

(H.B. 836)  
(Conference)

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**(No. 22)**

(Approved June 26, 1997)

**AN ACT**

To amend Section 3, repeal Section 4, and add Sections 3A, 4, and 5A of Act No. 11 of August 22, 1933; amend subsection (a) of Article 2057 and the second paragraph of Article 2079 of Act No. 120 of October 31, 1994 as amended, known as the Puerto Rico Internal Revenue Code of 1994, in order to authorize the introduction, installation and operation of adult entertainment machines, distinguish them from games of chance machines, to empower the Secretary of the Treasury to regulate them and establish the taxes and fees to be paid for them; and to impose penalties.

**STATEMENT OF MOTIVES**

The proliferation of slot machines in public establishments in Puerto Rico and the improper use of them as a means to exploit persons of limited financial resources has motivated the Legislature to forbid the introduction, manufacture, use, possession or operation of slot machines as well as any other kind of machines that can be used for games of chance, through Act No. 11 of August 22, 1933, known as the Games of Chance Act. The statute forbids these machines in any way that they are manipulated, and any substitute, part or accessory thereof shall be deemed to be illegal.

However, the desirability to take positive measures to protect the tourist industry in Puerto Rico, caused the Legislature to promulgate Act No. 221 of May 15, 1948, as amended, to create an exception to the prohibition of games of chance and authorizes and legalizes the acquisition, leasing, transportation, introduction, possession, use, maintenance and operation of machines known as slot machines, solely and exclusively when they are introduced by the Tourist Company for it to locate and operate them exclusively in the game halls exploited under a franchise issued by the Commissioner of Financial Institutions.

Practice has revealed that the above-mentioned statutes do not contain a clear definition of what games of chance machines are, which makes it difficult to differentiate the entertainment

machines from those that are not. To such effects, our Supreme Court has established the criteria that traditionally characterize this type of gambling. These are:

- (1) the payment or offer that is made or promised to participate in the game of chance;
- (2) the chance or lot whereby the prize is won, and finally
- (3) the prize which constitutes something of monetary worth which the person receives directly and obtains the right to receive it. See Serra vs Salesian Society, 84 DPR 322 (1961); Sun Design Video vs. E.L.A., 94 JTS 129.

Jurisprudence has stated that recreational video machines are legal. In recreational machines, the player's level of skill significantly affects the final result of the match. The recreational machine allows the player to use his/her ability through the manipulation of the levers, buttons and pinball flippers related to the visual interpretation of images and the playing field. The player also perfects his/her ability as he/she plays more games. In a gambling machine, which always includes an element of chance which is essentially beyond to player's control, he/she will reach a certain level of ability, but will not improve as a player regardless of how many times he/she plays the game. The entertainment value of the recreational machine is derived solely from the game itself and not the possibility of winning money as in gambling machines. (Sun Design Video, supra)

Furthermore, the Supreme Court stated what the mechanisms or subterfuges used in the illegal gambling machines to hide the elements of a game of chance, are. The highest forum identified the following mechanisms:

- (1) With regard to the element of performance, the multiple betting machines allow the player to insert several coins before the game begins. These coins become credits which are registered in an automatic counter which is located inside the machine or on the screen.
- (2) In these gambling machines the element of chance controls the result of the game. The equipment is designed to operate in a brief, predetermined time cycle that the player cannot alter with his/her skill.
- (3) These machines do not contain a coin dispenser that delivers the prize directly to the player.
- (4) The gambling machines have a knock-off switch to erase the credits once they are paid to the winning player. These machines have a second counter to register the

credits that are erased from the credit counter. The purpose of the counters and the switch is to register the bets of the players and the payments made to them.

- (5) Finally, the legal machines have a PIC circuit that is activated when there is a power surge. Without this apparatus, all the credits accrued and registered would be erased when the current is restored.

For some time, certain entertainment machines have been imported to Puerto Rico that seem to be recreational and for entertainment, but that once they are imported, the mechanisms are altered to operate as slot machines, and are thus considered to be games of chance.

The State, in its ministerial duty, proceeded to attach the machines it considered to be illegal. This action provoked a great mobilization of state resources in actions such as multi-agency operations to attach the machines, clerical procedural work, storage of the machines, vigilance, destruction of the machines and legal representation, among others. This action, inasmuch as it was directed against the machines that had been modified or adapted for illegal gambling through subterfuges, met the pressing interest of the State. However, in the process of enforcing compliance with the laws in effect, on many occasions, procedural errors were incurred resulting in the dismissal of many cases. Many owners of machines that were attached went to the courts and won their cases, which cost the State millions of dollars without any positive results.

Since the Supreme Court has clearly established the specific criteria under which the application of said Act No. 11 proceeds, it is not reasonable for the authorities to continue to expose themselves to dismissals and suits by depending on a broad interpretation as to what could fall under the scope of this Act as it was drafted 64 years ago.

To temper our legislation to the doctrine established by the Supreme Court of Puerto Rico, Act No. 11 of August 22, 1933, must be amended to state the mechanisms or subterfuges used in the illegal betting machines to hide the gambling elements. The purpose of said amendment is to integrate some parameters into the statute so that the Government of Puerto Rico can clearly identify and distinguish between the betting machines and the recreational video machines, which are perfectly legal.

On the other hand, Article 2057 of the Internal Revenue Code of 1994, regulates the annual license fee that any person who operates machines or apparatus manipulated with coins or tokens, must pay. Revenues generated through the issue of licenses to slot machine operators are

a substantial contribution to the economy of Puerto Rico. In order to conform said Section to the proposed amendment to Act No. 11 of August 22, 1933, the annual fee that the adult entertainment machine operators must pay should be added under subsection (a) (2) of said Article 2057.

The proposed amendments, in addition to tempering the laws that apply to the doctrine established by our Supreme Court, collaborate directly and substantially to maintain and consolidate the public policy of preventing the illegal and undue use of slot machines, thus helping to preserve public law and order, while contributing to the collection and covering of funds into the General Fund of the Government of Puerto Rico. The proposed licenses shall generate over 60 million dollars a year to the General Fund.

They also provide for small entrepreneurs to keep legal entertainment machines in their establishments, which helps them to cover their operating expenses. In addition to helping the economy through the support they give the operations of small entrepreneurs, these machines generate a series of direct and indirect jobs related to the construction, operation and maintenance thereof.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- Section 3 of Act No. 11 of August 22, 1933, is hereby amended to read as follows

"Section 3.- The introduction, manufacture, possession, use or operation of vending machines that are used for games of chance or lotteries, and those known as slot machines and of any other sort, that are used for games of chance or lotteries in whatever form they are exploited, or any substitute thereof, shall be deemed to be illegal, and their introduction, manufacture, use, possession, or operation is hereby forbidden. Games of chance shall be deemed to be those that contain any of the following mechanisms or apparatus:

- (1) An apparatus to accept wagers that are registered on a counter inside the machine;
- (2) A mechanism to award cash prizes to the player, a coin dispenser (Hopper) which awards the prize directly to the player, or a meter which can register or credit cash payments to the player.
- (3) A knock-off switch to erase the credits once they are paid to the winning player.

- (4) An apparatus or mechanism that causes the machine to function with total autonomy of the player for a predetermined cycle or space in time and which causes that the result of the game or operation of the machine is decided by chance or luck.

Any machine that does not have these mechanisms or apparatus shall be deemed as legal and shall be classified as "adult entertainment machines" as said term is defined in Section 3A of this Act."

Section 2.-A new Section 3A is hereby added to Act No. 11 of August 22, 1933, to read as follows:

Section 3A.- For the purposes of this Act, the following terms shall have the meaning stated below:

"(a) 'adult entertainment machine' refers to those machines that do not have mechanisms or apparatus that are characteristic of gambling machines as it has been established by the Supreme Court of Puerto Rico, and Section 3 of this Act.

Entertainment machines for the exclusive use of children and youths, vending machines for cigarettes, food, refreshments or postage stamps, money changing machines, public telephones, and slot machines in the gambling halls of tourist hotels, authorized under Act No. 221 of May 15, 1948, as amended, are hereby excluded from this term. Provided that the term "entertainment machines for the exclusive use of children and youths" refers to all those machines that do not award prizes to the players or that award toys or tickets to the player that can be exchanged for toys or other prizes which are not in cash, and are handed to them on the premises where the machine is located.

- (b) "Department" means the Department of the Treasury of Puerto Rico.
- (c) "Secretary" means the Secretary of the Department of the Treasury of Puerto Rico.
- (d) "Authorization" includes the right, permit or license issued by the Department of the Treasury.
- (e) "Business" means the fixed and permanent site or establishment in which all commercial operations of retail sale of products or services are performed, which, through a license issued by the Department of the Treasury, is authorized in its use permit from the Regulations and Permits Administration or amendments thereto, to install one or more adult entertainment machines.
- (f) "Owner" means that person who owns the adult entertainment machines.
- (g) "Person" means any natural or juridical person.

Section 3.- Section 4 of Act No. 11 of August 22, 1933, is hereby repealed.

Section 4.-A new Section 4 is hereby added to Act No 11 of August 22, 1933, which shall read as follows:

"Section 4.- The introduction, distribution, acquisition, sale, lease, transportation, installation, placing, functioning, maintenance, operation, use, custody and possession of adult entertainment machines in businesses or establishments that operate in the Commonwealth of Puerto Rico, is hereby authorized. When they are installed and operated in a business authorized therefor in the use permit from the Regulations and Permits Administration and are located more than two hundred (200) meters from a public or private school, or a church or congregation which aspires for spiritual serenity, they shall not operate while the school, church or congregation is in session.

In no case shall a person own more than ten (10) machines, and furthermore, he/she must be the owner of the establishment where said machines are installed.

The Secretary shall determine the requirements that must be met by the owners and operators of the machines and the businesses in which they shall be installed, including considerations with regard to the number of machines and the volume of business, to adequately supervise their handling and taxation. He/She shall likewise determine the requirements and conditions for the denial, suspension or revocation of the license."

Section 5.-A new Section 5A is hereby added to Act No. 11 of August 22, 1933, which shall read as follows:

"Section 5A.- Violations-Fines and Penalties

(a) Administrative Fines.-

The Secretary may impose an administrative fine of not less than five thousand (5,000) dollars, nor more than ten thousand (10,000) dollars on the owner for each violation of this Act.

(b) Penalties.-

- (1) Every owner of adult entertainment machines or any other person, operator, or attendant in a business or establishment that introduces the gaming machines described in Section 3 of this Act, considered games of chance machines, in said business, or uses or tries to use them therein, shall be guilty of a misdemeanor, and upon conviction, shall be punished with a fine of not less than two hundred (200) dollars, nor more than four hundred (400) dollars, or by imprisonment for a term of not less than thirty (30) days nor more than sixty (60) days, at the discretion of the Court. If it is a second conviction, a fine of not less than three hundred (300) dollars nor more than five hundred (500) dollars and a penalty of imprisonment of not less than sixty (60) days nor more than ninety (90) days, shall be imposed. Any subsequent conviction shall bring about a fixed fine of five hundred (500) dollars, and imprisonment for a period of six (6) months.
- (2) Any person who violates any of the provisions of this Act or the regulations promulgated by the Secretary, shall be punished, upon conviction, with a fixed fine of five hundred (500) dollars or imprisonment for a period of not less than two (2) months, nor more than six (6) months, or both penalties at the discretion of the court.
- (3) Any person who forbids or impedes the free inspection of businesses, establishments or sites by internal revenue or public law and order agents, with the purpose of conducting investigations related to this Act or the regulations promulgated by the Secretary, or who admits, counsels, incites, assists, or induces a person who is under 18 years of age to operate the adult entertainment machines, shall incur a felony, and upon conviction, shall be punished with a fixed fine of five hundred (500) dollars and imprisonment for a period of not less than three (3) months, nor more than six (6) months.

Regardless of the penalties established in this Act, the Secretary shall attach and dispose of any adult entertainment machine that is operated without a license, or with an



expired license or a license issued for another machine. The Secretary is further empowered to impose an administrative penalty for violations of his/her orders and the regulations promulgated thereunder, by a temporary suspension or permanent revocation of the rights and privileges enjoyed by the natural or juridical person who is guilty of the violation, including the automatic revocation of all internal revenue licenses granted and administered by the Secretary."

Section 6.- Subsection (a) of Article 2057 of Act No. 120 of October 31, 1994, as amended, is hereby amended to read as follows:

"(a) Any person who operates entertainment machines or artifacts manipulated with coins or tokens, pool tables, or cigarette vending machines shall pay an annual license fee in the amounts established below:

- (1) For each nickelodeon .....\$60.00
- (2) For each entertainment machine or artifact  
operated with coins or tokens as follows:
  - A. Mechanical.....\$50.00
  - B. Electronic.....\$150.00
  - C. Children and youth's videos.....\$200.00
  - D. Adult entertainment.....\$1.500.00

(3) ..."

Section 7.- The second paragraph of Section 2097 of Act No. 120 of October 31, 1994, as amended, is hereby amended to read as follows:

"Article 2079.- Term to Pay License Fees

...

...

In the case of renewals, the license fees shall be paid no later than October 31 of each year. Nevertheless, in the case of a renewal of a license to operate adult entertainment machines that has been issued originally in the period comprised between July 1, through September 30, 1997, the renewal fees for this license shall be paid no later than October 31, 1998."

Section 8.- This Act shall take effect immediately after its approval.

October 16, 1997

José A. Figueroa-Lugo, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 22 (H.B. 836) (Conference) of the 1st Session of the 13th Legislature of Puerto Rico, entitled:

**AN ACT** to amend Section 3, repeal Section 4, and add Sections 3A, 4, and 5A of Act No. 11 of August 22, 1933; amend subsection (a) of Article 2057 and the second paragraph of Article 2079 of Act No. 120 of October 31, 1994 as amended, known as the Puerto Rico Internal Revenue Code of 1994, in order to authorize the introduction, installation and operation of adult entertainment machines, distinguish them from games of chance machines, to empower the Secretary of the Treasury to regulate them and establish the taxes and fees to be paid for them; and to impose penalties,

and finds the same are complete, true and correct versions of each other.

José A. Figueroa-Lugo

