

(S. B. 1529)
(Conference)

(No. 201-2015)

(Approved December 7, 2015)

AN ACT

To amend subsection (h) of Section 6 and add a new Section 9 to Act No. 253-1995, as amended, known as the “Compulsory Motor Vehicle Liability Insurance Act”; amend Section 3 of Act No. 157-2015, to authorize the Joint Underwriting Association to declare a special dividend and make a special payment to be deposited in the “Legislative Fund for Community Impact”; establish rigorous administrative processes and modify the penalties to deter anticompetitive conduct in the compulsory liability insurance market; and for other related purposes.

STATEMENT OF MOTIVES

The purpose of this measure is to guarantee the cash flow for nonprofit organizations through a special deposit to be made by the Joint Underwriting Association to the Government Development Bank in favor of the “Legislative Fund for Community Impact.”

Moreover, this measure seeks to establish rigorous administrative processes and modify the penalties to deter anticompetitive conduct in the compulsory liability insurance market, thus accomplishing the purposes of Act No. 245-2014.

This Administration finds that this legislative piece is a prudent and responsible alternative to addressing the pressing need of nonprofit organizations that receive funds under Act No. 20-2012 and regulate the compulsory liability insurance market.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Subsection (h) of Section 6 is hereby amended and a new Section 9 is hereby added to Act No. 253-1995, as amended, to read as follows:

“Section 6.- Joint Underwriting Association.

(a) ...

(b) ...

(c) ...

(d) ...

(h) All members of the Joint Underwriting Association shall share in the annual profits and losses thereof, determined in accordance with the Annual Statement required under Section 3.310 of the Code, in the ratio that the net direct premiums written in Puerto Rico during the previous year for each one of the insurers, for insurance against any loss, expense, or liability consequential upon loss or damage to persons or property resulting from the possession, conservation, or use of land vehicle, aircraft, or draft or riding animal or incidental thereto, all in accordance with Section 4.070 of the Code, represents of the total of the net direct premiums written in Puerto Rico during said year for that type of insurance.

(1) 2013 Special Dividend:

(i) The Joint Underwriting Association is hereby authorized to declare a special dividend for its members during 2013, subject to the provisions of this subsection, in the amount of two hundred (200) million dollars subject to the payment of a one-time special tax of fifty percent (50%). Dividends received by private insurers that are members of the Joint Underwriting Association shall not be subject to any other tax. The revenues of the one-time special tax herein established shall not be considered for purposes of the computation of any of the existing formulas used to determine budget appropriations to be earmarked during the constitutional budget process.

(ii) The Board of Directors of the Joint Underwriting Association shall declare the dividend pursuant to its authority and procedures, upon determining that there is no adverse impact on the solvency and capital of the Joint Underwriting Association and the payment shall be ratified by a majority vote of members of the Association at a duly constituted meeting.

(iii) The authorization granted to the Joint Underwriting Association to approve the dividend provided herein shall remain in effect sixty (60) days after the approval of this Act.

(iv) The Joint Underwriting Association is hereby authorized to determine, based on its best interests, the form and date of payment of the approved dividend, and a period of ninety (90) days from the effective date of this Act is hereby provided to pay out the declared dividend, which shall be carried out taking into account the cash availability of the Joint Underwriting Association. Any portion of the dividend paid after the effective date of the authorization for its declaration shall not disallow the tax treatment established herein; provided, that the dividend is declared during the effective period provided in subsection (iii).

(v) Considering the public benefit of this measure and its authorization by the Legislative Assembly, the provisions of subsection (g) of this Section shall apply to the actions taken by the Board, the members, and the personnel of the Association.

(2) 2015 Special Dividend and Special Payment:

(i) The Joint Underwriting Association is hereby authorized to declare a special dividend during 2015 for its members, subject to the provisions of this subsection, in the amount of twenty-one million dollars (\$21,000,000) subject to the imposition of a one-time special tax of fifteen (15%). The special dividend shall be paid out in installments during 2016, subject to compliance with payment provided in subparagraph (vii) below. Dividends received by private insurers that

are members of the Joint Underwriting Association shall not be subject to any other tax. The revenues of the one-time special tax herein established shall not be considered for purposes of the computation of any of the existing formulas used to determine budget appropriations to be earmarked during the constitutional budget process.

(ii) The Board of Directors of the Joint Underwriting Association shall declare the dividend pursuant to the authority and procedures thereof, upon determining that there is no adverse impact on the solvency and capital of the Joint Underwriting Association and the payout shall be ratified by a vote of the members owning more than 50% of the total combined voting power, in accordance with the most recent determination made by the Office of the Insurance Commissioner.

(iii) Considering the public benefit of this measure and its authorization by the Legislative Assembly, the provisions of subsection (j) of this Section shall apply to the actions taken by the Board, the members, and the personnel of the Association.

(iv) The Joint Underwriting Association shall make a special payment in the amount of twenty-one million dollars (\$21,000,000) to the Government Development Bank in favor of the 'Legislative Fund for Community Impact.'

(v) The Joint Underwriting Association may use a credit of up to eighteen million dollars (\$18,000,000) on account of the special payment provided herein, as follows:

a. as a tax credit against the Income Tax imposed thereon under Sections 1022.01 through 1022.03 of the Puerto Rico Internal Revenue Code of 2011, and

b. as a credit against the four percent (4%) set aside for the General Fund, as provided in Section 7(b)(2) of this Act.

(vi) The credit mentioned in the above clause shall be used by the Joint Underwriting Association within a period of four (4) years to be counted from December 31, 2015. Any balance remaining after said four (4) year period, may be used as credit by the Joint Underwriting Association.

(i) ...

...

Section 7.- Premiums.

(a) ...

Section 8.- Investigation, Adjustment, and Resolution of Claims.

(a) ...

Section 9.- Anticompetitive Conducts, Procedure, and Penalties.

(a) Anticompetitive conducts: It shall constitute an anticompetitive conduct in the compulsory liability insurance market when an insurer included in the 'Selection Form,' including the Joint Underwriting Association, engages in any of the following acts:

(i) To encourage, promote, or facilitate that consumers not be provided with a 'Selection Form' at the time of renewing the vehicle registration tag;

(ii) To encourage, promote, or facilitate that consumers or concessionaires be provided with a 'Selection Form' wherein a specific insurer is already pre-selected, thus precluding the consumer from exercising his or her right to directly select his or her insurer of preference;

(iii) To encourage, promote, or facilitate that consumers be prevented from marking their insurer of preference in the 'Selection Form';

(iv) To encourage, promote, or facilitate the practice of engaging in acts of persuasion, offering, or solicitation during the process of collecting the compulsory liability insurance premium and, to such effect, engaging in conduct

tending to promote the selection of a specific insurer; or dissuade a consumer from choosing the insurer of his or her preference.

(v) To employ marketing strategies, place advertisements, deliver or place promotional material relating to the compulsory liability insurance of an insurer listed in the ‘Selection Form,’ including the Joint Underwriting Association, within the premises of an entity authorized to collect compulsory liability insurance, or encourage the placement of said advertisement or promotional material. This prohibition does not preclude insurers from advertising, promoting, or marketing their products outside of the premises of the entity authorized to collect compulsory liability insurance, or on the streets and public sidewalks.

(vi) To encourage, promote, or facilitate the offering of false information about another insurer, including the Joint Underwriting Association, and the selection process.

(vii) To encourage, promote, or facilitate the refusal to accept a valid certificate of compliance.

(viii) To enter into or maintain an oral or written contract or agreement with the entities authorized to collect the compulsory liability insurance and the insurers listed in the ‘Selection Form,’ including the Joint Underwriting Association, whereunder the authorized entity agrees to sell the compulsory liability insurance, or for promotion or advertising purposes in favor of a particular insurer, in connection with the compulsory liability insurance. It also includes the promotion or facilitation by any insurer of any type of verbal or written agreement between an insurer or the Joint Underwriting Association, and an entity authorized to collect compulsory liability insurance, whereby the insurer or the Joint Underwriting Association, offers or agrees to pay or deliver to the entity authorized to collect compulsory liability insurance any type of payment, assets, royalties,

rents, benefit, emolument, consideration, service, commission, or profit shares over the maximum service fee established in Section 7(b) of this Act. Insurers listed in the ‘Selection Form,’ including the Joint Underwriting Association may not use third parties, subsidiaries, or intermediaries to enter into or maintain, through them, contracts or agreements prohibited under this Section.

(viii) [sic] To encourage businesses or establishments other than the authorized entities, such as concessionaires, to collect a service fee for selling registration tags or using the ‘Selection Form.’

(ix) To encourage, promote, or facilitate that the ‘Notice’ required by this Act notifying consumers of their right to freely select the insurer of their preference be concealed and/or not be visible.

(xi) To use intermediaries or third parties to receive or offer benefits beyond those established in this Act, or engage, through intermediaries or third parties, in acts prohibited under this Section to insurers listed in the ‘Selection Form,’ including the Joint Underwriting Association.

Engaging in any of the aforementioned acts shall constitute an anticompetitive conduct in the compulsory liability insurance market, and could potentially constitute fraud in the insurance business, or other violations under Chapter 27 of the Insurance Code.

(b) Procedure:

(i) Any person or entity that learns that any insurance company or the Joint Underwriting Association has engaged in any of the anticompetitive practices identified in subsection (a) of this Section may file a complaint with the Insurance Commissioner. The complaint shall specifically state the facts and evidence supporting the complaint, as well as the basis therefor. Upon receiving a complaint that meets these requirements, the Insurance Commissioner shall be required to initiate an administrative proceeding, in accordance with the guarantees

and terms of the ‘Uniform Administrative Procedures Act,’ Act No. 170 of August 12, 1988, as amended, and the regulations of said agency. The complainant shall be notified in writing of any determination made by the Insurance Commissioner on the complaint. If the complaint fails to meet the requirements established herein, the Insurance Commissioner shall initiate an investigation and notify the complainant in writing of the outcome of the investigation within a period not to exceed sixty (60) days. If the Insurance Commissioner requires additional time to complete the investigation, the Commissioner shall notify the complainant in writing within the initial sixty (60)-day period. The additional time for completing the investigation shall not exceed thirty (30) days.

(c) Penalties:

(i) If any of the insurance companies listed in the ‘Selection Form,’ including the Joint Underwriting Association, engages in any conduct identified in this Act, whether determined through an administrative hearing or an investigation, any such insurance company shall be punished by the Insurance Commissioner by an administrative fine of not less than \$25,000 per occurrence. If it is determined that the conduct in question is part of a scheme or unfair practice aimed at unduly interfering with the insureds’ selection process to take a greater share in the market or any other benefit not provided for in this Act, in addition to imposing the minimum administrative fine established herein, the Insurance Commissioner shall disqualify such insurer from further participating in the ‘Selection Form,’ thereby preventing it from continuing to write compulsory liability insurance. The Insurance Commissioner is also authorized to revoke such insurer’s authorization to do business in Puerto Rico if it is determined that the acts of the insurer have unduly violated the rights of insureds and affected free competition in the compulsory insurance market. Likewise, the Insurance Commissioner may impose any other fine permitted under Chapter 27 of the

Insurance Code if the violation constitutes fraud in the insurance industry. Any insurer affected by a determination made in accordance with the foregoing may file an appeal with the Court of Appeals within a period of thirty (30) days.

(ii) The fines imposed by the Insurance Commissioner shall be deposited in the ‘Fund to Ensure Fair Competition in the Compulsory Insurance Market,’ created by this Act. Furthermore, the party against whom a determination of noncompliance is made under this Act shall be responsible for paying the costs and expenses incurred by the Office of the Insurance Commissioner in the administrative proceeding, in favor of this fund. As part of his or her administrative determination, the Insurance Commissioner shall notify the amount to be paid by the party against whom an adverse determination is made, on account of the costs and expenses incurred in the administrative proceeding, which shall be deposited in the ‘Fund to Ensure Fair Competition in the Compulsory Insurance Market.’

(d) ‘Fund to Ensure Fair Competition in the Compulsory Insurance Market.’

(i) The ‘Fund to Ensure Fair Competition in the Compulsory Insurance Market’ is hereby created, which shall be under the control and custody of the Insurance Commissioner. Funds deposited therein shall be used by the Insurance Commissioner to establish a division or department within the Office of the Insurance Commissioner devoted solely to addressing, investigating, adjudicating, and conducting the administrative proceedings provided for in this Section, aimed at deterring any conduct in the compulsory insurance market that affects free competition and unduly interferes with insureds’ right to free choice of insurer. Thus, the Insurance Commissioner shall ensure that sufficient human and technical resources are available to process, within a reasonable timeframe not exceeding the time periods established in this Act and the ‘Uniform Administrative

Procedures Act,' Act No. 170 of August 12, 1988, as amended, any complaint and request for investigation filed with the Insurance Commissioner.

(ii) The 'Fund to Ensure Fair Competition in the Compulsory Insurance Market' shall be funded by the fines and penalties established in subsection (c) of this Section. Moreover, the Insurance Commissioner is hereby authorized to require contributions from the insurers listed in the 'Selection Form,' including the Joint Underwriting Association, to initially fund the Fund. The amount of this initial contribution shall be determined by the Insurance Commissioner based on the share of each insurer and the Joint Underwriting Association in the compulsory liability insurance market at the time the contribution is required. The Insurance Commissioner is also authorized to request subsequent contributions as are necessary. The Insurance Commissioner shall prescribe by regulations the use of said fund, the mechanisms to notify the insurers listed in the 'Selection Form' and the Joint Underwriting Association about fund usage, the process for requesting additional contributions, and any procedures necessary to fulfill the purposes of this Act.

...”

Section 2.- Special Payment to the 'Legislative Fund for Community Impact.'

The special payment by the Joint Underwriting Association to the Government Development Bank, in favor of the 'Legislative Fund for Community Impact' provided in Section 1 of this Act, shall be made as follows:

(i) Fifteen million dollars (\$15,000,000) shall be disbursed within thirty (30) days of the approval of this Act; and

(ii) Six million dollars (\$6,000,000) shall be disbursed not later than January 31st, 2016.

Section 3.- Section 3 of Act No. 157-2015, as amended, is hereby amended to read as follows:

“Section 3.- Appropriations to the Fund.

The Fund shall receive an initial transfer of twenty-one million dollars (\$21,000,000) to be made by the Joint Underwriting Association in accordance with Section 1 of this Act. Any amount in excess of the one-time special tax provided in Section 1 shall remain in the Fund to be distributed upon the approval of a Joint Resolution by the Legislative Assembly.”

Section 4.- Severability.

If any clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act were held to be unconstitutional by a Court of competent jurisdiction, such holding shall not affect, impair, or invalidate the remaining provisions thereof. The effect of such holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, or part of this Act thus held to be unconstitutional.

Section 5.- Effectiveness.

This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 201-2015 (S. B. 2303) (Conference)** of the **6th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend subsection (h) of Section 6 and add a new Section 9 to Act No. 253-1995, as amended, known as the “Compulsory Motor Vehicle Liability Insurance Act”; amend Section 3 of Act No. 157-2015, to authorize the Joint Underwriting Association to declare a special dividend and make a special payment to be deposited in the “Legislative Fund for Community Impact”; establish rigorous administrative processes and modify the penalties to deter anticompetitive conduct in the compulsory liability insurance market; and for other related purposes.

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

In San Juan, Puerto Rico, on this 28th day of June, 2024.

Mónica Freire-Florit, Esq.
Director