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AB-2068 Talent services. (2015-2016)

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Assembly Bill No. 2068

CHAPTER 245

An act to amend Sections 1703 and 1703.4 of the Labor Code, relating to employment.

[Approved by Governor August 30, 2016. Filed with Secretary of State August 30, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2068, Holden. Talent services.

Existing law regulates the licensing and operation of talent services within the entertainment industry. Existing law prohibits specific activities or omissions by a talent service or its owners, directors, officers, agents, and employees, including the failure to remove information about, or photographs of, an artist displayed on the talent service's Internet Web site or an Internet Web site that the service has the authority to design or alter, within 10 days of delivery of a request made by telephone, mail, facsimile transmission, or email from the artist or from a parent or guardian of the artist if the artist is a minor. If the talent service offers to display information about, or a photograph of, an artist on the service's Internet Web site, existing law requires a contract between an artist and a talent service to contain a notice that the talent service will remove the content within 10 days of a request by the artist or the artist's parent or guardian, if a minor. A willful violation of those prohibitions is a crime.

This bill would prohibit these specific activities or omissions of a talent service, its owners, directors, officers, agents, and employees through any means of communication. The bill would extend the prohibition of the failure to remove an artist's information or photographs to those displayed on an online service, online application, or mobile application of the talent service or one that the talent service has the authority to design or alter and would require the talent service to also act on requests to remove information or photographs made by text message or other electronic communication. The bill would expand the above-described notice requirement to contracts in which the talent service offers to display information about, or a photograph of, an artist on the service's online service, online application, or mobile application. Because a violation of these provisions would be a crime under certain circumstances, the bill 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1703 of the Labor Code is amended to read:

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

(1) The name, address, telephone number, fax number (if any), email 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)

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

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

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

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

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

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

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

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

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

SEC. 2. Section 1703.4 of the Labor Code is amended to read:

1703.4. (a) A talent service, its owners, directors, officers, agents, and employees shall not do any of the following through any means of communication, including, but not limited to, in person, through the use of a telecommunication device, in print, on the Internet, or through the use of a mobile or online application or other electronic communication:

(1) Make or cause to be made any advertisement or representation expressly or impliedly offering the opportunity for an artist to meet with or audition before any producer, director, casting director, or any associate thereof, or any other person who

makes, or is represented to make, decisions for the process of hiring artists for employment as an artist, or any talent agent or talent manager, or any associate, representative, or designee thereof, unless the talent service maintains for inspection and copying written evidence of the supporting facts, including the name, business address, and job title of all persons conducting the meeting or audition, and the title of the production and the name of the production company.

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

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

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

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

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

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

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

(9) Fail to remove information about, or photographs of, the artist displayed on the talent service's Internet Web site, online service, online application, or mobile application or an Internet Web site, online service, online application, or mobile application that the service has the authority to design or alter within 10 days of delivery of a request made by telephone, text message, mail, facsimile transmission, email, or other electronic communication from the artist or from a parent or guardian of the artist if the artist is a minor.

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

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

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

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

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.