

(Substitute to  
S. B. 2342)

**(No. 236)**

(Approved August 31, 2004)

## **AN ACT**

To regulate all organizations or entities dedicated to repairing credit history, to establish the requirements for obtaining a license, to state prohibited practices, to establish service contract and contract termination requirements; to establish the civil liability of these organizations or entities, to authorize the necessary administrative procedures, to state the transition term, and to appropriate funds; to add subsection (g) to Section of Act No. 4 of October 11, 1985, as amended, to include the Credit Repair Agency as an institution under the jurisdiction of the Office of the Commissioner of Financial Institutions.

### **STATEMENT OF MOTIVES**

Experts on the economy have often raised their voices in warning about the problem that entails an affected credit history. A good credit history may be the key to a good quality of life, allowing access to capital, and to investments and financial liquidity. At times such as the present, an affected economy which is striving to recover stability leads to limited alternatives.

Puerto Rico has a consumer economy which has caused that most consumers have compromised their credit beyond their means. This situation brings about defaults that in turn lead to affected credit histories. Said information is available to be verified through any private organization dedicated to compiling and disclosing information regarding consumer credit quality. Occasionally, wrong information appears in the information systems, although such entities work very well as a general rule. As a consequence of this, consumers obtain highly

damaging negative credit reports.

The experts have posed many alternatives, some better accepted than others. Among the most popular alternatives, there are organizations that offer consumers services to reestablish credit histories to optimum status. However, the advertising campaigns of these entities make offers that may be prejudicial. They offer to restore credit utilizing several mechanisms that may include financing, refinancing, loans, etc., attracting a sector of consumers that lack knowledge in financial procedures, exposing themselves to further financial hardship. These offers have turned out to be unrealistic and burdensome for some consumers.

There are federal statutory and administrative standards that establish certain measures for the protection of consumers from unscrupulous practices, but our laws do not regulate these entities, nor the business to which they are dedicated, and within a consumer economy, it is even more important to establish additional standards to protect Puerto Rican consumers from being swindled. Thus, consumers shall have real alternatives when these entities use advertising campaigns to give them the wrong impression regarding the services they provide. Currently, the Department of Consumer Affairs addresses claims against these organizations by means of regulations for false advertising. Another alternative for consumers in these cases is to initiate legal action for breach of contract.

Aware of the importance of establishing and maintaining a good credit history to obtain and utilize the available credit mechanisms, this Legislature deems it necessary to set forth local legislation that offers more protection to consumers against the unfair and deceitful practices of these organizations, as well as measures that ensure compliance with the agreements between the parties to guarantee that consumers actually receive the contracted services.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.- Short Title

This Act shall be known as the “Act to Regulate Credit Repair Agencies.”

Section 2.- Definitions.

For the ends and purposes of this Act, these terms shall have the following meaning:

(a) Credit Repair Agency - Any person, business, establishment, corporation, association, partnership or entity dedicated to providing assistance or advice for the planning and management of the debts of a consumer, by means of personal or telephone contact, in writing or through newspaper advertisements, publications, handouts, signs, banners, the telephone book, radio or television, or otherwise by any other similar media, that initiates affirmative action on behalf of any person to correct erroneous information, lessen the harmful effects of adverse information, updates or otherwise varies, alters or modifies the information in the files, registers or reports of companies dedicated to disclosing credit information and require the payment of service charges, commissions or otherwise any other consideration of value for rendering such services.

(b) Commissioner - The Office of the Commissioner of Financial Institutions, created by virtue of Act No. 4 of October 11, 1985.

(c) Consumer - Any person whose debts or obligations are mainly for personal, family or household purposes who requests and utilizes the services of a credit repair agency.

(d) Credit Repair Agreement - The agreement between an organization dedicated to credit repair and the consumer whereby the services to be rendered and the fees to be paid are established, among others.

(e) Credit - The eligibility and capability of a consumer for obtaining loans or financing based on the debt and repayment history of the same.

(f) Credit Report - Report issued by a credit bureau or similar entities that contains the history of consumer debts and repayment, as defined by the “Fair Credit Reporting Act,” 15 USC § 1681 et seq.

(g) License – shall mean the authorization issued by the Commissioner for those who shall be dedicated to the credit repair business.

(h) Administrative Fines - Economic sanctions imposed pursuant to the provisions set forth in Act No. 170 of August 12, 1985, as amended, known as the “Uniform Administrative Procedure Act,” special laws within the jurisdiction of the Office and/or Regulations.

(i) Office or Business Location - Place at which the services are rendered, which requires a use permit granted by the Regulations and Permits Administration of the Commonwealth of Puerto Rico.

(j) To Operate or Do Business – means to carry out a series of similar actions for profit or to achieve an objective, including carrying out a series of actions, if performed for purposes of initiating said series of actions.

(k) Person – Refers to any natural or juridical person.

(l) Consumer Credit Transactions – means any transaction whereby credit is offered or extended to a natural person for personal, family or household purposes.

### Section 3 – Oversight

The Office of the Commissioner of Financial Institutions, created by virtue of Act No. 4 of October 11, 1985, as amended, shall be the Office in charge of supervising and overseeing Credit Repair Agencies.

### Section 4 -Applicability, Exclusions and Prohibitions

This Act shall apply to any person, partnership or corporation dedicated to the credit repair business.

This Act shall not apply to persons acting as owner, partner, director, officer,

attorney, accountant, agent or employee of any legally authorized business, such as: banks, savings and loan banks and associations, financing companies, small personal loan companies, mortgage institutions, savings and credit unions and other similar businesses whose main activity is to grant loans, such as businesses for the sale or lease of services and goods.

#### Section 5 - Powers of the Commissioner

In addition to the powers and authorities conferred to the Commissioner by the Organic Act, he/she shall be empowered to:

1. Conduct investigations at the request of an interested party or at his/her own initiative pertaining to alleged infringements of this Act, as well as any other investigations necessary for the proper administration thereof.

2. Issue summonses and compel witnesses to appear and to present information he/she deems necessary for the administration of this Act.

3. Take oaths and receive testimony, data or information. If a summons issued by the Commissioner were not duly complied with, he/she may appear before the Court of First Instance and request that the Court issue order compliance with the summons. The Court of First Instance shall have the power to punish for contempt any disregard toward its orders, making compulsory the appearance of witnesses or the presentation of any data or information previously requested by the Commissioner. No natural person may refuse to comply with a summons issued by the Commissioner or with a court order thus issued by alleging that the testimony, data or information required may incriminate him/her or cause the imposition of a penalty, although such a person may not be criminally prosecuted with respect to any transaction, issue or matter about which he/she gives testimony or produces data or information.

4. Investigate, address and settle claims submitted to the Commissioner.

5. Impose administrative fines for infringements of this Act or any applicable

Regulations.

6. Issue orders to cease and desist when it has been determined that a Credit Repair Agency has incurred any infringement of this Act, of regulations approved thereunder, or of an administrative order or resolution. Moreover, he/she may also prescribe corrective terms and conditions that according to the available evidence he/she determines to be beneficial to the public interest and necessary for compliance with the provisions of this Act.

7. Issue any regulations he/she deems necessary for compliance with the provisions set forth in this Act.

8. Take any and all actions necessary to efficiently achieve the purposes of this Act.

#### Section 6 - Obtaining a License; Exceptions

No person, except for those excluded from the applicability of this Act, banks authorized to operate in Puerto Rico, trust companies, federal agencies or dependencies of the Commonwealth of Puerto Rico, savings and credit unions, government retirement systems and federal savings and loans associations, may establish a credit repair business without first obtaining a license issued by the Commissioner pursuant to the provisions in this Act.

#### Section 7 - License Applications and Fees

License Applications shall be sworn and filed with the Commissioner, which shall state the following:

1. Name and address where the main offices of the business shall be located in Puerto Rico, as well as the information required by the Commissioner, including the identification of each applicant. Upon filing the application, the applicant shall pay five hundred dollars (\$500.00) as a fee for investigations and one thousand dollars (\$1,000.00) for the annual license fee, with a certified check payable to the Secretary of the Treasury. If the license is issued after June 30 of any year, the fee

for the annual license shall be five hundred dollars (\$500.00) per year.

2. If the applicant is a juridical person, the following shall be submitted together with the application:

1) In the case of corporations, a Certificate of Corporate Existence issued by the Department of State of the Commonwealth of Puerto Rico or by the government entity authorized to certify the existence of such juridical persons.

2) Articles of Incorporation, Charter of Constitution or any other document required by law to organize said entity.

3) Name and physical and mailing address of the Board of Directors and Officers.

4) Name, physical and mailing address of the resident agent or the agent authorized to receive summonses.

5) Name, address and copy of driver's license or other identification with photograph admissible by law of all persons who directly or indirectly control 10% or more of the capital shares of the business established pursuant to the provisions of this Act.

#### Section 8 - Requirements for Operating a Credit Repair Agency

Any person to be dedicated to act as a credit repair agency shall have a bachelor's degree and two (2) years of experience in the area of credit granting and analysis with a financial institution or five (5) years of experience in said market if he/she lacks the bachelor's degree. In the case of juridical entities, said requirement shall apply to the principal officer in charge or the person responsible for the daily operations of said entity. The Commissioner may establish other requirements by regulations.

#### Section 9 -Processing the Application

##### A. Issuing the License

Upon filing the application and paying the fees, the Commissioner shall

conduct the investigations he/she deems necessary and shall approve the application and issue a license to the applicant to operate pursuant to the provisions of this Act if it he/she finds that the financial responsibility, experience, character, appropriate location and general capacity of the applicant are such that they justify the belief that the business shall be administered legally and fairly according to the purposes of this Act, and that issuing the license shall be convenient and advantageous for the community in which the business shall be operating.

#### B. Denial of the License

If the Commissioner denies the application, the fee paid for investigations shall be withheld by the Commissioner and the license fee shall be refunded to the applicant.

The Commissioner may refuse to issue a license for any reason he/she believes affects the public interest, including but not limited to the following reasons:

a) The applicant does not meet any of the requirements set forth in this Act or any applicable Regulations;

b) The applicant has been found guilty of a violation of any of the provisions of the special laws and regulations approved by the Commissioner;

c) The applicant, or any other person who at the time of filing the application is a shareholder, director, officer, member, partner, agent or spouse of the applicant, has had a license, franchise or permit granted by the Commissioner previously revoked;

d) The applicant is responsible for any act or omission the consequence of which was the revocation of a license, franchise or permit granted by the Commissioner;

e) The applicant provides false information in his/her license application submitted to the Commissioner;

f) The applicant incurs a violation of any of the laws administered by the



Commissioner;

g) Negative or adverse information arises from the investigation; or

h) The Commissioner believes that the competence and character of the applicant or the persons related to the latter, as stated above, indicate that it is not convenient for the public interest to issue a license, franchise or permit to such an applicant.

The Commissioner may leave the application for a license pending if the person who applies for a license pursuant to the provisions in this Act is accused of a misdemeanor or a felony that entails moral depravity or fraud under state or federal law. The application for a license shall remain pending until the case is resolved by a competent court.

#### C. Reconsideration of the Denial

Any person adversely affected by a decision issued by the Commissioner pursuant to the provisions of this Act may, within twenty (20) days from the date of entry into records of the notification of the decision, submit a request for reconsideration of the decision to the Office of the Commissioner, pursuant to the terms and provisions set forth in the Uniform Administrative Procedure Act, Title 3 of the Laws of Puerto Rico Annotated (L.P.R.A.), § 2151 et seq.

#### Section 10 - Annual Licenses

##### A. Contents of the License

Every license shall have the address of the main office in Puerto Rico where the business shall be conducted and the name of the business.

The license shall not be transferable and shall be placed in a visible area in the place of business. No other license shall be issued unless it is certified in writing that the original was lost or destroyed, or due to change of address. In the latter case, the original license shall be returned.

##### B. Term to Begin Operations

All concessionaires shall initiate operations within a term not greater than ninety (90) days from the date in which the Commissioner or his/her representative issues the license. If the office cannot initiate business within the term herein set forth, an extension shall be requested from the Commissioner, explaining the reasons for the delay. The Commissioner or his/her representative shall study the request and, if in his/her judgment it is determined that the justification is valid, the corresponding extension shall be granted.

The license shall be void if operations are not initiated within the term set forth in this subsection or for any extension granted.

#### C. License Renewal

Every license shall remain in effect until its date of expiration, which shall be at the end of each calendar year, or until it is suspended, revoked or relinquished. Any license renewal application shall be filed not later than December 1 of each year.

If the payment and the information required for the license renewal are not received on or before December 31, it shall be understood that it has been relinquished due to lack of interest and the applicant may not operate or do business pursuant to the provisions of this Act.

Any concessionaire who pays the fees or submits the information required for the license renewal after December 1 of each year shall be subject to the imposition of an administrative fine, pursuant to the provisions of this Act. The license renewal fees to be paid shall be one thousand dollars (\$1,000.00) per office.

#### D. Prohibition During the License Renewal Procedures

If the term established for requesting the license renewal elapses without the application or documents requested having been submitted, it shall be understood that the previous license has expired. Once the previous license has expired, the credit repair agency may not operate or collect commissions, or generate income

from the operation of the business until the Commissioner issues the corresponding license.

#### E. Denial of the License Renewal

If the Office of the Commissioner denies the renewal of the license to any concessionaire, the former shall, within thirty (30) days after his/her determination, prepare a notification stating the reasons that motivated his/her decision and a summons to an administrative hearing, as set forth in the “Uniform Administrative Procedure Act,” Title 3 of the Laws of Puerto Rico Annotated (L.P.R.A.), § 2151 et seq.

#### F. Offices

A license shall be required for each office established. In the case of moving offices or branches to another location, a written notification shall be sent thirty (30) days in advance to the Commissioner, who shall amend the license as required.

Once requested to do so, the Office of the Commissioner of Financial Institutions may amend the license issued to indicate the change and the date of the same free of charge. In such a case, the original license shall be returned. The amendment shall constitute authorization to operate the business under such a license, franchise or permit in the new location.

#### Section 10 -Capital and Bond Requirements

Any business established under the provisions of this Act shall:

a. maintain not less than ten thousand dollars (\$10,000.00) in liquid capital for use in the administration of the business of each authorized office.

b. post and maintain a bond for a minimum of ten thousand dollars (\$10,000.00) and a maximum of one hundred thousand dollars (\$100,000.00), depending on the volume of business.

Said bond shall be issued by an insurance company authorized by the Insurance

Commissioner to do business in the Commonwealth of Puerto Rico. The bond shall be issued payable to the Commonwealth of Puerto Rico to benefit any person who suffers damages as a consequence of any violation of this Act and shall be posted at the Office of the Commissioner of Financial Institutions.

#### Section 11 - Inspections

All businesses established under the provisions of this Act shall be bound to put at the disposal of the Commissioner the accounting books, records, documents and any other information that the Commissioner deems necessary for his/her inspection. Moreover, the Commissioner or his/her representatives shall be given free access to their properties, facilities and sites of operations.

All businesses established under the provisions of this Act shall pay to the Commissioner one hundred dollars (\$100.00) per day or a fraction thereof for inspection fees. Such fees shall be charged per each inspector that intervenes in each inspection. Unless serious irregularities are found during the first inspection, the Commissioner shall not conduct more than one inspection per year. Such fees shall be paid by check payable to the Secretary of the Treasury.

#### Section 12 - Destruction of Books and Records

Any business established pursuant to the provisions of this Act may destroy its books and records after five (5) years have elapsed from the date of the last entry in such books or records or from the date in which any obligation ceases to be enforceable according to the documents in its possession.

The business shall submit a written request to the Commissioner to receive authorization to destroy said records. A list of the documents to be destroyed indicating the date that justifies such destruction shall be attached to said request.

The request shall also certify that any obligation appearing in the documents to be destroyed has ceased to be enforceable.

If the Commissioner fails to deny the request within fifteen (15) days from the

date it was filed, it shall be understood that the same has been authorized and the destruction of the documents may proceed.

The destruction of the documents shall be carried out and an authorized officer or representative of the business shall prepare a document on said destruction of records. Said document shall be remitted to the Office of the Commissioner within fifteen (15) days from the date the same was executed.

The aforementioned document shall become part of the permanent records of the business.

### Section 13 - Duties of the Credit Repair Agency

#### Orientation

Any attempt to contract the rendering of services shall be preceded by a thorough and efficient orientation on the services to be offered; said orientation shall include all the information required under the disclosure clause contained in this Act. This process shall be conducted as professionally as possible and shall fully comply with the requirements provided in this Act under prohibited practices.

#### A. Disclosure on Consumer Rights

Before executing a contract, any business established under the provisions of this Act shall supply each consumer with a written disclosure of consumer rights pursuant to federal and state provisions in a document separate from any other document, including the contract itself. Said disclosure shall be printed in bold type of not less than 10 points and shall be previously approved by the Office of the Commissioner of Financial Institutions. The disclosure shall include the following:

“Disclosure of Consumer Rights Pursuant to State and Federal Provisions”

“You have the right to contest any incorrect information appearing in your credit report by directly contacting the credit reporting entity or organization that issued the adverse report. In spite of this right, neither you nor any Credit Repair

Agency shall be entitled to have information excluded from your credit record if it is correct, accurate, in effect and verifiable. The credit reporting organization shall delete from the report all negative information that, although true, is more than seven (7) years old. Information pertaining to bankruptcy cases may remain in the credit record or history of the consumer for a maximum of ten (10) years.

You have the right to obtain a copy of the credit reports issued by credit reporting organizations, for which they may collect fees. However, no service fees shall be charged if within the previous sixty (60) days you have been denied credit, employment, insurance or leasing housing due to the information arising from a negative credit report. Credit reporting organizations shall provide assistance for interpreting your credit records. Moreover, you have the right to receive a free copy of your credit report if you are unemployed and intend to apply for a job within the next sixty (60) days, if you receive welfare or if you have grounds to believe that there is fraud-related erroneous or inaccurate information.

You have the right to sue any credit repair agency that infringes the provisions of this Act or applicable federal laws, since deceitful practices by said agencies are prohibited by both.

You have the right to terminate your contract with any credit repair agency for any reason within seven (7) working days from the date of signing said contract.

Credit reporting organizations are required to set reasonable measures and procedures in order for their reports to be accurate. However, it is understood that errors may be made.

Any consumer may notify any credit reporting organization of his/her intention to challenge the accuracy of the information in his/her credit records on his/her own and in writing. Copies of the documents regarding the correction procedures shall be offered to the credit reporting organization, and said credit reporting organization shall reinvestigate and modify or remove any pertinent information.

Provided, that if the organization fails to settle the dispute to the satisfaction of the consumer, he/she may submit a document stating the grounds for claiming that the information is incomplete or dubious; it is further provided that said document shall be included in the consumer's credit record and a summary of the same shall be attached to any credit report issued by the organizations in the future."

The business established under the provisions of this Act shall keep a true and exact copy of the statement signed by the consumer acknowledging receipt of the same for a term of up to two (2) years after the contract has expired. Said copy shall be the only acceptable evidence of the fact that the document was delivered to the consumer and that he/she knows its contents and understands his/her rights.

In addition to the written statement, in a document separate from any other document, the consumer shall be given a good faith estimate containing a complete and itemized list of the services offered and the cost of said services.

#### Section 14. - Contract

A. Any service contract of the business shall be in writing and bear the date and the signature of both the consumer and the authorized representative, and shall include the following information:

- a. A clear statement in bold type of not less than 10 points shall be printed next to the space reserved for the signature of the consumer, to read as follows:

"You, the consumer, may terminate this contract at any time before midnight of the seventh (7<sup>th</sup>) working day after the start date of this contract. See the enclosed TERMINATION NOTICE form for more information regarding this right.

- b. The payment terms and conditions, including the total amount of payments to be made to the credit repair agency or to any other person.

- c. A detailed and complete description of the services that the credit repair agency shall render to the consumer, including the estimated length of time for rendering said services, which may not exceed six months.
- d. The name and physical and mailing address of the main office of the credit repair agency.

B. The contract shall be accompanied by a pre-printed form in duplicate entitled "Termination Notice," which shall include the following statement in not less than 10 point type:

"Termination Notice"

"You may terminate this contract without penalties or further obligations within seven working days from the signing of said contract. If you terminate the same, any payment you made under this contract shall be returned within 15 days from the receipt of the Termination Notice by the Credit Repair Agency."

"To terminate this contract, please send by mail or submit a signed copy of this Termination Notice or any other written notice to (name of the Credit Repair Agency) not later than midnight of the third day from the signing of the contract."

"I hereby terminate this transaction."

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Signature of the Consumer)

C. A copy of the signed contract and all documents required by the Credit Repair Agency signed by the consumer shall be delivered to the latter upon the signing of the contract.

Section 15 - Additional Duties and Obligations

All Credit Repair Agencies established pursuant to the provisions of this Act shall comply with the following duties and obligations:

1. Relations with the customer shall be considered to be in the nature of a trust and the agencies shall be required to exercise their functions



with utmost diligence, care, loyalty and monetary benefit for the customer.

2. Have an office or location where they may be reached during office hours and keep the same in conditions appropriate for receiving customers.
3. Keep and maintain at the office or place of business all reports, books, records, registers, documents, papers or other evidence pertaining to the business.
4. Prepare and submit to the Office of the Commissioner any report required by him/her on the business and their operations.
5. Comply with any order or decision issued by the Commissioner.

#### Section 16 - Transfer of Capital or Control

No Credit Repair Agency established under the provisions of this Act may initiate the sale, assignment, merger, exchange, permutation or any other form of transfer of the shares with the right to vote, interest or participation in the capital of another Credit Repair Agency without previous authorization in writing from the Commissioner if by means of such a transaction any person may be able to acquire, directly or indirectly, control over ten percent (10%) or more of any class of shares, interest or participation in the capital with the right to vote.

Any sale, assignment, merger, exchange, permutation or any other form of transfer of capital shares with the right to vote, interest or participation in the capital of a Credit Repair Agency, as stated in subsection (A) of this Section, shall be null and void without prior authorization in writing from the Commissioner.

The Credit Repair Agency shall notify the Commissioner thirty (30) days in advance of any transaction proposal mentioned in this Section, the identity of the transferor and the transferee and the nature of the transaction, accompanied by payment of the investigation fees mentioned in Section 5 of this Act.

The Commissioner may require additional information as deemed necessary to decide whether the transaction would be prejudicial to the financial security or solidity of the Credit Repair Agency or if it would infringe any law, rule or regulation which governs the same, in which case the Commissioner may deny the authorization. Any person to whom the authorization is denied is entitled to request a hearing pursuant to the provisions set forth in the Uniform Administrative Procedure Act and the Regulations promulgated thereunder by the Office of the Commissioner.

#### Section 17. - Prohibited Practices

Credit Repair Agencies shall not engage in the following:

1. Operate or do business as a Credit Repair Agency without first obtaining a license from the Office of the Commissioner of Financial Institutions.
2. Solicit, receive or collect in advance the total or partial payment for any commission or charge for the services to be rendered, with the sole exception of the cost of the consumer's credit reports.
3. Collect charges additional to the payment agreed upon in the contract.
4. Advertise, show, distribute, broadcast or allow to be advertised, shown, distributed or broadcast information regarding the services to be rendered in a false and deceitful manner.
5. Make statements or offer advice or orientation for a consumer to give false or inaccurate information knowingly or which he/she should reasonably know regarding the classification of his/her credit and the manner and capacity to pay.
6. Give the impression that steps are being taken to expunge exact, current, real and verifiable information from a credit report.
7. Create or assist in the creation of, or advise the consumer to create, a new credit report using a different name, address and social security or

employee identification number.

8. Become involved in any action, practice or plan that either constitutes or results in committing or attempting to commit fraud or deception.
9. Give a false, inaccurate or erroneous impression to induce potential customers to acquire services, including the following:
  - (1) Guarantee or otherwise establish that the Credit Repair Agency is capable of expunging an adverse credit record, unless such an impression clearly reveals in an overt manner equal to the guarantee that such an action can be performed solely if the adverse credit record is inexact or obsolete and that the creditor who has submitted the information does not claim and prove that the information is true and exact.
10. Become involved, directly or indirectly, in any credit repair services activity, practice or business that operates or is to operate fraudulently.
11. Assign or transfer the license granted by the Commissioner of Financial Institutions.
12. Submit any consumer information under dispute to the agencies that issue credit reports without the authorization of the consumer.
13. Conduct consumer credit investigations without the authorization of the consumer.
14. Refuse to return to the consumer, at his/her request, any document or writing prepared in the course of performing their tasks.
15. Use the telephone system of the agencies that issue credit reports and give the impression that the caller is the consumer and that he/she is interested in challenging certain information, or requesting a disclosure without due authorization from the consumer.
16. Unduly withhold any amount of money and/or document relating to any

transaction or fail to inform customers of their rights or of any money or documents that constitute part of a transaction.

17. Falsify documents that constitute part of a transaction.
18. Render, publish or make false reports or entries to defraud any person or agent authorized by the Commissioner to investigate their business.
19. Incur unfair or illegal competition practices.

Moreover, any person who participates, instigates or cooperates in the commission of the aforementioned actions shall incur a violation whether or not the person obtained personal financial profit.

#### Section 18. - Relinquishment

Any Credit Repair Agency may relinquish its license through written notice sent to the Commissioner, who shall order and carry out an investigation of the business prior to accepting the relinquishment of the license. If after the investigation it is found that any violation has been incurred, the Commissioner may impose the corresponding penalty pursuant to the provisions in this Act, as well as suspend or revoke the license.

#### Section 19. - Relinquishment Due to Lack of Interest

After the term for requesting the license renewal set forth in this Act has elapsed without a renewal application being submitted, it shall be understood as relinquished due to lack of interest and the Credit Repair Agency may not operate or conduct any further business.

#### Section 20. - Revocation of License

Pursuant to the provisions of Section 2151 et seq. of Title 3 of the Laws of Puerto Rico Annotated, as amended, and known as the "Uniform Administrative Procedure Act," no license shall be revoked without a prior hearing.

The Office of the Commissioner of Financial Institutions, at its own initiative or at the request of a party, may initiate the procedures for the revocation of the

licenses issued pursuant to the provisions set forth in this Act.

#### Section 21. - Causes to Revoke the License

After prior notice and hearing, the Commissioner may revoke the license granted pursuant to the provisions set forth in this Act if he/she determines that:

1. There is a fact that, if it had existed or if it had been known at the time when the application was filed or the license issued, would have been sufficient cause for the Commissioner to deny the license.
2. The Credit Repair Agency or its representative has infringed any of the provisions set forth in this Act or any of the applicable regulations.
3. The Credit Repair Agency has infringed any of the provisions in the enabling laws and the regulations under the jurisdiction of the Office of the Commissioner after having been ordered to comply with them.
4. The license holder has been accused of a misdemeanor or a felony that entails moral depravity.
5. Any other cause that affects the public interest according to the Commissioner.

Any revocation of a license and its date of effectiveness shall be established by means of a written order accompanied by findings of fact and conclusions of law. A copy of the same shall be sent to the license holder. The evidence considered by the Commissioner shall be filed in the public records of the Office of the Commissioner.

If the license holder fails to appear at the proceedings or if having appeared does not prevail, the Commissioner of Financial Institutions shall issue a resolution ordering the revocation of the license, which shall be notified by mail and shall include an advisement as to the right to a reconsideration and appeal of review before the Circuit Court of Appeals, as the case may be, and the applicable terms.

## Section 22. - Penalties

The Commissioner, with prior notification and administrative hearing, may impose and collect administrative fines from any Credit Repair Agency for any violation of this Act or any applicable regulations, orders or resolutions approved and issued by the Commissioner. The administrative fines shall not be of less than five hundred dollars (\$500.00) nor of more than ten thousand dollars (\$10,000.00) per violation of this Act or the regulations promulgated thereunder.

When the nature of the violation of this Act or any rules, regulations, orders or resolutions issued by the Commissioner so justify, in addition to the administrative fines authorized in the preceding paragraph, the Commissioner shall file criminal charges against the offender.

## Section 23. - Consumer Claims

The Office of the Commissioner of Financial Institutions and the Department of Consumer Affairs shall have jurisdiction over the claims made by consumers regarding Credit Repair Agencies.

The Department of Consumer Affairs, created pursuant to Act No. 5 of April 23, 1973, as amended, shall have jurisdiction over claims filed by consumers regarding Credit Repair Agency advertising campaigns promoting unreal and deceitful offers that are prejudicial to consumers.

Any consumer may file a claim at the Office of the Commissioner of Financial Institutions to defend the rights granted in this Act or against any breach of contract by a Credit Repair Agency.

Moreover, any consumer may file a judicial action in any competent court to demand compensation for damages or for a specific breach of contract, or both remedies. When the consumer prevails in the action filed, he/she shall be entitled to demand payment for costs and attorney's fees.

#### Section 24. - Reconsideration

Issues pertaining to administrative hearing procedures, adjudication procedures, reconsiderations and reviews of orders and resolutions, or any other decision made by the Commissioner based on this Act or any regulations issued by the Commissioner, may be reconsidered and reviewed pursuant to the provisions set forth in Section 2101 et seq. of Title 3 of the Laws of Puerto Rico Annotated, known as the Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico and the Regulations promulgated thereunder.

Any person who is adversely affected by any resolution or order, whether partial or final, or by a decision issued by the Commissioner pursuant to the provisions set forth in this Act or applicable regulations, may file a motion for reconsideration of the resolution, order or administrative decision twenty (20) days from the date of entry into the files of the notice of the resolution, order or decision.

#### Section 25. - Review Before the Circuit Court of Appeals

Any party that is adversely affected by a final order or resolution or decision issued by the Commissioner pursuant to the provisions set forth in this Act or an applicable regulation, may file a request for review before the Circuit Court of Appeals within thirty (30) days from the date of entry in the files of a copy of the notification of the final resolution or order, or administrative decision.

Any party that is adversely affected by a final resolution of the Circuit Court of Appeals may request a review of said resolution by resorting to a recourse of Certiorari before the Supreme Court of Puerto Rico within thirty (30) days from the date of filing in the records of the judgment of the Circuit Court of Appeals or of its resolution resolving a duly filed motion for reconsideration.

#### Section 26. - Compliance

The provisions of this Act do not exempt the contracting parties from

compliance with any other applicable law or regulation, including federal laws.

#### Section 27. - Waiver of Liability

Any contract clause regarding the waiver of liability concerning the provisions in this Act granted by a consumer to a Credit Repair Agency for the purpose of exempting the latter from compliance with this Act shall be in contravention to the public policy and therefore null and void. Likewise, any contract that does not comply with the provisions herein set forth shall have no effect.

Any attempt to obtain a waiver of liability for the purpose of failing to comply with the provisions herein set forth is an infringement of the same and may entail the revocation of the license to operate the business granted by the Office of the Commissioner of Financial Institutions.

#### Section 28. - Existing Businesses

Any person who at the date of effectiveness of this Act is operating a Credit Repair Business may continue to do so, but shall request a license therefor from the Office of the Commissioner of Financial Institutions within thirty (30) days from the date of effectiveness of this Act. Such persons shall comply with all the requirements imposed by law or regulations for obtaining a license within sixty (60) days from the date of effectiveness of this Act.

#### Section 29. - Separability

If any provision of these Regulations were challenged before the court and ruled unconstitutional or null, said ruling shall not invalidate the remaining provisions of these Regulations, but rather its effect shall be limited to the provision which has been ruled unconstitutional or null.

#### Section 30. - Effectiveness

This Act shall take effect sixty (60) days after its approval.



## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 236 (Substitute to S.B. 2342) of the 7<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to regulate all organizations or entities dedicated to repairing credit history, to establish the requirements for obtaining a license, to state prohibited practices, to establish service contract and contract termination requirements; to establish the civil liability of these organizations or entities, to authorize the necessary administrative procedures, to state the transition term, and to appropriate funds; to add subsection (g) to Section of Act No. 4 of October 11, 1985, as amended, etc.,

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

In San Juan, Puerto Rico, today 26<sup>th</sup> of February of 2007.

Francisco J. Domenech  
Director