TESTIMONY
PROVIDED BY THE
OFFICE OF THE LIEUTENANT GOVERNOR
DIVISION OF BANKING, INSURANCE AND FINANCIAL REGULATION
BEFORE THE
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON ECONOMIC DEVELOPMENT AND AGRICULTURE
Wednesday, April 16, 2025

Good day, Committee Chairman Honorable Hubert L. Frederick and Honorable Members of the Thirty-Sixth Legislature of the Virgin Islands Committee on Economic Development and Agriculture, other Senators present today, as well as the viewing and listening audience. I am Attorney Glendina P. Matthew, Director of the Division of Banking, Insurance and Financial Regulation (thereinafter "Division") within the Office of the Lieutenant Governor. I am accompanied by Legal Counsel Suzette Richards.

I most respectfully appear before you today in response to your invitation to the Honorable Lieutenant Governor Tregenza A. Roach, Esq. to provide testimony on Bill No. 36-0019 *(An act amending title 12A Virgin Islands Code, chapter 2, subchapter I, section 101 to prohibit the imposition of a surcharge for the use of a credit card or debit card.)* The Committee has requested testimony and supporting documents on the following topics:

* The impact of prohibiting credit and debit card surcharge on businesses, consumers, and financial institutions.

* Legal considerations regarding consumer protection and business practices in the Virgin Islands.

* Potential economic effects and regulatory enforcement strategies.

While Bill No. 36-0019 is well-intentioned, the Division is compelled to respectfully state that, as currently written, the Bill would have a significantly adverse impact—particularly on insurance agencies conducting business in the Virgin Islands. Therefore, the Office of the Lieutenant Governor, through the Division, does not support the passage of Bill No. 36-0019 in its present form.

By way of background, on September 25, 2019, the Thirty-Third Legislature of the Virgin Islands passed Act No. 8205 as codified in the Virgin Islands Code Title 12A, Chapter 8, Section 451 et al., which mandates that businesses in the territory, with the exception of itinerant vendors, farmers certified by the Department of Agriculture, fisherman certified by the Department of Licensing and Consumer Affairs, and commercial establishments with an annual volume of business of less than $50,000 per year, shall offer to its customers at least two payment options, cash and either credit or debit. The intent of the Act is to ban cash-only businesses and to increase payment options available to consumers in the Territory.

Since the Act's enactment, the usage and number of businesses in the Virgin Islands that accept payment by credit card have significantly increased. Licensed entities under the Division's regulatory purview, such as insurance agencies that have a gross annual revenue of $50,000 also accept credit card payment via an online platform. However, with the increase in credit card usage, many businesses face the increasing costs associated with processing each credit card transaction, which paid to payment processors for use of its Online Payment System.

If this Bill passes, businesses currently charging surcharges or utilizing on-line third-party vendors for credit card processing will either absorb the respective payment processing fee as a cost of doing business or revisit their pricing model to take into consideration the additional fee.

If the business current pricing is generating adequate revenue and profit based on the volume of business, then a price increase may not be necessary. However, if the current pricing is not generating adequate revenue, the business may need to consider increasing its price for goods and the cost of services.

I must emphasize that not all business models allow for easy price or cost increases. The business model utilized in the United States for insurance agencies is based on commission and does not allow a lot of flexibility if an agency is seeking to offset increasing expenses. Thus, unlike other types of businesses that could pass on increasing costs to consumers, an agency would have to potentially reduce its overhead, by reducing its employees, administrative and other expenses. As stated above, an insurance agency's primary source of revenue comes from commissions earned on insurance policies sold and renewed. The amount of the commission is a percentage of the policy premium. On average commission is generally between five (5) and 15 percent, a lower commission paid for renewal businesses and based on the type of policy. Over the years, as the reserves of insurance companies continue to decrease due to catastrophic events, so too has high commissions for agencies. I have provided below an example of what an agency receives in commission for a single policy renewed versus what a payment processor charges to process a single credit card transaction using today's average credit card processing fee.

Commission (income earned): $4,000.00 x 5% = $200.00

Credit card processor fee (expense): $4,000.00 x 3.5%= $140.00

Net profit: $60.00

From my comparison, you will find for this renewal business 3.5 percent or $140.00 of the five (5) percent or $200.00 commission earned would be spent on credit card processing fees, leaving a net profit of $60.00.

On June 17, 2019, the Commissioner of Insurance issued Bulletin No. 2019-06, which reiterated the language in 22 VIC. Section 818, which was enacted in 1968, which provides, "No insurer or its officer, employee, agent, solicitor, or other representative **shall charge or receive** any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy. However, any amount due with respect to gross receipts taxes may be stated separately in the policy or on an invoice for such policy." While the Division sought to advocate for consumers in this bulletin, we also saw the effect credit card processing fees and other expenses had on the net profit of insurance agencies in the territory, resulting in a decline in the number of unaffiliated agencies. To maintain stability in the market and keep these agencies profitable, insurance agencies were approved to utilize on-line third-party vendors to process credit card payments without running afoul of Section 818; thus, consumers had the option of utilizing the online third-party vendor platform to make payment.

In closing, I must restate, the Division has observed a steady decline in small, family-owned, and often independently operated insurance agencies in the territory due to the increasing costs of managing an agency. Insurance agencies and their insurance producers play the crucial role of assisting clients with obtaining new insurance coverage, renewing policies, making changes in coverage, and filing claims. The Division is extremely concerned that this Bill if enacted without exempting the insurance agencies could unintentionally accelerate the decline of insurance agencies doing business in the Territory.

Chairman Frederick, Members of this Committee, and other Senators present, this concludes the Division's testimony on **Bill No. 36-0019.** We thank you and the Members of the Committee on Economic Development and Agriculture for the opportunity to appear before you. We are prepared to respond to your questions on this Bill.