

03/23/2022-AMENDED AND REPORTED OUT TO THE FLOOR
03/15/2022-REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

BILL NO. 34-0191

Thirty-Fourth Legislature of the Virgin Islands

January 27, 2022

An Act amending title 22 Virgin Islands Code, chapters 55 and 66 and title 13, chapter 14 relating to captive insurance companies to clarify the purpose of the chapter, and to prohibit the organization, within the Virgin Islands, of a special category of multi-state insurers that may not be required to comply with the accreditation standards established by the National Association of Insurance Commissioners (NAIC) and adopted by the Territory as a NAIC-accredited jurisdiction

PROPOSED BY: Senator Donna A. Frett-Gregory by Request of the Governor

1 **WHEREAS**, the Virgin Islands, through the Office of the Lieutenant Governor, Division
2 of Banking, Insurance and Financial Regulation ("the Division"), with the Lieutenant Governor
3 serving statutorily as the Territory's Commissioner of Insurance, was accredited by the National
4 Association of Insurance Commissioners ("NAIC") on December 6, 2019; and

5 **WHEREAS**, the NAIC Accreditation Program was established to develop and maintain
6 standards to promote effective insurance company financial solvency regulation. The purpose
7 of the accreditation program is for state insurance departments to meet baseline standards of
8 solvency regulation, particularly with respect to regulation of multi-state insurers. NAIC
9 accreditation allows non-domestic states to rely on the accredited domestic regulator to fulfill
10 a baseline level of effective financial regulatory oversight. This creates substantial efficiencies
11 for insurance regulators, who are then able to coordinate and rely on each other's work. It also

1 creates far greater efficiencies for insurance companies licensed in accredited states, which are
2 then not subject to financial examinations or other financial oversight by multiple jurisdictions;
3 and

4 **WHEREAS**, all fifty states, the District of Columbia and the Virgin Islands are currently
5 NAIC accredited; and

6 **WHEREAS**, the licensing and regulation of insurers seeking to conduct business in the
7 Territory must be conducted in accordance with NAIC standards; and

8 **WHEREAS**, the name of title 22, chapter 55 of the Virgin Islands Code, currently known
9 as "Virgin Islands International Insurers Act", is unclear inasmuch as it is not indicative of the
10 purpose of the chapter, which is to license and regulate only captive insurers, not international
11 insurers; and

12 **WHEREAS**, NAIC was concerned as to whether title 22, chapter 55 of the Virgin Islands
13 Code, currently known as the "Virgin Islands International Insurers Act", may allow for the
14 organization of a special category of multi-state insurers which may not be subject to NAIC's
15 accreditation standards; and

16 **WHEREAS**, the legislative intent of title 22, chapter 55 and chapter 66 was to authorize
17 the licensure and regulation of captive insurers. An international insurer licensed under chapter
18 55, subchapter I is organized as a captive insurance company, and no other categories of insurers
19 are organized under this law; further, an international insurer under chapter 55, subchapter 1 is
20 only permitted, as a captive insurer, to write insurance business for its parents and affiliates,
21 and all of the Territory's captive insurers are single-parent captive insurers, and none meet the
22 definition of "multi-state insurer" and of great importance, a captive insurer cannot convert into
23 or be licensed as a multi- state insurer in the Territory since it is only allowed to establish branch
24 captives in other jurisdictions; and

25 **WHEREAS**, to ensure the Territory's full compliance with NAIC's accreditation
26 standards; to ascertain that entities seeking to conduct captive insurance business are

1 conforming fully with the Territory's captive insurance laws and are not seeking to conduct
2 business as a multistate insurer or an international insurer; and of equal importance, to protect
3 the integrity of the Territory's insurance industry, it is imperative that the name of chapter 55
4 be changed from "Virgin Islands International Insurers Act" to "Virgin Islands Captive Insurers
5 Act"; that "international insurer" be deleted wherever it appears in chapter 55; and that a
6 definition of "Captive Insurer" be placed in chapter 55; *Now, Therefore,*

7 ***Be it enacted by the Legislature of the Virgin Islands:***

8 **SECTION 1.** The Virgin Islands Code title 22, chapter 55 is amended in the following
9 instances:

10 (a) The chapter heading and section 1400 are amended by striking "International"
11 wherever it appears and inserting "Captive" in its place.

12 (b) by striking the following terms wherever they appear in the chapter and inserting
13 new terms in their place as follows:

14 (1) "International insurance company" and "international insurer" and inserting
15 "captive insurer" in their place;

16 (2) "International insurance companies" and "international insurers" and
17 inserting "captive insurers" is inserted in their place;

18 (3) "International Insurers Business" and "International Insurer Businesses" and
19 inserting "Captive Insurers Business" and "Captive Insurers Businesses" respectively;

20 (4) "Alien Captive Insurance Company" and inserting "Alien Captive Insurer";

21 (5) "Branch Exempt International Insurer" and inserting "Branch Exempt
22 Captive Insurer";

23 (6) "Association International Insurance Company" and inserting "Association
24 Captive Insurer";

1 (7) “Exempt International Insurer” and “Exempt International Insurers” and by
2 inserting “Exempt Captive Insurer” and “Exempt Captive Insurers”, respectively;

3 (8) “Exempt International Company” and “Exempt International Companies”
4 and inserting “Exempt Captive Insurer” and “Exempt Captive Insurers”, respectively;

5 (9) “Group International Insurance Company” and inserting “Group Captive
6 Insurer”;

7 (10) “Industrial Insured International Insurance Company” and inserting
8 “Industrial Insured Captive Insurer”;

9 (11) “Single-parent International Insurance Company” and “Single-Parent
10 International Insurance Company” and inserting “Single-Parent Captive Insurer”;

11 (12) “Alternative Markets and International Reinsurance” and inserting
12 “Alternative Markets and Captive Reinsurance”;

13 (13) “International Reinsurance Business” and “International Reinsurance
14 Businesses” and inserting “Captive Reinsurance Business” and “Captive Reinsurance
15 Businesses”, respectively;

16 (14) “International Support Business” and “International Support Businesses” and
17 inserting “Captive Support Business” and “Captive Support Businesses”, respectively;

18 (15) “International Insurer Support Business” and “International Insurer Support
19 Businesses” and inserting “Captive Insurer Support Business” and Captive Insurer
20 Support Businesses, respectively;

21 (16) “International Reinsurer” and inserting “Captive Reinsurer”; and

22 (17) Alternative Market International Reinsurance Revolving Fund” and inserting
23 “Alternative Market Captive Reinsurance Revolving Fund”.”

24 (c) Section 1401 is amended by adding the following definition alphabetically:

25 “Captive insurer” means an insurance company created and wholly owned by one
26 or more non-insurance companies to insure the risks of its owner or parent corporation,

1 essentially a form of self-insurance whereby the insurer is owned wholly by the insured
2 and typically established to meet the risk-management needs of its owners or members
3 and whose primary jurisdiction is known as its domicile. A captive insurance company
4 includes any single-parent Captive Insurance Company, Association Captive Insurance
5 Company, and an Industrial Insured Captive Insurance Company or any Branch Exempt
6 Captive Insurer thereof licensed under this chapter to underwrite risks situated
7 exclusively outside the Virgin Islands.”

8 (d) Section 1401a is added and reads as follows: “§ 1401a. Purpose. The purpose of
9 this chapter is to:

10 (1) Allow for the statutory organization of captive insurance companies, as
11 defined in this chapter;

12 (2) Prohibit international insurers from licensure under this chapter, and

13 (3) Prohibit captive insurers from converting into or being licensed as a multi-
14 state insurer in the Virgin Islands.”

15 (e) Section 1401(t) is deleted in its entirety.

16 **SECTION 2.** Title 22 Virgin Islands Code, chapter 66 is amended as follows:

17 (a) By striking the following terms wherever they appear in the chapter and inserting
18 new terms in their place as follows:

19 (1) “Superintendent of Division of Alternative Markets and International
20 Reinsurance” and inserting “Superintendent of Division of Alternative Markets and
21 Captive Reinsurance”;

22 (2) “alternative markets and international reinsurance” and “Alternative Markets
23 and International Reinsurance” and inserting “alternative markets and captive
24 reinsurance” and “Alternative Markets and Captive Reinsurance”, respectively;

25 (3) “captive insurance company” and inserting “captive insurance insurer”;

26 (4) “International reinsurer” and inserting “captive reinsurer”; and

1 (5) “third party international reinsurer” and inserting “third-party captive
2 reinsurer”.

3 **SECTION 3.** Title 13 Virgin Islands Code, chapter 14 is amended by striking the
4 following wherever they appear in the chapter:

5 (1) “Exempt international insurer” and by inserting “exempt captive insurer”;

6 (2) “International insurance company” and by inserting “captive insurance
7 insurer”.

8 **BILL SUMMARY**

9 This bill amends title 22, chapter 55 of the Virgin Islands Code by (1) changing the title
10 of the chapter to the “Virgin Islands Captive Insurers Act”; (2) provide clarity to the purpose of
11 the chapter which is to allow for the statutory organization of a captive insurance company in
12 the Territory; (3) striking the words "international insurer(s)" wherever it appears in this chapter
13 and inserting in its place "captive insurer(s)"; (4) providing a definition of “captive”; and, (5)
14 limiting the purpose of title 22, chapter 55 of the Virgin Islands Code to the licensing of a
15 captive insurer.

16 **BR22-0888/ January 11, 2022/**
17 **G34-034**

18 **REVIEWER’S NOTE**

19 Section 1, subsection (b) of the bill strikes “International insurer” throughout the chapter
20 and substitutes “captive insurer”. Subsection (c) adds a definition of captive insurer. However,
21 internal section 1401, subsection (t) under existing law defines “International Insurance
22 Company”. When under subsection (b) “international” is changed to “capital” there will be two
23 definitions of a “captive”. Nonetheless, currently there is no definition of “International
24 Insurer” without a qualifier, such qualifier as “Branch Exempt International Insurer”. As
25 mentioned above, subsection (b) strikes the term, International Insurer” and replaces it with
26 “Captive Insurer”. The term, “international Insurer appears approximately 40 times throughout
27 the chapter. However, the term, International Insurance Company appears approximately 100
28 times throughout the chapter.

29 The last WHEREAS Clause in the preamble of the bill declares that *inter alia* to ensure
30 the Territory's full compliance with NAIC's accreditation standards and to protect the integrity
31 of the Territory's insurance industry, it is imperative that "international insurer" be deleted
32 wherever it appears in chapter 55. It is clear that the intent of the bill is to delete all references
33 to “international insurer”, but what is not clear is the retention of the term, “international
34 insurance company” in the more than 100 places where it appears.

1 Section 71 of title 22 grants the SAM authority to regulate International Insurance
2 Companies, Exempt International Insurers, International Reinsurance Business. Subsection
3 (a)(9) authorizes the SAM “to issue licenses and certificates of Exempt International Company
4 benefits and tax incentive benefits in accordance with Virgin Islands Code, Chapter 55 and
5 Chapter 66 of this title and chapter 14 of title 13, as it relates to exempt international insurer”.
6 *See, e.g.* 13 V.I.C. § 851, 853a. Moreover, 22 V.I.C. § 1415, as amended by this bill would
7 allow a Captive Insurer to make an exempt company election under chapter 14 of the corporate
8 code, title 13, §§851-863. However, chapter 14 of title 13, relating to exempt companies under
9 the corporation statute, would still apply to International Insurers. Section 851 defines exempt
10 insurer as an exempt company which also meets the definition of “exempt international insurer”
11 in Title 22, Chapter 55. Consequently, there will be no reference to captive insurers.
12

13 Because of all the references to international insurers in other parts of the code, it is the
14 intent of the bill is unclear, especially when title 22, section 70 establishes within the Office of
15 the Lieutenant Governor the Division of Alternative Markets and International Reinsurance.
16 In addition, section 6602 established within the Office of the Commissioner of Insurance the
17 Division of Alternative Markets and International Reinsurance. Under section 71, the SAM
18 may regulate International Reinsurers, International Support Busines, and International
19 Exempt Insurers. Under section 72 the SAM must keep a register of all licenses issued under
20 title 22 to International Insurance Support Businesses. Section 73 creates the Alternative
21 Market and International Reinsurance Revolving Fund.
22

23 The bill should be clear and consistent with respect to the intended treatment of
24 International Insurers. The bill does not reflect that all provisions *in pari materia* were
25 addressed.