

(H. B. 3180)

**(No. 303)**

(December 16, 2003)

## **AN ACT**

To amend subsection (1) of Section 3.090, subsection (2) of Section 3.100, subsection (1) of Section 3.130, subsection (2) of Section 3.140, Section 3.150, subsection (1) of Section 3.151, and subsection (1) of Section 3.160 of Act No. 77 of June 19, 1957, as amended, known as the Puerto Rico Insurance Code, in order to increase the requirements of minimum capital as well as the requirements for deposit and investment in securities of Puerto Rico applicable to insurers; and to provide that an inactive insurer shall not have to increase its minimum capital, deposit, and/or investment in securities of Puerto Rico, as applicable, until it commences or resumes its business activity.

### **STATEMENT OF MOTIVES**

Sections 3.090 and 3.100 of the Insurance Code (the “Code”) establish the requirements of minimum paid-in capital or surplus for companies authorized to transact insurance in Puerto Rico. These requirements were established with the amendments conducted to the Code in the year 1973.

This Legislature believes that the requirements of capital imposed by the Code in 1973, and revised in 1979, for the kind of Surety and Fidelity no longer respond to the economic reality of 21<sup>st</sup> century Puerto Rico. With the passing of time, minimum capital requirements have become insufficient and inadequate, mainly because of the loss of buying power of the dollar.

This Legislature, in considering that the paid-in capital or surplus requirements of the Code have not been updated since the year 1973, that Puerto Rico is a jurisdiction exposed frequently to being hit by hurricanes,

that, in addition, its geographic conditions render it highly susceptible to earthquakes—both phenomena being catastrophic events of great importance and which could affect all the island—we recommend that in the case of property risk, the minimum paid-in capital or surplus requirement be established to be two million (2,000,000) dollars, without distinction whatsoever of the kind of insurers. Thus, we provide a greater protection to the policyholders of Puerto Rico.

We equally believe that it is necessary to update the paid-in capital or surplus requirements for companies that insure other kinds of risk. In the case of insurers authorized to transact other kinds of insurance, the paid-in capital and surplus requirements for the different kinds of insurance would be the following: (a) Disability \$1,000,000; (b) Life only \$1,500,000; (c) Agricultural only, Marine and Transport, Vehicle only and Ownership (d); Casualty \$2,000,000; (e) Life and Disability, and Surety and Fidelity \$1,500,000; and (f) Mortgage Loans and all insurances, except life and mortgage loans \$3,000,000.

On the other hand, this Act modifies the deposit requirement to provide that said deposit shall be equal to 50% of the minimum required capital, but in the case of foreign insurers, said deposit shall not be greater than one million (1,000,000) dollars. At present, the Code establishes that insurers authorized to transact insurance in Puerto Rico must maintain a deposit for the same amount that the minimum capital required under the Code. The amendment proposed would be increasing the requirements of minimum capital both for domestic insurers and foreigner insurers. However, we understand that it is not necessary or convenient to make an increase above the current maximum level of \$1,000,000, the deposit requirement on assets applicable to foreigner insurers. To increase said deposit requirement over

one million (1,000,000) dollars could, on the contrary, make extremely burdensome for foreign insurers to get authorized to transact insurance in Puerto Rico. For such a reason, it is advisable to fix as the maximum deposit required the sum of one million (1,000,000) dollars. In the case of domestic insurers, the deposit requirement is increased to half the minimum capital required. This deposit requirement, pursuant to the provisions of Section 3.130 of the Code, is not applicable regarding companies organized in jurisdictions within the United States, with which there is reciprocity.

Conforming to the above, we modify the requirement of investment in securities of Puerto Rico applicable to foreigner insurers authorized to transact insurance in Puerto Rico, to provide that said investment shall be equal to fifty (50) percent of the paid-in capital requirement. However, for the reasons stated in the above paragraph, said requirement is being leveled to a maximum of one million (1,000,000) dollars.

Finally, this Act amends Section 3.150 of the Code to establish that an insurer that is not doing business in Puerto Rico shall be able to postpone its compliance with the minimum capital requirements and the requirements of deposit and/or investment in securities of Puerto Rico with the escalator provision made by said section until it commences or resumes said business activity. The escalator provision referred to provides for a five-year period for an insurer authorized to transact insurance in Puerto Rico to increase its minimum capital, deposit and/or investment in securities of Puerto Rico, if at determined point in time the amount of any of these items is less than the required by law and it begins its business in Puerto Rico or if said requirements increase.

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

Section 1.- Subsection (1) of Section 3.090 of Act No. 77 of June 19, 1957, as amended, known as the “Puerto Rico Insurance Code,” is hereby amended to read as follows:

“Section 3.090.- Funds required from insurers.—

(1) To qualify to receive the authority to transact any kind of insurance, an insurer must have and hold paid-in capital or surplus stock in an amount which shall not be less than what appears in the applicable portion of the following schedule:

<b>Kind of insurance</b>	<b>Stock, mutual or cooperative insurers Capital or surplus required</b>	<b>Reciprocals or Lloyd’s Surplus required</b>
Life	\$1,500,000	Not applicable
Life and Disability	2,500,000	Not applicable
Disability	1,000,000	\$1,000,000
Property	2,000,000	2,000,000
Agricultural only	Must qualify for property insurance	
Marine and Transport	1,500,000	1,500,000
Casualty	2,000,000	2,000,000
Vehicles only	1,500,000	1,500,000
Surety and Fidelity	1,500,000	1,500,000
Title	1,500,000	Not applicable
Mortgage loans	3,000,000	Not applicable
All insurance except life and mortgage loans	3,000,000	3,000,000”

Section 2.- Subsection (2) of Section 3.100 of Act No. 77 of June 19, 1957, as amended, known as the Puerto Rico Insurance Code, is hereby amended to read as follows:

“Section 3.100.- Additional kinds of insurance, funds required of insurers.—

An insurer who is otherwise qualified therefore may be authorized to transact combinations of kinds of insurance other than the combinations stipulated in Section 3.090 of this Code, while possessing and maintaining additional paid-in capital, if a stock insurer, or additional surplus funds, if a mutual, cooperative, reciprocal or Lloyd’s insurer, in an amount not less than that which is determined as follows:

For any lawful combination, add two hundred thousand (200,000) dollars for each additional kind included in the combination to: the amount required under Section 3.090 of this Code for that one kind in the combination for which the largest amount is required under Section 3.090 of this Code, except that:

- (1) ...
- (2) With such paid-in capital or such surplus in the amount of not less than three million (3,000,000) dollars, an insurer, if otherwise qualified therefore, may be authorized to transact all kinds of insurance except life insurance.”

Section 3.- Subsection (1) of Section 3.130 of Act No. 77 of June 19, 1957, as amended, known as “Puerto Rico Insurance Code,” is hereby amended to read as follows:

“Section 3.130.- Deposit requirements—insurers organized in the United States.—

- (1) No insurer organized under the laws of a state of the United States may be authorized to transact insurance in Puerto Rico, unless it deposits and maintains on deposit assets worth not less than fifty (50) percent of the amount of the paid-in capital if a stock insurer,

or surplus if a mutual, cooperative, reciprocal or Lloyd's plan insurer, as required to be maintained for the kind or kinds of insurance to be offered in Puerto Rico notwithstanding the provision contained in Section 3.040(2) of this Code. Provided, that in no case shall said deposit be greater than one million (1,000,000) dollars.”

Section 4.- Subsection (2) of Section 3.140 of Act No. 77 of June 19, 1957, as amended, known as “Puerto Rico Insurance Code,” is hereby amended to read as follows:

“Section 3.140.- Deposit requirements—insurers not organized in the United States.—

(1) ...

(2) An insurer not organized under the laws of a state of the United States nor authorized to transact insurance in any of such states may not be authorized to transact insurance in Puerto Rico, unless it deposits and maintains on deposit in Puerto Rico assets worth not less than fifty (50) percent of the required capital if a stock insurer, or surplus if a mutual, cooperative, reciprocal or Lloyd's plan insurer, as shown under Section 3.090 of this Code for the kind or kinds of insurance to be so offered in Puerto Rico. Provided, that in no case shall said deposit be greater than one million (1,000,000) dollars. In addition to such deposit, the Commissioner may, in his discretion, require such an insurer to maintain in Puerto Rico such of its assets representing reserves, or part thereof, of its insurance business operating in Puerto Rico as the Commissioner deems advisable for the protection of policyholders in Puerto Rico.”

Section 5.- Section 3.150 of Act No. 77 of June 19, 1957, as amended, known as “Puerto Rico Insurance Code,” is hereby amended to read as follows:

“Section 3.150.- Requirements of capital or surplus; deposit and/or investment in Puerto Rican securities; authorized insurers; escalator provision.—

Every insurer authorized to transact insurance in Puerto Rico with capital or surplus funds or with a deposit and/or investment in Puerto Rican securities, smaller than that otherwise required under this Code, may continue to be so authorized without immediately increasing its capital or surplus funds or its deposit and/or investment in Puerto Rican securities, if within each one (1) of the five (5) years immediately following the effective date of any increase in said requirement, the insurer increases its capital or surplus funds, deposit and/or investment in Puerto Rican securities, in such amounts as may be proportionally needed, within such five (5)-year period, up to the amounts otherwise required.

If the authorized insurer is not doing business in Puerto Rico at the date of any increase in such requirement, it shall not be necessary for it to immediately increase its capital or surplus funds, deposit and/or investment in Puerto Rican securities, if within said five (5)-year period, or at that date if later, on which it commences or resumes its insurance business activity in Puerto Rico, it increases its capital or surplus funds, deposit and/or investment in Puerto Rican securities in the amounts as may be proportionally needed within such five (5)-year period, up to the amounts otherwise required.”

Section 6.- Subsection (1) of Section 3.151 of Act No. 77 of June 19, 1957, as amended, known as “Puerto Rico Insurance Code,” is hereby amended to read as follows:

“Section 3.151.- Deposit requirement, domestic insurers.—

- (1) No domestic insurer shall be authorized to transact insurance in Puerto Rico unless it deposits and maintains on deposit assets of a value not less than fifty (50) percent of the amount of the paid-in capital if a stock insurer or a cooperative insurer, or of the surplus funds if a mutual, reciprocal, or Lloyd’s plan insurer, as required to be maintained for such kind or kinds of insurance to be transacted in Puerto Rico, notwithstanding the provisions contained in Section 3.040(2) of this Code.”

Section 7.- Subsection (1) of Section 3.160 of Act No. 77 of June 19, 1957, as amended, known as “Puerto Rico Insurance Code,” is hereby amended to read as follows:

“Section 3.160.- Required investment in Puerto Rican securities.—

- (1) An insurer shall not be authorized to transact insurance in Puerto Rico unless it has and maintains invested in the securities as designated in subsection (2) hereof an amount not less than one half of the required capital, if a stock insurer, or surplus, if a mutual, reciprocal or Lloyd’s plan insurer, shown in Section 3.090 of this Code for the kind or kinds of insurance to be transacted in Puerto Rico. Provided, that in the case of foreign insurers, this amount shall not be greater than one million (1,000,000) dollars. From the investment required in this subsection, the insurer shall invest fifty (50) percent in the securities designated in clauses (a) and (b) of subsection (2) of this Section, and may invest the

remaining fifty (50) percent in the securities designated in subsection (2)(c) of this Section.”

Section 8.- Transitory Provision.—

The escalator provision established in Section 3.150 of the Puerto Rico Insurance Code shall be applicable to all companies that as of the date of approval of this Act have initiated or commenced at the Office of the Insurance Commissioner the process of organization and authorization as insurer. In this manner, then companies may be authorized as insurers without having to immediately increase their capital or surplus funds or their deposit and/or investment in Puerto Rican securities if within each of the five (5) years immediately following the date of having been authorized as insurers, they increase their capital or surplus funds, deposit and/or investment in Puerto Rican securities in the amounts as proportionately needed, up to the amounts otherwise required by this Act.

Section 9.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 303 (H.B. 3180) of the 6<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend subsection (1) of Section 3.090, subsection (2) of Section 3.100, subsection (1) of Section 3.130, subsection (2) of Section 3.140, Section 3.150, subsection (1) of Section 3.151, and subsection (1) of Section 3.160 of Act No. 77 of June 19, 1957, as amended, known as the Puerto Rico Insurance Code, in order to increase the requirements of minimum capital as well as the requirements for deposit and investment in securities of Puerto Rico applicable to insurers; and to provide that an inactive insurer shall not have to increase its minimum capital, deposit, and/or investment in securities of Puerto Rico, as applicable, until it commences or resumes its business activity,

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

In San Juan, Puerto Rico, today 30<sup>th</sup> of August of 2004.

Elba Rosa Rodríguez-Fuentes  
Director

