

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2408

SPONSOR: Criminal Justice Committee and Senator Webster

SUBJECT: Talent Agencies and Advance Fee Services

DATE: April 20, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>FT</u>	_____
5.	_____	_____	<u>AGG</u>	_____
6.	_____	_____	<u>AP</u>	_____

I. Summary:

This bill provides as follows:

- Abolishes the regulation of talent agencies by Department of Business and Professional Regulation (department).
- Provides definitions and requirements for advance fee talent services.
- Narrows the number of prohibited or unlawful acts by talent agencies.
- Deletes the authority of the department to revoke or suspend the licenses of talent agents.
- Deletes the authority of the department to make rules.
- Deletes the requirement that a talent agency file a maximum fee schedule with the department.
- Deletes the requirement for filing the required bond with the department while increasing the bond from \$5,000 to \$10,000.
- Establishes requirements for talent agency contracts.
- Authorizes state attorneys to seek an injunction to enforce the provision of part VII of ch. 468, F.S., relating to talent agencies.
- Authorizes civil actions by persons harmed by a violation of a prohibited act.
- Authorizes the department to continue to prosecute pending legal proceedings.

The bill also increases the number of acts related to services provided by a talent agency that would constitute a third degree felony or a second degree misdemeanor.

This bill would take effect on July 1, 2004.

This bill substantially amends the following sections of the Florida Statutes: 468.401, 468.402, 468.406, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, and 468.415.

This bill creates sections 468.416 and 468.417, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 468.403, 468.404, 468.405, 468.407, and 468.414.

This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Talent agencies are defined in s. 468.401, F.S., to mean any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist. Section 468.403, F.S., requires a talent agency license for any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist. The department regulates through the talent agency licensing program, which does not have a board, does not require an exam, and does not require pre-licensure education, or continuing education. The statutory provisions relating to the regulation of talent agents and agencies are in part VII of ch. 468, F.S.

Licenses are required to have a \$5,000 surety bond.¹ The department has the authority to revoke a license and can impose citations and fines.² However, the department has no authority over criminal violations, e.g., theft. According to the department, criminal violations are referred to the State Attorney's Office.

According to the department, the laws governing talent agency regulation contain unclear provisions. For example:

- the definition of a talent agency does not include production companies, which are the companies that actually produce films;
- the statutes or rules do not prevent a talent agency that has lost its license from reopening under another name; and
- the requirement in s. 468.405(1), F.S., for "good moral character" as a qualification for licensure is vague.

Advance Fee Talent Services

According to the department, advance-fee talent services are performed by entities that receive money from prospective artists to promote or advertise the artist. The advance-fee talent services do not attempt to procure engagements for the artists. However, many artists do not understand this distinction and believe that the persons providing advance-fee talent services do procure engagements. The department does not have regulatory jurisdiction over advance-fee talent service operations.

¹ Section 468.408, F.S.

² See ss. 455.224, 468.402, and 468, F.S., and ch. 61-19, F.A.C.

Fiscal Soundness of the Talent Agencies Program

The Auditor General reviewed the department's Professional Regulation Trust Fund in an operational audit. The report dated October 2001, noted that the department's regulation of talent agencies had experienced fiscal year-end deficits for the previous three years, and concluded that it was unlikely that the profession's 291 licensees would be able to eliminate the existing cash deficit and then continue to pay license fees in an amount sufficient to pay ongoing regulatory costs.³

Section 468.404(1)(b), F.S., requires that the department assess, for the 2003-2004 fiscal year only, talent agency license fees at a level sufficient to cover the cost of regulation appropriated in the 2003-2004 General Appropriations Act, or any other act passed by the 2003 Legislature containing appropriations for such purpose. This provision expires July 1, 2004.

According to the department, the talent agencies program has a current deficit cash balance. The department advises the talent agency licensee base is small and has approximately 322 current active licensees. According to the department, a fee of at least \$1,000 per licensee would be required just to bring the profession out of the deficit. Additionally, the renewal fee of \$400 for talent agencies has reached its statutory cap.⁴

III. Effect of Proposed Changes:

Section 1. The bill creates s. 468.401, F.S., to provide for the regulation of advance-fee talent services. An advance-fee is defined by the bill to mean a fee paid by an artist before the artist receives actual earnings as an artist or where the actual earnings received by the artist exceed the fee charged. Subsection (2) of s. 468.401, F.S., defines advance-fee services to include the promotion of the artist, managing or developing the artist's career, and career counseling.

The bill also defines the terms "agency" and "owner" to include a talent agency or an advance-fee service. The term "talent agency" is amended to include any business entity in addition to the reference to any person in current law. The bill also defines the term "divided fee" to mean the process by which, without written approval from the artist, two or more persons receive a fee from the artist for placing the artist and the fee paid to the agents exceeds the compensation that would have been received by only one agent acting on behalf of the artist.

The bill defines the term "manager" as a person that advises, guides, or directs the artist in career development, but is not primarily involved in placing the artist in employment. The bill defines the term "modeling or photographing a minor in the nude in the absence of written permission from the minor's parents or legal guardian." This definition requires the written consent of both parents, if living, or legal guardian, and that the parents or legal guardian must be fully advised.

Section 2. The bill amends s. 468.402, F.S., to delete several prohibited acts that would subject a talent agent to discipline. The following currently prohibited acts would be deleted:

³ Auditor General, *Professional Regulation Trust Fund, Florida Department of Business and Professional Regulation Operational Audit*, Report No. 02-059, October 2001.

⁴ See s. 468.404(1), F.S.

- obtaining or attempting to obtain a license by fraud, misrepresentation or concealment;
- having been found guilty, or having entered a plea of no contest, to a crime involving moral turpitude or dishonest dealings;
- having a previous talent agency license revoked or denied;
- having operated with a revoked, suspended, inactive, or delinquent license;
- having aided or assisted a person to operate without a license;
- having failed to perform a legal obligation of a talent agency; and
- having acted beyond the scope permitted by law or performed professional responsibilities beyond the person's competency.

The bill further amends s. 468.402, F.S., to delete the department's authority to revoke or suspend a license, and to make rules to implement part VII of ch. 468, F.S., relating to talent agencies.

Section 3. The bill amends s. 468.406, F.S., to require each talent agency to post an itemized schedule of maximum fees, charges, and commissions it intends to charge. The provision deletes the requirements under current law for filing the fee schedule with the department with the license application and thereafter with any increase in the scheduled fees.

Section 4. The bill amends s. 468.408, F.S., to increase the bond requirement for each agency from \$5,000 to \$10,000. It also deletes the requirement to file the bond with the department. The bill also requires that, before the execution of a contract with an artist, the agency must provide the artist with a copy of the bond.

Section 5. The bill amends s. 468.409, F.S., to require agencies to keep a fully executed copy of the contract of each artist. Current law only requires that they keep a copy of the contract. The bill also requires that agencies keep a file of all attempts to promote or advertise the artist. The bill changes from one year to five years the period that the agency must keep its file or card for each artist.

Section 6. The bill amends s. 468.410, F.S., to require an executed contract between an agency and an artist when these parties agree that the agency will secure employment for the artist. If the circumstances do not permit a contract before the first employment, the contract must be executed within seven days of the first employment. The contract may also contain a list of commissions in lieu of the list of fees required under current law.

The bill also prohibits talent agencies from requiring subscription to a website as a condition for registering or obtaining employment for an artist. The bill also requires that the agency give the artist a copy of each of the following:

- part VII of ch. 468, F.S.;
- the signed and authenticated contract, which must be provided at the time the contract is executed; and
- a criminal background check of each owner and operator of the agency.

The bill provides that a contract that does not conform to the requirements of part VII of ch. 468, F.S., is voidable by the artist. If the contract is voided by the artist, the artist would not be required to pay any consideration or return any compensation received from the agency. The bill also provides artists with the right to cancel a contract within 14 days after a contract is signed. An artist may not waive this cancellation right, and any attempt by the agency to have the artist waive this right would constitute a violation of part VII of ch. 468, F.S. The bill also provides that an artist that cancels a contract can not be required to return or pay any consideration received from the agency.

Section 7. The bill conforms s. 468.411, F.S., to current bill drafting conventions and corrects the catch line.

Section 8. The bill amends s. 468.412, F.S., to change from one to five years the period of time that an agency must keep a record sheet for each booking (placement) of an artist. The bill also requires that the agency keep a record of the amount of commission received from the artist in lieu of the record of the amount of fees required under current law. The bill authorizes inspection of agency records by any state attorney or authorized agent of the state attorney, while it deletes the department's authority to inspect these records.

The bill deletes the requirement for each talent agency to conspicuously post the agency's name and address, a copy of part VII of ch. 468, F.S., and the rules adopted under its authority. Also deleted by the bill is the requirement that the department must furnish copies of any law or rule required to be posted. The bill deletes the requirement that the agency's license number and address must be listed on any advertisement.

The bill amends s. 468.412(8), F.S., to reference specific engagement or employment in the requirement that agencies return to the artist any fees and expenses he or she has paid to the agency for the procuring employment if the agency fails to procure employment.

Section 9. The bill amends s. 468.413, F.S., to provide that the following acts would constitute a third degree felony if related to services provided by a talent agency:

- Acts involving false statements, fraud or misrepresentation.
- Establishing an agency where alcoholic beverages are sold or gambling is permitted.
- Sending any person for employment in a house of ill fame or a place of amusement for immoral purposes or resorted to for prostitution.
- Sending a person to a place for photographing a minor in the nude without the parents' or legal guardian's consent.
- Conspiring with another agency or person to commit an act that would tend to coerce, intimidate, or preclude another agency from advertising its services.
- Exercising undue influence on the artist in manner that exploits the artist for financial gain of the agency or a third party.
- Committing sexual misconduct as prohibited in s. 468.415, F.S.

The bill deletes violations related to licensure requirements, i.e., operating without a license and fraud in obtaining a license. The bill also deletes, from the list of offences that would constitute a

second degree misdemeanor, offenses related to licensure requirements. The bill also increases the list of offenses that would constitute a second degree misdemeanor to include:

- Failing to provide copies of documents required to be provided to artists in ch. 468, F.S., including a copy of part VII of ch. 468, F.S., the annual background check, and the bond.
- Failing to maintain a bond as required in s. 468.408, F.S.
- Violating any provision of part VII of ch. 468, F.S.
- Charging, collecting, or receiving compensation for any service performed by the agency greater than specified in its schedule of maximum fees, charges, and commissions.
- Failing to post in a conspicuous place or include in the contract an itemized schedule of maximum fees, charges, and commissions which it intends to charge and collect for its services.
- Charging a registration fee, except as permitted for advance-fee talent services.
- Dividing fees with anyone, including, but not limited to, an agent or other employee of an employer, a buyer, a casting director, a producer, a director, or any venue that uses entertainment.
- Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
- Failing to notify an artist prior to sending an artist to an engagement that there is a strike, lockout, or other labor dispute in active progress.
- Failing or refusing upon demand to disclose any information, as required by part VII of ch. 468, F.S., within his or her knowledge, or failing or refusing to produce any document, book, or record in his or her possession for inspection, to any state attorney or any authorized agent thereof acting within the jurisdiction of the state attorney or by authority of law.
- Failing to maintain a permanent office and hours.
- Attempting to have an artist waive the right to cancel a contract.
- Failing to provide payment to the artist.
- Failing to return fees.
- Failing to maintain records.

Section 10. The bill amends s. 468.415, F.S., to include advance fee service relationships as subject to the sexual misconduct prohibition in this section. The bill also deletes provisions relating to licensure revocation for violations of this prohibition.

Section 11. The bill creates s. 468.416, F.S., to provide for judicial enforcement by state attorneys. The bill authorizes state attorneys to seek, and the courts to grant, temporary or permanent injunctions of violation of part VII of ch. 468, F.S.

Section 12. The bill creates s. 468.417, F.S., to authorize civil actions by persons harmed by a violation of a prohibited act. The bill limits the damages that may be obtained through a civil action in circuit court to a civil penalty not to exceed \$5,000 for each violation, restitution and treble damages for injured parties, and court costs and reasonable attorney's fees.

Section 13. The bill abolishes the regulation of talent agencies by the department. The bill requires that any funds and balances associated with the department's regulation of talent

agencies remaining in the Professional Regulation Trust Fund after the effective date of this bill must be used to pay any remaining expenses associated with this regulation. The bill also requires that any funds or balances remaining in the trust fund after January 1, 2005, must be transferred to the General Revenue Fund.

Section 14. The bill authorizes the department to continue to prosecute pending legal proceedings in existence after the effective date of this bill.

Section 15. The bill repeals the following sections;

- s. 468.403, F.S., which relates to license requirements;
- s. 468.404, F.S., which relates to license fees and renewals;
- s. 468.405, F.S., which relates to qualifications for a talent agency license;
- s. 468.407, F.S., which relates to posting requirements pertaining to licensure; and
- s. 468.414, F.S., which relates to the deposit of fines, fees, and penalties imposed on, and collected from, talent agencies into the Professional Regulation Trust Fund.

Section 16. This bill would take effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bond requirement for talent agencies would increase from \$5,000 to \$10,000. Talent agencies would no longer be required to remit licensure fees.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, ending the department's regulation of talent agencies would eliminate annual direct costs of approximately \$3,000, and annual indirect costs in the

range of \$95,671 to \$93,671, which estimate is based on the costs paid by talent agents for the fiscal years 1999-2000 and 2000-2001, respectively.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
