

(S. B. 2033)

(No. 104)

(Approved June 30, 2008)

AN ACT

To repeal clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x) of subsection (1) and add new clauses (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), (z), (aa), and (bb) to subsection (1) of Section 7.010; to amend clause (f) of subsection (2) of Section 7.010; and to amend subsections (2) and (4) of Section 2.071; to amend subsection (B) of Section 43.020 of Act No. 77 of June 19, 1957, known as the “Puerto Rico Insurance Code”; to repeal the third paragraph of Section 2 of Act No. 66 of May 27, 1976, as amended; and to repeal Section 15 of Act No. 62 of June 29, 1996, in order to update the contributions received by the Office of the Insurance Commissioner to enable the Commissioner to raise annual contributions every five (5) years through legislation to that effect, to group other contributions under Chapter 7 of the Puerto Rico Insurance Code, so as to enable the Office of the Insurance Commissioner to conserve in its coffers the total amount of income generated and deposited in the Insurance Industry Oversight and Regulation Fund, and to eliminate the transitory provisions set forth in Act No. 66 of June 27, 1996.

STATEMENT OF MOTIVES

Chapter 7 of Act No. 77 of June 19, 1957, as amended, known as the Puerto Rico Insurance Code (the Code), established the fees and taxes to be charged by the Insurance Commissioner, which would enable the Office of the Insurance Commissioner (the OIC) to discharge its ministerial duty of regulating the insurance industry.

Originally, Section 7.010 established 16 kinds of fees, which were due and payable upon request for service. This Section fixed, among others, the rates chargeable for the articles of incorporation or corporate charter of insurers; for insurer authorization certificates; for filing applications for permits to mediate for subscribers to equity shares or funds or policy request solicitation, and for the permit to solicit; for sales representative licenses; for broker licenses; and for broker, agent, solicitor, and adjuster licensure examinations.

In the following Section, Section 7.020, a tax on premiums was levied, which all insurers were to pay to the OIC on March 31 of each year. By virtue of the said Section, four (4) kinds of taxes on premiums and annuity considerations were also levied on insurance underwritten in Puerto Rico.

The following four Sections established the method whereby to file with the Commissioner an annual tax statement; the manner in which such funds to be received shall be treated (in the same manner as other public funds are treated); the authority of the Commissioner to impose fines and to revoke licenses for nonpayment; the authority to refund in the event that an insurer has overpaid; and the right of the Commonwealth to levy any other kind of tax.

Such six Sections laid the foundation for the OIC to receive an adequate amount of funds to be able to discharge its function of regulating the insurance industry. The first amendments to this Chapter were made in 1973. It would not be until June 5 of that same year—sixteen years after the Code was drafted—that the fees set forth by such Chapter would be revised. In general terms, the amendments adopted increased the fees to be charged for 35 different services as originally contemplated; moreover, they created

five new fees for services, to wit: for filing an insurer authorization application (\$100); for filing and analyzing the annual report (\$50); for filing foreign insurer merger or consolidation documents (\$50); for filing domestic insurer merger or consolidation documents (\$250); for applying for the eligibility declaration for a surplus line insurer (\$150); and for filing an eligibility certificate for a surplus line insurer (\$500).

After the approval of the amendments of 1973, there were three minor amendments made during the following six years. The first two amendments were made in 1974, when certain laws were approved which had no bearing on rates payable, since neither one increased any of the rates. Five years later, in 1979, Act No. 15 of February 16 made new amendments to this Chapter. This time, two new fees were included, to wit: consultant license fees (\$25) and attorney-in-fact license fees (\$10).

In 1992, amendments were made for the second time since the amendments of 1973, which brought about major changes as to the fees to be charged. This time, fees were increased by 163% on average, and 13 new fees were created. These new rates were established on account of new services, to wit: for a manager license (\$250); for a consultant license (\$200); for the filing and analyses of rates not requiring approval (\$100); for applying for an authorization (\$200); for issuing an authorization certification (\$500); and for applying as an automobile club (\$250), among others.

Lastly, in 1996, Act No. 62 of June 29 fixed the new fees to be charged by the OIC. This time around, all rates fixed were reorganized, some of the already-established rates were increased, and for the first time ever since Chapter 7 was penned, fees were established for insurers based on the volume of premiums underwritten.

The new fees were fixed in order to accomplish three objectives. Firstly, the OIC would be provided with additional revenues employable in the betterment and updating of human and technical resources. The second objective seeks to simplify the manner in which rates were charged by the OIC. Lastly, it would be a means for the OIC to receive recurring funding, which is necessary to run the operations of the OIC. These were the purposes behind the approval of the new schedules based on premiums underwritten by insurers, while regrouping the fees to be charged by the OIC.

The approval of Act No. 62 conferred onto the Commissioner the power, through regulations to that effect, to increase every five years the rates payable by insurers as fixed under Section 7.010, based on the average growth of the General Fund over those five years. From the approval of Act No. 62 in 1996 to the present, and by virtue of the adoption of Rule 77 of the Puerto Rico Insurance Code Regulations, the OIC has experienced growth in terms of rates annually payable by authorized insurers, which has had an infinitesimal impact (\$78,000) on the Agency's revenues.

The present measure pursues five objectives. The first is to make adjustments to the rates payable by insurers, and to temper the fees to be collected with the provisions established in Rule 77. The second objective is to establish additional fees for services offered by the OIC, as set forth in new chapters incorporated into the Insurance Code or as determined by the new trends in the demand for OIC services. The third objective is to group all fees fixed by the Code under one chapter for easy reference.

The fourth objective is to legislate in order to enable an increase of this fees every five (5) years, if such increase is determined to be necessary, by means of legislation to that effect, taking into account the budgetary needs of the OIC.

The fifth objective is to allow for the revenues thus collected and covered into the Insurance Industry Oversight and Regulation Fund to remain with the Office of the Insurance Commissioner, regardless of the total amount deposited into such Fund.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.—Section 7.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Section 7.010.—

(1) As a condition to remain or continue being authorized to procure or process any type of insurance in Puerto Rico, the following persons or entities shall pay to the Commissioner, not later than the date of expiration of their licenses or authorization certificates, the fees specified below:

Entity	Annual Fee
(a) Local insurers or health services organizations that subscribed a premium volume of less than five million (5,000,000) dollars during the preceding calendar year, as well as those whose volume of premiums subscribed derives solely and exclusively from healthcare services rendered under the Health Reform Plan of the Government of Puerto Rico.....	5,000

(b) Local insurers or health services organizations that subscribed a premium volume of five million (5,000,000) dollars or more, but less than twenty million (20,000,000) dollars during the preceding calendar year..... 27,000

(c) Local insurers or health services organizations that subscribed a premium volume of twenty million (20,000,000) dollars or more, but less than fifty-five million (55,000,000) dollars during the preceding calendar year..... 43,500

(d) Local insurers or health services organizations that subscribed a premium volume of fifty-five million (55,000,000) dollars or more, but less than eighty-five million (85,000,000) dollars during the preceding calendar year 92,000

(e) Local insurers or health services organizations that subscribed a premium volume of eighty-five million (85,000,000) dollars or more, but less than one hundred fifty million (150,000,000) dollars during the preceding calendar year..... 130,000

(f) Local insurers or health services organizations that subscribed a premium volume of one hundred fifty million (150,000,000) dollars or more, but less than two hundred thirty million (230,000,000) dollars during the preceding calendar year..... 149,500

(g) Local insurers or health services organizations that subscribed a premium volume of two hundred thirty million (230,000,000) dollars or more, but less than six hundred million (600,000,000) dollars during the preceding calendar year..... 172,000

(h) Local insurers or health services organizations that subscribed a premium volume of more than six hundred million (600,000,000) dollars during the preceding calendar year..... 200,000

(i) Foreign insurers 6,309

(j) Nonprofit shareholders organized under Act No. 152 of May 9, 1942—

(i) With a subscribed premium volume of fifty million (50,000,000) dollars or more during the preceding calendar year 31,545

(ii) With a subscribed premium volume of less than fifty million (50,000,000) during the preceding calendar year..... 5,257

(k) Charitable fraternity organizations 2,103

(l) Rate-setting bodies, for each kind of authorized insurance..... 2,103

(m) Advisory bodies 525

(n) Foreign insurers exclusively engaged in reinsuring..... 2,103

(o) Surplus line insurers..... 1,051

(p) Automobile clubs or associations 525

(q) Authorized representatives—

(i) Individuals 525

(ii) Corporations or partnerships with a premium production volume of less than one million (1,000,000) dollars.....1,051

(iii) Corporations or partnerships with a premium production volume of one million (1,000,000) dollars or more.....	2,103
(t) Settlements—	
(i) Viatical settlement investment agents	1,051
(ii) Viatical settlement brokers	1,051
(iii) Viatical settlement intermediaries	2,103
(iv) Viatical settlement providers.....	2,103
(u) Adjusters	210
(v) Non-residents intermediaries	841
(w) Attorneys-in-fact.....	105
(x) Consultants.....	420
(y) Surplus line brokers	525
(z) Managers—	
(i) Who represent two (2) or less insurers.....	1,051
(ii) Who represent more than two (2) insurers	5,257
(aa) General agents—	
(i) Who represent two (2) or less insurers.....	1,051
(ii) Who represent more than two (2) insurers	5,257
(bb) Charitable organizations as defined in Section 42.010.....	1,051

(2) The Commissioner shall charge in advance, and the persons and entities so served shall also pay in advance, the following fees and rates:

Service	Fees or Rates
(a) ...	
(i) ...	
(ii) ...	

- (b) ...
- (c) ...
- (i) ...
- (d) ...
- (e) ...
- (f) Examinations and provisional licenses—
 - (i) Licensing examination for intermediaries, authorized representatives, solicitors, adjusters, consultants, and attorneys-in-fact 150
 - (ii) Provisional license 150
- (g) ...”

Section 2.—Subsections (2) and (4) of Section 2.071 of Act No. 77 of June 19, 1957, as amended, are hereby amended to read as follows:

“Section 2.071.—

(1) ...

(2) The persons or entities who pay the annual fee established in Section 7.010 (1) shall not be bound to pay any of the examination fees or expenses established in this Act or by regulations. The scope of the above exemption does not include the payment of taxes on premiums, the payment of administrative fines, the payment of the fees established in Section 7.010 (2) (f), (g) or (h) of this Act, or the payment of publications sold by the Insurance Commissioner.

(3) ...

(4) The Commissioner, through legislation to such effect, may increase the fees established in the said Section 7.010, at five (5) year intervals, counted as of the date of approval of this Act, when the budgetary needs of the Office so warrant.”

Section 3.—Subsection (B) of Section 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Section 43.020.—Licenses; Requirements.—

A. ...

B. Applicants shall submit their applications to the Commissioner to obtain a viatical settlement broker license and to be authorized to do business as viatical settlement providers on such form as may be designated by the Commissioner, and such applications shall be accompanied with the payment of the annual fee as specified in Section 7.010 (1) of the Puerto Rico Insurance Code and Rule 77 of the Regulations approved under the said Code. Viatical settlement brokers and viatical settlement providers shall pay the fees established in Section 7.010 of this Code. If the viator is a resident of another jurisdiction, such viatical settlement shall be governed by legislation appertaining to the jurisdiction wherein the viator resides.

C. ...

D. ...

E. ...

F. ...

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

G. ...

H. ...”

Section 4.—The third paragraph of Section 2 of Act No. 66 of May 27, 1976, as amended, is hereby repealed to read as follows:

“Section 2.—

The income generated as a result of the provisions in Section 1 of this Act shall be used to defray the regular operating expenses of the Office of the Insurance Commissioner. They shall also be used to defray the expenses incurred for the upgrading of jobs; cost of computer system; educational programs; scholarships for technical training of employees; the creation, through regulations to such effect, of internship programs in the OIC through the contracting of university students; additional compensation to assistants or employees of said OIC for professional or official services rendered in addition to their regular workday, and the regular functions of said assistant or employee; and to carry out research and studies in the insurance field, compile statistics, create a unit to adequately supervise insurance companies and health services organizations, file legal actions, or intervene before judicial forums in cases vested with substantial public interest, sponsor lectures on the insurance field and initiatives of similar nature incurred by the Insurance Commissioner to effectively serve the insurance industry, protect the public interest, and maintain supervision and regulation of the highest excellence and professional competence.

Since the annual fee established in Sections 2.071 and 7.010 of Act No. 77 of June 19, 1957, as amended, may only be amended every five (5) years, at the end of each fiscal year the Commissioner shall retain any surplus remaining in the Insurance Industry Investigation and Examination Fund, in order to defray the budgetary needs of the Office of the Insurance Commissioner, when the Fund's income is not sufficient to cover them.”

Section 5.—Section 15 of Act No. 62 of June 29, 1996, is hereby repealed.

Section 6.—This Act shall take effect immediately after its approval, except for the provisions of Section 1, which shall take effect on June 1st, 2009.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 104 (S. B. 2033) of the 7th Session of the 15th Legislature of Puerto Rico:

AN ACT to repeal clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x) of subsection (1) and add new clauses (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), (z), (aa), and (bb) to subsection (1) of Section 7.010; to amend clause (f) of subsection (2) of Section 7.010; and to amend subsections (2) and (4) of Section 2.071; to amend subsection (B) of Section 43.020 of Act No. 77 of June 19, 1957, known as the “Puerto Rico Insurance Code”; etc.

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

In San Juan, Puerto Rico, today 15th of October of 2009.

Solange I. De Lahongrais, Esq.
Director