

“Department of Consumer Affairs Organic Act”

Act No. 5 of April 23, 1973 as amended,

(Contains amendments incorporated by:

Act No. 87 of June 26, 1974
Act No. 7 of November 21, 1978
Act No. 87 of June 3, 1980
Act No. 19 of May 31, 1985
Act No. 36 of June 27, 1985
Act No. 2 of September 27, 1985
Act No. 56 of July 1, 1986
Act No. 129 of July 12, 1986
Act No. 69 of July 11, 1988
Act No. 47 of August 21, 1990
Act No. 58 of August 22, 1990
Act No. 128 of August 9, 1995
Act No. 77 of July 26, 1996
Act No. 148 of August 19, 1996
Act No. 38 of July 19, 1997
Act No. 56 of August 4, 1997
Act No. 60 of August 8, 1997
Act No. 27 of January 10, 1998
Act No. 289 of August 21, 1999
Act No. 311 of October 5, 1999
Act No. 87 of May 24, 2000
Act No. 167 of August 12, 2000
Act No. 361 of September 2, 2000
Act No. 146 of August 9, 2002
Act No. 83 of March 27, 2004
Act No. 196 of August 5, 2004
Act No. 336 of September 16, 2004
Act No. 383 of September 17, 2004
Act No. 6 of January 6, 2006
Act No. 222 of August 9, 2008
Act No. 10 of March 9, 2009)

(Amendments non-incorporated:
Act No. 285 of December 30, 2011)

To create the Department of Consumer Affairs; to establish its functions, powers and faculties; to transfer to it the functions and powers of the Consumers Service Administration created by Act No. 148 of June 27, 1968; to transfer to it the functions of the Credit Regulatory Board established by Act No. 68 of June 19, 1964; to transfer to it the functions of the Secretary of the Treasury with respect to Act No. 148 of June 27, 1968; to make the Secretary of the Department of Consumer Affairs a member of the special Board established by 67 of June 25, 1964; to abolish the present consumers Administration, and to appropriate funds.

STATEMENT OF MOTIVES

The growing technological, industrial and commercial development which Puerto Rico has gone through during these last years, as well as the impersonalization brought about by the highly sophisticated styles of production, propaganda, marketing and sale of different goods and services in the market, together with the lack of an effective organization by the consumers' have created a significant imbalance of resources between producers and consumers.

Puerto Rico has fully entered into the "consumption society", where the consumer's interest is identified with the public interest. However, notwithstanding the important role of the consumer' his problems are often ignored or unnoticed, or the solutions and remedies are late.

The continued increase of the cost of living and the accelerated rhythm of said increase requires the fulfillment of a price policy through effective control mechanisms at all levels, and not merely at the consumer's level. The price policy heretofore fulfilled has not attained the stabilization results desired. Prices, however, are only a part of the scene.

The complexity of the property and services market together with the numberless undesirable practices that some merchants and manufacturers are performing, require the creation of an effective organization capable of taking the consumer out of the state of defenselessness and helplessness in which he is. This organization shall ventilate and adjudge the complaints brought to it by the consumers, shall inspect the enforcement of the laws whose aim is to protect the consumer, shall instruct the consumer and shall afford him adequate representation in the defense of all his rights.

Though in Puerto Rico there exists a great deal of legislation for the protection of the consumer, from the provisions of our Civil Code of 1889 to Act No. 148 of June 27, 1968, which created the Consumers Service Administration, neither the substantive provisions of the existing jurisprudence nor the administrative structures created by several special laws have succeeded in adequately fulfilling or vindicating the consumers' rights, and while there are Government Departments at cabinet level performing functions for the benefit of other sectors of our country, there is no such .Department for the benefit of the consumer sector, which is the majority.

It is therefore necessary and imperative to create a structure, of the highest hierarchy, at cabinet level, for the purpose of guaranteeing to the consumer due attention to his problems, and to effect a better coordination of the resources available to the government for the development and fulfillment of a public policy.

It is necessary to create a new structure of the highest hierarchy at, cabinet level, for the purpose of guaranteeing that the entire governmental structure is going to pay due attention to these problems and to make a better interagency coordination for the development of the public policy in this field and for its fulfillment.

The new Department of Consumer Affairs shall be a specialized agency with technical and professional personnel highly qualified so as to vindicate aggressively and strongly the rights of the consumer; to face the inflationary trends of our market, and to inspect undesirable marketing practices, many of which are the direct sequence of the monopolistic structures of our market.

This new Department shall have ample powers to investigate the problems affecting the consumer, and may require all relevant information to achieve the purposes of this act.

Be it enacted by the Legislature of Puerto Rico:

Section 1. — [Short Title] (3 L.P.R.A. § 341)

This act shall be known as the "Department of Consumer Affairs Organic Act".

Section 2. — [Creation] (3 L.P.R.A. § 341a)

A Department of Consumer Affairs is hereby created as an executive department of the Government.

Section 3. — [Purpose] (3 L.P.R.A. § 341b)

The Department of Consumer Affairs shall have as its primary purpose to defend and implement the rights of the consumer, to restrain the inflationary trends; as well as the establishment and inspection of a price control over the goods and services for use and consumption.

Section 4. — [Secretary; appointments] (3 L.P.R.A. § 341c)

The Department shall be under the direction of a Secretary who shall be appointed by the Governor with the advice and consent of the Senate pursuant to Section 5 of Art. IV of the Constitution of the Commonwealth of Puerto Rico.

The Secretary may appoint such other officers as he may deem necessary to fully attain the purposes of this Act.

Section 5. — [Transfer] (3 L.P.R.A. § 341d)

(A) The following functions and powers are hereby transferred to the Department of Consumer Affairs:

(a) All the functions, powers and duties of the Consumers Service Administration, as well as the property, records, outstanding balances of appropriations, items or other funds in the possession and under the custody of said Administration, and the latter is hereby abolished.

(b) All the functions, powers and duties of the Retail Installment Credit and Financing Companies Regulatory Board established by Act No. 68 of June 19, 1964. [10 L.P.R.A. §§ 731-793].

(c) All the functions, powers and duties of the Secretary of the Treasury with respect to Act No. 143 of June 27, 1968; [10 L.P.R.A. §§ 981-981s]; as well as the property, records, outstanding balances of appropriations, items or other funds in the possession of the Department of the Treasury appropriated for the implementation of said sections.

(B) The Secretary of the Department of Consumer Affairs shall be a member of the Special Board established by Section 3 of Act No. 77 of June 25, 1964. [10 L.P.R.A. § 259].

Section 5-A. — [Transfer of Puerto Rico Energy Office] (3 L.P.R.A. § 341d-1)

Everything that concerns the Puerto Rico Energy Office is hereby transferred to the Department of Consumer Affairs. Said transfer includes the following without it being construed as a limitation:

(1) All of its powers duties, functions, faculties, positions, properties, equipment, files and documents; available funds and remainders from any source; contracts, obligations, exemptions and privileges originated under Act No. 128 of June 29, 1977, as amended.

(2) Any regulations that govern the operation of the Puerto Rico Energy Office in effect on the date of effectiveness of the transfer authorized by this act. These will continue in effect until amended or repealed by the corresponding administrative authority.

(3) The personnel of the Puerto Rico Energy Office who are holding regular permanent positions in the career service on the effective date of this act will be transferred with their regular career status. Confidential employees who on said date were entitled to reinstatement, in harmony with Act No. 5 of October 14, 1975, shall be transferred with a confidential status and will remain in their positions with that status until the nominating authority reinstates them to career status. The corresponding steps will be continued with regard to transitory employees who were entitled to a permanent position on that date according to the provisions of Act No. 56 of August 16, 1989, as amended.

The Director of the Central Office of Personnel Administration, in coordination with the Secretary of Justice, shall evaluate the files of the employees to be transferred to determine if the Energy Office complied with all the provisions concerning the merit system with special attention to their recruiting, selection and appointment. The Director shall recommend the pertinent actions.

The transferred personnel shall retain the same rights and benefits they had at the time of the transfer, as well as their rights and obligations with respect to any pension, retirement or savings and loans funds system. The classification, reclassification and compensation of the positions shall be established in harmony with the classification and compensation plans applicable to the Consumer Affairs Department. The transferred employees must meet the minimum requirements of the classification of the positions to which their functions are assigned. The Central Office of Personnel Administration shall take the necessary steps so that the compensation of the employees is affected as little as possible by the transfer.

(4) All the powers, duties and functions assigned in Act No. 133 of July 20, 1979 [23 L.P.R.A. §§ 1062 et seq.] and any other acts.

Section 6. — [Powers and authorities of the Secretary] (3 L.P.R.A. § 341e)

In addition to the powers and faculties transferred by this Act, the Secretary of Consumer Affairs shall have the following powers and faculties:

- (a) To regulate, fix, control, freeze and review the prices, profit margins and yield rates on the capital invested at all marketing levels on the goods, products and those services that are currently and traditionally rendered and charged for by the hour or per unit, which are offered or sold in Puerto Rico, in those cases where such measures are justified to protect the consumer from unjustified [increases] in prices, to avoid the deterioration of the purchasing power of the consumer, and to protect the economy from inflationary pressures. Without it being construed as a limitation to any person with legitimate interest in the coffee market who may request review at any time, the Secretary shall be bound to review the price of coffee within a term that shall not exceed five (5) years, in which the current situation of the industry shall be evaluated and, if deemed necessary, any proposed increase in price shall be fixed according to recommendations that may arise from the economic studies conducted by a Coffee Evaluating Committee composed of economists of the Department of Consumer Affairs, the Department of Agriculture, the School of Agricultural Sciences of the University of Puerto Rico, and a representative of each of the three sectors of the coffee industry (farmers, processors, and roasters) appointed by the Secretary of Agriculture.
- (b) To attend consultations and offer technical advice and, further, to give legal assistance to consumers in laudable cases.
- (c) To attend, investigate and resolve the claims and complaints presented by the consumers of goods and services acquired or received from the private sector of the economy. When a complaint is upheld, the Secretary shall order the losing defendant who has acted recklessly to pay all or part of the expenses incurred by the Department in the processing thereof. The Secretary shall provide the charges for expenses that must be paid by the losing accused defendant through regulations.
- (d) To enforce, fulfill and defend the rights of the consumers, just as they are contained in the laws in force, through a structure of administrative adjudication with full powers to adjudge complaints brought before its consideration and to grant the pertinent remedies according to law; Provided, [That] the Secretary may delegate the faculties conferred in this subsection on that official he may consider qualified to exercise such duties.
- (e) To represent the public consumer before any private entity or public organization in any matter affecting or which might affect the interests of the consumer.
- (f) To appear for and in representation of the consumers before any court, board or committee, administrative organization, department, office or agency of the Commonwealth of Puerto Rico and/or of the Government of the United States in any hearing, proceeding or matter that affects or may affect the interests of the consumer in general, or groups of consumers or of any particular consumer.
- (g) To prescribe the necessary rules and standards for the conducting of the administrative proceedings, both regulatory and adjudicative, that the Department may hold.
- (h) To issue subpoenas to compel appearance of witnesses and production of documents and/or information.
- (i) To claim any legal remedies necessary to render effective the purposes of this Act and to obtain compliance with the Department rules, regulations, orders, resolutions and determinations.

To such ends, any petition to obtain compliance with any order of the Department of Consumer Affairs shall be submitted or presented in the Court of Justice corresponding to the Department's Regional Office where the claim proceeding took place, regardless of the fact that the party against whom the claim was made (defendant) does not reside in the area covered by said Regional Office.

(j) To regulate and inspect the advertisements and the deceitful practices in commerce, including the faculty of inspecting the advertisement on the kind and other qualities of the products and services published through different media of communications, as well as to require from the advertisers evidence as to the truthfulness of the advertisement published.

(k) To regulate and inspect the sale and the mechanisms of franchise distribution in Puerto Rico in the areas covered by subsections (a) and (j) of this section.

(l) To promote and establish standards for the quality, safety and genuineness in services and in the products for use and consumption and to require compliance therewith. Within a reasonable period of time, the Secretary may require any enterprise that sells a product or offers a service in Puerto Rico, and is subject to a complaint, to a routine investigation or to information that challenges the genuineness of the product or service, to carry out tests for quality, safety and genuineness, performed as specifically provided in each case, and paid for by the enterprise itself. If the results should reveal any lack in the quality, safety and genuineness of the product or service, the Secretary may choose to order that such tests be performed, and charge their cost or any part thereof, to the enterprise. He/she may also charge the cost incurred when divulging any warning related to the quality, safety and genuineness of the product or service.

(m) To stimulate the formation of nonprofit private groups of consumers, exclusively engaged in protecting and watching over the interests of the consumer.

(n) To study the problems of the consumer and the best ways of protecting this interests through the promulgation of appropriate regulations. Provided, That the Secretary shall establish, through regulations, in those cases that he/she deems is necessary and in the best interests of consumers, that any type of document or warranty that must be signed by a consumer shall be written in the Spanish language, unless the consumer states his/her preference that it be drafted in English, and in a format of letters of not less than a ten (10) point type.

(o) To recommend the legislation deemed necessary to protect the consumer. To compile, evaluate and divulge the existing legislation and regulation for protecting the consumer, as well as studies, opinions and resolutions, norms and procedures, transcripts, and any other document or recording found in the official files. Provided, That in order to recover the expenses or any part thereof, incurred for printing, reproduction and distribution, the corresponding fees may be charged for copies of such documents, reproductions, transcripts and re-recordings issued at the request of the interested party or those issued to the general public. The revenues thus obtained shall be deposited into a specific account in favor of the Department of Consumer Affairs. The Secretary of the Treasury shall put at the disposal of the Department of Consumer Affairs the monies deposited into that account through warrants authorized or signed by the Secretary. However, the Secretary may distribute said copies, transcripts and re-recordings free of charge to government bodies, universities, public and private schools, as well as to any other person that may so request when, in his/her judgment, it is necessary for the purposes of the programs of the Department of Consumer Affairs. The Secretary shall consign in a set of regulations the guidelines, conditions and exceptions that shall govern the distribution of and collection for such publications, documents, reproductions, transcripts and re-recordings.

- (p) To educate and guide the consumer in the adequate solution of his consumption problems and in the best use of his income and of his credit, using therefor all techniques and means of communication within its reach.
- (q) To establish the necessary coordination with other government agencies and organizations for the effective canalization of the education and guidance of the consumer in accordance with the programs and activities of each agency.
- (r) To refer to the corresponding organizations, agencies or departments those matters and complaints coming within their jurisdiction under their respective laws.
- (s) In coordination with the other agencies and departments of the Commonwealth of Puerto Rico, promote and watch over the enforcement of all laws, rules, regulations and orders which affect the interests of the consumer.
- (t) To enter into contracts or agreements with public or private persons or institutions for carrying out investigations, tests, examinations or analyses of products, goods or services as well as to carry out publicity campaigns.
- (u) To require the keeping and safeguarding of such records and other documents as may be necessary to enforce the provisions of this Act.
- (v) To take testimony under oath.
- (w) To inspect records, inventories, documents and physical facilities and examine the operations of persons or entities subject to regulation under the provisions of this Act and other acts administered by the Department. The person or entity object of the investigation shall reimburse any reasonable and adequate disbursements and expenses incurred in the investigation, upon presentation of a detailed account of such disbursements or expenses by the Secretary. The Secretary shall provide, through regulations, the fees to be charged for inspection or examination that must be paid by the person or entity inspected, which shall never in any case exceed one half of one percent (0.5%) of the annual volume of business.
- (x) To adjudicate the complaints that the Office of Monopolistic Affairs of the Department of Justice files and processes under the provisions of Section 3 of Act No. 77 of June 25, 1964, as amended [10 L.P.R.A. § 259].
- (y) To collect, receive, deposit and deliver the amounts corresponding to consumers for claims involving any compensation, right or benefit resulting from administrative transactions or judicial activities performed pursuant to the provisions of this Act when such amounts are deposited in trust in this Department or when consumers cannot be located. In these cases, the Secretary shall proceed as established in Section 25 of this Act.
- (z) To establish a licensing and bonding system from the sale and rental of goods, products and services offered in Puerto Rico, when it is necessary and proper in order to put into effect the purposes of this Act. The Secretary may also require the registration of the persons engaged in any commercial activity, in the sale or rental of properties, warranties and any other information whose divulgation benefits the consumers. The bonding, licensing or registration requirements established by this Act shall not apply to commercial activities or persons subject to other registries, licenses or bonds by virtue of other special acts. The municipal business licenses or certificates of incorporation shall not be understood as such.

Through regulations approved for these purposes, the Secretary shall fix and revise the fees to be charged for the licenses issued under this Act, as well as the charges for investigating the license applications and the registration fees. He/she shall, likewise, provide the forms and the total amount of the bonds required. The license fees, the charges for investigation and the

registration fees shall not be less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300). The amount of the fees, charges and bonds that have been established by law or by regulation for commercial and service activities that are similar and comparable, as well as the expenses that their processing entails shall be taken into document, among other criteria, for their determination. In the case of bonds, they shall be fixed and revised, so that based on experience, the amount and type of the bond reasonably responds for compliance with the contracted obligations.

(aa)

(1) To handle, investigate, adjudicate and process the complaints filed by persons with developmental disabilities against private entities receiving funds from programs contemplated by federal laws for the benefit and protection of said persons.

(2) To handle, investigate and adjudicate the complaints filed by those persons with developmental disabilities against public or quasi-public agencies under the benefits of the programs mentioned in clause (1) of this subsection.

(3) To appear for, or in representation of, those persons with developmental disabilities who qualify for benefits under the pertinent federal laws, before any forum, Commonwealth or federal court, board or commission, administrative body, department, office or agency of the Commonwealth of Puerto Rico, in any hearing, proceeding or issue that affects or may affect the interests, rights and prerogatives of these persons.

(4) Upon consultation with the Secretary of Justice, to file for and on behalf of persons with developmental disabilities, any legal remedy or recourse in force, which the federal laws contemplate to defend, protect and safeguard the interests, rights and prerogatives of those persons against any public or quasi-public agency.

The revenues collected under subsections (c), (l), (w) and (z) of this section, shall be entered into the books of the Secretary of Justice apart from any other funds that the Department of Consumer Affairs sees fit to receive. These funds shall be accounted outside of any particular calendar year. The revenues thus collected shall be covered into the Special Fund of the Department of Consumer Affairs.

Section 6-A. — Advisory Board. (3 L.P.R.A. § 341e-1)

The Advisory Board of the Department of Consumer Affairs on the Classification Systems for Television Programs, Video Games and Hazardous Toys, hereinafter the "Advisory Board" or "Board", is hereby created to advise the Secretary on the drafting of guidelines for the classification of television programs and video games according to their content, and on the rules that apply to hazardous toys or which may induce or promote violence in children. In order to comply with these purposes, the Board shall have the following functions:

(1) Advise the Secretary on the classification system for television programs, voluntarily adopted by television broadcasting stations, and share its experience and opinions with the Director of the Citizens' Orientation Office Against Obscenity and Child Pornography in Radio and Television.

(2) It shall implement the video game classification system called "Coin Operated Video Game Parental Advisory System" that classifies according to the contents of the game. It shall also order the establishments, businesses, and game halls that operate video game machines activated by coins or tokens, to compulsorily adopt this classification system.

The classifications to be implemented by the Board shall be the following:

APPROPRIATE FOR ALL AGES (GREEN) The content of the game is appropriate for all ages.

MODERATE ANIMATED VIOLENCE (YELLOW) Contains violent scenes that depict animated drawings in a fantasy environment.

HIGH CONTENT OF ANIMATED VIOLENCE (RED) Contains violent scenes that depict animated drawings in a fantastic or realistic environment, such as martial arts or sports.

[MODERATE CONTENT OF REAL LIFE VIOLENCE (YELLOW) Contains scenes with human personages in combat situations.

HIGH CONTENT OF REAL LIFE VIOLENCE (RED) Contains scenes with human personages in combat situations which may result in pain, injury and/or death of the main character.

MODERATE SEXUAL CONTENT (YELLOW) Contains suggestive sexual material or references.

HIGH SEXUAL CONTENT (RED) Contains graphic depictions of sexual conduct and/or of the human body in sexual activities.

MODERATE LANGUAGE (YELLOW) Contains commonly-used vulgar words.

STRONG LANGUAGE (RED) Contains strong vulgar words.

(3) To advise and recommend to the Secretary systems and methods for an adequate identification and evaluation of dangerous toys and of those that may induce or encourage violence in children.

(4) To prepare and adopt a plan to recommend to the Secretary the rules to coordinate and guide all other public agencies regarding the implementation of the public policy on the sponsoring or placement of advertisements in television and radio programs, as provided in Section 6-B of this Act. The Advisory Board shall adopt the necessary regulations to carry out the functions assigned herein. The Secretary shall provide the office space, equipment and services required by the Board for the performance of its functions. The Board and the Secretary shall jointly prepare an annual report on the activities of the Board that shall include its achievements, goals, objectives and recommendations, pursuant to the functions and purposes for which the Board has been created. Said report shall be rendered each calendar year and shall be submitted to the Governor and the Legislature of Puerto Rico on or before January 31 of the year following the year to which the report corresponds.

The Advisory Board shall consist of seven (7) members representing the public interest appointed by the Governor, with the advice and consent of the Senate of Puerto Rico. These members shall be persons of recognized interest in the problem concerning the messages of violence and sex that are transmitted to children and youngsters through television, radio, video games and toys for their entertainment. The initial appointments shall be two (2) for a term of one (1) year, two (2) for a term of two (2) years and three (3) for a term of three (3) years. Subsequent appointments shall be for a term of two (2) years. The Board members shall carry out their functions until their successors are appointed and take office. The Governor shall designate a Chairperson from among the Board members.

The Board members shall be entitled to receive per diems equal to the minimum per diem established in the Political Code for the members of the Legislature, with the exception of the Chairman of the Board, who shall receive a per diem equal to one hundred and thirty-three percent (133%) of the per diem received by its other Board members.

Whenever applicable, the Secretary may assume the functions of the Advisory Board when it is not duly constituted or is not operating.

Section 6-A-1. — Classification announcements. (3 L.P.R.A. § 341e-1A)

Following the approval of this act, all the operators of video game machines shall be required to post in their establishments an announcement in Spanish indicating the classification of the games, pursuant to the provisions in subsection (2) of Section 6-A of this Act. The announcement shall be located in a place that is visible for all the persons that visit the establishment, including children.

It shall also, be required that all the video game machines have a notice in Spanish in a visible area of the machine, indicating the classification of the game.

The Secretary of the Department of Consumer Affairs is empowered, pursuant to the powers granted by Act No.5 of April 23, 1973,as amended, known as the "Department of Consumer Affairs Organic Act", to impose an administrative fine which shall not be less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation of the provisions of this section.

Any person who disagrees with the fine imposed by the Secretary may request the Advisory Board to review this determination. This body pursuant to the information received by the Secretary and the official involved, may ratify the fine imposed, or modify it, or render it ineffective. The determination of the Advisory Board shall be final and unappealable.

Section 6-B. — Prohibitions. (3 L.P.R.A. § 341e-2)

It is hereby prohibited for any agency, department, bureau, office, dependency, instrumentality, public corporation or subsidiary of any of these, municipalities, or political subdivisions of the Government of Puerto Rico to sponsor or place announcements in segments in which a television program that is not classified, that is recommended for adults only or that contains material of a sexual content, with strong language and intense violence, or that covers topics for adults, includes profane language, graphic violence and explicit sexual content according to the system of classification adopted voluntarily by television stations. Moreover, they may not sponsor or place announcements during radio programs containing indecent material, as defined and regulated by the Federal Communications Commission. The foregoing prohibitions extend to any promotional or public service agreement. The Secretary is hereby authorized to adopt the necessary regulations to comply with the provisions of this section. The Secretary is hereby empowered to impose an administrative fine which shall not be less than five hundred dollars (\$500), nor more than one thousand dollars (\$1,000) for each violation of the provisions of this section. One fourth of the fine imposed shall be paid at the expense of the Secretary, Executive, or Head Director of the public agency that incurred the violation. The funds generated by these fines shall be covered into a special account to defray the operational costs of the Advisory Board.

The administrative fine shall be canceled when one of the following circumstances occurs:

- (1) The Secretary, Executive Director, Head of the agency or government instrumentality or the mayor can show that the violation incurred was not due to his/her negligence or fault or to the negligence or fault of an employee of his/her agency, instrumentality or municipality.

(2) Presents a copy of the contract to schedule government advertisements which includes the clause with the prohibition provided in this section, and the penal clause, and

(3) presents evidence of the efforts made by said official to compel compliance with the penal clause provided in Section 3 of Act No. 128 of August 9, 1995, as amended [3 L.P.R.A. § 341e-1 nt].

(4) Evidence is submitted as to the fact that the Secretary expressly granted a dispensation from compliance with this section for any of the exception provided in subsections (1), (2) and (3) of Section 6-C of this Act.

Any person who is not in agreement with the fine imposed by the Secretary may request a review of said decision from the Circuit Court of Appeals.

All that is here provided is expressly excluded from the provisions set forth in Act No. 170 of August 12, 1988, as amended [3 L.P.R.A. §§ 2101 et seq.], known as the "Uniform Administrative Procedures Act".

Section 6-C. — Exemptions. (3 L.P.R.A. § 341e-3)

The Secretary may grant dispensations from compliance with the provisions of Section 6-B of this Act to public agencies in the following cases:

(1) The topic or content of a radio or television program offers the ideal opportunity to show educational advertisements on its same subject matter and the agency that requests the dispensation has the legal mandate to educate on the subject matter of the advertisement.

(2) Marketing studies show that the audience of the radio and television program is mostly constituted by the population to which the advertisement is addressed and is not an advertisement to promote carnivals, festivals, patron saints festivities, camps, public shows, exhibitions, anniversaries, contests, sports clinics, competitions, championships, Olympic games and other[s] of a similar nature.

(3) When dealing with messages of a preventive and educational nature, geared toward giving orientation to the citizenry that generally tunes in and watches the programs included in Section 6-B of this Act and the agency requesting the dispensation has the legal mandate to educate on the matter dealt with in the announcement.

The Secretary shall consider the inquiry and shall grant the dispensation within not more than 15 calendar days. If the inquiry for the dispensation is not replied to within said term, it shall be understood as approved and the agency may schedule the corresponding announcements according to its media plan.

The dispensation from the Secretary shall not be required when the public announcement is necessary and urgent because:

(1) There is a state of emergency declared by the Governor, as provided by the provisions of Act No. 211 of August 2, 1999, as amended [25 L.P.R.A. §§ 172 et seq.], known as the "Commonwealth of Puerto Rico Emergency Management and Disaster Administration Act".

(2) There is an emergency caused by a disaster, catastrophic accident or similar situation within the geographic boundaries of a municipality declared as such by the Mayor, pursuant to Section 3.009 of Act No. 81 of August 30, 1991, as amended [21 L.P.R.A. § 4109], known as the "Autonomous Municipalities Act".

Section 6-C-1. — Definitions. (3 L.P.R.A. § 341e-3A)

For the purposes of the application of Sections 6-A, 6-B and 6-C of this Act and of Section 3 of Act No. 128 of August 9, 1995, as amended [3 L.P.R.A. § 341e-1], the term "public agency" shall mean every department, office, agency, administration, bureau, authority, program, commission, board, public corporation and subsidiary thereof, municipality and every other dependency and instrumentality of the Commonwealth of Puerto Rico, regardless of its denomination.

The terms "emergency" and "disaster" shall have the same meaning and scope given to them in Act No. 211 of August 2, 1999, as amended [25 L.P.R.A. §§ 172 et seq.], known as the "Commonwealth of Puerto Rico Emergency Management and Disaster Administration Act" and its regulations.

Section 7. — [Protection of Consumers] (3 L.P.R.A. § 341f)

The Secretary shall have powers and faculties to inspect for the protection of the consumer, compliance of the consumer protecting laws under the jurisdiction of other agencies and organizations of the Commonwealth of Puerto Rico, and to refer the complaints and notify the violations to them for proper action.

Section 8. — [Rules, regulations, orders, resolutions and determinations] (3 L.P.R.A. § 341g)

(a) The Secretary shall have the power to approve, amend or revoke those rules, regulations, orders, resolutions and determinations needed for compliance of this Act. The rules and regulations which are not of an internal nature, shall be promulgated in accordance with the provisions of Act No. 170 of August 12, 1988 [3 L.P.R.A. §§ 2101 et seq.], known as the "Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico"; Provided, That the orders and regulations promulgated in accordance with subsection (a) of Section 6 of Act No. 228 of May 12, 1942, as amended, [23 L.P.R.A. § 737], shall take effect immediately after being filed in the Office of the Secretary of State.

For the adoption of rules and regulations which are not of an internal nature, the Secretary shall hold public hearings after publishing a notice in at least one of the newspapers of greater circulation largest publication in Puerto Rico, indicating the date, place and nature of said hearing. The publication shall be made at least fifteen (15) days prior to the hearing.

The preceding provisions of this subsection notwithstanding, the price orders issued on the basis of the regulations containing the criteria for said price fixing shall take effect on the same date they are published in one of the newspapers of greater circulation in Puerto Rico, unless a different date is specified in the text of the order published. In these cases it shall not be necessary to hold public hearings or to file said orders with the Department of State.

(b) When the Secretary determines that there is a situation that requires immediate action to avoid serious damages to consumers, the Secretary shall adopt any order or regulations pursuant to the provisions of Section 2.13 of Act No. 170 of August 12, 1988, as amended [3 L.P.R.A. § 2133 et seq.], known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act".

(c) To establish and regulate the corresponding rates that private establishments engaged in caring for elderly persons who reside in them must charge, the Secretary of the Department of Consumer Affairs must study the biophysiological, sociological and psychological characteristics of elderly persons, actual demographic data and future projections and their service and support needs. The Secretary shall also utilize the following criteria, without it constituting a limitation:

- (1) The location of the establishment.
- (2) Physical facilities, such as equipment and materials.
- (3) Privacy.
- (4) Ambulance and transportation services.
- (5) Personnel and its professional training and experience.
- (6) Rehabilitation and recreation program.
- (7) Access to support systems.
- (8) Security systems.
- (9) Feeding.
- (10) Medical services, medical and dental care.
- (11) The elderly's degree of dependency, according to his/her state of health.
- (12) Administrative matters.

(d) Every retail business or commercial enterprise with a sales volume of over four hundred thousand dollars (\$400,000) per year, which is open to the public and sells consumer items and goods, including those businesses which use any type of electronic price scanner, must label the items for sale on the shelves or display cases or places where the merchandise is available to consumers, with signs or posters whose letters have a minimum size of twelve (12) points or one eighth (1/8) of an inch and the price whose numbers have a minimum size of forty-eight points or one half (1/2) inch. The sign or poster must specify the trademark, the weight of the contents and the price of the item. The sign may contain abbreviations provided these are commonly used and easily distinguished and do not create possible confusion with other products. The sign must be placed within the space occupied by the items on the shelf, gondola or display case and in a place easily visible to the consumer.

When the sales volume of businesses devoted, among other things, to the retail of gasoline, has been determined, the sales volume of gasoline and of any other type of merchandise available to the consumer must be included. Businesses shall have the option of tagging the individual price of each article in Arabic numbers which are clearly legible so that the consumer can compare and be informed of the prices of the items selected. The refusal of the merchant to label the aforementioned items or to tag them individually, as provided in the preceding paragraph, entails a fine of five hundred dollars (\$500) for the first day of the violation and of one thousand dollars (\$1,000) for each additional day.

Section 9. — [Administrative division for the ventilating of complaints] (3 L.P.R.A. § 341h)

The Secretary shall establish an administrative division in the Department, for the purpose of receiving, ventilating and adjudging the complaints involving violation of the laws or provisions thereof for the protection of the consumer that may be filed by individual consumers, groups of consumers and officers of the Department or other officials of the Commonwealth of Puerto Rico.

Section 10. — [Examiners; administrative hearings] (3 L.P.R.A. § 341i)

The Secretary shall designate a staff of examiners whose function shall be to preside over the administrative hearings to be held in the Department, both of a quasi-legislative and quasi-judicial nature.

The examiners shall render a report to the Secretary or to his designee, in accordance with subsection (d) of § 341e of this title, on the results of each administrative hearing held, and shall submit their recommendations.

Section 10-A. — [Complaints and grievances of consumers - Term to adjudicate them] (3 L.P.R.A. § 341i-1)

The Secretary shall resolve the charges and complaints presented by the consumers of goods and services acquired or received from the private sector of the economy, and grant the pertinent legal remedies through the structure of administrative adjudication, within a term of one hundred and twenty (120) working days after the filing of the complaint, provided there is no just cause. As of July 1, 1986, the one hundred and twenty (120) working-day term shall be applicable to complaints regarding real property. In all other cases, the term shall be of one hundred twenty (120) calendar days.

Section 10-B. — [Complaints and grievances of consumers - Remedy in case of unjustified delay] (3 L.P.R.A. § 341i-2)

In case the Secretary of the Department of Consumer Affairs or the person designated by him delays the matter beyond the term fixed by this Act, the complainant may resort to the Court of First Instance Part corresponding to the Office where the complaint was filed, and request that forum to issue an order to show cause to justify the delay. The court, at its discretion, shall fix a term for the Department of Consumer Affairs to resolve the matter.

Section 11. — [Attorneys for public interest] (3 L.P.R.A. § 341j)

(a) The Secretary shall designate a staff of lawyers of the public interest whose function shall be to represent the individual consumers, groups of consumers and the Department in proceedings before other agencies or organizations and courts, both of the Commonwealth of Puerto Rico and of the United States.

(b) The Secretary may request from the Secretary of Justice the appointment of the lawyers of the public interest as special prosecutors in criminal actions for violations of the laws, regulations or orders administered by the Department.

Section 12. — [Separation of examiners and attorneys for public interest] (3 L.P.R.A. § 341k)

The Secretary shall keep separate the unit of examiners and the unit of lawyers of the public interest. In the event that it might be necessary to transfer personnel from one unit to the other,

the persons involved in the transfer shall not deal in cases in which they have intervened before in another capacity.

Section 13. — [Sanctions and orders] (3 L.P.R.A. § 341l)

The Secretary or his designee, in accordance with subsection (d) of § 341e of this title, shall be empowered to issue the following sanctions and orders:

(a) Upon previous notice and hearing, impose administrative fines for violations of this Act, or of the rules, regulations and orders approved or prescribed by the Department in accordance with this Act.

(b) Upon previous notice and hearing, he may issue orders to cease and desist, and prescribe the corrective terms and conditions that through the evidence at his disposal, and in accordance with the law applicable, he may determine beneficial to the consumer. Whenever in the opinion of the Secretary an immediate serious damage is caused or may be caused to the consumers or to a consumer in particular, he may issue said order, of a provisional character, waiving the requirement of holding a hearing. Within the ten (10) days subsequent to the issuance of said provisional order, the Secretary shall hold an administrative hearing to decide whether such provisional order is made final or is repealed. The orders issued under this subsection shall be notified to the proper person at his business place or by registered mail to his last known address.

(e) The Secretary may appeal to the Court of First Instance of Puerto Rico requesting that any order to cease and desist issued by him or any corrective order be put into effect. Noncompliance with a judicial order granting such request shall constitute contempt of court.

Section 14. — [Studies and investigations] (3 L.P.R.A. § 341m)

(a) The Department is hereby empowered to carry out all kinds of studies and investigations on matters affecting the consumer, and to such purposes, the Secretary may require the information which might be necessary, pertinent and essential to achieve such purposes, and to approve those necessary and reasonable rules and regulations. The Secretary may issue subpoenas requiring the appearance of witnesses and the presentation of data or information to carry out the purposes of this Act. He may, also, through himself or by means of his agent duly authorized administer oaths and receive testimonies, data or information.

(b) If a subpoena issued by the Secretary is not duly complied with, the Secretary may appear before the Court of First Instance of Puerto Rico and request the compliance of the subpoena. The Court of First Instance shall give preference to the course and dispatch of said request and may issue orders compelling the appearance of witnesses or the presentation of data or information previously required by the Secretary. The Court of First Instance is empowered to punish for contempt disobedience to the orders.

(c) No person shall refuse to comply with a subpoena of the Secretary or of his representative or to produce the required evidence or refuse to answer any question in connection with any study or investigation, or because the evidence required may incriminate him or subject him to criminal prosecution or that may cause his dismissal or removal from his employment, profession or occupation; but the testimony or evidence produced by said person on the requirements of the Secretary or his representative or by virtue of a judicial order, may not be used or presented as evidence against him in any criminal prosecution or in civil or

administrative action that may cause his dismissal or removal from his employment profession or occupation.

(d) All information obtained as a result of the investigations made by the Department shall be of a public character, except, that which incriminates the deponent and that which constitutes a secret of production or is protected by the federal legislation on patents.

Section 15. — [Consumer complaints] (3 L.P.R.A. § 341n)

Any consumer may file a complaint in the Department to vindicate the rights granted to him by the laws of the Commonwealth of Puerto Rico. In case the complaint filed by the consumer does not state any awardable controversy, the Department shall advise the consumer with respect to the solution of his complaint and/or shall refer same to any pertinent agency of the Commonwealth of Puerto Rico or of the United States.

The complaints of the consumers shall be governed by the adjudication procedure provided in this Act

Section 16. — [Decisions of Secretary, reconsideration] (3 L.P.R.A. § 341o)

In a quasi-judicial or quasi-legislative proceeding, any party affected adversely by the decision of the Secretary or the official designated by him, pursuant to subsection (d) of § 341e of this title, shall request the Secretary to reconsider such decision within the term of twenty (20) days from the date notice thereof is served, except in proceedings filed by the Antitrust Office. The agency shall consider the reconsideration within fifteen (15) days as of the filing thereof. If it is denied in its entirety, or if it does not take action within fifteen (15) days, the term to request review shall begin to count again as of the notice of said denial or upon the expiration of said fifteen (15) days, as the case may be. If a determination is made in its consideration, the term to request review shall begin to count as of the date in which a copy of the notice of the resolution of the agency definitely resolving the motion for reconsideration is filed in the records. Said resolution shall be issued and filed in the records within the ninety (90) days following the filing of the motion for reconsideration. If the agency accepts the motion for reconsideration but fails to take action with respect to said motion within ninety (90) days as of the filing thereof, it shall lose jurisdiction over the same and the term to request judicial review shall begin to count as of the expiration of said ninety (90) day term, unless the agency for just cause and within said ninety (90) days extends the term to resolve for a period which shall not exceed thirty (30) additional days

Section 17. — [Judicial review of decisions] (3 L.P.R.A. § 341p)

(a) Any part adversely affected by a decision of a resolution [on] its merits or by a decision in reconsideration of the Secretary or of the officer designated by him, pursuant to subsection (d) of Section 6 of this Act, may request judicial review of said decision from the Court of Appeals. The petition for review shall be filed before the Court of Appeals within thirty (30) days of the date of the filing in record of the notice of said decision.

(b) The decision of the Secretary or of the officer designated by him, shall remain in full force and effect until a decision from the Court of Appeals revoking or modifying the decision of the Secretary becomes final.

(c) The appeal for review shall be executed by presenting a petition at the Office of the clerk of the court, which shall state the grounds on which the petition for review is based. The party shall notify the filing of the petition for review to the agency and to all the parties within the term for petitioning said review. Said notice may be remitted by mail.

(d) The Secretary shall transmit to the court a certified copy of the documents appearing in the file within a term of ten (10) days, counting from the date on which he was served notice of the issuing of a writ of review.

(e) The court shall review the resolutions or orders of the Secretary on the basis of the administrative record submitted to it and only as to the conclusions of law; the issues of fact of the Secretary shall be conclusive to the court if supported by substantial evidence.

(f) The petition for review made to the Court of Appeals shall not stay the effects of the regulations, order or resolution of the Secretary.

The provisions of this section shall not be applicable to the complaints filed by the Office of Monopolistic Affairs of the Department of Justice, under the provisions of Section 3 of Act No. 77 of June 25, 1964, as amended.

Section 18. — [Fines] (3 L.P.R.A. § 341q)

The Secretary shall be empowered to impose fines up to a maximum of ten thousand dollars (\$10,000).

The Secretary may impose fines for violation of the provisions of this Act, the acts administered by the Department or the regulations, or orders issued by the Department. Each day that the same violation is incurred, shall be deemed as a separate violation

Section 19. — [Prohibited acts] (3 L.P.R.A. § 341r)

Every type or kind of act, practice, advertisement or publicity which constitutes or tends to constitute fraud or deceit or misrepresentation of the brand, price, quantity, size, quality, guarantee or wholesomeness of a product, article or service is hereby prohibited.

Any business operating in Puerto Rico must display in a visible place and in clear and legible letters, a sign with the following information:

"It is illegal to publish false and deceitful advertisements. To incur in such a practice entails the penalty of a fine of up to a maximum of ten thousand dollars (\$10,000). Consumers may file complaints with the Department of Consumer Affairs (DACO, Spanish acronym), Act No. 5 of April 23, 1973, as amended."

The Secretary shall establish, through regulations, the size, type of letter and material on which the sign shall be printed and its location.

All natural or juridical persons who advertise their services regarding their profession, occupation or business in the written media, shall include the license or permit number granted by the Government for the practice thereof. Failure to comply with the provisions of this Act shall constitute a misdemeanor, and upon conviction, the offender shall be penalized with a fine not to exceed five-hundred dollars (\$500).

Entities with ten (10) or more licensed professionals may comply with the requirements of the preceding paragraph by including in their advertisements for goods and services a single license number and the name of its holder, which shall be the person who administers or directs the entity.

Section 20. — [Professional and technical services] (3 L.P.R.A. § 341s)

The Secretary shall contract the professional and technical services that might be necessary to attend the multiple and complex problems which the consumer must face and which require the attention and action of specialized personnel.

Section 21. — [Annual report] (3 L.P.R.A. § 341t)

At the end of each fiscal year the Secretary shall render to the Governor and to the Legislature a report of the work performed during the year.

Section 22. — [Appropriations] (3 L.P.R.A. § 341 note)

The sum of one million five hundred thousand (1,500,000) dollars is hereby appropriated to the Department of Consumer Affairs from unencumbered funds in the Commonwealth Treasury to carry out the purposes of this act. The appropriations necessary for the regular operation expenses of the Department of Consumer Affairs for the fiscal year 1974-75 and succeeding years shall be made in the General Budget Act.

Section 23. — [Current regulations; legal successor] (3 L.P.R.A. § 341u)

All laws, rules, regulations and orders applicable to the Department of Consumer Affairs and to the Department of the Treasury as to Act No. 143 of June 27, 1968 [10 L.P.R.A. §§ 981-981s], which are not in conflict with the provisions of this Act, shall continue in force, and it shall be understood that from the date of effectiveness of this act, they relate and refer to and shall be administered by the Department of Consumer Affairs and its Secretary, who shall be, for all purposes, the legal successor of the Director of the Department of Consumer Affairs and the Secretary of the Treasury, respectively.

Section 24. — [Commission, members, purposes] (3 L.P.R.A. § 341v)

A Commission is hereby created composed of the Secretary of Consumer Affairs, the Secretary of Justice, the Chairman of the Planning Board and two persons representing the public interest designated by the Governor of Puerto Rico which, in the term of one year from the effective date of this act, shall make a study in which shall be determined the functions and programs of the Commonwealth of Puerto Rico which must be transferred to the Department of Consumer Affairs by reason of their close relationship to the problems and affairs of the consumer.

Based on these recommendations the Governor shall submit to the Legislature, not later than thirty (30) days after a regular session starts or ten (10) days after a special session convenes, the transfers or programs he may deem necessary. If the Legislature adjourns without any of the

Houses rejecting any proposed transfer, the latter shall automatically be approved, and shall take effect on the day following the adjournment of the Legislature.

Section 25. — [Faculties and duties of Secretary regarding claims and complaints] (3 L.P.R.A. § 341w)

(1) The Secretary may collect, receive, deposit and deliver the total amount of the claims to the consumers to whom they correspond. If the amounts received cannot be delivered promptly to the consumers entitled thereto, the same shall remain under the custody of the Secretary in a banking account which accrues interest. In these cases, the Secretary shall be empowered to endorse and deposit in said account those bank checks, money orders and any other securities drawn to the order of the consumers. The disbursements against this account shall be made in accordance with the regulations promulgated by the Secretary of Consumer Affairs in coordination with the Secretary of the Treasury.

(2) In case of the death of the consumer entitled to receive a specific amount for the above-mentioned concept, the Secretary of Consumer Affairs shall make the payment to the heirs according to the determination made in that respect, in the proportions corresponding to them pursuant to the Civil Code of Puerto Rico.

The evidence of legal heir, as provided in this section, shall be established before the Secretary of Consumer Affairs in the manner provided by him through regulations.

When the persons entitled to payment are under legal age or disabled, said payment shall be made to the person in charge of said minors or disabled persons, if, after the corresponding investigation, it is deemed advisable to do so.

(3) Once the payment of the total amount of a claim has been in the positive manner pursuant to this Act, the Secretary of Consumer Affairs and his agents and employees will be released from any future liability.

(4) The total amount of the claim of a consumer who has not been located shall be covered into the General Fund after five (5) years have elapsed from the publication in a newspaper of general circulation of his name, last known address and any other information that the Secretary of Consumer Affairs provides through regulations.

(5) The Secretary of Consumer Affairs shall periodically transfer to the Secretary of the Treasury the total amount of the interest accrued by the amounts deposited in the bank account that accrues interest, so that the latter official, in turn, shall deposit it in a special account under his custody. These funds shall be destined exclusively for the following purposes:

(a) To defray the expenses incurred by the Secretary of Consumer Affairs to locate the claimants.

(b) To strengthen and expedite the activities for the investigation of complaints, adjudication and collection of claims and judicial actions initiated by the Secretary of Consumer Affairs.

(6) The Secretary of Consumer Affairs is hereby authorized to incur whatever expenses are needed to publish the names and addresses of the claimants that have not been located, and to comply with any other requirement needed in the administration of this Act.

(7) The Secretary of Consumer Affairs shall promulgate the regulations needed to carry out the provisions of this Act.

(8) The power granted to the Secretary of Consumer Affairs to endorse and deposit bank checks, money orders and other securities issued in payment of claims is hereby extended to any other securities of that same nature that are under his custody when this act takes effect.

Section 26. — [Separability] (3 L.P.R.A. § 341 note)

If any provision of this act or the application thereof to any person or circumstance is declared unconstitutional or null, said nullity shall not affect the other provisions nor the application of this act that may have effect without the provisions or applications that may have been declared null, and to such end, it is hereby declared that the provisions of this act are separable.

Section 27. — Effective date. (3 L.P.R.A. § 341 note)

This act shall take effect immediately after its approval, except the provision of Section 22 referring to the appropriation of \$1,500,000 from the resources available in the General Fund. Said appropriation shall take effect July 1, 1973.

Note. This compilation was prepared by the Puerto Rico OMB staff who have striven to ensure it is complete and accurate. However, this is not an official compilation and may not be completely free of error. It contains all amendments incorporated for reading purposes only. For accuracy and exactitude please refer to the act original text. Compiled by the Office of Management and Budget Library.