

(H.B. 3406)

(No. 159)

(Approved August 11, 2000)

AN ACT

To add a subsection (d) and rename subsections (d) and (e) as subsection (e) and (f), respectively, of Section 20 of Act No. 4 of October 11, 1985, as amended, known as the "Financial Institutions Commissioner's Office Act", in order to penalize any person who acts as a financial institution without being duly authorized and whose acts are damaging and detrimental to a third party.

STATEMENT OF MOTIVES

The "Financial Institutions Commissioner's Office Act", Act No. 4 of October 11, 1985, as amended, (henceforth "Act No. 4") was mainly created for the purpose of supervising and regulating those financial institutions that conduct business in Puerto Rico. Act No. 4 defines financial institutions as those authorized by the Commissioner to operate pursuant to the special laws which regulate those businesses.

Every day more and more people get into the business of providing services that are proper to a financial institution without complying with the legal obligation of applying for a license at or registering with the Office of the Commissioner of Financial Institutions. This is done to avoid being supervised by the government, having to comply with its regulations, having to meet all other requirements which the pertinent laws impose on all

licensees, and having to pay the license or registration fees. These requirements act as safeguards both for consumers as well as for the financial industry itself. Among other requirements, these laws also demand minimum amounts of capital and that a bond be obtained in order to operate.

The experience in many cases in which persons operate without a license or without being duly authorize to do so is that those consumers who use their services have been hurt by abusive or illegal acts. The majority of those hurt have been the elderly and the needy or consumers unknowledgeable as to that type of transaction. Because of this it is imperative that legislation be passed to meet this reality. The legislation presently in effect does not provide the punitive mechanisms needed to discourage these practices.

The purpose of this measure is to include all those persons who provide services proper to the financial institutions and evade complying with the laws that regulate said businesses. It also seeks to discourage the practice of operating as a financial institution without being duly authorized to do so. Through this measure the consumer shall be protected and the heath of the financial industry ensured, thus contributing to the economic welfare of Puerto Rico.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-A new subsection (d) is hereby added and subsections (d) and (e) renamed as (e) and (f) respectively, of Section 20 of Act No. 4 of October 11, 1985, as amended, to read as follows:

"Section 20.-Penalties.-

(a) ...

(d) Any person who in order to obtain for him or herself or for a third party any benefit, acts, offers, announces or advertises that he or she

provides services proper to financial institutions as defined in this Act without being duly licensed or authorized to do so by the Office of the Commissioner and in the course of his or her actions:

- 1) makes any false statement concerning a material fact for the purpose of inducing or persuading a person to err; or
- 2) engages in misrepresentation for the purpose of inducing or persuading a person to conduct a business transaction;
- 3) unduly retains any property, sum of money and/or document related to any transaction or fails to inform the person with whom the transaction is conducted as to his or her right to any property, sum of money or document that may be part of the transaction; or
- 4) induces a party in a transaction to rescind a contract and execute a new one when the main objective of the new contract is to benefit a third party or him or herself; or
- 5) incurs embezzlement or misappropriation of funds; or
- 6) incurs in falsifying documents that are part of a transaction; or
- 7) employs any trick, ruse or ploy to defraud another person; or
- 8) engages in any act, practice or type of business that results or would result in fraud or is used to deceive another person; or
- 9) injures or intends injury to a third party, shall be sanctioned with the penalty of imprisonment for a fixed term of ten (10) years. Should there be aggravating circumstances the fixed penalty established may be increased for up to a maximum of twelve (12) years; should there be extenuating circumstances, the fixed penalty established may be reduced for up to a minimum of six (6) years.

The court, at its discretion, may impose the fixed penalty of imprisonment established, a fine of not less than five thousand (5,000) dollars, nor of more than ten thousand (10,000) dollars for each violation, the penalty of restitution or any combination thereof.

Any person who takes part, instigates or cooperates with the commission of these acts shall be likewise sanctioned, regardless of whether he or she obtained or failed to obtain any personal economic profits.

(e) ...

(f) ..."

Section 2.-Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 159 (S.B. 3406) of the 7th Session of the 13th Legislature of Puerto Rico:

AN ACT to add a subsection (d) and rename subsections (d) and (e) as subsection (e) and (f), respectively, of Section 20 of Act No. 4 of October 11, 1985, as amended, known as the "Financial Institutions Commissioner's Office Act", in order to penalize any person who acts as a financial institution without being duly authorized and whose acts are damaging and detrimental to a third party,

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

In San Juan, Puerto Rico, today 1st of December of 2003.

Elba Rosa Rodríguez-Fuentes
Director