

(H. B. 2894)

(No. 23-2011)

(Approved February 24, 2011)

AN ACT

To repeal Act No. 138 of July 18, 1998, as amended, known as the “Pawnshop Regulatory Act,” and replace it with the new “Pawnbroking Business and Operations Regulatory Act,” in order to adjust the provisions thereof to the current economic reality, and for other purposes; amend Section 6 of Act No. 18 of September 21, 1983, as amended, known as the “Purchase and Sale of Precious Metals and Stones Regulation Act,” in order to delegate on the Commissioner of Financial Institutions of Puerto Rico the power to oversee and regulate the business of buying and selling precious metals and stones whenever the same takes place in the same location where a pawnbroking business is conducted; and for other purposes.

STATEMENT OF MOTIVES

The purpose of this legislation is to repeal the current “Pawnshop Regulatory Act” and replace it with the new “Pawnbroking Business and Operations Regulatory Act,” which includes provisions that impose more stringent requirements for issuing licenses to and overseeing pawnbroking businesses.

Applications for licenses to operate pawnbroking businesses in Puerto Rico have increased dramatically. Due to the rapid growth in the number of pawnbroking businesses and the use of their services by thousands of consumers, it is necessary to expand the supervision and oversight of these businesses that, according to the Department of Economic Development and Commerce, sell approximately thirty million dollars (\$30,000,000) a year. As part of their regular business, pawnshops currently acquire personal property by purchase, including precious metals and stones. In order to engage in the aforementioned activities,

pawnshops must hold a license issued by the Department of the Treasury under Act No. 18 of September 21, 1983, as amended, known as the “Purchase and Sale of Precious Metals and Stones Regulation Act.” However, the Office of the Commissioner of Financial Institutions lacks jurisdiction to enter, supervise, and examine the purchase and sale of metals, precious stones, and other merchandise when inspecting pawnshops, even though both activities are conducted in the same location. For such reason, it is necessary for the Office of the Commissioner of Financial Institutions to strictly supervise and oversee both types of businesses when they are being conducted in the same location.

As part of the effort to regulate more stringently the operation and the various transactions conducted in these businesses, the Legislative Assembly seeks to empower law enforcement officers and those authorized by this Act to carry out inspections to ensure compliance therewith. The reasonableness of an administrative search in strictly regulated industries without having previously obtained a warrant pursuant to Article II of Section 10 of the Constitution of Puerto Rico shall be subject to the specificity and delimitation with which such search is carried out. The constitutionality of statutes that allow for inspections and order the return of presumably stolen or unlawfully taken property located in a pawnshop to a law enforcement officer authorized by this Act has also been upheld, insofar as these are performed exactly as provided by the statute that so allows.

It is clear that pawnbroking business operators have a duty with respect to the property that is involved in a transaction. Due to the nature and complexity of this type of business, operators thereof must assume an active role and question the source of each good being offered.

The need for stringent requirements to grant pawnbroker licenses becomes evident. This would facilitate the regulatory entity's oversight of pawnbroking businesses and operations, and gain consumer trust which would make for a profitable industry.

Recognizing the importance of establishing and maintaining an effective oversight of the pawnbroking business, this Legislative Assembly deems it necessary to pass progressive local legislation to place Puerto Rico among those jurisdictions committed to protecting citizens, addressing the stolen property issue, and demanding pawnbroking businesses' compliance with applicable Commonwealth and Federal laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1. –Title.–

This Act shall be known and may be cited as the “Pawnbroking Business and Operations Regulatory Act.”

Section 2. –Definitions.–

For purposes of this Act, the following definitions are hereby adopted:

(a) Liquid assets: Assets that can be converted into cash quickly at the least possible cost. These include cash, bank deposits, and securities with a maturity date of less than three (3) months.

(b) Service Charge: Amount of money, rate, discount, or commission that a natural or juridical person engaged in the pawnbroking business charges his/her clients, directly, indirectly, or disguised as a compensation for the services rendered.

(c) Commissioner: the Commissioner of Financial Institutions of Puerto Rico.

(d) Purchase: The acquisition of personal property without a repurchase agreement, including Precious Metals and Stones from a Licensee by a person, other than an authorized vendor, by consignment or trade for value or other goods.

(e) Licensee: The person to whom the Commissioner of Financial Institutions has issued a license under this Act.

(f) Law Enforcement Officer: For purposes of this Act, an Internal Revenue Agent of the Department of the Treasury or an officer of the Puerto Rico Police, jointly or separately.

(g) License: The authorization issued by the Commissioner to operate a Pawnbroking Business.

(h) Precious Metal: Includes gold, silver, platinum, sterling silver, rhodium, and palladium in any grade of purity of said metals, or in any item commonly or commercially known as jewelry.

(i) NAICS: Means the North American Industry Classification System. NAICS is a system to organize industries and businesses used at the Federal level by agencies that gather and classify information in order to collect, analyze, and publish statistics related to the United States economy.

(j) Pawnbroking Business: Includes any activity whereby a person engages in lending money on the security of pledge, including loans with a repurchase agreement, as well as buying and selling Precious Metals, Precious Stones, or any other personal property, as authorized by this Act.

(k) OCFI: The Office of the Commissioner of Financial Institutions of Puerto Rico.

(l) Office: The location of the licensee's principal office and any other location where the pawnbroking business is conducted.

(m) Person: Any natural person of legal age or juridical person, including, but not limited to individuals, partnerships, corporations, trusts, or any other legal entity.

(n) Precious Stone: Any gem such as a diamond, emerald, ruby, or sapphire, or any semiprecious stone, including, but not limited to an amethyst, agate, spinel, jasper, onyx, opal, topaz, turquoise, pearl, or other.

(o) Pledgor: A person who takes money on loan, on the security of pledged personal property.

(p) Pawnbroker: A person who loans money on the security of pledge.

(q) Money lent on the security of pledge: The delivery of a sum of money by a pawnbroker in exchange for any personal property susceptible of possession, as surety for compliance with the obligation to refund said sum on a specific fixed or future date, together with payment for accrued interest and any other additional charge allowed by this Act.

It shall also be understood that the sale of personal property with a repurchase agreement lent on the security of pledge when the purchaser acquires such good, granting the vendor the right to redeem the same, paying a previously determined amount in excess of the original sales price, plus the charges allowed, within an established term that shall not exceed one hundred eighty (180) days. It shall also be considered as money lent on the security of pledge when the personal property and title thereof have been delivered into the custody of the pawnbroker and such personal property remains in the possession of the debtor upon agreement with the pawnbroker.

It shall be presumed that this sale with repurchase agreement constitutes a pawn, even if the title is transferred to the buyer. It shall be further presumed that the amount paid in excess of the original sales price agreed upon to obtain the return of the sold good constitutes agreed upon interest.

(r) Seller: Any person who sells or attempts to sell any Precious Metal, Precious Stone, or personal property to a Licensee without the right to repurchase.

Section 3. –Applicability.–

This Act shall apply to any person engaged in the Pawnbroking Business.

Any person who, at the time of approval of this Act, is operating a Pawnbroking Business authorized by Act No. 138 of July 18, 1998, as amended, may continue operating the same under the provisions of such Act. However, he/she shall file a renewal application pursuant to the provisions and requirements established in this Act and the Regulations approved thereunder.

No person shall engage in a Pawnbroking Business in Puerto Rico without first obtaining a valid license issued by the Commissioner as provided below in this Act.

Section 4. –License Requirement.–

In order to obtain a license to engage in the Pawnbroking Business under this Act, petitioners or their partners, directors, and executive officers shall:

(a) Have a net worth of at least ten thousand dollars (\$10,000) calculated according to generally accepted accounting principles;

(b) Have liquid assets valued at no less than five thousand dollars (\$5,000) available for the business at the specific location;

(c) Maintain an appropriate space available and equipped for conducting the business;

(d) File a license application with the OCFI, together with the corresponding bond, pursuant to Sections 5 and 6 of this Act;

(e) Include a Negative Criminal Record Certificate issued by the Puerto Rico Police not more than sixty (60) days in advance, as well as two (2) 2x2 photographs when filing the aforesaid application;

(f) Include with the aforesaid application, three (3) sworn statements from three (3) persons who have no relation within the third degree of consanguinity or the second degree of affinity and are not employed by the petitioner, testifying, under penalty of perjury, that the petitioner enjoys a good reputation in his/her community, that he/she is not considered prone to commit criminal acts, including but not limited to fraud, and that to the best of their knowledge, he/she is emotionally capable of operating a Pawnbroking Business;

(g) Include certified copies of the income tax returns for the last five (5) years; and

(h) Meet any other requirement provided by the OCFI through Regulations, Circular Letter, or other general determination or administrative communication.

Section 5. –License Application.–

(a) Any person who wishes to obtain a license to engage in the Pawnbroking Business shall file an application, under oath, with the OCFI using the form provided by the Commissioner. It shall be necessary to submit a license application for every Office to be established.

(b) The application shall contain all the information prescribed by the Commissioner through Regulations, Circular Letter, or any other general determination or administrative communication.

(c) The license application shall include the license and investigation fees, as provided below:

(1) A certified or manager's check, bank draft, or money order in the amount of one thousand dollars (\$1,000) for each office, payable to the Secretary of the Treasury on account of annual license fees. If the license is applied for or issued after June 30 of any year, the annual license fee for that year shall only be five hundred dollars (\$500); and

(2) A certified or manager's check, bank draft, or money order in the amount of five hundred dollars (\$500) for each office, payable to the Secretary of the Treasury to cover the cost of the investigation required by this Act.

(d) The application shall include the required bond as provided in this Act.

(e) The license application shall state the exact location where business shall be conducted, as well as any other information requested by the Commissioner, including the names and addresses of the owners, partners, directors, and principal officers of the applying entity, in order to set a basis for the investigations provided in this Section. Every year, the OCFI shall submit an updated list of the Pawnshops existing in Puerto Rico, including the names and addresses of the owners, partners, directors, or officers of the applying entity, to the Police Department and the Department of the Treasury. Any changes in the information provided shall be informed to the Puerto Rico Police Department and the Department of the Treasury within five (5) days of filing such changes with the OCFI.

(f) Any investigation regarding an application to engage in a Pawnbroking Business filed with the OCFI shall be completed within ninety (90) calendar days from the date the applicant submitted all the documents required to process the license to operate a Pawnbroking Business. The Commissioner, for just cause, may initiate and/or require any additional investigation that he/she may deem appropriate and necessary to determine if the petitioner or its partners, directors, or executive officers, in the case of a juridical person, meet the requirements established by this Act.

(g) The Commissioner may extend the term provided by Law or Regulations to consider the application only if the investigation described in subsection (f) shows just cause, and notify the applicant in writing within five (5) days before the expiration of such term, as described in subsection (f) of this Section.

(h) The application for a license shall contain the NAICS number that has been assigned to the applicant.

Section 6. –Bond.–

(a) Every applicant for a license to operate a Pawnbroking Business shall include with the application, and maintain, a bond to guarantee faithful compliance with the provisions of this Act and the Rules or regulations that may be adopted thereunder. The Commissioner shall prescribe through Regulations the terms and conditions that he/she deems should be contained in the bond in order to protect the public interest. Said bond shall respond to any person, including the OCFI, and shall be in an amount of at least ten thousand dollars (\$10,000) to guarantee that he/she shall fully meet his/her obligations during the business' operation. However, the Commissioner may require a bond in excess of ten thousand dollars (\$10,000) and up to a maximum of one hundred thousand dollars (\$100,000) based on the licensee's volume of business and financial situation. The bond shall be renewed on a yearly basis and either personally submitted or sent by certified mail to the OCFI.

Section 7. –Return of the Application for License.–

(a) Upon receipt of the license application, the Commissioner shall verify the same and may return it to the applicant if any of the following reasons, but not limited thereto, are evident on its face:

(1) The application was not filed in its entirety pursuant to the provisions of this Act or the regulations that may be promulgated thereunder; and

(2) The application lacks sufficient information or documentation as required by this Act or regulations.

(b) If the Commissioner returns a license application, the amount paid on account of investigation and license fees shall be refunded to the applicant.

Section 8. –Denial of License.–

(a) After analyzing an application for a license to engage in the Pawnbroking Business, and after having conducted the corresponding investigation, the Commissioner may deny the license for any cause in order to protect the public interest, such as:

(1) The applicant has failed to meet any of the requirements established in this Act or the Regulations prescribed thereunder;

(2) The officers or persons responsible for daily operations lack experience, financial or commercial abilities, or their moral reputation disqualifies them to conduct the business in a way that benefits the public interest;

(3) The Commissioner adjudicated a claim against the applicant whose motives are sufficient cause to believe that the applicant is unable to adequately operate the business;

(4) The applicant has been convicted of a felony or misdemeanor against the property or involving bribery or perjury, as defined in Act No. 149 of June 18, 2004, as amended; or the applicant has been the subject of an Order issued by the Commissioner for conducting or having conducted a Pawnbroking Business without the required license; or the applicant has been convicted of violations of Article 201 of the Penal Code, “Receiving, Disposal, and Transfer of Stolen Goods”; and

(5) The applicant has collected amounts greater than the authorized interest and charges for money lent on the security of pledge.

(b) Applicants to whom a license to engage in the Pawnbroking Business has been denied may request reconsideration to the Commissioner within twenty (20) days following the notice of denial.

(c) If the Commissioner denies a license, the amount paid on account of investigation costs shall be withheld by the Commissioner, but the amount paid on account of license fees shall be refunded to the applicant.

Section 9. –Issuance of License.–

(a) The Commissioner shall issue a license for the applicant to engage in the Pawnbroking Business, as requested. The license shall contain the name of the licensee, the street address of the location where the business is to be conducted in Puerto Rico, as well as issuance and expiration date.

(b) One license shall be issued per office. Said license may not be used in a place or business located at an address other than that stated thereon and the same shall be prominently displayed at the pawnshop. Licenses to engage in the Pawnbroking Business shall not be transferrable and may not be assigned to a person other than that to whom the license was issued for the operation of another pawnshop.

(c) When a licensee wishes to transfer an authorized office to another location or facility, such licensee shall notify the Commissioner in writing, either personally or by certified mail, at least thirty (30) calendar days before the date on which operations begin in the new location. If no objection is received from the Commissioner within twenty (20) business days from the date of the notice of transfer, such transfer shall be deemed to be authorized. In turn, the Commissioner shall send written notice of such change to the Puerto Rico Police Department and the Department of the Treasury within ten (10) business days from the date of

receipt of the notice or from the date on which the transfer was deemed to be authorized.

(d) Every holder of a license to operate a Pawnbroking Business shall begin operations and notify the Commissioner of the exact date thereof within a term not to exceed ninety (90) calendar days after the date on which the Commissioner issued the license. If the licensee is unable to begin operations within the term stated herein, he/she shall request an extension of time and state the reasons therefor to the Commissioner within ten (10) calendar days before the expiration of the established period. If no objection from the Commissioner is received within ten (10) calendar days from the date the extension was requested, the same shall be deemed to be authorized.

The license shall become null if operations do not begin within the term established herein or any extension granted, and the applicant shall resubmit an application as if it were a new case, in accordance with the requirements established in Section 5 of this Act.

Section 10. –License Renewal.–

(a) Each license shall be valid until its expiration, which shall be at the end of each calendar year.

(b) Every applicant shall file an application to renew the license, as provided by the OCFI, on or before December 1 of every year. Such application shall contain all the information required by the Commissioner by Law or regulations.

(c) The renewal application shall contain a manager's or certified check, bank draft, or money order payable to the Secretary of the Treasury in the amount of one thousand dollars (\$1,000) for each office on account of license fees.

(d) The applicant shall not have any pending debts with the OCFI at the time of filing the renewal application. Should there be any debts, full payment by a certified or manager's check, bank draft, or money order payable to the Secretary of the Treasury shall be included therewith.

(e) The Commissioner may extend the term for renewal of a license at the applicant's request prior to the expiration of the renewal term by filing a sworn statement including the reasons that impair the applicant to meet with such renewal term.

(f) If the licensee fails to file his/her renewal application or pay the applicable fees within the established term, it shall be understood that he/she has surrendered the license to operate a Pawnbroking Business and may not continue operating such Business.

(g) The Commissioner shall summon the person who has surrendered a license to a meeting wherein the latter shall be required to turn in the license and pay for any outstanding debt at the OCFI.

Section 11. –Surrender, Revocation, Cancellation, or Suspension of License.–

(a) Any licensee may surrender his/her license by filing a written notification with the Commissioner.

(b) The Commissioner may revoke, cancel, or suspend any license due to any violation of this Act or the rules and regulations that may be promulgated thereunder, or upon finding that a condition exists that, had it existed or had it been known when the license was issued, would have justified the refusal to issue a license.

The revocation, cancellation, or suspension process shall be carried out in accordance with the power and authority conferred by Act No. 4 of October 11, 1985, as amended, known as the "Financial Institutions

Commissioner's Office Act," and Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act."

(c) The surrender, revocation, cancellation, or suspension of a license shall not impair or affect the obligation of any existing lawful contract between the licensee and other persons, nor shall the State be held responsible with respect to third parties as a result of its power to revoke, cancel, or suspend a license.

Notwithstanding the above Section, a licensee shall have his/her license revoked immediately in the following instances:

(1) If he/she has been convicted of a felony or misdemeanor against the property, or involving bribery or perjury, as defined in Act No. 149 of June 18, 2004, as amended.

(2) If pledged good, as provided in Section 20 of this Act, is sold.

(3) If the licensee or any employee of the Pawnshop prevents or limits the Commissioner, his/her representative, or a law enforcement officer empowered by this Act from performing inspections or examinations. In the absence of the owner or the person in charge, said licensee shall have a qualified and authorized employee to assist in inspections and examinations, and who shall allow access to all documents, files, and computers.

(d) Under the circumstances specified in subsection (b) of this Section, the licensee shall have the opportunity to request a hearing before the Commissioner within twenty (20) calendar days from the revocation of the license.

(e) In all those cases in which the revocation arose from the intervention of any law enforcement officer and the licensee requests a hearing to appeal the same, the Commissioner shall summon the public officer whose investigation resulted in the revocation of the license as an interested party.

(f) Regarding the provisions established in this Section, if the Commissioner upholds the Revocation of the License after the hearing has been held, the licensee shall follow the reconsideration process set forth by Law.

Section 12. –Maximum Interest Rate.–

The maximum interest rate on money lent on the security of pledge shall not exceed five percent (5%) for five days, ten percent (10%) for ten days, fifteen percent (15%) for fifteen days, and twenty percent (20%) for one month on such portion of the debt pending payment and not exceeding five hundred dollars (\$500) and ten percent (10%) a month on the remaining pending balance, up to a term of fifteen (15) months.

The payment of interest rates higher than the aforementioned rate shall not be allowed. The only additional fee that a licensee may charge and collect on account of the care, safekeeping, and storage of a pledged good shall not exceed one dollar (\$1.00) per each contract for money lent on the security of pledge. An additional amount may be charged in the case of pledged goods that require special care upon justification of the reasons for such special care.

Additional interest or fees, through discounts or otherwise, shall not be charged in advance.

Section 13. –Interest Due.–

The total amount of interest due and the additional fees authorized by this Act shall be payable at the close of each month, in case of installment payment agreements, or on the maturity of the debt.

The principal obligation shall be deemed as due and payable when two (2) interest and additional fee installments have become due and payable. The licensee may sell a pledged good after the obligation has become due and payable, subject to the provisions of this Act.

In the case of installment payment agreements, the contract shall provide that the payment of the principal, interest, and additional fees shall be made at equal time intervals and in equally amortized amounts.

Section 14. –Procedure for the Sale of Unredeemed Pledged Goods.–

If the pledged good is not redeemed within the term agreed upon, the licensee may sell it for cash thirty (30) days after the expiration date of the loan, in which the pledgor's right to redemption expires. To redeem the pledged good, the pledgor must pay the principal plus interest and any additional charges due before such pledged good is sold.

Section 15. –Loss of Ticket.–

If the pawn ticket of the pledged good is lost or stolen, the pledgor must immediately notify the pawnbroker and the pledged good may be redeemed by verifying the identifying details that appear on the pawn ticket and the records with the person who claims to be the owner of the pledged good. The identification must be issued by a public agency of the Government of Puerto Rico or the Federal Government and have a current photograph at the time of the transaction. The identification number shall be written on the pawn ticket. A written statement shall be made to such effect. On such written statement shall be recorded that the person is the same who pledged the good in question, and the address, place of work, and personal and business telephone numbers of the pledgor.

Section 16. –Destruction of Records or Files.–

Except as otherwise ordered by Court or requested by the Commissioner, a licensee may destroy his/her records, files, or documents five (5) years after: the last entry in said records, files or documents; the date on which any obligation ceased to be due; or an audit by the OCFI, whichever is later. All licensees shall keep a register of records, files, or documents destroyed pursuant to the rules or regulations established by the Commissioner.

Section 17. –Duties.–

(a) Any person who operates a Pawnbroking Business shall:

(1) Conduct business in a commercial location with a duly approved use permit issued by the corresponding government agency, where he/she can adequately assist customers and be found during business hours;

(2) Register the legal or trade name being used for business at the Office of the Commissioner;

(3) Conspicuously display all applicable licenses, permits, and certifications at the pawnshop;

(4) Prominently display a sign stating the legal or trade name in the exterior of the business;

(5) Advertise in such a manner that the nature of the services provided, as well as the license number, may be clearly identified;

(6) Prominently show and display a list of current charges for pawnbroking services in each office, so that it may be visible to the public;

(7) Provide clear orientation in writing to the customer regarding the service charges;

(8) Keep physical or electronic sequential records that accurately show business transactions and operations, including but not limited to the following:

- i. A list of all pledged goods;
- ii. A list of the goods whose right of redemption expired and are available for sale;
- iii. A list of sold goods including their source;
- iv. The fingerprints of the pledgor.

(9) Include the information prescribed through Regulations by the Commissioner in each record entry. Said information shall be made available to the OCFI or the Department of the Treasury upon request;

(10) Give each pledgor a pawn ticket for each transaction. Such ticket must contain the information prescribed by the Commissioner through Regulations. Keep copies of such tickets on record for at least five (5) years from the date of the transaction;

(11) Keep in his/her office and available to the Commissioner all accounts, accounting books, records, files, and any other documents deemed necessary for the latter to discharge his/her supervisory duties. In addition, allow the Commissioner free access to his/her properties, facilities, and places of business, and cooperate with any examinations or investigations carried out by him/her and consent without limitation to the examination he/she conducts of the accounting books, records, files, and documents within and outside the facilities;

(12) Make available to the Commissioner a copy of the annual financial statements and any other information prescribed through Regulations. If a licensee has more than one authorized office in Puerto Rico, he/she may file only one consolidated annual report;

(13) Make all offices, files, records, safety deposit boxes, and premises used for the deposit and storage of pledged goods available to the Commissioner and to law enforcement officers during regular working hours;

(14) Allow advance payment to the principal for any portion of the amount due;

(15) After full payment of the loan, write the word "paid" or "cancelled" on the ticket and return the pledged good to the pledgor in the same condition it was originally delivered;

(16) Duly identify each person, as prescribed by the Commissioner through Regulations, with the pledgor's name, address, and telephone number; and a copy of the passport, drivers' license, or official document with a picture issued by the Government of Puerto Rico or the United States;

(17) Duly identify all goods accepted by the licensee as pledge for any loan, regardless of their nature, keep the same in the licensee's deposit and storage space, and have the same available for inspection by the Commissioner and Law Enforcement Officers, as defined in this Act;

(18) File with the Commissioner any periodic reports he/she may require by rules, regulations, circular letter, request, or order;

(19) Comply with any order or resolution issued by the Commissioner;

(20) Perform his/her duties with the utmost diligence, care, loyalty, and protection of the customers' interests;

(21) Comply with all the local, as well as any applicable Federal legislation and regulations;

(22) Faithfully comply with Act No. 18 of September 21, 1983, as amended, known as the "Purchase and Sale of Precious Metals and Stones Regulation Act," if the licensee is engaged in said business at the same location in which he/she conducts a Pawnbroking Business, or any other activities approved by the Commissioner;

(23) Manage, operate, and administer the Pawnbroking Business in a safe manner, as established through Regulations;

(24) Keep the pledged good in the premises where the transaction was conducted for at least thirty (30) days before sending it elsewhere for safekeeping;

(25) Keep a detailed description of all goods related to the business. In the case of motor vehicles, proof of ownership or any other document established through Regulations shall be required.

Section 18. –Prohibited Practices.–

(a) A person operating a Pawnbroking Business, as defined by this Act, shall not:

- (1) Operate a Pawnbroking Business without a license;
- (2) Operate his/her business outside the working hours of 7:00a.m. to 7:00p.m., notwithstanding the provisions of Act No. 1 of December 1, 1989, as amended;
- (3) Engage in any transaction with a minor, a legally incompetent person, or someone who, to the best of his/her knowledge, is depressed or under the influence of alcohol, narcotics, drugs, or stimulants;
- (4) Commit fraud, distort information, or make false or misleading statements;
- (5) Cease to provide reasonable care to protect pledged goods against damage or loss;
- (6) Charge for insurance in connection with a transaction;
- (7) Refuse to return pledged goods to a pledgor upon payment of the full amount due within the term provided. If a pledged good is lost or destroyed while in the possession of the pawnbroker, he/she must compensate the pledgor with the reasonable market value of the good lost or destroyed;
- (8) Sell a pledged good before the end of the agreed term;
- (9) Sell a pledged good before thirty (30) days have elapsed since the expiration date of a loan, in the event that such pledged good is not redeemed within the agreed term;

(10) Receive a good on the security of pledge whose brand name or serial or identification number has been altered, covered, removed, erased, or destroyed;

(11) Receive a good on the security of pledge if the licensee knows or suspects that such good does not legally belong to the pledgor or has been obtained unlawfully;

(12) Conduct other commercial transactions in the same premises as the Pawnbroking Business, except for those allowed by Act No. 18 of September 21, 1983, as amended, known as the “Purchase and Sale of Precious Metals and Stones Regulation Act,” and those expressly authorized by the Commissioner;

(13) Make any agreement that requires or allows the personal liability of a pledgor or the waiver of any provision of Law or regulation;

(14) Conduct any transaction at a drive-through window where the pledgor remains in a motor vehicle as a driver or passenger while conducting the transaction;

(15) Fail to provide customers with a pawn ticket that breaks down the Sales and Use Tax, in detail whenever applicable;

(16) Refuse to allow the Commissioner or authorized public officers to inspect any record, document, or information in his/her custody;

(17) Advertise in any type of media as a Pawnbroking Business, as defined by Law and Regulations, without having first obtained a license from the Commissioner;

(18) Advertise in any type of media without stating the business or trade name of the entity providing Pawnbroking Business services, as well as its street address and the license number issued by the Commissioner;

(19) Require or allow the pledgor to sign blank documents;

(20) Fail to keep records, files, or accounting books according to generally accepted accounting principles which clearly show transactions in a way that allows the Commissioner or other government agencies to perform any necessary investigations;

(21) Make promises to customers in order to try to engage them in business knowing that such promise shall not be kept, or make any false statement regarding a material fact in order to mislead the customer;

(22) Engage in unlawful or unfair competition practices;

(23) Engage in misrepresentation in order to induce or persuade a person to conduct a transaction;

(24) Illegally withhold any sum of money or document related to a transaction, or fail to notify a customer of his/her right to any sum of money or document that is part of a transaction;

(25) Embezzle or misappropriate funds under his/her custody;

(26) Forge documents that are part of a transaction;

(27) File, publish, or make false reports or entries in documents or records in order to defraud or deceive any person, the Commissioner, or the agents and officers authorized by this Act;

(28) Make contact in person, by phone, in writing, or through any other means to offer Pawnbroking Business services without the corresponding license;

(29) Advertise, show, distribute, or broadcast deceptive and false information regarding the Pawnbroking Business, or allow the same to be advertised, distributed, or broadcast;

(30) In the case of both natural and juridical persons, to comply with a summons, order, or requirement by the Commissioner or his/her representatives, or with a court order so issued, by alleging that the data or information so requested could incriminate him/her or give rise to the imposition of a penalty;

(31) Sell property or goods given on pledge before the hold order established in Section 20 has expired.

Likewise, any person shall commit a violation whenever he/she takes part, abets, or cooperates in the commission of these acts, regardless of whether or not such person personally profited therefrom.

Section 19. –Powers of the Commissioner.–

(a) The OCFI shall have the responsibility to oversee, supervise, and regulate the operations of persons who engage in the Pawnbroking Business, as well as those transactions conducted pursuant to Act No. 18 of September 21, 1983, as amended, known as the “Purchase and Sale of Precious Metals and Stones Regulation Act,” and those expressly authorized by the Commissioner. Furthermore, it may investigate and issue orders against those who engage in any type of Pawnbroking Business without having obtaining a license issued by the OCFI.

Any person who engages in a Pawnbroking Business with or without a license shall be subject to the OCFI’s jurisdiction and the corresponding procedures and sanctions, as determined by the Commissioner.

(b) In addition to the powers and authorities conferred by this Act, as well as Act No. 4 of October 11, 1985, as amended, the Commissioner or his/her representatives shall have the following powers, among others:

(1) Carry out those actions and impose those remedies as necessary to enforce this Act or any rules or regulations that may be promulgated thereunder;

(2) Require licensees to keep records or other documents as necessary to implement the provisions of this Act or the regulations promulgated thereunder;

(3) Inspect all kinds of records and documents related to all the businesses conducted by the person engaged in the Pawnbroking Business;

(4) Conduct studies and investigations at the request of an interested party or on his/her own motion regarding authorized matters or alleged violations of this Act or the regulations promulgated thereunder. To such ends, he/she may require all the necessary pertinent, and essential information to achieve this purpose, as well as any other necessary investigations for the sound administration of this Act or the regulations promulgated thereunder;

(5) Take sworn statements; obtain testimony, data, or information; issue summons; require the production of documents, such as accounting books, records, correspondence, memoranda, agreements, or other documents that he/she may deem relevant and essential to the investigation and inspect the same in light of the requirements of this Act;

(6) Resort to the Court of First Instance in aid of jurisdiction, so that it may enforce any summons, order, requirement, or resolution issued by the Commissioner or his/her representatives. The Court of First Instance shall have the power to find noncompliance with its orders punishable for contempt, by demanding the appearance of witnesses or the presentation of any facts or information that the Commissioner or his/her representatives may have previously required;

(7) Approve the necessary regulations to implement this Act;

(8) The Commissioner may issue any orders he/she may deem convenient against persons who are suspected of having committed violations of this Act, any regulations promulgated thereunder, or any administrative order or

resolution issued by the OCFI, in order to protect the public interest and initiate proceedings in accordance with the provisions of Act No. 170 of August 12, 1988, known as the “Uniform Administrative Procedures Act”;

(9) Impose fines, restitution, and administrative sanctions for violations of Law, regulations, and orders he/she may issue;

(10) Carry out all the necessary steps to enforce compliance with this Act.

(c) The Commissioner or his/her representatives may conduct inspections or audits of the licensee’s operations in the latter’s place of business. He/she may also conduct special investigations when deemed necessary.

(d) The Commissioner shall require a payment for the inspection in the amount of two hundred dollars (\$200) per day or fraction thereof for each examiner or investigator who intervenes in each inspection, up to a maximum of thirty (30) calendar days, in addition to the costs incurred for transportation, per diems, and lodging, in accordance with the norms established for officials and employees of the Government of Puerto Rico. Such payment shall be made with a certified or manager’s check, bank draft, or money order payable to the Secretary of the Treasury.

(e) If a specialized inspection or investigation is required, the Commissioner may direct that the same be conducted outside Puerto Rico; in that case, the licensee shall pay the inspection fees, plus all reasonable charges incurred regarding said examination, including transportation costs.

Section 20. –Holding of Property in Possession of a Pawnbroking Business.–

(a) When a Law Enforcement Officer has reasonable cause to believe that the property in possession of a Pawnbroking Business is stolen or unlawfully taken, said officer shall notify the Pawnbroking Business to hold such good. For

purposes of this Section, reasonable cause shall be based on the filing of a complaint.

(b) The initial term of the hold order shall not exceed forty five (45) calendar days while the pertinent investigation takes place. However, such holding period may be extended for just cause notified in writing to the licensee before the expiration of such term. If the holding period has expired and has not been extended, the hold order shall be deemed to be expired and without legal effect.

(c) The initial hold order shall contain the following information:

(1) Signature of the licensee or designated person who operates the Pawnbroking Business;

(2) Name, title, identification number, if applicable, or employee number of the Law Enforcement Officer serving the hold order;

(3) Name, telephone number, and address of the government agency where the Law Enforcement Officer works and the Section of the Act that has been violated;

(4) A complete description of the property to be held, including model number, serial number, pawn or sale transaction number, and the signature of the licensee certifying the same;

(5) Name of the entity, person, or agency reporting the property to be stolen or unlawfully taken;

(6) Street and mailing address of the pawnshop where the property is held;

(7) Expiration date of the holding period.

(d) While the hold order is in effect, the Pawnbroking Business may, as requested, hand over custody of the stolen or unlawfully taken property to the government agency where the Law Enforcement Officer who filed the hold order

works. Handing over the stolen or unlawfully taken property does not imply a waiver of proprietary interest by the Pawnbroking Business.

(e) The Department of Justice shall notify the Pawnbroking Business in writing whenever criminal charges are filed which may require entering the property as evidence. Said notification shall contain the case number and the description of the good. The Pawnbroking Business shall retain the good until it receives notification from the Department of Justice regarding the disposition of the case, which notification shall be made within twenty (20) business days from the disposition of the case. Noncompliance with the hold order by the Pawnbroking Business shall be cause for the Commissioner to suspend or revoke the license to operate such Pawnbroking Business pursuant to the provisions of this Act.

(f) The licensee may request an Administrative Hearing from the Secretary of the Treasury or the Superintendent of the Police to sustain, revise, modify, or vacate the action taken by the Law Enforcement Officer. The licensee shall have fifteen (15) calendar days from the date of the intervention by the Law Enforcement Officer to request an Administrative Hearing. The Secretary of the Treasury or the Superintendent of the Police shall hold such hearing within thirty (30) calendar days from the date on which the licensee requested the same.

Section 21. –Rulemaking Authority.–

The Commissioner of Financial Institutions shall promulgate regulations to implement the provisions of this Act within sixty (60) days after approval thereof without being subject to Act No. 170 of August 12, 1988, as amended.

Section 22. –Penalties.–

The Commissioner is hereby authorized to:

(a) Impose and collect administrative fines, which shall not be less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000), for each

violation of the provisions of this Act or the provisions contained in the rules and regulations promulgated thereunder;

(b) Order restitution or reimbursement of payments received in contravention of the provisions of this Act or any Rules or Regulations promulgated thereunder, or any other remedy that he/she may deem necessary to achieve the purposes of this Act;

(c) Impose and collect administrative fines, which shall not be less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000), for each day the person engaged in a Pawnbroking Business fails to meet the requirements or orders of the Commissioner;

(d) In addition to the imposition of authorized administrative fines pursuant to the previous subsections, the Commissioner or his/her representatives may initiate the corresponding judicial action against the person who committed such violation when the nature of the violation of this Act, the rules or regulations, or the resolutions issued by the Commissioner so justify.

Any natural or juridical person who violates the provisions of this Act, the rules and regulations, or the orders and resolutions issued by the Commissioner shall be guilty of a misdemeanor and, upon conviction, shall be subject to an individual fine, which shall be no less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000), or imprisonment for a term of up to six (6) months or both, at the discretion of the Court. Each transaction conducted in violation of the aforesaid provisions shall constitute a separate infraction and be punishable as such. If said conduct constitutes a felony under the Penal Code of Puerto Rico or any other Special Act, the perpetrator shall be processed for such felony.

(e) In addition to the penalties established in this Act, the Commissioner may impose an additional fine equivalent to the total price of the pledged good and sold in violation of the provisions of this Act, minus the balance of the amount received on loan; or order the return of the pledged good in the conditions in which it was brought in.

Section 23. –Severability.–

If any part of this Act is held to be null by a Court with competent jurisdiction, such holding shall not affect or invalidate the rest of the Act, and its effect shall remain limited to the part thus held.

Section 24. –Repeal and Amendment.–

Act No. 138 of July 18, 1998, as amended, known as the “Pawnshop Regulatory Act,” is hereby repealed and Section 6 of Act No. 18 of September 21, 1983, as amended, known as the “Purchase and Sale of Precious Metals and Stones Regulation Act,” is hereby amended to read as follows:

“Section 6.– The record required by Section 5 of this Act may be inspected by any law enforcement officer in the discharge of his/her duties, including the Commissioner of Financial Institutions, who shall have the power to oversee, regulate, and ensure compliance with this Act whenever the business of purchasing and selling precious metals and stones is conducted at the same location as a Pawnbroking Business. The aforesaid of the Commissioner shall be consistent with the provisions of the ‘Pawnbroking Business and Operations Regulator Act.’

A legible copy of such record shall be filed by the purchaser at the nearest Police Station within forty eight (48) hours following the purchase of a precious metal or stone.”

Section 25. –Effectiveness.–

This Act shall take effect sixty (60) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 23-2011 (H. B. 2894)** of the **5th Session of the 16th Legislature** of Puerto Rico:

AN ACT to repeal Act No. 138 of July 18, 1998, as amended, known as the “Pawnshop Regulatory Act,” and replace it with the new “Pawnbroking Business and Operations Regulatory Act,” in order to adjust the provisions thereof to the current economic reality, and for other purposes; amend Section 6 of Act No. 18 of September 21, 1983, as amended, known as the “Purchase and Sale of Precious Metals and Stones Regulation Act,” in order to delegate on the Commissioner of Financial Institutions of Puerto Rico the power to oversee and regulate the business of buying and selling precious metals and stones whenever the same takes place in the same location where a pawnbroking business is conducted; and for other purposes.

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

In San Juan, Puerto Rico, on this 30th day of August, 2013.

Juan Luis Martínez Martínez
Acting Director