

(H. B. 878)

(No. 43-2017)

(Approved July 11, 2017)

## **AN ACT**

To amend Sections 3, 10, 12, and 13 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” in order to provide medical tourism services and telemedicine sites as part of the services that are eligible under the Law; eliminate bureaucratic restrictions as well as requirements that limit tax incentives to persons who wish to invest in order to export their services outside of the Island, in the interest of promoting the economic development of Puerto Rico; and for other related purposes.

### **STATEMENT OF MOTIVES**

Since the 1970s, Puerto Rico’s economic development has been focused on promoting foreign industries through the granting of federal and local tax incentives. Ever since, Puerto Rico’s economy began to deteriorate. Such decline became evident with the elimination of the federal tax incentives over which the Government of Puerto Rico had no control and which were at odds with the strengthening and development of new local businesses.

The deterioration of the Puerto Rican economy took a turn for the worse when the Government incurred expenses that exceeded the income which, in turn, brought about more taxes and fees for local enterprises, as well as for all the People. Consequently, local economic activity declined. Since fiscal year 2007, there has been a fifteen percent (15%) economic contraction, with the exception of the year 2012. Since then, the Gross National Product of the Commonwealth of Puerto Rico has been in negative numbers.

In an interconnected global economy, Puerto Rico is faced with the challenge of reaching high levels of competition in order to achieve its economic development goals. According to the Global Competitiveness Report 2016-2017 of

the World Economic Forum, competitiveness is defined as the set of institutions, policies, and factors that determine the level of productivity of an economy, which in turn determines the level of prosperity a country can achieve.

We are compelled to reverse the negative performance of our economy and get back on the road to prosperity. In order to achieve this, it is critical to bring about a paradigm shift in the manner in which we envision the functions of our public institutions and our economic development model. Precisely, the Plan for Puerto Rico, endorsed by the People on November 8, 2016, includes measures to achieve fiscal responsibility and to develop the economy of our Island. This Administration did not stand with arms crossed and in less than fifty days it has approved, more than ever before, at the beginning of a government administration, more than a dozen laws that seek to promote the development of our economy and deal with the fiscal crisis, in order to become a more competitive jurisdiction. See, Acts No. 1 through 11 of 2017.

Seeking to achieve our economic development and growth, during the administration of the Honorable Governor Luis Fortuño, the Government of Puerto Rico identified the need of incentivizing the export of services. Thus, Act No. 20-2012 was approved for the purpose of incentivizing the development of local businesses and other businesses looking for the opportunity to operate on the Island and expand their capacity to export services and insert Puerto Rico into the global economy.

A study conducted by Estudios Técnicos, published in December 2015, revealed that, as of November of the same year, 360 tax exemption decrees been issued under Act No. 20-2012; that the businesses operating under said Act created approximately 3,350 direct jobs, 2,160 indirect jobs, and more than 1,500 induced

jobs totaling 7,000 jobs. This shows that said Act has been of paramount importance for Puerto Rico's economic development.

In fact, said Act was endorsed by the García-Padilla Administration through the former Secretary of Economic Development and Commerce, Alberto Bacó-Bagué, who became its main supporter. He stated that Act No. 20-2012 has been an economic stimulus tool that has generated thousands of high-paying jobs and prevented a greater brain drain in Puerto Rico.

However, the preceding Administration amended Act No. 20-2012 to establish limitations that rather than stimulating the export of services, discourages our human resources from taking the initiative to invest in order to export their services. We must put aside the "me vale" policy, roll up our sleeves and get back on the path toward economic development set by the Fortuño Administration, which was neglected by the García-Padilla Administration.

Certainly, Puerto Rico's greatest asset is its human resources. We have high level professionals, technicians, advisors, consultants, and service providers, who have the talent to offer services to other jurisdiction from Puerto Rico with the highest rate of success. This Administration is committed to help our workers and anyone who sees Puerto Rico as an economic investment destination to succeed.

Puerto Rico's public policy on the export of services must be focused on the necessary tax incentives to promote the growth of the service sector in its economy. Said incentive must also promote a sustainable economic development and the creation of jobs on the Island. Our population is bicultural and bilingual and our strategic location serves as a bridge between Latin America and the continental United States.

To attain the objectives outlined herein, this Administration deems it necessary to amend the "Act to Promote the Export of Services." Thus, medical

tourism and telemedicine sites services are included as eligible services under Act No. 20-2012. This extends the range of eligible services to incentivize foreign and local investors to develop in Puerto Rico an economic component based on the export of medical services. The foregoing coupled with the incentives for medical professionals approved by virtue of Act No. 14-2017, shall enable our physicians to expand their services in this area and remain in Puerto Rico not only to provide health care services to Puerto Ricans but also to export their services overseas, thus contributing to our economic development.

It is a programmatic principle of this Administration, as established in the Plan for Puerto Rico, that the function of the Government must be based on promoting, incentivizing, and facilitating economic development as well as on raising financial capital in order to attract service companies and large institutions to Puerto Rico, and encourage local businesses to export services abroad. Said commitment includes the implementation of a development model based on the global principles of competitiveness and sustainability that enables the private sector to play a key role and lead our economic development. This Government is committed to eliminating all obstacle to enable Puerto Rico to compete favorably with other jurisdictions.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Subsection (k) of Section 3 of Act No. 20-2012, as amended, is hereby amended to read as follows:

“Section 3.- Definitions.-

For purposes of this chapter, the following terms, phrases, and words shall have the meaning and scope stated below, except when it is otherwise clearly indicated, and terms used in the singular form shall also include the plural form, and vice versa:

(a) ...

...

(k) Eligible Services.- Eligible services include the following services which are, in turn, considered services for export:

(i) ...

...

(xvi) Hospital and laboratory services including medical tourism and telemedicine sites;

...

(xxi) Trading Companies.- For the purposes of this Section, trading companies shall mean any entity that derives not less than eighty percent (80%) of its gross income from:

(A) the sale to persons or entities outside of Puerto Rico for use, consumption, or disposition outside of Puerto Rico of products manufactured inside or outside of Puerto Rico and purchased by the eligible business for resale;

(B) commissions derived from the sale of products for use, consumption, or disposition outside of Puerto Rico; provided, that no part of the income derived from the sale or resale of products for use, consumption, or disposition in Puerto Rico shall be deemed to be industrial development income and that the income-producing property is not used for purposes other than those authorized by the decree; and

(C) other eligible services for export as described in this Act.

(xxii) ...

(l) ...

...”

Section 2.- Subsection (a) is hereby repealed and subsection (b) is hereby amended and renumbered as subsection (a), and subsections (c) through (f) are hereby renumbered as (b) through (e) of Section 10 of Act No. 20-2012, as amended, to read as follows:

“Section 10.- Procedures.-

(a) Ordinary Process.-

(i) Applications for decree.-

Any person who has established or plans to establish an eligible business in Puerto Rico may apply for the benefits of this Act to the Secretary by filing the appropriate duly-sworn application at the Exemption Office.

The Secretary shall prescribe by regulations or administrative determination the criteria to be used in the application evaluation process, including among the evaluation criteria, the eligible business' contribution to the economic development of Puerto Rico. Such criteria may include, but shall not be limited to: (i) creation of jobs; (ii) investment of capital; or (iii) direct or indirect contributions to the economy. The Secretary may require in the decree that, in the event the business needs employees or independent contractors to carry out its operations, certain number of employees or, in the case of independent contractors, that such contracts be entered into with residents of Puerto Rico or local businesses engaged in trade or business in Puerto Rico. However, in the case of telemedicine services, the Secretary shall require that thirty percent (30%) of the hired physicians be residents of Puerto Rico. If there are no people qualified to carry out the hired activities or operations in Puerto Rico or if 30% of specialized physicians residents of Puerto Rico are not available to render telemedicine services, the business may hire specialized personnel from any other jurisdiction. Businesses holding an exemption decree or whose application for decree is pending approval, which have already hired direct employees cannot dismiss such employees as a result of the amendments to this Act modifying the job creation requirement.

...

(ii) ...

## (iii) Additional Provisions.-

(A) The Secretary shall, through the Exemption Office, require applicants for decree to submit sworn statements attesting to the facts stated, required, or pertinent, in order to determine whether such applicant's service operations or proposed service operations qualify under the provisions of this Act.

(B) ...

(C) ...

(D) ...

(E) ...

(b) ...

(c) ...

(d) ...

(e) ...”

Section 3.- Subsection (f) of Section 12 of Act No. 20-2012, as amended, is hereby amended to read as follows:

“Section 12.- Periodic Reports to the Governor and the Legislative Assembly; Portal.-

(a) ...

...

(f) The Secretary, with the support of the Industrial Development Company and the Department of the Treasury, shall establish an electronic data repository that allows information relative to businesses holding a decree under this Act as well as certificates of compliance to be stored, updated, and accessed by the agencies concerned, while safeguarding the confidentiality of such information. This information shall be used to oversee compliance with the conditions imposed

on businesses holding a decree under this chapter and to develop a marketing intelligence system that enables the Department of Economic Development to identify and help in a timely manner those eligible businesses or businesses holding a decree in a precarious situation, as well as to establish promotion strategies.”

Section 4.- Subsection (d) of Section 13 of Act No. 20-2012, as amended, is hereby amended to read as follows:

“Section 13.- Decrees Granted under Industrial or Tax Incentives Laws.-

(a) ...

(b) ...

(c) ...

(d) Every eligible business holding a decree granted under this Act shall submit annually to the Exemption Office, along with a copy to the Secretary, the Secretary of the Treasury, and the Executive Director, not later than thirty (30) days after the filing of the corresponding income tax return, a report authenticated with the signature of the Chairperson, managing partner, or his authorized representative. Said report shall contain an itemization showing compliance with the conditions set forth in the decree for the taxable year immediately preceding the filing date, including, but not limited to the following: average jobs, services covered by the decree, as well as any other information that may be required in the form adopted for such purposes or required by regulations. This report shall include the fees established by regulations, which shall be payable by money order, cashier’s check, or certified check to the order of the Secretary of the Treasury. The information included in the annual report shall be used for statistical and economic research purposes, as provided in this Act. Likewise, the Secretary, through the Industrial Tax Exemption Office, shall conduct a compliance audit

every two (2) years of the terms and conditions of the decree granted under this Act.

...”

#### Section 5.- Severability.

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

#### Section 6.- Effectiveness.

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 43-2017 (H. B. 878)** of the **1<sup>st</sup> Regular Session** of the **18<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend Sections 3, 10, 12, and 13 of Act No. 20-2012, as amended, known as the “Act to Promote the Export of Services,” in order to provide medical tourism services and telemedicine sites as part of the services that are eligible under the Law; eliminate bureaucratic restrictions as well as requirements that limit tax incentives to persons who wish to invest in order to export their services outside of the Island, in the interest of promoting the economic development of Puerto Rico; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 18<sup>th</sup> day of November, 2019.

Orlando Pagán-Ramírez  
Director