

(S. B. 1693)

(No. 426)

(Approved November 7, 2000)

AN ACT

To adopt measures to protect the rights of public employees and officials who report, accuse, or witness alleged improper or illegal acts in the use of public property and funds, acts that constitute corruption and violations of the laws and regulations that govern ethical conduct in the public service; establish the statement of motives applicable to such situations; define terms; establish prohibitions on illegal and discriminatory practices against public employees and officials who report or file claims against persons who incur acts that, due to their nature constitute acts of corruption; impose penal sanctions, civil and administrative remedies; and for other related purposes.

STATEMENT OF MOTIVES

Section 9 of Article VI of the Constitution of Puerto Rico expressly provides that public property and funds shall only be available for public purposes and for the support and operation of State institutions and, in every case, pursuant to law. In harmony with this Constitutional precept, we have repeatedly reaffirmed our commitment to implement a public policy addressed to foster and achieve that the government agencies and instrumentalities render high quality services at the level of excellence required by our people. Likewise, the principles that govern the moral integrity and ethical responsibility of the public employees and officials become more effective in view of the need to proscribe conduct that attempts against sound administrative standards.

Therefore, the Government of Puerto Rico has declared war on government corruption in all its aspects and manifestations. Legal mechanisms have been implemented to counteract conflicts and improper, immoral, and illegal conduct in public service, so that public actions are vested with the highest possible trust and respect of our people. Among the measures adopted we may highlight Act No. 50 of August 5, 1993, which prohibits every public official or the co-author, convicted for specific crimes which constitute acts of corruption, to seek or hold any public or elective office. It also amended the Public Service Personnel Act to exclude any person convicted of these crimes from being able to hold any public or elected office. On the other hand, Act No. 51 of August 5, 1993, amended the Penal Code of Puerto Rico to prevent that people who incur crimes that constitute acts of corruption, may not prosecuted criminally simply because the penal action had prescribed. Thus, it is provided that acts of corruption shall not prescribe, and that the prescriptive term be increased for others.

In order to bolster the provisions of the Ethics in Government Act of the Government of Puerto Rico, we approve Act No. 150 of December 22, 1994, to extend the regulation of the conduct of public officials and employees, to avoid any possible conflict of interest that may diminish the trust of the people in its government and in its public officials.

Through Act No. 3 of January 14, 1995, the Penal Code of Puerto Rico was amended to include the penalty of restitution as a possible additional penalty to be imposed on an official convicted of profiting from public works or services. Act No. 93 of July 30, 1996, also introduced another amendment to the Ethics in Government Act, in order to require judges to file financial statements before the Ethics in Government Office. On the other hand, in order to establish more rigorous administrative controls in the

disbursement of travel expenses, we approved Act No. 187 of September 4, 1996, to amend the “Government of Puerto Rico Accounting Act” in order to expressly prohibit the disbursement of travel expenses and per diems to the spouses and close family members who accompany the heads of government offices on official trips.

With regard to the tax liability of candidates to elective positions, Act No. 76 of August 14, 1997, amended the Puerto Rico Electoral Act to establish that every candidate to an elective public office shall give evidence of having complied with the legal obligation to file and pay the income tax and to certify that they owe no taxes to the Government of Puerto Rico, as a requirement for their candidacy. An additional measure addressed to continue eradicating individual and institutional corruption is Act No. 119 of September 7, 1997, to create a register of persons convicted of government corruption, adjoined to the Puerto Rico Police. The purpose of this register is to prevent that persons convicted of crimes of this nature in the exercise of their public duties or those who seek elective office may enter or re-enter the public service.

In spite of these significant efforts and advances to censure the illegal use of public funds and property, we have the obligation to continue to design strategies that guarantee a government administration of excellence and that effectively contributes to eradicate government corruption. As part of these strategies, we have identified the need to protect the rights of those public employees and officials who report improper or illegal acts that due to their nature constitute acts of corruption.

The Constitution of the Commonwealth of Puerto Rico in several of its provisions, Act No. 5 of October 14, 1975, as amended, as well as diverse laws of our legal system, expressly prohibit discrimination and guarantee the

vested rights of the officials and employees of the public sector. However, the scope of these guarantees is not specifically and dissuasively extended to situations in which a public official or employee, who denounces, files a complaint or serves as a witness for alleged improper or illegal acts in the use of public property or funds, is retaliated against because he/she reported, accused or witnessed alleged improper or illegal acts in the use of public property and funds. As a result the informer, complainant, or witness may be the subject of discriminatory actions and oppressive practices that influence his/her rights to work.

Regarding private sector employees, Act No. 115 of December 20, 1991, establishes additional protection when an employee offers or attempts to offer information regarding the inappropriate management of a company. It establishes the prohibitions, as well as the violations and civil and criminal liability against any employer who demonstrates this conduct.

It is imperative to extend similar protection to the public sector. Therefore, the Legislature deems it is necessary and convenient to establish measures that guarantee the rights of public employees and officials who report, accuse, or witness acts that constitute corruption and violations of the laws and regulations that govern the ethical conduct in the public service. The intention of this Legislature is that the provisions contained in this Act shall apply when the complaints or statements made by the informer, complainant or witness of such acts are not defamatory, unfounded or frivolous in nature. Likewise, the provisions of this Act do not apply when the public employee or official who reports, accuses, or witnesses alleged acts of corruption, has been accused or convicted as a co-author of the same illegal acts on which he/she is offering information or making statements and administrative procedures to impose disciplinary measures on him/her

are initiated or have been initiated, to separate him/her from the public service, or discharge him/her from office pursuant to the norms and regulations that govern the administration of human resources and due process of law.

In order to achieve faithful compliance of the provisions of this Act, and establish a balance framed within the criteria of reason and equity, the sanctions and remedies of penal and civil nature that shall apply to public employees and officials are hereby adopted. Regarding acts of criminal nature, it is hereby provided that every public official or employee who violates any of the provisions of this Act, shall incur a felony and upon conviction thereof, shall be punished by a fine of not less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, and/or imprisonment for a fixed term of three (3) years. If there were aggravating circumstances, the fixed penalty established hereby, may be increased to a maximum of five (5) years; if extenuating circumstances arise, it may be reduced to a minimum of two (2) years.

On the other hand, every employee or public official who reports, accuses, or is a witness to any illegal act, furnishes information, whether verbally or in writing, or gives any testimony on improper or illegal acts that due to their nature constitute acts of corruption, knowing that such facts are false, or when said statements are defamatory, unfounded or frivolous, shall incur a felony and upon conviction, shall be punished by a fine of not less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, and/or imprisonment for a fixed term of three (3) years. If aggravating circumstances intervene, the fixed penalty may be increased to a maximum of five (5) years; if extenuating circumstances intervene, it may be reduced to a minimum of two (2) years.

On the other hand, suits of a civil nature contemplate that any public employee or official who alleges a violation of the provisions of this Act, may file a civil suit against the public official or employee who acts contrary to what is provided hereby, within one (1) year after the date said violation took place; may request to be compensated for damages, mental anguish, unearned wages, and benefits and attorney's fees and reinstated in his/her employment.

Likewise, any public official or employee who reports, complains or is a witness who discloses information verbally or in writing, or gives testimony on improper or illegal acts that because of their nature are acts of corruption, knowing that such facts are false, or when such statements are defamatory, unfounded or frivolous, shall be personally subject to extracontractual civil liability.

Thus, a balance is established between the need to guarantee the rights of persons who denounce, accuse, or witness acts of corruption, against retaliation and discriminatory treatment, with the protection of the rights of public officials or employees against unfounded or defamatory complaints. In this way, this Act combines provisions, which in other state jurisdictions such as California and Illinois, at the Federal level, and in the model legislation suggested by the National Whistleblower Center, are separated into different statutes.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Title

This Act shall be known as the “Act to protect the rights of public employees and officials who report, accuse, or witness alleged acts which constitute corruption.” (Whistleblowers Protection Act)

Section 2.- Statement of Motives

The Legislature declares that ethical responsibility and moral integrity are guiding principles that govern public officials and the institutions, agencies, branches, and instrumentalities of the Government of Puerto Rico. Likewise, it is imperative to guarantee that government management at all levels incorporates and consecrates the highest standards of sound public administration, as an effective means to counteract and eradicate government corruption.

The purpose of this Act is to adopt measures for the protection of the rights of public employees and officials who disclose information or testify on alleged improper or illegal acts regarding the use of public property or funds that due to their nature constitute acts of government corruption, or that fall within the ethical conduct regulated by our legal system. Said public official or employee shall enjoy the guarantee and protection of his/her anonymity during the investigative process. Although the need to offer protection of the rights of the public employees and officials who report, accuse, or are witnesses in investigations and procedures before administrative, judicial and legislative forums is evident the establishing of sanctions for those cases in which such claims or statements are defamatory, unfounded or frivolous in nature, is also necessary in the enforcement of this Act.

The scope of this Act has the effect of preventing that any public official or employee from being dismissed, threatened, discriminated, or otherwise retaliated against, with respect to the terms, conditions, compensation, location, benefits, or privileges of the employment or public service, when he/she gives information, or testifies on alleged illegal or improper acts in the use and management of public property or funds.

Section 3.- Application

The provisions of this Act shall apply to all employees and officials of public agencies and instrumentalities, municipalities, public corporations, and any branches of the Executive, Judiciary or Legislative Branch of the Government of Puerto Rico. The practice of this Act is available to confidential employees who disclose the information to the pertinent authorities within sixty (60) days from being aware of the information.

Section 4.- Definitions

For the purposes of this Act, the following terms and phrases shall have the meaning stated below:

- (a) “Public Official” – includes those persons who hold office or are employed in the Government of Puerto Rico who are vested with part of the sovereignty of the State.
- (b) “Public Employee” – includes those persons who hold positions or jobs in the Government of Puerto Rico who are not vested by the sovereignty of the State and includes regular and non-regular public employees, those who render services under contract, equivalent to a regular position or office, transitory appointees and employees in probation.
- (c) “Government of Puerto Rico” – includes the government of the Commonwealth of Puerto Rico, its bureaus, agencies and entities or the Executive Branch, including public corporations, instrumentalities, and municipalities; the Legislative Branch and any office or joint dependency of both legislative bodies; the Comptroller of Puerto Rico; the Judiciary Branch, as well as the dependencies and offices attached thereto.

Section 5.- Prohibitions

The following actions are hereby prohibited:

- (a) No public official or employee may dismiss, threaten, discriminate against or otherwise retaliate against another public official or employee, with regard to the terms, conditions, compensation, location, or employment benefits or privileges, because the latter has disclosed or has attempted, orally or in writing to disclose any testimony, statement, or information on alleged improper or illegal acts in the use of public property or funds or acts that constitute corruption, before any official or employee with investigative functions or before a state or federal legislative, administrative or judiciary forum, when said statements are not defamatory, unfounded, or frivolous, nor constitute privileged information established by law.
- (b) 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 gives the information or testimony reasonably believes that it is evidence of the violation of a law, rule or regulation, misuse use public funds, illegal use

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.

2. Exercising the right to report, complain, sue, or appeal, guaranteed by any act, rule or regulation of our legal system in effect.
3. Refusing to obey an order to carry out an act or omission that would bring about the violation of a law or regulation.

Section 6.- Exceptions to the application of the Act.

The provisions of this Act shall not apply when the public employee or official or accuser, or witness of alleged acts of corruption has been accused or convicted as co-author of the same illegal acts on which he/she is disclosing information or making statements, and the administrative procedures are initiated or have been initiated to impose disciplinary measures, separating from public service, or discharging from office pursuant to the rules and regulations that govern the administration of human resources and due process of law.

Furthermore, the public official or employee that accuses, brings suit or witnesses shall not invoke the protections and guarantees recognized by this Act, when he/she offers or attempts to offer any testimony, statement or information on alleged improper or illegal acts, orally or in writing, before any official or employee with investigative functions, or before any state or federal administrative, legislative or judiciary forum, when said statements are defamatory, unfounded, or frivolous, or constitute privileged information established by law.

Section 7.- Interpretation of Legal Provisions

The interpretation, implementation, and administration of this Act shall be made in strict compliance with the enunciated statement of motives and the applicable principles of penal, civil, and administrative code of laws.

Section 8.- Sanctions and Remedies

(a) Criminal Acts

Any public employee or official who violates any of the provisions of this Act shall incur a felony and upon conviction shall be punished with a fine of not less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, and/or the penalty of imprisonment for a fixed term of three (3) years. If aggravating circumstances are present, the fixed penalty thus established may be increased up to a maximum of five (5) years; if there are extenuating circumstances, it may be reduced to a minimum of two (2) years.

Any public employee or official that falsely and knowingly by reports, accuses or witnesses illegal acts, or discloses or offers any testimony verbally or in writing on improper or illegal acts that due to their nature constitute acts of corruption, or when said statements are defamatory, unfounded or frivolous, shall incur a felony and upon conviction, shall be punished by a fine of not less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, and/or imprisonment for a fixed term of three (3) years. If there were aggravating circumstances, the fixed penalty could be increased to a maximum of five (5) years; if there were extenuating circumstances arise, it could be reduced to a minimum of two (2) years.

(b) Civil Acts

Any public official or employee who alleges a violation of the provisions of this Act has incurred, may file a civil suit against the public official or employee who acts in contravention of the provisions within a year of the date said violation occurred, and request to be compensated by the person for damages, mental anguishes, reinstatement to employment and granted triple unearned wages, benefits and the payment of attorney fees.

Any public employee or official who informs, accuses or a is of witnesses who furnishes oral or written information, offers testimony on improper or illegal acts that due to their nature are acts of corruption, knowing that they are false, or when said statements are made by him/her are of defamatory, unfounded or frivolous in nature, said employee or official shall be subject to extra contractual civil liability.

(c) Administrative Actions

In addition to any other administrative or judicial remedy that granted against any public official or employee who violates any of the provisions of this Act, the criminal conviction or finding of civil liability by a Court of First Instance, shall constitute sufficient cause to file charges pursuant to the rules and regulations that govern the applicable administrative procedures.

Section 9.- Severability Clause

If any Article, Section, paragraph, sentence, phrase or provision of this Act is found unconstitutional by a Court with jurisdiction, the remaining provisions shall continue in full force and effect.

Section 10.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 426 (S.B. 1693) of the 4th Special Session of the 13th Legislature of Puerto Rico:

AN ACT to adopt measures to protect the rights of public employees and officials who report, accuse, or witness alleged improper or illegal acts in the use of public property and funds, acts that constitute corruption and violations of the laws and regulations that govern ethical conduct in the public service; establish the statement of motives applicable to such situations; etc.,

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

In San Juan, Puerto Rico, today 1st of April of 2005.

Luis Fusté-Lacourt
Director