

STORAGE NAME: h4431.brc
DATE: March 25, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4431 (PCB BRCA 98-10)

RELATING TO: Talent Agencies

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Rep. Ogles

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 6 NAYS 1
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I. SUMMARY:

This bill repeals part VII of chapter 468, F.S., related to the regulation of talent agencies, effective July 1st of the year enacted.

Under s. 468.401, F.S., a "talent agency" is defined as "any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagement for an artist." An "artist" is defined as a "person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model."

Talent agencies are regulated by the Department of Business and Professional Regulation. This regulation is of an industry, not a profession. There is no required testing for licensure, no continuing education requirement, and no professional regulatory board.

Requirements for licensure include paying a: \$5,000 surety bond; \$300 application fee; and biennial fees for initial licensing, renewal of license, and reinstatement of license, none of which fees shall exceed \$400. The applicant must supply affidavits from at least five reputable persons attesting to the moral character of the applicant. The applicant cannot be a convicted felon.

The regulation of talent agencies has been in effect since 1986. The number of active licensees in 1997 was 275, down from 445 in 1996. In 1991-92, the disciplinary activities of DBPR related to this industry resulted in 12 actions involving revocation, suspension, probation, reprimands or fines; in 1992-93, there were 7 disciplinary actions; in 1993-94, 3 disciplinary actions; and in 1994-95, there were 24 disciplinary actions, of which 21 actions were fines totaling \$19,300. There were 36 and 40 complaints in 1995-96 and 1996-97, respectively. No data on the number of disciplinary actions was immediately available.

Despite the application and renewal fees, talent agencies have a negative trust fund balance of \$272,208. The department has been operating on a cash deficit from the inception of talent agency regulation. The licensure fees are at their statutory cap, and the department has proposed a \$1,000 one-time assessment as necessary to bring the regulation of talent agents into compliance with section 455.219, F.S.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

"Theatrical employment agencies" were regulated by the state from 1947-1980; however, under the Regulatory Reform Act of 1976, chapter 449, F.S., was set for repeal on July 1, 1980. During the 1980 legislative session, legislation was introduced in the House and Senate to continue regulation of the industry, but the Legislature failed to adopt the legislation, thereby allowing regulation of these agencies to stand repeal effective July 1, 1980.

Each year, from 1981-1984, legislation providing for regulation of Talent, Modeling, or Theatrical Agencies within the Department of State failed passage. In 1985 and 1986, legislation was introduced placing regulation of Talent and Theatrical Agencies within the Department of Professional Regulation. Finally, in 1986, legislation was adopted and approved by the Governor reestablishing regulation of Talent and Theatrical Agencies within the Department of Professional Regulation (ch. 86-292, Laws of Florida).

Under s. 468.401, F.S., a "talent agency" is defined as "any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagement for an artist." An "artist" is defined as a "person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model."

Talent agencies are regulated by the Department of Business and Professional Regulation. The department is responsible for issuing and revoking licenses, taking disciplinary action against an agency for specific violations, establishing application, license, and registration fees, and promulgating rules for implementation of the law. This regulation is of an industry, not a profession. There is no required testing for licensure, no continuing education requirement, and no professional regulatory board.

Requirements for licensure include paying a: \$5,000 surety bond; \$300 application fee; and biennial fees for initial licensing, renewal of license, and reinstatement of license, none of which fees shall exceed \$400. In addition, the owner of a talent agency must submit: a set of fingerprints; a photograph taken within the last two years; proof of one year of direct experience in the industry; disclose parties with financial interests in the agency; and supply affidavits from at least five reputable persons attesting to the moral character of the applicant. The applicant cannot be a convicted felon.

Despite the application and renewal fees, the department has been operating on a cash deficit from the inception of talent agency regulation. The licensure fees are at their statutory cap, and the department has proposed a \$1,000 one-time assessment as necessary to bring the regulation of talent agents into compliance with section 455.219(1) and (2), F.S., (the underlined portions contain the most specifically relevant provisions), which states:

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board. Each board, or the department when there is no board,

shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

(2) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active and each voluntary inactive licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of such professions as required in this section. No more than one such assessment may be made in any 4-year period without specific legislative authorization.

The trust fund account for the regulation of talent agents is currently (as of June 30, 1997) at a deficit of \$272, 208. Without action, the DBPR projects the deficit to be at \$447,413 by June 30, 1999. There are only 275 active talent agent licensees.

A 1996 report by DBPR found that practice by talent agencies does not normally result in direct physical or mental harm to the public. It also does not result in significant financial harm to a significant segment of the public. The harm which does occur is primarily financial; talent agents represent talent and have a major impact on the livelihood of the actors, models, musicians, and other performers and entertainers they represent. The management of the transaction by the talent agent provides the opportunity for fraudulent activity and the misappropriation of funds.

An analysis of the complaints received by DBPR relating to this industry indicates that the frequency of monetary loss or harm is very low, and the extent of loss is limited or minimal. Over the last three years, there were 141 legally sufficient complaints received by DBPR relating to this industry. The largest category of complaints appears to be for failure to pay the artist in a timely fashion.

While failure to pay in a financial transaction creates harm, the DBPR is not a collection agency. Additionally, the administrative process can be lengthy, time consuming and costly, and may not be the appropriate legal avenue to resolve the majority of complaints experienced in this industry. These complaints could alternately be resolved in the civil court system.

B. EFFECT OF PROPOSED CHANGES:

The bill repeals the regulation of talent agencies.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The DBPR will no longer have the authority to make rules or adjudicate disputes with regard to talent agents and agencies.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

Talent agents and agencies will no longer have to pay licensure and renewal fees, or any other fees associated with continued licensure.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Persons will be allowed to practice as a talent agent without having to comply with government imposed restrictions.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

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(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Part VII of ch. 468, F.S., ss. 20.165, 20.43, 232.435, 408.07, 443.101, 455.501, 455.607, 455.667, 489.109, 489.519, and 721.13, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Repeals the sections which comprise part VII of chapter 468, relating to the regulation of talent agents and agencies.

Sections 2-12. Amend ss. 20.165, 20.43, 232.435, 408.07, 443.101, 455.501, 455.607, 455.667, 489.109, 489.519, and 721.13, F.S., making technical changes relating to renumbering existing statutory references.

Section 13. Provides that the act shall take effect July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments section.

2. Recurring Effects:

See Fiscal Comments section.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments section.

4. Total Revenues and Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Persons working as talent agents will not have to bear licensure costs.

3. Effects on Competition, Private Enterprise and Employment Markets:

There should be heightened competition, since licensure qualifications will no longer exist to restrict entry into the profession.

D. FISCAL COMMENTS:

The impact of deregulation will be to reduce DBPR's budget by \$21,725. One FTE is currently devoted to this program. Over the past two fiscal years, the average annual cost of the program was \$51,035. Over the next two fiscal years, the average annual revenue collected by DBPR to support this program is estimated to be \$78,178. At the end of fiscal year 1996-1997, this program had a negative trust fund balance of \$272,208.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

As stated by the DBPR in their 1996 report:

It is the opinion of DBPR that financial harm is the primary impetus for regulation of talent agents. In most cases, the ability of DBPR to provide any compensation for economic or financial harm to a consumer is limited. Similar

financial harm can occur in many other instances where financial transactions take place: in retail stores, in private transactions facilitated through classified advertisements, etc. Talent agents as well as talent hired and represented by the agents should function with a contract which spells out all obligations and duties. The dictum "buyer beware" is appropriate for the public with regard to the practice of this profession, and it is incumbent on the profession to encourage responsible practice and promote the image and integrity of the profession.

Other alternatives to the regulatory process also exist, including both market forces and consumer choices. Consumers who suffer from harm have the same alternatives for seeking damages and compensation for harm as other buyers through the court system.

The primary benefit of the regulatory effort is to ensure that talent agents who may consistently cause financial harm to the public be denied a license to practice their profession. In most instances of professional regulation, there is reason to regulate the profession in order to ensure the competence of a professional to practice. For talent agents, the public has no intrinsic interest in the ability of a talent agent to represent talent successfully for either the purchaser of the talent or the talent itself. What the parties in these transactions need is protection from the willful misappropriation of funds, fraud, etc. These are criminal issues; they are not issues of professional practice.

The argument most strongly emphasized by proponents of continued regulation is that with interest in Florida for film-making and television burgeoning, deregulation of talent agencies may send the wrong message to national firms who may be considering locating their project in Florida.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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