

(H. B. 1460)  
(Conference)

**(No. 113)**

(Approved September 16, 2005)

### **AN ACT**

To provide for the creation and organization of the College of Public Performance Producers; authorize the creation of the foundation of the College; to specify its functions, powers, and duties; to provide for its regulation, fix penalties, and to amend Section 4 of Act No. 182 of September 3, 1996, as amended, in order to add a subsection (i) to include the College membership as a requirement for practicing the profession of Public Performance Promoters in Puerto Rico.

### **STATEMENT OF MOTIVES**

In the modern media and public performances world, the protection of the rights of artists, interpreters, and producers has acquired special importance, due to the ease for moving capital and to the internationalization of the market. It is only fair that there be incentives to strengthen the position of local producers and artists without undermining the attractiveness or competitiveness of a community as a performance venue nor the constitutional precepts which guarantee interstate trade.

Under this concept, legislation such as Act No. 182, *supra*, has been approved to protect and promote artists and producers in Puerto Rico. Even so, Puerto Rican promoters usually encounter many obstacles to adequately stage their performances in the various venues of the Island. Some of these difficulties arise from the involvement in the business of promoters and produces who have no experience in staging shows in the local market, or

who appear briefly for the sole purpose of yielding a quick profit and then leave the market. The hazard actions of these individuals discredit the industry, frequently leading administrators of performance centers to prefer working with enterprises from other jurisdictions.

A step forward to improve this situation would be to regulate and create a Code of Ethics for performance producers that would ensure the professional quality and competitiveness of local producers. A College, as instituted in other areas of the economy, would give uniformity to this practice and create a mechanism for monitoring the business practices of public performance promoters and producers. Under this law, every public performance producer on the Island shall be bound to become a member of the “Puerto Rico College of Public Performance Producers,” as required. Those producers who are not established in Puerto Rico would be able to continue to stage their performances, by simply becoming associates with a producer member of the College to stage their performances, or in the case of producers or promoters who are not established in Puerto Rico, but who are established in some other territory or state of the United States of America, by becoming associated with a producer member of the College or by obtaining a license from the Public Performance Promoting Services Office (OSPEP, Spanish acronym,) and becoming a college member. Likewise, this measure establishes as a requirement for obtaining the license issued by OSPEP that the producers become College members.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- This Act shall be known and may be officially cited as the “Puerto Rico College of Public Performance Producers Act.”

## Section 2.- Definitions

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

- a. "College" refers to the Puerto Rico College of Public Performance Producers.
- b. "Public Performance" means any public event produced for commercial purposes, whether a sung concert, musical performance, dance performance, sport event, comedy or drama which is presented in a coliseum, hotel, convention center, or any other location, whether open or close, private or public, where admission is charged. Those performances organized by non profit civilian groups or associations, religious institutions, political parties, or candidates to public office or to reelection to public office, school organizations or those events produced by public corporations of the Commonwealth or by municipal governments shall not be included under this definition. No convention, trade show, meeting or seminar intended for professionals shall be construed as a public performance.
- c. "Foundation" means the Foundation of the Puerto Rico College of Public Performance Producers.
- d. "Office (OSPEP)" refers to the Public Performance Promoters Services Office, whose operations are governed by Act No. 182 of September 3, 1996, known as the "Public Performance Promoters Act."
- e. "Producer established in Puerto Rico" a person who has produced public performances in Puerto Rico individually or associated with another producer, for a period of two (2) years or more, who has

obtained a regular license from OSPEP to stage performances on the Island, pursuant to the provisions of this Act. It shall be deemed that this group shall be comprised of natural or juridical persons who have obtained a license issued by the Public Performance Promoters Services Office prior to the approval of this Act, and henceforth shall be comprised of all those producers who comply with all legal and regulatory requirements under the provisions of this Act and who by virtue thereof obtain the corresponding College membership.

Likewise, it shall be understood that any natural or juridical person who can provide evidence, as determined by OSPEP under the regulations established by Section 13 of this Act, attesting that he/she has practiced the profession of public performance producer for a term of not less than three years before the approval of this Act, shall be covered under the protection that this Act offers to the public performance producer established in Puerto Rico.

### Section 3.- Special Provision

Public Performance Producers, who hold a license issued by the Department of the Treasury at the effective date of this Act, are hereby authorized to become a juridical body under the name “Puerto Rico College of Public Performance Producers.”

Thus, only those public performance producers established in Puerto Rico who are members of the College shall act as public performance producers in theaters, stages, coliseums, convention centers and other facilities in which public performances are held, as established by this Act and the regulations adopted thereunder, or those producers who are not established in Puerto Rico, but are associated with producers members of the

College, or in the case of producers or promoters who are not established in Puerto Rico, but who are established in some other territory or state of the United States of America after having associated with a producer member of the College, or after having obtained a license from OSPEP and becoming college members.

#### Section 4.- Functions and Powers

Without it being construed as a limitation the College shall have the following functions and powers:

- (a) To exist and operate under that name.
- (b) To create and adopt those regulations that are required to carry out the duties and functions described in this Act.
- (c) To have juridical personality to sue and be sued; to exist in perpetuity.
- (d) To own and use an official seal which may be altered at will and of which judicial notice shall be taken.
- (e) To acquire rights, and personal and real estate property through, donations, bequests, purchase, or by any other legal means, or to own and dispose of them in agreement with applicable laws and regulations, as long as it shall be necessary and convenient to achieve its purposes.
- (f) To create and adopt its regulations and to amend the same in the manner and as required thereby, thus always guaranteeing the individual rights of the College members, without impairing interstate commerce rights covered under the Commerce Clause of the Federal Constitution.
- (g) To adopt a Code of Professional Ethics, which shall govern the conduct of its members as well as the procedures to receive,

investigate, and adjudicate complaints relative to the practice and the conduct of the College members and in such manner that OSPEP may impose applicable sanctions.

- (h) To protect its members, promote their professional development and provide for the creation of insurance and special fund systems and other voluntary protection services for its members.
- (i) To implement free ticket or special ticket-price programs for public performances intended for Puerto Rican low income communities, without impairing the legislation in effect which regulates said matters.
- (j) In order to set forth the purposes of this Act, the College is hereby authorized to create the Puerto Rico Public Performance Producers Foundation, which shall operate as a non-profit corporation duly registered in the Department of State. However, the Foundation shall provide community service programs, whether educational, sports, artistic, cultural and any other programs of social and professional interest, among others. The College, with the previous expressed authorization of the members in assembly, may transfer by onerous title or gratuitous title to the Foundation any of the personal or real property that the College may deem necessary so that the Foundation may achieve the purposes of its creation.
- (k) To coordinate with the Department of State to establish relations or an affiliation with analogous colleges or associations in the states and in other territories of the United States of America and foreign countries, pursuant to the applicable reciprocity and courtesy rules.

- (l) To exercise incidental powers necessary for achieving the purposes of its creation and that are not in conflict with the provisions of this Act.
- (m) To have full control of its properties and activities, including the control of its funds. It shall adopt its own accounting system.
- (n) Likewise, the College may enter into contracts and execute all kinds of documents necessary and/or convenient for the exercise of its powers.
- (o) Each year, the Comptroller of Puerto Rico or his/her representative shall examine the accounts and books of the College and those of the Foundation. Likewise, the College member shall be entitled to inspect the financial statements, contracts, payrolls and remunerations of the College.
- (p) To administer its own personnel system and appoint all the officers, agents, and employees it deems necessary and assign to them the corresponding function as well as to fix their compensation pursuant to the regulations established by the Board of Directors. The Board of Directors shall adopt for the College a personnel system, compensation schedules and classification plans, and the rules and regulations necessary to comply with the purposes of this Act.
- (q) To accept donations or loans, and enter into contracts, leases, agreements, and other transactions with federal agencies, the Commonwealth of Puerto Rico and the Commonwealth agencies, instrumentalities and municipalities, and to invest the proceeds of any donations or loans for any valid institutional purpose.

- (r) To lease and dispose of any of its properties and of any interest thereon, in the form, manner, and to the extent determined by the College.
- (s) To perform any necessary and convenient actions to exercise the powers granted thereto by this Act and any other Act.
- (t) To receive funds from public and private sources and use said funds in compliance with the objectives that respond to those of this College and the conditions imposed by the fund grantors.

#### Section 5.- Organization and Government

The organization and government of the College herein created shall be conducted, without it being construed as a limitation, under the following criteria:

- a. The decisions of the College shall be governed firstly by valid resolutions and agreements approved by its General Assembly, and secondly, by valid agreements and decisions of the College governing bodies, in matters not corresponding by Law or Regulations to the General Assembly and that are within the general and incidental scope of those powers and functions related to the administration which ministerially correspond to the governing bodies.
- b. A Chairperson, a Vice-chairperson, and a Secretary, shall be designated, to be elected in Assembly and be part of the Board of Directors of the College following the procedures provided by the College through Regulations. All other members of the Board of Directors of the College shall be elected in General Assembly. Provided, that the first Chairperson and Vice-chairperson of the College shall be elected at a Constituting

Assembly to be called by the Department of the Treasury, and by secret vote among the attendees at said Constituting Assembly.

- c. The College Regulations shall establish what has not been provided by the law, as necessary for the faithful compliance with the purposes for which the College was established, including, among other things, everything relative to the composition and name of its governing bodies, to the admission and suspension procedures, the latter as they are delegated to the College by OSPEP as provided by Section 13 of this Act, to the functions, duties, and procedures of all its bodies and officials, to the calling, dates, quorum, manner, and requirements of the general and special assemblies and sessions of the governing bodies, to the elections for directors and officials, to the committees, to the terms of all positions, to the creation and manner for filling vacancies, to the budget, to the investment of funds, and to the disposal of College properties. The regulations shall also provide for the College to hold at least one Regular Assembly every year. Provided further, that the terms of the College Directors, including its Chairperson and Vice-chairperson, shall not exceed two (2) years.

#### Section 6.– Special Provisions

- a. Once the College begins operations, those persons who aspire to have their own public performance producer license shall apply for admission to the College and be admitted prior to obtaining said license. Once admission to the College is formally requested, pursuant to the Regulations to be approved, said College shall issue a membership certificate within a term not to exceed thirty

(30) calendar days as of the formal request if the aspirant meets all the requirements established by OSPEP.

- b. The Public Performance Promoter Services Office (OSPEP, Spanish acronym) of the Department of the Treasury shall continue to be the body through which performance promoters and producers in Puerto Rico authenticate ticket inventories and account for their operations to the Government of the Commonwealth of Puerto Rico. Likewise, it shall be the body before which persons or entities aspiring to obtain a license and College membership, as well as those producers who are not established in Puerto Rico provide proof of their participation in the public performance business. OSPEP shall continue to be the entity under the authority of the Department of the Treasury, which shall issue the licenses to aspirants who, as provided by Section 13 of this Act, shall be college member as a requirement for obtaining said license.
- c. The producers who are not established in Puerto Rico shall continue to register with OSPEP; these producers shall produce their public performances on the Island by associating with a College member or by obtaining a membership in the College and the license issued by OSPEP. To such effects, any producer who is not established in Puerto Rico shall enter into contracts or agreements with a College member producer of his/her choice, in order to jointly produce the public performance in question. In the case of producers established within the United States jurisdiction, the College shall not impose terms or conditions for the execution of such contracts or agreements other than those

agreed upon by the parties nor shall it have authority to veto their execution. A producer who is not established in Puerto Rico, originating from another state or territorial jurisdiction of the United States of America, who does not wish to associate with a local producer, shall obtain a license issued by OSPEP in addition to the College membership.

Likewise, every administrator of a public or private facility in which public performances are held, shall be bound to certify prior to holding the event and prior to adjudicating or contracting for the use of the facility that the producers have fully complied with the requirements of this Section.

#### Section 7.- Fees

- a. The annual fees of the College shall be fixed by majority vote at a Constituting Assembly, but never shall it be fixed by a number of college members of less than ten (10) percent of the total number of producers holding a license to work in Puerto Rico and who are College members pursuant to this Act. Said fees may vary from time to time if it is so stipulated by a majority of two-thirds (2/3) of the College members present at a General Assembly called to such effects. The minimum quorum for an Assembly to change the fee shall be established by regulations, but it shall never be less than one-fourth (1/4) of the total number of active College members.
- b. Every College member who ceases the active and remunerated practice of producing public performances to engage in other activities, to retire from practicing the profession, or to leave Puerto Rico, may remain a College member as provided by this

Act or may, on the contrary, cancel his/her College membership through a sworn statement to such effects submitted to the Board of Directors. The College member who chooses this option shall not be bound to pay the fees during the period of his/her voluntary inactivity, nor shall be entitled to the College membership benefits, or to receiving compensation for practicing the profession in Puerto Rico. The College member may not return to active and remunerated practice of the profession in Puerto Rico until he/she reactivates his/her license and pays the required fees.

- c. If any College member fails to pay the annual fees on the final date fixed for the payment thereof by regulations, his/her college membership and the license issued by OSPEP to practice the public performance producer profession in Puerto Rico shall be suspended, provided that such failure to pay was due to clear negligence and marked indifference to the payment requirements by the corresponding officers. The College shall establish the procedure for the suspension of the College membership through regulations, as provided by Section 13 of this Act to the extent this function is entrusted by OSPEP, and the procedure for the suspension of the license shall be established by OSPEP. The final decision of both may be judicially reviewed pursuant to Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.” During the length of the license suspension period, the individual may not practice the profession of public performance producer, even if he/she is a qualified College member in all

other aspects. Provided, that the College member shall not accrue additional debts during the length of his/her period of suspension or the time he/she has not practiced the profession in Puerto Rico. Provided further, that temporary suspensions and permanent revocations that are final and binding and which are decreed by the College or by the Public Performance Promoter Services Office (OSPEP) against any producer who violates the Code of Ethics established through Regulations, may entail an admonition as well as the suspension of the producer as College member for the time the suspension or revocation decreed by the College lasts.

#### Section 8.- College Funds

It is hereby provided that an annual sum of the funds received by the College shall be deposited in a trust to be administered by the Foundation to be used, among other things, to:

- a. Provide for the necessary conditions to make feasible the holding of affordable public performances for people with limited financial resources.
- b. Propitiate the organization of performances in public schools of the Commonwealth by the producers who are College members.
- c. Propitiate the organization of public performances for nonprofit charitable organizations of the Commonwealth of Puerto Rico by the producers who are College member.

These funds shall be channeled according to the requirements and in the proportional amounts established by the College Regulations.

### Section 9.- Objections to the Use of Contributions.

The performance producers shall have the right to make objections on the manner the College makes use of the contributions to conduct ideological activities. To such purposes, the College shall outline in its Regulations a simple procedure to be followed so that the objector may proceed thus, according to the applicable constitutional parameters.

### Section 10.- Penalties

Any person who practices the profession of public performance producer in Puerto Rico, without being a College member or during the length of the suspension of the payment of the fee, or after his/her license has been revoked, practices the profession as such, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred (500) dollars nor of more than one thousand (1000) dollars for every violation incurred.

In compliance with the provisions of Section 6(c) of this Act, every producer who is not established in Puerto Rico who works as the promoter or producer of any public performance in Puerto Rico, without being duly associated with a producer member of the College pursuant to this Act to hold said public performance or who is established in a territory or state of the United States and has not become associated with a producer member of the College, or if he/she is not associated to a College member nor has become a College member or has not obtain a license according to the requirements established by this Act and the regulations adopted by the College, shall also be subject to an administrative fine to be imposed by OSPEP of not more than ten thousand (10,000) dollars and any public performance producer license granted to him/her may be suspended or revoked. Said sanction may also be imposed to the administration of

facilities belonging to the government or to the administrator of the facility individually who allows public performance producers who are not College members nor are associated with a producers members of the College, or who has not obtained the license issued by the College to hold public performances.

Any collections or proceeds resulting from the imposition of the above fines shall be covered into the General Fund.

#### Section 11.- Amendment

A new subsection (i) is hereby added to Section 4 of Act No. 182 of September 3, 1996, to read as follows:

“Section 4.- Requirements to act as artistic promoter within the Commonwealth of Puerto Rico.-

(a) ...

...

(i) Be a member of the Puerto Rico College of Public Performance Promoters, or become associated to a member of said College.”

#### Section 12.- Regulations

It is hereby provided that the Department of the Treasury, through the Public Performance Registration Office or corresponding entity, shall adopt the mechanisms, rules and new regulations, or to modify existing regulations, including, without it being limited to those contemplated under Regulation No. 5670 of August 18, 1997, to enforce the provisions of this Act, and including, without it being limited the establishment through regulations of the requirements for the admission to and suspension from the Puerto Rico College of Public Performance Promoters and the corresponding procedure, as well as the delegation to the College of those aspects of said

procedure for admission to and suspension from the College membership enforceable under the law. The Department of the Treasury shall meet this requirement within one hundred and twenty (120) days after its date of approval. Once the College drafts a Code of Ethics, the Department of the Treasury shall include the same in the corresponding regulations adopted by OSPEP.

Any regulations, including the Code of Ethics, that are to be created as a result of this Act shall be in agreement with Act No. 170 of August 12, 1988, *supra*, known as the Uniform Administrative Procedure Act.

#### Section 13.- Severability

If any section, subsection, part, paragraph, or clause of this Act or the application thereof to any person or circumstance is declared unconstitutional by a court with jurisdiction, said ruling shall not affect nor invalidate the remaining provisions of this Act, but rather its effect shall be limited to the section, subsection, part, paragraph, or clause of this Act or the application thereof declared unconstitutional.

#### Section 14.- Effectiveness

This Act shall take effect immediately after its approval.

## **CERTIFICATION**

I hereby certify to the Secretary of State that the following Act No. 113 (H.B. 1460) of the 2<sup>nd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to provide for the creation and organization of the College of Public Performance Producers; authorize the creation of the foundation of the College; to specify its functions, powers, and duties; to provide for its regulation, fix penalties, and to amend Section 4 of Act No. 182 of September 3, 1996, as amended, in order to add a subsection (i) to include the College membership as a requirement for practicing the profession of Public Performance Promoters in Puerto Rico,

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

In San Juan, Puerto Rico, today 8<sup>th</sup> of December of 2006.

Francisco J. Domenech  
**Director**