

(H. B. 459)

**(No. 136-2010)**

(Approved September 21, 2010)

## **AN ACT**

To repeal Act No. 106 of August 6, 1996, known as the “Act to Regulate the Monetary Transaction Business,” and Act No. 119 of August 11, 1996, as amended, known as the “Check-Cashing Business Regulatory Act,” and substitute them for the new “Money Service Business Regulatory Act,” in order to adjust its provisions to our current reality using the “Uniform Money Services Act” as a model.

### **STATEMENT OF MOTIVES**

The purpose of this legislation is to repeal the “Act to Regulate the Monetary Transaction Business” and the “Check-Cashing Business Regulatory Act,” which are currently in effect, in order to substitute them for the new “Money Services Business Regulatory Act.” This new law compiles the other two and standardizes them using the provisions of the “Uniform Money Services Act” (hereinafter, the “Uniform Act”) as a model.

The “Uniform Act” was drafted by a Committee appointed by the National Conference of Commissioners on Uniform State Laws. Said “Uniform Act” was enacted in 2000 and amended in 2004. It contains provisions to promote security and legality in various types of money service businesses, among which are money transmitting and check cashing businesses. The “Uniform Act” provides the states with an opportunity to address all that pertains to the licensing and regulation of businesses that render these types of money services in a standard and consistent manner.

The provisions of this new “Uniform Act” include those aimed at establishing more stringent requirements for granting money service licenses, as well as those aimed at preventing money laundering. It is well known that money laundering becomes more common in the Island with each passing day. To stop this social evil in our society, stricter criteria are necessary, especially for those businesses that are prone to such risk. In the last few years, the banking industry has raised security and oversight standards with regards to money laundering. Thus, criminals have sought other type of financial institutions to easily transfer or exchange their money, or convert large amounts of cash into checks or other means of payment.

For such reason, the new “Money Services Business Regulatory Act” includes provisions aimed at regulating all that pertains to money laundering in a stringent and more standardized manner, and adjusting our laws to the provisions that all money service businesses must comply with according to applicable Federal laws.

Acknowledging the importance of establishing and maintaining a safe and trustworthy financial industry in Puerto Rico, this Legislative Assembly deems it necessary to set forth advanced legislation to position the Island among the countries that are committed to protect citizens, prevent money laundering, and enforce compliance with all applicable Federal laws by money service businesses.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

**MONEY SERVICE BUSINESS REGULATORY ACT**

**CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**

**Section 1.1. – Short Title. –**

This Act shall be known as the “Money Service Business Regulatory Act.”

Section 1.2. – Definitions. –

For purposes of this Act, the following definitions are hereby adopted:

(a) Liquid Assets. – means assets that can be converted into cash in a short time, with little or no loss in value. These include cash, as well as bank deposits and securities with a maturity of less than three (3) months.

(b) Authorized Delegate. – means a person designated by the licensee to engage in the business of Money Service on his/her behalf pursuant to the provisions of this Act.

(c) NAFTA. – means the “North American Free Trade Agreement,” 19 U.S.C. §§ 3301, *et seq.*

(d) Bank. – means an institution engaged in the banking business, including banks, savings and loan associations, savings and credit unions, or trust companies organized under the laws of the Commonwealth of Puerto Rico, the United States, any other foreign country, or any state of the United States, and authorized by the pertinent entities to do business in Puerto Rico.

(e) Bank Secrecy Act. – means the “Bank Secrecy Act,” 31 U.S.C. §§ 5311, *et seq.*

(f) Beneficiary. – means a person to whom an obligation incurred through a Money Transmitting Business is due.

(g) Check Cashing. – means to provide cash in exchange for checks, for which a service charge is collected or withheld.

(h) Capital. – means the sum of all resources and securities used to organize and start a business; the amount invested in a business by its owners, partners, or shareholders.

(i) Service Charge. – means the amount of money, rate, discount, or commission that persons engaged in any money service business charge clients directly, indirectly, or disguised as compensation for services rendered in such capacity.

(j) Check. – means a bill of exchange or order drawn against a bank, requiring payment at sight against deposited funds, including, but not limited to, money orders, traveler’s checks, or any payment order or instrument to transfer or pay money.

(k) Post-dated Check. – means a check issued for collection at a future date.

(l) Commissioner. – means the Commissioner of Financial Institutions of Puerto Rico.

(m) Licensee. – means a person holding a license issued by the Commissioner under this Act.

(n) Financial Statement. – means a document presenting the financial position, operating results, and cash flow status of an institution that has been prepared using generally accepted accounting principles.

(ñ) FINCEN. – means the “Financial Crimes Enforcement Network of the United States Department of the Treasury.”

(o) Check Cashing Business. – means to offer services or engage in activities in which a check is exchanged for cash. Such services require the person for whom the exchange is processed, transacted, or conducted to pay a service charge.

(p) Money Transmitting Business. – means to offer services or engage in activities in which any order of payment is received, including, but not limited to bank drafts, checks, personal money orders, or any other means of money transmission or payment, including those carried out by electronic transfer, wire,

telephone, or any other medium to be transferred to a beneficiary, and which services require the person for whom the money transmission is processed, transacted, or conducted to pay a service charge.

(q) OCFI. – means the Office of the Commissioner of Financial Institutions, created under Act No. 4 of October 11, 1985, as amended.

(r) OFAC. – means the Office of Foreign Asset Control of the United States Department of the Treasury.

(s) Office. – means the location of the licensee's main office and any other place or mobile location in which money services are rendered.

(t) Net Worth or Capital. – means the total amount of assets minus the total amount of liabilities.

(u) Person. – means any natural or juridical person, including, but not limited to individuals, partnerships, corporations, trusts, or any other natural juridical [sic] entity.

(v) Average Annual Outstanding Money Transmission. – means the total unpaid Money Transmissions computed using the monthly arithmetic means for the twelve (12) months prior to all the transfer orders that have been accepted by the licensee or reported as accepted by an authorized delegate, but not yet paid by the licensee to the client or beneficiary on the same day such orders were made.

(w) Money Services. – includes Money Transmitting and/or Check Cashing Businesses.

(x) Money Transmissions. – means any order of payment, including, but not limited to bank drafts, checks, personal money orders, or any other means of transferring money, including those carried out by electronic transfer, wire, telephone, or any other medium, processed in favor of a beneficiary.

(y) Mobile Location. – means any vehicle or portable facility where money services are provided.

(z) U.S.A. Patriot Act. – means the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act,” Pub. L. 107-56 of October 26, 2001.

Section 1.3. – Applicability and Excluded Entities. –

(a) This Act shall apply to any person who offers or provides money services.

Any person who, upon the approval of this Act, is operating a Money Transmitting Business authorized under Act No. 106 of August 6, 1996, and/or a Check Cashing Business authorized under Act No. 119 of August 11, 1996, as amended, may continue operating such business under the provisions of said laws. However, any person who holds a license to operate any of these businesses, whose license expires during the effective term of this Act, shall file a renewal application in accordance with the provisions and requirements set forth herein.

(b) The following persons or entities shall not be subject to the provisions of this Act:

(1) Banks, as defined herein, whose permitted activities include money transmissions and check cashing;

(2) The United States Postal Service, federal or state agencies, or entities of the Government of Puerto Rico or any foreign country.

(c) Persons acting on their capacity as owners, partners, directors, officials, agents, or employees of any of the entities excluded from the applicability of this Act may engage in any money service business without a license issued therefor exclusively for the benefit of their institutions; however, if they do, they may not collect service charges as individuals.

## CHAPTER 2. GENERAL PROVISIONS FOR LICENSING

### Section 2.1. – License Required. –

No person, except those excluded under Section 1.3(b) of Chapter 1 of this Act, may engage in any money service business in the Commonwealth of Puerto Rico, in exchange for a service charge, without first obtaining a license issued by the Commissioner as provided below.

### Section 2.2. – License Application. –

(a) Persons interested in obtaining a license to engage in any money service business shall file an application with OCFI. Such application shall contain:

(1) The full name, and the residential and mailing address of the applicant;

(2) The business and mailing address, as well as the telephone number of the main office of the business in Puerto Rico where the accounting books and all documents related to the business' operations shall be kept;

(3) Any trade name used by the applicant in the conduct of its business;

(4) The business and mailing address, as well as the telephone number, of any additional office to be established, if any;

(5) The full name, the business and mailing address, as well as the telephone number, of the statutory agent in Puerto Rico, and the date on which such agent was designated;

(6) A criminal record certificate of the applicant, as well as the history of the applicant's litigations and/or complaints, both in Puerto Rico and at the Federal level, for the five (5)-year period preceding the date of the application. In the case of juridical persons, the provisions of subsection (b)(5) of this Section shall apply;

(7) A description of any money services previously provided by the applicant and the type of money services in which such applicant seeks to be engaged in Puerto Rico;

(8) The name and address of the applicant's depository bank;

(9) A copy of the applicant's financial statements for the fiscal year preceding the year of application, duly certified by a Certified Public Accountant authorized to practice in Puerto Rico or the United States;

(10) The amount and description of the applicant's liquid assets, certified under oath by his/her chief financial officer;

(11) A description certified under oath of the source of money and line of credit to be used by the applicant to provide money services in Puerto Rico;

(12) Any other document or information required by the Commissioner to determine whether the applicant is eligible for and should be granted a license pursuant to the application he/she has filed.

(b) If the applicant is a juridical person, the following shall also be submitted:

(1) The date of the applicant's incorporation or formation and the state or country of incorporation and organization;

(2) A certificate of good standing from the state or country in which the applicant is incorporated;

(3) A brief description of the applicant's entity or organization, including any parent company or subsidiary, and whether any parent company or subsidiary is publicly traded on a recognized stock exchange;

(4) The legal name, any trade name, all residential and mailing addresses, and the place of employment of every partner, director, or executive officer for the five(5)-year period preceding the filing of the application;

(5) A criminal record certificate, as well as the history of litigations and/or complaints, both in Puerto Rico and at the Federal level, in which any partner, shareholder, director, or executive officer has been involved for the five (5)-year period preceding the date of the application;

(6) The name, and the residential and mailing address of the resident agent authorized to receive service of process; as well as the residential and business address, and the telephone number of his/her place of employment;

(c) The Commissioner may waive any requirement or allow an applicant to submit other information in lieu of that generally required if he/she determines that such action is consistent with the purposes of this Act.

(d) The license application shall enclose any license and investigation fees, as well as the required bond, as provided in the corresponding Sections.

(e) Any application to engage in a money service business filed with the OCFI shall entail all those investigations considered proper and necessary to determine if the applicant and/or the partners, or the directors and executive officers, in the case of a juridical person, meet all the requirements established in this Act.

(f) The Commissioner may extend the period provided by law and/or regulation to consider the license application.

### Section 2.3. – Application Returned or Denied. –

(a) After evaluating the license application, the Commissioner may return the same to the applicant for any of the reasons below, without it being understood as a limitation:

(1) The application was not filed in accordance with the provisions of this Act or the rules or regulations promulgated thereunder;

(2) The application lacks information or documents;

(3) The license application filed seeks authorization to engage in a business not authorized in the Commonwealth of Puerto Rico.

(b) In the event that the Commissioner returns the application, the amount paid for investigation costs and license fees shall be refunded to the applicant.

(c) Upon evaluating an application to engage in a money service business and carrying out the corresponding investigation, the Commissioner may deny such application if he/she deems that the applicant has failed to meet any of the requirements set forth herein.

(d) An applicant whose application to engage in a money service business has been denied may request reconsideration to the Commissioner within twenty (20) days following the notice of denial.

(e) In the event that the Commissioner denies a license, he/she shall retain the amount paid for investigation costs and refund the license fees to the applicant.

#### Section 2.4. – Issuance of License. –

(a) If the application is approved, the Commissioner shall issue a license to the applicant to engage in the requested money service business, which license shall include the name of the licensee, the address of the office in Puerto Rico where such business shall be conducted, the date of issue, and the expiration date.

(b) A license shall be issued for each office. Said license shall not be used in a location or office other than the one whose address is shown thereon and shall be placed conspicuously visible to the public in such business office. The license to engage in the requested money service business is nontransferrable.

(c) Every holder of a license to engage in a money service business shall begin operations within a term that shall not exceed ninety (90) days after the date on which the Commissioner issued the license. If the licensee is unable to begin operations within the term set forth herein, he/she shall request an extension to the

Commissioner and explain the reasons therefor. The Commissioner, in his/her sole judgment, shall determine if such reasons are a valid justification to grant an extension.

The license shall be void if operations do not begin within the term provided herein or within the term of any granted extension.

Section 2.5. – License Renewal. –

(a) Each license shall remain in effect until its expiration, which shall be at the end of each calendar year.

(b) Every license renewal application, as provided by OCFI, shall be filed on or before December 1 of each year. The same shall include:

(1) A description of any material change to the information submitted to OCFI in the original license application;

(2) Evidence that the licensee maintains the surety bond or security posted in accordance with Section 3.4 of Chapter 3 or Section 4.4 of Chapter 4 of this Act, as applicable. If the Commissioner determines that such surety bond or security is inadequate, insufficient, or totally or partially exhausted, he/she may request, by written order and within thirty (30) days after filing the notice, that the licensee posts a new or supplemental surety bond, or the deposit of new or additional securities, in order to ensure compliance with this Act or the rules or regulations promulgated thereunder;

(3) Evidence of the licensee's registration with FINCEN as a Monetary Service Business, or "MSB."

(4) Any other information, documentation, or report that the Commissioner may require to keep current the information and documentation included in the application.

(c) The Commissioner may extend the renewal term.

(d) If the licensee fails to file a renewal application or pay the applicable fees within the term granted or during the additional time extension authorized by the Commissioner, if any, it shall be understood that such licensee has surrendered the license to operate a money service business, and may not continue operating the same.

(e) The Commissioner may call a meeting with the person who surrendered the license to require him/her to hand over the license and pay any outstanding debts with OCFI.

Section 2.6. – Surrender, Revocation, Cancellation, and Suspension of License. –

(a) All licensees may surrender a license by providing a written notice to the Commissioner, who may direct and conduct an examination of the licensee's business before accepting such surrender. If, after the examination, the licensee were found to have committed any violation of law, the Commissioner may revoke such license and impose the corresponding penalty pursuant to the provisions of this Act.

(b) The Commissioner may revoke, cancel, or suspend the license of any licensee for any violation of this Act or the Regulations promulgated thereunder, and/or if he/she determines that a fact exists which, if it had existed or had been discovered at the time when the license was issued would have been sufficient cause to deny the same.

The revocation, cancellation, or suspension process shall be carried out according to the powers or authorities conferred by Act No. 4 of October 11, 1985, as amended, known as the "Financial Institutions Commissioner's Office Act," and pursuant to Act No. 170 of August 12, 1988, as amended, known as the "Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico."

(c) No surrender, revocation, cancellation, or suspension of any license shall impair or affect the obligations arising from any existing valid contract between the licensee and other persons.

### CHAPTER 3. MONEY TRANSMITTING BUSINESSES

#### Section 3.1. – Applicability. –

This Chapter shall apply to any person engaged in the Money Transmitting Business as such term is defined in Section 1.2 of Chapter 1 of this Act.

#### Section 3.2. – License Requirements. –

To obtain a license to engage in a Money Transmitting Business under this Act, the applicant shall:

(a) Have a net worth of not less than five hundred thousand dollars (\$500,000) calculated in accordance with generally accepted accounting principles;

(b) Have liquid assets worth of at least one hundred thousand dollars (\$100,000);

(c) File a license application and post the corresponding bond with OCFI;  
and

(d) Have a reputation, moral probity, financial responsibility, experience, character, and general fitness that reasonably warrant the belief and the probability that such applicant, as well as his/her partners, directors, and executive officers, shall operate its business honestly, efficiently, and in the public interest.

#### Section 3.3. – License Application. –

In addition to the requirements established in Section 2.2 of Chapter 2 of this Act, every application for a license to engage in a Money Transmitting Business shall be filed together with:

(a) An annual license fee in the amount of two thousand five hundred dollars (\$2,500) per office, to be paid by manager's check, certified check, money order, or bank draft to the order of the Secretary of the Treasury. An additional annual fee of one hundred dollars (\$100) shall be required per authorized delegate. If the license is applied for or issued after June 30 of any year, the annual fee for that specific year only shall be one thousand two hundred fifty dollars (\$1,250) and an additional fifty dollars (\$50) per each authorized delegate;

(b) A manager's check, certified check, money order, or bank draft in the amount of two thousand five hundred dollars (\$2,500) to the order of the Secretary of the Treasury, to defray the cost of the investigation required under this Act. In the event that the cost of the investigation exceeds the aforesaid amount, the Commissioner shall notify the applicant that, in order to continue with the licensing process, such applicant shall deposit the necessary amount with OCFI to cover such cost;

(c) A list identifying the applicant's proposed authorized delegates and the location where the applicant and such authorized delegates intend to conduct such money transmitting business in Puerto Rico;

(d) A copy of the contract that shall govern the relationship between the applicant and his/her authorized delegates;

(e) A certification whereby both the applicant and his/her authorized delegates state that they:

i. are familiar and willing to fully comply with all applicable Federal and Commonwealth laws, as well as with the regulations related to the money transmitting business proposed by the applicant, including this Act, the applicable provisions of the "Bank Secrecy Act," and the "U.S.A. Patriot Act";

ii. Have adopted such business policies and procedures as necessary to comply with the provisions of OFAC; and[sic]

Section 3.4. – Bond. –

(a) Any person who applies for a license to engage in a Money Transmitting Business shall post, together with the application, a bond to vouch for full compliance with the provisions of this Act and any rules or regulations promulgated thereunder. Said bond shall respond to any person, including OCFI, and shall be in the amount of five hundred thousand dollars (\$500,000) if the applicant intends to conduct business only in one office. For every additional office or authorized delegate to conduct business, the bond shall be increased by ten thousand dollars (\$10,000). However, the Commissioner may require a higher bond based on the licensee's volume of business and his/her financial situation. The bond shall be renewed every year.

Within the terms and conditions of each surety bond, it must be specified that such bond shall respond for claims brought by any person, including OCFI, for a period of at least five (5) years from the date on which the facts that prompted such claim took place.

(b) The bond shall be posted with the Office of the Commissioner and may consist of:

(1) A bond issued by an insurance company authorized to conduct business in Puerto Rico, which shall be subject to cancellation only through written notification to the Commissioner not less than thirty (30) days prior to such cancellation;

(2) Bonds, notes, or other evidence of indebtedness of the Commonwealth of Puerto Rico, its municipalities, and public corporations; provided, that the same shall be accepted at eighty percent (80%) of their market value at all times; or

(3) Certificates of deposit issued by banks authorized to do business in Puerto Rico.

(c) Securities deposited as bond may be registered, with regards to their principal, in the name of the applicant, and the same must be accompanied with a separate endorsement, including a description of the endorsed securities, in the name of the Secretary of the Treasury. Certificates of deposit shall be assigned to the Secretary of the Treasury and the funds shall not be withdrawn without the express authorization of the Commissioner.

#### Section 3.5. – License Renewal. –

In addition to the provisions of Section 2.5 of Chapter 2 of this Act, every renewal application to engage in a Money Transmitting Business shall include the following:

(a) A list of locations at which authorized delegates carry out such money transmissions;

(b) Evidence that the licensee maintains a net worth of not less than five hundred thousand dollars (\$500,000) calculated in accordance with generally accepted accounting principles;

(c) Evidence that the licensee maintains liquid assets worth one hundred thousand dollars (\$100,000) or more;

(d) A certification attesting that the licensee and all his/her authorized delegates have not accepted money to carry out transmissions knowing that any portion of such money was derived from unlawful activities or transactions, and have not failed to file or evaded their reporting requirement, including money transactions or suspicious activity reports, as required by the “Bank Secrecy Act” and the “U.S.A. Patriot Act,” in the three (3) years prior to filing the application.

(e) An annual license fee in the amount of two thousand five hundred dollars (\$2,500) per office, to be paid by manager’s check, certified check, money order, or bank draft to the order of the Secretary of the Treasury. An additional annual fee of one hundred dollars (\$100) shall be required per authorized delegate.

Section 3.6.– Additional Requirements in Case of Surrender, Revocation, Cancellation, or Suspension of Money Transmitting Business License.–

If a licensee surrenders his/her license, or if the same is revoked, cancelled, or suspended, he/she shall have the responsibility to notify his/her delegates to immediately cease to provide money services. The licensee must also retrieve all books, files, and documents related to the money transmitting business conducted by authorized delegates.

If a contract with an authorized delegate is rescinded, if the Commissioner suspends or revokes an authorized delegate's authorization, or if an authorized delegate decides to cancel his/her contract with the licensee or otherwise render it ineffective, the licensee shall have the responsibility to retrieve the machines and/or system used to carry out money transmissions, as well as the books, files, and documents related to the money transmitting business conducted by such authorized delegate.

Section 3.7. – Establishment of a Separate Account. –

(a) Every licensee shall maintain any money he/she received, either directly or through any of his/her authorized delegates, to carry out money transmissions in a separate account from the time the same are received until the money transmission is carried out.

(b) Every authorized delegate of a licensee shall maintain any money received to carry out money transmissions in a separate account from the time such money is received until it is remitted by the authorized delegate to the licensee.

(c) The money deposited in a separate account shall not be deemed to be part of the assets or wealth of the licensee or authorized delegate.

(d) No licensee or authorized delegate may commingle funds received for transmission by or to the licensee with his/her own personal or business funds or any other personal or business property.

(e) If the Commissioner revokes a licensee's license, any money deposited in the separate account of the licensee or authorized delegate may be assigned to the Commissioner for the benefit of the claimants of pending money transmissions.

Section 3.8. – Responsibilities of Money Transmitting Business Licensee.–

(a) Every licensee shall file a certified report with OCFI that includes the total number of money transmissions carried out, classified by authorized delegate and country of destination, in the format required by the Commissioner from time to time. Such report shall be required by the close of each calendar year and be filed on or before March 1 of the year following the close. The report shall be submitted electronically to the internet address that the Commissioner may determine from time to time.

(b) The licensee may engage in a Money Transmitting Business in the Commonwealth of Puerto Rico through the authorized delegates he/she designates and authorizes in accordance to this Section at the appropriate time.

(c) For a licensee to conduct a Money Transmitting Business through an authorized delegate, he/she must:

(1) Adopt written business policies and procedures to ensure that authorized delegates operate in full compliance with applicable Federal and Commonwealth laws related to money service businesses, including this Act, the "Bank Secrecy Act," and the "U.S.A. Patriot Act";

(2) Adopt written business policies and procedures to ensure that authorized delegates operate in full compliance with the provisions of OFAC for Money Transmitting Businesses;

- (3) Require the following from authorized delegates:
  - (a) A debt certification issued by the Secretary of the Treasury;
  - (b) Evidence of municipal license payment for the location where the authorized delegate intends to operate the business;
  - (c) A criminal record certificate of the authorized delegate to be designated issued by the Puerto Rico Police Department;
- (4) Execute a contract with the authorized delegate, which shall include at least the following provisions:
  - (a) Designation of the delegate as the person authorized to conduct the Money Transmitting Business on behalf of the licensee;
  - (b) Nature and scope of the relationship between the licensee and the delegate, as well as the rights and responsibilities of both parties;
  - (c) Certification attesting that the delegate is familiar with all applicable Federal and Commonwealth laws, regulations, and provisions related to Money Transmitting Businesses, including this Act, the “Bank Secrecy Act,” and the “U.S.A. Patriot Act,” and that he/she agrees to fully comply therewith;
  - (d) All that pertains to transmission and management of money received by the delegate;
  - (e) All that pertains to the establishment of a separate account for the management of the money received, in accordance with Section 3.7 of this Chapter;
  - (f) A requirement for the delegate to prepare and maintain his/her documents and files as required herein or by the Commissioner or any other applicable law or regulation;

(g) Consent of the delegate to undergo examinations and/or investigations by the Commissioner;

(h) Acknowledgement that the licensee is subject to the Commissioner's regulations and that, as part of the latter's powers, the Commissioner may suspend or revoke the designation of a delegate or demand that the licensee withdraws the designation of an authorized delegate;

(i) Acknowledgement of the delegate that he/she received the licensee's written standards and procedures and that he/she agrees to adhere thereto;

(d) Any person and/or licensee shall be responsible for the payment of all the transmissions carried out either directly or through an authorized delegate.

(e) Every licensee shall file a quarterly report with OCFI including the name, residential address, business location, and social security or employer identification number, as applicable, of each new authorized delegate, and shall pay the amount of one hundred dollars (\$100) on account of fees for every new authorized delegate. In such report, the licensee shall notify of any authorized delegates whose contracts have been cancelled, suspended, or rescinded. In the event that the licensee does not designate an authorize delegate in a particular quarter, or has no authorized delegates whose contracts have been cancelled, suspended, or rescinded, such licensee shall file a negative quarterly report.

All quarterly reports shall be filed with OCFI not later than thirty (30) days after March 31, June 30, September 30, and December 31 of each year.

**Section 3.9. – Responsibilities and Prohibitions of Authorized Delegates. –**

(a) Every authorized delegate has the duty to:

(1) Act according to the authorization granted through the contract executed with the licensee and in strict compliance with the latter's standards and procedures;

(2) Notify the licensee immediately after any theft or loss of payment instruments or money;

(3) Display in a conspicuous place at the office that he/she is an authorized delegate of a licensee under the provisions of this Act, as well as the service charges for money transmissions;

(4) Immediately cease to operate as an authorized delegate of that licensee or take any required action upon receipt of a notice from the Commissioner or the licensee to such effects;

(5) Remit to the licensee any money from transmissions plus service charges:

(a) In accordance with the terms of the contract executed between the licensee and the authorized delegate; or

(b) As provided in the rules and regulations adopted under this Act;

(6) Fully comply with the applicable Federal and Commonwealth laws and regulations related to money transmitting businesses proposed by the applicant, including this Act, and the applicable provisions of the "Bank Secrecy Act" and the "U.S.A. Patriot Act;"

(7) File a money transaction or suspicious activity report, as required by the "Bank Secrecy Act" and the "U.S.A. Patriot Act," whenever necessary;

(8) Establish standards and procedures as necessary to comply with the provisions of the OFAC.

(b) No authorized delegate shall:

(1) Make money advances to the client as loan to later charge for such service;

(2) Enter into a contract with a third party to provide money transmission services on behalf of the licensee;

(3) Provide money transmission services outside the scope of activity permissible under the contract between the authorized delegate and the licensee;

(4) Carry out money transactions knowing that any portion of the money was derived from unlawful activities or transactions.

(c) Any business requiring a license under this Act and conducted by an authorized delegate outside the scope of specific powers granted in the contract executed with the licensee shall be deemed to be a business that operates without a license.

(d) Violations of any of the provisions of this Act, or the rules or regulations promulgated thereunder, shall suffice for the Commissioner to order the immediate cancellation of all contracts executed between the authorized delegate and the licensee.

#### CHAPTER 4. CHECK CASHING

##### Section 4.1. – Applicability and Exclusions. –

(a) This Chapter shall apply to any person engaged in the check cashing business as such term is defined in Section 1.2 of Chapter 1 of this Act.

(b) In addition to the persons or entities excluded in Section 1.3(b) of Chapter 1 of this Act, the following persons or entities shall not be subject to the provisions of this Chapter:

(1) Persons or entities that cash checks free of charge;

(2) Persons or entities for who check cashing is an activity which is inherent or related to a lawful main business or commercial activity;

(3) Persons or entities that hold a license issued by the OCFI to engage in the money transmitting business.

Section 4.2. – Requirements to Obtain a License to Operate a Check Cashing Business. –

(a) The Commissioner shall issue a license to engage in the check cashing business to any applicant upon determining whether such applicant has met all of the following conditions:

(1) Have a net worth of not less than fifty thousand dollars (\$50,000), calculated in accordance with generally accepted accounting principles;

(2) Have liquid assets worth of not less than twenty-five thousand dollars (\$25,000);

(3) File a license application and post the corresponding bond with OCFI; and

(4) Have a reputation, moral probity, financial responsibility, experience, character, and general fitness that warrant the belief and the probability that such applicant, as well as his/her partners, directors, and executive officers, shall operate its business honestly, efficiently, and in the public interest.

Section 4.3. – License Application. –

In addition to the requirements set forth in Section 2.2 of Chapter 2 of this Act, every application to engage in a Check Cashing Business shall include:

(a) An annual license fee in the amount of five hundred dollars (\$500) per office, to be paid by manager's check, certified check, money order, or bank draft to the order of the Secretary of the Treasury. An additional annual fee of five hundred dollars (\$500) shall be required per every additional office to be established. If the license is applied for or issued after June 30 of any year, the annual fee for that specific year shall only be two hundred fifty dollars (\$250);

(b) A manager's check, certified check, money order, or bank draft in the amount of five hundred dollars (\$500) to the order of the Secretary of the Treasury, to defray the cost of the investigation required under this Act. In the event that the

cost of the investigation exceeds the aforesaid amount, the Commissioner shall notify the applicant that, in order to continue with the licensing process, the applicant shall deposit the necessary amount with OCFI to cover such cost.

Section 4.4. – Bond. –

(a) Any person who applies for a license to engage in a Check Cashing Business shall post, together with the application, a bond to vouch for full compliance with the provisions of this Act and any rules or regulations promulgated thereunder. Said bond, which shall be in the amount of twenty-five thousand dollars (\$25,000), shall respond to any person, including OCFI, if the applicant intends to conduct business in only one office. For every additional office, the bond shall be increased by five thousand dollars (\$5,000). However, the Commissioner may require a higher bond based on the licensee's volume of business and his/her financial situation. The bond shall be renewed every year.

Within the terms and conditions of each surety bond, it must be specified that such bond shall respond for claims brought by any person, including OCFI, for a period of not less than five (5) years from the date on which the facts that prompted such claim took place.

(b) The bond shall be posted with the Office of the Commissioner and may consist of:

(1) A bond issued by an insurance company authorized to conduct business in Puerto Rico, which shall be subject to cancellation only through written notice to the Commissioner within not less than thirty (30) days prior to such cancellation;

(2) Bonds, notes, or other evidence of indebtedness of the Commonwealth of Puerto Rico, its municipalities and public corporations; provided, that the same shall be accepted at eighty percent (80%) of their market value at all times; or

(3) Certificates of deposit issued by banks authorized to conduct business in Puerto Rico.

(c) Securities deposited as bond may be registered, with regards to their principal, in the name of the applicant, and the same must be accompanied with a separate endorsement, including a description of the endorsed securities, in the name of the Secretary of the Treasury. Certificates of deposit shall be assigned to the Secretary of the Treasury and the funds shall not be withdrawn without the express authorization of the Commissioner.

#### Section 4.5. – License Renewal. –

In addition to the provisions of Section 2.5 of Chapter 2 of this Act every renewal application to engage in a Check Cashing Business shall include:

(a) A license fee in the amount of five hundred dollars (\$500) per office, to be paid by manager's check, certified check, money order, or bank draft to the order of the Secretary of the Treasury;

(b) Evidence that the applicant maintains a net worth of not less than fifty thousand dollars (\$50,000) calculated in accordance with generally accepted accounting principles;

(c) Evidence that the applicant has maintained liquid assets worth twenty-five thousand dollars (\$25,000) or more at all times.

#### Section 4.6. – Responsibilities and Prohibitions of Check Cashing Business Licensees. –

(a) Every licensee engaged in a Check Cashing Business shall:

(1) Maintain a separate record of all check cashing transactions carried out, including date, time, and description of each transaction, as well as the number of the identification used by the person requesting the check cashing service. Such identification shall be issued by the Commonwealth of Puerto Rico, the Government of the United States or any of its states, or any foreign country;

(2) Endorse for deposit only the checks cashed at their business with his/her name and license number as it appears on the license issued by OCFI.

(b) No Check Cashing Business licensee shall:

(1) Cash or make advances for post-dated checks. Notwithstanding this prohibition, any licensee may cash checks payable on the following business day if such checks are drawn by the Commonwealth of Puerto Rico, the Government of the United States, or any NAFTA member country, or any political subdivision, agency, entity, department, or authority thereof, or if the same is a paycheck drawn by an employer to the order of the person seeking to cash the same;

(2) Enter into contracts with authorized delegates to conduct the Check Cashing Business.

## CHAPTER 5. ADDITIONAL RESPONSIBILITIES AND PROHIBITIONS

### Section 5.1. – Additional Responsibilities. –

(a) Every person engaged in the Money Service Business under the provisions of this Act, including authorized delegates, shall be required to:

(1) Operate his/her business in a commercial facility approved by the Regulations and Permits Administration (ARPE, Spanish acronym) for such activity, where he/she may be located during business hours, and which is appropriate for receiving clients. In the event that a Check Cashing Business is carried out from a mobile unit, the same shall meet the applicable requirements set forth by law;

(2) Maintain a visible sign outside the business stating its name or trademark;

(3) Advertise in such a manner that the nature of the services provided and/or the activity carried out with regard to the check cashing business are clearly identifiable, and include the license number;

(4) Conspicuously post and display at each office visible to the public, a list of the rates they currently charge for their check cashing services;

(5) Provide clients with clear and accurate details in writing regarding money service charges and terms, as well as any other disclosure required by applicable Federal and/or Commonwealth laws or regulations;

(6) Provide a receipt to any person who received money services or with whom a transaction was conducted as evidence thereof;

(7) Keep a record of all money services requested, including money orders sold, pursuant to applicable Federal or Commonwealth laws or regulations;

(8) Keep in his/her office and make available to the Commissioner, within the term the latter specifies, any accounts, books, files, and any other documents necessary to perform his/her supervisory function; allow the Commissioner free access to his/her properties, facilities, and operating sites; cooperate with any examinations and/or investigations carried out by the Commissioner; and consent to the examination by the Commissioner of his/her books, files, and documents;

(9) Make available to the Commissioner a copy of the annual financial statements audited by a Certified Public Accountant corresponding to the last five (5) years, together with a report by the Certified Public Accountant who certified the same, stating the value and nature of the liquid assets and the average annual outstanding or pending money services. If the licensee has more than one authorized office in Puerto Rico, he/she may file a consolidated report;

(10) Fully comply with all applicable Federal and Commonwealth laws and regulations related to money service businesses, including this Act and the applicable provisions of the “Bank Secrecy Act” and the “U.S.A. Patriot Act”;

(11) Adopt business policies and procedures as necessary to comply with the provisions of OFAC;

(12) Verify with OCFI that the persons with whom he/she conducts money service businesses hold the required license, and furnish a copy of the license that authorizes him/her to engage in the money service business to any financial institution with which he/she does business;

(13) Comply with any order or resolution of the Commissioner;

(14) Carry out their functions with the highest degree of diligence, care, loyalty, and pecuniary benefit for their clients;

(15) Manage the money service business in a safe manner.

(b) Every licensee may destroy his/her books or records, files, or documents after five (5) years from the date of the last entry on said books or records, files, or documents, or from the date on which any obligation ceased to be payable, whichever is later.

(c) Every licensee shall designate a Statutory Agent with the necessary training and expertise to carry out such function and duties, and who shall be responsible for enforcing the applicable Federal or Commonwealth laws related to money service businesses.

(d) Every licensee shall file a sworn report with OCFI, not later than April 30 of each year, including the information and details that the Commissioner may require with regards to the business and operations of the preceding calendar year.

(e) Every licensee shall comply with the provisions of Act No. 36 of July 28, 1989, as amended, known as the “Abandoned or Unclaimed Money and Other Liquid Assets Act.”

Section 5.2. – Prohibitions. –

No person shall:

- (a) Commit fraud, misrepresent, or make false or fraudulent statements;
- (b) Grant loans or credit, deduct negotiable instruments or other debt instruments, or engage in any activity allowed solely to banks under Act No. 55 of May 12, 1933, as amended;
- (c) Engage in a money service business in an establishment where small personal loans are granted;
- (d) Charge a double fee for each money service;
- (e) Make promises to clients with the intent to do business or knowing that such promises shall not be kept, or make any false claim regarding a material fact in order to induce them to error;
- (g)[sic] Compensate third parties, either directly or indirectly, for processing or referring cases;
- (h) Engage in illegal or unfair business practices;
- (i) Use misrepresentations to induce or persuade a person to carry out a transaction.
- (j) Unduly retain any sum of money or document concerning a transaction, or failing to advise a client on his/her rights or any amount of money and/or document that is part of a transaction;
- (k) Embezzle or misappropriate funds in his/her custody;
- (l) Falsify documents that are part of a transaction.
- (m) Render, publish or prepare false reports or make false entries in order to deceive or defraud any person or the Commissioner;

(n) Carry out a money service business without a license to do so through personal contact, by telephone, or in writing or through advertisements on newspapers, the Internet, publications, handouts, signs, banners, phone books, radio, television, or any other similar medium;

(o) Advertise, show, distribute, broadcast, or allow someone else to advertise, show, distribute, or broadcast information regarding a money service business in a false or deceiving manner;

(p) No natural or juridical person may refuse to obey a summons, order, or requirement of the Commissioner or a court order thus issued claiming that the testimony, data, or information required could incriminate him/her or lead to the imposition of a penalty.

Likewise, any person who takes part, instigates, or cooperates with another in the commission of these acts shall commit a violation, regardless of whether such person obtained financial gain.

#### Section 5.3. – Transfer of Control or Interest. –

(a) No sale, acquisition, assignment, transfer, exchange, or any other type of conveyance or acquisition of voting capital stock issued by any corporation, or of partnership interest, engaged in the money service business in Puerto Rico under this Act, and which results in the control or the transfer of control of said corporation or partnership shall be carried out, nor shall any partial or total sale, assignment, exchange, or any other type of transfer of an individual business be carried out until the owner, president, or any other authorized executive officer of said entity has notified the Commissioner of the details of the proposed operation and obtained his/her approval.

For purposes of this Section, the term “control” shall mean the power to exercise a controlling influence, either directly or indirectly, over the management or policies of a money services corporation or partnership. A change

in control of voting stock that results in direct or indirect ownership of less than ten percent (10%) of outstanding voting stock by a stockholder or affiliate stockholder or of less than ten percent (10%) of the partnership interest, whether directly or indirectly, of a partnership engaged in the money service business shall not be deemed a change of control.

Should there be any doubts with regards to whether an operation results in the control or change of control of a corporation or partnership, the pertinent information shall be submitted to the Commissioner, who shall determine whether the proposed transaction constitutes a change of control.

(b) Any sale, assignment, merger, barter, exchange, or any other transfer of voting capital stock, interest, or share in the capital of a licensee that constitutes a change of control shall be void without the prior written authorization of the Commissioner.

In the event of a change of control, the licensee shall notify the Commissioner, thirty (30) days in advance of any proposed transactions, the identity of both the transferor and the acquirer and the nature of the transaction, as well as remit the payment of the investigation costs.

Notice to the Commissioner shall contain information about the number of voting stock and the amount of partnership interest involved in the operation, the name and address of the seller or assignor and the buyer or assignee, the purchasing price, the number of voting stock or the distributive share of the seller and the buyer or assignee, and the number of outstanding voting stock issued by the corporation or partnership interest as of the date on which the proposed operation is carried out.

Upon receiving notice of a proposed transaction that results in the control or change of control of a money services corporation or partnership, it shall be the duty of the Commissioner to conduct the investigation he/she deems necessary in terms of:

(1) The reputation, experience, and financial responsibility of the buyer or assignor;

(2) If such reputation, experience, and financial responsibility warrant the belief that the business will be conducted soundly, legally, and fairly within the purposes of this Act; and

(3) If the proposed change shall promote the convenience and advantage of the community in which the business is to be conducted and is in the public interest.

(c) The Commissioner may require such additional information as he/she deems pertinent to determine whether the transaction would jeopardize the financial safety or stability of the licensee or if it would violate any applicable law, rule, or regulation, in which case the Commissioner may deny the authorization. Any person to whom authorization is denied shall be entitled to request a hearing pursuant to Act No. 4 of October 11, 1985, as amended, and Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act.”

The Commissioner shall issue the corresponding authorization within a term of sixty (60) days from the date of receipt of all the documentation related to the change of control of the money service corporation or partnerships if the outcome of such investigations is satisfactory.

## CHAPTER 6. POWERS OF THE COMMISSIONER

### Section 6.1. – General Powers. –

OCFI shall be responsible for overseeing, supervising, and regulating the operations of persons engaged in the money service business and for investigating and issuing orders against those who operate such business without a license issued therefor by OCFI.

Any person engaged in any type of money service business without a license shall be subject to the jurisdiction of OCFI and to the procedures and sanctions established by the Commissioner.

In addition to the powers and authorities conferred to the Commissioner under Act No. 4 of October 11, 1985, as amended, he/she shall, without it being construed as a limitation, have the power:

(a) To take any action and impose such remedies as necessary to effectively achieve the purposes of this Act or its regulations;

(b) To require that licensees and authorized delegates keep and maintain records or other documents as needed to enforce the provisions of this Act or the regulations thereunder;

(c) To inspect all types of records, files, and documents of any person engaged in the money service business;

(d) To undertake all kinds of studies and investigations, at the request of the interested party or *motu proprio*, regarding any authorized matters or alleged violations of this Act or the regulations thereunder. For such purposes, he/she may request the necessary, pertinent, and essential information to achieve such objectives, as well as carry out any other investigations necessary for the sound administration of this Act or the regulations thereunder;

(e) To administer oaths; take testimonies, gather data or information; summon witnesses; require the presentation of documents such as books, records, files, correspondence, memoranda, agreements, or other documents he/she may deem relevant or substantial to the investigation; and examine the same with regard to the requirements of this Act;

(f) To investigate any transaction of any person engaged in the money service business and his/her accounts, books or records, files, and documents whenever he/she has reasonable grounds to believe that said person is violating or appears to be violating the provisions of this Act or the regulations thereunder. For purposes of this subsection, any person who advertises, solicits, or appears to be willing to carry out any money services business shall be deemed to be engaged in the money service business;

(g) To resort to the Court of First Instance of Puerto Rico to petition, in Aid of Jurisdiction, that any summons, order, requirement, or resolution issued by the Commissioner be enforced. The Court of First Instance shall be empowered to punish as contempt of court the disobedience of its orders and to compel the appearance of witnesses or the presentation of any data or information that the Commissioner has previously required;

(h) To approve the necessary regulations to implement this Act;

(i) To prescribe by regulations the maximum service charge(s) that a licensee or authorized delegate may collect for providing money services. Provided, that unless the Commissioner provides otherwise, the service charge to be collected by a licensee or authorized delegate for providing money services shall be determined according to open market conditions;

(j) Should the Commissioner determine that a person has committed a violation of this Act or the regulations promulgated thereunder, as well as any order or administrative resolution issued by OCFI he/she may issue against such

person those orders he/she may deem convenient in the public interest, and initiate proceedings pursuant to the provisions of Act No. 170 of August 12, 1988, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico”;

(k) To impose fines, restitution, or administrative sanctions for violations of law, regulations, and the orders issued by him/her, which shall include, but not be limited to the suspension or revocation of any licenses issued by virtue of this Act.

Section 6.2. – Examinations. –

(a) The Commissioner may conduct examinations or audits of the operations of the licensee at his/her place of business. The Commissioner may also conduct special inspections as necessary in his/her judgment.

(b) Every licensee shall pay an examination fee of three hundred dollars (\$300) for each day or fraction thereof, per examiner or investigator who intervenes in any examination, plus the expenses such examiners incurred in per diems and mileage, according to the norms established for officials and employees of the Commonwealth of Puerto Rico, to be paid by manager’s check, certified check, money order, or bank draft to the order of the Secretary of the Treasury.

(c) If the Commissioner deems it necessary, an inspection may be conducted outside of Puerto Rico; in such case, the licensee shall pay the examination fee established in subsection (b) of this Section, plus all reasonable expenses incurred during said examination, including transportation and lodging expenses.

Section 6.3. – Penalties. –

The Commissioner shall be empowered to:

(a) Impose and collect administrative fines of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each violation of the provisions of this Act or of the rules and regulations promulgated thereunder;

(b) Order restitution or reimbursement of such payments received in contravention of the provisions of this Act or any rule or regulation promulgated thereunder, or any other remedy he/she deems necessary to enforce the provisions of this Act;

(c) Impose and collect administrative fines of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each day that a person engaged in a money service business fails to meet the requirements or to comply with the orders issued by the Commissioner.

(d) When the nature of the violation of this Act or of the rules, regulations, or orders and resolutions issued by the Commissioner justify it, the Commissioner, in addition to imposing the administrative fines authorized above, shall initiate the corresponding legal action against the violator.

Any violation by a natural or juridical person of the provisions of this Act, or of the rules and regulations that may be promulgated thereunder, or of the orders or resolutions issued by the Commissioner by virtue thereof, shall constitute a misdemeanor and, upon conviction, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of up to five thousand dollars (\$5,000) or by imprisonment for up to six (6) months, or both penalties at the discretion of the court. Each transaction in violation of the aforementioned provisions shall constitute a separate offense that shall be punishable individually.

Section 6.4. – Repeal. –

Act No. 106 of August 6, 1996, known as the “Act to Regulate the Monetary Transaction Business,” and Act No. 119 of August 11, 1996, as amended, known as the “Check-Cashing Business Regulatory Act,” are hereby repealed and substituted for the new “Money Service Business Regulatory Act.”

Section 6.5. – Effectiveness. –

This Act shall take effect sixty (60) days after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 136-2010 (H. B. 459)** of the **4<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to repeal Act No. 106 of August 6, 1996, known as the “Act to Regulate the Monetary Transaction Business,” and Act No. 119 of August 11, 1996, as amended, known as the “Check-Cashing Business Regulatory Act,” and substitute them for the new “Money Service Business Regulatory Act,” in order to adjust its provisions to our current reality using the “Uniform Money Services Act” as a model.

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

In San Juan, Puerto Rico, on this 17<sup>th</sup> day of January, 2014.

Juan Luis Martínez Martínez  
Acting Director