

(H.B. 2261)

(No. 163)

(Approved August 10, 2002)

AN ACT

To amend the Statement of Motives, Sections 4, 5, 9 and 20, and to add a subsection (y) to Section 3 to Act No. 114 of August 17, 2001, known as the “Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico Act.”

STATEMENT OF MOTIVES

Pursuant to the public policy of the development of the Cooperative Movement in Puerto Rico, and the purpose of consolidating the monitoring, supervising, and insuring functions in a single government agency, the Legislature of the Commonwealth of Puerto Rico approved Act. 114 of August 17, 2001, hereinafter “the Act”, which creates the Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico, known by its acronym COSSEC.

At this time it is necessary to amend the abovementioned Act with the purpose of correcting errors in chronological, numerical, expression and typographical terms contained in the different Sections, as well as to grant to the Corporation full powers of supervision and monitoring of the deposits of public funds and educational contribution accounts in the Savings and Credit Unions Cooperatives.

On the other hand, the present legislation clarifies the provisions regarding the merging, consolidation, sale of assets and liabilities of

cooperatives being dissolved, the election of the representatives of the cooperative movement, and eliminates the procedure for election to full vacancies in the Board of Directors in Section 5(c)(4)(v), to establish as the sole procedure, that which is found in Section 5(c)(6); due to the duplication of inconsistent procedures found in the statute.

Likewise, being aware of the importance of enabling this legislation to expedite the recruiting of personnel to direct the Corporation, and with the purpose of tempering the present status of the representatives of the government sector to the conditions required for the selection of the Board of Directors of the Corporation, the same are hereby amended and made flexible.

These amendments intend to expedite the performance of the responsibilities and functions of the Corporation in order allow the cooperative movement to develop its potential to its maximum and thus contribute to the socioeconomic development of the country.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- The fourth and fifth paragraph of the Statement of Motives of Act No. 114 of August 17, 2001, are hereby amended to read as follows:

“ ...

For the purpose of enabling the implementation and advancing of these principles, this Act is hereby adopted to consolidate the supervisory and monitoring powers, under the cooperative and financial laws.

Pursuant to the above, the number of members of the Financial Board in the Office of the Commissioner is increased from seven (7) to nine (9) members, including the Commissioner.”

Section 2.- Subsection (y) of Section 3 of Act No. 114 of August 17, 2001, is hereby added to read as follows:

“Section 3.- Definitions

For the purposes of this Act, the following terms and phrases shall have the meanings stated below:

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) ...
- (h) ...
- (i) ...
- (j) ...
- (k) ...
- (l) ...
- (m) ...
- (n) ...
- (o) ...
- (p) ...
- (q) ...
- (r) ...
- (s) ...
- (t) ...
- (u) ...
- (v) ...
- (w) ...
- (x) ...

- (y) “Substantial financial interest” - means the financial interest that implies direct or indirect control.”

Section 3.- Section 4 of Act No. 114 of August 17, 2001 is hereby amended to read as follows:

“Section 4.- Powers of the Corporation

- (a) ...
- (b) ...
- (c) In order to empower the Corporation with full power and authority to perform the comprehensive and consolidated function of monitoring and supervising the Savings and Credit Unions Cooperatives, all the functions, powers and duties of the Office of the Commissioner of Financial Institutions, the Office of the Inspector of Cooperatives, the Secretary of the Treasury and of any other agency, body or government entity related to the supervision, monitoring and implementation of the following provisions of law as applied to the Savings and Credit Union Cooperatives, their affiliates, and their businesses and operations, are hereby transferred to the Corporation:
 - (1) Act No. 6 of January 15, 1990, as amended, known as the "Savings and Credit Cooperatives Partnership Act of 1989"; Act No. 50 of August 4, 1994, known as “General Cooperatives Association Act of Puerto Rico”; Act No. 106 of June 28, 1965, as amended, known as “Small Personal Loans Act”; Act No. 97 of June 5, 1973, as amended, known as “Mortgage Loans Act; Act No. 20 of May 8, 1973, as amended,

known as “Personal Property Lease Act,” Act No. 76 of August 13, 1994, as amended, known as “Act to Regulate Personal Property Lease Contracts” Act No. 106 of August 6, 1996, known as “Act to Regulate the Monetary Transaction Business;” Act No. 131 of July 23, 1974, as amended, known as “Act on Transfers of Funds Abroad”; Act No. 60 of June 18, 1963, as amended, known as “Uniform Securities Act”; Act No. 6 of October 19, 1954, as amended, known as “Investment Companies Act”; Act No. 17 of April 18, 1933, as amended; Act No. 10 of March 7, 1951; Act No. 68 of June 19, 1964, as amended, known as “Retail Installments Sales and Finance Companies Act”; Act No. 214 of October 14, 1995, as amended, known as “Act to Regulate the Financial Intermediation Business”; Section 1169 and 1172 of Act No. 120 of October 31, 1994, as amended, known as “Internal Revenue Code of 1994”; Act No. 69 of August 14, 1991, known as “Act to Regulate the Deposit of Public Funds and Provide for their Security”.

- (2) ...
- (3) ...
- (4) ...
- (5) All those laws, regulations, orders, permits, memoranda of understanding, circular letters and

administrative decisions applicable to Cooperatives in effect on August 17, 2001, issued by transferring agencies, shall remain in effect until they are modified or rendered ineffective by the Corporation.

(d) ...”

Section 4.- Section 5 of Act No. 114 of August 17, 2001, is hereby amended to read as follows:

“Section 5.- Board of Directors

(a) ...

(b) Governmental Representation. None of the integrants of the Board of Directors, except for the Secretary of the Treasury, may neither delegate their functions in other officials nor hold directive office or have a substantial financial interest in any private financial institution.

(c) Cooperative Representation.

(i) In order to provide the Cooperative Movement with immediate representation in the Board of Directors, within the thirty (30) days following the approval of this Act, the Governor shall designate the first four (4) representatives of the Insured Cooperatives as follows:

A. At least two (2) persons who are chief executive officers of Insured Cooperatives;
and

B. At least two (2) persons who are members of the Board of Directors of Insured Cooperatives.

In order to stagger the positions of representatives of the Cooperative Movement, a director who is the chief executive officer and a director who is a member of a board of directors shall hold office for two (2) years; a director who is the chief executive officer and director who is a member of a board of directors shall hold office for one (1) year. The successors of the of the first four representatives of the Cooperative Movement shall be elected by the Insured Cooperatives as provided by the following subsection two (2).

(2) Subsequent members of the Board representing the Insured Cooperatives shall be selected exclusively by the Cooperatives that have availed themselves of the Shares and Deposit Insurance. The Insured Cooperatives shall elect as directors, two (2) persons who are members of the Board of Directors of said Cooperatives and two (2) persons who are the chief executive officer of the Insured Cooperatives. Provided, that in no case, shall more than one representative of the Cooperatives correspond to the same Cooperative. The elected Director shall hold office for a term of three (3) years. No director shall hold said office for more than three (3) consecutive terms. The selected members shall not hold directive offices nor be employee of government agencies related to the Cooperative Movement, except for those provided in this Act.

(3) ...

(4) ...

(i) ...

(ii) ...

(iii) ...

(iv) ...

(5) ...

(6) In the event of a vacancy in the directive positions representing the Cooperative Movement, the Puerto Rico League of Cooperatives shall be notified immediately, which shall be responsible for establishing the mechanism of consultation and the selection from among the insured cooperatives, be it representative of the Board of Directors or chief executive officers of the insured cooperatives; Provided, that the person to be designated shall meet the requirements of this Act. The representative designated through the method established by the League of Cooperatives shall hold his/her office for the remainder of the term at the moment of the vacancy.

(d) The member of the Board representing the public interest shall be designated jointly by the vote of three fourths ($\frac{3}{4}$) of the total eight (8) members of the Board of Directors representing the government sector and the cooperative sector. The representative of the public interest shall be designated for a term of three (3) years and shall hold office until his/her successor is appointed and takes office. The latter shall be a person of

recognized moral integrity and who is knowledgeable of the cooperative and financial field. The representative of the public interest may neither be employed by nor hold directive office in any private financial institution, insured Savings and Credit Union, Cooperative, or any other central cooperative organization. Furthermore, he/she shall have no substantial financial interest in any private financial institution.

The members of the Board shall receive no compensation or remuneration whatsoever for performing their functions, however those who are not officials or employees of the Commonwealth of Puerto Rico shall be entitled to per diems and traveling expenses incurred for each day they attend meetings of the Board or for performing any function or task delegated by the Chairman of the Board pursuant to the regulations adopted by the Board to such effect. In addition, they shall be eligible to be covered by the provisions of Section 132 of Act No. 104 of June 29, 1955, in addition to Act No. 9 of November 26, 1975, as amended.”

Section 5.- Section 9 of Act No. 114 of August 17, 2001, is hereby amended to read as follows:

“Section 9.- Executive Chairman

The Executive Chairman of the Corporation shall be appointed by the vote of two thirds (2/3) of the total members of the Board, with the approval of the Governor of the Commonwealth of Puerto Rico. The latter shall be the Chief Executive Officer of the corporation, and shall perform whatever

function or charges established by law and delegated by the Board, and shall earn the salary authorized by him/her. The Executive Chairman shall have the following powers and duties, among others:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) ...

(k) ...

(l) ...

(m)

(n) Determine, pursuant to the rules adopted by the Board and those provided by this Act and its regulations, the eligibility of any cooperative to receive the shares and deposit insurance, or to continue as an insured entity, including cases of mergers, acquisition of assets and liabilities or consolidation of cooperatives.

(o) ...

(p) ...

(q) ...

(r) ...

(s) ...”

Section 6.- Section 20 of Act No. 114 of August 17, 2001 is hereby amended to read as follows:

“Section 20.- Trusteeship, Merger, Consolidation, Purchase of Assets and Liabilities or Liquidation of Insured Cooperatives in Cases of Insolvency or Risk of Insolvency.

The Corporation may issue a provisional order to place an insured Cooperative under its administration when, after an audit, investigation, examination, or inspection it shows, in the judgment of the Corporation that the Cooperative faces one or more of the following conditions:

1. It lacks a solid financial and economic state.
2. It has no effective internal controls for the administration of its affairs.
3. It has no adequate reserves
4. Its accounting is not up to date, nor in a reasonably correct firm to continue its operations.
5. It is being administered in such way that the partners, persons or entities with deposits in it, are in danger of being defrauded.

It shall not be necessary to hold a hearing before issuing an order, when in the judgment of the Corporation, the Cooperative is undergoing an emergency situation, in which case the Corporation shall take possession and immediate control of the Administration of the Cooperative according to the regulations adopted thereby.

In these cases, an administrative hearing shall be held within ten (10) days following the date of notice of the order, to determine if the same shall be permanent or revoked. In situations where no emergency exists, the hearing shall be held prior to issuing the order. In either case, the

administrative hearing shall be held pursuant to the provisions of the Uniform Administrative Procedure Act.

After the mergers, consolidation, or the sale of assets and liabilities of an Insured Cooperative occurs, and that the Corporation has met the compulsory services, the insured accounts of the partners and depositors of the acquired Cooperative shall become shares and deposits in the acquiring institution.

Notwithstanding the above, in the judgment of the Corporation, it may issue an order for the Cooperative to show cause whereby the liquidation, mergers, consolidation, or sale of assets and liabilities of any Insured Cooperative shall not proceed, whenever the following circumstances coincide:

1. There is an emergency requiring immediate action with regard to such Insured Cooperative.
2. There is no other reasonable option that can assure the solvency of the Insured Cooperative.
3. It is determined that the merger, consolidation or purchase is the less costly option for the Corporation.

It shall not be necessary to hold a hearing prior to issuing an order, when in the judgment of the Corporation, the Cooperative has an emergency situation, in which case, the Corporation shall take possession and immediate control of the Administration of the Cooperative pursuant to the regulations adopted for this purpose by it.

In these cases, an administrative hearing shall be held within ten (10) days following the date of notice of the order to determine if the same shall be permanent or revoked. In situations where no emergency exists, the hearing shall be held prior to issuing the order. In any of the cases, the

administrative hearing shall be held pursuant to the provisions of the Uniform Administrative Procedure Act.

Any transaction for the mergers, consolidation, or sale of assets and/or liabilities to liquidate and/or dissolve an Insured Cooperative shall be made with cooperative institutions. However, the Corporation may perform said transactions with institutions that are not cooperatives when the cooperatives are not interested in performing the transaction. It is further provided, that no government entity of the Commonwealth of Puerto Rico shall issue orders or administrative actions decreeing the administration, trusteeship, merging, consolidation, purchase of assets and liabilities, or liquidation of any Insured Cooperative unless said action has the approval and ratification of the Corporation.”

Section 7.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 163 (H.B. 2261) of the 3rd Session of the 14th Legislature of Puerto Rico:

AN ACT to amend the Statement of Motives, Sections 4, 5, 9 and 20, and to add a subsection (y) to Section 3 to Act No. 114 of August 17, 2001, known as the “Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico Act”,

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

In San Juan, Puerto Rico, today 2nd of April of 2004.

Elba Rosa Rodríguez-Fuentes
Director