

(H. B. 1350)

(No. 2-2018)

(Approved January 4, 2018)

AN ACT

To consolidate the anticorruption provisions of different laws into an “Anticorruption Code for the New Puerto Rico”; amend Section 1.1 of Act No. 1-2012, as amended, known as the “Puerto Rico Government Ethics Act of 2011”; to provide for the “Anti-corruption Interagency Group” by law; repeal Act No. 426-2000, as amended; repeal Act No. 36-2001; repeal Act No. 14-2001, as amended; repeal Act No. 119-1997, as amended; repeal Act No. 458-2000, as amended; repeal Act No. 84-2002, as amended; repeal Act No. 50-1993, as amended; amend Section 2 of Act No. 259 of April 3, 1946, as amended, known as the “Suspended Sentence and Probation Act”; amend Section 24 of Reorganization Plan No. 3-2011, as amended, known as the “Reorganization Plan of the General Services Administration of 2011,” and amend Section 5 of Act No. 74-2017, in order to compile into a single statute the public policy on zero tolerance for corruption, strengthen the tools to fight corruption, broaden the protections available to individuals who report acts of corruption; and for other related purposes.

STATEMENT OF MOTIVES

Corruption is an evil that affects all levels of our society. This continues to be a serious and sensitive issue due to the failed anti-corruption public policies implemented by previous administrations. This evil erodes public trust in institutions and the mere conduct of one of its members may lay to waste the collective-group effort of an organization.

The most common type of corruption is abuse of a public authority to obtain undue advantage, generally secretly and privately. Other forms of corruption are the improper use of privileged information, patronage, bribery, influence peddling, extortion, fraud, embezzlement, malfeasance in office, quid pro quo, cronyism, co-

optation, nepotism, impunity, and despotism. In addition, corruption frequently facilitates or leads to other types of criminal activities, such as drug trafficking, money laundering, and prostitution although it is not limited to these types of organized crime.

Puerto Rico has a considerably high rate of corruption which is mostly related to the misuse of public funds. The most common type of corruption in the Island is bribery between private companies and public officials. Most of the cases heard in court, and certainly those that are most noteworthy, are in relation to the awarding of contracts. However, corruption is not limited to the process of contracting services; hence, other acts of corruption go unnoticed.

The Plan for Puerto Rico, which was endorsed in the elections, includes a pragmatic commitment to zero tolerance for corruption. We must strengthen our efforts to effectively prosecute all individuals or entities engaged in these practices, while maintaining a vision that allow us to implement preventive measures. We should focus on prevention while also combatting and eradicating all types of corruption in order to restore the trust of the People of Puerto Rico. This shall be achieved with the implementation of a new government system that has zero tolerance for these acts and is based on the values, principles, and best practices worldwide.

Our effort requires the implementation of various initiatives that tackle this issue from different angles and across all government operations: the contracting of services; public bidding process and awarding; procurement, issuance of permits; and dispute resolution and adjudication. Moreover, we should promote a cultural and philosophical change in the minds of all Government components, from government service recipients, to public officials, service contractors, even elected or appointed government officials.

To achieve this, we have developed various initiatives directed at eradicating the corruption issue which causes so much harm to our society. Some of the aforementioned initiatives have become Law, specifically, for instance, Act No. 15-2017, whereby we honored our commitment to restore the Office of the Inspector General which had been eliminated by the previous administration. This Office shall be in charge of proactively evaluating, in a fully unbiased and objective manner, the administration of public funds to prevent the misuse and corruption.

Likewise, through Act No. 74-2017, known as the “Public Service Supervisory Personnel Training Act,” we honored our commitment to expand the mandatory training on public resource sound administration that is provided to public servants, particularly to the secretaries, heads of agencies, and other employees with supervisory duties. We have also passed legislation that facilitates the access to public information under the belief that government transparency shall generate multiple benefits such as a reduction in corruption cases and an increase in economic development.

With this measure we seek to honor other commitments to combat corruption which are embedded in our public policy of zero tolerance for corruption. We specifically expanded the list of offenses that are excluded from the benefits of the “Suspended Sentence Act.” Therefore, it is hereby provided that the full weight of the Law shall fall on those who betray the trust of the people.

In addition, the Government’s public policy on corruption, which is currently spread out between multiple special laws that are redundant and/or inconsistent with each other is hereby compiled into a single code. This shall help prevent loopholes and gaps in our laws and shall facilitate the access to and understanding of the applicable rules.

This Act also enables us to honor our commitment to broaden the rights of whistleblowers, thereby strengthening the protections against retaliation for all government employees and any other person who reports acts of government corruption. Moreover, we provide legal mechanisms for the State to be compensated by those whose behavior betrayed the trust bestowed upon them by the people, and affected the public treasury. In order to do so, it is hereby provided that the Government may claim damages through a civil action in order to receive a compensation that is three times the amount of losses sustained by the treasury. A conviction for the conduct that caused such losses shall be sufficient evidence to support such action.

Lastly, we are hereby including the interagency cooperation as a provision of law as it is necessary to be effective in preventing, combatting, and eradicating corruption. In doing so, we ensure that all bodies concerned with the fight against corruption keep close communication and collaboration with each other, regardless of who is head of the agency at a given time.

This Act constitutes an unequivocal message that corruption is banned from this Government, and that any person who fails the people by engaging in corruption shall be prosecuted and punished.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

TITLE I.- TITLE AND SCOPE

Section 1.1.- Declaration of Public Policy.

Corruption is an evil that affects all levels of our society. Corruption in the performance of a public function is one of the greatest challenges that the Government of Puerto Rico is facing to ensure the best and more efficient services to the people.

Zero tolerance for corruption is hereby declared as public policy. To eradicate corruption, all Government components must join efforts to prevent, investigate, and prosecute acts of corruption. We must strengthen the protections available to individuals who report acts of corruption, ensure that offenders answer for their acts, and bring the full weight of the law to bear on those who betray the trust of the People.

Section 1.2.- Title.

This Act shall be known as the “Anti-Corruption Code for the New Puerto Rico.”

- I. Title and Scope
- II. Organic Act of the Puerto Rico Government Ethics Office.
- III. Code of Ethics for Contractors, Suppliers, and Applicants for Economic Incentives of the Government of Puerto Rico
- IV. Protections Against Retaliation
- V. Civil Actions for Damages to the State
- VI. Registry of Persons Convicted of Corruption and Related Offenses
- VII. Anti-corruption Interagency Group
- VIII. Relation with Other Laws
- IX. Final and Transitory Provisions

TITLE II. ORGANIC ACT OF THE PUERTO RICO GOVERNMENT

ETHICS OFFICE

Section 2.1.- The conduct of active and former public servants of the Executive Branch shall be governed by the provisions of Act No. 1-2012, as amended.

Section 2.2.- Section 1.1 of Act No. 1-2012, as amended, is hereby amended to read as follows:

“Section 1.1.- Title.

This Act shall be known as the ‘Puerto Rico Government Ethics Office Organic Act.’

TITLE.III. CODE OF ETHICS FOR CONTRACTORS, SUPPLIERS, AND APPLICANTS FOR ECONOMIC INCENTIVES OF THE EXECUTIVE AGENCIES OF THE GOVERNMENT OF PUERTO RICO

Section 3.1.- Definitions.

For purposes of this Title, the following terms shall have the meaning stated below, unless the context clearly indicates otherwise:

(a) Executive Agencies.- The bodies and entities of the Executive Branch of the Government of Puerto Rico, including public corporations, departments, agencies, offices, municipalities, or other instrumentalities.

(b) Conflict of Interest.- A situation in which a personal or financial interest is or could reasonably be incompatible with the public interest.

(c) Contract.- A covenant, an agreement, or a legal transaction whereby the parties commit to give something, or to do, or not to do a specific act, and which is executed with the consent of the parties thereto, in relation to a certain object, a contract matter, and by virtue of the consideration that is established.

(d) Contribution.- Any payment, gift, subscription, commission, grant, benefit, tip, loan, advance, bribe, or any promise or agreement to grant it.

(e) Public Employee.- A person who holds a position or is employed in the executive agencies of the Government of Puerto Rico, the Legislative Branch, or the Judicial Branch and does not partake in the sovereignty of the State, including regular or irregular public employees, those who render services

equivalent to a regular office or position, those with provisional appointments, and those in a probationary period.

(f) Former Public Servant.- A person who has served as a public official or employee in the executive agencies of the Government of Puerto Rico, the Legislative Branch, or the Judicial Branch.

(g) Curable Catastrophic Illnesses Service Fund.- The fund created under Act No. 150-1996, as amended, attached to the Department of Health.

(h) Official.- A person sharing in the sovereignty vested in the State, and therefore intervening in the formulation and implementation of public policy, who holds office or is employed by the Government of Puerto Rico.

(i) Confidential Information.- Any information defined as confidential by law; protected under any of the privileges in the Law of Evidence that, if disclosed, could impair the fundamental rights of third parties or the right to privacy and to a private life; that which is protected under the executive privilege; information that is part of a deliberation process in policy making that, if disclosed, may endanger the life or bodily integrity of any person, hinder ongoing criminal or administrative investigations, endanger the security of the Island, or impair any business transactions or official efforts of the State in progress, when requesting such information.

(j) Income.- Everything received from any source, whether lawful or unlawful, exempt or taxable. Includes profits, benefits, and income derived from salaries, wages, or compensation for personal services of any kind and in any form they are paid, or from professions, occupations, trades, businesses, commerce or sales, or from operations in properties, whether real or personal, that arise from the ownership or use or interest in said property; as well as those derived from interests, rents, dividends, partnership interests, securities, or the operation of any business conducted for profit, or utility, and earnings or benefits and income

derived from any source. It includes compensation received for services rendered as an official or employee of the Government of Puerto Rico, of any state of the United States of America, or of any political subdivision thereof, or of any agency or instrumentality of any of said entities.

(k) Person.- A natural or juridical person, or groups of persons or associations, that wish to establish a contractual, commercial, or financial relationship with the executive agencies, or that have entered into an agreement with the State to render goods or services, as well as the entities that receive or are interested in receiving an economic incentive from the executive agencies of the Government. It also includes natural or juridical persons that are or shall be affected by any regulation established by the executive agencies of the Government of Puerto Rico.

(l) Natural Person.- Any person defined as such in any applicable law, including the Civil Code of Puerto Rico, and including, but not limited to, every chair, vice chair, director, executive director, or every member of a Board of Officers or a Board of Directors, or a person discharging similar duties.

(m) Juridical Person.- Includes corporations, professional corporations, professional associations or business partnerships, special partnerships, cooperatives, and any other entity defined as such in any applicable law, associations, partnerships, or *de facto* corporations, including those that constitute for these purposes an alter ego of the juridical person, affiliates, or subsidiaries thereof.

(n) Judicial Branch.- The General Court of Justice and any office or entity thereof.

(o) Legislative Branch.- Includes the House of Representatives, the Senate of Puerto Rico, the Office of the Comptroller of Puerto Rico, the Office of the Ombudsman, and any joint office or body attached thereto.

(p) Gift.- A payment or enrichment without equivalent consideration, or receiving one of a lesser value. Includes, among others, money, goods, or any object, favorable economic opportunities, tips, grants, benefits, discounts, privileges, or special considerations.

(q) Public Servant.- Includes public officials and employees.

(r) Family Unit.- Includes the spouse of the public servant or former public servant, his dependent children, family members within the fourth degree of consanguinity or within the second degree of affinity who are not dependents of or reside with the public servant or former public servant, or those persons who share the legal residence of the public servant or former public servant, or whose financial affairs are under the *de jure* or *de facto* control of the public servant or former public servant.

Section 3.2.- Ethical Obligations and Responsibilities.

(a) Every person shall treat the public officials and employees of the executive agencies with respect and professionalism, and shall require the same from them at all times.

(b) Every person who, in his relationship with the executive agencies of the Government of Puerto Rico, participates in public bids, submits quotations, wishes to enter into contracts with them, seeks to receive any economic incentive, shall be required to disclose all the information needed for the executive agencies to evaluate in detail any transactions or applications submitted thereto, and make correct and informed determinations.

(c) Every person shall observe the precepts and principles of excellence and honesty that cover his profession, in addition to the ethical standards or rules of the Association or College of which he is a member and that regulate his trade or profession in the relationship with his competitors as well as with the Government of Puerto Rico and its employees or officials. In the case of persons

who are not members of an Association or College, or in the case of Associations and Colleges that do not have a code of ethics for the members thereof, they shall observe the general principles of ethical conduct that are deemed reasonable in their profession or trade.

(d) Every person interested in doing business with the Government of Puerto Rico shall submit quotations based on a fair price for his services, considering experience, education, and technical skills. The quality of the goods shall be taken into consideration in agreements for the supply of goods.

(e) Every person interested in doing business with the Government shall commit to complete the work within the term agreed on, guarantee the quality of the services and goods provided, and charge for his services upon presentation of an invoice the correction of which shall be certified stating that the services were fully provided or the goods were delivered within the term agreed on, and that no compensation has been received therefor. Thus, all invoices for the payment of goods and services submitted to the executive agencies shall contain the following certification:

“Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract which is the basis of this invoice, and should he be a party to, or have an interest in, the profits or benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefor.”

Provided, that contractors and suppliers of goods and services of the Curable Catastrophic Illnesses Service Fund attached to the Department of Health shall be exempt from meeting the certification requirement provided in this subsection.

(f) No person shall offer or deliver to a public servant or former public servant of the executive agencies, or the members of his family unit, with whom said person wishes to enter into, or has entered into, a contractual, commercial, or financial relationship, directly or indirectly, any gift, items of monetary value, contribution, gratuity, favor, service, donation, loan, or share in any business entity or legal transaction. In the cases referring to a former public servant, the preceding prohibition shall be extended to one (1) year from the date he ceased his duties in the executive agency. This obligation shall cover the period preceding and following the execution of the contract, business, or transaction, as well as during the term thereof.

(g) Every person shall collaborate with any investigation initiated by the government on business transactions, execution of contracts, or granting of government incentives to which he was a party or from which he benefited directly or indirectly.

(h) No person shall be involved in matters that could give rise to a conflict of interest or the appearance of a conflict of interest.

(i) Every person has the obligation to report any acts that violate the provisions of this Code, that constitute acts of corruption, or that have the elements of fraud, bribery, embezzlement or misappropriation of funds, and of which such person has personal knowledge, concerning a contract, business, or transaction between the government, and a contractor, goods and services provider or recipients of economic incentives. Every agency shall prescribe by regulations the

procedures for receiving and handling complaints under this subsection as well as ensure that whistleblowers are protected in accordance with Title IV of this Act.

(j) No person may establish negotiations with the Secretaries, Heads of Agencies, Municipal Executives, or Executive Directors of Public Corporations leading to the granting of undue advantage, privileges, or favors for their benefit, or the benefit of any other person, represented by them. Nor shall the services of third parties be required for the aforementioned purposes.

(k) No person shall use confidential information acquired in the course or as result of any task entrusted thereto under a contract by the Government of Puerto Rico, for purposes other than the contracted task, or to obtain, directly or indirectly, any financial advantage or benefit for himself, a member of his family unit, or any other person, business, or entity.

(l) No person shall request or obtain confidential information from a current or former public servant to obtain, directly or indirectly, any financial advantage or benefit for himself, or for any other natural or juridical person; nor for purposes other than those of the contracted task.

(m) No person shall accept or maintain contractual or business relations with a public servant or a member of his family unit that has the effect of impairing the independent judgment of the public official or servant in the performance of his official duties. All persons are hereby banned from accepting or maintaining contractual or business relations with a former public servant within a term of one (1) year from the time such former public servant ceased to hold office, if in the performance of his government duties, said former public servant directly participated in transactions between the executive agencies and the person.

(n) No person shall enter into contracts with executive agencies if there is any conflict of interests. Every person shall certify that he does not represent private interests in cases or matters that involve conflicts of interest, or of public policy, between the executive agency and the private interests he represents.

(o) No person shall directly or indirectly request a public official, servant, or employee to represent his private interests, make efforts, or exert influence to obtain a contract, the payment of a claim, a permit, license, or authorization, or in any other matter, transaction, or proposal in which said person or his family unit has private interests, even when it concerns official actions of the public official, servant, or employee within the scope of his official authority.

(p) No person shall induce a public servant or former public servant to violate the provisions of this Act.

Section 3.3- Contracts.

This Title shall apply to any person who, in his relationship with the executive agencies of the Government of Puerto Rico, participates in public bids, submits quotations, wishes to enter into contracts with them, or seeks to receive any economic incentive.

A pledge to abide by the provisions of this Code of Ethics shall be an indispensable requirement for every person contracting with the Government. Such fact shall be stated in every contract between the executive agencies and contractors or suppliers of services, and in every application for economic incentives granted by the Government.

In addition, any natural or juridical person who wishes to participate in the award of bids or in the award of any contract with any government agency or instrumentality, public corporation, municipality, or the Legislative or the Judicial Branch, to provide services or for the sale or delivery of goods, shall file an affidavit sworn before a notary public stating whether the natural or juridical

person or any chair, vice chair, director, executive director, or member of a board of officers or board of directors, or persons discharging similar duties for the juridical person have been convicted of, or plead guilty to, any of the offenses listed in Section 6.8 of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act,” or any offenses listed in this Code.

Section 3.4.- Inability to Contract with the Government.

Any natural or juridical person who has been convicted of: violating Sections 4.2, 4.3, or 5.7 of Act No. 1-2012, known as the “Government Ethics Office Organic Act”; committing any of the offenses against public service or public funds deemed felonies under Sections 250 through 266 of Act No. 146-2012, as amended, known as the Penal Code of Puerto Rico, any of the offenses classified under this Code, or any other felony involving misappropriation of public funds or property, including, but not limited to, the offenses listed in Section 6.8 of Act No. 8-2017, shall be ineligible to contract or bid with any executive agency of the Government of Puerto Rico for the period established in Section 6.8 of Act No. 8-2017. If no such period is established, the person shall be ineligible for ten (10) years from the date he finishes serving the sentence.

Every contract shall include a termination clause in the event that a person who entered into a contract with the executive agencies is convicted in the federal or state jurisdiction of any of the offenses that render him ineligible to enter into contracts under the preceding subsection.

It shall be certified in the contracts that the person has not been convicted in the federal or state jurisdiction of any of the aforementioned offenses. The duty to inform shall be of a continuous nature at all stages of the contracting process and the execution of the contract.

Section 3.5.- Procedure.

Every executive agency of the Government of Puerto Rico shall ensure compliance with the provisions of the Code of Ethics established herein. Accordingly, the executive agencies of the Government of Puerto Rico are hereby empowered to conduct investigations in order to determine whether a contractor, provider, or applicant for economic incentives has acted in violation of this Code of Ethics. Said investigative power shall be exercised by any official designated by the agency for such purposes, as provided in the regulations approved by every agency to enforce the provisions of this Act.

Section 3.6.- Publicity.

The executive agencies are hereby directed to notify the Secretary of Justice of all final orders or judgments issued for violations of the Code of Ethics for Contractors, Suppliers, and Applicants of Economic Incentives of the Executive Agencies of the Government of Puerto Rico. Likewise, when an employee of the Executive Branch is involved in the facts that led to the final order or judgment, the agencies shall notify the Government Ethics Office with a copy thereof.

Section 3.7.- Fines and Penalties.

Noncompliance by any person with any of the provisions of Section 3.2 of this Code shall be sufficient grounds for the Government of Puerto Rico to terminate a contract. In addition, the Government, through the Secretary of Justice, may seek compensation under Section 5.2 of this Code.

Any person who intentionally violates the prohibitions and provisions of subsections (f), (j), (k), (l), (o), and (p) of Section 3.2 shall be guilty of a felony punishable by imprisonment for a fixed term of three (3) years and by a fine of five thousand dollars (\$5,000). In addition, the Court may order restitution, community services, the suspension or revocation of a license, permit, or authorization.

The person thus convicted shall be ineligible to hold any public office or position, subject to the provisions of Section 6.8 of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act.”

The penalties imposed under this Title shall not preclude the imposition of any other penalty or disciplinary measure determined by the Association or Professional College of which the contractor is a member. Neither shall they preclude the imposition of criminal penalties for participating in an act constituting an offense.

Section 3.8.- Code of Ethics for Contractors of the Executive and Legislative Branches.

The Legislative Branch and the Judicial Branch, as well as the Office of the Comptroller, the Office of the Ombudsman, and any office or body attached thereto, shall adopt a Code of Ethics for contractors, suppliers of goods and services, or shall amend the regulations in effect to incorporate the principles stated herein, to protect the public interest pursuant to the public policy of the Government of Puerto Rico.

TITLE IV. PROTECTIONS AGAINST RETALIATION.

Section 4.1.- Definitions.

For purposes of this Title, the following terms shall have the meaning stated below, unless the context clearly indicates otherwise:

(a) “Public Official”: Any person who partakes in the sovereignty of the State, is involved in the formulation and implementation of public policy, and holds office or is employed in the Government of Puerto Rico who.

(b) “Public Employee”: Any person who holds office or is employed in executive agencies of the Government of Puerto Rico, in the Legislative or Executive Branch, who does not partake in the sovereignty of the State, including

regular and irregular public employees, those who provide services under contract, equivalent to a regular position or office, those with temporary appointments, and employees in a probationary period.

(c) “Government of Puerto Rico”: The Government of the Commonwealth of Puerto Rico and its bodies, the agencies, and entities of the Executive Branch, including public corporations, instrumentalities, and municipalities; the Legislative Branch and any joint office or body attached thereto; the Comptroller of Puerto Rico; the Judicial Branch, as well as the entities and bodies attached thereto.

(d) Person.- Any individual, partnership, corporation, association as well as any other juridical entity or agent thereof.

Section 4.2.- Prohibition on Retaliation Against Persons Who Report Acts of Corruption.

(a) No person shall harass, discriminate, dismiss, threaten, or suspend the benefits, rights or protection granted to another person because the latter furnishes information, cooperates, or serves as witness in any investigation that leads to a complaint, indictment, conviction, or civil or administrative action for a conduct related to the misuse of property or public funds.

(b) No person may dismiss, threaten, discriminate against or otherwise retaliate against another person, with regard to the terms, conditions, compensation, location, or employment benefits, protections, or privileges, because the latter has given or has attempted to give, orally or in writing, any testimony, statement, or information on alleged improper or illegal acts in the use of public property or funds or acts of corruption, before any official or employee with investigative functions or before a state or federal legislative, administrative or judicial forum, when said statements are not defamatory, baseless, or frivolous, nor constitute privileged information under the Rules of Evidence or any law.

(c) No public official or employee who has authority to influence, recommend, or approve any action shall make adverse or discriminatory decisions regarding any public official or employee for:

1. Offering or attempting to offer any spoken or written information or statement against an official or employee, before any other public official or employee with investigative functions, or any state or federal administrative, legislative, or judicial forum, that the public official or employee who furnishes the information or testimony reasonably believes that it is evidence of a violation of a law, rule, or regulation, misuse use public funds, misuse of public property, loss of funds, abuse of authority or violations of the laws and regulations that govern the ethical conduct in the public service, even if such conduct does not constitute an actual act of corruption.

2. Exercising the right to report, complain, sue, or appeal, guaranteed under any valid law, rule, or regulation in our legal framework.

3. Refusing to obey an order to take action or inaction that would entail a violation of a law or regulation.

Section 4.3.- Exceptions.

The provisions of Section 4.2 of this Act shall not apply when the whistleblower, complainant, or witness of alleged acts of corruption has been accused or convicted of perpetrating the same unlawful acts on which he is disclosing information or making statements, and the administrative procedures are initiated or have been initiated against him to impose disciplinary measures, separate him from public service, or discharge him from office pursuant to the rules and regulations that govern the administration of human resources and due process of law.

Furthermore, the whistleblower, complainant, or witness may not invoke the protections and guarantees recognized under this Act, when he offers or attempts to offer, verbally or in writing, any testimony, statement, or information on alleged improper or unlawful acts before any official or employee with investigative functions, or before any state or federal administrative, legislative, or judicial forum, if such statements are defamatory, baseless, or frivolous, or constitute privileged information established by law.

Section 4.4.- Penalties.

(a) Any person who violates any of the provisions of Section 4.2 of this Code shall be guilty of a felony and, upon conviction, shall be punished by a fine of five thousand dollars (\$5,000) or by imprisonment for a fixed term of three (3) years, or both penalties at the discretion of the Court. The statute of limitations for this offense shall not expire.

(b) Any person who knowingly furnishes false information, orally or in writing, or gives a testimony on improper or unlawful acts that, due to their nature, constitute acts of corruption, or when said statements are defamatory, baseless, or frivolous, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for a fixed term of six (6) months, by a fine of one thousand dollars (\$1,000), or both penalties at the discretion of the Court.

Section 4.5.- Civil Actions.

Any person alleging a violation of the provision of Section 4.2 of this Act may bring a civil action against the person acting contrary thereto and seek compensation for damages, mental anguish, triple back pay, as well as any other benefit that such person would have earned and attorneys' fees.

The action authorized herein shall be initiated within three (3) years after the occurrence of said violation or after the person became aware of such fact.

Said action shall be brought before a competent court and shall be independent from any administrative procedure related thereto. It shall not be necessary to exhaust administrative remedies before bringing a civil action.

The plaintiff in the cause of action provided herein may prove the violation of his rights by direct or circumstantial evidence. Moreover, the person may establish a *prima facie* case of violations of the provisions of Section 4.2 of this Code, by providing proof that he is cooperating or has cooperated with any investigation of government corruption that affects or affected any person with whom the plaintiff had any tie or relationship, whether directly or indirectly, and that after such cooperation he was dismissed, harassed, discriminated against, threatened, or had any right, benefit, or protection suspended. Once the foregoing is established, the defendant shall set forth his allegations that he did not cause the damages, that the alleged damage does not exist, or that there was good cause for his actions as well as provide the basis for such allegations. If the defendant furnishes strong and convincing evidence to rebut a presumption of the violation of Section 4.2, the plaintiff shall prove by a preponderance of evidence that the exculpatory evidence produced by the defendant does not relieve him from liability.

Section 4.6.- Administrative Actions.

In addition to any other administrative or judicial remedy that may proceed against any public official or employee who violates any of the provisions of this Title, the criminal conviction or civil liability determination made by a Court of competent jurisdiction shall constitute sufficient cause for filing charges in accordance with the rules and regulations that govern the applicable administrative procedures.

Section 4.7.- Applicability.

The provisions of this Title shall apply to protect any person who reports acts of corruption, including, but not limited to, all public employees and officials of the public agencies and instrumentalities, the municipalities, the public corporations, and any entity of the Executive Branch, the Judicial Branch, and the Legislative Branch of the Government of Puerto Rico.

TITLE V. CIVIL ACTIONS FOR DAMAGES TO THE STATE.

Section 5.1.- Definitions.

For purposes of this Title, the following terms shall have the meaning stated below, unless the context clearly indicates otherwise:

(a) “Competent Forum”- Any court with legal authority in the Commonwealth of Puerto Rico, at the federal or state level, or any other jurisdiction of the United States of America.

(b) “Natural Person”- Any person defined as such in any applicable law, including the Civil Code of Puerto Rico, and including, but not limited to, every chair, vice chair, director, executive director, or every member of a Board of Officers or a Board of Directors, or a person discharging equivalent duties.

(c) “Juridical Person”- Includes corporations, professional corporations, professional associations or business partnerships, special partnerships, cooperatives, and any other entity defined as such in any applicable law, associations, partnerships, or *de facto* corporations, including those that constitute for these purposes an alter ego of the juridical person, affiliates, or subsidiaries thereof.

(d) “Financial Damage”- Refers to the quantification, in monetary terms, of the damages caused by the defendant through a negligent, culpable, or unlawful act or omission provided for in this Act, while promoting the consummation of the unlawful objective.

(e) “Negligent act or omission”- Shall mean the gross deviation from the standards of care that a prudent and reasonable person should exercise if found in the place of the defendant.

Section 5.2.- State Claim.

It is hereby provided that the Government of Puerto Rico, through the Secretary of Justice, may bring civil actions before the Court of First Instance of Puerto Rico against any natural or juridical person for negligent, culpable, or unlawful acts or omissions to the detriment of the public treasury, seeking compensatory damages equal to three (3) times the financial damages caused to the public treasury as a result of said conduct.

Section 5.3.- Provisional Remedies.

At any time after filing the complaint authorized in this Section, the State may request the Court any necessary provisional order to ensure the status quo until final judgment is issued. The court may grant any of the provisional remedies provided in the Rules of Civil Procedure, including, but not limited to, attachment, garnishment of funds held by a third party, and restraint on alienation.

In the event a provisional remedy is requested, the court shall consider the interests of all the parties and proceed in accordance with substantive law.

The State shall not be required to post a surety bond for the granting of any provisional remedy to ensure the status quo until final judgment is issued.

The defendant may release the attachment by posting a sufficient bond to the satisfaction of the court.

Section 5.4.- Quantum of Proof.

For the purposes of the complaint authorized in Section 5.2 of this Code, proof of the commission of negligent, culpable, or unlawful acts or omissions to the detriment of the public treasury may be given upon presentation of a certified copy of the judgment of conviction for any felony or misdemeanor for the same

offenses, or a certified copy of the guilty plea resolution resulting from the criminal procedure in which said act or omission was tried before a competent court.

For purposes of this Act, in those cases in which a conviction or guilty plea in a criminal proceeding were not issued under the laws of Puerto Rico, only those orders or judgments of competent judicial authorities whereby the defendant has been found guilty beyond a reasonable doubt of an offense that requires the proving of all elements of the offense classified in the Laws of Puerto Rico shall be considered.

A conviction shall not be required to initiate the civil action authorized under this Title. However, an official referral enabling the Secretary of Justice to make the corresponding investigation shall be required. If a conviction or guilty plea has not preceded a civil action in a criminal process for the same facts, the commission of negligent, culpable or unlawful acts or omissions to the detriment of the public treasury may be proven by preponderance of the evidence.

Once it has been proved that an action or negligent, culpable or unlawful act or omission has been committed, the amount of the damages caused to the public treasury shall be proven by preponderance of the evidence.

Section 5.5.- Exception.

The exercise of a civil action pursuant to this Act shall not be construed as an impairment of the right of the Government of Puerto Rico or any of its instrumentalities to file any penal or administrative action based on the same facts adjudicated in the civil process authorized herein.

Section 5.6.- Statute of Limitations.

The remedy established in Section 5.2 of this Act may be claimed by the Government of Puerto Rico within a term of fifteen (15) years from the entry of a copy of the notice of the judgment of conviction or guilty plea resolution referred to in Section 5.3 of this Act.

In those cases in which there is no preceding criminal conviction, the fifteen (15)-year term shall begin to count from the time the Secretary of Justice becomes aware of the damages and of the person who caused them, through an official referral that shall allow him to conduct the corresponding investigation.

TITLE VI. REGISTRY OF PERSONS CONVICTED OF CORRUPTION
AND RELATED OFFENSES.

Section 6.1.- Definitions.

For purposes of this Title, the following terms shall have the meaning stated hereinbelow, unless the context clearly indicates otherwise:

(a) “Exercise of a Public Function” – An action taken by a public employee or official by virtue of the powers, functions, duties, and obligations of the position or office held within the Government of Puerto Rico or by taking advantage of such powers, functions, offices, or positions.

(b) “Government of Puerto Rico” – The Government of the Commonwealth of Puerto Rico and its bodies, agencies, and entities of the Executive Branch, including public corporations, instrumentalities, and municipalities; the Legislative Branch and any joint office or instrumentality of both Legislative Bodies; the Comptroller of Puerto Rico; the Judicial Branch, as well as the instrumentalities and offices attached thereto.

(c) “Person” – Any individual, partnership, corporation, association as well as any other juridical entity or agent thereof.

(d) “Natural Person” - Any person defined as such in any applicable law, including the Civil Code of Puerto Rico, and including but not limited to every chair, vice chair, director, executive director, or every member of a board of officers or a board of directors, or a person who performs equivalent functions.

(e) “Juridical Person” - Includes corporations, professional corporations, professional association and business partnerships, special partnerships, cooperatives, and any other entity defined as such in any applicable law, associations, partnerships, or *de facto* corporations, including those that constitute for these purposes an alter ego of the juridical person or subsidiaries thereof.

(f) “Registry” - The “Registry of Persons Convicted of Corruption” created under Section 6.2 of this Code.

Section 6.2.- Creation of the Registry.

The Department of Justice shall establish a registry denominated the “Registry of Persons Convicted of Corruption,” which shall include any person convicted of any of the following offenses:

a) Offenses established in Chapter IV of Act No. 1-2012, as amended, or similar offenses in previous or subsequent laws;

b) Offenses provided in Sections 3.7 and 4.4 of this Code;

c) Sections 250 through 266 of Act No. 146-2012, as amended, known as the “Penal Code of Puerto Rico,” or similar offenses in previous or subsequent laws; and

d) Any of the offenses listed in Section 6.8 of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act,” when the offense was committed in the exercise of a public function or whenever public funds or assets have been involved.

Section 6.3.- Scope of the Registry.

Any natural or juridical person who has been convicted any of the offenses listed in Section 6.2 of this Code in the jurisdiction of Puerto Rico, in the federal jurisdiction, or in any state of the United States of America, shall be subject to inclusion in the Registry provided in this Title.

The Registry shall only apply to persons who have been convicted of the commission of the offense as coperpetrator with a public official, whether or not they are public officials.

No person subject to inclusion in the Registry, regardless of whether such person is registered or not, shall be a candidate for nor hold an elective office. The State Elections Commission is hereby prohibited from accepting or processing any document whatsoever for the purpose of qualifying for an elective public office a person who has been convicted of any of the offenses listed in Section 6.2.

Section 6.4.- Contents.

The Registry of Persons Convicted of Corruption shall include the following information:

- (a) The full name of the person convicted of corruption;
- (b) The case number, jurisdiction, and court that entered the judgment;
- (c) The date judgment was entered or date of conviction for corruption;

and

- (d) The offense for which the person was convicted and punishment was imposed.

Section 6.5.- Duties and Obligations of the Secretary of the Department of Justice of Puerto Rico.

The Secretary of the Department of Justice of Puerto Rico shall be the custodian of the information entered in the Registry of Persons Convicted of Corruption, and shall be responsible for keeping and updating the information in

the Registry of Persons Convicted of Corruption. Moreover, the Department shall ensure that the information of the registry is available electronically to be examined by government agencies and the public. Until this is achieved, the Department shall disclose the information to the designated persons in every agency and municipality of the Government of Puerto Rico.

Section 6.6.- Exclusion from the Registry of Persons Convicted of Corruption.

Convicted persons shall be subject to inclusion in the Registry provided herein for the term provided in Section 6.8 of Act No. 8-2017, as amended, known as the “Government of Puerto Rico Human Resources Administration and Transformation Act,” and until these persons are habilitated in accordance with said Section.

Once the Director of the Government of Puerto Rico Human Resources Administration and Transformation Office ascertains that the convicted person has been habilitated and it is so certified to the Secretary of the Department of Justice, the latter shall be required to eliminate from the Registry of Persons Convicted of Corruption all the information pertaining to such particular conviction.

Before the candidate is eligible for or the habilitated official returns to public service, the agencies and municipalities of the Government of Puerto Rico shall be responsible for verifying, through the Department of Justice, whether the person convicted of corruption has been habilitated and, therefore, removed from the Registry of Persons Convicted of Corruption.

Section 6.7.- Penalties.

Any person who, with the intent to avoid the purposes of this Title, offers or provides false information with respect to a conviction for any of the foregoing offenses shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for a fixed term of two (2) years.

Section 6.8.- Exception.

The Registry herein established shall operate as a successor and extension of the Registry provided for in Act No. 119-1997. Any reference to the registry of Act No. 119-1997 shall be deemed to be amended so as to refer to the Registry set forth in Section 6.2 of this Code. Unless the Secretary of Justice provides otherwise, the regulations and procedures adopted under Act No. 119-1997 shall continue to be in effect and shall apply to the transactions provided in this Title.

TITLE VII. ANTICORRUPTION INTERAGENCY GROUP

Section 7.1.- Creation and Composition.

The “Corruption Prevention and Eradication Group” is hereby created in order to achieve a continuous cooperation between all of the agencies participating in the fight against corruption. This Group shall be composed of the following members:

- (a) The Director of the Office of Government Ethics, which shall preside over the Group;
- (b) The Comptroller of the Government of Puerto Rico;
- (c) The Chair of the Special Independent Prosecutor’s Panel;
- (d) The Secretary of the Department of Justice of the Government of Puerto Rico;
- (e) The Secretary of the Department of the Treasury of the Government of Puerto Rico;
- (f) The Inspector General of the Government of Puerto Rico;
- (g) The Commissioner of the Puerto Rico Police Bureau; and
- (h) Any other member as invited by the chair.

The Group shall invite the U.S. Attorney in charge of the Puerto Rico office of the US Department of Justice and the special agent in charge of the Puerto Rico office of the Federal Investigations Bureau (FBI) to participate in the meetings thereof

The Group shall agree on the bylaws that shall govern its internal operations, including how often they shall meet.

Section 7.2.- Group Functions.

The “Corruption Prevention and Eradication Group” shall have the following functions:

- (a) To guarantee proper interagency communication and cooperation in all anticorruption efforts;
- (b) To collaborate with the Office of Government Ethics in any effort geared to preventing and eradicating corruption;
- (c) To improve the ability of the Government to receive information on potential acts of corruption; and
- (d) To improve the procedures so as to avoid impunity.

Section 7.3.-Interagency Cooperation.

Public officials who compose the Group are hereby instructed to facilitate the broadest interagency cooperation to further the public policy set forth in this Code. None of the provisions herein, however, shall be construed as an authorization to disclose confidential information that may interfere with ongoing processes or hinder any pending investigations.

TITLE VIII. RELATION WITH OTHER LAWS.

Section 8.1.- Preservation of the Rule of Law.

None of the provisions of this Code may be used as a defense against any charges filed under any other criminal law. It is expressly provided that any charges filed for any of the offenses herein provided shall not affect any criminal

liability arising from the Penal Code or any other applicable law. When two (2) or more criminal provisions are applicable to one (1) fact, judgment shall be entered for all of the offenses and sentencing shall be imposed as provided in the Section Three of Act No. 146-2012, as amended, known as the “Penal Code of Puerto Rico.”

TITLE IX. AMENDING PROVISIONS.

Section 9.1.- Subsection (b) is hereby amended and a new subsection (g) is hereby added to Section 2 of Act No. 259 of April 3, 1946, as amended, known as the “Suspended Sentence and Probation Act,” to read as follows:

“Section 2.- Suspended Sentence and Probation; Exclusions

The Court of First Instance may suspend the effect of the sentence of imprisonment in all felony cases and in all misdemeanor cases that arise out of the same facts or the same transactions other than:

(a) ...

(b) One (1) of the following felonies: lewd acts when the victim is a minor under the age of fourteen (14), abduction, burglary, robbery, havoc, negligent homicide, bribery, offer to bribe, undue intervention in government operations, unlawful taking of public assets or embezzlement of public funds, unjust enrichment, illegal enrichment, undue influence, and misappropriation of public funds, as those felonies are classified in Act No. 146-2012, as amended, known as the ‘Puerto Rico Penal Code,’ or any substitute Act, or any other felony against the public function or public funds.

(c) ...

...

(g) ...

(h) One of the following felonies, when committed in conjunction with any of the felonies listed in subsection (b) of this Section: preventing or dissuading a witness from attending; perjury; witness tampering; intimidating or threatening a witness; conspiring against, threatening, or attacking officials of the justice system or their relatives, destroying evidence; preparing false documents; and filing false documents.

It may likewise suspend the effects of a sentence imposed in all misdemeanor cases that arise out of the same facts or from the same transaction that has also resulted in a sentence for a felony, other than those excluded from the benefits of this Act, including the case in which a person has been found not guilty for said felony or that said felony has been reduced to a misdemeanor, and thus convicted, shall order that the sentenced person be released on probation provided that at the time of imposing said sentence all the requirements listed hereinafter concur:

- (1) ...
...”

Section 9.2.- Subsection (e) of Section 24 of Reorganization Plan No. 3-2011, as amended, known as the “Reorganization Plan of the General Services Administration of 2011,” is hereby amended to read as follows:

“Section 24.- Acquisitions Through Public Bids.

It shall be necessary to employ the public bid method when the amount of the acquisition exceeds one hundred and ninety-five thousand dollars (\$195,000). Provided, that every two (2) years, the threshold for the holding of a public bid shall be reviewed by the Administrator through regulations approved under Act No. 170 of August 12, 1988, as amended, known as the ‘Uniform Administrative Procedures Act,’ and be adjusted to the consumer’s price index rounded up to the next highest thousand.

The procedure to procure goods and nonprofessional services through public bids may include, if deemed to be necessary and in compliance with the requirements established by the Administrator through regulations, Requests for Qualifications (RFQs), Requests for Information (RFIs), and Requests for Proposals (RFPs).

In compliance with the provisions of this Plan and the public bid regulations adopted thereunder, the Administrator shall determine when the public bid method shall be used to procure goods and nonprofessional services, and establish the procedure to be followed therefor by incorporating to the greatest extent possible any technological advances. The Public Bid Regulations shall include, among other things:

a) ...

...

e) Any bidder that appears before the agency to participate in any public bid or to provide services pursuant to the intent of this legislation shall submit to the Administrator an affidavit every six (6) months attesting to the fact that none of the following offenses have been committed:

(1) aggravated unlawful taking, in every modality;

(2) extortion;

(3) construction fraud;

(4) fraud in the execution of construction projects;

(5) fraud in delivery of merchandise;

(6) undue intervention in the procurement process or in government operations;

(7) bribery, in every modality;

(8) aggravated bribery;

(9) offer of bribe;

- (10) undue influence;
 - (11) offense against public funds;
 - (12) drafting of forged writings;
 - (13) submitting forged writings;
 - (14) document forgery;
 - (15) possession and transfer of forged documents.
- f) ...
- ...”

Section 9.3.- Section 5 of Act No. 74-2017, known as the “Public Service Supervisory Personnel Training Act” is hereby amended to read as follows:

“Section 5.- The Government of Puerto Rico Human Resources Administration and Transformation Office (HRATO) and the University of Puerto Rico are hereby empowered to adopt regulations as deemed pertinent, as well as enter into the appropriate interagency agreements to effectively comply with this Act.

Moreover, the Government of Puerto Rico Human Resources Administration and Transformation Office (HRATO) may impose fines and sanctions of up to one thousand dollars (\$1,000) per occurrence on Agencies, Municipalities, or Government Entities, as established by said Office through regulations.”

TITLE X. FINAL PROVISIONS.

Section 10.1.- Repealing Clause.

The following laws are hereby repealed:

- (a) Act No. 426-2000, as amended;
- (b) Act No. 36-2001;
- (c) Act No. 14-2001, as amended;
- (d) Act No. 119-1997, as amended;
- (e) Act No. 458-2000, as amended;

- (f) Act No. 84-2002, as amended;
- (g) Act No. 50-1993, as amended.

Section 10.2.- Savings Clause.

None of the provisions herein shall entail the decriminalization of the unlawful conduct covered under the Acts repealed. Any sentences imposed under the aforementioned Acts shall be served in full pursuant to the terms established thereunder and the law applicable at the time such conduct occurred.

Any action initiated under the provisions of the Acts repealed may continue in accordance with the Act in effect at the time of the facts. Likewise, any conduct that occurs before the effective date of this Act may be prosecuted whether criminally or civilly, in accordance with the Act in effect at the time such actions were committed.

Section 10.3.- Rulemaking Authority.

The agencies shall have a term of ninety (90) days after the approval of this Act to adjust their regulations, procedures, or forms to the provisions set forth herein.

Section 10.4.- Severability.

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be null or

unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest extent possible, even if it renders ineffective, nullifies, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance. This Legislative Assembly would have approved this Act regardless of any determination of severability that the Court may make.

Section 10.5.- Effectiveness.

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 2-2018 (H. B. 1350)** of the **2nd Regular Session** of the **18th Legislative Assembly of Puerto Rico**:

AN ACT to consolidate the anticorruption provisions of different laws into an “Anticorruption Code for the New Puerto Rico”; amend Section 1.1 of Act No. 1-2012, as amended, known as the “Puerto Rico Government Ethics Act of 2011”; to provide for the “Anti-corruption Interagency Group” by law; repeal Act No. 426-2000, as amended; repeal Act No. 36-2001; repeal Act No. 14-2001, as amended; repeal Act No. 119-1997, as amended; repeal Act No. 458-2000, as amended; repeal Act No. 84-2002, as amended; [...]

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

In San Juan, Puerto Rico, on this 14th day of January, 2019.

Orlando Pagán-Ramírez
Director