

(H. B. 2973)
(Conference)

(No. 220-2010)

(Approved December 28, 2010)

AN ACT

To amend Articles 9.040, 9.060, 9.061, 9.070, 9.140, 9.14, 9.160, 9.170, 9.200, and 9.420, and repeal Article 9.390 of Act No. 77 of June 19, 1957, as amended, better known as the “Insurance Code of Puerto Rico,” in order to clarify that a general agent may also hold an authorized representative license; eliminate the incompatibility between the insurance producer and the insurance consultant licenses by establishing that a person cannot receive commissions as both producer and consultant with regard to the same insurance; clarify the applicability of this provision to the proxy license; incorporate the interstate trade risk exemption; incorporate the exception provided in Section 13(D) of the Producer Licensing Model Act promulgated by the National Association of Insurance Commissioners; specify the prohibition that prevents officials or employees of the Government of the United States or Puerto Rico from obtaining a license to be a general insurance agent, or insurance producer, authorized representative, broker, adjuster, or consultant; provide that licenses shall be renewed every two (2) years; establish new limited license categories and authorize the Insurance Commissioner to establish other limited license categories; correct a numbering error and standardize the necessary requirements to obtain an insurance producer license; and for other purposes.

STATEMENT OF MOTIVES

Chapter 9 of the Insurance Code of Puerto Rico was adopted upon the approval of Act No. 10 of January 19, 2006 (hereinafter, “Act No. 10”). The main purpose of adopting a new Chapter 9 was to adjust the principles and standards in effect at the time to the parameters established in the model legislation promulgated by the National Association of Insurance Commissioners (NAIC),

known as the “Producer Licensing Model Act.” With such adjustment, Puerto Rico would join the group of state jurisdictions with a uniform producer licensing process, thus promoting the development of brokerage in Puerto Rico.

In spite of the efforts made at that time, Act No. 10 failed to fully achieve its objectives. As it was approved, Chapter 9 did not meet the necessary parameters to conform to the model law promulgated by the NAIC and obtain the accreditation thereof. Such uniformity would allow Puerto Rico and its residents to benefit from reciprocity with other jurisdictions.

The intent of this measure is to correct the discrepancies between Puerto Rico’s requirements and those of other state jurisdictions that have adopted the “Producer Licensing Model Act.” In this manner, Puerto Rico shall be on the same level, with accredited jurisdictions to compete and provide insurance brokerage with the same opportunities for growth offered by such jurisdictions.

Lastly, many of the amendments herein introduced constitute opportunities for growth, incentivize the job creation, and revamp the aggressive brokerage activity within the insurance industry, all of which directly benefit Puerto Rico’s economy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.-Article 9.040 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 9.040.- General Agent, Definition.-

A General Agent is the person appointed by an insurer as an independent contractor, or who is totally or partially on commission, with general powers or duties to inspect the execution and operations of the policy services of the insurer, to contract authorized representatives for the insurer, and to perform other functions the latter may confer pursuant to the terms of the contract, such as:

(1) ...

(2) ...

...

Any general agent interested in acting as authorized representative shall be bound to meet the requirements established in this Chapter to obtain a license as such.

Section 2.- To amend subsection (1), add a new subsection (4), renumber subsections (4) to (6) as (5) to (7), respectively, and to amend renumbered subsection (6) of Article 9.060 of Act No. 177 of June 19, 1957, as amended, to read as follows:

“Article 9.060.- License Required; Incompatibility.-

(1) No person in Puerto Rico shall act as or pretend to be an insurance producer, authorized representative, general agent, solicitor, adjuster, or consultant unless he/she holds a license therefor, pursuant to this Chapter.

...

(4) A person who is not a resident of Puerto Rico who sells, solicits, or negotiates a contract of insurance for commercial property or casualty risks to an insured with risks located in more than one state insured under that contract, does not need to obtain a producer license in Puerto Rico, provided that the person is otherwise licensed as an insurance producer in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(5) ...

(6) No person shall be issued a license in more than one of the following classifications: producer, authorized representative, general agent, solicitor, adjuster, or consultant; except that a person holding an authorized representative

license may obtain a license as a general agent and proxy, and a producer may obtain a license of consultant. Provided, that a person who holds both a producer and consultant license at the same time, shall not receive commissions or other valuable consideration for both under the same insurance or insurable object.

(7) ...”

Section 3.- A new subsection (4) is hereby added to Article 9.061 of Act No. 77 of June 19, 1957, as amended, to read as follows:

“Article 9.061.- Commission for Business Negotiations; Payment and Acceptance.-

(1) ...

(2) ...

(3) ...

(4) An insurer or producer may pay or assign commissions or other valuable consideration, to a manager or person who does not sell, contract, negotiate, transact, or solicit insurance in Puerto Rico, unless the payment would violate Article 27.100 of this Code.”

Section 4.- Subsection (1) of Article 9.070 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 9.070.- License; General Requirements.-

(1) The Commissioner shall not issue, renew, or permit the licenses of any general agent, producer, authorized representative, solicitor, adjuster, or consultant to exist except in compliance with this Chapter, or with respect to:

(a) ...

(b) Any person who, in his/her capacity as an official or employee of the Government of the United States, the Government of Puerto Rico or any agency or municipality thereof, or a member of the reserve units of the United

States Armed Forces or the Puerto Rico National Guard in active duty, is impaired to carry out such functions by virtue of Act No. 12 of July 24, 1985, as amended, known as the 'Ethics in Government Act of the Commonwealth of Puerto Rico.'

(c) ...”

Section 5.- Article 9.140 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 9.140.- License; Issuance.-

The Commissioner shall issue the licenses applied for to eligible persons under this Chapter, providing evidence thereof in the form of a certificate or an identification card.

Licenses shall be issued for a term of two (2) years and may be renewed for additional periods pursuant to Article 9.420 of this Code. However, in the case of a license issued to a new applicant, the Commissioner may issue a license for a term greater than two (2) years, subject to the payment of the corresponding fees, prorated for the term in excess of two (2) years; provided, that the effective term of a license thus issued shall in no case exceed thirty (30) months.”

Section 6.- Article 9.14 of Act No. 77 of June 19, 1957, as amended, is hereby renumbered as Article 9.141 and amended to read as follows:

“Article 9.141.- Licenses Limited by Type of Risk.-

When a qualified person applies for a license, the Commissioner may issue a license limited to subscribing insurance against the following risks:

(1) ...

(3) Cancer and Critical Illness Insurance: means coverage under which benefits are paid beginning at the time the subscriber receives a positive cancer or critical illness diagnosis by a physician certified in pathology, and any endorsements thereof.

(a) For purposes of this Article, cancer means a malignant tumor caused by the uncontrolled growth and division of abnormal cells in any part of the body, the invasion of tissue or leukemia, provided that such disease has been diagnosed through a pathology report. Cancer shall also mean Kaposi's Sarcoma and Hodgkin's disease.

(b) For purposes of this Article, critical illness shall mean, but not be limited to one or more of the following: muscular dystrophy, poliomyelitis, multiple sclerosis, encephalitis, rabies, tetanus, tuberculosis, osteomyelitis, meningitis, diphtheria, typhoid fever, malaria, Reye syndrome, myasthenia gravis, rheumatoid fever, lupus erythematosus, legionnaires' disease, turalemia, scarlet fever, or smallpox.

(4) Home Service Insurance, to wit: burial, natural death, and accident insurance.

(5) Any other risks for which, in the judgment the Commissioner, it would be appropriate to recognize, establish, or issue a limited license.

Section 7.- Subsection (1)(b) of Article 9.160 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 9.160.- License; Partnerships and Corporations.-

(1) A partnership or corporation shall only be licensed as producer, general agent, adjuster, or consultant, subject to the following requirements:

(a) ...

(b) In the case of a corporation, at least one (1) of its directors must appear on the license and meet its requirements as if he/she were the holder of an individual license. Likewise, every person designated to act on behalf of the corporation in one or more of the kinds authorized pursuant to the license, must appear on the license and meet its requirements regarding said kinds as if he/she

were the holder of an individual license. Such persons designated to act on behalf of the corporation with regards to one or more kinds of insurance in particular, may only transact or contract, on behalf of the corporation, said kind or kinds of insurance. Thus, none of the persons designated to act on behalf of the corporation may contract more kinds of insurance than those for which they have been authorized under the license of the corporation. A license may be issued only to a corporation organized pursuant to the Laws of Puerto Rico with its main place of business in Puerto Rico. All other directors, officials, and those stockholders who have substantial financial interest in the corporation, either directly or indirectly, must meet the requirements listed in Article 9.070 of this Code.”

Section 8.- Subsection (1) of Article 9.170 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 9.170.- Producer; Requirements.-

The insurance producer license may only be issued and exist in connection with a natural person who meets the following requirements:

- (1) To have attained eighteen (18) years of age.
- (2) ...
- ...”

Section 9.- Subsection (1) of Article 9.200 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 9.200.- Producer; Proof of Financial Liability.-

(1) No insurance producer license shall be issued or permitted to exist unless a bond is posted in the name of the Government of Puerto Rico to answer for the funds received by the producer as incidental to the insurance business and for the damages the interested parties may suffer as a result of the negligence of the

producer in the performance of his/her duties. Provided, that this requirement shall not apply when a nonresident producer license is issued.

(2) ...

...”

Section 10.- Subsection (1) of Article 9.420 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 9.420.- Expiration and Renewal of Licenses.-

(1) Any general agent, producer, authorized representative, proxy, solicitor, consultant, and adjuster license issued by the Commissioner pursuant to the provisions of this Chapter, with the exception of temporary licenses, shall continue in effect until their expiration, suspension, revocation, or cancellation. The foregoing shall be subject to the payment of the corresponding annual fees set forth in Article 7.010 of this Code to the Commissioner before midnight of the day on which the two (2)-year term, counted from the date of effectiveness of the license, expires. Said payment shall be submitted along with the written application provided by the Commissioner for renewing said license. If the Commissioner does not receive a duly filled out application for the renewal of a license, along with the payment of the corresponding fees, before the expiration date thereof, said license shall be deemed to have expired on that date.”

Section 11.- Article 9.390 of Act No. 77 of June 19, 1957, as amended, is hereby repealed.

Section 12.- Severability.-

The provisions of this Act are independent and severable; if any of such provisions is held to be unconstitutional by a court with jurisdiction and competence, such holding shall not affect the remaining provisions of the Act, and the Act thus modified by such court ruling shall remain in full force and effect.

Section 13.- Effectiveness.-

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 220-2010 (H. B. 2973) (Conference)** of the **4th Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend Articles 9.040, 9.060, 9.061, 9.070, 9.140, 9.14, 9.160, 9.170, 9.200, and 9.420, and repeal Article 9.390 of Act No. 77 of June 19, 1957, as amended, better known as the “Insurance Code of Puerto Rico,” in order to clarify that a general agent may also hold an authorized representative license; eliminate the incompatibility between the insurance producer and the insurance consultant licenses by establishing that a person cannot receive commissions as both producer and consultant with regard to the same insurance; etc,

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

In San Juan, Puerto Rico, on this 17th day of June, 2013.

Juan Luis Martínez Martínez
Acting Director