

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1319

**Introduced by Assembly Member Krekorian
(Coauthors: Assembly Members Davis and Ma)**

February 27, 2009

An act to repeal and add Chapter 4.5 (commencing with Section 1701) of Part 6 of Division 2 of the Labor Code, relating to talent services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1319, as amended, Krekorian. Talent services.

Existing law regulates the licensing and operation of talent services within the entertainment industry. These provisions govern the making and canceling of contracts, fees to be charged for services, records to be maintained by talent services, bonding requirements, and remedies for violations of these provisions, a violation of which constitutes a crime.

This bill would prohibit a person from engaging, as specified, in an advance-fee talent representation service, as defined. This bill would also impose additional disclosure and contract requirements for a talent service, as defined. The bill would make a violation of its provisions punishable as a misdemeanor and subject to a civil action.

Because the bill would make additional conduct a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds that there exist in
2 connection with a substantial number of contracts for talent
3 services, sales practices and business and financing methods which
4 have worked a fraud, deceit, imposition, and financial hardship
5 upon the people of this state, particularly upon children and other
6 minors; that existing legal remedies are inadequate to correct these
7 abuses; that the talent industry has a significant impact upon the
8 economy and well-being of this state and its local communities;
9 and that the provisions of this act relating to these are necessary
10 for the public welfare.

11 The Legislature declares that the purpose of this act is to
12 safeguard the public against fraud, deceit, imposition, and financial
13 hardship, and to foster and encourage competition, fair dealing,
14 and prosperity in the field of talent services by prohibiting or
15 restricting false or misleading advertising and other unfair,
16 dishonest, deceptive, destructive, unscrupulous, and fraudulent
17 business practices by which the public has been injured in
18 connection with talent services.

19 Nothing in this act is intended to prohibit talent training services,
20 talent counseling services, and talent listing services from
21 conducting business provided they comply with the provisions and
22 prohibitions set forth in this act.

23 SEC. 2. Chapter 4.5 (commencing with Section 1701) of Part
24 6 of Division 2 of the Labor Code is repealed.

25 SEC. 3. Chapter 4.5 (commencing with Section 1701) is added
26 to Part 6 of Division 2 of the Labor Code, to read:

CHAPTER 4.5. FEE-RELATED TALENT SERVICES

Article 1. Definitions

1701. For purposes of this chapter, the following terms have the following meanings:

(a) “Artist” means a person who is or seeks to become an actor, actress, model, extra, radio artist, musical artist, musical organization, director, musical director, writer, cinematographer, composer, lyricist, arranger, or other person rendering professional services in motion picture, theatrical, radio, television, Internet, print media, or other entertainment enterprises or technologies.

(b) “Audition” means any activity for the purpose of obtaining employment, compensated or not, as an artist whereby an artist meets with, interviews or performs before, or displays his or her talent before, any person, including a producer, a director, or a casting director, or an associate, representative, or designee of a producer, director, or casting director, who has, or is represented to have, input into the decision to select an artist for an employment opportunity. An “audition” may be in-person or through electronic means, live or recorded, and may include a performance or other display of the artist’s promotional materials.

(c) “Employment opportunity” means the opportunity to obtain work as an artist, whether compensated or not.

(d) “Fee” means any money or other valuable consideration paid or promised to be paid by or on behalf of an artist for services rendered or to be rendered by any person conducting business under this chapter. “Fee” does not include the following:

(1) A fee calculated as a percentage of the income earned by the artist for his or her employment as an artist.

(2) (A) Reimbursements for out-of-pocket costs actually incurred by the payee on behalf of the artist for services rendered or goods provided to the artist by an independent third party if all of the following conditions are met:

(i) The payee has no direct or indirect financial interest in the third party.

(ii) The payee does not accept any referral fee, kickback, or other consideration for referring the artist.

1 (iii) The services rendered or goods provided for the
2 out-of-pocket costs are not, and are not represented to be, a
3 condition for the payee to register or list the artist with the payee.

4 (iv) The payee maintains adequate records to establish that the
5 amount to be reimbursed was actually advanced or owed to a third
6 party and that the third party is not a person with whom the payee
7 has a direct or indirect financial interest or from whom the payee
8 receives any consideration for referring the artist. To satisfy this
9 condition, the payee shall maintain the records for at least three
10 years and make them available for inspection and copying within
11 24 hours of a written request by the Labor Commissioner, the
12 Attorney General, a district attorney, a city attorney, or a state or
13 local enforcement agency.

14 (B) A person asserting a defense based upon this paragraph has
15 the burden of producing evidence to support the defense.

16 (e) “Person” means an individual, company, society, firm,
17 partnership, association, corporation, limited liability company,
18 trust, or other organization.

19 (f) “Talent counseling service” means a person that is not
20 otherwise the talent manager of ~~any~~ *an* artist and who, for a fee
21 from, or on behalf of, an artist, provides or offers to provide, holds
22 itself out as providing, or represents it will make a referral to
23 another person who will provide, an artist with career counseling,
24 career consulting, vocational guidance, aptitude testing, career
25 evaluation, or career planning as an artist.

26 (g) “Talent listing service” means a person that, for a fee from,
27 or on behalf of, an artist, provides or offers to provide, holds itself
28 out as providing, or represents it will make a referral to another
29 person who will provide, an artist with any of the following:

30 (1) A list of one or more auditions or employment opportunities.

31 (2) A list of talent agents or talent managers, including an
32 associate, representative, or designee thereof.

33 (3) A search, or providing the artist with the ability to perform
34 a self-directed search, of any database for an audition or
35 employment opportunity, or a database of talent agents or talent
36 managers, or an associate, representative, or designee thereof.

37 (4) Storage or maintenance for distribution or disclosure to a
38 person represented as offering an audition or employment
39 opportunity, or to a talent agent, talent manager, or an associate,
40 representative, or designee of a talent agent or talent manager, of

either of the following: (A) an artist's name, photograph, Internet Web site, filmstrip, videotape, audition tape, demonstration reel, résumé, portfolio, or other reproduction or promotional material of the artist or (B) an artist's schedule of availability for an audition or employment opportunity.

(h) "Talent scout" means an individual employed, appointed, or authorized by a talent service, who solicits or attempts to solicit an artist for the purpose of becoming a client of the service. The principals of a service are themselves talent scouts if they solicit on behalf of the service.

(i) "Talent service" means a talent counseling service, a talent listing service, or a talent training service.

(j) "Talent training service" means a person that, for a fee from, or on behalf of, an artist, provides or offers to provide, holds itself out as providing, or represents it will make a referral to another person who will provide, an artist with lessons, coaching, seminars, workshops, or similar training as an artist.

Article 2. Advance-Fee Talent Representation Service

1702. No person shall own, operate, or act in the capacity of an advance-fee talent representation service or advertise, solicit for, or knowingly refer a person to, an advance-fee talent representation service.

1702.1. (a) "Advance-fee talent representation service" means a person that, for a fee received from, or on behalf of, an artist, provides, holds itself out as providing, offers to provide, or represents it will make a referral to another person who will provide, an artist with any of the following services:

(1) Procuring or attempting to procure an employment opportunity or an engagement as an artist.

(2) Procuring or attempting to procure an audition for an artist.

(3) Managing or directing the development of an artist's career.

(4) Procuring or attempting to procure a talent agent or talent manager, including an associate, representative, or designee of a talent agent or talent manager.

(b) "Advance-fee talent representation service" also means a person that charges an artist a fee for any other product or service in order for the artist to obtain any of the services described in paragraphs (1) to (4), inclusive, of subdivision (a).

1 1702.3. A person who violates Section 1702 is subject to the
2 provisions of Article 4 (commencing with Section 1704).

3 1702.4. This article does not apply to the following:

4 (a) A public educational institution.

5 (b) A nonprofit corporation, organized to achieve economic
6 adjustment and civic betterment, give vocational guidance,
7 including employment counseling services, and assist in the
8 placement of its members or others, if all of the following
9 conditions exist:

10 (1) None of the corporation's directors, officers, or employees
11 receive any compensation other than a nominal salary for services
12 performed for the corporation.

13 (2) The corporation does not charge a fee for its services,
14 although it may request a voluntary contribution.

15 (3) The corporation uses any membership dues or fees solely
16 for maintenance.

17 (c) A nonprofit corporation, formed in good faith for the
18 promotion and advancement of the general professional interests
19 of its members, that maintains a placement service principally
20 engaged to secure employment for its members with the state or
21 a county, city, district, or other public agency under contracts
22 providing employment for one year or longer, or with a nonprofit
23 corporation exempted by subdivision (b).

24 (d) A labor organization, as defined in Section 1117.

25 (e) A newspaper, bona fide newsletter, magazine, trade or
26 professional journal, or other publication of general circulation,
27 whether in print or on the Internet, that has as its main purpose the
28 dissemination of news, reports, trade or professional information,
29 or information not intended to assist in locating, securing, or
30 procuring employment or assignments for others.

31 (f) A public institution.

32 Article 3. Other Talent Services

33
34 1703. (a) Every contract and agreement between an artist and
35 a talent service shall be in writing, in at least 10-point type, and
36 contain all of the following provisions:

37 (1) The name, address, and telephone number of the talent
38 service, the artist to whom services are to be provided, and the
39 representative executing the contract on behalf of the talent service.
40

1 (2) A description of the services to be performed, a statement
2 when those services are to be provided, and the duration of the
3 contract.

4 (3) Evidence of compliance with applicable bonding
5 requirements, including the name of the bonding company and the
6 bond number, if any, and a statement that a bond in the amount of
7 fifty thousand dollars (\$50,000) must be posted with the Labor
8 Commissioner.

9 (4) The amount of any fees to be charged to or collected from,
10 or on behalf of, the artist receiving the services, and the date or
11 dates when those fees are required to be paid.

12 (5) The following statements, in boldface type and in close
13 proximity to the artist's signature:

14
15 “(Name of talent service) IS A TALENT COUNSELING SERVICE,
16 TALENT LISTING SERVICE, OR TALENT TRAINING SERVICE
17 (whichever is applicable). THIS IS NOT A TALENT AGENCY CONTRACT.
18 ONLY A TALENT AGENT LICENSED PURSUANT TO SECTION 1700.5
19 OF THE LABOR CODE MAY ENGAGE IN THE OCCUPATION OF
20 PROCURING, OFFERING, PROMISING, OR ATTEMPTING TO PROCURE
21 EMPLOYMENT OR ENGAGEMENTS FOR AN ARTIST. (Name of talent
22 service) IS PROHIBITED BY LAW FROM OFFERING OR ATTEMPTING
23 TO OBTAIN AUDITIONS OR EMPLOYMENT FOR YOU. IT MAY ONLY
24 PROVIDE YOU WITH TRAINING, COUNSELING, OR LISTING
25 INFORMATION (whichever is applicable). FOR MORE INFORMATION,
26 CONSULT CHAPTER 4.5 (COMMENCING WITH SECTION 1701) OF
27 PART 6 OF DIVISION 2 OF THE LABOR CODE.

28
29 YOUR RIGHT TO CANCEL
30 (enter date of transaction)
31

32 You may cancel this contract and obtain a full refund, without any penalty
33 or obligation, if notice of cancellation is given, in writing, within 10 business
34 days from the above date even if services have been provided to you.

35 To cancel this contract, mail or deliver or send by facsimile transmission a
36 signed and dated copy of the following cancellation notice or any other written
37 notice of cancellation to (name of talent service) at (address of its place of
38 business), NOT LATER THAN MIDNIGHT OF (date). If the contract was
39 executed in part or in whole through the Internet, you may cancel the contract
40 by sending the notification to: (e-mail address).

CANCELLATION NOTICE

I hereby cancel this contract.

Dated: _____

Artist Signature.

If you cancel, all fees you have paid must be refunded to you within 10 business days after delivery of the cancellation notice to the talent service.”

(6) A statement conspicuously disclosing whether the artist may or may not obtain a refund after the 10-day cancellation period described in paragraph (5) has expired.

(b) Except for contracts executed over the Internet, a contract subject to this section shall be dated and signed by the artist and the representative executing the contract on behalf of the talent service. In the case of a contract executed over the Internet, the talent service shall give the artist clear and conspicuous notice of the contract terms and provide to the artist the ability to acknowledge receipt of the terms before acknowledging agreement thereto. In any dispute regarding compliance with this subdivision, the talent service shall have the burden of proving that the artist received the terms and acknowledged agreement thereto.

(c) If the talent service offers to list or display information about an artist, including a photograph, on the service’s Internet Web site, or on a Web site that the talent service has authority to design or alter, the contract shall contain a notice that the talent service will remove the listing and content within 10 days of a request by the artist or, in the case of a minor, the artist’s parent or guardian. The contract shall include a valid telephone number, mailing address, and e-mail address for the talent service to which a request for removal may be made.

(d) A contract between an artist and a talent service shall be contained in a single document that includes the elements set forth in this section. A contract subject to this section that does not comply with subdivisions (a) to (f), inclusive, is voidable at the election of the artist and may be canceled by the artist at any time without any penalty or obligation.

1 (e) (1) An artist may cancel a contract for talent services within
2 10 business days of the date he or she executed the contract by
3 mailing, delivering, or sending by facsimile transmission to the
4 talent service, a signed and dated copy of the cancellation notice
5 or any other written notice of cancellation, or by sending a notice
6 of cancellation via the Internet if the contract was executed in part
7 or in whole through the Internet. A talent service shall refund all
8 fees paid by, or on behalf of, an artist within 10 business days after
9 delivery of the cancellation notice.

10 (2) Unless a talent service conspicuously discloses in the
11 contract that cancellation is prohibited after the 10-day cancellation
12 period described in paragraph (1), an artist may cancel a contract
13 for talent services at any time after the 10-day cancellation period
14 by mailing, delivering, or sending by facsimile transmission to the
15 talent service a signed and dated copy of the cancellation notice
16 or any other written notice of cancellation, or by sending a notice
17 of cancellation via the Internet if the contract was executed in part
18 or in whole through the Internet. Within 10 business days after
19 delivery of the cancellation notice, the talent service shall refund
20 to the artist on a pro rata basis all fees paid by, or on behalf of, the
21 artist.

22 (f) A contract between an artist and a talent service shall not be
23 renewed automatically.

24 (g) The talent service shall maintain the address set forth in the
25 contract for receipt of cancellation and for removal of an Internet
26 Web site or other listing, unless it furnishes the artist with written
27 notice of a change of address. Written notice of a change of address
28 may be done by e-mail if the artist designates an e-mail address
29 in the contract for purposes of receiving written notice.

30 (h) The talent service shall advise a person inquiring about
31 canceling a contract to follow the written procedures for
32 cancellation set forth in the contract.

33 (i) Before the artist signs a contract and before the artist or any
34 person acting on his or her behalf becomes obligated to pay or
35 pays any fee, the talent service shall provide a copy of the contract
36 to the artist for the artist to keep. If the contract was executed
37 through the Internet, the talent service may provide a copy of the
38 contract to the artist by making it available to be downloaded and
39 printed through the Internet.

(j) The talent service shall maintain the original executed contract on file at its place of business.

1703.1. (a) Every person engaging in the business of a talent service shall keep and maintain records of the talent service business, including the following:

(1) The name and address of each artist contracting with the talent service.

(2) The amount of the fees paid by or for the artist during the term of the contract with the talent service.

(3) Records described in clause (iv) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 1701.

(4) Records described in paragraph (1) of subdivision (b) of Section 1703.6.

(5) Records described in subdivision (j) of Section 1703.

(6) Records described in paragraph (1) of subdivision (a) of Section 1703.4.

(7) Records described in paragraph (2) of subdivision (a) of Section 1703.4.

(8) Records described in paragraph (2) of subdivision (c) of Section 1703.4.

(9) The name, address, date of birth, social security number, federal tax identification number, and driver's license number and state of issuance thereof, of the owner of the talent service and of the corporate officers of the talent service, if it is owned by a corporation.

(10) The legal name, principal residence address, date of birth, and driver's license number and state of issuance thereof, of every talent scout and the name each talent scout uses while soliciting artists.

(11) Any other information that the Labor Commissioner requires.

(b) All books, records, and other papers kept pursuant to this chapter by a talent service shall be open for inspection during the hours between 9 a.m. and 5 p.m., inclusive, Monday to Friday, inclusive, except legal holidays, by a peace officer or a representative from the Labor Commissioner, the Attorney General, any district attorney, or any city attorney. Every talent service shall furnish to the Labor Commissioner, a law enforcement officer, the Attorney General, any district attorney, or any city attorney, upon request, a true copy of those books, records, and papers, or any

1 portion thereof, and shall make reports as the Labor Commissioner
2 requires.

3 1703.2. An advertisement soliciting artists to perform or
4 demonstrate any talent for the talent service, or to appear for an
5 interview with the talent service, shall clearly and conspicuously
6 state: "This is not an audition for employment or for obtaining a
7 talent agent or talent management."

8 1703.3. (a) Prior to advertising or engaging in business, a
9 talent service shall file with the Labor Commissioner a bond in
10 the amount of fifty thousand dollars (\$50,000) or a deposit in lieu
11 of the bond pursuant to Section 995.710 of the Code of Civil
12 Procedure. The bond shall be executed by a corporate surety
13 qualified to do business in this state and conditioned upon
14 compliance with this chapter. The total aggregate liability on the
15 bond shall be limited to fifty thousand dollars (\$50,000). The bond
16 may be terminated pursuant to Section 995.440 of, or Article 13
17 (commencing with Section 996.310) of Chapter 2 of Title 14 of
18 Part 2 of, the Code of Civil Procedure.

19 (b) The bond required by this section shall be in favor of, and
20 payable to, the people of the State of California and shall be for
21 the benefit of any person injured by any unlawful act, omission,
22 or failure to provide the services of the talent service.

23 (c) The Labor Commissioner shall charge and collect a filing
24 fee to cover the cost of filing the bond or deposit.

25 (d) (1) Whenever a deposit is made in lieu of the bond otherwise
26 required by this section, the person asserting the claim against the
27 deposit shall establish the claim by furnishing evidence to the
28 Labor Commissioner of injury resulting from an unlawful act,
29 omission, or failure to provide the services of the talent service or
30 of a money judgment entered by a court.

31 (2) When a claimant has established the claim with the Labor
32 Commissioner, the Labor Commissioner shall review and approve
33 the claim and enter the date of the approval thereon. The claim
34 shall be designated an approved claim.

35 (3) When the first claim against a particular deposit has been
36 approved, it shall not be paid until the expiration of a period of
37 240 days after the date of its approval by the Labor Commissioner.
38 Subsequent claims that are approved by the Labor Commissioner
39 within the same 240-day period shall similarly not be paid until
40 the expiration of that 240-day period. Upon the expiration of the

1 240-day period, the Labor Commissioner shall pay all approved
2 claims from that 240-day period in full unless the deposit is
3 insufficient, in which case every approved claim shall be paid a
4 pro rata share of the deposit.

5 (4) Whenever the Labor Commissioner approves the first claim
6 against a particular deposit after the expiration of a 240-day period,
7 the date of approval of that claim shall begin a new 240-day period
8 to which paragraph (3) applies with respect to any amount
9 remaining in the deposit.

10 (5) After a deposit is exhausted, no further claims shall be paid
11 by the Labor Commissioner. Claimants who have had claims paid
12 in full or in part pursuant to paragraph (3) or (4) shall not be
13 required to return funds received from the deposit for the benefit
14 of other claimants.

15 (6) Whenever a deposit has been made in lieu of a bond, the
16 amount of the deposit shall not be subject to attachment,
17 garnishment, or execution with respect to an action or judgment
18 against the assignor of the deposit, other than as to an amount as
19 no longer needed or required for the purposes of this chapter and
20 that would otherwise be returned to the assignor of the deposit by
21 the Labor Commissioner.

22 (7) The Labor Commissioner shall return a deposit two years
23 from the date it receives written notification from the assignor of
24 the deposit that the assignor has ceased to engage in the business
25 or act in the capacity of a talent service or has filed a bond pursuant
26 to subdivision (a), provided that there are no outstanding claims
27 against the deposit. The written notice shall include all of the
28 following:

29 (A) The name, address, and telephone number of the assignor.

30 (B) The name, address, and telephone number of the bank at
31 which the deposit is located.

32 (C) The account number of the deposit.

33 (D) A statement that the assignor is ceasing to engage in the
34 business or act in the capacity of a talent service or has filed a bond
35 with the Labor Commissioner. The Labor Commissioner shall
36 forward an acknowledgment of receipt of the written notice to the
37 assignor at the address indicated therein, specifying the date of
38 receipt of the written notice and the anticipated date of release of
39 the deposit, provided that there are then no outstanding claims
40 against the deposit.

1 (8) A superior court may order the return of the deposit prior
2 to the expiration of two years upon evidence satisfactory to the
3 court that there are no outstanding claims against the deposit, or
4 order the Labor Commissioner to retain the deposit for a specified
5 period beyond the two years to resolve outstanding claims against
6 the deposit.

7 (9) This subdivision applies to all deposits retained by the Labor
8 Commissioner. The Labor Commissioner shall notify each assignor
9 of a deposit it retains and of the applicability of this section.

10 (10) Compliance with Sections 1700.15 and 1700.16 of this
11 code or Section 1812.503, 1812.510, or 1812.515 of the Civil Code
12 shall *not* satisfy the requirements of this section.

13 1703.4. (a) A talent service, its owners, directors, officers,
14 agents, and employees shall not do any of the following:

15 (1) Make or cause to be made any advertisement or
16 representation expressly or impliedly offering the opportunity for
17 an artist to meet with or audition before any producer, director,
18 casting director, or any associate thereof, or any other person who
19 makes, or is represented to make, decisions for the process of hiring
20 artists for employment as an artist, or any talent agent or talent
21 manager, or any associate, representative, or designee thereof,
22 unless the talent service maintains for inspection and copying
23 written evidence of the supporting facts, including the name,
24 business address, and job title of all persons conducting the meeting
25 or audition, and the title of the production and the name of the
26 production company.

27 (2) Make or cause to be made any advertisement or
28 representation that any artist, whether identified or not, has
29 obtained an audition, employment opportunity, or employment as
30 an artist in whole or in part by use of the talent service unless the
31 talent service maintains for inspection written evidence of the
32 supporting facts upon which the claim is based, including the name
33 of the artist and the date the contract was executed.

34 (3) Charge or attempt to charge an artist for an audition or
35 employment opportunity.

36 (4) Require an artist, as a condition for using the talent service
37 or for obtaining an additional benefit or preferential treatment from
38 the talent service, to pay a fee for creating or providing
39 photographs, filmstrips, videotapes, audition tapes, demonstration

1 reels, or other reproductions of the artist, Internet Web sites, casting
2 or talent brochures, or other promotional materials for the artist.

3 (5) Charge or attempt to charge an artist any fee not disclosed
4 pursuant to paragraph (4) of subdivision (a) of Section 1703.

5 (6) Refer an artist to a person who charges the artist a fee for
6 any service or any product in which the talent service, its owners,
7 directors, officers, agents, or employees have a direct or indirect
8 financial interest, unless the fee and the financial interest are
9 conspicuously disclosed in a separate writing provided to the artist
10 to keep prior to his or her execution of the contract with the talent
11 service.

12 (7) Require an artist, as a condition for using a talent service or
13 for obtaining any additional benefit or preferential treatment from
14 the talent service, to pay a fee to any other talent service in which
15 the talent service, its owners, directors, officers, agents, or
16 employees have a direct or indirect financial interest.

17 (8) Accept any compensation or other consideration for referring
18 an artist to any person charging the artist a fee.

19 (9) Fail to remove an artist's Internet Web site and its content
20 within 10 days of delivery of a request made by telephone, mail,
21 facsimile transmission, or electronic mail from the artist or from
22 a parent or guardian of the artist if the artist is a minor.

23 (b) A talent training service and talent counseling service and
24 the owners, officers, directors, agents, and employees of the talent
25 training service or talent counseling service shall not own, operate,
26 or have a direct or indirect financial interest in a talent listing
27 service.

28 (c) A talent listing service and its owners officers, directors,
29 agents, and employees shall not do either of the following:

30 (1) Own, operate, or have a direct or indirect financial interest
31 in a talent training service or a talent counseling service.

32 (2) Provide a listing of an audition, job, or employment
33 opportunity without written permission for the listing. A talent
34 listing service shall keep and maintain a copy of all original
35 listings; the name, business address, and business telephone number
36 of the person granting permission to the talent listing service to
37 use the listing; and the date the permission was granted.

38 1703.5. No talent scout shall use the same name as used by
39 any other talent scout soliciting for the same talent service, and no

talent service shall permit a talent scout to use the same name as used by any other talent scout soliciting for the talent service.

1703.6. This article does not apply to any of the following:

(a) An entity described in subdivisions (a), (b), (d), (e), and (f) of Section 1702.4.

(b) (1) A private educational institution established solely for educational purposes which, as a part of its curriculum, offers employment counseling to its student body and satisfies either of the following:

(A) The institution conforms to the requirements of Article 5 (commencing with Section 33190) of Chapter 2 of Part 20 of Division 2 of Title 2 of the Education Code.

(B) More than 90 percent of the students to whom instruction, training, or education is provided during any semester or other term of instruction have completed or terminated their secondary education or are beyond the age of compulsory high school attendance. A person claiming exemption under this subparagraph shall maintain adequate records to establish the age of its students, including the name, date of birth, principal residence address, principal telephone number, driver's license number and state of issuance thereof, and dates of attendance, and shall make them available for inspection and copying within 24 hours of a written request by the Labor Commissioner, the Attorney General, a district attorney, a city attorney, or a state or local law enforcement agency.

(2) A person claiming an exemption under this subdivision has the burden of producing evidence to establish the exemption.

(c) A psychologist or psychological corporation, licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, that provides psychological assessment, career or occupational counseling, or consultation and related professional services within the scope of its practice.

(d) An educational psychologist, licensed pursuant to Article 1 (commencing with Section 4980) of Chapter 13 of Division 2 of the Business and Professions Code, who provides counseling services within the scope of his or her practice.

(e) A talent listing service, if all of the following apply:

(1) A majority interest in the service is owned by one or more colleges or universities, or alumni associations affiliated therewith, and each of the colleges or universities is accredited by an

1 accrediting agency recognized by the United States Department
2 of Education and a member organization of the Council of
3 Postsecondary Accreditation.

4 (2) The service provides services exclusively for artists who are
5 the alumni of colleges or universities specified in paragraph (1).

6 (3) The service does not require, as a condition to receiving
7 services, an applicant to have completed courses or examinations
8 beyond the requirements for graduation from the applicant's college
9 or university specified in paragraph (1).

10 (4) More than 50 percent of the annual revenues received by
11 the service are derived from paid subscriptions of prospective
12 employers.

13 (f) A public library.

14 Article 4. Remedies

15
16
17 1704. A person, including, an owner, officer, director, agent,
18 or employee of a talent service, who violates any provision of this
19 chapter is guilty of a misdemeanor. Each violation is punishable
20 by imprisonment in a county jail for not more than one year, by a
21 fine not exceeding ten thousand dollars (\$10,000), or by both that
22 fine and imprisonment. However, payment of restitution to an
23 artist shall take precedence over the payment of a fine.

24 1704.1. The Attorney General, a district attorney, or a city
25 attorney may institute an action for a violation of this chapter,
26 including an action to restrain and enjoin a violation.

27 1704.2. A person who is injured by a violation of this chapter
28 or by the breach of a contract subject to this chapter may bring an
29 action for recovery of damages or to restrain and enjoin a violation,
30 or both. The court shall award to a plaintiff who prevails in an
31 action under this chapter reasonable attorney's fees and costs. If
32 the court determines by clear and convincing evidence that the
33 breach of contract or violation was willful, the court may award
34 punitive damages in addition to any other amounts awarded to the
35 plaintiff. The amount awarded for damages for a violation of this
36 chapter shall be not less than three times the amount paid by the
37 artist, or on behalf of the artist, to the talent service or the
38 advance-fee talent representation service.

39 1704.3. The Labor Commissioner shall use the proceeds of a
40 bond or deposit posted by a person pursuant to this chapter to

1 satisfy a judgment or restitution order resulting from the person's
2 violation of a provision of this chapter, if the person fails to pay
3 all amounts required by the judgment or restitution order.

4
5 Article 5. General Provisions
6

7 1705. The provisions of this chapter are not exclusive and do
8 not relieve a person subject to this chapter from the duty to comply
9 with all other laws.

10 1705.1. The remedies provided in this chapter are not exclusive
11 and shall be in addition to any other remedies or procedures
12 provided in any other law.

13 1705.2. A waiver by an artist of the provisions of this chapter
14 is deemed contrary to public policy and void and unenforceable.
15 An attempt by a person or a talent service to have an artist waive
16 his or her rights under this chapter is a violation of this chapter.

17 1705.3. If any provision of this chapter or the application
18 thereof to any person or circumstances is held unconstitutional,
19 the remainder of the chapter and the application of that provision
20 to other persons and circumstances shall not be affected thereby.

21 1705.4. Compliance with this chapter does not satisfy and is
22 not a substitute for the requirements mandated by any other
23 applicable law, including the obligation to obtain a license under
24 the Talent Agencies Act (Chapter 4 (commencing with Section
25 1700)), prior to procuring, offering, promising, or attempting to
26 procure employment or engagements for artists.

27 SEC. 4. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.