

(S. B. 404)  
(Conference)

**(No. 164-2013)**

(Approved December 26, 2013)

## **AN ACT**

To amend Section 2 of Act No. 131 of July 23, 1974, known as the “Act on Transfers of Funds Abroad,” in order to organize, add, and clarify definitions; amend Section 3 of Act No. 131 of July 23, 1974, *supra*, in order to establish the recordkeeping and/or electronic reporting duty, at the discretion of the Secretary of the Treasury, in connection with the transfer of funds abroad in excess of five thousand dollars (\$5,000.00) or a larger amount as prescribed by the Secretary from time to time; amend Section 4 of Act No. 131 of July 23, 1974, *supra*, in order to include money or bearer securities among the regulated transactions; to amend Section 6 of Act No. 131 of July 23, 1974, to establish a limitation on the penalties for noncompliance of this Act; amend Section 7(a) of Act No. 4 of August[sic]11, 1985, as amended, known as the “Financial Institutions Commissioner’s Office Act,” to restore the former functions, powers, and duties of the Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico related to Sections 1 through 7 of the “Act on Transfers of Funds Abroad” to the Secretary of the Treasury.

## **STATEMENT OF MOTIVES**

The reason for the approval of Act No. 131 of July 23, 1974 (“Act No. 131”) known as the “Act on Transfers of Funds Abroad,” was to provide the Department of the Treasury with information about the transfer of funds made through financial institutions of Puerto Rico from our jurisdiction to foreign countries and vice versa. Such information would provide the Government with an additional tool to “detect and combat tax evasion and crime in general.”

Since its approval in the 1970s, a body of laws and regulations have been approved at the federal level that establish objectives and requirements similar to those provided in Act No. 131. Specifically, the “Bank Secrecy Act,” 12 USC 1829b, 12 USC 1951-1959, and 31 USC 5311 *et seq.*, includes provisions regarding the transfer of funds abroad. Pursuant to said Act, the United States Treasury and the Board of Governors of the Federal Reserve System issued a definite regulations requiring the recordkeeping of payment orders issued by banks.

Said Regulations, entitled Records to be Made and Retained by Financial Institutions, established the recordkeeping requirements for financial institutions that include the requirement to keep the records of fund transfers. Such regulations require every bank effecting fund transfers, to obtain and retain certain information about fund transfers exceeding three thousand dollars (\$3,000). As a result, financial institutions operating and doing business in Puerto Rico under said laws are required to comply with virtually similar requirements at both the local and the federal levels. This situation duplicates their compliance duties.

On the other hand, Act No. 131 requires financial institutions making transfers in excess of five thousand dollars (\$5,000) to retain records and file reports of such transactions; thus, every month, financial institutions file thousands of reports with the Office of the Commissioner of Financial Institutions (OCIF, Spanish acronym). OCIF, in turn, sends said reports to the Department of the Treasury for the corresponding analysis. Due to the large amount of reports received, the review and use of the information provided therein becomes unmanageable, distorting the purpose that prompted the approval of said measure, and rendering it inoperable.

Therefore, it is necessary to revise the provisions of Act No. 131 to update and conform the requirements thereof to analogous federal laws and regulations in order to relieve financial institutions from their compliance burden, as well as to facilitate the effective use of information furnished to the Department of the Treasury to fight tax evasion and crime in general, in accordance with the original purposes that prompted the measure.

Given that the main purpose of Act No. 131 is related to the inherent duties of the Department of the Treasury, it is necessary to restore to the Secretary of the Treasury the functions, powers, and duties thereunder that had been transferred to the Office of the Commissioner of Financial Institutions by virtue of Act No. 4 of October 11, 1985, as amended.

To such effect, this Legislative Assembly hereby proposes certain amendments to Act No. 131 in order to fulfill the aforementioned purposes by providing, among other things, that in relation to international wire transfers of funds or bearer securities in excess of five thousand dollars (\$5,000) or other amount as prescribed by the Secretary through regulations, certain records shall be retained electronically and made available to the Secretary and/or certain reports shall be filed electronically, as prescribed by the Secretary through regulations. Other amendments are hereby introduced for the purpose of updating the statute and, in general terms, adjusting it to similar requirements contained in federal laws and regulations.

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

Section 1.- Section 2 of Act No. 131 of July 23, 1974, is hereby amended to read as follows:

“Section 2.- Definitions.-

As used in this Act, the following terms shall have the meaning stated below:

(1) Money.- Generally accepted medium of exchange that may be declared as legal form of payment, constituted by the currency of the United States of America and the currency of foreign countries, including bills or other negotiable instruments.

(2) Financial Institution.- Any person doing business in any one or more of the capacities listed below or in operations related or similar to those performed in such capacities:

1. A banking institution of any kind.
2. A trust company.
3. An agency or branch of a foreign banking institution in Puerto Rico.
4. A savings and loan association, cooperative, or any savings institution.
5. A securities dealer or broker.
6. An investment banker trust or company.
7. An agency that issues money orders or similar instruments.
8. An insurance company.
9. A loan or finance company.
10. A travel agency.
11. Any financial institution defined in Act No. 4 of October 11, 1985, as amended, known as the 'Financial Institutions Commissioner's Office Act.'

This term also includes any person acting in the capacity of a financial institution, depository, agent, or any other similar capacity in relation to the transfer of funds, in representation of any particular person.

(3) Foreign Country.- Any country other than the United States of America, its states, territories, and possessions, and the District of Columbia.

(4) Person.- Includes any natural or juridical person, and any partnership, association, trust, or community of assets, or heirs.

(5) Secretary.- The Secretary of the Treasury of the Commonwealth of Puerto Rico.

(6) Transfer of Funds.- According to Section 4-104 of Act No. 208-1995, as amended, known as the ‘Negotiable Instruments and Banking Transactions Act,’ means the series of transactions, beginning with the originator’s payment order made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator’s bank or an intermediary bank intended to carry out the originator’s payment order. A funds transfer is completed by acceptance by the beneficiary’s bank of a payment order for the benefit of the beneficiary of the originator’s payment order, provided, that, the transfer of funds governed by the Electronic Funds Transfer Act of 1978 Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 *et seq.*, as amended from time to time, and those that are carried out by means of an automated clearing house, automated teller machine, or point-of-sale terminal, shall be excluded from this Act.

(7) Bearer Securities.- Represent cash such as bonds, notes, money orders, traveler’s checks, bearer negotiable instruments, bearer investment securities, bearer securities and shares whose ownership is transferred upon delivery, or the equivalent of any of the aforementioned instruments or securities, as prescribed by the Secretary.”

Section 2.- Section 3 of Act No. 131 of July 23, 1974, is hereby amended to read as follows:

“Section 3.- Scope; Records; Reports; Publicity; Exemptions.-

(a) Except as otherwise provided in this Act, any financial institution or agency that makes or receives any payment, directly or indirectly through the transfer of funds, on its own or on behalf of another person, with a financial institution organized or operating under the laws of a foreign country in an amount that exceeds five thousand dollars (\$5,000) or any larger amount as the Secretary may prescribe by regulations, shall be required to keep a paper or digital record and/or to file reports electronically, at the discretion of the Secretary, of said transfers of funds that meet the design and content specifications for records and transmission media that the Secretary may prescribe through regulations from time to time.

If a financial institution has any doubt in relation to the information it is required to keep or report, as the case may be, said institution shall indicate so in writing to the Secretary explaining the situation in detail.

(b) The records retained by virtue of the preceding subsection (a) of this Section 3 shall be kept for a period of six (6) years and during which shall be available to the Secretary.

(c) When prescribing regulations for the enforcement of this Section, the Secretary shall ensure that said regulations do not become unreasonably onerous for the financial institutions and persons concerned.

(d) The Secretary is hereby empowered to prescribe by regulations any exceptions to the requirement imposed on financial institutions pursuant to the preceding subsection (a) of this Section 3.

(e) When deemed best for public interest, the Secretary shall request, through an order, information to a financial institution regarding one or more transfers of funds subject to the recordkeeping requirement imposed by the Secretary, pursuant to the preceding subsection (a) of this Section 3.

(f) The Secretary may, for purposes consistent with this Act and under such conditions and procedures as he/she may prescribe, place at the disposal of any other agency or department of the Government of the Commonwealth of Puerto Rico any information required to be retained or to appear in the reports filed pursuant to this Act, at the request of the head of such agency or department, and also, publish the statistics reasonably available with respect to the application of this Act.

Except as provided by this subsection, it shall be unlawful for any officer or employee of the Commonwealth of Puerto Rico to disclose any information obtained according to or from any report required by this Act or to allow that a copy or summary thereof be viewed or examined. Any proven violation of the preceding provision shall constitute a misdemeanor punishable by a fine of not more than five hundred dollars (\$500), or by imprisonment in a penal institution for not more than six (6) months, and entail the removal from office or employment.”

Section 3.- Section 4 of Act No. 131 of July 23, 1974, is hereby amended to read as follows:

“Section 4.- Personal Transportation; Exemptions

(a) Any person who transports or causes the transport of money or bearer securities in excess of five thousand dollars (\$5,000).

(1) From a place in the Commonwealth of Puerto Rico to or through a place in a foreign country; or

(2) to a place in the Commonwealth of Puerto Rico from or through a place in a foreign country; or

(3) that receives money or bearer securities in excess of five thousand dollars (\$5,000) upon arrival in the Commonwealth of Puerto Rico from or through any foreign country, shall file a report with the Secretary of the Treasury with the following information:

(1) The legal capacity in which the person filing the report is acting with respect to the money or bearer securities transported.

(2) The origin, destination, and route of the money or bearer securities.

(3) The names of the transmittor and recipient of the money or bearer securities.

(4) The amount and kind of money or bearer securities.

(b) The provisions of Section 4 of this Act shall not apply to a common carrier of passengers when a passenger possesses money or bearer securities or to a common carrier of goods if the shipper does not declare the money or bearer securities.”

Section 4.- Section 6 of Act No. 131 of July 23, 1974, is hereby amended to read as follows:

“Section 6.- Penalties

The Secretary is hereby authorized to impose and collect administrative fines in a sum which shall not exceed five thousand dollars (\$5,000) for any violation of this Act or the provisions contained in the regulations promulgated thereunder, except as otherwise provided in said statutes. This fine may be imposed whether any other penalty is provided in this Act or in any other special Act”.

Section 5.- Subsection (a) of Section 7 of Act No. 4 of October 11, 1985, is hereby amended to read as follows:

“Section 7.- Transfer to the Office of the Commissioner of Financial Institutions

The following are hereby transferred to the Office of the Commissioner of Financial Institutions:

(a) All the functions, powers, and duties of the Secretary and/or the Department of the Treasury related to Act No. 221, approved May 15, 1948, as amended, known as the ‘Games of Chance Act’; Section 2(j) of Act No. 6 of December 15, 1953, as amended, known as the ‘Puerto Rico Industrial Incentives Act of 1954’; Section 2(j)(3) of Act No. 57 of June 13, 1963, as amended, ‘Puerto Rico Industrial Incentives Act of 1963’; Sections 2(j)(4), (5), and (6) of Act No. 26 of June 2, 1978, as amended, known as the ‘Puerto Rico Industrial Incentives Act of 1978,’ as amended; Act No. 8, approved October 8, 1954, as amended, known as the ‘Accounts Receivable Conveyance Act’; Act No. 3, approved October 13, 1954, as amended, known as the ‘Uniform Trust Receipt Transactions Act’; Act No. 20 of April 9, 1976, as amended, Act that creates the Fund for the Investigation and Audit of Financial Institutions and Gambling Casinos; all the functions, powers, and duties of the Secretary and/or the Department of the Treasury related to the supervision and monitoring of banks and financial institutions, with regard to Act No. 55, approved May 12, 1933, as amended, ‘Puerto Rico Banking Law’; Act No. 106, approved June 28, 1965, as amended, ‘Small Personal Loan Act’; Act No, 97, approved June 5, 1973, as amended, ‘Mortgage Institutions Act’; Act No. 20, approved May 8, 1973, as amended, ‘Personal Property Leasing Institutions Act’; Act No. 93, approved June 26, 1964, as amended, ‘Savings Banks Act’; Act No. 17, approved May 3, 1967, as amended, ‘Act to Regulate the Sale of Drafts’; Act No. 40, approved April 23, 1928,

as amended, ‘Trust Company Law’; Act No. 130, approved June 30, 1975, as amended, ‘Loans Upon Pledges Act’; Act No. 60, approved June 18, 1963, as amended, ‘Uniform Securities Act’; Act No. 6, approved October 19, 1954, as amended, ‘Investment Companies Act of Puerto Rico’; Act No. 16, approved July 2, 1980, as amended, known as ‘International Banking Center Regulatory Act’; Act No. 17, approved April 18, 1933, as amended; Act No. 10, approved March 7, 1951; and the authority to supervise the Cooperative Bank of Puerto Rico, the Puerto Rico Housing Bank and Financing Agency, the Savings and Loans Labor Bank of Puerto Rico, the Government Development Bank for Puerto Rico, and the Puerto Rico Development Bank; all the functions, powers, and duties related to Act No. 86, approved June 24, 1954, as amended, ‘Industrial and Commercial Financing Contracts Act’; Act No. 68, approved June 19, 1964, as amended, known as ‘Retail Installment Sales and Financing Companies Act’.

(b) ...

(c) ...”

Section 6.- All of the duties of the Secretary of the Treasury in relation to the enforcement and compliance with Act No. 131 of July 23, 1974, as amended, are hereby restored.

Section 7.- Effectiveness

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 164-2013 (S. B. 404 (Conference) of the 2<sup>nd</sup> Regular Session of the 17<sup>th</sup> Legislative Assembly of Puerto Rico:**

**AN ACT** to amend Section 2 of Act No. 131 of July 23, 1974, known as the “Act on Transfers of Funds Abroad,” in order to organize, add, and clarify definitions; amend Section 3 of Act No. 131 of July 23, 1974, *supra*, in order to establish the recordkeeping and/or electronic reporting duty, at the discretion of the Secretary of the Treasury, in connection with the transfer of funds abroad in excess of five thousand dollars (\$5,000.00) or a larger amount as prescribed by the Secretary from time to time; amend Section 4 of Act No. 131 of July 23, 1974, *supra*, in order to include money or bearer securities among the regulated transactions; to amend Section 6 of Act No. 131 of July 23, 1974, to establish a limitation on the penalties for noncompliance of this Act; etc.

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

In San Juan, Puerto Rico, on this 15<sup>th</sup> day of April, 2016.

Juan Luis Martínez Martínez  
Director