



DEPARTMENT OF INDUSTRIAL RELATIONS

GOLDEN GATE AVENUE
SAN FRANCISCO 94102

December 2, 1985

ADDRESS REPLY TO:
P.O. BOX 603
San Francisco 94101

The Honorable George Deukmejian
Governor of California
State Capitol
Sacramento, CA 95814

The Honorable David A. Roberti
President Pro Tempore
State Capitol
Sacramento, CA 95814

The Honorable Willie Brown, Jr.
Speaker of the Assembly
State Capitol
Sacramento, CA 95814

Dear Governor Deukmejian and Messrs. Roberti and Brown:

Enclosed for filing, pursuant to Labor Code Section 1703, is the Report of the California Entertainment Commission.

This report was prepared and is submitted pursuant to the legislative mandate of the statutes of 1982, Chapter 682, Labor Code Sections 1701 through 1704, inclusive.

If you have any questions, please advise the undersigned.

Very truly yours,

C. Robert Simpson, Jr.
Chair
California Entertainment Commission

enc.

cc: Darryl White
Secretary of the Senate

James D. Driscoll
Clerk of the Assembly

Honorable Walter Stiern
Chairman
Joint Legislative
Budget Committee

Honorable Richard Floyd
Chairman
Assembly Committee on
Employment

Honorable Alfred Alquist
Chairman
Senate Finance Committee

Honorable Bill Greene
Chairman
Senate Industrial
Relations Committee

Honorable John Vasconcellos
Chairman
Assembly Ways and Means
Committee

Honorable Maxine Waters
Assembly Ways and Means
Subcommittee on State
Government

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EXECUTIVE SUMMARY

Report of the California Entertainment Commission

The California Entertainment Commission was created by the California Legislature in 1982 and was activated on the effective date of the statute, January 1, 1983. The Commission was mandated to recommend to the Governor and the Legislature any changes deemed appropriate to California's Talent Agencies Act which might serve to make the Act a model bill regarding the licensing of agents and other representatives of artists in the entertainment industry.

The Commission which sunsets on January 1, 1986, consists of 10 members: 3 appointed by the Governor, 3 by the Senate Rules Committee and 3 by the Speaker of the Assembly. Each appointing power was required to appoint an artist, a talent agent and a personal manager. The 10th member of the Commission was statutorily designated as the Labor Commissioner.

The Commission is required by statute to submit its report not later than January 1, 1986.

The attached report submitted by the Commission was prepared on the basis of the study of relevant materials and discussions at 15 meetings held between June 20, 1983, and January 10, 1985.

The Commission considered six principal issues, and came to conclusions and has submitted recommendations with respect to each. The issues and conclusions and recommendations are as follows:

Issue 1. Under what conditions or circumstances, if any, should a personal manager or anyone other than a licensed talent agent be allowed to procure, offer, promise or attempt to procure employment or engagements for an artist without being licensed as a talent agent?

Conclusion:

No person, including personal managers, should be allowed to procure employment for an artist in any manner or under any circumstances without being licensed as a talent agent.

Issue 2. What changes, if any, should be made in the provisions of the Act exempting from the Act a person who procures recording contracts for an artist?

Conclusion:

No change should be made in the provisions of the present Act which exempt from the licensure requirements of the Act a person who procures recording contracts for an artist.

Issue 3. Should the criminal sanctions of the Act, removed by AB 997 (Stats. 1982), be reinstated and, if so, in what form?

Conclusion:

Criminal sanctions removed from the Act by AB 997 should not be restored to the Act.

Issue 4. Should the sunset provisions added to the Act by AB 997 be deleted?

Conclusion:

The sunset provisions added to the Act by AB 997 should be deleted.

Issue 5. Should the entire Act be repealed and/or should there be a separate licensing law for personal managers?

Conclusion:

The entire Act should not be repealed, and there is no need for a separate licensing law for personal managers.

Issue 6. What other language changes, if any, should be made in the Act?

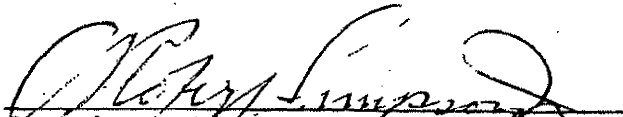
Conclusion:

Several changes to the present Talent Agencies Act should be made and are recommended in the report.

Certain of these proposed amendments address aspects of the qualifications necessary to become a talent agent. The bond required from applicants is proposed to be increased and certain other conditions to the issuance of a license have been added for the purpose of provided added protection to the artist. Certain other provisions address the fiduciary relationship between the talent agent and the artist and provide, among other things, for the establishment of a trust fund to provide for the proper accounting for income received by the talent agents which is payable to the artist. Certain other proposed amendments are in the nature of housekeeping.

The Commission believes that if the amendments to the Talent Agencies Act recommended in the report are made a part of the Act by statute, the Talent Agencies Act of California will, in pursuance to the legislative mandate to the Commission, become a model statute of its kind in the United States.

Dated: December 2, 1985


E. Robert Simpson, Jr.
Chair
California Entertainment Commission

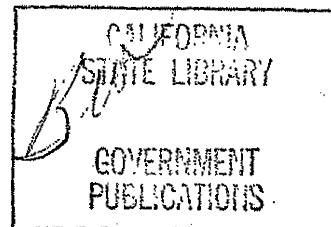


CALIFORNIA ENTERTAINMENT COMMISSION

This report relating to the California Talent Agencies Act (sometimes referred to as the Act) is submitted by the California Entertainment Commission (Commission) to the Governor and the Legislature pursuant to California Labor Code Sections* 1701 to 1704**. These sections, as amended, established the Commission, directed the preparation of this report containing recommended changes in the Act and required that this report be submitted not later than January 1, 1986.

Labor Code Section 1701, which established the Commission, provides as follows:

There is hereby created in State government the California Entertainment Commission consisting of 10 members. Three members of the commission shall be appointed by the Governor, three members by the Speaker of the Assembly, and three members by the Senate Rules Committee. Each appointing power shall



*Reference to Section is to the California Labor Code, unless otherwise noted.

**California Statutes (Stats) of 1982, Chapter (Ch.) 682. Effective January 1, 1983.

appoint a licensed talent agent, a personal manager of at least three artists, and an artist. The Labor Commissioner shall also be a member of the commission.

Appointments to the Commission were made in late 1982. The members of the Commission and their respective appointing powers are as follows:

Commission Member

Appointed by

Artist

Ed Asner

Senate Rules Comm.

John Forsythe

Governor Brown

Cicely Tyson

Speaker of Assembly

Talent Agent

Jeffrey Berg

Speaker of Assembly

Roger Davis

Governor Brown

Richard Rosenberg

Senate Rules Comm.

Personal Manager

Bob Finklestein

Governor Brown

Patricia McQueeney

Senate Rules Comm.

Larry Thompson*

Governor Deukmejian

The State Labor Commissioner, C. Robert Simpson, Jr., is also a member of the Commission, pursuant to Labor Code Section 1701, above, and served as Chair.

*Appointed by Governor Deukmejian following the resignation of Irving Azoff.

The Commission met 15 times between June 20, 1983, the date of its first meeting, and January 10, 1985, the date of the last meeting held by the Commission. At its first meeting, the Commission adopted the following rules of procedure:

- a) A quorum for any meeting would be five.
- b) Any action of the Commissioner would require the attendance of at least two artists, two personal managers and two talent agents, and would require the vote of a majority of the Commission.
- c) The Chair would not be a voting member except to break a tie.

The Commission was mandated by Section 1702* to recommend a model bill relating to the licensing of agents and representatives of artists in the entertainment industry in general and the recording industry in particular.

Pursuant to this statutory mandate, the Commission studied the laws and practices of California and of New York and other

*Section 1702 provides, as follows:

The commission shall study the laws and practices of this state, the State of New York, and other entertainment capitals of the United States relating to the licensing of agents and representatives of artists in the entertainment industry in general, and the recording industry in particular, so as to enable the commission to recommend to the Legislature a model bill regarding this licensing.

entertainment capitals of the United States. In the course of its deliberations, it analyzed the Act in minute detail.

In the judgment of a majority of the members of the Commission, the Talent Agencies Act of California is a sound and workable statute and the recommendations contained in this report will, if enacted by the California Legislature, make that Act a model statute of its kind in the United States.

The recommendations of the Commission submitted in this report were, in all cases, supported by the majority of the members of the Commission. A few recommendations were approved unanimously. Minority views of members of the Commission on specific issues were invited at the close of the Commission's final meeting: none was received.

This report is submitted in accordance with Section 1703.* The sections of the report which follow are a summary of the major issues addressed by the Commission and a discussion with conclusions and recommendations of the Commission on each. A short background summary of the legislation leading up to the Talent Agencies Act is attached as Appendix A.

*Section 1703 provides, as follows:

Deadline for Report--Expenses. The commission shall report to the Legislature and the Governor not later than January 1, 1986. All expenses of the commission shall be appropriated in the Budget Act.

ISSUES

The principal issues addressed by the Commission were as follows:

1. Under what conditions or circumstances, if any, should a personal manager or anyone other than a licensed talent agent be allowed to procure, offer, promise or attempt to procure employment or engagements for an artist without being licensed as a talent agent? (Hereinafter these basic functions of a talent agent which comprise the statutory definition of talent agent, will be referred to collectively as "procure employment.")

2. What changes, if any, should be made in the provisions of the Act exempting from the Act a person who procures recording contracts for an artist?

3. Should the criminal sanctions of the Act, removed by AB 997, be reinstated and, if so, in what form?

4. Should the sunset provisions added to the Act by AB 997 be deleted?

5. Should the entire Act be repealed and/or should there be a separate licensing law for personal managers?

6. What other changes, if any, should be made in the Act?

DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS REGARDING THE ISSUES

Issue 1

Under what conditions or circumstances, if any, should personal managers or anyone other than a licensed talent agent be allowed to procure employment for an artist without being licensed as a talent agent?

Conclusion

It is the majority view of the Commission that personal managers or anyone not licensed as a talent agent should not, under any condition or circumstances, be allowed to procure employment for an artist without being licensed as a talent agent, except in accordance with the present provisions of the Act.

Recommendations

The Commission recommends that, except for the deletion of the words "and franchised" from Section 1700.44, which will be explained on page 31 of this report, no change should be made in the present language of Section 1700.4 which defines Talent Agent or in Section 1700.44 which, in part, defines the parameters of the circumstances when one not licensed as a talent agent may become involved in procuring the employment of an artist.

Discussion

A talent agent is defined in Section 1700.4 of the Act as follows:

1700.4. (a) A talent agency is hereby defined

to be a person or corporation who engages in the occupation of procuring, offering, promising or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

Section 1700.5 provides in pertinent part, that--

1700.5. No person shall engage in or carry on the occupation of a talent agency without first procuring a license therefor from the Labor Commissioner.

The principal, and philosophically the most difficult, issue before the Commission, the discussion of which consumed a substantial portion of the time of most of the meetings of the Commission, was this first issue: When, if ever, may a personal manager or, for that matter, anyone other than a licensed Talent Agent, procure employment for an artist without obtaining a talent agent's license from the Labor Commissioner?

No clear legislative intent can be discerned to assist in answering this critical and fundamental question.

When the artists' manager provisions of the Employment Agencies Act were removed from that Act in 1959 (see Appendix A) the personal manager profession was still in its infancy.

The Talent Agencies Act of 1978, originally introduced as AB 2535, would have required a separate personal manager license for all personal managers, whether or not they procured employment for an artist at any time. However, that portion of the bill relating to personal managers was deleted.

In 1982, AB 997 was enacted by the Legislature and amended the Act in several significant respects. One of these amendments was the addition of the following language to Section 1700.44.

It shall not be unlawful for a person or corporation who is not licensed under this chapter to act in conjunction with, and at the request of, a duly licensed and franchised talent agency in the negotiations of an employment contract.

The controversy over the question of whether anyone other than a licensed talent agent should be permitted to procure employment for an artist is long-standing in the entertainment industry.

The position of the talent agents is that anyone who performs the same function as they in procuring employment for an artist should be subject to the same statutory and regulatory obligations as they are--nothing more and nothing less. Those obligations include regulation of contract terms and fees by the

Labor Commissioner and the requirements of franchise agreements with unions representing the artists. Talent agents increasingly find themselves in competition with personal managers and others in seeking employment for clients. In the opinion of the talent agents, the issue is simply one of fairness: all who seek employment for an artist should be licensed or none should be licensed.

Personal managers contend that the reality of the entertainment industry requires that, in the normal course of the conduct of their profession, they must engage in limited activities which could be construed as procuring employment. Such activity is only a minor and incidental part of their services to the artist. The essence of their service, which is counseling the artist in the development of his/her professional career, is not the kind of activity which can feasibly or legitimately be made the subject of licensure. They argue that if they are required to be licensed, they will not only be required to procure employment for their clients, which is not the essence of their service to clients, but their fees, the length of the contracts, and other aspects of their service will be controlled by the Labor Commissioner and the unions. The fees charged by personal managers are generally higher than agents' fees charged for procuring employment, and managers believe that they reflect not only the value of an intangible service but the greater risk which is assumed by the personal manager in the eventual artistic success of their clients.

The Commission attempted over many hours, and by diligent exploration and analysis of alternatives, to find a common ground of compromise on which an answer to this long-standing industry controversy could be formulated, but without success.

The Commission considered, and rejected, alternatives which would have allowed:

- The personal manager to engage in "casual conversations" concerning the suitability of an artist for a role or part, subject, however, to the other restrictions of 1700.44 above. (A causal relationship between conversation and illegal unlicensed activity has not been established in decided opinions or cases but remains susceptible of proof.)
- The artist, with or without the consent of the licensed talent agent, to call a personal manager into the negotiations of an employment contract. (Under 1700.44 (above), a personal manager can become involved in the negotiations of an employment contract only at the request of a duly licensed and franchised talent agent.)
- The personal manager to act in conjunction with the talent agent in the negotiation of an employment contract whether or not requested to do so by the talent agent. (Under 1700.44,

a personal manager can act in conjunction with the talent agent, only at the request of the talent agent.)

The Commission also reviewed and rejected proposals that would have exempted from the Act:

- Anyone who does not charge a fee or commission or other form of compensation for procuring employment for an artist;

and

- Anyone who is a bona fide employer of the artist who does not represent the artist in procuring employment.

Thus, in searching for the permissible limits to activities in which an unlicensed personal manager, or anyone, could engage in procuring employment for an artist without being licensed as a talent agent, the Commission concluded that there is no such activity, that there are no such permissible limits, and that the prohibitions of the Act over the activities of anyone procuring employment for an artist without being licensed as a talent agent must remain, as they are intended to be, total. Exceptions in the nature of incidental, occasional or infrequent activities relating in any way to procuring employment for an artist cannot be permitted: one either is, or is not, licensed as a talent agent, and, if not so licensed, one cannot expect to engage, with impunity, in any activity relating to the services which a talent agent is licensed to render. There can be no "sometimes" talent

agent, just as there can be no "sometimes" professional in any other licensed field of endeavor.

Issue 2

What changes, if any, should be made in the provisions of the Act exempting from the Act a person who procures recording contracts for an artist?

Conclusion

It is the majority opinion of the Commission that the exemption of the Act for anyone procuring a recording contract for an artist should be retained in the Act.

Recommendation

The Commission recommends that no change be made in the present language of the Act exempting procurement of recording contracts.

Discussion

For purposes of the discussion of this issue, reference is again made to the definitive section of the Act--Section 1700.4-- which provides in pertinent part as follows:

The activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter.

A recording contract is an employment contract of a different nature from those in common usage in the industry involving personal services. The purpose of the contract is to produce a

permanent and repayable showcase of the talents of the artist. In the recording industry, many successful artists retain personal managers to act as their intermediaries, and negotiations for a recording contract are commonly conducted by a personal manager, not a talent agent. Personal managers frequently contribute financial support for the living and business expenses of entertainers. They may act as a conduit between the artist and the recording company, offering suggestions about the use of the artist or the level of effort which the recording company is expending on behalf of the artist. The personal manager may become involved in travel arrangements on behalf of the artist, sometimes accompanying the artist to oversee arrangements for planes and hotels.

However, the problems of attempting to license or otherwise regulate this activity arise from the ambiguities, intangibles and imprecisions of the activity.

The majority of the Commission concluded that the industry would be best served by resolving these ambiguities on the side of preserving the exemption of this activity from the requirements of licensure.

Issue 3

Should the criminal sanctions of the Act removed by AB 997 be reinstated and, if so, in what form?

Conclusion

It is the majority view of the Commission that the industry would be best served without the imposition of civil or criminal sanctions for violations of the Act.

Recommendation

The Commission recommends that the criminal sanctions which were removed from the Act by AB 997, not be restored to the Act.

It is further recommended that a new sentence be added to Section 1700.44 of the Act as follows:

Any provision of any law or regulation of the State of California to the contrary notwithstanding, failure of any person to obtain a license from the Labor Commissioner under this Act shall not be considered a criminal act under any law of this State.

Discussions

The criminal sanctions in the nature of misdemeanor violations which were contained in the Act prior to their removal by AB 997 have been invoked on a number of occasions.

There is, however, an inherent inequity--and some question of constitutional due process--in subjecting one to criminal sanctions for the violation of a law which is so unclear and

ambiguous as to leave reasonable persons in doubt about the meaning of the language or whether a violation has occurred.

"Procure employment" is just such a phrase. While a majority of the Commission believes that there should be no unlicensed activity involving any aspect of procuring of employment for artists, the uncertainty of knowing when such activity may or may not have occurred at pain of criminal sanctions has left the personal manager uncertain and highly apprehensive about the permissible parameters of their daily activity.

Therefore, the Commission indicated in its early discussions that if criminal penalties were to be reinstated, the failure to obtain a license should be no more than an infraction, meaning that monetary but no criminal penalties should attach to the failure to obtain a license.

The Commission then considered the addition to the Act of the following:

Any provision of any law or regulation of the State of California to the contrary notwithstanding, any person who violates any provisions of this chapter is guilty of a misdemeanor punishable by a fine not to exceed \$1,000 for the first offense, \$5,000 for the second offense and \$10,000 for the third and each succeeding offense, or by imprisonment for a period of not more than six months, or both, except that violation of Section 1700.5

of this Act* shall be considered an infraction, punishable only by a fine in the above amounts.

Upon further deliberation, the Commission took no action on this proposed addition. Instead, it concluded that the industry would be best served by having no criminal sanctions of any kind attached to the Act.

The majority of the Commission believes that existing civil remedies, which are available by legal action in the civil courts, to anyone who has been injured by breach of the Act, are sufficient to serve the purposes of deterring violations of the Act and punishing breaches. These remedies include actions for breach of contract, fraud and misrepresentation, breach of fiduciary duty, interference with business opportunity, defamation, infliction of emotional distress, and the like. Perhaps the most effective weapon for assuring compliance with the Act is the power of the Labor Commissioner, at a hearing on a Petition to Determine Controversy, to find that a personal manager or anyone has acted as an unlicensed talent agent and, having so found, declare any contract entered into between the parties void from the inception and order the restitution to the

*Section 1700.5 is the section which requires the talent agent to obtain a license from the Labor Commissioner.

artist, for the period of the statute of limitations, of all fees paid by the artist and the forfeiture of all expenses advanced to the artist. If no fees have been paid, the Labor Commissioner is empowered to declare that no fees are due and owing, regardless of the services which the unlicensed talent agent may have performed on behalf of the artist.

These civil and administrative remedies for violation of the Act continue to be available and should serve adequately to assure compliance with the Act.

Issue 4

Should the sunset provisions added to the Act by AB 997 be deleted?

Conclusion

The sunset provisions of the Act should be deleted.

Recommendations

The following sections of the Act should be deleted:

1700.4(b). This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

1700.44: This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

Discussion

This recommendation is supported by the basic premise of the Commission that, as modified by the recommendations of this report, the California Talent Agencies Act will be an exemplary statute and one which can serve as a model on this subject. It should, therefore, in all of its provisions, be made a permanent part of the laws of this state.

Issue 5

Should the entire Act be repealed, and/or should there be a separate licensing law for personal managers?

Conclusion

The Commission concludes that there is a need for the licensing of talent agents and that the Act should be retained. There is no need to license personal managers.

Recommendation

The Talent Agencies Act as amended by the recommendations of this report is an exemplary statute which should be retained.

There is no rationale or practical justification for the enactment of a law requiring the licensing of personal managers.

Discussion

For protection of artists, anyone who procures employment for an artist should be licensed. Such person has been legally defined as a talent agent, and licensure requirements and other regulatory provisions of the Talent Agencies Act are necessary and sufficient.

There is no justification for licensing personal managers. A significant fact should be underscored: It is not a person who is being licensed by the Talent Agencies Act: rather, it is the activity of procuring employment. Whoever performs that activity is legally defined as a talent agent and is licensed, as such. Therefore, the licensing of a personal manager--or anyone else who undertakes to procure employment for an artist--with the

Talent Agencies Act already in place would be a needless duplication of licensure activity.

The Commission concluded that the licensing provisions of the Talent Agencies Act are meaningful, and it reviewed and rejected amendments which would have added testing and other additional qualifying criteria for licensure over and above those already contained in the Act.

ISSUE 6

What other language changes, if any, should be made in the Act?

Conclusion

The Commission, by majority vote, and sometimes unanimously concluded that several administrative, technical and housekeeping changes would strengthen the Talent Agencies Act, make it more workable and enable it to serve the entertainment industry more effectively.

Recommendation

The several changes in the Act recommended by the Commission are set forth below, together with a brief statement of the reasons for each of the changes.

I. Add to Section 1700.2 the following:

(d) Registration fee means any charge made or attempted to be made to an artist: (1) for registering or listing an applicant for employment in the entertainment industry; (2) for letter writing; (3) for photographs, film strips, video tapes or other reproductions of the applicant; (4) for costumes for the applicant; or (5) any charge of a like nature made, or attempted to be made to the applicant.

Reason: "Registration fee" is not presently defined in the Act and must be defined because it is later proposed that the

collection of a registration fee be prohibited. The prohibition against the collection of a registration fee has been added to Section 1700.40.

2. Add to that paragraph of Section 1700.4(a) which defines "artists" the word "models" as follows:

The word "artists" as used herein refers to actors and actresses rendering services on the legitimate stage and in the production of motion pictures; radio artists; musical artists; musical organizations; directors of legitimate stage, motion picture and radio productions; musical directors; writers; cinematographers; composers; lyricists; arrangers; models and other entertainment enterprises.

Reason: As persons who function as an integral and significant part of the entertainment industry, models should be included within the definition of artist.

3. Amend the last paragraph of Section 1700.6 (d) by adding the following language which establishes the requirement for fingerprinting as a part of the application for a license as a talent agent, and which makes other minor changes, as follows:

The application must be accompanied by two sets of fingerprints and affidavits of at least two reputable residents, who-have-known7 or-been-associated-with7-the-applicant-for-two

years, of the city or county in which the business of the talent agency is to be conducted who have known, or been associated with, the applicant for two years, that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

Reason: Fingerprints are necessary and should be required as a part of background checking of talent agents. The changes relating to the affidavits are intended to add to the credibility of those documents. The remaining changes are for clarification only.

4. Amend Section 1700.9 to read as follows:

1700.9 No license shall be granted to conduct the business of a talent agency:

~~(a) -- In rooms used for living purposes.~~

~~(b) -- Where boarders or lodgers are kept.~~

~~(c) -- Where meals are served.~~

~~(d) -- Where persons sleep.~~

~~(e) -- In connection with a building or premises where intoxicating liquors are sold or consumed.~~

(a) In a place that would endanger the health, safety, or welfare of the artist.

~~(f)~~ (b) To a person whose license has been

revoked within three years from the date of application.

Reason: Existing language is somewhat archaic and difficult to enforce. The proposed revision accomplishes the purposes to be served in governing the location in which a talent agent may conduct business, and the language conforms to the Employment Agency Act.

5. Amend Section 1700.15 by increasing the bond required for issuance of the license from \$1,000 to \$10,000, as follows:

1700.15 A talent agency shall also deposit with the Labor Commissioner, prior to the issuance of renewal of a license, a surety bond in the penal sum of ~~one-thousand-dollars~~ ~~(\$1,000)~~ ~~ten-thousand-dollars~~ ~~(10,000)~~ ten thousand dollars (\$10,000).

Reason: Increase in the bond from \$1,000 to \$10,000 will serve as a truer test of the financial credibility of the applicant and will provide more meaningful protection to the artist who may have to have recourse to the bond.

6. Amend Section 1700.19 as follows:

1700.19 Each license shall contain:

- (a) The name of the licensee.
- (b) A designation of the city, street, and number of the house premises in which the licensee is authorized to carry on the business of a talent agency.
- (c) The number and date of issuance of the

license.

Reason: A housekeeping change to correspond to the changes suggested for Section 1700.9 (d)--(above).

7. Add to Section 1700.21 the following additional basis in subsection (d) for the revocation or suspension of licensing:

The Labor Commissioner may revoke or suspend any license when it is shown that:

(a) The licensee or his agent has violated or failed to comply with any of the provisions of this chapter, or

(b) The licensee has ceased to be of good moral character, or

(c) The conditions under which the license was issued have changed or no longer exist, or

(d) Licensee has made any material misrepresentation or false statement in his application for a license.

Reason: To give added protection to the artist against misrepresentation or falsity by the applicant.

8. Amend Section 1700.24 as follows:

~~Every person engaged in the occupation of a~~
talent agency shall file with the Labor
Commissioner a schedule of fees to be charged
and collected in the conduct of such
occupation, and shall also keep a copy of such
schedule posted in a conspicuous place in the

office of such talent agency. Changes in the schedule may be made from time to time, but no fee or change of fee shall become effective until seven days after the date of filing thereof with the Labor Commissioner and until posted for not less than seven days in a conspicuous place in the office of such talent agency.

Reason: The language proposed to be deleted is inconsistent with references to talent agents in other sections of the Act and is redundant with the definition in Section 1700.4. Other changes are for clarification.

9. Delete Section 1700.25 as unnecessary and burdensome and add the following new section:

~~Before-making-any-theatrical-engagement, other than-an-emergency-engagement, every-person doing-business-as-a-talent-agency, shall prepare, sign, and-keep-in-his-files-a verified-statement-setting-forth-how-long-the applicant-employer-has-been-engaged-in-the theatrical-business.--Such-statement-shall-set forth-whether-or-not-the-applicant-employer has-failed-to-pay-salaries-or-left-stranded any-companies, in-which-the-applicant-employer and, if-a-corporation, any-of-its-officers-or directors, have-been-financially-interested~~

during-the-five-years-preceding-the-date-of
application-and, further, shall set forth the
names-of-at-least-two-persons-as-references.
If-the-applicant-is-a-corporation, the
statement-shall-set-forth-the-names-of-the
officers-and-directors-thereof-and-the-length
of-time-the-corporation-or-any-of-its-officers
have-been-engaged-in-the-theatrical-business
and-the-amount-of-its-paid-up-capital-stock.
If-any-allegation-in-the-statement-is-made
upon-information-and-belief, the-person
verifying-the-statement-shall-set-forth-the
sources-of-his-information-and-the-grounds-of
his-belief.--The-statement-shall-be-kept-for
the-benefit-of-any-person-whose-services-are
sought-by-any-such-applicant-employer.

A licensee who receives any payment (on behalf
of an artist) shall immediately deposit same
in a trust fund account maintained by him in a
bank or other recognized depository.

Said fund, less licensee's commission, shall
be disbursed to the artist within 15 days
after receipt.

A separate record shall be maintained of all monies
received subject to this section and said record shall
further indicate the disposition thereof.

Reason: The deleted language is unnecessary and burdensome. The new language affords additional protection to the artist by providing safeguards for monies due and owing to an artist which are paid to the talent agent.

10. Delete the following language from Section 1700.26:

Every talent agency shall keep records approved by the Labor Commissioner, in which shall be entered: (1) the name and address of each artist employing such talent agency; (2) the amount of fee received from such artist; ~~{3}-the-employment-in-which-such-artist-is engaged-at-the-time-of-employing-such-talent agency,-and-the-amount-of-compensation-of-the artist-in-such-employment,-if-any,-and~~ (3) the employments subsequently secured by such artist during the term of the contract between the artist and the talent agency, and the amount of compensation received by the artists pursuant thereto; and (4) other information which the Labor Commissioner requires. No talent agency, its agent or employees, shall make any false entry in any such records.

Reason: The deleted language is redundant, unnecessary and burdensome.

11. Add and delete the following language to Section 1700.30:

No talent agency shall sell, transfer, or give away to any person other than a director, officer, manager, employee or shareholder of the talent agency any interest in or the right to participate in the profits of the talent agency without the written consent of the Labor Commissioner. ~~A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisonment for not more than 60 days, or both.~~

Reason: The proposed exceptions are required to avoid the necessity of having the Labor Commissioner act as an approving authority on such matters as stock issues, bonuses, compensation plans and testamentary instruments. The Labor Commissioner has no administrative qualifications or regulatory jurisdiction as to such matters.

The criminal penalty provisions have been stricken in accordance with the Commission's unanimous view, which is consistent with AB 997, that all criminal sanctions should be removed from the Act.

12. Amend Section 1700.33 to read as follows:

No talent agency shall send or cause to be sent, ~~any woman or minor as an employee to any~~

~~house-of-ill-fame, to any house or place of amusement for immoral purposes, to places resorted to for the purposes of prostitution,~~
artist to any place where the health, safety, or welfare of the artist could be adversely affected, the character of which places the talent agency could have ascertained upon reasonable inquiry.

Reason: To broaden the protections to the artist in terms of places of permissible employment.

13. Add to Section 1700.40 the following first sentence:

No talent agent shall collect a registration fee.

Reason: To prohibit the collection of a registration fee which is unnecessary, burdensome and often subject to abuse.

14. Amend the third paragraph of Section 1700.44 as follows:

No action or proceeding may be prosecuted brought under this chapter with respect to any violation occurring or alleged to have occurred more than one year prior to commencement of the action or proceeding.

Reason: A language change to clarify the statutory period within which an action for alleged violation of the Act must be instituted.

15. Amend the fourth paragraph of Section 1700.44, as follows:

It shall not be unlawful for a person or

corporation who is not licensed under this chapter to act in conjunction with, and at the request of, a duly licensed and-franchised talent agency in the negotiations of an employment contract.

Reason: The reference to franchised talent agencies is unnecessary and unduly restrictive. Whether a franchise agreement exists between a talent agent and a union, guild or other franchising entity is irrelevant to the considerations of the Labor Commissioner in determining whether a person has acted as an unlicensed talent agent.

16. Amend the four lettered paragraphs of Section 1700.45 by adding the following underlined words to the end of subsections (a) and (b) thereof, as follows:

Notwithstanding Section 1700.44, a provision in a contract providing for the decision by arbitration of any controversy under the contract or as to its existence, validity, construction, performance, non-performance, breach, operation, continuance, or termination, shall be valid:

(a) If the provision is contained in a contract between a talent agency and a person for whom such talent agency under the contract undertakes to endeavor to secure employment,
or

(b) If the provision is inserted in the contract pursuant to any rule, regulation, or contract of a bona fide labor union regulating the relations of its members to a talent agency, and

(c) If the contract provides for reasonable notice to the Labor Commissioner of the time and place of all arbitration hearings, and

(d) If the contract provides that the Labor Commissioner or his authorized representative has the right to attend all arbitration hearings.

Reason: To clarify the application of the enumerated conditions which must be met before an arbitration provision may be regarded as valid and enforceable.

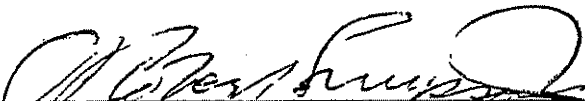
17. Delete Section 1700.47 as obsolete and unnecessary and substitute the following:

~~Any persons who held an unrevoked or unsuspended license as a musician booking agency 90 days prior to the effective date of the repeal of the musician booking agency license law may apply for and be issued a talent agency license for the remaining term of such license without examination or fee. Any musician booking agency application pending 90 days prior to the effective date of~~

~~such-repeal-shall-be-reprocessed-as-a-talent
agency-application-upon-written-request-of-the
applicant.--Any-fee-on-file-will-be-applied-to
the-talent-agency-application,--the-application
shall-meet-all-other-requirements,--including
investigation,--for-a-talent-agency-license
before-a-talent-agency-license-may-be-issued.~~
It shall be unlawful for any licensee under
this Act to refuse to represent any artist on
account of that artist's race, color, creed,
sex, national origin, religion or handicap.

Reason: The Act should provide protection to the artist
against breaches of these fundamental civil rights.

The foregoing report is respectfully submitted on this date
of December 2, 1985.


C. Robert Simpson, Jr.
Chair
California Entertainment
Commission

APPENDIX A

Summary of Legislation Preceding
the Talent Agencies Act

When the California Labor Code was enacted in 1937, the provisions of the Employment Agencies Act of 1913 (Stats. 515, Ch. 282) were re-enacted and incorporated in the new code. Two categories of employment agencies had been denominated by that Act and made subject to regulation: "general employment agencies" and, in recognition of California's infant entertainment industry, the "theatrical employment agencies." The latter were delineated as operating within the context of "circuses, vaudeville, theatrical and other entertainers, exhibitors and performers."

The 1937 Code established another category of employment agency, namely, "the motion picture employment agency" (Stats. 230, Ch. 90).

Regulatory controls over each of these categories of employment agencies were established, including licensing requirements and other restrictions on the operations of such agencies.

In 1943, the "artist manager" was added to the Employment Agencies Act (1943, Stats, 1326, Ch. 329). The artist manager was defined as:

A person who engages in the occupation of advising, counseling, or directing artists in the development or advancement of their professional careers and who procures, offers, promises or attempts to procure employment or engagements of an artist only in connection with and as a part of the duties and obligations of such person under a contract with such artist by which such person contracts to render services of the nature above mentioned to such artist.

In 1959, those provisions of the Employment Agencies Act pertaining to the "artist manager" were removed from that Act and were placed in the Labor Code as a separate group of sections (1959, Stats. 2929, Ch. 888).

These four categories of agents--employment agent, theatrical employment agent, motion picture employment agent and the artists' manager--existed under 1967. In the year, the California Legislature repealed the Employment Agencies Act, abolished the categories of theatrical employment agent and motion picture employment agent, transferred the provisions

relating to employment agencies to the Business and Professions Code and placed such agencies under the jurisdiction of the Department of Professional and Vocational Standards (since 1971, the Department of Consumer Affairs). Regulation of artists' manager remained in the Labor Code in the Artists' Manager Act, and, for purposes of administration, under the jurisdiction of the Labor Commissioner.

In 1978, the Act was renamed the Talent Agencies Act (1978, Ch. 1382) and that remains the name of the statute today. (The Talent Agencies Act will hereinafter be referred to as the Act.) Also by the same enactment, artists' managers became "talent agents", and the definition of an artists' manager, now a talent agent, was changed to read, as follows:

A talent agency is hereby defined to be a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist or artists. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

In 1982, AB 997 (1983, Ch. 682) made several significant changes in the Act. First, it excluded the procuring of recording contracts from the licensure requirements under the Act. To accomplish this exclusion, Section 1700.4 was amended by the addition of the following underlined language:

1700.4. (a) A talent agency is hereby defined to be a person or corporation who engages in the occupation of procuring, or attempting to procure employment or engagements for an artist or artists, except that the activities of procuring, offering, or promising to procure recording contracts for an artist or artists shall not of itself subject a person or corporation to regulation and licensing under this chapter. Talent agencies may, in addition, counsel or direct artists in the development of their professional careers.

It was also provided in AB 997 that the above exception would sunset on January 1, 1985, unless such sunset provision was deleted or further extended.

Also under AB 997, Section 1700.44 of the Act was amended by the addition of the following language, which established a statute of limitations of one year for bringing a legal action for violation of the Act:

No action or proceeding may be prosecuted under this chapter with respect to any violation occurring or alleged to have occurred more than one year prior to

commencement of the action or proceeding.

A highly significant exception to the licensure requirements of the Act was also added to AB 997 to Section 1700.44. That exception, which was a central point of debate in the deliberations of the Commission, is the following:

It shall not be unlawful for a person or corporation who is not licensed under this chapter to act in conjunction with, and at the request of, a duly licensed and franchised talent agency in the negotiations of an employment contract.

The final amendment of AB 997 to Section 1700.44 was the sunset provision which reads:

This section shall remain in effect only until January 1, 1985, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends that date.

The above sunset dates were extended by Stats. 1984, Ch. 553, to January 1, 1986, unless deleted or further extended.

AB 997 also established the California Entertainment Commission by the enactment of the above-quoted sections of the Labor Code--Sections 1701, 1702 and 1703. Section 1704, which sunsetted the Commission on January 1, 1985, was amended by Cal. Stats., Ch. 553 by extending the existence of the Commission to January 1, 1986.