

ACT NO. 7964

**BILL NO. 31-0445**

**THIRTY-FIRST LEGISLATURE OF THE VIRGIN ISLANDS**

**Regular Session**

**2016**

An Act repealing and reenacting title 22 Virgin Islands Code chapter 31 to enact the "Virgin Islands Producer and Adjuster Licensing Act"

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**WHEREAS**, the laws governing the insurance industry in the Virgin Islands seriously needs to be updated to comply with national standards; and

**WHEREAS**, the Lieutenant Governor of the Virgin Islands as the Commissioner of Insurance regulates the Virgin Islands insurance industry; and

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

**WHEREAS**, the National Association of Insurance Commissioners (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 affording 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 Virgin Islands has not adopted most of the NAIC Model Laws and Regulations that are necessary to obtain substantial compliance with the NAIC accreditation standards and is therefore not in compliance with the NAIC accreditation standards; Now, Therefore,

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

**SECTION 1.** Title 22 Virgin Islands Code, chapter 31 is repealed and reenacted to read as follows:

**“CHAPTER 31 VIRGIN ISLANDS INSURANCE PRODUCER AND ADJUSTER LICENSING**

**§751. Purpose and Scope.**

(a) This chapter governs the qualifications and procedures for the licensing of insurance producers and adjusters. It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance licenses.

(b) This chapter does not apply to excess and surplus lines brokers licensed pursuant to chapter 27 of this title, except as provided in sections 763(b) and 764 of this chapter.

**§751a. Definitions.** As used in this chapter:

(1) “Adjuster” means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. The term does not apply to an attorney-at-law who adjusts insurance losses from time to time incidental to the practice of the attorney's or the adjuster's profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a general agent.

(2) “Independent adjuster” means a person licensed as an all-lines adjuster who is self-appointed or appointed and employed by an independent adjusting firm or other independent adjuster, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.

(3) “Public adjuster” means a person, who for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims.

(b) “Agent” means any person appointed by an insurer to solicit application for insurance on its behalf, and if authorized so to do, to effectuate and countersign insurance contracts except as to life or disability insurances, and to collect premiums on insurance so applied for or effectuated.

(c) “Bail bond insurance” has the meaning used in section 459 of chapter 19 of this title.

(d) "Broker" means any person who, on behalf of the insured, for compensation as an independent contractor, for commission, or fee, and not being an agent of the insurer, solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance thereof, or in any manner aids therein, for insureds or prospective insured other than himself.

(e) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, sole proprietor or any other legal entity.

(f) "Commissioner" means the Commissioner of Insurance.

(g) "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his principal place of residence or principal place of business and is licensed to act as an insurance producer.

(h) "Insurance" has the same meaning as provided in section 3 of chapter 1 of this title.

(i) "Insurance producer" means a person required to be licensed under the laws of the Virgin Islands to sell, solicit or negotiate insurance. It does not include excess and surplus line brokers licensed under chapter 27 of this title or adjusters as defined in this section.

(j) "Insurer" has the meaning as provided in section 4 of chapter 1 of this title.

(k) "License" means a document issued by the Commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit to an insurer.

(l) "Limited lines credit insurance" includes life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile protection gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the Commissioner determines should be designated a form of limited line credit insurance.

(m) "Limited lines insurance" means those lines of insurance defined in section 759(a)(7)-(12) of this chapter or any other line of insurance that the Commissioner considers necessary to recognize for the purposes of complying with section 763(g) of this chapter.

(n) "Limited lines producer" means a person authorized by the Commissioner to sell, solicit or negotiate limited lines insurance.

(o) "Managing General Agent" means an individual, firm or business entity that manages all or part of the insurance business of an insurer, including the management of a

separate division, department or underwriting office; and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with the following activity related to the business produced, adjusts or pays claims in excess of \$10,000 per claim or negotiates reinsurance on behalf of the insurer.

(p) "NAIC" means National Association of Insurance Commissioners.

(q) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(r) "Person" means an individual or a business entity.

(s) "Policyholders surplus" means assets in excess of the liabilities of a company or net income above any monies indebted to legal obligation.

(t) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(u) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(v) "Solicitor" means an individual authorized by an agent or broker or insurance producer to solicit applications for insurance as a representative of such agent or broker and to collect premiums in connection therewith. An individual employed by, and devoting full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the agent or broker is not deemed to be solicitor if the individual's compensation is not related to the volume of such applications, insurances, or premiums.

(w) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or between a solicitor and an agent or broker or the termination of an insurance producer's authority to transact insurance.

(x) "Title insurance agent" means a person licensed under the laws of the Virgin Islands and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

(y) "Uniform Application" means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

(z) "Uniform Business Entity Application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

**§ 752. License required.**

(a) It is unlawful for a person to perform any act as an insurance producer in the Virgin Islands unless then licensed in the Virgin Islands.

(b) It is unlawful for a person to sell, solicit or negotiate insurance in the Virgin Islands for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this chapter.

(c) It is unlawful for a person to act as or hold himself out as an adjuster in the Virgin Islands unless licensed by the Commissioner or otherwise authorized to act as an adjuster under this chapter.

**§ 753. Unlicensed activities; acts committed in the Virgin Islands; Sanctions 24.**

(a) For the purpose of section 752, an act is committed in the Virgin Islands if it is committed, in whole or in part, in the Virgin Islands, or affects persons or property within the Virgin Islands and relates to or involves an insurance contract, health care services contract, or health maintenance agreement.

(b) If a person violates provisions of section 752, the Commissioner may:

(1) issue and enforce a cease and desist order in accordance with sections 54 and 55 of this title; or

(2) suspend or revoke a license; or

(3) both issue cease and desist order and suspend or revoke the license.

(c) Any person violating this section may be fined up to \$10,000 or imprisonment for not more than one year, or both, for each instance of violation, in addition to any other penalty or forfeiture provided by law. Notwithstanding any other provision of this title, the penalties and fines provided in this chapter for violation of this chapter control, unless specifically provided otherwise.

(d) Upon failure to pay a civil penalty when due, the Attorney General may bring a civil action on behalf of the Commissioner to recover the unpaid penalty.

(e) The Commissioner may suspend or revoke the license of an insurance producer or adjuster or issue a cease and desist order, or may do both, if, after notice and opportunity for hearing, the Commissioner finds that an insurance producer or adjuster:



(1) is using such methods or practices in the conduct of its business so as to render its further transaction of business in the Virgin Islands hazardous or injurious to insured persons or the public;

(2) has failed to pay any judgment rendered against it in the territory within 60 days after the judgment has become final;

(3) has, in the transaction of business under its license, used fraudulent, coercive or dishonest practices, or has demonstrated untrustworthiness or financial irresponsibility; or is not of good personal and business reputation;

(4) has obtained or attempted to obtain a license through misrepresentation or fraud;

(5) has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of the Virgin Islands;

(6) has refused to be examined or to produce its accounts, records and files for examination, or has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the Commissioner;

(7) has failed to appear without reasonable cause or excuse in response to a subpoena, examination warrant or any other order lawfully issued by the Commissioner;

(8) has misappropriated or converted to its own use, or improperly withheld, money required to be held in a fiduciary capacity;

(9) has intentionally made a material misstatement on its application for a license;

(10) has been, within the past three years, convicted of, or has entered a plea of guilty or *nolo contendere* to a felony without regard to whether adjudication was withheld, unless the person demonstrates to the Commissioner sufficient rehabilitation to warrant the public trust;

(11) has had a license suspended or revoked or its application denied in any of the 50 states or territories of the United States; or

(12) has performed any other action the Commissioner determines is a violation of the laws and regulations of the Virgin Islands.

**§ 754. Exceptions to licensing.**

(a) Nothing in this chapter may be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(b) A license as an insurance producer is not required for the following types of activities or circumstances:

(1) An officer, director, or employee of an insurer or of an insurance producer, if the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in the Virgin Islands; and

(A) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these and are only indirectly related to the sale, solicitation, or negotiation of insurance; or

(B) The officer, director, or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) The officer, director, or employee is acting in the capacity of an agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance.

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, and the program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or an organization employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities are limited to advertising without the intent to solicit insurance through communications in printed publications or other forms of electronics mass media whose distribution is not limited to residents of the Territory, if the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this Territory;

(6) A person who is not a resident of this Territory who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, if the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state or territory where the insured maintains its principal place of business and the contract of insurance insures risks located in that state or territory; or

(7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interest of the employer or of the subsidiaries or business affiliates of the employer if the employee does not sell or solicit insurance or receive a commission.

**§ 755. Application of chapter to insurance producers appointed by health care service contractors, health maintenance organizations, or both.**

The provisions of this chapter apply to insurance producers appointed by either health care service contractors or health maintenance organizations.

**§ 756. Determining whether authorization exists; burden on insurance producer.**

Any insurance producer soliciting, negotiating, or procuring an application for insurance or health care services in the Territory must make a good faith effort to determine whether the entity that is issuing the coverage is:

(1) authorized as an admitted insurer to transact health insurance coverage in this Territory; or

(2) a property or casualty insurer, conducting business as an admitted insurer or through a surplus line broker licensed under chapter 27 of this title.



**§ 757. Application for examination.**

(a) Unless exempt pursuant to section 765 of this chapter, a resident individual applying for an insurance producer license or an adjuster license shall take and pass a written examination about the Territory's insurance law. This requirement does not apply to:

(1) applicants for a license as a nonresident insurance producer or adjuster who are duly licensed in another state and have fulfilled qualification requirements in their state of residence and who the Commissioner determines is fully qualified and competent;

(2) applicants for a producer or adjuster license covering the same kinds of insurance as a producer or adjuster license then held by them in the Virgin Islands; or

(3) applicants who have maintained a continuous license in the Virgin Islands in a similarly qualified area for the five-year period immediately preceding the date of application and who the Commissioner considers to be fully qualified and competent.

(b) The examination described in subsection (a) is required for the following lines of authority:

(1) lines of authority set forth in section 759(a); and

(2) any other line of authority designated by the Commissioner unless exempt under section 765.

(c) The examination tests the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or adjuster and the insurance laws and regulation of the Virgin Islands.

(d) Examinations must be developed and conducted under regulations prescribed by the Commissioner.

(1) The Commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the fee.

(2) Each individual applying for an examination shall remit a non-refundable fee as prescribed by the Commissioner.

(3) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(4) The Commissioner may require a waiting period of reasonable duration before giving a new examination to an applicant who has failed a previous similar examination.

(e) The Commissioner shall prepare, or approve, and make available a manual specifying in general terms the subjects that may be covered in any examination for a particular license.

(f) Applicants for the renewal of licenses in force on the effective date of this title, or issued thereafter are not required to take an examination except as provided in subsection (g).

(g) The Commissioner may at any time require any licensed insurance producer or adjuster to take and successfully pass an examination testing competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been found in violation of this title, or has so conducted his or her affairs under the license as to cause the Commissioner reasonably to desire further evidence of qualifications.

#### **§ 758. Application for license.**

(a) Any corporation, firm or individual having a place of business in the Virgin Islands and acting as an agent may be licensed by the Commissioner as a resident insurance producer to solicit, accept applications, write, issue, deliver or place policies or contracts of direct insurance upon risks located within the Virgin Islands for an insurer authorized to transact business. During the time, the resident insurance producer shall conform to the agreement and requirements of this section and other provisions of the insurance law, if an application for an insurance producer's license is filed with the Commissioner accompanied by a statement signed by the proposed insurance producer on a form prescribed by the Commissioner in which the insurance producer agrees not to rebate any part of the premium or commission or offer any valuable consideration as an inducement to take insurance other than that clearly expressed in the policy and that, if the insurance producer signs policies, the insurance producer will maintain an office within the Virgin Islands and keep therein at all times a complete record of all applications for and policies of insurance placed by or through the insurance producer and will not sign any policies in blank to be issued outside of his or her office.

(b) An individual applying for a resident insurance producer or adjuster license shall make application to the Commissioner on the Uniform Application or any other application prescribed by the Commissioner, along with any additional information required by the Commissioner, and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. As a part of, or in connection with any such application, the applicant shall furnish information concerning the applicant's identity, personal history, experience, business record, purposes, and other pertinent facts as the Commissioner may reasonably require. Before approving the application, the Commissioner shall find that the individual:

- (1) is at least eighteen years of age or over;
- (2) is a bona fide resident of and actually resides in the Virgin Islands;
- (3) is of good reputation and character, is honest and trustworthy, and is otherwise suitable to be licensed;
- (4) has not committed any act that is a ground for refusal, nonrenewal or revocation as set forth in section 776;
- (5) has paid the nonrefundable application fee and any other fees as prescribed by the Commissioner;
- (6) has completed a pre-licensing course of study for the lines of authority for which the applicant has applied;
- (7) has successfully passed the examinations for the lines of authority for which the person has applied;
- (8) has submitted a national criminal records check, with fingerprint;
- (9) if applying for a resident insurance agent license with a variable life-variable annuity line of authority, shall include in the applicant's application the applicant's individual central registration depository number;
- (10) if applying for a resident public adjuster license, has filed the bond for \$5,000 and has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster;
- (11) if applying for an insurance agent license, has on file an appointment form by an insurer;
- (12) if applying for an insurance solicitor license, has on file an appointment form by an agent or broker;
- (13) if a resident producer or adjuster, other than an agent licensed for life or disability insurances only, shall have and maintain a principal place of business in the Virgin Islands; and
- (14) if applying for a broker's license or for the renewal of a broker's license existing on the effective date of this title, must maintain a bond executed by an authorized corporate surety approved by the Commissioner in the amount of \$10,000. The bond

must be continuous in form, and total aggregate liability on the bond may be limited to the payment of \$10,000.

(c) A business entity acting as an adjuster must obtain an insurance adjuster license. Application must be made to the Commissioner on the Uniform Application or any other application prescribed by the Commissioner, and the individual signing the application shall declare under penalty of refusal, nonrenewal, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the Commissioner shall find that the business entity:

- (1) if a corporation, is other than an insurer;
- (2) is domiciled or maintains its principal place of business in the Virgin Islands;
- (3) is empowered to be an adjuster under a member's agreement, if a firm, or by its articles of incorporation, if a corporation;
- (4) has paid the nonrefundable application fee and any other fees as prescribed by the Commissioner;
- (5) has designated a licensed adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of the Virgin Islands;
- (6) has not committed any act that is a ground for refusal, nonrenewal, or revocation as set forth in section 776;
- (7) if applying for a resident public adjuster, has filed a bond in the amount of \$5,000.00; and
- (8) has submitted any other documents requested by the Commissioner.

(d) A resident business entity acting as a title insurance agent must hold a resident insurance producer license. Application must be made to the Commissioner on the Uniform Business Entity Application or any other application prescribed by the Commissioner, and the individual submitting the application shall declare under penalty of refusal, nonrenewal, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the Commissioner shall find that the business entity:

- (1) has paid the non-refundable application fee and any other fees as prescribed by the Commissioner;
- (2) maintains a lawfully established place of business in the Virgin Islands;

(3) is empowered to be a title insurance agent under a members' agreement, if a limited liability company, or by its articles of incorporation, if a corporation;

(4) is appointed as an agent by one or more authorized title insurance companies;

(5) has designated a licensed title agent responsible for the business entity compliance with the insurance laws, rules and regulations in the Virgin Islands; and

(6) has complied with all applicable laws, rules and regulations of the Virgin Islands.

(e) The Commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer or insurance adjuster to produce the information requested in an application for license.

(f) A firm or corporation may not be licensed as an agent or broker unless each individual is designated in the license to exercise the powers and is qualified as though the agent or broker were the sole individual.

(g) Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that must be approved by the Commissioner.

(h) If the Commissioner finds that the applicant has qualified pursuant to the Commissioner's requirements, and that the license fee has been paid, the Commissioner shall issue the license. Otherwise, the Commissioner may refuse to issue the license.

#### **§ 759. License.**

(a) Unless denied licensure pursuant to section 776, persons who have met the requirements of sections 757 and 758 must be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) life insurance on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accidental death and may include benefits for disability income;

(2) accident and health or sickness- insurance for disability, sickness, bodily injury or accidental death and may include benefits for disability income;



(3) property insurance for the direct or consequential loss or damage to property of every kind;

(4) casualty insurance against legal liability, including that for death, injury or disability or damage to real or personal property;

(5) variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities;

(6) personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(7) credit limited line credit insurance;

(8) surety as used in this chapter, is as defined in section 458 of this title;

(9) travel insurance coverage for personal risks incident to planned travel including but not limited to:

(A) interruption or cancellation of trip or event;

(B) loss of baggage or personal effects;

(C) damages to accommodations or rental vehicles; and

(D) sickness, accident, disability or death occurring during travel.

(10) Title as used in this chapter, is as defined in chapter 19, section 460 of this title.

(10) specialty lines:

(A) communications equipment or services;

(B) rental car;

(C) self-service storage; or

(12) any other line of insurance permitted under the Virgin Islands laws or regulations.

(b) An insurance producer license remains effective until December 31 of each year, unless revoked, suspended or surrendered as long as the fee prescribed by the Commissioner is paid and educational requirements for resident individual insurance producers are met by the due date.

(c) Any individual insurance producer or adjuster who allows the license to lapse may, within 12 months from the due date of the renewal, have the license reinstated without the necessity of passing a written examination. However, a penalty of double the unpaid renewal fee must be paid for any request for renewal received after 15 days of the due date. During this 15-day grace period, no penalty may be charged.

(d) A licensed insurance producer or adjuster who is unable to comply with license renewal procedures or take an examination due to military service or some other extenuating circumstances may request a waiver and may also request a waiver of any fine or sanction imposed for failure to comply with renewal or examination requirements.

(e) An insurance producer's license must be in the form as the Commissioner prescribes and must set forth:

(1) the name and address of the licensee, or if the licensee is required to have a place of business, the address of the place of business;

(2) if the agent or broker is a firm or corporation, the name of each individual authorized to exercise the powers conferred by the license;

(3) National Insurance Producer Registry number and Virgin Islands insurance license number;

(4) the lines of authority the licensee is thereby licensed to handle;

(5) if a solicitor's license, the name and address of the agent or broker represented by the solicitor;

(6) the condition under which the license is granted;

(7) the date of issuance and the expiration date of license; and

(8) and any other information the Commissioner considers necessary.

(f) An insurance adjuster's license must contain:

(1) the name of the adjuster and the address of his place of business;

(2) if the adjuster is a firm or corporation, the name of the individual authorized to exercise the powers conferred by the license;

(3) a statement regarding license as an independent adjuster or as a public adjuster;

(4) the date of issuance and the expiration date of license; and

(5) any other information the Commissioner considers necessary.

(g) Licensees shall inform the Commissioner by any means acceptable to the Commissioner of a change of legal name and address not more than 30 days after the change. Failure to timely inform the Commissioner of a change in legal name or address may result in a fine in accordance with section 775(b).

(h) An agent shall have but one license inclusive of all kinds or combination of kinds of insurance the agent is licensed to handle, regardless of the number of insurers for whom the agent is appointed.

(i) The Commissioner may contract with non-governmental entities, including the NAIC or its affiliates or subsidiaries to perform ministerial functions, including the collection of fees related to producer licensing that the Commissioner and the non-governmental entity consider appropriate.

(j) The license of each producer, other than licenses for life and disability insurances or adjuster licenses must be displayed in a conspicuous place in the area of the business which is customarily open to the public.

#### **§ 760. Broker's authority.**

(a) A broker's license must be issued to cover all lines of insurance. The Commissioner may not issue a broker's license limited to a particular line of insurance.

(b) A broker is not an agent or other representative of an insurer and may not bind the insurer upon any risk or with reference to any insurance contract.

(c) An insurer or agent has the right to pay a broker licensed under this title, or under the laws of any other jurisdiction, and the broker has the right to receive from the insurer or agent, the customary commissions upon insurances placed with the insurer by the broker.

#### **§ 761. Agent-broker combinations.**

A licensed agent may be licensed as a broker and be a broker as to insurers for which he is not then licensed as agent. A licensed broker may be licensed as and be an agent as to insurers appointing him as agent. The sole relationship between a broker and an insurer as to which he is licensed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent.

**§ 762. Solicitor.**

(a) The Commissioner shall issue a solicitor's license only upon application by the applicant and the request of the agent or broker to be represented, upon such forms as the Commissioner shall prescribe and furnish.

(b) The fee for issuance or renewal of a solicitor's license must be paid by the agent or broker by whom the solicitor is employed.

(c) The solicitor's license must be delivered to and remain in the possession of the employing agent or broker. Upon termination of such employment, the license terminates and must be returned to the Commissioner for cancellation.

(d) A solicitor's license may not cover any kind of insurance for which the agent or broker by whom the applicant is employed is not then licensed.

(e) A solicitor may not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign insurance contracts.

(f) Any individual while licensed as a solicitor may not be licensed as an agent or broker.

(g) All business transacted by a solicitor under the solicitor's license must be in the name of the agent or broker by whom the solicitor is employed and the agent or broker is responsible for all acts or omissions of the solicitor within the scope of the solicitor's employment.

**§ 763. Nonresident licensing.**

(a) Unless denied licensure under section 776, a nonresident applicant shall receive a nonresident insurance producer license if the applicant:

(1) is currently licensed as a resident and in good standing in the applicant's home state;

(2) is licensed in the applicant's home state for the lines of authority requested in the Virgin Islands;

(3) has submitted or transmitted to the Commissioner the application for licensure that the applicant submitted to the applicant's home state, or instead of the application license in the home state a completed Uniform Application or a form prescribed by the Commissioner;

(4) has submitted the proper request for licensure and has paid the fees as prescribed by the Commissioner;

(5) is of good reputation and character, is honest and trustworthy, and is otherwise suitable to be licensed;

(6) home state awards non-resident insurance producer licenses to residents of the Virgin Islands on the same basis;

(7) a business entity applicant has designated an insurance agent licensed as an agent in the Virgin Islands responsible for the applicant's compliance with the insurance laws of the Virgin Islands; and

(8) has submitted any other documents requested by the Commissioner.

(b) The Commissioner may verify the insurance producer's licensing status through the producer database maintained by the NAIC, its affiliates or subsidiaries. If that information is not available on the producer database, the Commissioner may require a certification letter from the applicant's home state.

(c) An individual or business entity seeking to renew a nonresident insurance producer license shall apply annually for a renewal of the license on or before December 31 of each year.

(d) If an individual or business entity does not apply for the renewal of the individual or business entity's license on or before the license renewal date specified in subsection (c) or by the 15th day of January, the individual or business entity may submit a late renewal application along with all applicable fees required under this chapter.

(e) A licensee is subject to the same obligations and duties and to the Commissioner's supervision, as if a resident in the Virgin Islands, except as to the requirement for the maintenance of an office in the Virgin Islands.

(f) A nonresident insurance producer who moves from a state or territory to another state or territory or a resident insurance producer who moves from the Virgin Islands to another state or territory shall file a change of address and provide certification from the new resident state not later than 30 days after the change of legal residence. A filing fee of \$50.00 must be submitted. The filing fee may be changed by the Commissioner upon a 30-day notice in accordance with the regulations. No license application is required.

(g) Notwithstanding any other provision of this title, a person licensed as a surplus lines producer in the licensee's home state shall receive a nonresident surplus lines producer license pursuant to subsection (a). Except as to subsection (a), nothing in this section otherwise amends or supersedes any provision of chapter 27 of this title.



(h) Notwithstanding any other provision of this title, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in the licensee's home state shall receive a nonresident limited lines insurance producer license, pursuant to subsection (a), granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purpose of this subsection, limited lines insurance is any authority granted by the home state that restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 759(a)(1) through (6).

#### **§ 764. Reciprocity.**

(a) The Commissioner shall waive any requirement for a nonresident license applicant with a valid license from the applicant's home state except the requirements imposed by section 763 if the applicant's home state awards nonresident licenses to residents of the Virgin Islands on the same basis.

(b) A nonresident insurance producer's satisfaction of the home state's continuing education requirements for licensed insurance producers constitutes satisfaction of the Virgin Islands continuing education requirements if the non-resident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from the Virgin Islands on the same basis.

#### **§ 765. Exemption from examination.**

(a) An individual who applies for an insurance producer license in the Virgin Islands who was previously licensed for the same lines of authority in another state is not required to complete any pre-licensing education or examination of the Virgin Islands. This exemption is available only if the person is currently licensed in that state or if the application received not later than 90 days after the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the NAIC, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(b) A person licensed as an insurance producer in another state who moves to the Virgin Islands shall make application not later than 90 days after establishing legal residence to become a resident licensee pursuant to section 758. No pre licensing education or examination is required of that person to obtain any line of authority previously held in the prior state, except where the Commissioner determines otherwise by regulation.

(c) Applicants for an insurance producer license acting as a title agent shall, prior to the issuance the such license, personally take and pass to the satisfaction of the Commissioner an examination given by the Commissioner as a test of the applicant's qualification and competence, but this requirement does not apply to attorneys licensed to practice law.

**§ 766. Producer to file for change of address.**

(a) If a person licensed as an insurance producer under section 758 changes the person's address within the Virgin Islands, the person shall, not later than 30 days after making that change, file a change of address with the Commissioner or the Commissioner's designee.

(b)(1) If a person licensed as an insurance producer under this section changes the person's home state, the person, not later than 30 days after making that change, shall file a change of address with the Commissioner and provide the Commissioner with certification from the new home state.

(2) If a resident insurance producer complies with paragraph (1) of this subsection and the producer is in good standing with the Commissioner, the producer's license must be changed to that of a nonresident license after paying a filing fee of \$50. The Commissioner may increase the fee upon 30 days' notice to the public in accordance with title 22 regulations. No license application is required. A change in the residency status of an insurance producer license does not change the license renewal date established by the initial licensure under section 759.

(3) Any person violating this section is liable for a fine of not to exceed \$500.

**§ 767. Separate licenses.**

(a) The Commissioner may license an individual concurrently as an independent adjuster and as a public adjuster. A separate application is required for each type of adjuster license. The full license fee must be paid for each license.

(b) An adjuster has authority under the license only to investigate or report to the adjuster's principal upon claims on behalf only of the insurers, if licensed as an independent adjuster. An adjuster licensed concurrently as an independent and a public adjuster may not represent both the insurer and the insured in the same transaction.

(c) A non-resident, independent adjuster who enters the Virgin Islands for the adjustment of a single loss, or of losses arising out of a catastrophe common to all such losses, shall formally register with the Office of the Commissioner of Insurance. The Commissioner may establish and amend from time to time, a schedule of fees for such registration.

(d) No Virgin Islands license is required of a nonresident independent adjuster for the adjustment in the Virgin Islands of a single loss or of losses arising out of a catastrophe common to all such losses.

**§ 768. Public adjuster's bond.**

(a) Prior to the issuance of a license as a public adjuster, the applicant shall file with the Commissioner and shall maintain in force while so licensed a surety bond in favor of the people of the Virgin Islands, executed by an authorized corporate surety approved by the Commissioner, in the amount of \$5,000. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of \$5,000. The bond must be contingent on the accounting by the adjuster to any insured whose claim the adjuster is handling, for moneys or any settlement received in connection with the claim.

(b) Any such bond remains in force until the surety is released from liability by the Commissioner, or until canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel a bond upon 30 days advance notice in writing filed with the Commissioner.

(c) A bond is required of any adjuster acting as a public adjuster as of the effective date of this title, or thereafter under any unexpired license issued.

**§ 769. Report of losses.**

(a) Every adjuster who investigates any fire loss claim under any insurance contract covering property located in the Virgin Islands shall promptly report to the Commissioner any facts or circumstances found and from which he believes fraud has been committed or attempted.

(b) Upon completing the adjustment of any fire loss requiring claim payments aggregating \$500 or more, for damage to or destruction of property located in the Virgin Islands, under any policy or policies issued by an unauthorized insurer, an adjuster shall promptly report the details to the Commissioner, upon forms prescribed and furnished by the Commissioner. The report must state:

- (1) the names of the insurers and insured involved,
- (2) the amount of insurance on the property carried by each insurer,
- (3) the amount of the claim and the amount paid by each insurer,
- (4) the circumstances of the loss, and
- (5) other information as the Commissioner requests.

(c) Upon the Commissioner's request, each adjuster shall, in similar manner, report to the Commissioner relative to losses and claims investigated or adjusted, and arising under other insurance contracts issued by unauthorized insurers.

**§ 770. Continuing education courses and requirements.**

(a)(1) Producers are required to complete 24 credits of continuing education for each biennial compliance period. Three of the 24 credits must be in ethics.

(2) The Commissioner shall by regulations establish minimum continuing education requirements for the renewal or reissuance of a license to an insurance producer.

(b) The Commissioner shall require that continuing education courses are made available on a territory-wide basis to ensure that persons residing in all geographical areas of the Virgin Islands have a reasonable opportunity to attend courses in person or online.

(c) The continuing education requirements must be appropriate to the license for the lines of authority specified in section 759(a) or by regulations.

**§ 771. Managing general agent license requirement.**

(a)(1) No person may act as a managing general agent representing an insurer licensed in the Virgin Islands with respect to risks located in the Virgin Islands unless the person is licensed as a managing general agent pursuant to the subsection (c) or (d).

(2) No person may act as a managing general agent representing an insurer organized under the laws of the Virgin Islands with respect to risks located outside the Virgin Islands unless the person is licensed as a managing general agent pursuant to subsection (c) and holds a non-resident managing general agent in that jurisdiction.

(b) Every person who seeks to act as a managing general agent as described in subsection (a), shall apply to the Commissioner for a license. Except as otherwise provided in subsection (d), the application must be in writing on a form provided by the Commissioner and must be sworn or affirmed before a notary public or other person empowered to administer oaths. The application must be kept on file by the Commissioner and must include the following:

(1) the name and principal business address of the applicant;

(2) if the applicant is an individual, the applicant's current occupation and occupations during the five-year period prior to applying for the license to act as a managing general agent;

(3) a copy of the contract between the applicant and the insurer as required by and in compliance with section 77;

(4) a copy of a certified resolution of the board of directors of the insurer on whose behalf the applicant will act, appointing the applicant as a managing general agent and agent of the insurer, specifying the duties the applicant is expected to perform on



behalf of the insurer and the lines of insurance the applicant will manage, and authorizing the insurer to enter into a contract with the applicant;

(5) a statement that the applicant submits to the jurisdiction of the Commissioner and the courts of the Virgin Islands; and

(6) any other information required by the Commissioner.

(c) The Commissioner shall issue to a resident of this Virgin Islands or a business entity organized under the laws of the Virgin Islands, a license to act as a managing general agent representing an insurer licensed to do business in the Virgin Islands with respect to risks located in this Virgin Islands or a license to act as a managing general agent representing an insurer organized under the laws of the Virgin Islands with respect to risks located outside the Virgin Islands, and shall renew the a license, if the Commissioner is satisfied that all of the following conditions are met:

(1) The applicant is a suitable person and meets requirements in accordance with subsection (b) and intends in good faith to be a managing general agent in compliance with section 776 of this chapter.

(2) The applicant is honest, trustworthy, and understands the duties and obligations of a managing general agent in compliance with section 772.

(3) The applicant has filed a completed application that complies with subsection (b).

(4) The applicant has paid the filing fee as prescribed by the Commissioner.

(5) The applicant maintains a bond in the amount of \$50,000 or 10 percent of the managing general agent's total annual written premium nationwide produced by the managing general agent for the insurer, in the prior calendar year for the protection of the people of the Virgin Islands.

(6) The applicant is not, and has never been, under an order of nonrenewal, suspension or revocation under section 776 or under any other law of the Virgin Islands, or any other state, relating to insurance, and is otherwise in compliance with this title and all other laws of the Virgin Islands relating to insurance.

(d) If the applicant is a resident of another state or a business entity organized under the laws of another state, the applicant shall submit an application, along with the filing fee, to the Commissioner. The Commissioner may issue a manager general license if the request for licensure includes proof that the applicant is licensed and in good standing as a managing general agent in the applicant's home state and a copy of the application for licensure the applicant submitted to the applicant's home state or the application described in subsection (b) of this section has been submitted. If the applicant's home state does not license managing general



agents under provisions similar to those in this section, or if the applicant's home state does not grant licenses to residents of the Virgin Islands on the same reciprocal basis, the applicant shall comply with subsections (b) and (c).

(e) Unless suspended or revoked by an order of the Commissioner pursuant to section 776 and except as provided in subsection (f), any license issued or renewed pursuant to subsection (c) or (d) expires on the 31st day of December next after its issuance or renewal. A 15-day grace period without any penalty applies after the 31st day of December. However, a penalty of double the unpaid renewal fee is imposed for any renewal fee received after 15 days of the due date.

(f) If the appointment of a managing general agent is terminated by the insurer, the license of the managing general agent expires on the date of the termination.

(g) A license must be renewed in accordance with the renewal procedures as provided by the laws, rules and regulations of the Virgin Islands.

#### **§ 772. Responsibilities of managing general agent.**

(a) It is unlawful for any person acting in the capacity of a managing general agent to place business with an insurer, unless there is in force a written contract between the parties which sets forth the responsibilities of each party; specifies the separation of responsibilities, where both parties share responsibility for a particular function; and contains at a minimum the substance of the requirements and conditions. The following must be included:

(1) The insurer may immediately terminate the contract for cause upon giving written notice to the managing general agent. Upon giving written notice to the managing general agent, the insurer may immediately suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer not less than on a monthly basis.

(3) The managing general agent shall hold all funds collected for the account of an insurer in a fiduciary capacity in a bank that is a member of the Federal Reserve System. The managing general agent shall use this account for all payments on behalf of the insurer. If the managing general agent represents more than one insurer, the managing general agent shall maintain separate accounts for each insurer. The managing general agent shall retain no more than three months' estimated claims payments and allocated loss adjustment expenses in each account. The managing general agent may not commingle the funds in an account with the funds in any other account held by the managing general agent.

(4) The managing general agent shall maintain separate records of business written by the managing general agent. The insurer shall have access to and the right to copy, in a form usable by the insurer, all accounts and records related to its business. The Commissioner shall have access to and the right to copy, in a form usable to the Commissioner, all books, bank accounts, records, contracts, and other documents, including the contract required by subsection (a) of the managing general agent.

(5) The managing general agent may not assign the contract in whole or part.

(6) The contract must contain appropriate underwriting guidelines, including all of the following:

- (A) the maximum annual premium volume;
- (B) the basis of the rates to be charged;
- (C) the types of risks that may be written;
- (D) maximum limits of liability;
- (E) applicable exclusions;
- (F) territorial limitations;
- (G) policy cancellation provisions; and
- (H) the maximum policy period.

(7) The insurer may cancel or refuse to renew any policy of insurance subject to the applicable laws, rules, and regulations of the Virgin Islands concerning the cancellation or nonrenewal of insurance policies.

(8) The insurer shall require the managing general agent to obtain and maintain a surety bond for the protection of the insurer. The bond must be at least \$50,000 or 10 percent of the managing general agent's total annual written premium nationwide produced by the managing general agent for the insurer, in the prior calendar year, but not greater than \$500,000. A bond is required for each insurer.

(9) If the contract permits the managing general agent to settle claims on behalf of the insurer, all of the following apply:

- (A) The managing general agent shall report every claim to the insurer no later than 30 days after the claim is reported to the managing general agent.

(B) The managing general agent shall send a copy of the claim file to the insurer as soon as any of the following becomes known, or at any time earlier upon the request of the insurer if the claim:

(i) has the potential to exceed one percent of the policyholder surplus of the insurer as of the 31<sup>st</sup> day of December of the last completed calendar year or exceeds the limit set by the insurer, whichever is less;

(ii) involves a coverage dispute;

(iii) may exceed the managing general agent's claims settlement authority;

(iv) is open for more than six months; or

(v) is closed by payment of one percent of the policyholder surplus of the insurer or an amount set by the insurer, whichever is less.

(C) All claim files are the joint property of the insurer and managing general agent, except upon an order of rehabilitation or liquidation of the insurer, at which time the files become the sole property of the insurer or its estate. If the insurer is subject to an order of rehabilitation or liquidation, the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(D) Any settlement authority granted to the managing general agent may immediately be terminated for cause upon the provision of written notice by the insurer to the managing general agent. The settlement authority must immediately terminate upon the termination of the contract, unless otherwise specified in writing by the insurer. Upon giving written notice to the managing general agent, the insurer may immediately suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(b) Where electronic claim files are in existence, the contract must address the timely transmission of the data.

(c) The managing general agent may use only advertising materials pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use.

(d) If the contract provides for a sharing of interim profits by the managing general agent and if the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or in any other manner, the interim profits may not be paid to the managing general agent until the profits have been verified by an on-site review pursuant to this section and until one year after the profits are earned for

property and health insurance business and five years after they are earned for casualty insurance business.

(e) It is unlawful for any managing general agent to do any of the following:

(1) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(2) commit the insurer to participate in insurance or reinsurance syndicates;

(3) appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;

(4) without prior written approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which amount may not exceed one percent of the policyholder surplus of the insurer as of the 31st day of December of the last completed calendar year;

(5) without prior written approval of the insurer, collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer. A report of any such payment or claim settlement must be forwarded promptly to the insurer;

(6) permit its producers to serve on the board of directors of the insurer;

(7) jointly employ an individual who is employed by the insurer; or

(8) appoint a sub managing general agent or other person to act as an agent on its behalf.

**§ 773. Independent financial examination of each managing general agent.**

(a) The insurer shall have on file, in a form acceptable to the Commissioner, an independent financial examination of each managing general agent with which it has done business.

(b) If a managing general agent establishes loss reserves, the insurer shall obtain annually the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This annual opinion is in addition to any other required loss reserve certification.

(c) The insurer shall conduct not less frequently than once a year an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates is vested in an officer of the insurer who is not affiliated with the managing general agent.

(e) Not later than 30 days after entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the Commissioner. Notices of appointment of a managing general agent must include a statement of duties that the managing general agent is expected to perform on behalf of the insurer, the lines of insurance the managing general agent will manage, and any other information the Commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer, not later than 60 days, shall provide written notice of the determination to the producer and Commissioner. The insurer and producer shall comply with sections 771 to 774 not later than 30 days after receipt of the notice.

(g) It is unlawful for any insurer to appoint to its board of directors, its managing general agent or an officer, director, employee, producer, or controlling shareholder of its managing general agent.

**§ 774. Acts of managing general agent deemed Acts of Insurer of examinations.**

(a) The acts of a managing general agent are the acts of the insurer on whose behalf it is acting.

(b) A managing general agent may be examined pursuant to chapter 5 of this title, as if it were the insurer. The managing general agent shall pay the expenses incurred in the conduct of the examination in accordance with section 107 of this title.

**§ 775. Assumed names and address.**

(a) An insurance producer doing business under any name other than the producer's legal name must seek approval from the Commissioner prior to using the assumed name.

(b) Any person violating this section is liable for a fine not to exceed \$500.

**§ 776. License refusal, nonrenewal, suspension or revocation.**

(a) The Commissioner may suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with this chapter or any combination of actions, for any one or more of the following causes:



- (1) providing incorrect, misleading, incomplete or materially untrue information in the license application;
- (2) violating or failing to comply with any insurance laws, rule, subpoena, consent agreement, or order of the Commissioner or of another state's commissioner;
- (3) obtaining, maintaining, or attempting to obtain a license through material misrepresentation or fraud;
- (4) improperly withholding, misappropriating or converting any money or properties received in the course of doing insurance business or in his fiduciary capacity;
- (5) intentionally misrepresenting the terms, benefits, value, cost, or effective dates of any actual or proposed insurance contract or application for insurance;
- (6) conviction of or plea of guilty or no contest to a felony regardless of whether a judgment of conviction has been entered by the court;
- (7) conviction of or a plea of guilty or no contest to a misdemeanor that involves the misuse or theft of money or property belonging to another, fraud, forgery, dishonest acts, or breach of a fiduciary duty, that is based on any act or omission relating to the business of insurance, securities, or financial services, or that involves moral turpitude regardless of whether a judgment has been entered by the court;
- (8) having admitted to or has been found to have committed any insurance unfair trade act or practice or insurance fraud;
- (9) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in the Virgin Islands or elsewhere;
- (10) having an insurance producer or adjuster license, its equivalent, denied, suspended or revoked in any other state, province, district or territory;
- (11) forging or causing the forgery of another's name to an application for insurance or to any document related to an insurance transaction;
- (12) improperly using notes or any other reference material, equipment or devices of any kind to complete an examination for an insurance license;
- (13) knowingly accepting insurance business from an individual who is not licensed;

(14) failing to pay income taxes in accordance with Virgin Islands and Federal laws or comply with any administrative or court order directing payment of income or corporate taxes in accordance with Virgin Islands and Federal laws;

(15) failing to respond to an order or request of the Commissioner or its designee more than 15 days after the request;

(16) if in the conduct of affairs under the license, the licensee has shown to be, and is considered by the Commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public;

(17) if the licensee has dealt with, or attempted to deal with, insurances or to exercise powers relative to insurance outside the scope of the licenses;

(18) for any cause for which issuance of the license could have been refused had it then existed and been known to the Commissioner;

(19) failing to pay commission to broker; or

(20) any other action determined to be hazardous or injurious to the public.

(b) If the action by the Commissioner is to not-renew or to deny an application for a license, the Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee license. The applicant or licensee may make written demand upon the Commissioner not later than 15 days after the notice for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. The hearing must be held not more than 30 days after receipt of the demand and must be held pursuant to section 151 of this title.

(c) The license of a business entity may be suspended, revoked or not renewed if the Commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the Commissioner nor subject to corrective action taken.

(d) In addition to or in lieu of any applicable refusal, nonrenewal, denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine in accordance with this chapter.

(e) Notwithstanding subsection (b), the Commissioner shall revoke or refuse to renew license immediately and without a hearing upon conviction of the licensee of a felony by final judgment of any court of competent jurisdiction.

(f) The Commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter against any person who is under investigation

and found in violation of this chapter even if the person's license or registration has been surrendered or has lapsed by operation of law.

(g) After hearing and in addition to or in lieu of suspension, revocation, or refusal to renew any such license, the Commissioner may impose a fine upon the licensee in amount not less than \$250 and not more than \$10,000. The order imposing the fine must specify the period within which the fine must be fully paid, and the period must not be less than 15 nor more than 30 days after the date of the order. Upon failure to pay the fine when due, the Commissioner shall revoke the licenses of the licensee if not already revoked, and the fine may be recovered in a civil action brought on behalf of the Commissioner by the Attorney General. Any fine so collected must be paid to the Financial Services Fund.

(h) The Commissioner must not reinstate the license of, or relicense any licensee or former licensee whose license was suspended, revoked, or renewal refused, until any cause for the suspension, revocation, or refusal of such license is no longer existing, or until any fine imposed upon the licensee pursuant to section (g) has been fully paid.

(i) Every order suspending a license must specify the period during which suspension will be effective, and the period may not exceed 12 months. For purposes of this section, the 12-months period applies only to suspension.

(j) The holder of any license that has been revoked or suspended shall surrender the license certificate to the Commissioner at the Commissioner's request.

(k) The license of any firm or corporation may be suspended, revoked, or refused for any cause relating to any individual designated in the license to exercise its powers.

(l) Notwithstanding any other provision of this title, the sections providing penalties and fines for violations of this chapter are controlling unless specifically provided otherwise.

#### **§ 777. Hearing to determine administrative action modification.**

(a) Upon written application of a person who was refused a license or whose license was not renewed or was revoked, or surrendered for cause under section 776, the Commissioner shall hold a hearing to determine whether the administrative action imposing the refusal, nonrenewal, revocation, or other administrative action should be modified, if all of the following conditions are met:

(1) At least five years have elapsed since the date of the administrative action sought to be modified;

(2) At least two years have elapsed since any previous request for a modification was made under this section;

(3) The person is of good business repute and does not have a history of moral turpitude;

(4) The person has made restitution for all pecuniary losses suffered by any person as a result of the conduct that gave rise to the administrative action;

(5) The person has not been convicted of any felony or of any misdemeanor described in section 776, unless the conviction was the subject of a previous administrative action by the Commissioner;

(6) The circumstances surrounding the previous violation are such that it is unlikely the person would commit such offenses in the future; and

(7) The person's character has been rehabilitated.

(b) The burden of proof is on the person requesting the modification.

(c) The modification of an order issued under section 54 of this title is at the discretion of the Commissioner.

(d) The issuance of any license pursuant to a modification under this section is conditioned upon the successful completion of all pre licensing education or examination requirements.

(e) For the purpose of this section, administrative action does not include suspension that cannot exceed 12 months.

#### **§ 778. Fine in lieu of license suspension, revocation, or refusal.**

(a) Upon the hearing of an appeal from an order suspending, revoking, or refusing to renew any license issued, the court, if it finds that the licensee is guilty of violation of the law and if it finds the suspension, revocation, or refusal too severe a penalty under the facts as found, may impose a fine of not more than \$10,000 in lieu thereof, and payment of the fine in full not more than 10 days after reinstates, restores or renews the license. The fine depends on the severity of the violation.

(b) If it appears that a license of the licensee has been suspended, revoked, or refused for a similar prior or concurrent offense, the court shall not have jurisdiction to impose a fine.

#### **§ 779. Appointments.**

(a) (1) An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer.



(2) An insurance producer may not act as a solicitor of an agent or broker unless the insurance producer becomes an appointed solicitor of that agent or broker.

(b) (1) To appoint an insurance producer as its agent, the appointing insurer shall file, in a format approved by the Commissioner, a notice of appointment not more than 15 days after the date the agreement is executed.

(2) To appoint an insurance producer as its solicitor, the appointing agent or broker shall file, in a format approved by the Commissioner, a notice of appointment not more than 15 days after the date the agreement is executed.

(c) An insurer, or agent or broker shall pay an appointment fee, in the amount and method of payment as prescribed by the Commissioner or by regulation, for each agent appointed by the insurer or solicitor appointed by the agent or broker.

**§ 780. Notification of insurance Commissioner of termination.**

(a) An insurer or authorized representative of the insurer who terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the Commissioner not more than 15 days after the effective date of the termination, using a format prescribed by the Commissioner, if the reason for termination is one of the reasons set forth in section 776 or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section 776. Upon the written request of the Commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

(b) An insurer or authorized representative of the insurer who terminates the appointment, employment, or contract with a producer for any reason not set forth in section 776, shall notify the Commissioner not more than 30 days after the effective date of the termination, using a format prescribed by the Commissioner. Upon written request of the Commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

(c) The insurer or the authorized representative of the insurer shall promptly notify the Commissioner in a format acceptable to the Commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Commissioner in accordance with subsection (a) had the insurer then known of its existence.

(1) Not more than 15 days after making the notification required by subsections (a), (b) and (c), the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in section 776, the insurer shall provide a copy of the notification to the producer at the producer's last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.



(2) Not more than 30 days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the Commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments become a part of the Commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (f).

(A) Any document, materials or other information in the control or possession of the Division of Banking, and Financial Regulation that is provided by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the Commissioner in an examination pursuant to this title is confidential and privileged, and is subject to section 881(a) of title 3, unless otherwise ordered by a court, by the lawful custodian of records, or by another person duly authorized to release information. However, the Commissioner may use the documents, materials or other information in furtherance of any regulatory or legal action brought as a part of the Commissioner's duties.

(B) Neither the Commissioner nor any person who receives documents, materials or other information while acting under the authority of the Commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject subparagraph (A) (1) of this paragraph.

(3) In order to assist in the performance of the Commissioner's duties under this chapter, the Commissioner:

(A) may share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (2)(A), with other state, federal, and international regulatory agencies, with the NAIC, its affiliates or subsidiaries, and with state, territory, federal, and international law enforcement authorities if the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(B) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, materials or information; and

(C) may enter into agreements governing sharing and use of information consistent with this subsection.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in paragraph (3) of this subsection.

(5) Nothing in this chapter prohibits the Commissioner from releasing final, adjudicated actions including for cause terminations, which are open to public inspection pursuant to sections 56(b) of this title and section 881(a) of title 3 to a database or other clearinghouse service maintained by the NAIC affiliates or subsidiaries.

(f) An insurer, the authorized representative of the insurer, or producer who fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction, after notice and hearing, may have its license or certificate of authority suspended or revoked and may be fined not more than \$5,000.

#### **§ 781. Records of agents, brokers, adjusters.**

(a) Every producer or adjuster shall keep at the producer's address as shown on the producer's license, a record of all transactions consummated under the producer's license. This record must be in organized form and must include:

(1) if an agent or broker-

(A) a record of each insurance contract procured, issued, or countersigned, together with the names of the insurers and insureds, the amount of insurance, the amount of premium paid or to be paid, and a statement of the subject of the insurance; and

(B) the names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid.

(2) if an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of such investigation or adjustment; and

(3) such other and additional information as is customary, or as may reasonably be required by the Commissioner.

(b) All records to any particular transaction must be kept available and open to the inspection of the Commissioner during all business hours during the five years immediately after the date of the completion of such transaction.

- (c) This section does not apply as to life or disability insurance.

**§ 782. Reporting and accounting for premiums, penalty.**

(a) An agent or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and the amount must likewise be shown in the contract and in the records of the agent. Each willful violation of this provision constitutes a misdemeanor.

(b) All funds representing premiums, less commission, or return premiums received by a producer must be received in his fiduciary capacity, unless there is a separate agreement between him and the insurer.

(c) Any producer who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to the producer's own use, must be punished as provided in the criminal statutes of the Territory.

**§ 783. Prohibition.**

It is unlawful for managing general agent, insurer, or other person to violate, or fail to comply with any provision of sections 771, 772, 773, 774, 780, or 782 of this chapter.

**§ 784. Penalties for violations.**

(a) If the Commissioner, after a hearing conducted in accordance with chapter 7 of this title, finds a violation of the types of infractions listed in section 753(e) of this chapter, the Commissioner may order any of the following:

(1) for each separate violation committed by an insurer, managing general agent, or other person, a civil penalty in an amount of not more than \$10,000, for each instance of such violation;

(2) for a violation committed by a managing general agent or the producer of the managing general agent, revocation or suspension of the license of the managing general agent or the license of the producer;

(3) for a violation committed by a managing general agent, reimbursement of the insurer or the rehabilitator or liquidator of the insurer by the managing general agent and by any officer, director, shareholder, or other representative or agent of the managing general agent who actually benefited from the violation, for any losses incurred by the insurer that were caused by the violation.

(b) Any person violating this section may be imprisoned for not more than one year in addition to any other penalty or forfeiture under this section.

(c) Nothing in this section affects the authority of the Commissioner to impose any other civil penalties or to initiate any other proceedings or remedies pursuant to the laws of the Virgin Islands.

**§ 785. Rights not limited or restricted.**

Nothing in this chapter is intended, in any manner, to limit or restrict the rights of policyholders and claimants of any insurer on whose behalf a managing general agent is acting, or of auditors, accountants, examiners, or other persons that conduct examinations of insurers.

**§ 786. Reporting of actions.**

(a) A producer shall report to the Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in the Virgin Islands not more than 30 days after the final disposition of the matter. This report must include a copy of the order, consent to order or other relevant legal documents.

(b) Not later than 30 days after of the initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer taken in any jurisdiction. The report must include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

**787. Service of process on nonresident agent or broker.**

(a) Every nonresident agent or broker by obtaining a license in the Virgin Islands may be sued in the Virgin Islands in the district of the plaintiff's property, residence or principal office or place of business upon any cause of action, arising out of or based upon any business or acts done or omitted to be done.

(b) The Commissioner is the attorney in fact of a nonresident agent or broker for the purpose of being served with and accepting service of process in such suits, action or other proceedings. The summons or other process together with a certified copy of the complaint, or other pleading must be served upon the Commissioner in triplicate, and the Commissioner shall immediately mail a true copy registered mail with proper postage affixed properly addressed to the residence of the nonresident agent or broker.

(c) The place of residence of a licensed nonresident agent or broker placed on file with the Commissioner is considered the place of residence until such agent or broker places on file with the Commissioner a written notice stating another place of residence.

Upon such service of process, the court in which the action is filed is considered to have jurisdiction in personam, and the nonresident agent or broker has 40 days after the date of service upon the Commissioner to plead, answer, or otherwise defend the action. In any action in which the process is so served, the plaintiff shall pay the Commissioner the actual costs for service of process, which sum is to be taxed as a part of the costs in the action if the plaintiff prevails. The Commissioner shall enter alphabetically in a process book, kept for that purpose, the name of plaintiff and defendant, the title and number, if any, of the cause in which process has been served upon him, and the day and hour when the service was made.

**§ 788. Compensation disclosure.**

(a) (1) Where any insurance producer or any affiliate of the producer receives any compensation from the customer for the placement of insurance or represents the customer with respect to that placement, neither that producer nor any affiliate shall accept or receive any compensation from an insurer or other third party for that placement of insurance unless the producer has, prior to the customer's purchase of insurance:

(A) obtained the customer's documented acknowledgement that the compensation will be received by the producer or affiliate;

(B) disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.

(2) Paragraph (1) does not apply to an insurance producer who:

(A) does not receive compensation from the customer for the placement of insurance; and

(B) in connection with that placement of insurance represents an insurer that has appointed the producer; and

(C) discloses to the customer prior to the purchase of insurance:

(i) that the insurance producer will receive compensation from an insurer in connection with that placement; or

(ii) that, in connection with that placement of insurance, the insurance producer represents the insurer and that the producer may provide services to the customer for the insurer.

(b) A person may not be considered a "customer" for purposes of this section if the person is merely:



- (1) a participant or beneficiary of an employee benefit plan; or
- (2) covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.

(c) This section does not apply to:

(1) A person licensed as an insurance producer who acts only as an intermediary between an insurer and the customer's producer, for example a managing general agent, a sales manager, or wholesale broker; or

(2) a reinsurance intermediary.

(d) For purposes of this section:

(1) "Affiliate" means a person who controls, is controlled by, or is under common control with the producer.

(2) "Compensation from an insurer or other third party" means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement.

(3) "Compensation from the customer" may not include any fee or amount collected by or paid to the producer that does not exceed an amount established by the Commissioner.

(4) "Documented acknowledgement" means the customer's written consent obtained prior to the customer's purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot reasonably be obtained, consent documented by the producer is acceptable.

#### **§ 789. Paying unlawful consideration.**

(a) It is unlawful for an insurer or an insurance producer to pay a commission, service fee, brokerage fee, or other type of consideration for selling, soliciting, or negotiating insurance in the Virgin Islands, if the person is required to be licensed under this chapter but is not licensed. However, renewal or other deferred commissions may be paid to the person for selling, soliciting, or negotiating insurance in the Virgin Islands if the person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was so licensed at that time.

(b) It is unlawful for an insurer or insurance producer to pay a referral fee or other compensation to an unlicensed person for any referral unless the compensation is a fixed dollar

amount for each referral and does not depend on whether the person referred purchases an insurance product.

(c) The Commissioner shall suspend or revoke the license of all licensees participating in any violation of this section or impose a fine.

#### **§ 790. Regulations.**

The Commissioner may, in accordance with this title, promulgate reasonable regulations necessary or proper to carry out the purposes of this chapter.

#### **§ 791. Immunity.**

The Commissioner, the Director, and employees of the Division of Banking and Insurance and Financial Regulation are immune from any civil liability while acting within the scope of this chapter.

#### **§ 792. Centralized agent License registry.**

The Commissioner may participate, in whole or in part, with the NAIC or any of its affiliates or subsidiaries, in a centralized agent license registry in which insurance producers acting as agents appointments are centrally or simultaneously electronically stored for all states that require an agent to be licensed and that participate in the registry.

#### **§ 793. Severability.**

If any provision of this chapter, or the application of a provision to any person or circumstances is held invalid, the remainder of the provisions and the application of the provision to persons or circumstances other than those to which it is held invalid are not affected.

**SECTION 2.** This act takes effect 30 days after the date of enactment.

Thus passed by the Legislature of the Virgin Islands on December 20, 2016.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 5<sup>th</sup> Day of January, A.D., 2017.



*Neville A. James*  
Neville A. James  
President

*Myron D. Jackson*  
Myron D. Jackson  
Legislative Secretary



**Bill No. 31-0445 is hereby approved.**

**Witness my hand and the Seal of the  
Government of the United States  
Virgin Islands at Charlotte Amalie,  
St. Thomas, this 20th day of January, A.D., 2017.**

A handwritten signature in blue ink, appearing to read "K. Mapp", written over a horizontal line.

**Kenneth E. Mapp  
Governor**