

(S. B. 1081)

**(No. 144-2019)**

(Approved September 6, 2019)

## **AN ACT**

To add a new paragraph (3) and renumber current paragraph (3) as paragraph (4) of subsection (c) of Section 4.2; amend Section 4.3; and add a new Section 4.7 and renumber current Section 4.7 as Section 4.8 of Act No. 2-2018, known as the “Anticorruption Code for the New Puerto Rico,” in order to provide that any public official or employee who reports an act of corruption shall have the right to seek and receive free legal advice and/or representation through the Department of Labor and Human Resources to initiate or participate in any civil, criminal or administrative proceeding arising out of the protections provided to whistleblowers under Title IV of said statute; and for other related purposes.

### **STATEMENT OF MOTIVES**

The approval of Act No. 2-2018, known as the “Anticorruption Code for the New Puerto Rico,” represented a significant step in the right direction to eradicate an ill that unfortunately has greatly affected the Government of Puerto Rico. This Administration has demonstrated its zero-tolerance policy on this issue to the People of Puerto Rico.

In order to eradicate corruption at all government levels, the Government of Puerto Rico must be afforded any and all tools available so that it may learn who, where, and how acts of corruption—which result in the mismanagement of public funds and property—are carried out. To fulfill this task, it is critical that the people who have knowledge of such acts report them, thus prompting the government apparatus to take action against those who failed the people.

In view of the foregoing, Title IV of Act No. 2-2048 provides Protections against Retaliation for any person who reports an act of corruption. It establishes a series of guarantees that provide those who muster the courage to report these type of acts with peace of mind and tranquility in the workplace. In that sense, this Legislative Assembly deems it appropriate to provide an additional guarantee to public officials or employees who do the right thing and report this ill that, ultimately, affects us all. It is a well-known and respected constitutional principle, which has been widely legislated, that public property and funds shall only be disposed of for public purposes, for the support and operation of State institutions and pursuant to the law<sup>1</sup>.

This Act shall guarantee the right of public officials or employees who report acts of corruption to receive the necessary free legal representation from the Department of Labor and Human Resources to initiate or participate in any civil, criminal or administrative proceeding that may arise out of the protections provided under Title IV of Act No. 2-2018. However, said public official or employee must seek said legal representation and the granting thereof shall be subject to the exceptions established in Section 4.3 of said statute.

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

Section 1.- A new paragraph (3) is hereby added and the current paragraph (3) is hereby renumbered as paragraph (4) of subsection (c) of Section 4.2 of Act No. 2-2018, known as the “Anticorruption Code for the New Puerto Rico,” to read as follows:

“Section 4.2.- Prohibition on Retaliation Against Persons Who Report Acts of Corruption.

...

(a) ...

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<sup>1</sup> Art. VI, Sec. 9, Const. of the Commonwealth of Puerto Rico, LPRC, Title 1.

(b) No public official or employee who has authority to influence, recommend, or approve any action shall make adverse or discriminatory decisions regarding any public official or employee for:

1. ...
2. ...
3. Exercising the right to seek and receive free legal advice and/or representation from the Department of Labor and Human Resources, as provided in Section 4.7 of this Code.
4. Refusing to obey an order to take action or inaction that would entail a violation of a law or regulation.”

Section 2.- Section 4.3 of Act No. 2-2018, known as the “Anticorruption Code for the New Puerto Rico,” is hereby amended to read as follows:

“Section 4.3.- Exception

The provisions of Section 4.2 and Section 4.7 of this Code shall not apply when the whistleblower, complainant, or witness of alleged acts of corruption has been accused or convicted of perpetrating the same unlawful acts on which he is disclosing information or making statements, and the administrative procedures are initiated or have been initiated against him to impose disciplinary measures, separate him from public service, or discharge him from office pursuant to the rules and regulations that govern the administration of human resources and due process of law.

Furthermore, the whistleblower, complainant, or witness may not invoke the protections and guarantees recognized under this Code, when he offers or attempts to offer, verbally or in writing, any testimony, statement, or information on alleged improper or unlawful acts before any official or employee with investigative

functions, or before any state or federal administrative, legislative, or judicial forum, if such statements are defamatory, baseless, or frivolous, or constitute privileged information established by law.”

Section 3.- A new Section 4.7 is hereby added and the current Section 4.7 is hereby renumbered as Section 4.8 of Act No. 2-2018, known as the “Anticorruption Code for the New Puerto Rico,” to read as follows:

“Section 4.7.- Legal Representation for Public Officials and Employees.

Any public official or employee alleging a violation of the provisions of Section 4.2 of this Code, shall have the right to receive and may request the Department of Labor and Human Resources to provide him with free and adequate legal advice and/or representation as necessary to initiate or participate in any civil, criminal or administrative proceeding that may arise under the protections provided in this Title. The Government of Puerto Rico shall provide legal advice and/or representation until all of the aforementioned proceedings conclude.”

Section 4.- 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.

Section 5.- This Act shall take effect upon its approval.