

(H.B. 895)  
(Conference)

**(No. 10)**

(Approved January 19, 2006)

## **AN ACT**

To add a Article 27.280; amend Articles 27.240 and 27.310 and renumber Articles 27.280, 27.290, 27.300, 27.310, 27.320 and 27.330 as Articles 27.290, 27.300, 27.310, 27.320, 27.330 and 27.340 of Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” in order to give civil immunity to those persons who in good faith report fraudulent in the insurance business to the Office of the Insurance Commissioner of Puerto Rico or to any other law enforcement agency; amend subsection (j) of Article 3.170, Article 3.290; repeal Article 3.340 and add a new Article 3.340 and repeal Chapter 9 of Act No. 77 of June 19, 1957, as amended, better known as the “Insurance Code of Puerto Rico,” and adopt a new Chapter 9 in order to adjust the principles and standards in effect to the parameters established in the model legislation promulgated by the National Association of Insurance Commissioner (NAIC) known as the “Producer Licensing Model Act.”

### **STATEMENT OF MOTIVES**

A reason for concern has arisen among those persons who in good faith and for the purpose of complying with the provisions of Act No. 18 of January 8, 2004, are bound to provide information about activities that constitute fraudulent acts in the insurance business. Even when these persons may act in good in good faith when providing any information in relation to an activity that may seem to be illegal, they may be at risk of having civil

actions brought against them for having given information which eventually fails to lead to the conviction of the person accused.

The Act demands that any person who has information indicating that an act which constitutes fraud in the insurance business has been committed, is being committed or is going to be committed must report this to the Office of the Insurance Commissioner who must initiate an investigation for the purpose of determining whether in fact said fraudulent act has been committed or is being committed. Furthermore, the Act imposes penalties to those persons who have knowledge that a fraudulent act has been committed or is being committed. However, the person who provides such information depends on whether the investigation is in fact conducted and has positive results. Even when a criminal act has been committed there is not always sufficient evidence to prosecute a person or, if the person is actually prosecuted, that the case holds up in Court. As a consequence of this the person who provided the information may face a civil action.

The “Insurance Code” itself contains provisions to sanction those persons who provide unfounded or frivolous information of a defamatory nature about fraudulent acts in the insurance industry knowing that it is false. It is thus necessary to protect all persons who in good faith offer information about fraudulent acts. This will encourage more persons who have knowledge of these acts to approach the authorities in good faith to offer information on the matter.

The laws against fraud are not unique to Puerto Rico; the States of the United States already have their own legislation to fight insurance fraud. The statutes of forty-seven (47) of the States contain immunity provisions related to the disclosure of insurance fraud information. In order to protect all those citizens who provide information that helps fight insurance fraud, the present

legislative measure offers immunity under the condition that said information is not given in bad faith or that it constitutes malicious persecution, as this term has been interpreted by our courts.

Furthermore, we believe it necessary to create a new Chapter 9. Its main purpose is to adjust the standards now in effect on which the foundation of the system for the distribution of insurance products is based to the model legislation promulgated by the National Association of Insurance Commissioners (NAIC) known as the “Producer Licensing Model Act.” This new Chapter 9 promulgates the criteria that must be met by those persons interested in obtaining a license to engage in insurance contracting in Puerto Rico and establishes guidelines and standards to promote fair competition. This would at the same time protect the interests of insured consumers.

Another purpose for the creation of this new Chapter 9 is to continue updating and modernizing the present Insurance Code of Puerto Rico. This shall expedite the operation of the mechanisms employed to effectively respond to the constant changes that arise in the insurance industry and the financial services worldwide.

The adoption of these amendments to the Code shall likewise allow Puerto Rico to be part of the existing uniformity for licensing producers established by NAIC. At the same time it also enables and encourages the producers to obtain different kinds of products from U.S. jurisdictions attached to the NAIC that have adopted these measures.

The proposed Chapter 9 paves the way and readies Puerto Rico for the future development of its insurance industry. It is an additional tool for trying to make sure that the consumer continues to receive services of excellence and that these are efficiently regulated.

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

Section 1.- Article 27.280 is hereby added to Act No. 77 of June 19, 1957, as amended, to read as follows:

“Article 27.280.-Civil immunity

Except when it has been demonstrated that gross negligence has been incurred no extra-contractual civil liability may be imposed to any person who in good faith and under the provisions of this Code provides information to the Insurance Commissioner or to any law enforcement agency about fraudulent acts related to the insurance business that have been committed, are being committed or are going to be committed.”

Section 2.-Article 27.240 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Antifraud Special Investigations Unit

(a) .....

(b) To comply with such a purpose the Office of the Insurance Commissioner shall coordinate efforts with the antifraud special investigations units of the insurers and health services organizations, established in Article 27.310 of this Code to obtain information relevant to the investigations which said units intend to conduct and for processing the matters to be presented before the courts of justice. Said units, at the same time, shall facilitate the investigation when so required by the Office of the Commissioner.”

Section 3.-Article 27.310 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“The Board of Directors of every insurer of the country and every health services organization shall adopt a written plan of action within

a term of three (3) months after this Act has been approved to detect, prevent and fight fraudulent acts in the insurance business.

This action plan shall contain at least the following:

(1) A description of the procedures established to fulfill the obligation of detecting and investigating possible acts of fraud in the insurance business and to report said acts to the Antifraud Special Investigations Unit of the Office of the Insurance Commissioner. The procedure must include the establishment of an Antifraud Investigations Unit.

(2) A description of the plan for the education and training of its employees, particularly the Antifraud Investigations Unit personnel.

(3) A description of the personnel hired or employed by the Antifraud Investigations Unit to execute the procedures established to detect and investigate acts of fraud and the functions assigned to each.”

Section 4.-Articles 27.280, 27.290, 27.300, 27.310, 27.320 and 27.330 are hereby renumbered as Articles 27.290, 27.300, 27.310, 27.320, 27.330 and 27.340.

Section 5.-Subsection (j) of Article 3.170 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 3.170.-Application for authorization

(1) ...

(a) ...

...

(j) Designation of the insurer’s manager or general agent to be resident in and have charge of its affairs in Puerto Rico, together with the written acceptance of the general agent, if any. Said general agent may be

either a natural or a juridical person. If the general agent is a partnership, the acceptance shall be subscribed by all the partners. If the general agent is a corporation, the acceptance shall be executed by its president and be accompanied by a certified copy of the resolution of its board of directors authorizing acceptance of such general agency. This requirement shall be optional in the case of an insurer who is engaged only in reinsurance. The insurer must give notice in writing about the appointment to the Commissioner of the in the forms approved and supplied by the latter.”

Section 6.-Article 3.290 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 3.290.-Business Must Be Transacted through Resident Agents or Broker Producers; Countersignature

(1) No insurer may effectuate any direct insurance upon or relative to any person, property or other material object of insurance that resides, is located in or is to be carried out in Puerto Rico, nor any insurance related thereto, except through an authorized representative of said insurer residing in Puerto Rico.

If the insured is represented by a producer residing in Puerto Rico, said insurance shall be executed through the manager, general agent or authorized representative of the insurer residing in Puerto Rico.

(2) Such policies or contracts shall be countersigned by the manager, general agent or authorized representative of the insurer residing in Puerto Rico.

If an insurance policy transacted or issued outside of Puerto Rico also covers any person, property or other material object of insurance that resides, is located in or is to be carried out in Puerto Rico, the same must be countersigned by a manager, general agent or

authorized representative of the insurer residing in Puerto Rico, and in addition it shall indicate the proportional part of the premium corresponding to the person, property or object of insurance that resides, is located in or is to be carried out in Puerto Rico.

(3) ...

(4) ...”

Section 7.-Article 3.340 of Act No. 77 of June 19, 1957, as amended, is hereby repealed and a new Article 3.340 is hereby added to read as follows:

“Article 3.340.-General Agents and Managers

(1) In order to comply with the provisions of Section 3.170, an insurer shall appoint and contract a manager or general agent to represent the insurer in Puerto Rico to carry out those functions consistent with this Code that may be conferred upon said manager or general agent by the insurer.

(2) The insurer that appoints and contracts a person as general agent or manager to represent the former as such in Puerto Rico must comply with the provisions of Section 9.212 of this Code.

(3) Said general agent or manager must meet all requirements established in Article 9.211 of this Code in respect to a license.”

Section 8.-Articles 9.010 to 9.480, of Chapter 9 of Act No. 77 of June 19, 1957, as amended, are hereby repealed and a new Chapter 9 is adopted for said Act to read as follows:

“Article 9.010.-Statement of Purpose

This Chapter establishes the requirements that must be met by all persons who aspire to obtain a license issued by the Commissioner to engage

in the insurance business in Puerto Rico. It also establishes the procedure to issue licenses to said persons, as well as for the renewal, denial, suspension and revocation of said licenses. This Article also includes certain general standards pertinent to the transaction of insurance policies and the payment of commissions.

Article 9.020.-Producer, definition

Producer – The person that pursuant to this Code holds a license duly issued by the Commissioner to negotiate insurance in Puerto Rico. In negotiating insurance the producer shall not act as authorized representative of the insurer, except in those cases in which an appointment made according to the provisions of Article 9.063 of this Chapter is involved.

Provided that the term negotiate includes the following acts:

- (1) Solicitation and persuasion
- (2) Offer and negotiation
- (3) Sale

Article 9.021.-Authorized Representative, definition

Authorized Representative – is a producer that subscribes a contract with an insurer to negotiate insurance on his behalf, be it as employee or as independent contractor.

Article 9.022.-Responsibility of the Producer towards the insured

The producer shall fulfill the following duties, among others:

- (1) Provide the consumer with a clear and concise orientation about the coverage, benefits, limitations and exclusions of the insurance policy negotiated by him/her, as well as about the duties and obligations of the former as insured under the same.

- (2) Negotiate the insurance product so it adjusts to the coverage needs the consumer seeks.

(3) Identify and measure the possibility of loss.

(4) Fulfill the duties imposed according to other provisions of this Code and with the principles of conduct the Commissioner may establish through rules or regulations.

When the producer acts as authorized representative of the insurer, he/she must also fulfill all those other duties imposed by the insurer by virtue of the contract subscribed between the parties.

#### Article 9.030.-Solicitor, definition

A solicitor is a natural person appointed and authorized by a producer to solicit insurance as representative of said producer. An individual employed on salary only who devotes all his/her time to office work, incidentally soliciting insurance at the office of the producer shall not be deemed to be a solicitor if his/her employment or compensation is not contingent upon or related to the volume of said insurance, applications or premiums.

#### Article 9.040.-General Agent, definition

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

(1) receive and accept business solicited or negotiated by producers;

(2) compute rates;

(3) countersign the policies;

(4) issue endorsements, countersign and maintain records thereof;

- (5) train producers about the new products available;
- (6) process the loss experience;
- (7) process policy cancellations;
- (8) invoice and collect the corresponding premiums;
- (9) process and carry out the return of premiums;
- (10) process and carry out the payment of commissions to producers;
- (11) select risks according to the established underwriting guidelines.

The general agent interested in acting as producer shall be bound to meet the requirements established in this Chapter for obtaining a license as such; provided, however, that the business volume the general agent may generate shall proceed mostly from other producers.

Article 9.050.-Adjuster, definition

(1) 'Adjuster' is the person who for compensation as independent contractor or as employee of an independent contractor, or for a fee, commission or salary, investigates and negotiates the settlement of claims arising under insurance contracts exclusively on behalf of the insurer or the insured.

A practicing attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his/her profession shall not be deemed an 'adjuster' for the purposes of this Chapter. An attorney-at-law who in representation of an insurer adjusts losses shall have to hold a license as independent adjuster.

(2) 'Independent adjuster' means the adjuster who represents the interests of the insurer.

(3) 'Public adjuster' means the adjuster employed by the claimant whose financial interests he/she represents exclusively.

Article 9.051.-Insurance consultant, definition

(1) Insurance consultant – is the person who for compensation as independent contractor, if not the insurer, advises his/her clients, provides advice and information regarding the terms of a policy, its conditions, coverage benefits, the premium of any policy or contract and offers orientation with relation to the advisability or opportunity of canceling or continuing to hold a policy or of accepting or obtaining any contract or policy.

Any person who through any advertisement or any means of publicity uses the title of insurance consultant, insurance specialist, insurance advisor, insurance analyst or any similar title shall be deemed as an insurance consultant and shall be bound to meet all requirements that to those effects are provided in this Chapter.

(2) This provision shall not apply to attorneys in active professional practice nor to insurance actuaries, members of the Society of Actuaries or of the Academy of Actuaries, who incidentally render services as consultants on insurance matters.

(3) Property and contingency insurance consultant – is the person who holds a license as consultant in one or several of the following kinds of insurance:

- (a) Property
- (b) Casualty
- (c) Surety
- (d) Transportation and Marine
- (e) Title

(4) Life and disability insurance consultant – is the person who holds a license as life insurance, annuities and disability consultant, including health care plans.

Article 9.052.-Proxy, definition

A proxy is a person authorized by a surety insurer to grant, on behalf and in representation of the latter, surety instruments in Puerto Rico according to the license which for such a purpose is issued by the Commissioner pursuant to the provisions of Chapter 22 of this Code.

Article 9.060.-License required; Incompatibility

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

(2) No producer or solicitor may transact or accept applications for any kind of insurance for which he/she does not hold a license nor procure or place said application for others.

(3) No producer may act or state that he/she acts as authorized representative of an insurer unless there is a written contract subscribed to those effects between the latter and the insurer.

(4) Violations against paragraphs (1), (2) or (3) of this Article shall be deemed as violations of this Code subject to the sanctions provided in this Chapter. Furthermore, said violations shall be deemed misdemeanors punishable with a fine of not less than five hundred (500) dollars nor more than fifteen thousand (15,000) dollars.

(5) No person shall be issued a license in more than one of the following classifications: producer, general agent, solicitor, adjuster or consultant, except that a person with a license as producer may obtain a license as general agent.

(6) The Commissioner shall supply the forms required in relation to the application, issue or termination of any license required by this Chapter.

Article 9.061.-Payment and acceptance of commission for business negotiations

(1) No insurer, general agent, manager or authorized representative of the insurer shall accept insurance applications transacted through a person who does not hold a license issued according to this Code for the kind of insurance transacted.

(2) No insurer, general agent, manager or producer shall pay any commission or compensation whatsoever for transacting insurance unless by the date the same is due the person entitled to the same holds a license issued pursuant to this Code for the kind of insurance transacted.

(3) No person shall accept any payment whatsoever as commission or compensation for transacting insurance, including commissions whose payment has been deferred or commissions payable for renewals, unless by the date the same is due said person holds a license issued pursuant to this Code for the kind of insurance transacted.

Article 9.062.-Commission for business negotiations

The commission to be paid to any producer for negotiating insurance shall be circumscribed to the maximum amount fixed in the schedule of types approved by the Commissioner for the corresponding kind or subdivision of insurance. Should the Commissioner fail to fix said maximum commission, the same shall be circumscribed to the portion the insurer is able to justify on the basis of a study or analysis conducted by the latter.

The payment of any commission or compensation in addition to the commission calculated and authorized, including but not limited to the payment of contingent commissions, may only be made according to the standards established by the Commissioner for such a purpose through rules or regulations.

No person may accept as incentive for insurance or in relation to an insurance transaction, commissions in excess of the commission calculated and authorized pursuant to the preceding, or accept some other type of prohibited emolument or incentive.

Article 9.063.-Notice of appointment of producers

(1) No producer may act as authorized representative of an insurer, unless he/she subscribes a contract with the insurer through which the insurer authorizes the producer to negotiate insurance on behalf and in representation of the insurer.

(2) The appointment of a producer as authorized representative of an insurer shall be notified to the Commissioner in the manner prescribed by the latter within the fifteen (15) days following the date on which the contract is subscribed for such a purpose. The insurer shall keep the contract subscribed between the insurer and the producer accessible for the inspection of the Commissioner.

(3) The cancellation of the contract subscribed between the insurer and the producer for the negotiation of insurance shall be notified to the Commissioner in the manner prescribed by the latter within the fifteen (15) days following the date on which the contract was cancelled.

Article 9.070.-General requirements for license

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

(a) Any untrustworthy or incompetent person or any person who has not established to the satisfaction of the Commissioner that he/she is qualified to hold a license according to this Chapter.

(b) Any person who is an official, officer or employee of the Government of the United States or of the Commonwealth of Puerto Rico or of any of its dependencies, or of a municipality, or who is a member of the United States Armed Forces Reserves or of the National Guard of the Commonwealth of Puerto Rico in full-time active military service.

(c) Any bank or any other depository institution, except that a license as producer may be issued to a savings and credit cooperative organized according to the laws of Puerto Rico.

(d) Any financial holding company, trust company, finance company, savings and loan association or any other institution directly or indirectly engaged in the business of lending money.

(e) Any employee, director, official, officer, or stockholder of a financial holding company, depository bank or institution, trust company, finance company, savings and loan association or any other institution directly or indirectly engaged in the business of lending money, except as provided in this Section.

(2) The Commissioner may issue a license pursuant to this Chapter to any person who has, directly or indirectly, a substantial financial interest in, or relationships, as owner, subsidiary, or affiliate, with a company exclusively engaged in financing insurance premiums. Provided that in no case shall the premium financing company have, directly or

indirectly, a substantial economic interest in, or a relationship as owner, subsidiary, or affiliate with a company exclusively engaged in the business of lending money.

(3) The Commissioner may issue, renew or permit a license as producer or general agent to exist with respect to:

(a) An entity or corporation with a substantial economic interest in, or a relationship as owner, subsidiary, or affiliate with, a financial holding company or depository institution, regardless of whether said financial holding company or depository institution has, directly or indirectly, a relationship as owner, subsidiary, or affiliate with other institutions engaged in the business of lending money.

(b) An entity or corporation that has, directly or indirectly, a substantial economic interest in or a relationship as owner, subsidiary, or affiliate, with an institution engaged in the business of lending money.

(c) An entity or corporation that has, directly or indirectly, a substantial economic interest in or a relationship as owner, subsidiary, or affiliate, with a savings and credit cooperative organized pursuant to the laws of Puerto Rico.

(4) Taking into account the provisions of the preceding paragraph (3), the depository institution, the institution engaged in the business of lending money or the savings and credit cooperative may not:

(a) select, directly or indirectly, the producer to solicit, place or negotiate insurance for insurance objects, subjects or exposures that may arise from or be related to its credit activity.

(b) induce, directly or indirectly, the potential party for insurance to select the producer or to not conduct any business

transaction whatsoever that puts the producer in an advantageous competitive position with respect to an insurance object, subject or exposure that may arise from or be related to its credit activity.

(5) The Commissioner may include on the license as producer of a subsidiary corporation, of a financial holding company or of a depository institution as authorized person, any individual who works as employee, director or official of said institution, provided the latter does not accept deposits. In the case of savings and credit cooperatives, the Commissioner may include on the license of said corporation as authorized person any individual who works as employee or official of the cooperative, provided the latter does not accept deposits. The Commissioner shall establish through rules or regulations the additional standards that shall govern the inclusion of said persons on the license of the corporation.

(6) For the purposes of this Section, the terms 'depository institution' and 'financial holding company' shall have the meaning provided in Article 3.041 of this Code.

(7) The Commissioner may promulgate those rules or regulations deemed necessary to oversee compliance with the provisions of this Section.

#### Article 9.080.-Controlled business

(1) For the purposes of assisting in the enforcement of the Laws against prohibited rebates and prevent the use of undue influences or coercion in insurance transactions, the Commissioner shall not grant any license as producer, general agent or solicitor to any person should he/she have reasonable grounds to believe that the license has been used to negotiate a controlled business.

(2) A license shall be deemed to be used for the purpose of negotiating a controlled business if the total net sum of the commissions or other compensation received or to be received by the licensee or applicant on a controlled business contracted or to be contracted during a specific period, exceeds thirty-five percent (35%) of the total net sum of commissions or other compensation received or to be received by the licensee or applicant, on every insurance business contracted or to be contracted by him/her during the same period.

(3) 'Controlled business' shall mean insurance transacted or to be transacted by said licensee or applicant or through either of them on:

(a) His/her own life, person, property or interests, or those of his/her spouse or relatives by consanguinity or affinity to the second degree;

(b) The life, person, property, casualty risks, surety risks, or title risks of his/her employer, or of his/her principal, or of his/her firm, or of his/her officer, director or stockholder, or of his/her client or any person to whom he/she serves through a professional service contract or of any officer, director, stockholder or member of his/her employer or firm that are not members of mutual insurers or of the spouse of said employer, officer, director, stockholder or member;

(c) The property or interests of the corporation whose stock is under its control or held by any combination of himself/herself, his/her firm, employer, major stockholders of his/her employer, his/her directors, officers, or stockholders and spouses of any of them; the property or interests of any subsidiary of said corporation;

(d) The life, person, property or interests of his/her ward or his/her employees or upon persons, property or interests under

his/her control or supervision as trustee, attorney, agent or receiver or as administrator or executor of any estate; or

(e) Property sold under contract by him/her as agent or principal, his/her employee, director or stockholder or by his/her employer or firm or by any officer, official, director, stockholder or member of his/her employer or firm, except in the case of real estate.

(4) The provisions of this Article shall not apply to any general agent or producer who has a relationship as subsidiary or affiliate with a depository institution or financial holding company, provided these comply with the safeguards established by the Commissioner to protect consumers from the use of undue influences or coercion in the transaction of insurance and a conditioned subscription. The Commissioner may deny, revoke, suspend or refuse to renew the license of said general agent, producer or solicitor if, when transacting insurance, these fail to observe the safeguards established by the Commissioner. To those effects, the procedure established in clause 2 of Article 9.470 of this Code shall be available to the Commissioner.

#### Article 9.090.-Applications for Licenses

(1) The application for a license shall be made to the Commissioner by the applicant. The application must be sworn to by the applicant and shall contain that information and those documents the Commissioner may require.

(2) Should the applicant be a partnership or a corporation, the application shall also indicate the names of all partners, officials and directors as well as designate every person who shall exercise the powers to be conferred by the license to said partnership or corporation. The

Commissioner shall require that every person so designated furnish information as though for an individual license.

The application for a license as solicitor shall be accompanied by a written statement executed by the producer by whom the applicant is to be appointed, stating:

(a) The appointment of the applicant as solicitor, subject to the license being issued.

(b) Whether the producer has made an investigation about the probity and qualifications of the applicant and the results of the same.

(c) Whether said insurance solicitation shall constitute the principal occupation of the applicant.

(d) Any other information the Commissioner may require.

(3) The willful misrepresentation of any fact required in said application or declaration is a violation of this Chapter and the same may be cause for denial, cancellation, non-renewal or suspension of the license.

(4) As part of the procedure for renewing a license, or at any date after the same has been issued, the Commissioner may require the presentation of a new application containing the pertinent information.

#### Article 9.100.-Number of Applications Required

(1) The presentation of personal data about a person, together with his/her license application, subject to paragraph (2), shall be sufficient, regardless of the number of license applications or renewals subsequently made by the same person.

(2) In relation to the renewal of a license, or at any date after the issue of a license, the Commissioner may require the presentation of a new application containing the pertinent information.

Article 9.110.-Examination for License

(1) Prior to the issue of any such license, each applicant for a license as producer, solicitor, adjuster, consultant or proxy, must take and pass, to the satisfaction of the Commissioner, an examination given under the direction of the Commissioner as proof of his/her qualifications and competence, although this requirement shall not apply to:

(a) An applicant who at some date, within a period of five (5) years immediately preceding the date of the application, had been authorized in Puerto Rico under a license similar to the one he/she is applying for and who is considered by the Commissioner to be fully qualified therefor.

(b) An applicant for a license as non-resident producer who meets all classification requirements in his/her state of country of residence and who is deemed by the Commissioner to be fully qualified and competent.

(c) An applicant who has transferred his/her residence from a state or jurisdiction of the United States to have said residence established as bona fide in Puerto Rico, provided he/she meets one of the following conditions:

(i) that at the time of the application he/she holds, in his/her state or jurisdiction of origin, a license equal to the license applied for in Puerto Rico, subject to having said state or jurisdiction issue a certificate of good standing from which may be ascertained that the applicant has no matter pending in the state or jurisdiction which may result in the revocation or suspension of such a license; or

(ii) that at the time of the application no more than ninety (90) days have transpired from the date his/her license was cancelled

in his/her state or jurisdiction or origin, subject to having that state or jurisdiction certify, to the satisfaction of the Commissioner, that by the date of cancellation of the license the applicant met all requirements to continue holding the same; and

(iii) that the provisions of the Model Act for licensing producers approved by the National Association of Insurance Commissioners have been adopted in his/her state or jurisdiction and that a similar privilege has been granted to a person residing in Puerto Rico.

(2) If the applicant is a partnership, every partner or member must take and pass the corresponding examination for each kind of insurance that said partnership is to transact pursuant to its license.

(3) If the applicant is a corporation, at least one director must take and pass the corresponding examination for each kind of insurance that said corporation is to transact pursuant to its license. All other persons or any other director who is to be designated on the license of the corporation to transact, on behalf or in representation of the latter, one or more of the kinds of insurance that the same intends to transact, must take and pass the corresponding examination for said kind or kinds of insurance.

(4) The Commissioner may, at any time, require that any licensee take and pass an examination as evidence of his/her competence as a condition for continuing or renewing his/her license if the licensee has been conducting his/her business pursuant to his/her license in a manner that would make the Commissioner need additional evidence as to his/her qualifications. In any of such case, the Commissioner shall give notice of said requirement at least thirty (30) days prior to the date of the examination. The license of such a person shall remain in effect until the results of the

examination have been determined by the Commissioner, unless the license expires before for other reasons.

(5) The Commissioner may require that a new examination be taken and passed as part of the procedure established pursuant to Article 9.471 for the reinstatement of a license that has been suspended or revoked for any of the causes provided in this Code.

#### Article 9.120.-Scope of the examination

(1) Every examination required by Article 9.110 of this Code shall be as prescribed by the Commissioner and its scope shall be broad enough to enable the reasonable evaluation of the knowledge of the applicant relative to the kinds of insurance covered on the license and the duties and responsibilities of said licensee and the Laws applicable to the latter.

(2) The Commissioner may prepare and make available to the applicants, through the payment of fees established by the Commissioner through rule, regulation, order or administrative determination, a manual specifying the subject matter to be covered in any examination for a specific license.

(3) The Commissioner shall, from time to time and through rule or regulation, establish reasonable groupings of the kind or kinds of insurance or subdivisions thereof that may be covered by examinations for specific licenses.

#### Article 9.130.-Examinations, form, place, waiting period and fees

(1) The examination shall be administered in the form and manner deemed by the Commissioner to best serve the purposes of this Chapter.

(2) The Commissioner shall administer the examinations in Puerto Rico on the dates and at the places deemed appropriate, taking into account his/her resources and the convenience of the applicants.

(3) The Commissioner, through rule or regulation, may require a waiting period before administering a new examination to an aspirant who has failed to pass a prior similar examination.

(4) For every examination the Commissioner shall collect in advance the fee specified in Article 7.010 of this Code.

#### Article 9.140.-Issue of license

The Commissioner shall issue the licenses applied for to those persons who qualify for them according to this Chapter, providing evidence thereof in the form of a certificate or of an identification card.

The licenses shall be issued for a term of one (1) year 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 of more than one year, subject to the payment of the corresponding fees prorated for the term in excess of one year, provided that in no case may the effective term of a license thus issued exceed eighteen (18) months.

#### Article 9.14.-Licenses limited because of type of risk

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

(1) Automobile, Truck or other Similar Motor Vehicle Rental or Lease – means insurance offered, sold or solicited in relation or incidental to the rental or lease of an automobile, truck or other similar motor vehicle for a period of time of not more than ninety (90) days, by the lessor through a corporate or group insurance contract with an insurer, provided the same: (1) is non-transferable, (2) is applicable only to the automobile, truck or other

similar motor vehicle object of the agreement, and (3) is limited to the following kinds of insurance:

a) insurance against bodily injury to the lessee and those who accompany the latter inside the automobile, truck or other similar motor vehicle, to cover disability, accidental death and dismemberment damages and any medical expenses resulting from an accident occurring with the rented or leased vehicle during the term of the rental or lease;

(b) liability insurance arising from the operation or use of the vehicle rented or leased by the lessee and any other authorized driver of said vehicle during the term of the rental or lease;

(c) insurance that provides coverage for the lessee and for those who accompany the latter inside the automobile, truck or other similar motor vehicle for the loss of, or damages to, personal effects found inside the vehicle during the term of the rental or lease; and for

(d) roadside assistance and emergency protection due to illness.

(2) Travel – means insurance against cancellation of travel, interruption of travel, loss of baggage, death, illness and accident, disability and damage to personal articles, when the same is limited to a specific trip and is issued in relation to the transportation provided by a maritime, land or air transport company.

#### Article 9.150.-Contents of license

(1) All licenses shall contain whatever information the Commissioner may deem pertinent, including the name, address, kinds of insurance and the number assigned to the license, and they shall be in the form prescribed by the Commissioner.

(2) In the case of partnerships or corporation, the license shall also set forth the name of every person authorized by the same to exercise the powers conferred therein, indicating the kinds of insurance that said persons may transact pursuant to the same.

(3) If the holder is a solicitor, the license shall contain the name of the producer the latter shall represent.

#### Article 9.160.-Licensing partnerships and corporations

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

(a) In the case of a partnership, every partner or member shall appear on said license and meet its requirements as if they were holders of individual licenses. A license in the name of a partnership may only be issued when it is proven, to the satisfaction of the Commissioner, that the company name has been registered in the Mercantile Registry.

(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 in relation to one kind or more kinds of insurance in particular, may only transact or contract, on behalf of the latter, 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 that is organized pursuant to the Laws of Puerto Rico and that maintains its main

business offices in Puerto Rico. All other directors, officials and those stockholders that have, directly or indirectly, a substantial financial interest in the corporation must meet the requirements listed in Article 9.170 of this Code.

(c) When the entity to be licensed is a savings and credit cooperative, organized pursuant to the Laws of Puerto Rico, at least one (1) executive officer must appear on the license and meet its requirements as if he/she were the holder of an individual license. Likewise, every person to be designated to act on behalf and in representation of the cooperative in the transaction of one or more of the kinds of insurance authorized pursuant to the license must appear on the license and meet its requirements regarding said kind or kinds of insurance as if he/she were the holder of an individual license. Such persons may only transact on behalf of the cooperative, the kind or kinds of insurance for which they were authorized. Provided, that only a license as producer may be issued to the cooperative as provided by Article 9.070 and only with respect to cooperative insurers authorized pursuant to this Code.

(d) Any corporation subsidiary of a savings and credit cooperative that applies for a license shall be subject to the provisions of paragraph (b) of this subsection.

(2) A license may not be issued to a partnership or corporation unless it is proven, to the satisfaction of the Commissioner that the business it intends to conduct is legally within the scope of the partnership contract or the articles of incorporation.

(3) Except for the exceptions contained in Article 9.260 of this Chapter, only those persons who reside in Puerto Rico may be designated in the license of the partnership or the corporation. A person designated to act

as the person authorized on the license of a partnership or a corporation may not, at the same time, represent another partnership or corporation or obtain a license of any kind whatsoever in his/her individual capacity until his/her capacity as such ceases.

(4) The Commissioner shall charge for every person in excess of three (3), who is designated on the license as producer or general agent of the partnership or corporation, the fees provided in Article 7.010 of the Code for the individual license as producer or general agent, as the case may be. In the case of a license as adjustor or consultant, the Commissioner shall charge for every person in excess of one (1) who is designated on the partnership or corporation license, the fees provided in Article 7.010 of the Code for licenses as adjustor or consultant, as the case may be.

(5) The partnership or corporation holding a license must notify the Commissioner about any application for bankruptcy, voluntary dissolution and merger or consolidation and about any change in its members, directors and officers, as well as in any of the persons designated in its license not later than fifteen (15) days as of the date of the application, transaction or change. The notice shall be accompanied by all the documentation that credits the transaction executed. The information herein required shall remain confidential and not be subject to public inspection.

(6) The Commissioner may, through rule or regulation, establish requirements in addition to those herein contained.

#### Article 9.161-License for the sale of variable products

(1) A corporation may obtain a license as producer for the sale of variable products provided it complies with the provisions of Article 9.160 of this Chapter, with all applicable provisions of the Puerto Rico Uniform Securities Act and its Regulations and with those other requirements that the

Commissioner, the Commissioner of Financial Institutions, or both acting jointly, may establish through rule, regulation, order or administrative determination.

(2) A natural person interested in obtaining a license of an individual nature for the sale of variable products must comply with the provisions of Sections 9.070 and 9.170 of this Code, with all applicable provisions of the Puerto Rico Uniform Securities Act and its Regulations and with those requirements that the Commissioner, the Commissioner of Financial Institutions, or both acting jointly, may establish through rule, regulation, order or administrative determination.

(3) The Commissioner shall suspend the license of any authorized producer to whom the Office of the Commissioner of Financial Institutions, the National Association of Securities Dealers or the Securities Exchange Commission has suspended its authorization for the sale of securities. In the case of corporations, the Commissioner shall remove from the license of the corporation the person suspended or expelled and shall allow the license of the corporation to exist while it complies with all provisions of this Chapter.

#### Article 9.170.-Requirements of the producer

The license as producer may only be issued and exist regarding a natural person who meets the following requirements:

(1) To be of legal age and to have finished high school or its equivalent.

(2) To reside de facto in Puerto Rico and to have been a bona fide resident of Puerto Rico for at least one (1) years immediately prior to the date on which he/she solicits the license, except for non-resident producers authorized pursuant to Article 9.260 and except for general agents as provided in Article 9.210(2). Neither shall those individuals who transfer

their residence from any state or jurisdiction of the United States and establish the same in a bona fide manner in Puerto Rico, be bound to comply with the residential requirement of one (1) year prior to soliciting a license, provided that at the time the license is solicited they meet the conditions established in clause (1)(c) of Article 9.110 and that the state or jurisdiction from where they proceed has adopted the provisions of the Model Act for licensing producers approved by the National Association of Insurance Commissioners and provided that a similar privilege has been granted to a person residing in Puerto Rico.

(3) Be trustworthy and competent and be able to comply in other respects with Article 9.070.

(4) Comply with the provisions of Article 9.080 about a 'controlled business.'

(5) Pass any examination required pursuant to Article 9.110.

(6) Shall not be a stockholder, member, partner, director, official, representative or employee of any other producer authorized to conduct business or who is conducting business in Puerto Rico nor to have an economic or financial interest or a contractual relationship in the field of insurance with a producer authorized to conduct business or who is conducting business in Puerto Rico.

(7) Provide satisfactory evidence of having complied with those continuing education requirements established by the Commissioner through rule or regulation.

(8) Have and maintain a place of business, as required by Article 9.340.

(9) Present proof of financial responsibility required pursuant to Article 9.200 of this Chapter.

#### Article 9.190.-Scope of license as producer

The license as producer shall cover all kinds of insurance for which the latter has taken and passed to examination required. However, the Commissioner may issue a license as producer limited to a specific kinds or kinds of insurance, excluding others.

#### Article 9.200.-Proof of Financial Liability of the Producer

(1) No license as producer shall be issued or permitted to exist unless [...] of the Commonwealth 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.

(2) The bond shall be for the sum the Commissioner may require, taking into account, among other things, the volume of business subscribed through a producer, although it shall never be less than ten thousand (10,000) dollars. In the case of a corporation or partnership, the amount of the bond shall never be less than ten thousand (10,000) dollars multiplied by the number of persons designated in its license. The Commissioner shall provide through rule or regulation the parameters pursuant to which the amount of the bond required shall be established.

(3) The bond shall be effective by the date of effectiveness of the license.

(4) The bond shall consist of:

(a) A bond issued by an authorized surety insurer which shall not be subject to cancellation unless the Commissioner is notified thereof not later than sixty (60) days prior to its cancellation and in which it is established that the liability contracted under the bond contract until the

date of cancellation shall not be extinguished nor be limited in any manner whatsoever because of the cancellation; or

(b) Deposit of securities acceptable to the Commissioner.

(5) In lieu of the bond the producer may submit a professional liability policy issued by an authorized insurer which shall be for an amount equal to or greater than the bond and be subject to the approval of the Commissioner.

#### Article 9.210.-Authority of the Producer

(1) A producer is not a representative of an insurer and does not have the power through his own acts to bind the insurer regarding a risk or in reference to any insurance transaction, unless the producer has subscribed a contract with the insurer through which he/she is conferred the authority to act as his/her authorized representative in the transaction of one or more kinds of insurance subscribed by the insurer. Said appointment shall be notified to the Commissioner pursuant to the provisions of Article 9.063 of this Code.

(2) In those cases whereby the an insurer wishes to appoint a producer as his/her authorized representative for transacting insurance, the latter shall subscribe a contract with said producer through which shall be established, among other things, the payment of commissions, the collection of premiums, the termination of the contractual relationship and whether said representation shall be of an exclusive nature.

#### Article 9.211.-License as General Agent

(1) No person shall act in the capacity of general agent in relation to those risks located in the Commonwealth of Puerto Rico in the name of an insurer authorized to enter into the insurance business in Puerto Rico, unless said person holds a license issued by the Commissioner to do so pursuant to

this Chapter and unless an appointment of said insurer exists pursuant to the provisions of Article 9.212 of this Code.

(2) The license as general agent issued by the Commissioner shall continue in effect while it has not been suspended, revoked or cancelled, but subject to the payment of the annual fee for the amount stipulated in Article 7.010 before its expiration date.

(3) The Commissioner may deny, suspend or revoke the license of the general agent for any of the grounds specified in Article 9.460 and in the manner provided in Article 9.470.

#### Article 9.212.-Appointment of General Agents

(1) The insurer who appoints a person as general agent to represent him/her as such in Puerto Rico, shall give written notice of the appointment to the Commissioner within the fifteen (15) days following the date on which the contract for such purposes is executed and in the form he/she may prescribe. The insurer shall keep accessible for the inspection of the Commissioner the contract executed between the former and the general agent.

(2) The general agent shall have the authority, which consistently with this Code, the insurer may confer upon him/her in the contract executed between them. Said general agent may transact insurance applications if he/she obtains a license as producer and meets all requirements established in Article 9.170 of the Code for said license, except as refers to the length of his/her previous residence in Puerto Rico.

(3) The volume of business generated by the general agent shall mostly proceed from other producers.

#### Article 9.220.-Requirements of the solicitor

A license as solicitor may only be issued to a natural person who meets the following requirements:

(1) To be residing in and to have been a bona fide resident of Puerto Rico for at least one (1) year immediately before the date on which the license is applied for, to be at least eighteen (18) years of age and to have finished High School or its equivalent. The Commissioner may, at his/her discretion, waive the residence requirement of an industrial life insurance solicitor who is to be assigned to a specific area for the collection of small short-term premiums.

(2) To be trustworthy, competent and willing to actively engage in the insurance business as his/her main occupation and be otherwise in compliance with Article 9.070.

(3) To pass any examination required pursuant to Article 9.110.

(4) To be appointed solicitor by a single authorized resident producer in relation to any kind or kinds of insurance for which said producer is authorized.

(5) Shall not be licensed as general agent, producer, consultant or adjuster.

(6) Shall not devote a substantial portion of his/her time to the adjustment of losses when he/she is a salaried employee of an insurer or general agent.

(7) Shall satisfactorily show to have met those continuing education requirements that, from time to time, adopts the Commissioner through rule or regulation.

#### Article 9.230.-License as solicitor; custody; cancellation

The license as solicitor shall be entrusted to the producer who appoints the solicitor. Upon the expiration of such an appointment the

license shall also expire and the producer shall return the same to the Commissioner for its cancellation.

The license of a solicitor may be cancelled through a written petition filed with the Commissioner by the former or by the producer who appointed him/her. If it is the producer who files the petition, it shall set forth the grounds for said cancellation and must be accompanied by evidence attesting that the producer has mailed a notice of said petition to the solicitor. The cancellation of the appointment of a solicitor at the request of the producer shall be effective ten (10) days after the date on which the producer has provided the evidence to the Commissioner attesting that he/she sent the solicitor the notice of cancellation of his/her appointment.

Article 9.240.-Authority of the solicitor; liability of the solicitor

(1) The license of a solicitor appointed by a producer shall cover only that kind or kinds of insurance that said producer may transact pursuant to his/her license.

(2) A solicitor shall not have the power to bind an insurer regarding any risk or insurance contract, nor to countersign insurance contracts.

(3) Any business transacted by a solicitor under his/her license shall be in the name and on the account of the producer by whom he/she is appointed and the producer shall be liable for all acts or omissions of the solicitor within the scope of such an appointment.

Article 9.241.-Requirements of the insurance consultant

All applicants for a license as insurance consultant shall meet the following requirements:

(1) To reside de facto in Puerto Rico and to have been a bona fide resident of Puerto Rico for at least one (1) years immediately prior to the date on which the license is applied for.

(2) To be trustworthy, competent and be otherwise in compliance with all other provisions of Article 9.070.

(3) To pass any examination required pursuant to Article 9.110 and file an application for license in the form supplied by the Commissioner.

(4) To have at least five (5) years of experience as producer or adjuster in relation to the kinds of insurance or annuities to be covered by the license. Must also have the special training and the additional experience necessary to fulfill the duties as consultant.

(5) To post the bond required as consultant by Article 9.244.

(6) To satisfactorily show to have met the continuing education requirements established by the Commissioner through rule or regulation.

(7) Shall not be a stockholder, member, partner, director, official, officer, representative or employee of any insurer authorized or producer authorized to engage in or who is engaged in business in Puerto Rico; or who has economic or financial interest or a contractual relationship in the insurance field with an authorized insurer or producer, except as policy holder.

Article 9.242.-Revocation, suspension or denial of license as insurance consultant

(1) The Commissioner may revoke the license as insurance consultant for any violation of this Chapter and for any of the reasons for which a license as producer may be revoked as provided in Article 9.460.

(2) Any person who acts as insurance consultant, as defined in Article 9.051, without holding a license for doing so or during the period in which the same was suspended or revoked shall be subject to a fine of not less than five hundred (500) dollars nor of more than five thousand (5,000)

dollars or to a term of imprisonment of not more than six months, or both penalties for each violation.

Article 9.243.-Form and requirements of the insurance consultant contract

For an insurance consultant contract to be binding it shall be executed in writing and submitted in duplicate by the contracting person or his/her legal representative and the consultant. The contract shall specify the services to be rendered and the fees to be paid.

Once his/her advice as insurance consultant is offered, the consultant shall submit to the person who received his/her services a written report specifying the advice, counsel, recommendations and information provided.

Violation of this provision shall entail an administrative fine of not less than five hundred (500) dollars or of more than five thousand (5,000) dollars.

Article 9.244.-Proof of financial liability for insurance consultants

No license as insurance consultant shall be issued or allowed to exist unless the applicant presents to the Commissioner and thereafter maintains in effect a bond in favor of the Commonwealth of Puerto Rico to answer for the damages that may be suffered by any party as a result of negligence in the fulfillment of his/her duties as consultant. The bond of the insurance consultant shall be effective at the date of effectiveness of the license. Said bond may be substituted by a professional liability policy for an amount equal to or greater than the bond required, subject to the approval of the Commissioner.

The bond shall be for an amount of not less than twenty-five thousand (25,000) dollars and issued by a surety insurer authorized to conduct business in Puerto Rico. Said bond shall not be subject to cancellation except

through a written notice to the Commissioner and to the licensee at least sixty (60) days prior to its cancellation date.

Article 9.250.-Insurance vending machines

(1) A producer contracted by an insurer to act as his/her authorized representative may negotiate applications and issue insurance policies by means of vending machines, inspected by him/her, provided the Commissioner determines that:

(a) The kind of insurance and the form of the policy that the producer intends to transact pursuant to his/her license are suitable for sale and issuance by means of vending machines;

(b) The type of vending machine is suitable and practical for such a purpose; and

(c) The use of said vending machines shall be convenient for the public.

(2) The Commissioner shall issue to the producer a special vending machine license for each machine inspected by him/her. The license shall specify the make and serial number of the machine, the name and address of the insurer and the producer, the kind of insurance and type of the policy provided and the place where said machine is to be in operation. The license shall expire, be renewed and be suspended or revoked when the license of the producer expires, is renewed and suspended or revoked or for any cause whereby the contract between the latter and the insurer is terminated, whichever occurs first. The license fees for each vending machine shall be one hundred (100) dollars per year or part thereof. The license shall be displayed in each machine, or close thereto, as required by the Commissioner.

(3) The policies thus sold shall not have to be countersigned.

(4) The Commissioner may, at his/her discretion, fix a limit as to the number of vending machines to be operated by a single insurer, or by a single producer or from a single location.

(5) The Commissioner shall supply the applications, licenses and forms required under this Article.

#### Article 9.25.-Sale of Insurance over the Internet

The Commissioner may adopt, through rule or regulation, the standards that shall govern the sale, offer and solicitation of insurance over the Internet pursuant to the applicable provisions of this Code and of any other Act approved by the Legislature to regulate said activity.

#### Article 9.260.-Nonresident producers

(1) The Commissioner may grant a license as nonresident producer to any person who comes from a state or jurisdiction of the United States that has adopted the provisions of the Model Act for licensing producers approved by the National Association of Insurance Commissioners and that grants to a resident producer in Puerto Rico a similar privilege, provided the person:

(a) holds a license as producer duly issued by the Insurance Commissioner of the state or jurisdiction from whence he/she comes, subject to having that state or jurisdiction issue a certificate of good standing which would also indicate that the applicant does not have any matter pending in that state or jurisdiction that could result in the suspension or revocation of the license; and

(b) submits or makes available to the Commissioner a copy of the license application he/she presented in the state or jurisdiction from whence he/she comes; and

(c) fills out and submits the application for the license as nonresident producer in the form prescribed by the Commissioner and pays the corresponding fees pursuant to what the Code provides.

(2) The Commissioner may grant a license as nonresident producer to a juridical person who meets the following requirements:

(a) to be organized under the laws of a state or jurisdiction of the United States and to hold a license as producer according to the provisions of clause (1) of this Article.

(b) to provide evidence about being duly registered and authorized according to the laws of Puerto Rico to engage in business in Puerto Rico

(c) to designate the person residing in Puerto Rico to be in charge of those matters that involve insurance transactions in Puerto Rico.

(3) The nonresident producer shall be subject to the same obligations and limitations and to the supervision of the Commissioner as though residing or domiciled in Puerto Rico and to keeping the usual and customary books corresponding to insurance transactions in Puerto Rico.

(4) No license as nonresident producer shall be issued to any person who has a direct or indirect economic or financial interest in a general agent or resident producer or in the business of a solicitor authorized as resident in Puerto Rico.

(6) The Commissioner shall issue a license as nonresident producer to a person who comes from a jurisdiction other than the United States provided he/she complies with the provisions of this Article and provides evidence to the satisfaction of the Commissioner that under the laws of said jurisdiction a similar privilege is granted to the residents of Puerto Rico.

(7) No license as nonresident producer shall be issued to any person unless he/she presents the proxy prescribed in Article 9.280.

Article 9.270.-Limitations imposed to nonresident producers

(1) A nonresident producer shall directly or indirectly solicit insurance in Puerto Rico or be able to inspect risks in Puerto Rico and, pursuant to his/her license, shall place only insurance that has been directly procured from the insured outside of Puerto Rico upon a subject of insurance located or to be executed in Puerto Rico.

(2) The nonresident producer may only place insurance upon subjects located or to be executed in Puerto Rico through a resident producer, appointed by the insurer and with an insurer authorized to transact insurance in Puerto Rico. The insurance so transacted shall be deemed, for all purposes, as having been transacted in Puerto Rico.

(3) The nonresident producer shall not countersign any policy to cover an insurance object placed, residing or to be executed in Puerto Rico. The countersignature shall be made by a resident producer appointed by the insurer for such a purpose, who shall enter in a register all details of the insurance so transacted, including the name of the nonresident producer.

Article 9.280.-Process against nonresident producer

(1) A nonresident producer, before his license is issued, shall irrevocably appoint the Commissioner as his/her proxy to receive service of legal process issued against the licensee upon causes of action arising in Puerto Rico out of transactions under the license. Service upon the Commissioner as proxy shall constitute effective legal service upon the licensee.

(2) Duplicate copies of said legal process shall be served to the Commissioner by persons competent to serve a summons. At the time of

service the plaintiff shall pay to the Commissioner ten (10) dollars to cover the costs for transacting the service. Upon receipt of the service the Commissioner shall forthwith remit one of the copies of the process by registered mail with return receipt requested to the defendant nonresident producer at his/her last address as it appears in the files of the office of the Commissioner. The Commissioner shall keep a register of the day and hour of service of all such processes.

(3) No other action shall be taken against the defendant nonresident producer nor shall he/she be required to appear or plead until forty-five (45) days have elapsed from the date of the service to the Commissioner.

#### Article 9.290.-Requirements of the Adjuster

A license as adjustor shall not be issued or allowed to exist to any person who does not meet the following requirements:

(1) To be of legal age and have completed High School or its equivalent.

(2) To be and to have been a bona fide resident of Puerto Rico for at least one (1) year immediately prior to the date on which he/she applies for the license.

(3) To be trustworthy and competent.

(4) To pass any examination required under Article 9.110.

(5) To have posted by bond required by Article 9.320, if for a license as public adjuster.

(6) To satisfactorily demonstrate that he/she has met those reasonable continuing education requirements adopted by the Commissioner through rule or regulation.

(7) Shall not be a stockholder, member, partner, director, official, representative or employee of any producer authorized to conduct business

or who is conducting business in Puerto Rico nor to have an economic or financial interest or a contractual relationship in the field of insurance with a producer authorized to conduct business or who is conducting business in Puerto Rico.

(8) Shall not be a stockholder, member, partner, director, official, representative or employee of any other adjuster authorized to conduct business or who is conducting business in Puerto Rico nor to have an economic or financial interest or a contractual relationship in the field of insurance with an adjuster authorized to conduct business or who is conducting business in Puerto Rico.

Article 9.310.-Special rights to adjust

(1) A producer contracted by the insurer to act as his/her authorized representative may, on behalf of the insurer and by virtue of the authority which pursuant to the contract said insurer has conferred, act, from time to time, as adjuster and investigate, inform and liquidate claims without the need of having a license as adjuster; provided that he/she may not act as adjuster, nor investigate, inform or liquidate claims in relation to any policy, contract or insurance cover transacted or contracted because of his/her performance as producer.

(2) An authorized producer may assist persons insured through him/her with the transactions leading to the liquidation and adjustment of losses under said insurance without being authorized as an adjuster.

(3) No license from Puerto Rico shall be required of a nonresident independent adjuster for the adjustment in Puerto Rico of a single loss or of losses arising from a catastrophe common to all such losses.

(4) The Commissioner may grant a special emergency permit as adjuster to any person qualified for adjusting losses arising from a general

catastrophe after the presentation of the application for the special permit in the form prescribed for doing so by the Commissioner. Such a permit shall be subject to compliance with the requirements and conditions established by the Commissioner and to the payment of the corresponding fees.

Article 9.320.-Bond of the public adjuster

(1) Prior to the granting of a license as public adjuster, the applicant shall post with the Commissioner and thereafter maintain in effect for the duration of the license, a bond in favor of the Commonwealth of Puerto Rico, issued by a surety insurer authorized by the Commissioner, for an amount of not less than ten thousand (10,000) dollars. The bond shall be continuous in its form and not be subject to cancellation unless a written notice is presented sixty (60) days prior to its cancellation. Every public adjuster bond shall be effective by the date of effectiveness of the license. If more than once person appears in the license as adjuster issued to any partnership or corporation, the bond must be increase in the sum required by the Commissioner, but the same shall not be less than ten thousand (10,000) dollars multiplied by the number of persons designated in the license. The bond shall be subject to having the adjuster present to the claimant, whose claim he/she is transacting, due account of money or of any payment received in relation thereto. The bond shall also cover any claim arising from professional negligence.

(3) Any natural or juridical person authorized by the Commissioner as emergency public adjuster must post, together with the application for the special permit, and thereafter maintain while the permit is in effect, a bond in favor of the Commonwealth of Puerto Rico subscribed by an authorized surety insurer, for the amount determined by the Commissioner through rule, regulation or administrative order or determination.

(4) In lieu of the bond, the emergency public adjuster may present a professional liability policy issued by an authorized insurer, which shall be for an amount equal to or greater than the amount of the bond and the same shall be subject to the approval of the Commissioner.

#### Article 9.330.-Report of losses by the Adjuster

(1) Any authorized independent adjuster, at the time of taking charge of the adjustment of the losses caused by a fire, storm, hurricane or earthquake, shall render to the Commissioner a preliminary report of the estimated loss and within five (5) working days after the amount of the loss has been determined, a final report of the amount to be paid for the loss as agreed upon between the parties. The Commissioner may, at his/her discretion, suspend through rule or regulations the requirement of this subsection.

(2) The Commissioner may, from time to time, through rule, regulation or administrative order or determination, require similar reports as to other kinds or classifications of losses as to which he/she deems such reports to be necessary or convenient.

#### Article 9.340.-Place of business

(1) Every producer, other than a producer authorized only as to life or disability insurance, as well as every authorized adjuster or consultant shall have in Puerto Rico a place of business accessible to the public. The place of business shall be one wherein the licensee mainly conducts business pursuant to his/her license. The address of the place of business shall appear on the license and its holder shall promptly notify the Commissioner of any change.

(2) Nothing in this Article shall be deemed to prohibit the licensee from maintaining his/her place of business in his/her place of residence in

Puerto Rico, but such a place must be accessible to the public and comply with all other requirements contained in the above subsection (1).

#### Article 9.350.-Display of license

Any person who holds a license issued by the Commissioner in any capacity shall be bound to display the same as evidence of his/her authority to engage in the insurance business in Puerto Rico.

Should the Commissioner issue a certificate as evidence of the license granted, the person thus authorized shall be bound to exhibit said certificate in a visible place of his/her place of business. Likewise, should the Commissioner issue an identification card as evidence of the license granted, the person thus authorized shall carry the same on his/her person while conducting insurance business and show the same every time he/she is asked to do so.

Any person to whom the Commissioner issues a license shall be bound to protect and use the same exclusively for the purposes related to the business for which he/she is authorized. Should said license be lost, replacing the same shall entail the payment of the fees established by the Commissioner.

#### Article 9.351.-Identification

Every holder of a license issued pursuant to this Chapter shall identify him/herself exclusively according to the license he/she has been issued. Thus, when publishing any notice or printed material, or when advertising through any means of communication, he/she shall do so under the name which appears on the license. Provided, that no holder of an individual license may identify him/herself under a trade name. Only those juridical persons that after organizing themselves as such pursuant to the laws of Puerto Rico have complied with the provisions of Article 9.160 and hold a

valid license issued by the Commissioner to engage in the insurance business in such a capacity may be able to identify themselves as a corporation or partnership.

Article 9.360.-Required books and documents

(1) Every insurance producer, general agent, proxy, adjuster or consultant shall keep, at the place of business indicated in his/her license, the usual and customary books corresponding to the transactions effected pursuant to his/her license, together with the additional books the Commissioner may require through rule, regulation or administrative order or determination, and shall also conserve the documents related thereto.

(2) All books and documents related to any particular transaction shall be available and accessible to the inspection of the Commissioner at any business time during the five (5) years immediately following the date of completion of such a transaction, unless a shorter period is granted, through rule, regulation or administrative order or determination of the Commissioner, for a certain case in particular.

(3) As regards life or disability insurance, any insurance producer, general agent, adjuster or consultant shall be bound to comply with the requirements related to the books and documents established by the Commissioner through rule or regulation.

Article 9.370.-Reports to the Commissioner

Every producer, general agent, solicitor, adjuster, consultant or proxy shall submit, at the request of the Commissioner, a report about his/her insurance business or about any matter or loss he/she has transacted, or in which he/she has participated or about which he/she has information.

Said report shall be submitted in the form provided by the Commissioner for doing so and shall contain in an exact and precise manner

all the information pertinent to the period provided by the Commissioner. Noncompliance with what is herein provided shall entail the imposition of sanctions, including non-renewal, suspension or revocation of the license.

Article 9.380.-Collection and accounting of premiums

(1) Any premium paid by an insured to his/her producer shall not be deemed paid to the insurer unless it is delivered to the insurer, to his/her general agent or to an authorized agent, except that:

(a) if the insurer, either directly or through his/her general agent or authorized representative expressly authorized the producer in writing to collect said premium, the insurer shall be responsible for the same to the insured; or

(b) if the amount of the premium on a policy issued through a producer is charged by the insurer, his/her general agent or authorized representative to the current account of the producer, the insurer shall be responsible therefor to the insured and the premium thus received is remitted to the insurer within the fifteen (15) days following the date on which it is received. This provision shall not affect the rights and obligations of the insurer, the general agent, the solicitor and the producer among themselves.

(2) All funds representing premiums or returned premiums received by a producer, general agent or solicitor shall be received in a fiduciary capacity, shall not be mixed with other funds of the licensee and shall be credited and paid in full to the person entitled thereto within fifteen (15) days from the date in which requested, except that in case a different term should exist in the contract subscribed by the insurer with his/her authorized representative or general agent, said term shall prevail, but in no case shall it exceed the term of ninety (90) days as of the date of effectiveness of the policy. When the person entitled to received returned

premiums fails to solicit their return, they shall be remitted within ninety (90) days as of the date of effectiveness of the policy the endorsement or the cancellation thereof,

The producer, general agent, solicitor or authorized representative of the insurer who receives returned premiums and fails to remit them to the person entitled thereto within the terms herein provided, shall be bound to pay legal interest on the amount of the premiums withheld and be subject to the imposition of sanctions provided in this Code.

(3) Any producer, general agent or solicitor who, without being legally authorized to do so, unduly takes or appropriates such funds or part thereof for his/her own use, and the managing partner, director, official or executive employee, should any of them be a juridical person, who approves or collaborates with said undue taking or appropriation, in addition to the other penalties provided in this Code shall be guilty of a crime and be punished as provided in the Puerto Rico Penal Code.

(4) Any managing partner, director, official or executive employee of a producer, general agent or solicitor who without being legally authorized to do so, unduly takes or appropriates such funds or part thereof for his/her own use shall be jointly and severally responsible to the insurer or insurers of the funds unduly taken or appropriated.

#### Article 9.390.-Exchange of businesses; sharing commissions

(1) No licensee shall divide his/her commission or compensation with others, or share in any commission or compensation payable to others on account of insurance subject to this Code, except as follows:

(a) A resident producer may divide commissions or compensation with other resident producers authorized to transact the same kind or kinds of insurance or may share in the same provided this is done

with respect to some insurance transaction whereby both have conducted transactions that make them deserving of such commissions or compensation.

(b) A resident producer and a nonresident producer may divide between themselves commissions as to the kind or kinds of insurance for which both are authorized and that have been lawfully transacted.

(c) A resident producer and a surplus line insurance broker may divide commissions pursuant to Article 10.120.

This subsection shall not be deemed to affect the payment of the regular salaries due to employees of the licensee, or the distribution in the regular course of business, of compensation and profits among members or stockholder, should the licensee be a partnership or corporation.

(3) Besides any other penalty provided in this Code, the license of the licensee who violates or participates in violating this Article shall be revoked and shall not be reinstated for at least one year.

#### Article 9.400.-Transfer of business; Committees

(1) When an insurance policy originally subscribed through a particular producer whose premium has been billed and paid for in whole or in part is cancelled and substituted for one or more policies with the same coverage or with additional coverage for the same insured through another producer, whether or not subscribed with the same insurer and whether or not subscribed for the same term, the new producer shall be liable to the originating producer for the amount of any commission unearned by the latter for the term comprised between the date of cancellation and the date on which the next anniversary of the original policy begins, if the partial payment corresponding to the policy year on which the cancellation occurs has been paid.

To the effects of this Article, the phrase ‘unearned commission’ means the commission that has been advanced or paid or credited to the account of a producer on account of the premium that has been paid to and accepted by the insurer, but which the producer is bound to refund due to the cancellation of the insurance for which the premium was paid.

(2) It is essential that in the transfer of businesses the new producer acts in good faith. To those effects it shall be understood that the new producer acted in good faith if he/she immediately notifies the originating producer by certified mail with return receipt requested that the insured has appointed him/her as his/her producer. In the absence of such a notice it shall be understood that the appointment of the originating producer remains in effect.

(3) Both the originating producer and the new producer shall provide evidence available for the inspection of the Commissioner attending that he/she has complied with the requirements of this Article.

(5) This Article shall not apply to life and disability insurance.

#### Article 9.401.-Assignment or sale of policies

In the case of a transaction for the assignment or sale of an insurance policies portfolio, the new producer shall immediately notify each insured through a written communication to the last address appearing in the record about the transaction executed, granting the insured a term of not less than ten (10) days to choose to appoint him/her as his/her producer or appoint another producer.

On his/her part, the originating producer shall promptly notify the Commissioner about the transaction executed and submit a copy of the assignment or sales contract, including all its riders. The information herein required shall be kept confidential and not be available for public inspection.

#### Article 9.420.-Expiration and renewal of licenses

(1) Any license as general agent, producer, proxy, solicitor, consultant and adjuster 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. Subject to this, the Commissioner shall be paid, before midnight of the day on which the term of one year expires, from the date of effectiveness of the license, the corresponding annual contribution stipulated under Article 7.010 of this Code. Said payment shall be accompanied by the written application provided by the Commissioner for renewing said license. Any license for whose renewal the Commissioner has not received the renewal application duly filled out and accompanied by the payment of the corresponding fees before the expiration date of said license shall be deemed to have expired on that date.

(2) The application for the renewal of a license as solicitor shall be submitted by the producer by whom he/she was appointed.

(3) The Commissioner may consider as an application for a new license any petition for license renewal or the payment of a fee received after the date of expiration of a previously existing license.

(4) The person who possesses a license that has expired or who has control over the same shall immediately surrender the same to the Commissioner for its proper cancellation.

#### Article 9.430.-Cancellation of license as producer

The license of a producer shall be cancelled through a written petition submitted to the Commissioner by the producer or in the case of a producer contracted as authorized representative, by the latter or by the insurer who subscribed such as contract. If the petition is submitted by the insurer, it

shall set forth the reasons for said cancellation and must be accompanied by evidence attesting that the insurer has mailed a notice of said petition to the producer. Should the Commissioner consider that the reasons set forth by the insurer show that the producer does not meet the requirements of Article 9.170, the Commissioner shall notify the producer about the cancellation of his/her license at least fifteen (15) days before the effective date of the cancellation, subject to the right of the producer to be heard.

Article 9.440.-Temporary licenses, issuance

(1) The Commissioner may issue temporary licenses as producer in the following cases:

(a) To the surviving spouse or next of kin or the administrator or executor or to an employee of the administrator or executor of the deceased authorized producer.

(b) To the spouse, next of kin, employee or legal guardian of an authorized producer who has become disabled due to illness, injury or insanity or because of reasonably required temporary absence from Puerto Rico or for being in active full-time military service.

(c) To the surviving member or employee of a partnership or the surviving official or employee of a corporation authorized as producer, upon the death or disability of the person designated in the license to exercise the powers thereof.

(2) To be eligible for a temporary license, a person must be qualified as if for a regular license, except as to experience, training and passing the examination.

(3) Any fee paid to the Commissioner for issuing a temporary license shall be credited to the fees required for issuing a permanent license, should the same be issued to replace the temporary license before it expires.

Article 9.450.-Temporary license, duration, limitations

(1) A temporary license shall expire within the one hundred and eighty (180) days following its date of issue.

(2) Not more than one temporary license shall be issued to any person during the same twelve (12) month period, as of the date of issue of the temporary license, and the Commissioner may refuse to grant a new license to any person who had thus been previously authorized.

(3) The holder of a temporary license shall have all the rights and privileges of the holder of a permanent license of the same kind. Provided, that the holder of a temporary license may not transact a new business nor be entitled to receive or able to receive any commission or compensation whatsoever on account of a new business, unless he/she qualifies for receiving and receives the license required by this Chapter.

Article 9.460.-Denial, suspension, revocation of licenses and grounds

(1) The Commissioner may deny, suspend, revoke or refuse to renew any license issued pursuant to this Chapter, any license as surplus line broker or as general agent, for any cause specified in any provision of this Code or for any of the following causes:

(a) For any cause for which issuing the license could have been refused had it then existed and been known to the Commissioner;

(b) For willful violation of or noncompliance with or knowingly participating in the violation of any provision of this Code or of any rule, regulation or order of the Commissioner;

(c) If the licensee has obtained or attempted to obtain a license through misrepresentation or fraud, or failed to pass any examination required under this Chapter;

(d) For embezzlement or misappropriation for personal use or unlawful withholding of monies belonging to insurers or other persons, received in the course of business under the license;

(e) If convicted of felony or crime involving fraud or moral turpitude by final judgment;

(f) If in the conduct of his/her business under the license, the licensee has shown to be and is so deemed by the Commissioner, incompetent, untrustworthy or a source of damages and loss to the public.

(g) If the licensee has dealt in or attempted to deal in insurance or to exercise his/her powers relative to insurance beyond the scope of his/her license;

(h) If the licensee has procured an insurance transaction in violation of the requirements for insurable interest as defined in Articles 11.040 and 11.050;

(i) For providing incorrect, deceitful, incomplete or false information on any report required by the Commissioner;

(j) For altering the license or any other authorizing document issued by the Commissioner;

(k) For distorting the terms of a contract or of an insurance application;

(l) For having been the object of a denial, suspension or revocation of a license or its equivalent in a state or territory of the United States or his country of origin;

(m) For providing or including incorrect, deceitful, incomplete or false information in an insurance application or in any other document related to an insurance transaction;

(n) For using notes or other reference material while taking an examination for an insurance license;

(o) For accepting an insurance transaction from an unlicensed individual;

(p) For noncompliance with an administrative or judicial order which imposes the obligation of paying child support; and

(q) For noncompliance with his/her tax responsibility or with an administrative or judicial order which order compliance with said responsibility.

(2) The license of any partnership or corporation may also be suspended, revoked or denied for any cause related to any of the directors or persons designated in the license to exercise its powers. Likewise, the license of any partnership or corporation may be suspended, revoked or denied for noncompliance with its tax responsibility or for failing to submit any report required pursuant to the Code or to the Law under which it was organized.

(3) The holder of a license which was revoked or suspended must surrender the same to the Commissioner. The mere retention of a revoked or suspended license by the holder thereof shall be sufficient grounds to declare said person as untrustworthy or incompetent to have an insurance license in any capacity, leaving said person exposed to the sanctions herein provided and to any other sanction provided under the Code.

Article 9.470.-Procedure for suspending, revoking or denying a license

(1) The Commissioner shall revoke or refuse to renew a license immediately and without hearing upon conviction of the licensee under final

judgment of a felony or a crime involving moral turpitude or of a violation of this Code.

(2) For causes other than those stated in subsection (1) above, including those set forth in Article 9.460 of this Chapter, the Commissioner shall only suspend, revoke or refuse to renew a license:

(a) Through an order given to the licensee at least fifteen (15) days prior to the effective date of said order, subject to the right of the licensee to be heard and while the hearing is held to those effects, the license shall be suspended; or

(b) through an order given to the licensee after the hearing has been held, effective as of not less than ten (10) days after the order has been given.

#### Article 9.471.-Reinstatement of licenses

The Commissioner may, at his/her discretion and after a petition to that effect, reinstate any license that has been revoked through a final and firm resolution or administrative order. Any person interested in petitioning for the reinstatement of a license that had been revoked must submit evidence showing that the reasons for which the same was revoked have been corrected or have ceased to exist, as well as evidence that attests to its reinstatement. If one of the reasons for revoking the license was that the person was declared to be untrustworthy for the insurance business, the latter, as part of his/her petition for reinstatement shall be bound to demonstrate his/her trustworthiness taking into account all the circumstances under which the declaration of untrustworthiness was issued.

The Commissioner, after evaluating the petition for reinstatement submitted, may, as a requirement for reinstating the revoked license, impose one or more of the following conditions:

(1) To have continuing education courses accredited, such as those previously approved by the Commissioner.

(2) To take and pass an examination for the kind or kinds of insurance the person is interested in transacting.

(3) That the scope of the license be limited.

(4) That the effective term of the license be limited.

(5) Any other condition that may be established by the Commissioner through an order.

The determination of the Commissioner regarding the petition for reinstatement shall be deemed as a final adjudication of the petition.

#### Article 9.480.-Additional penalties for violations

(1) Beside the denial, revocation or suspension of the license or in lieu of these, any of the following sanctions may be imposed on any licensee who violates any of the provisions of this Code:

(a) Denial of the license in any capacity authorized pursuant to this Code for a term not to exceed five (5) years.

(b) Administrative fine not to exceed five thousand (5,000) dollars for each fault, provided that the total amount of the fines imposed for different faults shall not exceed fifty thousand (50,000) dollars.

(c) Upon conviction of said violation through final judgment of a Court, with a fine of not less than one thousand (1,000) dollars nor of more than fifty thousand (50,000) dollars.

(2) Any of said penalties may be imposed as substitute to or jointly with any other provided by law.

#### Section 9.-Counterreferences

The terms 'Agent' and 'Broker' used in all those Articles of the Insurance Code where said terms are used and which have not been

amended by this Act, shall be substituted by the term 'Producer.' Provided that in those cases whereby the term 'Agent' is substituted by the term 'Producer,' this term shall have the meaning provided in Article 9.021 of this Act.

Section 10.-Effect of Existing Laws

To the degree that the provisions of this Act are inconsistent with any other law of Puerto Rico, the provisions of this Act shall prevail.

Section 11.-Severability of the Provisions

The provisions of this Act are independent and severable; if any of its provisions is declared unconstitutional by a Court with jurisdiction and competence, the remaining provisions of this Act shall not be affected and the Act thus modified by the decision of said Court shall continue in full force and effect.

Section 12.-Effective Date

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 10 (H.B. 895) (Conference) of the 2<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to add a Article 27.280; amend Articles 27.240 and 27.310 and renumber Articles 27.280, 27.290, 27.300, 27.310, 27.320 and 27.330 as Articles 27.290, 27.300, 27.310, 27.320, 27.330 and 27.340 of Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” in order to give civil immunity to those persons who in good faith report fraudulent in the insurance business to the Office of the Insurance Commissioner of Puerto Rico or to any other law enforcement agency; etc.,

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

In San Juan, Puerto Rico, today 8<sup>th</sup> of December of 2006.

Francisco J. Domenech  
Director