

Assembly Bill No. 1319

CHAPTER 286

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.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1319, 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 a misdemeanor and subject to a civil action.

Because the bill would 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.

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

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

The Legislature declares that the purpose of this act is to safeguard the public against fraud, deceit, imposition, and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of talent

services by prohibiting or restricting false or misleading advertising and other unfair, dishonest, deceptive, destructive, unscrupulous, and fraudulent business practices by which the public has been injured in connection with talent services.

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

Nothing in this chapter is intended to prohibit legitimate contractual business relationships between artists and bona fide record companies or to excuse a person from complying with Chapter 4 (commencing with Section 1700).

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 Chapter 4.5 (commencing with Section 1701) of Part 6 of Division 2 of the Labor Code is repealed.

SEC. 3. Chapter 4.5 (commencing with Section 1701) is added 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.

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

(iv) The payee maintains adequate records to establish that the amount to be reimbursed was actually advanced or owed to a third party and that the third party is not a person with whom the payee has a direct or indirect financial interest or from whom the payee receives any consideration for referring the artist. To satisfy this condition, the payee shall maintain the records for at least three years and 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 enforcement agency.

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

(3) Appearances, marketing, or similar activities by an artist rendered in the context of promoting that artist's career.

(4) Royalties or profit participation from work or services as an artist payable under a bona fide contractual obligation.

(e) "Person" means an individual, company, society, firm, partnership, association, corporation, limited liability company, trust, or other organization.

(f) "Talent counseling service" means a person who does not manage or direct the development of an artist's career and who, for a fee from, or on behalf of, an artist, provides or offers to provide, or advertises or represents itself as providing, that artist, directly or by referral to another person, with career counseling, vocational guidance, aptitude testing, or career evaluation as an artist.

(g) "Talent listing service" means a person who, for a fee from, or on behalf of, an artist, provides or offers to provide, or advertises or represents itself as providing, an artist, directly or by referral to another person, with any of the following:

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

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

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

(4) Storage or maintenance for distribution or disclosure to a person represented as offering an audition or employment opportunity, or to a talent

agent, talent manager, or an associate, 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 who, for a fee from, or on behalf of, an artist, provides or offers to provide, or advertises or represents itself as providing, an artist, directly or by referral to another person, 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 who provides or offers to provide, or advertises or represents itself as providing, an artist, directly or by referral to another person, with one or more of the following services described below, provided that the person charges or receives a fee from or on behalf of an artist for photographs, Internet Web sites, or other reproductions or other promotional materials as an artist; lessons, coaching, seminars, workshops, or similar training for an artist; or for one or more 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 who charges or receives a fee from, or on behalf of, an artist for any product or service required for the artist to obtain, from or through the person, any of the services described in paragraphs (1) to (4), inclusive, of subdivision (a).

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

1702.4. This article does not apply to the following:

(a) A public educational institution.

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

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

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

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

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

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

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

(f) A public institution.

Article 3. Other Talent Services

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), 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)

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), e-mail 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: (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.

(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 e-mail if the artist designates an e-mail 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.

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 portion thereof, and

shall make reports as the Labor Commissioner requires. The inspecting party shall maintain the confidentiality of any personal identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by state or federal law.

A written or verbal solicitation or advertisement for an artist to perform or demonstrate any talent for the talent service, or to appear for an interview with the talent service, shall include the following clear and conspicuous statement: “This is not an audition for employment or for obtaining a talent agent or talent management.”

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

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

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

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

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

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

(4) Whenever the Labor Commissioner approves the first claim against a particular deposit after the expiration of a 240-day period, the date of

approval of that claim shall begin a new 240-day period to which paragraph (3) applies with respect to any amount remaining in the deposit.

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

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

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

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

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

(C) The account number of the deposit.

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

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

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

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

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

(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, or a 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 electronic mail 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 either 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 organization as defined in Section 1117, in any manner that falsely or misleadingly suggests the endorsement, sponsorship, approval, or affiliation of a talent service.

1703.5. No talent scout shall use the same name as used by 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. The inspecting party shall maintain the confidentiality of any personal identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by state or federal law.

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

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

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

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

(f) A public library.

Article 4. Remedies

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

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

1704.2. A person who is injured by a violation of this chapter or by the breach of a contract subject to this chapter may bring an action for recovery of damages or to restrain and enjoin a violation, or both. The court shall award to a plaintiff who prevails in an action under this chapter reasonable attorney's fees and costs. The amount awarded for damages for a violation of this chapter shall be not less than three times the amount paid by the artist, or on behalf of the artist, to the talent service or the advance-fee talent representation service.

1704.3. The Labor Commissioner shall use the proceeds of a bond or deposit posted by a person pursuant to this chapter to satisfy a judgment or restitution order resulting from the person's violation of a provision of this chapter, if the person fails to pay all amounts required by the judgment or restitution order.

Article 5. General Provisions

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

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

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

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

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

SEC. 4. 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.