

(S. B. 1152)

(No. 6)

(Approved January 5, 2006)

AN ACT

To amend subsection (aa 4) of Section 6, Section 16 and subsections (a), (b), (c) and (f) of Section 17 of Act No. 5 of April 23, 1973, as amended, better known as the “Organic Act of the Department of Consumer Affairs” in order to harmonize them to the changes undergone by the laws connected to the same.

STATEMENT OF MOTIVES

Thirty-two years after its creation, the Department of Consumer Affairs has increased its competence and jurisdiction. At present, it is responsible for the implementation and oversight of thirty (30) laws and approximately fifty-eight (58) regulations.

In addition to the functions of oversight and education assigned to the Department, it was entrusted with the establishment of a just, practical and flexible complaint or controversy adjudication system that is less costly and complicated than litigation in court, through which the rights of consumers can be vindicated.

Act No. 247 of December 25, 1995, had the effect of amending the “Uniform Administrative Procedures Act” to harmonize it with the changes caused by the reorganization of the Judicial Branch. This amendment also had the effect of eliminating the requirement of the filing of a motion for reconsideration as a prior and compulsory step to appear before a court with a motion for review of an administrative decision. In the case of Severiano Aponte v. Policía de Puerto Rico, 142 D.P.R. 75, it was sustained that “to

grant jurisdictional nature to a motion for reconsideration operates in prejudice to the access of the People to the courts.” In spite of said interpretations, the intention of the legislator set forth in Section 3.15 of the “Uniform Administrative Procedures Act” before it was amended by Act No. 247, pursued the legitimate purpose of establishing the exact instance when to resort to the courts in the case of an administrative determination. In that which concerns us, the amendment set forth in Act 247 provided that the jurisdictional nature of this requirement remains only when expressly provided for in any special law approved subsequently.

In view of the stated above, it is imperative to amend Act No. 5 of April 23, 1973, as amended, better known as the “Organic Act of the Department of Consumer Affairs,” in order to harmonize it to the changes undergone by laws that are related to the same.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsection (aa4) of Section 6 is hereby amended to read as follows:

Section 6.- Powers and Faculties of the Secretary

In addition to the powers and faculties transferred by the Act, the Secretary of Consumer Affairs shall have the following powers and faculties:

(a) ...

...

(b) ...

...

(aa) (1)...

...

(4) Upon consultation with the Secretary of Justice, to file for and on behalf of persons with developmental disabilities, any legal remedy or recourse in force, which the federal laws contemplate to defend, protect and safeguard the interests, rights and prerogatives of those persons against any public or quasi-public agency.

The revenues collected under subsection (c), (l), (w) and (z) of this Section, shall be entered into the books of the Secretary of Justice apart from any other funds that the Department of Consumer Affairs sees fit to receive. These funds shall be accounted outside of any particular calendar year. The revenues thus collected shall be covered into the Special Fund of the Department of Consumer Affairs.”

Section 2.- Section 16 is hereby amended to read as follows:

“Section 16.- Decisions of the Secretary, Reconsideration

In a quasi-judicial or quasi-legislative proceeding, any party affected adversely by the decision of the Secretary or the official designated by him, pursuant to subsection (d) of Section 6 of this Act, shall request the Secretary to reconsider such decision within the term of twenty (20) days from the date notice thereof is served, except in proceedings filed by the Antitrust Office. The agency shall consider the reconsideration within fifteen (15) days as of the filing thereof. If it is denied in its entirety, or if it does not take action within fifteen (15) days, the term to request review shall begin to count again as of the notice of said denial or upon the expiration of said fifteen (15) days, as the case may be. If a determination is made in its consideration, the term to request review shall begin to count as of the date in which a copy of the notice of the resolution of the agency definitely

resolving the motion for reconsideration is filed in the records. Said resolution shall be issued and filed in the records within the ninety (90) days following the filing of the motion for reconsideration. If the agency accepts the motion for reconsideration but fails to take action with respect to said motion within ninety (90) days as of the filing thereof, it shall lose jurisdiction over the same and the term to request judicial review shall begin to count as of the expiration of said ninety (90) day term, unless the agency for just cause and within said ninety (90) days extends the term to resolve for a period which shall not exceed thirty (30) additional days.”

Section 3.- Subsections (a), (b), (c) and (f) of Section 17 are hereby amended to read as follows:

“Section 17.- Judicial Review of Decisions.

- (a) Any part adversely affected by a decision of a Resolution in its merits or by a decision in reconsideration of the Secretary or of the officer designated by him, pursuant to subsection (d) of section 6 of this Act, may request judicial review of said decision from the Court of Appeals. The petition for review shall be filed before the Court of Appeals within thirty (30) days of the date of the filing in record of the notice of said decision.
- (b) The decision of the Secretary or of the officer designated by him, shall remain in full force and effect until a decision from the Court of Appeals revoking or modifying the decision of the Secretary becomes final.
- (c) The appeal for review shall be executed by presenting a petition at the Office of the Clerk of the Court, which shall state the grounds on which the petition for review is based. The party

shall notify the filing of the petition for review to the agency and to all the parties within the term for petitioning said review. Said notice may be remitted by mail.

- (d) ...
- (e) ...
- (f) The petition for review made to the Court of Appeals shall not stay the effects of the regulations, order or resolution of the Secretary.”

Section 4.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 6 (S.B. 1152) of the 2nd Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsection (aa 4) of Section 6, Section 16 and subsections (a), (b), (c) and (f) of Section 17 of Act No. 5 of April 23, 1973, as amended, better known as the “Organic Act of the Department of Consumer Affairs” in order to harmonize them to the changes undergone by the laws connected to the same,

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

In San Juan, Puerto Rico, today 2nd of June of 2006.

Francisco J. Domenech
Director