

(H. B. 2554)  
(Conference)

**(No. 319)**

(Approved October 23, 1999)

## **AN ACT**

To add a second paragraph to Section 3; amend Section 8, add two new Sections 9A and 9B; add a second paragraph to Subsection (a)(4) and amend Subsection (a)(14) of Section 10, and to add a second paragraph to Subsection (d) of Section 20 of Act No. 4 of October 11, 1985, as amended, known as the "Office of the Commissioner of Financial Institutions Act"; to amend Sections 3, 8 and 11 and to repeal Sections 2, 4, 5, 6, 9 and 10 of Act No. 1 of October 15, 1973, as amended; to repeal Subsection (G) of Section 3 and amend Section 4 of Act No. 3 of June 14, 1980, as amended; so that it is not mandatory, but rather advisable to consult with persons representing the private sector on the Financing Board, to reduce to four (4) the minimum number of members of the Financing Board that must be present at the meetings and for decisions regarding the interest rates parameters, clarify the provisions applicable to the approval of regulations by the Financing Board with regard to the fixing of the maximum interest rates or charges to make the same uniform with the Uniform Administrative Procedure Act; to allow the participation of the members of the Financing Board in meetings through any communications means through which all the participants in the meeting may be heard simultaneously and that the Financing Board may issue determinations by means of a referendum; to declare the Office of the Commissioner of Financial Institutions as an agency of public law and order for the sole purpose that it may collect and verify information to be obtained from, and that shall be made available by the traditional public law and order agencies of the Government of Puerto Rico, on the criminal record of those persons on which it has the need to evaluate said record; that the Government of Puerto Rico recognizes it as such before other foreign investigative and public law and order agencies, for the purposes stated above; to make flexible and temper to the present, the power to impose charges through

regulations with respect to the answering of consultations, opinions and other administrative determinations; to require that the Commissioner designate officials from his/her Office to offer support and advice to the prosecutors of the Department of Justice; typify as a felony, with the penalty of imprisonment, the diffusion, offering or publication of said information by any official, officer, employee or examiner of the Office of the Commissioner of Financial Institutions without the authorization of the Commissioner, and for other purposes.

### **STATEMENT OF MOTIVES**

Pursuant to Act No. 4 of October 11, 1985, as amended, known as the "Office of the Commissioner of Financial Institutions Act" (hereinafter Act No. 4), which created the same, the Financing Board was established in turn, and its functions, powers and duties were fixed. The Financing Board became the successor in law of the Interest Rates and Finance Charges Regulatory Board, created by Act No. 1 of October 15, 1973. Since more than thirteen years have elapsed from the creation of the Finance Board, it is necessary to provide the adequate mechanisms in law for the Finance Board to be enabled to discharge its responsibilities in a more agile and flexible manner in view of the enormous volume of financial activity that is generated in Puerto Rico. In accordance to said need, it is provided that it shall not be mandatory, but on the contrary, that the Financing Board may request the advice of persons representing the private sector, to reduce to four (4) the minimum number of members of the Financing Board who must be present at the meetings and to make decisions regarding the parameters of the interest rates, clarify the provisions applicable to the approval of regulations by the Financing Board regarding the fixing of the maximum interest rates or charges to make them uniform with the Uniform Administrative Procedure Act, and also to allow participation of the

members of the Financing Board in meetings through any communications means through which all the participants in the meeting may be heard simultaneously and that the Financing Board may issue determinations by means of a referendum.

Act No. 4, supra, upon the creation of the Office of the Commissioner of Financial Institutions, attached to the Department of the Treasury, assigned to said agency the function of regulating the financial institutions that operate or do business in Puerto Rico, and the supervision thereof. Said Act clearly stated the unavoidable responsibility of the State to ensure that the interests of those connected to these industries as depositors, creditors, and stockholders, or other type of association are protected.

The Office of the Commissioner of Financial Institutions, as part of the discharge of its duties and obligations that its organic act, and other laws or regulations under its administration have established, has the obligation to investigate the identity, character, reputation and penal records of the natural and juridical persons who wish to operate or do business, or that in fact, operate or do business as financial institutions in Puerto Rico.

Recent experiences have shown that the current legal provisions are not sufficiently adequate, and even at times they prevent the Office of the Commissioner of Financial Institutions from obtaining confidential information on the criminal record of natural and juridical persons in cases whose sources are foreign investigative and public law and order agencies.

The present legislation designates the Office of the Commissioner of Financial Institutions as an agency of public law and order so that it is recognized as such, under the circumstances stated above, by the traditional agencies of public law and order of the Government of Puerto Rico and that the latter, in turn, recognizes its like nature before foreign investigative and

public law and order agencies. On the other hand, the power of the Commissioner to determine the corresponding charges to answer consultations, opinions or other administrative determinations, is made more flexible and tempered to the present.

Considering the sensitivity of the confidential information that may be obtained under the inherent power granted herein to the Office of the Commissioner of Financial Institutions, said information shall have the degree of confidentiality by part the Office of the Commissioner of Financial Institutions given to said information by the investigative and public law and order agency that has furnished said information, and it is hereby typified as a felony and thus penalized, the diffusion, offering or publication of said information by any official, officer, employee or examiner of the Office of the Commissioner of Financial Institutions, without the authorization of the of the Commissioner.

Furthermore, recognizing the high technical and expertise degree involved in procedures of a criminal nature that arise as a result of violations of laws, regulations and orders under the administration of the Office of the Commissioner, the Commissioner is hereby empowered to request the Secretary of Justice to appoint special prosecutors in said procedures and it is hereby established that the Secretary of Justice may appoint attorneys from the Office of the Commissioner, as such.

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

Section 1.- A second paragraph is hereby added to Section 3 of Act No. 4 of October 11, 1985, as amended, to read as follows:

"Section 3.- Purposes of the Office of the Commissioner

.....

The Office of the Commissioner of Financial Institutions shall be deemed as an agency of public law and order for the sole purpose that it may compile and verify information that shall be obtained from and that shall be made available by the traditional agencies of public law and order of the Government of Puerto Rico on the criminal record of those persons of whom there is a need to evaluate said record for the discharge of the duties imposed by this Act, and other acts and regulations. In case that said information is in custody of state, federal or foreign agencies of public law and order, the Office of the Commissioner of Financial Institutions shall also be recognized as such by the Government of Puerto Rico before said agencies, so that the information may be requested directly from the body in question. The information obtained, through the inherent power herein granted shall be given by the Office of the Commissioner of Financial Institutions that degree of confidentiality given to said information by the investigative and public law and order agency that has furnished the same."

Section 2.- Section 8 of Act No. 4 of October 11, 1985, as amended, is hereby amended to read as follows:

"Section 8.- Financing Board - Creation and members

- (a) The Financing Board is hereby created in the Office of the Commissioner, which shall be composed of seven (7) members including the Commissioner.
- (b) The other members are: the Secretary of the Treasury who shall act as Chairperson of the Board, the Secretary of Economic Development and Commerce, the Secretary of Consumer Affairs, the President of the Economic Development Bank for Puerto Rico, the President of the Planning Board and

the President of the Government Development Bank for Puerto Rico.

Said Board is hereby empowered to fix, regulate, increase or reduce, by regulations and, for the time needed, the maximum interest rates or charges applicable to specific financial transactions within the framework of any sector, area or activity of the country not covered by special laws, with the exception of Section 14 of Act No. 55 of May 12, 1933, as amended, including the interest payable on deposits in banking institutions and financial institutions, but subject and in accordance to the following norms.

- (1) The rate of interest and the financial sector to which it shall be applicable shall be determined by regulations.
- (2) The determination to raise the interest rates shall be made when it can reasonably be foreseen that because of discrepancies between the interest rates prevailing in the market and the maximum rates allowed by law in Puerto Rico, there is a risk that capital investment in specific sectors or financial activities in Puerto Rico is halted or reduced.
- (3) The decision shall be based on a study of the prevailing cost in the market for the money available to finance diverse financial areas or activities and the adverse effect to the economy in general, or any of its sectors or the citizens, that could occur if no action is taken to change, by

increasing or reducing interest rates or charges in effect at a given time. The Financing Board may also determine not to fix maximum interest rates and charges, and leave the market open to free competition.

Provided further, that the Financing Board may request the advice of the financial industry.

- (c) The travel expenses of any Board member in representation of the Board shall be paid according to the regulations issued by it to such effect.
- (d) The Board shall meet when the Chairperson calls the same, as it may be deemed pertinent, with due prior notice, of not less than twenty-four (24) hours. Four (4) of its members shall constitute a "Quorum", in which calculation the participation of the Secretary of the Treasury and the Commissioner shall always be taken into account. The members shall be entitled to participate in any meeting by means of telephone conferencing, or other means of communication, through which all the persons participating in the meeting may listen to each other simultaneously. The participation of the Board in the manner described above shall constitute attendance to said meeting. In every determination made by the Board there must be a quorum and it shall be approved by the affirmative vote of the majority of the members of the Board present. In case an affirmative vote of the majority of the Board members present cannot be obtained because of a tie vote, the proposal under discussion shall be defeated. The Board may also issue determinations by

means of a referendum. The approval of a determination by means of a referendum requires the affirmative vote of the majority of the members of the Board.

- (e) No member of the Board shall take part in the deliberations and decisions on any matter related to any corporation, partnership, unincorporated association or person who is an interested party or who was or has been an officer, director, partner, employee, member, or shareholder thereof, at any time during the previous three (3) years. A member may disqualify him/herself from participating in the deliberations and decisions for any other reason that he/she or the Board deem justified.
- (f) Any technical, legal or clerical assistance needed by the Board shall be furnished by the Commissioner."

Section 3.- A new Section 9A is hereby added to Act No. 4 of October 11, 1985, as amended, to read as follows:

"Section 9A.- Hearings; summons; oaths; information and personnel.

In order for the Board to adequately comply with the duties imposed by this Act, it may hold hearings and request any information that it deems pertinent from the persons or entities that could be affected by any of its determinations.

The Financing Board is hereby empowered to conduct all types of studies and investigations on the matters authorized by this Act and for such purposes, the Chairperson of the Board or the person designated by him/her may request the information that is necessary, pertinent and essential to achieve such purposes.

The Chairperson of the Board or the person designated by him/her, may issue summons ordering the appearance of witnesses and the



presentation of data or information to carry out the purposes of this Act. He/she may also, *per se*, or through duly authorized delegation, administer oaths, and take sworn statements, and receive data or information.

If a summons issued by the Chairperson of the Board or the person designated by him/her is not duly complied with, the Chairperson may appear before the Court of First Instance of Puerto Rico and request that compliance with said summon be ordered. The Court of First Instance shall give preference to the course and dispatch of said petition and may issue orders making compulsory the appearance of witnesses or the presentation of the data or information previously required by the Chairperson of the Board or the person designated by the former. The Court of First Instance shall be empowered to sanction for contempt of court the disobedience of said orders.

No person shall refuse to obey a summons of the Chairperson of the Board or the person designated by him/her, or to produce the evidence required, or to answer any question regarding any study or investigation, or refuse to obey a judicial order thus issued, alleging that the testimony or the evidence required, could incriminate him/her or expose him/her to a criminal procedure, or to destitution or suspension from his employment, profession or occupation; but the testimony or evidence produced by said person as required by the Chairperson of the Board or the person he/she designates, or by virtue of a judicial order, shall not be used or presented as evidence against said person in a criminal procedure, or in civil or administrative procedures that could result in the dismissal or suspension from his/her employment, profession or occupation.

The evidence and testimony obtained through these means shall not be referred, furnished or handed over to any state or federal agency that is not

willing to grant immunity to the person giving testimony or producing the evidence that has the same scope that is conferred to it by virtue of this Act.

The federal or state agency shall sign an agreement of immunity with the person giving testimony or producing the evidence before the testimony or evidence concerned can be referred, furnished or given.

The Financing Board shall establish the mechanisms needed for its effective operation, including being informed of the changes in the money market conditions and other matters related to the implementation of this Act. To do this, the Board members shall contribute with the information and personnel resources that may be necessary.

Section 4.- A new Section 9B is hereby added to Act No. 4 of October 11, 1985, as amended, to read as follows:

"Section 9B.- Regulations

When a regulation is approved, amended or repealed by the Financing Board, said regulation, amendment or repeal shall comply with the provisions of Act No. 170 of August 12, 1988, as amended.

The provisions of the regulations approved by virtue of the provisions of Section 8 of Act No. 4 of October 11, 1985, as amended, shall not be applicable to contracts executed nor to obligations made prior to the effective date of the regulations. Every contract shall be governed by the provisions of the regulations in effect on the date of formalizing the contact, even when said regulation is subsequently amended or repealed."

Section 5.- A second paragraph is hereby added to Subsection (a)(4) and Subsection (a)(14) is hereby amended, both of Section 10 of Act No. 4 of October 11, 1985, as amended, to read as follows:

"Section 10.- Commissioner - Powers

(a) The Commissioner, in addition to the powers and faculties transferred hereby, shall have the powers and faculties to:

- (1) ...
- (2) ...
- (3) ...
- (4) ...

The Commissioner shall also designate an official of the Office of the Commissioner to give support and advise the prosecutor of the Department of Justice who has the task of prosecuting a criminal procedure for a violation of the laws, regulations or orders under the administration of the Office of the Commissioner.

- (5) ...

(14) The Commissioner is hereby authorized to establish through regulations, those charges he/she deems are reasonable for producing advice, issuing opinions or administrative determinations, granting permits authorized by law or regulations, or for the rendering of any other similar services with regard to any of the laws and regulations that he/she administers or are under his/her jurisdiction."

Section 6.- A second paragraph is hereby added to Subsection (d) of Section 20 of Act No. 4 of October 11, 1985, as amended, to read as follows:

"Section 20.- Penalties

(a) ...

- (b) ...
- (c) ...
- (d) ...

In the case of confidential information obtained from investigative and public law and order agencies, every officer, official, employee or examiner of the Office of the Commissioner of Financial Institutions who, through negligence or omission, or deliberately, offers information, publishes or publicly comments said information, without the written authorization of the Commissioner, shall be charged with a felony and upon conviction shall be imposed a penalty of imprisonment for a fixed term of three (3) years. If there were aggravating circumstances, the penalty may be increased to a maximum of five (5) years; if there were extenuating circumstances the penalty may be reduced to a maximum of two (2) years. The person thus convicted may be referred to the benefits of a suspended sentence, to be determined by the Court.

- (e) ..."

Section 7.- Section 2 of Act No. 1 of October 15, 1973, as amended, is hereby repealed.

Section 8.- Section 3 of Act No. 1 of October 15, 1973, as amended, is hereby amended to read as follows:

"Section 3.- Interest exceeding stipulated maximum rates.

Notwithstanding the provisions of Section 1 of this Act and in Article 1649 of the Civil Code, there may be demanded or received, in or for loans

or extensions of money or merchandise, or in or for any type of obligation, agreement or contract, an interest rate higher than the maximum rates stipulated in Section 1 of this Act, as well as other charges to compensate for research, analysis and loan negotiation expenses, provided they are maximum rates of interest or charges fixed by the Financing Board created by Section 8 of Act No. 4 of October 11, 1985, as amended.”

Section 9.- Section 4 of Act No. 1 of October 15, 1973, as amended, is hereby repealed.

Section 10.- Section 5 of Act No. 1 of October 15, 1973, as amended, is hereby repealed.

Section 11.- Section 6 of Act No. 1 of October 15, 1973, as amended, is hereby repealed.

Section 12.- Section 8 of Act No. 1 of October 15, 1973, as amended, is hereby amended to read as follows:

"Section 8.-

The provisions of this Act shall in no way affect, modify or alter the civil liability that any natural or juridical person may incur under the articles of the Civil Code of Puerto Rico that deal with the fixing of legal interest and the manner of recovering the excess amounts paid thereon, it being understood, however, that the interest rates or charges the Board may fix, or the determination of the Board of not fixing maximum interest rate and leaving the market open to free competition in such case, shall prevail over the provisions of said Code.

When a borrower prepays a debt, he/she shall not be charged interest on that part of the principal paid in advance. In such case, however, the creditor may charge the debtor an adequate compensation. The Financing Board is hereby authorized to prescribe, through regulations, the terms,

rates and/or conditions needed for the computing of said compensation. To such effect, the Board shall take into consideration the prevailing market conditions and harmonize them with the debtor's right to protection against the assessment of excessive charges."

Section 13.- Section 9 of Act No. 1 of October 15, 1973, as amended, is hereby repealed.

Section 14.- Section 10 of Act No. 1 of October 15, 1973, as amended, is hereby repealed.

Section 15.- Section 11 of Act No. 1 of October 15, 1973, as amended, is hereby amended to read as follows:

"Section 11.-

Any natural or juridical person who violates the provisions of this Act or of the regulations prescribed by the Financing Board from time to time, shall be subject to the penalties and sanctions provided in Act No. 4 of October 11, 1985, as amended."

Section 16.- Subsection (G) of Section 3 of Act No. 3 of June 14, 1980, is hereby repealed.

"Section 3.-

The following interest rates and financing charges are hereby adopted which shall be the maximum to be collected or demanded in Puerto Rico for specific types of credit, with the exception of deposits in banks and other financial institutions, and the further exception of such retail installment sales for which the maximum interest rates and financing charges have been fixed (or shall be fixed in the future) pursuant to the provisions of Act No. 68 of June 19, 1964, as amended.

...

(G) ..."

Section 17.- Section 4 of Act No. 3 of June 14, 1980, is hereby amended to read as follows:

"Section 4.-

The provisions of Sections 2 and 3 of this Act shall remain in effect until the Financing Board, created by Act No. 4 of October 11, 1985, as amended, approves regulations for the purpose of amending the same."

Section 18.- Effectiveness

This Act shall take effect immediately after its approval.

February 10, 2000

Luis G. Hidalgo, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 319 (H.B. 2554) (Conference) of the 6th Session of the 13th Legislature of Puerto Rico, entitled:

**AN ACT** to add a second paragraph to Section 3; amend Section 8, add two new Sections 9A and 9B; add a second paragraph to Subsection (a)(4) and amend Subsection (a)(14) of Section 10, and to add a second paragraph to Subsection (d) of Section 20 of Act No. 4 of October 11, 1985, as amended, known as the "Office of the Commissioner of Financial Institutions Act"; to amend Sections 3, 8 and 11 and to repeal Sections 2, 4, 5, 6, 9 and 10 of Act No. 1 of October 15, 1973, as amended; to repeal Subsection (G) of Section 3 and amend Section 4 of Act No. 3 of June 14, 1980, as amended; so that it is not mandatory, but rather advisable to consult with persons representing the private sector on the Financing Board, etc.,

and finds the same are complete, true and correct versions of each other.

Luis G. Hidalgo