

Commissioner of Financial Institutions—Powers of Regulation, Examination and Fiscalization; Amendment (H.B. 2165)

[No. 18]

[Approved March 24, 1996]

AN ACT

To add clauses (15,) (16), (17), (18) and (19) to subsection (a) and to add a subsection (b) to Section 10 of Act No. 4 of October 11, 1985, as amended, known as the "Office of the Commissioner of Financial Institutions", in order to empower the Commissioner of Financial Institutions to regulate, examine and administer all financial institutions under his/her supervision in a uniform manner and to provide for the Commissioner of Financial Institution to enter agreements for the joint examination, exchange of information, and other measures during the supervision, inspection and examination of all these institutions, and other details.

STATEMENT OF MOTIVES

The financial institutions of Puerto Rico are dynamic entities, which are continuously changing and growing. These entities exert great influence on our economy. The rapid development of these entities in Puerto Rico has strengthened and enabled them to render more and improved services to the economy.

The inspection and supervision of these institutions are vested with great complexity and display a dynamic scenario that is constantly changing, which requires an equally dynamic and flexible government inspection structure. It is the responsibility of the Commonwealth to ensure the interests of those areas linked to the financial institutions in general, whether as depositors, creditors, debtors, shareholders, or with any other kind of association, are adequately protected.

On the other hand, it has been established as a public policy, that the excessive regulation of financial institutions can have an adverse effect of suffocating them and imposing costs and charges on them that do not benefit the public interest and which only bring about as a final product the possibility of discouraging economic activity and reining the growth of the financial services sector in our country.

The supervision given to financial institutions today is frequently fragmented in several state and federal government agencies. This situation leads to a duplication of resources, and work, and to the increase of operating costs in government as well as in financial sectors.

In recognition of the above, Act No. 4 of October 11, 1985, supra, created the Office of the Commissioner of Financial Institutions, attached to the Department of the Treasury, assigning to said agency the function of regulating the financial institutions that operate or are doing business in the country, whose supervision is assigned to it. Act No. 4, supra, clearly stated the intention to equip the Office of the Commissioner with the needed agility and flexibility to honor its commitments and for the satisfaction of all.

This Act introduces several amendments to the abovementioned Act No. 4, which aim to eliminate the differences within the power of the Commissioner's Office, depending on the nature of the financial institution under supervision. On the other hand, this Act establishes additional powers conferred on the Office of the Commissioner of Financial Institutions of Puerto Rico, which has the purpose of adjusting the powers of said supervisor of financial institutions organized or doing businesses in Puerto Rico, with the powers granted to national or state banking regulators. Among other purposes, this Act has the intention to empower and match the Office of the Commissioner of Financial Institutions with the banking supervisors under the provisions of the federal act known as the "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994", Pub L. No. 103-328, whose amendment is effective September 29, 1995.

The Legislature recognizes that financial institutions participate in a critical manner in the collective affairs of our

people, are a main pillar of our economy and enjoy a high public interest. Therefore, the public policy to sustain, support and promote the financial industry in Puerto Rico is hereby confirmed.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Clauses (15), (16), (17), (18) and (19) are hereby added to subsection (a) of Section 10 of Act No. 4 of October 11, 1985, as amended [7 L.P.R.A. § 20109(a)(15)-(19)], to read as follows:

“Section 10.—Faculties of the Commissioner.—

(a) In addition to the powers and faculties transferred hereby, the Commissioner shall have the power and faculties to:

(1) ...

(15)(i) Grant contracts or cooperative agreements with other jurisdictions to, among other things, perform joint examinations and share confidential information compiled in said financial institution's examinations, notwithstanding the provisions of subsection (d) of Section 20 of this Act; coordinate and share information with any other supervisory agencies of financial institutions of any other jurisdiction, or any organization affiliated to or representing one or more supervisory agencies of financial institutions;

(ii) Before revealing any confidential information under the provisions of subsection (15)(i) of this Section, the Commissioner shall obtain the assurance of said supervisory agency to maintain the confidentiality of such information to the extent possible under this or any other applicable act;

(16) Accept, in his/her full discretion, any examination report or investigation report from any other supervisory agency of financial institutions of any other jurisdiction, with concurrent jurisdiction over a financial institution organized or doing business in Puerto Rico, in lieu of the examination or investigation of said financial institution by the Commissioner him/herself.

(17) Participate in joint examinations or investigations with any other supervisory agency with concurrent jurisdiction

over any financial institution of Puerto Rico. Provided, however, that the Commissioner may take any of these actions independently, if he/she determines that such action is necessary or proper to execute his/her responsibilities under this Act and to ensure compliance of the laws of Puerto Rico.

(18) Grant contracts or agreements to obtain the services of examiners or to share examiners with other regulators of financial institutions. Said contracts shall be exempted from the bidding requirements, if applicable; and

(19)(i) Impose the examination and supervisory fees pertinent to the performance of the duties of the Commissioner under this Act, which shall be paid by the financial institutions organized of doing business in Puerto Rico, pursuant to the regulations adopted by the Commissioner to such effects, which shall be covered into the Fund for the Investigation and Examination of Financial Institutions and gaming casinos.

(ii) Said fees may be shared with other supervisory agencies of financial institutions or with other organizations affiliated to or representing one or more supervisory agencies, pursuant to the agreements granted between these and the Commissioner.”

Section 2.—A new subsection (b) is hereby added to Section 10 of Act No. 4 of October 11, 1985, as amended [7 L.P.R.A. § 2010], to read as follows:

“Section 10.—Faculties of the Commissioner.—

(a) ...

(b) If as a result of an audit, examination or inspection, or of a report submitted by an examiner, it is shown that a financial institution lacks a solid financial and economic status or that it is operated or administered in such a way that the general public or persons and entities that have funds or shares in its custody are in danger of being defrauded, and in absence of a specific provision in the law to regulate the financial institution in question and which likewise empowers it, the Commissioner may assume the direction and administration of the financial institution, and promptly appoint a trustee who, in the case of insured financial institutions can be its insuring entity. The Commissioner shall hold a hearing before issuing an order to

place a financial institution under his/her direction, or that of a trustee. Nevertheless, the Commissioner may issue a provisional order appointing a receiver without having to hold a hearing, when in his/her judgment, the financial institution's status is of such a nature that it is causing or may cause irreparable damage to its interests, or those of the persons and entities with funds or assets in the institution. When the Commissioner issues a provisional order to appoint a receiver, he/she shall notify the Governor of the details and grounds for his/her determination and shall hold an administrative hearing within ten (10) days following the date of notice thereof, in order to determine if it is made permanent or revoked. The receiver thus appointed shall administer the financial institution pursuant to the provisions of the law and the regulations that govern said institution, and in accordance with the regulations that govern said institution, and in accordance with the regulations promulgated by the Commissioner for receiverships or emergency measures declared under this Section of the Law.

Said receivership shall terminate upon the total liquidation of the financial institution, if it were necessary, or when the operations thereof, as certified by the trustee in the Commissioner's judgment, allow the return of the administration of the institution to the duly elected and appointed officers and officials, under the circumstances stipulated by the Commissioner. The Commissioner shall fix a reasonable compensation for the services rendered by the receiver and his/her employees. The determination of the Commissioner to assume the administration and direction of a financial institution or to appoint a receiver, can be reviewed by the Circuit Court of Appeals, through a petition filed within the term of ten (10) days from the date of the determination."

Section 3.—Effectiveness.—

This Act shall take effect immediately after its approval.

Approved March 24, 1996.
