

(S. B. 915)

**(No. 231-2014)**

(Approved December 19, 2014)

## **AN ACT**

To promote job creation through employee trusts (401(k)) and individual retirement accounts (IRAs) by clarifying that these may invest in registered investment companies under Act No. 93-2013, as amended, known as the “Investment Companies Act of 2013,” or in open-end investment companies registered pursuant to the provisions of Act No. 6 of October 19, 1954, as amended, known as the “Puerto Rico Investment Companies Act”; amend subsection (N) of Section 3 of Article 1 of Act 93-2013, as amended, known as the “Investment Companies Act of 2013”; amend subparagraph (A) of paragraph (10) of subsection (a) of Section 1081.01 and amend subparagraphs (A) and (D) of paragraph (3) of subsection (a); amend subparagraph (A) and add subparagraph (E) to paragraph (6) of subsection (b) of Section 1081.02 of Act No. 1-2011, as amended; and for other related purposes.

## **STATEMENT OF MOTIVES**

Individual Retirement Accounts (IRAs) and employee trusts (commonly known as 401(k) plans) are among the most important sources of capital in Puerto Rico. IRAs and 401(k)s provide Puerto Rican families with the opportunity to save for retirement by depositing their money in instruments that would allow them to defer taxes. Usually, these constitute a significant portion of a family’s savings. Currently, investments allowed in said funds are strictly limited, and so are their yield and the number of jobs they can generate. The economic effect of such restrictions is significant, since individual retirement accounts alone constitute three (3) billion dollars in capital according to information provided by the Office of the Commissioner of Financial Institutions.

This Legislative Assembly believes that the investment rules for these savings accounts shall be clarified. Therefore, the Act is hereby amended to clarify that individual retirement accounts and employee trusts may invest in mutual funds and exempt investment funds created by Act No. 93-2013, as amended, or in an open-end investment company registered pursuant to the provisions of Act No. 6 of October 19, 1954, as amended. These instruments, regulated by the Office of the Commissioner of Financial Institutions, meet a series of stringent legal requirements that shall safeguard the investment and allow for attractive returns.

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

Section 1.- Subparagraph (A) of paragraph (10) of subsection (a) of Section 1081.01 of Act No. 1-2011, as amended, is hereby amended to read as follows:

“Section 1081.01.-

(a) ...

(1) ...

...

(10) ...

(A) ...

(i) ...

(ii) ...

(I) ...

(II) the plan offers at least three (3) investment options (are consistent with the regulations prescribed by the Secretary or are securities of an exempt investment company or investment trust organized and authorized to operate as such under Act No. 93-2013, as amended, or an open-end investment company registered under the provisions of Act No. 6 of October 19, 1954, as amended, to each participant making an election under clause (i) and within ninety (90) days after the period during which the election may be made, the

plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) ...

...

(B) ...

(11) ...

...

(b) ...

...”

Section 2.- Subparagraphs (A) and (D) of paragraph (3) of subsection (a) are hereby amended, and subparagraph (A) is hereby amended, and subparagraph (E) is hereby added to paragraph (6) of subsection (b) of Section 1081.02 of Act No. 1-2011, as amended, to read as follows:

“Section 1081.02.- ...

(a) ...

(1) ...

...

(3) ...

(A) That thirty-four percent (34%) or more of the contributions received pursuant to paragraph (1) of subsection (a) and paragraph (4) of subsection (d) of this Section, and paragraph (2) of subsection (b) of Section 1081.01, shall be invested in obligations of the Government of Puerto Rico or any of its instrumentalities or political subdivisions, in securities of an exempt investment trust eligible under the provisions of Section 1112.02, or in mortgage loans constituted for the financing of construction or the acquisition of residential properties in Puerto Rico, or in loans enabled to Special Employee-owned

Corporations, their members or stockholders in accordance with the purposes established in Sections 1031.02(a)(3)(L) and (M) of this Subtitle.

(B) ...

...

(D) A trustee who invests in stock of an investment company organized and authorized to operate as such under Act No. 6 of October 19, 1954, as amended, shall meet, with respect to said investment, with the investment requirements established in the preceding paragraphs (A), (B), and (C), provided that the product of said investment by the investment company is designated by said Company to be invested according to said subsections and that said Company meets all the requirements of the regulations to be adopted by the Commissioner pursuant to the authority conferred in the same. Provided that the trustee investing in securities of an exempt investment company or investment trust organized and authorized to operate as such under Act No. 93-2013, as amended, or an open-end investment company registered under the provisions of Act No. 6 of October 19, 1954, as amended, shall automatically meet, with respect to such investment, the investment requirements established in the preceding subparagraphs (A), (B), and (C). A Bank or institution authorized to do trust business in Puerto Rico may invest the funds of their Individual Retirement Accounts through one or several common investment funds as authorized by this Code.

...

(4) ...

...

(b) ...

(1) ...

...

(6) ...

(A) That thirty-four percent (34%) or more of the premiums received as contributions described in paragraph (1) of subsection (a) and paragraph (4) of subsection (d) of this Section, and paragraph (2) of subsection (b) of Section 1081.01, shall be invested in obligations of the Government of the Commonwealth of Puerto Rico or of any of its instrumentalities or political subdivisions, in securities of an exempt investment trust eligible under the provisions of Section 1112.01, or in mortgage loans executed for financing the construction or acquisition of residential properties.

(B) ...

...

(D) ...

(E) However, it shall be understood that the investment automatically meets the investment requirements of the preceding subparagraphs (A), (B), (C), and (D), in proportion to the premiums invested in securities of one or more exempt investment companies or investment trusts organized and authorized to operate under Act No. 93-2013, as amended, and the income derived from such investments is reinvested in such stocks.

(7) ...

(c) ...

...”

Section 3.- Subsection N of Section 3 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“Section 3.- ...

A. ...

...

N. 'Person' means a natural person or a company. In order to determine whether a person is a holder of securities of an investment company and the percentage of voting securities held by such person, the following shall be attributed to the each person and added:

- (1) Securities of the investment company owned by such person;
- (2) Securities of the investment company over which such person has the power to vote or to dispose or to direct the disposition of such securities, through a contract, arrangement, understanding, relationship or trust; and
- (3) If the person is the beneficiary of a trust (whereby such person does not exercise its power to vote or hold the power to dispose, or to direct the disposition of specific securities) the securities of the investment company held in trust, in proportion to such person's investment in the trust.

O. ...

...”

Section 4.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 231-2014 (S. B. 915)** of the **4<sup>th</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to promote job creation through employee trusts (401(k)) and individual retirement accounts (IRAs) by clarifying that these may invest in registered investment companies under Act No. 93-2013, as amended, known as the “Investment Companies Act of 2013,” or in open-end investment companies registered pursuant to the provisions of Act No. 6 of October 19, 1954, as amended, known as the “Puerto Rico Investment Companies Act”; etc.

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

In San Juan, Puerto Rico, on this 8<sup>th</sup> day of July, 2015.

Juan Luis Martínez Martínez  
Acting Director