

(H.B 3321)

(No. 462)

(Approved December 29, 2000)

AN ACT

To add a Section 112 to Article IV of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” add a subsection (3) to Section 37.040 and amend Section 38.170 of Act No. 77 of June 19, 1957, as amended, known as the “Puerto Rico Insurance Code,” in order to limit the economic liability of the members of the Boards of Director of the entities created pursuant to said provisions and for other purposes.

STATEMENT OF MOTIVES

In the degree that the economies of the capitalist countries have evolved throughout the years, the social mechanism of insurance has been adapting to meet a great number of needs that have arisen from the new economic and social reality. This process has brought about the creation of multiple governmental, quasi-governmental and private institutions devoted to handling specific situations and problems of a social nature as well as those germane to the insurance industry.

Many of these mechanisms are based on the obligatory incumbency, through statute, of the private insurers and their officials, in those entities dedicated to covering marginal risks that are normally rejected by insurers in the free enterprise market or protecting the integrity of the insurance industry as a whole so as to strengthen the trust of the citizen concerning the

capacity of the insurance industry to fulfill the promises for protection contained in the insurance policies. This type of activity undermines to a certain extent the principle of free enterprise for the sake of solving certain social problems that are normally not susceptible to being dealt with through the insurance mechanism.

In view of this reality and considering that getting involved in this type of activity both the insurers that support each initiative and the individuals that participate in the decision-making processes, be it as representatives of the insurers or as individual participants, are at risk of having to respond with their resources to any alleged errors or omissions that may arise, this Legislature has on several occasions provided protection for said insurers and individuals by granting them immunity for the acts or omissions that may in good faith arise in the discharge of their obligations and duties. Thus immunity has been established for the directing body of the Miscellaneous Insurance Guaranty Association, the Life and Disability Insurance Guaranty Association, the Insurers Union for underwriting Medical-Hospital Professional Liability Insurance and the Joint Underwriting Association for Compulsory Motor Vehicle Liability Insurance.

However, while creating other similar entities, no provisions of equal nature have been established for their directing bodies or for their representatives. We are referring to the Puerto Rico Health Insurance Administration and the Joint Underwriting Association for Fire and Allied Lines Insurance and the officials that represent member insurers of the Board of Directors of the Guaranty Association.

Act No. 72 of September 7, 1993, as amended, created the Puerto Rico Health Insurance Administration, a public corporation with full

autonomy for conducting the functions the Law requires. The Puerto Rico Health Insurance Administration is responsible for implementing, administering and negotiating, through contracts with insurers, a health insurance system to provide all residents of the Island with access to quality medical-hospital care, regardless of the financial situation and ability to pay of those who require such care.

Likewise, Act No. 85 of June 14, 1968, created the Joint Underwriting Association for Fire and Allied Lines Insurance, whose purposes is to guarantee the availability of fire and allied lines insurance to those persons who, having insurable interest in insurable property, are unable to obtain coverage from authorized insurers. Thus, authorized insurers, as a group, are compelled to provide said coverage.

Finally, Section 38.170 of the Puerto Rico Insurance Code grants immunity to the members of the Miscellaneous Insurance Guaranty Association and to the Insurance Commissioner as to their powers and duties in the discharge of their responsibilities relative to any insurer subject to liquidation or rehabilitation proceedings under Chapter 40 of said Code. However, it must be made clear that said immunity also includes all said persons in the fulfillment of their responsibilities under Chapter 40.

The discharge of this compulsory activity for the protection of the public interest fully justifies that, with the approval of this Act, the members of the aforementioned Boards of Directors and their representatives be provided with protection similar to that which the Government has already provided for the members of other Boards of Directors created through statutes.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-A Section 12 is hereby added to Article IV of Act No. 72 of September 7, 1993, as amended, to read as follows:

“Article IV

PUERTO RICO HEALTH INSURANCE ADMINISTRATION

Section 1.-Creation:

...

Section 12.-Immunity of the Board of Directors of the Administration or of Any of its Members:

Neither the Board of Directors nor its directors shall personally or individually incur any economic liability whatsoever for any action taken in the discharge of their duties and powers under this Act, provided they do not act in violation of their fiduciary duties towards the Administration, nor act intentionally to cause harm or knowingly that they may cause some harm.”

Section 2.-A subsection (3) is hereby added to Section 37.040 of Act No. 77 of June 19, 1957, as amended, known as the “Puerto Rico Insurance Code,” to read as follows:

“Section 37.040.-Participation.-

(1) ...

(3) Neither the Board of Directors of the Association nor its directors shall personally or individually incur any economic liability whatsoever for any action taken in the discharge of their duties and powers under this Chapter, which in the case of member insurers shall mean both the insurer and its representative before the Board of Directors, nor the officials of the Association, provided they do not act in violation of their fiduciary duties towards the Administration, nor act intentionally to cause harm or knowingly that they may cause some harm.”

Section 3.-Section 38.170 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Section 38.170.-Immunity

No civil liability shall be attached to, and no cause of action of any nature shall be established against any member insurer, the Association or its agents or employees, the Board of Directors or its representatives or the Commissioner or his/her representatives, for any action taken by them, or omission, in the discharge of their powers or duties under this Chapter or under Chapter 40 of this Code.”

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. 462 (H.B. 3321) of the 6th Special Session of the 13th Legislature of Puerto Rico:

AN ACT to add a Section 112 to Article IV of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” add a subsection (3) to Section 37.040 and amend Section 38.170 of Act No. 77 of June 19, 1957, as amended, known as the “Puerto Rico Insurance Code,” in order to limit the economic liability of the members of the Boards of Director of the entities created pursuant to said provisions and for other purposes,

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

In San Juan, Puerto Rico, today 1st of April of 2005.

Luis Fusté-Lacourt
Director