(H. B. 4582)

(No. 384)

(Approved September 17, 2004)

AN ACT

To amend Section 18 of Act No. 15 of April 14, 1931, as amended, in order to “create the Office of Mediation and Adjudication of the Department of Labor”; to establish its jurisdiction and competency; to appropriate funds for its organization; and for other purposes.

STATEMENT OF MOTIVES

The mission of the Department of Labor and Human Resources is to establish and administer the public policy on the legislation to protect the workers and on the programs directed toward the education, instruction and training of human resources, and the promotion of labor peace for the purpose of harmonizing social and economic justice with efficiency in production.

The Department of Labor, since its creation 73 years ago, has participated actively in the development of labor laws in Puerto Rico and has played a starring role in harmonizing employer-employee controversies and in promoting labor peace. This generation of its public employees is the custodian of this historic legacy and the architects of changes on behalf of Puerto Rican families.

The self-sufficiency and self-esteem produced by employment for the workers and their families is greatly undermined when justice for legitimate claims is delayed.

The Department of Labor adjudicates insurance benefits under Act No. 74 of June 21, 1956, as amended, known as the Employment Security Act, Act No. 139 of June 26, 1968, as amended, known as the Temporary Disability Benefit Act, and
Act No. 428 of May 15, 1950, as amended, known as the Social Security for Chauffeurs Act. In addition, the Department adjudicates disputes through the construal of the collective bargaining agreements. However, it does not adjudicate other employer-employee conflicts that arise under labor protection laws with respect to dismissals, wages, vacations, sick leave, bonuses and other employment benefits, terms and conditions. In fiscal year 2002-2003, the Bureau of Labor Standards received eight thousand three hundred twelve (8,312) claims and within that same period, it solved eight thousand five hundred seventy three (8,573) claims. Out of two thousand one hundred twenty-two (2,122) claims (half (50%) of these pertaining to wages, vacations, sick leave and bonuses), violations of the law were found and not paid, hence they were referred to the Bureau of Legal Affairs to be litigated in the Courts. This situation aggravates the large amount of claims before the courts. At this time (November 2003), the Bureau of Legal Affairs intervenes in 5,320 active cases and it has presented one thousand seven hundred ninety-seven (1,797) complaints before the courts. On many occasions, the parties in conflict must wait for years in order to obtain a judicial ruling, and they have to invest valuable resources for the settlement of controversies.

It is imperative that our labor legal system expedite the settlement of our workers’ claims efficiently and consistently. Thus, it is necessary to empower the Secretary of Labor to establish adjudicative procedures in which to hear and settle certain claims of the workers, pursuant to the administrative adjudication procedures provided in Act No. 170 of 1988, known as the Uniform Administrative Procedures Act.

Puerto Rico’s legal system has considered labor legislation as a measure of social protection.

The economic development of the country and the agility required by commercial transactions point toward seeking alternate specialized forums that are
able to mediate and quickly solve employer-employee conflicts within the institutional mechanisms that maintain the operational stability of the businesses.

The benefits of this legislation are evident: the burden of legal resources of the Department of Labor, which are currently used in litigation before the courts in routine cases for small claims is relieved, providing the opportunity to dedicate the resources to attending to complex cases of greater juridical transcendence in the area of labor legislation, such as cases of discrimination in the workplace for various causes, sexual harassment, and the protection of the rights of workers with disabilities, etc., more effectively and aggressively on all bases and levels of court litigation. Simultaneously, the calendar of cases in the courts that can be heard in administrative quasi-judicial procedures in the Department of Labor itself, where employee-employer complaints are generally started, is substantially reduced and relieved. The employee, in turn, shall have the opportunity of obtaining prompt decisions and justice for his/her claims, and the employers shall reduce their administrative and judicial litigation costs and expenses.

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

Section 1.- Section 18 of Act No. 15 of April 14, 1931, as amended, is hereby amended to read as follows:

“Section 18.- Mediation, Conciliation and Adjudication Service

The Department shall provide mediation and conciliation services, and it shall intervene and mediate for the purpose of keeping industrial peace, in such industrial, agricultural or other disputes, conflicts or controversies connected to the application of labor laws, as may arise between workers and employers.

The Department shall also have an Office of Mediation and Adjudication that shall conciliate and adjudicate worker-employer controversies on the following matters:
1. Claims for violations of the right to reinstatement in Section 5A of Act No. 45 of April 18, 1935, as amended, generally known as the “Workmen’s Accident Compensation Act,” in which no indemnization for damages claim is made.


3. Act No. 17 of April 1931, on the payment of wages.

4. Act No. 80 of May 30, 1976, on unjustified dismissal in which no indemnization for damages claim is made for other additional causes, separate from the right to allowance and compensation for the act of dismissal pursuant to said Act.


6. Act No. 379 of May 15, 1948, on working hours.

7. Act No. 3 of March 13, 1942, Section 7, on working mothers’ leave in cases whereby no claim is made for compensation or indemnization for damages, and there are no penalties for other additional or separate causes other than severance, or the payment or granting of the leave claimed.

Once a complaint is received from the Bureau of Labor Standards, the Office of Mediation and Adjudication shall summon the parties in controversy to a conciliation hearing or session to be held within the following twenty (20) days as of the date of receipt of the complaint. The parties shall be advised of their right to legal assistance and representation in said conciliation hearing or session. If after the mediation and conciliation procedures are conducted before the Office, the parties fail to arrive at a satisfactory agreement, such procedures shall be concluded and the case shall follow the procedures for adjudicating the controversy before an Official Examiner or an Administrative Judge.
The Office of Mediation and Adjudication of the Department of Labor shall have concurrent jurisdiction with the Court of First Instance at the option of the complainant or claimant in matters within its jurisdiction and shall issue its decisions or resolutions to settle controversies pursuant to the law through the procedures established in Act No. 170 of August 12, 1988, known as the Uniform Administrative Procedures Act, except that once the hearing is held and the controversy is submitted for his/her consideration, the Official Examiner or Administrative Judge shall issue the same within sixty (60) days as of the date on which the case was submitted.

The Official Examiners or Administrative Judges shall be knowledgeable in the field of labor, preferably attorneys, and they shall be authorized to take oaths, summon witnesses, to order the production of documents and materials, and to issue protection orders. At their discretion, they may authorize the discovery of evidence in a limited manner, in harmony with the purpose of guaranteeing speedy and economical procedures, pursuant to the Rules of Civil Procedure.

When the applicable Law for the adjudication of a complaint or controversy before an Official Examiner or Administrative Judge does not provide for the payment of the fees of the claimant worker’s attorney, the payment of such fees in an amount of not more than twenty-five (25) percent of the amount to be received by the worker as a consequence of his/her complaint, or three hundred fifty (350) dollars, whichever is greater, shall be imposed on the employer that is found to be responsible for the violation of the Law in question. Such attorney fees shall be the only authorized fees to be earned by the legal representative of the worker.

In the case a determination of the Office adjudicating a controversy is final and binding, and the adversely affected party fails to comply with the provisions of said determination, the Secretary, through his/her attorneys, may resort to the Court of First Instance for the latter to put in effect the decision of the Bureau and
order full compliance with its provisions including all remedies and sanctions that apply according to the law, as if it were a court judgment including, without it being understood as a limitation, the imposition of interest for the amounts owed, the seizure of goods or sanctions for contempt.

The Court shall give priority to these cases in its docket and, within not more than thirty (30) days as of the date on which the request of the Secretary is presented, shall summon the parties to appear at a hearing.”

Section 2.- The amount of nine hundred thousand (900,000) dollars from the funds and by means of the financing provided by Act No. 14 of July 20, 1990, for the Bureau of Labor Standards and the Office of the Assistant Secretary of the Occupational Safety and Health Administration (OSHA) is hereby granted for the implementation of this Act and the creation and organization of the Office of Mediation and Adjudication. During fiscal year 2004-2005 and subsequent years, the operating budget of the Office of Mediation and Adjudication shall be consigned in the operating budget of the Department of Labor.

Section 3.- The Secretary shall designate and appoint the Director of the Office and shall fix his/her salary as a confidential employee. In turn, the Director shall hire and recommend to the Secretary the appointment of the Official Examiners or Administrative Judges, including a deputy director, who shall become a regular career service employee, and the necessary administrative personnel, and who shall submit annually to the Secretary a projected budget for his/her approval, rendering an annual report to the Secretary on the work performed by the Office with an evaluation of the work and his/her recommendations.

Section 4.- This Act shall take effect immediately after its approval for purposes of the organization of the administrative structure, the hiring of the necessary personnel and the preparation and approval of regulations to govern the mediation and adjudication procedures. The mediation and adjudication procedures
before the Office shall begin to be heard not later than one hundred twenty (120) days after the approval of this Act.
CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 384 (H.B. 4582) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to amend Section 18 of Act No. 15 of April 14, 1931, as amended, in order to “create the Office of Mediation and Adjudication of the Department of Labor”; to establish its jurisdiction and competency; to appropriate funds for its organization; and for other purposes,

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

In San Juan, Puerto Rico, today 16th of August of 2007.

Francisco J. Domenech
Director