

AMENDED IN SENATE JUNE 28, 2009

AMENDED IN SENATE JUNE 15, 2009

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 *willful* violation of its provisions punishable as a misdemeanor and subject to a civil action.

Because the bill would ~~make additional conduct a crime~~ *create new crimes*, 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 an artist and who, for a fee from,
21 or on behalf of, an artist, provides or offers to provide, holds itself
22 out as providing, or represents it will make a referral to another
23 person who will provide, an artist with career counseling, career
24 consulting, vocational guidance, aptitude testing, career evaluation,
25 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

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

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

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

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

18 Article 2. Advance-Fee Talent Representation Service

19
20
21 1702. No person shall own, operate, or act in the capacity of
22 an advance-fee talent representation service or advertise, solicit
23 for, or knowingly refer a person to, an advance-fee talent
24 representation service.

25 1702.1. (a) "Advance-fee talent representation service" means
26 a person that, for a fee received from, or on behalf of, an artist,
27 provides, holds itself out as providing, offers to provide, or
28 represents it will make a referral to another person who will
29 provide, an artist with any of the following services:

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

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

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

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

37 (b) "Advance-fee talent representation service" also means a
38 person that charges an artist a fee for any other product or service
39 in order for the artist to obtain, from or through the person, any of

1 the services described in paragraphs (1) to (4), inclusive, of
2 subdivision (a).

3 1702.3. A person who violates Section 1702 is subject to the
4 provisions of Article 4 (commencing with Section 1704).

5 1702.4. This article does not apply to the following:

6 (a) A public educational institution.

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

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

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

17 (3) The corporation uses any membership dues or fees solely
18 for maintenance.

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

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

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

33 (f) A public institution.

34

35 Article 3. Other Talent Services

36

37 1703. (a) Every contract and agreement between an artist and
38 a talent service shall be in writing, in at least 10-point type, and
39 contain all of the following provisions:

(1) The name, address, telephone number, fax number (if any), e-mail address (if any), and Internet Web site address (if any), of the talent service, the artist to whom services are to be provided, and the representative executing the contract on behalf of the talent service.

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

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

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

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

“(Name of talent service) IS A TALENT COUNSELING SERVICE, TALENT LISTING SERVICE, OR TALENT TRAINING SERVICE (whichever is applicable). THIS IS NOT A TALENT AGENCY CONTRACT. ONLY A TALENT AGENT LICENSED PURSUANT TO SECTION 1700.5 OF THE LABOR CODE MAY ENGAGE IN THE OCCUPATION OF PROCURING, OFFERING, PROMISING, OR ATTEMPTING TO PROCURE EMPLOYMENT OR ENGAGEMENTS FOR AN ARTIST. (Name of talent service) IS PROHIBITED BY LAW FROM OFFERING OR ATTEMPTING TO OBTAIN AUDITIONS OR EMPLOYMENT FOR YOU. IT MAY ONLY PROVIDE YOU WITH TRAINING, COUNSELING, OR LISTING INFORMATION (whichever is applicable). FOR MORE INFORMATION, CONSULT CHAPTER 4.5 (COMMENCING WITH SECTION 1701) OF PART 6 OF DIVISION 2 OF THE LABOR CODE. A DISPUTE ARISING OUT OF THE PERFORMANCE OF THE CONTRACT BY THE TALENT SERVICE THAT IS NOT RESOLVED TO THE SATISFACTION OF THE ARTIST SHOULD BE REFERRED TO A LOCAL CONSUMER AFFAIRS DEPARTMENT OR LOCAL LAW ENFORCEMENT, AS APPROPRIATE.

YOUR RIGHT TO CANCEL
(enter date of transaction)

1 You may cancel this contract and obtain a full refund, without any penalty
2 or obligation, if notice of cancellation is given, in writing, within 10 business
3 days ~~or after the artist utilizes from the above date or the date on which you~~
4 *commence utilizing* the services under the contract, whichever is longer. For
5 purposes of this section, business days are Monday through Friday.

6 To cancel this contract, mail or deliver or send by facsimile transmission a
7 signed and dated copy of the following cancellation notice or any other written
8 notice of cancellation to (name of talent service) at (address of its place of
9 business), fax number (if any), e-mail address (if any), and Internet Web site
10 address (if any), NOT LATER THAN MIDNIGHT OF (date). If the contract
11 was executed in part or in whole through the Internet, you may cancel the
12 contract by sending the notification to: (e-mail address).

13
14 CANCELLATION NOTICE

15
16 I hereby cancel this contract.

17
18 Dated: _____

19
20 _____
Artist Signature.

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

23
24 (6) A statement conspicuously disclosing whether the artist may
25 or may not obtain a refund after the 10-day cancellation period
26 described in paragraph (5) has expired.

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

37 (c) If the talent service offers to list or display information about
38 an artist, including a photograph, on the service’s Internet Web
39 site, or on a Web site that the talent service has authority to design
40 or alter, the contract shall contain a notice that the talent service

1 will remove the listing and content within 10 days of a request by
2 the artist or, in the case of a minor, the artist's parent or guardian.
3 The contract shall include a valid telephone number, mailing
4 address, and e-mail address for the talent service to which a request
5 for removal may be made.

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

12 (e) (1) An artist may cancel a contract *or within 10 business*
13 *days from the date he or she commences utilizing the services*
14 *under the contract. An artist shall notify the talent service of the*
15 *cancellation* for talent services within 10 business days of the date
16 he or she executed the contract by mailing, delivering, or sending
17 by facsimile transmission to the talent service, a signed and dated
18 copy of the cancellation notice or any other written notice of
19 cancellation, or by sending a notice of cancellation via the Internet
20 if the contract was executed in part or in whole through the Internet.
21 A talent service shall refund all fees paid by, or on behalf of, an
22 artist within 10 business days after delivery of the cancellation
23 notice.

24 (2) Unless a talent service conspicuously discloses in the
25 contract that cancellation is prohibited after the 10-day cancellation
26 period described in paragraph (1), an artist may cancel a contract
27 for talent services at any time after the 10-day cancellation period
28 by mailing, delivering, or sending by facsimile transmission to the
29 talent service a signed and dated copy of the cancellation notice
30 or any other written notice of cancellation, or by sending a notice
31 of cancellation via the Internet if the contract was executed in part
32 or in whole through the Internet. Within 10 business days after
33 delivery of the cancellation notice, the talent service shall refund
34 to the artist on a pro rata basis all fees paid by, or on behalf of, the
35 artist.

36 (f) A contract between an artist and a talent service shall have
37 a term of not more than one year and shall not be renewed
38 automatically.

39 (g) The talent service shall maintain the address set forth in the
40 contract for receipt of cancellation and for removal of an Internet

1 Web site or other listing, unless it furnishes the artist with written
2 notice of a change of address. Written notice of a change of address
3 may be done by e-mail if the artist designates an e-mail address
4 in the contract for purposes of receiving written notice.

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

8 (i) Before the artist signs a contract and before the artist or any
9 person acting on his or her behalf becomes obligated to pay or
10 pays any fee, the talent service shall provide a copy of the contract
11 to the artist for the artist to keep. If the contract was executed
12 through the Internet, the talent service may provide a copy of the
13 contract to the artist by making it available to be downloaded and
14 printed through the Internet.

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

17 1703.1. (a) Every person engaging in the business of a talent
18 service shall keep and maintain records of the talent service
19 business, including the following:

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

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

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

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

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

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

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

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

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

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

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

7 (b) All books, records, and other papers kept pursuant to this
8 chapter by a talent service shall be open for inspection during the
9 hours between 9 a.m. and 5 p.m., inclusive, Monday to Friday,
10 inclusive, except legal holidays, by a peace officer or a
11 representative from the Labor Commissioner, the Attorney General,
12 any district attorney, or any city attorney. Every talent service shall
13 furnish to the Labor Commissioner, a law enforcement officer, the
14 Attorney General, any district attorney, or any city attorney, upon
15 request, a true copy of those books, records, and papers, or any
16 portion thereof, and shall make reports as the Labor Commissioner
17 requires. *The inspecting party shall maintain the confidentiality*
18 *of any personal identifying information contained in the records*
19 *maintained pursuant to this section, and shall not share, sell, or*
20 *transfer the information to any third party unless it is otherwise*
21 *authorized by state or federal law.*

22 A written or verbal solicitation or advertisement for an artist to
23 perform or demonstrate any talent for the talent service, or to
24 appear for an interview with the talent service, shall ~~clearly and~~
25 ~~conspicuously state~~ *include the following clear and conspicuous*
26 *statement: "This is not an audition for employment or for obtaining*
27 *a talent agent or talent management."*

28 1703.3. (a) Prior to advertising or engaging in business, a
29 talent service shall file with the Labor Commissioner a bond in
30 the amount of fifty thousand dollars (\$50,000) or a deposit in lieu
31 of the bond pursuant to Section 995.710 of the Code of Civil
32 Procedure. The bond shall be executed by a corporate surety
33 qualified to do business in this state and conditioned upon
34 compliance with this chapter. The total aggregate liability on the
35 bond shall be limited to fifty thousand dollars (\$50,000). The bond
36 may be terminated pursuant to Section 995.440 of, or Article 13
37 (commencing with Section 996.310) of Chapter 2 of Title 14 of
38 Part 2 of, the Code of Civil Procedure.

39 (b) The bond required by this section shall be in favor of, and
40 payable to, the people of the State of California and shall be for

1 the benefit of any person injured by any unlawful act, omission,
2 or failure to provide the services of the talent service.

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

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

11 (2) When a claimant has established the claim with the Labor
12 Commissioner, the Labor Commissioner shall review and approve
13 the claim and enter the date of the approval thereon. The claim
14 shall be designated an approved claim.

15 (3) When the first claim against a particular deposit has been
16 approved, it shall not be paid until the expiration of a period of
17 240 days after the date of its approval by the Labor Commissioner.
18 Subsequent claims that are approved by the Labor Commissioner
19 within the same 240-day period shall similarly not be paid until
20 the expiration of that 240-day period. Upon the expiration of the
21 240-day period, the Labor Commissioner shall pay all approved
22 claims from that 240-day period in full unless the deposit is
23 insufficient, in which case every approved claim shall be paid a
24 pro rata share of the deposit.

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

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

35 (6) Whenever a deposit has been made in lieu of a bond, the
36 amount of the deposit shall not be subject to attachment,
37 garnishment, or execution with respect to an action or judgment
38 against the assignor of the deposit, other than as to an amount as
39 no longer needed or required for the purposes of this chapter and

1 that would otherwise be returned to the assignor of the deposit by
2 the Labor Commissioner.

3 (7) The Labor Commissioner shall return a deposit two years
4 from the date it receives written notification from the assignor of
5 the deposit that the assignor has ceased to engage in the business
6 or act in the capacity of a talent service or has filed a bond pursuant
7 to subdivision (a), provided that there are no outstanding claims
8 against the deposit. The written notice shall include all of the
9 following:

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

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

13 (C) The account number of the deposit.

14 (D) A statement that the assignor is ceasing to engage in the
15 business or act in the capacity of a talent service or has filed a bond
16 with the Labor Commissioner. The Labor Commissioner shall
17 forward an acknowledgment of receipt of the written notice to the
18 assignor at the address indicated therein, specifying the date of
19 receipt of the written notice and the anticipated date of release of
20 the deposit, provided that there are then no outstanding claims
21 against the deposit.

22 (8) A superior court may order the return of the deposit prior
23 to the expiration of two years upon evidence satisfactory to the
24 court that there are no outstanding claims against the deposit, or
25 order the Labor Commissioner to retain the deposit for a specified
26 period beyond the two years to resolve outstanding claims against
27 the deposit.

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

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

34 1703.4. (a) A talent service, its owners, directors, officers,
35 agents, and employees shall not do any of the following:

36 (1) Make or cause to be made any advertisement or
37 representation expressly or impliedly offering the opportunity for
38 an artist to meet with or audition before any producer, director,
39 casting director, or any associate thereof, or any other person who
40 makes, or is represented to make, decisions for the process of hiring

1 artists for employment as an artist, or any talent agent or talent
2 manager, or any associate, representative, or designee thereof,
3 unless the talent service maintains for inspection and copying
4 written evidence of the supporting facts, including the name,
5 business address, and job title of all persons conducting the meeting
6 or audition, and the title of the production and the name of the
7 production company.

8 (2) Make or cause to be made any advertisement or
9 representation that any artist, whether identified or not, has
10 obtained an audition, employment opportunity, or employment as
11 an artist in whole or in part by use of the talent service unless the
12 talent service maintains for inspection written evidence of the
13 supporting facts upon which the claim is based, including the name
14 of the artist and the ~~date the contract was executed~~ *approximate*
15 *dates the talent service was used by the artist.*

16 (3) Charge or attempt to charge an artist for an audition or
17 employment opportunity.

18 (4) Require an artist, as a condition for using the talent service
19 or for obtaining an additional benefit or preferential treatment from
20 the talent service, to pay a fee for creating or providing
21 photographs, filmstrips, videotapes, audition tapes, demonstration
22 reels, or other reproductions of the artist, Internet Web sites, casting
23 or talent brochures, or other promotional materials for the artist.

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

26 (6) Refer an artist to a person who charges the artist a fee for
27 any service or any product in which the talent service, its owners,
28 directors, officers, agents, or employees have a direct or indirect
29 financial interest, unless the fee and the financial interest are
30 conspicuously disclosed in a separate writing provided to the artist
31 to keep prior to his or her execution of the contract with the talent
32 service.

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

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

1 (9) Fail to remove information about, or photographs of, the
2 artist displayed on the talent service's Internet Web site, or a Web
3 site that the service has the authority to design or alter, within 10
4 days of delivery of a request made by telephone, mail, facsimile
5 transmission, or electronic mail from the artist or from a parent or
6 guardian of the artist if the artist is a minor.

7 (b) A talent training service and talent counseling service and
8 the owners, officers, directors, agents, and employees of the talent
9 training service or talent counseling service shall not own, operate,
10 or have a direct or indirect financial interest in a talent listing
11 service.

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

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

16 (2) Provide a listing of an audition, job, or employment
17 opportunity without written permission for the listing. A talent
18 listing service shall keep and maintain a copy of all original
19 listings; the name, business address, and business telephone number
20 of the person granting permission to the talent listing service to
21 use the listing; and the date the permission was granted.

22 (3) Make or cause to be made an advertisement or representation
23 that includes the trademark, logo, name, word, or phrase of a
24 company or organization, including a studio, production company,
25 network, broadcaster, talent agency licensed pursuant to Section
26 1700.5, labor union, or organization as defined in Section 1117,
27 in any manner that falsely or misleadingly suggests the
28 endorsement, sponsorship, approval, or affiliation of a talent
29 service.

30 1703.5. No talent scout shall use the same name as used by
31 any other talent scout soliciting for the same talent service, and no
32 talent service shall permit a talent scout to use the same name as
33 used by any other talent scout soliciting for the talent service.

34 1703.6. This article does not apply to any of the following:

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

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

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

4 (B) More than 90 percent of the students to whom instruction,
5 training, or education is provided during any semester or other
6 term of instruction have completed or terminated their secondary
7 education or are beyond the age of compulsory high school
8 attendance. A person claiming exemption under this subparagraph
9 shall maintain adequate records to establish the age of its students,
10 including the name, date of birth, principal residence address,
11 principal telephone number, driver's license number and state of
12 issuance thereof, and dates of attendance, and shall make them
13 available for inspection and copying within 24 hours of a written
14 request by the Labor Commissioner, the Attorney General, a district
15 attorney, a city attorney, or a state or local law enforcement agency.
16 *The inspecting party shall maintain the confidentiality of any*
17 *personal identifying information contained in the records*
18 *maintained pursuant to this section, and shall not share, sell, or*
19 *transfer the information to any third party unless it is otherwise*
20 *authorized by state or federal law.*

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

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

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

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

34 (1) A majority interest in the service is owned by one or more
35 colleges or universities, or alumni associations affiliated therewith,
36 and each of the colleges or universities is accredited by an
37 accrediting agency recognized by the United States Department
38 of Education and a member organization of the Council of
39 Postsecondary Accreditation.

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

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

7 (4) More than 50 percent of the annual revenues received by
8 the service are derived from paid subscriptions of prospective
9 employers.

10 (f) A public library.

11
12 Article 4. Remedies
13

14 1704. A person, including, an owner, officer, director, agent,
15 or employee of a talent service, who *willfully* violates any provision
16 of this chapter is guilty of a misdemeanor. Each violation is
17 punishable by imprisonment in a county jail for not more than one
18 year, by a fine not exceeding ten thousand dollars (\$10,000), or
19 by both that fine and imprisonment. However, payment of
20 restitution to an artist shall take precedence over the payment of
21 a fine.

22 1704.1. The Attorney General, a district attorney, or a city
23 attorney may institute an action for a violation of this chapter,
24 including an action to restrain and enjoin a violation.

25 1704.2. A person who is injured by a violation of this chapter
26 or by the breach of a contract subject to this chapter may bring an
27 action for recovery of damages or to restrain and enjoin a violation,
28 or both. The court shall award to a plaintiff who prevails in an
29 action under this chapter reasonable attorney's fees and costs. ~~If~~
30 ~~the court determines by clear and convincing evidence that the~~
31 ~~breach of contract or violation was willful, the court may award~~
32 ~~punitive damages in addition to any other amounts awarded to the~~
33 ~~plaintiff.~~ The amount awarded for damages for a violation of this
34 chapter shall be not less than three times the amount paid by the
35 artist, or on behalf of the artist, to the talent service or the
36 advance-fee talent representation service.

37 1704.3. The Labor Commissioner shall use the proceeds of a
38 bond or deposit posted by a person pursuant to this chapter to
39 satisfy a judgment or restitution order resulting from the person's

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

3
4 Article 5. General Provisions
5

6 1705. The provisions of this chapter are not exclusive and do
7 not relieve a person subject to this chapter from the duty to comply
8 with all other laws.

9 1705.1. The remedies provided in this chapter are not exclusive
10 and shall be in addition to any other remedies or procedures
11 provided in any other law, including Section 17500 of the Business
12 and Professions Code.

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.