

ACT NO. 8074

BILL NO. 32-0232

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2018

An Act amending title 22 Virgin Islands Code, chapter 21, section 514 and adding chapter 55A relating to life and health reinsurance agreements

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WHEREAS, the laws governing the insurance industry in the Territory are outdated as many of the laws were enacted in 1968 and have not been updated; and

WHEREAS, the laws governing the insurance industry in the Territory do not grant to the Commissioner of Insurance of the Virgin Islands all of the necessary authority to effectively regulate the solvency of the multi-state domestic insurance industry in the Territory; and

WHEREAS, all other United States jurisdictions have periodically updated their insurance laws commensurate with the ever-evolving insurance industry; and

WHEREAS, the NAIC has established core accreditation standards and a comprehensive set of laws, known as the Model Laws and Regulations, in order to assist United States jurisdictions in their regulation of the solvency of their multi-state domestic insurance industry, thereby giving greater protection to the policyholders in the United States; and

WHEREAS, all of the 50 States of the United States and the Commonwealth of Puerto have adopted the NAIC Model Laws and Regulations and the accreditation requirements and are now in substantial compliance with the NAIC accreditation standards; and

WHEREAS, the Territory has not adopted most of the NAIC Model Laws and Regulations that are necessary to obtain accreditation; and

WHEREAS, the enactment of the Virgin Islands Credit for Reinsurance Act and the incorporation into the Virgin Islands Code of the requirements for life and health reinsurance

agreements will place the Territory on par with other United States jurisdiction and will satisfy one of the NAIC requirements for bringing the Territory into compliance with the NAIC accreditation standards; Now, Therefore,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22, Chapter 21 is amended as follows:

Section 514, subsection (a), paragraph (1) is stricken and section 514 (a) (2) is designated as section 514 (a).

SECTION 2. Title 22 Virgin Islands Code is amended by adding Chapter 55A to read as follows:

“Chapter 55A The Virgin Islands Credit for Reinsurance.

§1441. Short title. This chapter may be cited as “The Virgin Islands Credit Reinsurance Act”.

§1442. Definitions: The following terms have the following meaning:

(a) An “Assuming insurer” means the company that assumes the risks from the insurance policy portfolio passed from a ceding insurer.

(b) A “Ceding insurer” means an insurance company that passes a part or all of its risks from its insurance policy portfolio to a reinsurance firm known as the assuming insurer.

(c) “Commissioner” means the Commissioner of Insurance of the Virgin Islands.

(d) “Reinsurance” means the insurance of an insurance company. In a reinsurance transaction, the ceding insurer pays the premium to the re-insurer (“assuming insurer”) for the shared risk, and the assuming insurer guarantees the amount payable by the assuming insurer if a specified event happens.

(e) “Substantially similar” means standards that equal or exceed the standards set in this chapter, as determined by the Commissioner.

§ 1443. Credit Allowed a Domestic Ceding Insurer

Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsections (a), (b), (c), (d), (e) or (f) of this section; but the Commissioner may adopt by regulation pursuant to Section 1446 (b) specific additional requirements relating to or setting forth: (1) the valuation of assets or reserve credits; (2) the amount and forms of security supporting reinsurance arrangements described in section 1446; or (3) the circumstances pursuant to which credit will be reduced or eliminated.

Credit is allowed under subsections (a), (b) or (c) of this section only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit is allowed under subsections (c) or (d) of this section only if the applicable requirements of subsection (g) have been satisfied.

(a) Credit is allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this territory.

(b) Credit is allowed when the reinsurance is ceded to an assuming insurer that is accredited by the Commissioner as a reinsurer in this territory. If the Commissioner determines that the assuming insurer has failed to continue to meet any of the qualifications, in the following paragraph the Commissioner may, upon written notice and hearing, revoke accreditation.

In order to be eligible for accreditation, a reinsurer must:

(1) File with the Commissioner evidence of its submission to this territory's jurisdiction;

(2) Submit to this territory's authority to examine its books and records;

(3) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(4) File annually with the Commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(5) Demonstrate to the satisfaction of the Commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000, and its accreditation has not been denied by the Commissioner within ninety days after submission of its application.

(c)(1) Credit is allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a U. S. branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or U. S. branch of an alien assuming insurer:

(A) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(B) Submits to the authority of this territory to examine its books and records.

(2) The requirement of section 1443 (c)(1)(A) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(d)(1) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified U.S. financial institution, as defined in section 1445, for the payment of the valid claims of its U. S. ceding insurers, their assigns and successors in interest. To enable the Commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the Commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of examination.

(2) (A) Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(i) The commissioner of the state where the trust is domiciled; or

(ii) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(B) The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers, their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the Commissioner.

(C) The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the Commissioner in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(3) The following requirements apply to the following categories of assuming insurer:

(A) The trust fund for a single assuming insurer must consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance

ceded by U.S. ceding insurers, and, in addition, the assuming insurer shall maintain a trusted surplus of not less than \$20,000,000, except as provided in paragraph (3B) of this subsection.

(B) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusted surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusted surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(C) (i) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, the trust must consist of a trusted account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U. S. domiciled ceding insurers to any underwriter of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, the trust must consist of a trusted account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusted surplus of which \$100,000,000 must be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all years of account; and

(ii) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(iii) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(D) In the case of a group of incorporated underwriters under common administration, the group shall:

(i) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation;

(ii) Maintain aggregate policyholders' surplus of at least \$10,000,000,000;

(iii) Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by U. S. domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(iv) In addition, maintain a joint trusteed surplus of which \$100,000,000 must be held jointly for the benefit of U. S. domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(v) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the Commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(e) Credit must be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this territory and secures its obligations in accordance with the requirements of this subsection. For purposes of this subsection, "jurisdiction" refers to those jurisdictions other than the United States and also to any state, district or territory of the United States. This subsection allows credit to ceding insurers that are mandated by these jurisdictions to cede to state-owned or controlled insurance or reinsurance companies or to participate in pools, guaranty associations or residual market mechanisms.

(1) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(A) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner pursuant to paragraph (3) of this subsection;

(B) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the Commissioner pursuant to regulation;

(C) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner pursuant to regulation;

(D) The assuming insurer must agree to submit to the jurisdiction of this territory, appoint the Commissioner as its agent for service of process in this territory, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U. S. ceding insurers if it resists enforcement of a final U.S. judgment;

(E) The assuming insurer must agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(F) The assuming insurer must satisfy any other requirements for certification deemed relevant by the Commissioner.

(2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of paragraph (1):

(A) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which must include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commissioner to provide adequate protection;

(B) The incorporated members of the association must not be engaged in any business other than underwriting as a member of the association and are subjected to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(C) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(3) The Commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the Commissioner as a certified reinsurer.

(A) In order to determine whether the domiciliary jurisdiction of a non U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U. S. A qualified jurisdiction must agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Commissioner has determined that the jurisdiction does not adequately and promptly enforce final U. S. judgments and arbitration awards. Additional factors may be considered in the discretion of the Commissioner.

(B) A list of qualified jurisdictions must be published through the NAIC Committee Process. The Commissioner shall consider this list in determining qualified jurisdictions. If the Commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Commissioner shall provide thoroughly documented justification in accordance with criteria to be developed under regulations.

(C) U.S. jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program must be recognized as qualified jurisdictions.

(D) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

(4) The Commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the Commissioner pursuant to regulation. The Commissioner shall publish a list of all certified reinsurers and their ratings.

(5) A certified reinsurer shall secure obligations assumed from U. S. ceding insurers under this subsection at a level consistent with its rating, as specified in regulations promulgated by the Commissioner.

(A) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with the

provisions of section 1444 or in a multibeneficiary trust in accordance with subsection (d) of this section, except as otherwise provided in this subsection.

(B) If a certified reinsurer maintains a trust to fully secure its obligations subject to subsection (d) of this section, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this subsection or comparable laws of other U. S. jurisdictions and for its obligations subject to subsection (d) of this section. It shall be a condition to the grant of certification under subsection (e) of this section that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the Commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(C) The minimum trusted surplus requirements provided in subsection (d) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum trusted surplus of \$10,000,000.

(D) With respect to obligations incurred by a certified reinsurer under this subsection, if the security is insufficient, the Commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(E) For purposes of this subsection, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100 percent of its obligations.

(i) As used in this subsection, the term "terminated" refers to revocation, suspension, voluntary surrender and inactive status.

(ii) If the Commissioner continues to assign a higher rating as permitted by other provisions of this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(6) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and such assuming insurer must be considered to be a certified reinsurer in this territory.

(7) A certified reinsurer that ceases to assume new business in this territory may request to maintain its certification in inactive status in order to continue to qualify for a

reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the Commissioner shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(f) Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsections (a), (b), (c), (d) or (e) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(g) If the assuming insurer is not licensed, accredited or certified to transact insurance or reinsurance in this territory, the credit permitted by subsections (c) and (d) of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(1) (A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and

(B) To designate the Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding insurer.

(2) This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(h) If the assuming insurer does not meet the requirements of Subsections (a), (b) or (c), the credit permitted by subsection (d) or (e) of this section must not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (d)(3) of this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(2) The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(3) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. ceding insurers of the grantor of the trust, the assets or part thereof must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(4) The grantor shall waive any right otherwise available to it under U. S. law that is inconsistent with this provision.

(i) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the Commissioner may suspend or revoke the reinsurer's accreditation or certification.

(1) The Commissioner must give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the Commissioner's order on hearing, unless:

(A) The reinsurer waives its right to hearing;

(B) The Commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under Subparagraph (e)(6) of this section; or

(C) The Commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the Commissioner's action.

(2) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with section 1444. If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection (e)(5) or section 1444.

(j) Concentration Risk.

(1) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceeds fifty 50% of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is

likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(2) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

§ 1444 Asset or Reduction from Liability for Reinsurance Ceded by a Domestic Insurer to an Assuming Insurer not Meeting the Requirements of Section 1443

An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 545 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer; provided further, that the Commissioner may adopt by regulation pursuant to section 548(b) specific additional requirements relating to or setting forth: (1) the valuation of assets or reserve credits; (2) the amount and forms of security supporting reinsurance arrangements described in section 1446(b); and/or (3) the circumstances pursuant to which credit will be reduced or eliminated.

The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified U.S. financial institution, as defined in Section 1445(b). This security may be in the form of:

- (a) Cash;
- (b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
- (c) (1) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified U.S. financial institution, as defined in section 1445(a), effective no later than December 31, of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement;
- (2) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

- (d) Any other form of security acceptable to the Commissioner.

§ 1445. Qualified U.S. Financial Institutions for Purposes of Section 1444(c):

- (a) A "qualified U. S. financial institution" means an institution that:

(1) Is organized or (in the case of a U. S. office of a foreign banking organization) licensed, under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by U. S. federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

- (b) A "qualified U. S. financial institution" means, for purposes of those provisions of this subchapter specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(1) Is organized, or, in the case of a U. S. branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

§ 1446 Rules and Regulations

- (a) The Commissioner may adopt rules and regulations implementing the provisions of this chapter.

- (b) The Commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangements described in paragraph (1) of this section.

- (1) A regulation adopted pursuant to this section may apply only to reinsurance relating to:

(A) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

- (B) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
 - (C) Variable annuities with guaranteed death or living benefits;
 - (D) Long-term care insurance policies; or
 - (E) Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.
- (2) A regulation adopted pursuant to paragraph 1(A) or 1(B) of this section 1446(b), may apply to any treaty containing (i) policies issued on or after January 1, 2015, and/or (ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.
- (3) A regulation adopted pursuant to this section 1446(b) may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.
- (4) A regulation adopted pursuant to this section 548(b) shall not apply to cessions to an assuming insurer that:
- (A) Is certified in this territory or, if this territory has not adopted Provisions substantially equivalent to section 2E of the NAIC's Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or
 - (B) Maintains at least \$250,000,000 in capital and surplus when determined in accordance with the NAIC *Accounting Practices and Procedures Manual*, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is
 - (i) licensed in at least 26 states; or
 - (ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.
- (5) The authority to adopt regulations pursuant to this section does not limit the Commissioner's general authority to adopt regulations pursuant to Section 548(a) of this law.

§ 1447 Reinsurance Agreements Affected

This subchapter applies to all cessions after the effective date of this chapter under reinsurance agreements that have an inception, anniversary or renewal date not less than nine (9) months after the effective date of this chapter.

SECTION 3. Title 22 of the Virgin Islands Code is amended to add a new chapter 55A, subchapter 1 entitled "Life and Health Reinsurance Agreements" to read as follows:

"SUBCHAPTER 1 LIFE AND HEALTH REINSURANCE AGREEMENTS

§ 1448. Short Title

This subchapter is entitled "Life and Health Reinsurance Agreements".

(a) *Scope*

This subchapter applies to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers which are not subject to a substantially similar law or regulation in their domiciliary state. This subchapter also similarly applies to licensed property and casualty insurers with respect to their accident and health business. This subchapter does not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

(b) *Accounting Requirements:*

(1) No insurer subject to this subchapter shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(A) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall using assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured;

(B) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld,

and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets;

(C) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty;

(D) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;

(E) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company;

(F) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk categories:

- (i) Morbidity
- (ii) Mortality
- (iii) Lapse

This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

- (iv) Credit Quality (C1)

This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(v) Reinvestment (C3)

This is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(vi) Disintermediation (C3)

This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

Significant -0- Insignificant

RISK CATEGORY

a b c d e f

Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
dump-in premiums allowed						

*LTC = Long Term Care Insurance

LTD = Long Term Disability Insurance

(G) (i) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in paragraph (G)(ii) below either transfer the

underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Commissioner which legally segregates, by contract or contract provision, the underlying assets.

(ii) Notwithstanding the requirements of paragraph (G)(i) of this subsection, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

Health Insurance - LTC/LTD
 Traditional Non-Par Permanent
 Traditional Par Permanent
 Adjustable Premium Permanent
 Indeterminate Premium Permanent
 Universal Life Fixed Premium
 (no dump-in premiums allowed)

(iii) The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where I is the net investment income
 CG is capital gains less capital losses
 X is the current year cash and invested assets plus investment income due and accrued less borrowed money
 Y is the same as X but for the prior year

(H) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

(I) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(J) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(K) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(2) Notwithstanding subsection (1), an insurer subject to this subchapter may, with the prior approval of the Commissioner, take such reserve credit or establish such asset as the Commissioner may determine consistent with the Insurance Code, Rules or Regulations, including actuarial interpretations or standards adopted by the Commissioner.

(3) (A) Agreements entered into after the effective date of this subchapter which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the Commissioner within thirty (30) days from its date of execution. Each filing must include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this subchapter and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the Commissioner. The actuary shall maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this subchapter.

(B) Any increase in surplus net of federal income tax resulting from arrangements described in subsection (3)(A) above must be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income must be reflected on a net of tax basis in the "Reinsurance ceded" line, page 4 of the Annual Statement as earnings emerge from the business reinsured. {For example, on the last day of calendar year N, company XYZ pays a \$20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is \$13.2 million (\$20 million - \$6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. \$6.8 million (34% of \$20 million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations. At the end of year N+1 the business has earned \$4 million. ABC has paid \$.5 million in profit and risk charges in arrears for the year and has received a \$1 million experience refund. Company ABC's annual statement would report \$1.65 million (66% of (\$4 million - \$1 million - \$.5 million) up to a maximum of \$13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -\$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.}

(c) ***Written Agreements:***

(1) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the

Commissioner, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety (90) days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(3) The reinsurance agreement must contain provisions which provide that:

(A) The agreement must constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(B) Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

(d) Existing Agreements:

Insurers subject to this subchapter shall reduce to zero no later than nine months following the effective date of this subchapter any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this subchapter which, under the provisions of this subchapter would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements shall have been in compliance with laws or regulations in existence immediately preceding the effective date of this subchapter.

SECTION 4. This Act takes effect 60 days following its enactment.

Thus passed by the Legislature of the Virgin Islands on August 31, 2018.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 13th Day of September, A.D., 2018.



Myron D. Jackson
President

Jean A. Forde
Legislative Secretary



Bill No. 32-0232 is hereby approved.

Witness my hand and the Seal of the
Government of the United States
Virgin Islands at Charlotte Amalie,

St. Thomas, this 25th day of September, 2018 A.D.



Kenneth E. Mapp
Governor