

**TESTIMONY ON BILL NO. 31-0132
PROVIDED BY THE
OFFICE OF THE LIEUTENANT GOVERNOR
DIVISION OF BANKING AND INSURANCE
BEFORE THE
THIRTY-FIRST LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON GOVERNMENT SERVICES, VETERANS AND CONSUMER
AFFAIRS
Tuesday, August 23, 2016**

Good Morning, Committee Chairman Honorable Justin Harrigan, Sr. and Honorable Members of the 31st Legislature of the Virgin Islands Committee on Government Services, Veterans and Consumer Affairs, and other Senators present today. I am Attorney Glendina Matthew, Assistant Director of the Division of Banking and Insurance, Office of the Lieutenant Governor. I am accompanied by Gwendolyn Hall Brady, Director of the Division of Banking and Insurance. I most respectfully appear before you today to provide testimony on Bill No. 31-0132 *(An Act amending title 20 Virgin Islands Code, chapter 47, section 707 requiring insurance carriers to provide liability insurance data to the Virgin Islands Bureau of Motor Vehicles and for the Bureau to establish a motor vehicle liability insurance database.)*

The Office of the Lieutenant Governor, Division of Banking and Insurance ("Division"), with a few minor exceptions, supports the proposed legislation. The Division respectfully provides comments on and a few recommendations for additional changes to section 707 and to the Compulsory Automobile Liability Insurance Law in general that we believe will provide more clarity for the respective agencies that are charged with the administration and enforcement of the provisions of the Law.

At this juncture, a brief history of the Compulsory Automobile Liability Insurance Law is warranted. The Compulsory Automobile Liability Insurance Law, encoded at chapter 47, sections

701 through 713 of title 20 of the Virgin Islands Code, was enacted in an effort to provide more protection for innocent victims of automobile accidents in the territory. This law mandates that all automobiles traversing the roadways of this territory be insured and that proof of such coverage be provided to the Director of the Bureau of Motor Vehicles ("BMV") before the automobile will be registered with the BMV. More specifically, Section 701 of the Compulsory Automobile Liability Insurance Law states in pertinent part that "no motor vehicle shall be registered except upon the filing by the owner of the vehicle with the Director of the Bureau of Motor Vehicles ("Director") proof of coverage by a satisfactory 'owner's' policy of liability insurance, in the manner provided in Section 707 of this chapter." Section 707 of the law provides further that "proof of coverage by satisfactory liability insurance shall be furnished by filing with the Director of the Bureau of Motor Vehicles, the written certificates of any insurance carrier admitted and duly authorized to do business in the Virgin Islands, certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of coverage by satisfactory liability insurance."

Also of particular relevance to this hearing is Section 705 of the Law which requires that an insurer provide, within 15 days prior to the effective date of the cancellation of an automobile insurance policy, notice of such cancellation by certified mail to all parties including the insured, any lienholders and the Director of the BMV. Once notice of the cancellation of the insurance policy is received by the Director of BMV, Section 705 mandates that the BMV immediately suspend the registration of the uninsured vehicle and that the owner of the vehicle surrender the registration sticker, registration license, license plate and the insurance sticker. Thus the uninsured vehicle will no longer be eligible to traverse the territory's roadways.

If I may also briefly mention a hearing that was held by this committee on September 30, 2015, when the Division was asked to provide testimony on Bill Number 31-0105, "An Act amending title 3 Virgin Islands Code, chapter 14, section 231 requiring the Director of the Bureau of Motor Vehicles to transmit to the Director of the Virgin Islands Taxicab Commission all information pertaining to the cancellation of any insurance policy that a taxicab operator is required to maintain." Attorney Monica Carbon, Legal Counsel for the Division and Attorney Dolace McClean, Legal Counsel to the Lieutenant Governor appeared on Director Brady's behalf at that hearing. During that hearing, many of the problems regarding compliance with and the enforcement of the Compulsory Automobile Liability Insurance Law were discussed. One issue was whether insurance companies were providing the information regarding cancellation of the insurance coverage to the BMV. Based upon discussions with the Virgin Islands Insurance Association, this information is being provided, especially by Guardian Insurance Company, the territory's primary provider of automobile insurance coverage. Another issue raised was how the information was being shared with the Police Department in order to ensure that police officers would have access to information regarding the cancellation of the vehicle liability insurance coverage and the subsequent suspension of the vehicle's registration which would therefore allow police officers to actively seek out these vehicles as they traverse the roadways. At that time, there was also some discussion concerning a database that has been created and is maintained by the BMV which currently exists and can be accessed by the police department. The BMV can provide more insight regarding this database.

Additionally, regarding the responsibilities of the Division in assisting the BMV in carrying out the provisions of the Compulsory Automobile Liability Insurance Law, the Division provides a listing to the BMV of all property and casualty insurance carriers who are duly licensed to

procure automobile liability insurance coverage to the members of the Virgin Islands community. Additionally, as part of its regular duties, the Division reviews the rates of all insurers licensed in the territory which includes, but is not limited to all property and casualty insurers who are licensed to procure automobile liability insurance coverage. The Division has established the surcharges for high risk drivers in accordance with the moving violations point system established under Sections 801 and 803 of the Law. The Division has ensured that the required language to be included in automobile liability insurance policies are in place with the required limits in accordance with Sections 703 and 704 of the Law. The Division has also confirmed that the required certificate of insurance which must be provided to the BMV upon application for the registration of a vehicle is also in place. Therefore, we submit that the Division has taken an active role in ensuring that the provisions of the Compulsory Automobile Insurance Law relevant to the insurance industry are carried out.

Notwithstanding the above, it is the opinion of the Division that the current Bill Number 31-0132, as with the previous Bill Number 31-0105, is simply an extension of the Compulsory Automobile Liability Insurance Law as it seeks to reduce the number of uninsured motorists traversing the roadways of this territory and to enhance access to and the sharing of this information with the Police Department which allows for better enforcement of the Law. Under the Compulsory Automobile Liability Insurance Law, all motorists in the territory are required to show proof of liability insurance coverage before the BMV will register the covered vehicle. This law also requires that all policies evidencing automobile liability insurance coverage must be effective for at least one (1) year. This means that the policy expires at least one year from the date of its issuance or renewal. This date is not associated in any way with the date of the registration of the vehicle. Moreover, the registration of motor vehicles in the territory is also valid

for one year, the expiration of which in most cases does not coincide with the dates evidencing the effective period of the policy for automobile liability coverage. If the owner of a vehicle fails to maintain the mandatory liability insurance coverage by failing to renew the policy when it expires or by failing to make any required monthly payments to a premium finance company or the insurer, the insurer, within its rights, cancels the insurance coverage for non-payment of premium. If the insured's failure to make the required payments and the resulting cancellation occurs after the vehicle was initially registered but before the registration's one-year period expires, the owner of the vehicle will still have a valid vehicle registration in his or her possession, but not the required vehicle insurance coverage.

The early cancellation of these automobile insurance policies has negative economic consequences not only to passengers or third party claimants injured in the accident but to the insurance company who wrote the policy, the agent who sold the policy, the Government of the Virgin Islands and the policyholders of this territory. For example, a third party claimant may be forced to file a claim with his or her insurance company if the uninsured motorist is the person at fault in causing the accident. Filing such a claim may preclude the third party claimant from obtaining the "no claims discount" provided by his or her insurance company, a benefit enjoyed by insureds who do not file claims. Under the same scenario, if there are any passengers in the vehicle owned by the uninsured motorist who are injured in the accident these persons may not have personal health insurance coverage or the monies required for healthcare services. For these persons, treatment at the hospital may be through uncompensated care representing a loss to the Virgin Islands Government in the amount of all unpaid monies for services provided. Other less obvious, but very significant, economic losses resulting from early cancellation include, but may not be limited to: (1) a loss to the insurer as a result of having to return unearned premiums to the

premium finance company; (2) a loss to the insurance agent who will lose a portion of his commission; (3) a loss to the Virgin Islands Government whose premium tax dollars will be decreased thereby decreasing the amount of funds available in the Virgin Islands Insurance Guaranty Fund for use if there is a catastrophe or an insurance company becomes insolvent; and (4) a loss to the policyholders of this territory who will be afforded less protection under the Guaranty Fund because there will be less money available in the case of a catastrophe or an insolvent insurer.

In light of the foregoing and in order to address the concerns of the Division regarding the practical application of the Compulsory Automobile Liability Insurance Law, we do have a few suggested changes that we believe will make Bill Number 31-0132 more effective and help to clarify the respective duties and obligations of those charged with the administration and enforcement of the provisions of the Bill.

Specifically, the Division is concerned with Section 709 of the Compulsory Automobile Liability Insurance Law, which, by its language, places the entire responsibility for the administration and enforcement of the provisions of the Law with the Commissioner of Insurance. It is our opinion that this responsibility as set forth in Section 709 is over broad. Looking at the language contained in the provisions of the Compulsory Automobile Liability Law, it is clear that many of the requirements set forth in the law are directly related to the registration of motor vehicles in the territory, which is a responsibility of the BMV. Such provisions should be administered and enforced by the Bureau of Motor Vehicles. We further believe that placing the responsibility of these provisions upon the Commissioner of Insurance is contrary to the intent and purpose of section 231 of title 3 of the Virgin Islands Code, which explicitly states that “[t]he Bureau [of Motor Vehicles] shall exercise general control over the administration of law and the

collection of fees relating to the licensing of motor vehicle operators and the registration and licensing of motor vehicles, as provided by law.” For example, we draw your attention to Section 701 of the Law which sets forth the requirement that all owners of vehicles file with the BMV proof of automobile liability insurance. Additionally, Section 705 (a) (2) specifically places the responsibility and authority to suspend the registration of a vehicle resulting from the cancellation of the automobile liability insurance policy upon the BMV, the entity responsible for registering the vehicle. It is clear that it is the responsibility of the BMV and not the Division to enforce these provisions. For this reason, we respectfully suggest that a simple way to more clearly define the respective responsibilities of the BMV and the Division is to amend the language in the heading and the introductory paragraph of Section 709 to state the following:

“709. Commissioner of Insurance to administer provisions applicable to the regulation of insurance

The Commissioner of Insurance is charged with the administration and enforcement of Sections 702, 703, 704, 705(a)(1), 706, 707(b) and (c) of this chapter and any provisions relating to the regulation of the insurance industry including any subsequent provisions that may be adopted in order to carry out the purpose of this chapter. The Commissioner of Insurance, charged with the administration and enforcement of the applicable provisions of this chapter, shall be authorized to:”

With regards to the language currently proposed in the Bill, the Division respectfully suggests that the heading of Section 707 be amended and the first sentence be designated as Subsection (a) with an amended second sentence to state the following:

“§707 Certificate of insurance required as proof of insurance

(a) Proof of coverage by satisfactory liability insurance shall be furnished by filing with

the Director of the Bureau of Motor Vehicles, the written certificates of any insurance carrier admitted and duly authorized to do business in the Virgin Islands, certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of coverage by satisfactory liability insurance. Such certificate shall be prescribed by the Commissioner of Insurance.

The Division further respectfully suggests that a new Subsection 707(b) be added to state the following:

(b) The certificate shall designate by explicit description or by appropriate reference all vehicles covered thereby, and shall give the effective date of such motor vehicle liability policy, which date shall (i) be the same as or earlier than the effective date of the certificate, and (ii) terminate upon the policy's expiration; provided, however that the policy shall provide coverage for at least one (1) year.

Finally, the Division respectfully suggests that new Subsections 707 (c) and (d) be added to include the currently proffered language with the following additional language:

*(c) All insurance carriers or its designee referred to in subsection (a) shall provide to the Virgin Islands Bureau of Motor Vehicles the **required** motor vehicle liability insurance data contained in any certificate issued pursuant to subsection (b) no later than the tenth working day of the month following its issuance, but if a policy has lapsed or has been terminated, the data must be provided on the date the policy lapsed or was terminated.*

(d) The Bureau of Motor Vehicles shall establish and maintain a motor vehicle liability insurance database that contains, at a minimum, the insurance data contained on the certificate and a listing of all motor vehicles that have the required motor vehicle liability insurance coverage in effect in the Virgin Islands at the end of the prior month's processing period. The database

must be made available to the Virgin Islands Police Department for traffic and law enforcement purposes.”

In reference to the suggested changes in subsection c, presently, many insurers delegate to their agents or producers the responsibility to transmit cancellation notices for its insured to BMV. The addition of the word “designee” in Section 707(c), would, as is presently done, give insurers the option to delegate the reporting responsibility to USVI licensed and appointed agents or producers.

As mentioned above, it is our understanding that the BMV may have already established a database that is maintained by the BMV which are being utilized to store the data on the certificate and can provide further information regarding this database.

In sum, the Division believes that Bill Number 31-0132 furthers the objectives of the Compulsory Automobile Liability Insurance Law by seeking to address any lapses in the Law that may delay the BMV’s notification of the cancellation of an automobile liability insurance policy and the receipt by the Virgin Islands Police Department of this very vital information. By amending and adding the proposed language, the BMV along with the police department will, by statutes, have specifically cited requirements to effectively regulate the registration of motor vehicles in the territory ensuring that those motorists who do not have the required automobile liability insurance are apprehended and thereby removed from the roadways of the territory. Removing these uninsured vehicles from the roadways will decrease the potential economic loss to the members of this community including, but not limited to, the innocent third party claimants and passengers of uninsured motorists who are involved in automobile accidents as well as the insurance carriers, their agents, the Government of the Virgin Islands and thus all policyholders of this territory. Moreover, the Division proposes the inclusion of the additional language in order to clarify the respective responsibilities of the BMV and the Commissioner of Insurance with regards

to the application of the Law and to avoid any overlap in the intended duties which are contrary to the intent and purpose of the insurance laws and the motor vehicle laws of this territory. Accordingly, the Division fully supports this legislation with the recommended changes to the current proposed language and to Section 709 of the Compulsory Automobile Liability Insurance Law.

Chairman Harrigan and members of the Committee, this concludes my testimony on **Bill No. 31-0132**. I thank you and the members of the Committee for the opportunity to appear before you and I am prepared to respond to your questions on this bill.