

(H. B. 1142)  
(Conference)

**(No. 108-2017)**

(Approved August 23, 2017)

## **AN ACT**

To amend Section 3050.02 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” in order to establish the license fee for coin-operated devices as of July 1<sup>st</sup>, 2017; and for other related purposes.

### **STATEMENT OF MOTIVES**

Puerto Rico is currently undergoing a serious and historically unprecedented fiscal and social crisis. Said crisis was caused, in part, by a lack of expenditure controls, sustainable development measures, and management information systems that promote clarity and transparency in government affairs. Furthermore, the current state of our economy worsens as the Department of the Treasury fails to receive the necessary resources to operate the government apparatus.

The unwise decisions of the past coupled with our defenselessness as a colony led the United States Congress to promulgate the Puerto Rico Oversight, Management, and Economic Stability Act, known as PROMESA, Public Law 114-187, which delegated vast powers to the Financial Oversight Board (hereinafter the “Oversight Board”). Pursuant to PROMESA, any ongoing fiscal, budget, legislative, or executive actions taken in Puerto Rico, as well as any debt restructuring, whether consensual or not, as well as any debt issue, guarantee, exchange, modification, repurchase, or redemption is subject to oversight.

In Section 4 of PROMESA, the Congress expressly stated its intent that said Act shall prevail over any state legislation that is in conflict with PROMESA. Section 8(2) likewise reasserts this provision by providing that the Government of Puerto Rico may not enact, implement, or enforce any statute, resolution, policy, or rule that would impair or defeat the purposes of PROMESA, as determined by the Oversight Board. Hence, we cannot promulgate legislation to defeat or impair PROMESA, its provisions, and its scope. Therefore, it is evident that we must work within the parameters of PROMESA to initiate the financial and fiscal recovery of Puerto Rico and, in turn, solve the issue of our political status.

This Administration found a cash deficit of over \$7 billion as certified by the Federal Treasury and the Oversight Board. In other words, we inherited a Government with no access to capital markets, with a “junk status” credit rating, with no liquidity and no transparency in public finances, where public spending was excessive, and the public debt amounted to billions of dollars. Furthermore, the Governor had the enormous task of restoring the credibility of the Island in the market and before the Oversight Board. Thus, it is essential to ensure as Government that spends in accordance with the actual revenues generated.

Since January 2<sup>nd</sup>, we have been implementing a systematic plan to control government spending, reactivate our economy, and create conditions to generate more and better jobs in the private sector. We are showing the world that Puerto Rico is open to do business in an environment of government stability and security. We have worked nonstop, and the approval of over twenty (20) reform measures during the first three (3) months of this Administration proves it. Undoubtedly, our efforts have changed the course of Puerto Rico and have set it on a path of fiscal responsibility.

On February 28, 2017, the Governor submitted a Fiscal Plan that is complete, thorough, real, and also consistent with the needs of our People. On March 13, 2017, the Oversight Board accepted and certified our Fiscal Plan together with a series of contingencies which ensure that government employees shall not be dismissed, the workweek shall not be affected, the People's access to healthcare services shall be maintained, and that the pensions of those who are most vulnerable shall be protected.

The Fiscal Plan's measures are geared toward achieving the fiscal goals, promoting economic development, and our capacity to restore our credibility, ensuring changes translate into long-term benefits rather than a mere cutback and, above all, ensuring that those who are most vulnerable and work hard every day have a better quality of life. The validation of the Fiscal Plan is an acknowledgment of the new Government's credibility. We have proven that incoherence and improvisation are a thing of the past and we are now working as a team and obtaining results that inure to the benefit of Puerto Rico.

The changes we are implementing are not easy and shall take time, but they shall also yield results within the first two (2) years. Under the certified Fiscal Plan, we shall be able to strike a balance between revenues and expenditures by Fiscal Year 2019. Now is the time to execute these changes. The contingencies of the Fiscal Plan require the Government's compliance. Liquidity must be ensured in order to avoid any impact on the salary of government employees, the health of the People, and the income of pensioners.

For such reason, we shall exercise our Police Power in accordance with Sections 18 and 19 of Article II and Sections 7 and 8 of Article VI of the Constitution of Puerto Rico to take the necessary measures in order to comply with the Fiscal Plan and to set Puerto Rico on the path to financial recovery.

Even though there are many obstacles that we must overcome in our journey towards a definite recovery, there is hope and optimism among our people. We must seize this moment and rise to the challenges in order to successfully achieve the significant changes that Puerto Rico needs.

In view of the foregoing, this Administration has decided to undertake the task of transforming the public function, by eliminating the bureaucratic barriers that hinder proper exercise of such function. Likewise, this Administration has taken measures to incorporate the use of technology, thus promoting transparency in the administration of the resources held by the State.

Thus, the Government is implementing new ways of approaching the people by taking into account the obstacles that have been hindering our progress for years. However, there are people and sectors of the population that still do not properly contribute to the social affairs of the Island.

For the past years, the Department of the Treasury has detected a very interesting phenomenon regarding the issuance of licenses and, therefore, the payment of license fees in accordance with Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico.” The number of taxpayers applying for a license to operate electronic game machines under the current Section 3050.02(a)(1) of Act No. 1-2011, has significantly increased, whereas, simultaneously, the number of licenses issued under Section 3050.02(a)(3) of Act No. 1-2011, which regulate adult entertainment machines, has been reduced to zero.

This trend has aroused the Department of the Treasury’s suspicion about the possible use that the operators of coin-operated gaming machines are giving thereto under the Internal Revenue Code. For instance, Section 3050.02(a)(1) of Act No. 1-2011 provides that a one hundred dollar (\$100)-fee shall be paid for each jukebox, pool table, amusement machine, or device, operated by coins or

tokens, of a mechanical, electronic type, or video games intended for children and youths, when the abilities or skills of the player significantly affect the end result of the game.

On the other hand, Section 3050.02(a)(3) of Act No. 1-2011 provides that a two thousand five hundred dollar (\$2,500)-fee shall be paid for each screen of adult amusement machine, as defined in Act No. 11 of August 22, 1933, as amended, known as “Games of Chance Act.” Upon evaluating Section 3 of Act No. 11, *supra*, which prohibits games of chance, except for those permitted by law, it requires some sort of prize or reward for the use of the machines.

As a result, operators of coin-operated machines have desisted from awarding “prizes to their clients” and have defined, for tax purposes, their operations in accordance with Section 3050.02(a)(1) of Act No. 1-2011. Thus, they pay one hundred dollars (\$100) to the treasury rather than the two thousand five hundred dollar (\$2,500)-fee payable for adult amusement machines.

This explains why in 2009, in Puerto Rico there were reported one thousand two (1,002) jukeboxes, pool tables, electronic or amusement machines, and there were eight thousand three hundred fifty-five (8,355) adult amusement machines. However, in 2014, the Department of the Treasury reported almost twenty thousand (20,000) jukeboxes, pool tables, electronic or amusement machines, and zero (0) adult amusement machines. That is, in five (5) years, between 2009 and 2014, the number of licenses issued for jukeboxes, pool tables, electronic or amusement machines increased to almost seventeen (17) thousand and the number of licenses for operating adult amusement machines was reduced to zero (0). At present, there are over twenty three (23) thousand electronic game machines in Puerto Rico.

For such reason, it is deemed necessary to amend Section 3050.02 of Act No. 1-2011 in order to impose a three thousand dollar (\$3,000)-fee for the operation of video and electronic game machines with violent or sexual content, as well as for every adult amusement machine. In the case of jukeboxes, pool tables, electronic or amusement machines, operated with coins or tokens, of a mechanical electronic type, or video games intended for children and youths, the Secretary shall be empowered to impose a license fee of up to three hundred dollars (\$300). Lastly, a three thousand dollar (\$3,000)-fee shall be imposed for each screen of electronic game machine operated with coins or tokens, that is not included among those stated above. Thus, electronic game machine operators are prevented from resorting to other provisions of the Internal Revenue Code to obtain a more favorable tax treatment.

Moreover, it is hereby proposed that a decal designed by the Department of the Treasury, rather than a license, shall be required to operate electronic game machines in order to effectively oversee these electronic devices.

With this measure, we expect to collect nearly sixty-nine million dollars (\$69,000,000) in revenues. For said result, we take as a basis the three thousand dollar (\$3,000)-decal fee multiplied by an average of twenty-three thousand (23,000) electronic machines operators on the Island. This measure has a favorable fiscal impact, furthers the oversight of the State's resources, and helps the Department of the Treasury in its task of generating revenues for Puerto Rico's compromised treasury.

This measure is an additional effort to obtain liquidity in seeking to improve the critical state of the treasury without affecting those most vulnerable. Our goal since day one has been to rescue Puerto Rico from the inherited economic and

fiscal crisis. We have worked nonstop to achieve this. This measure shall allow us to obtain an important additional income to prevent the essential services provided to the people from being affected.

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

Section 1.- Subsection (a) of Section 3050.02 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” is hereby amended to read as follows:

“Section 3050.02.— License Fees for Coin-Operated Machines.—

(a) Any person engaged in operating amusement machines or devices operated by coins, cards, tokens, or similar objects, or pool tables, shall pay an annual tax on account of license fees in the amount stated below:

(1) Until June 30, 2017:

(A) For each jukebox, pool table, amusement machine or device, operated by coins or tokens, of a mechanical, electronic type, or video games intended for children and youths, when the abilities or skills of the player significantly affect the end result of the game.	\$100
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(B) For each video and electronic game machine operated by coins or tokens, with violent or sexual content, when the abilities or skills of the player significantly affect the end result of the game.	\$400
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(C) For each screen of adult amusement machine, as defined in Act No. 11 of August 22, 1933, as amended, known as ‘Games of Chance Act.’	\$2,500
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(2) Beginning July 1, 2017, the Secretary may impose the following annual tax on account of license fees:

(A) For each jukebox, pool table, amusement machine or device, operated by coins, cards, tokens, or similar object, of a mechanical or electronic type, or video games that (i) lack violent or sexual content and that may be used by any person, including underage persons, and (ii) when the abilities or skills of the player significantly affect the end result of the game. Up to \$300

(B) For each video and electronic game machine, operated by coins, cards, tokens, or any similar device, with violent or sexual content, for individuals older than eighteen (18) years when the abilities or skills of the player significantly affect the end result of the game, or for each screen of adult amusement machine as defined in Act No. 11 of August 22, 1933, as amended, known as ‘Games of Chance Act.’ \$3,000

(C) For each screen of electronic game machine, operated by coins or tokens, when the abilities or skills of the player significantly affect the end result of the game, which are not included in the paragraphs above. \$3,000

(3) With regard to the revenues exclusively obtained from the payment of the annual tax on account of adult amusement machine license fees, as defined in Act No. 11 of August 22, 1933, as amended, known as ‘Games of Chance Act,’ fifty percent (50%) of said tax shall be deposited in the General Fund and the remaining fifty percent (50%) shall be allocated to the Puerto Rico Tourism Company.

(4) The Secretary shall prescribe through regulations, administrative determination, circular letter, or general information bulletin the manner in which the provisions of this Section shall apply. The Secretary shall



have discretion to inspect every type of machine subject to the provisions of this Act and to determine which of the classifications set forth in paragraphs (1) and (2) of this subsection (a) shall apply thereto.

(5) The Secretary is hereby authorized to, not later than October 31, 2017, render invalid any license issued under paragraph (a) (1) of this Section that is valid as of July 1, 2017, and direct the renewal of such license under subsection (a)(2) of this Section. The Secretary shall establish the expiration date under this paragraph by administrative determination, circular letter, or general information bulletin.

(b) The aforementioned license fees shall apply to each amusement machine or device operated with coins, cards, tokens, or similar devices, as well as to every imported or distributed pool table. The license shall be conspicuously displayed visible to the public on each machine or device to which it belongs. The license shall be attached to the top left corner of every screen or electronic game or amusement machine or device operated by coins as appropriate, or in a conspicuous place in the case of pool tables. The Secretary is hereby empowered to prescribe by regulations, administrative determination, circular letter, or general information bulletin the format of the license to be displayed for each screen or amusement machine.

(c)

...”

Section 2.-

None of the provisions of this Act shall alter the provisions relating to the operation of adult amusement machines under Act No. 11 of August 22, 1933, as amended.

### Section 3.- 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, harms, 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 4.- Effectiveness.-

This Act shall take effect immediately after its approval.