

CHAMBER ACTION

1 The State Administration Appropriations Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to talent agencies and advance-fee talent
8 services; repealing part VII of ch. 468, F.S., relating to
9 the regulation of talent agencies; providing definitions;
10 requiring each talent agency and advance-fee talent
11 service to obtain a surety bond for a specified amount;
12 requiring each talent agency and advance-fee talent
13 service to give each artist a copy of the bond; providing
14 criminal penalties for failing to comply with the bonding
15 requirements; requiring each talent agency and advance-fee
16 talent service to maintain a permanent office during
17 certain specified hours; directing that certain records,
18 with specified information in them, be kept for each
19 artist; requiring that records be maintained for a
20 specified period; directing that all records of a talent
21 agency and advance-fee talent service be open to the
22 inspection of a state attorney; requiring that the talent
23 agency or advance-fee talent service give the state

24 attorney a copy of the records when so requested;
25 providing criminal penalties if the talent agency or
26 advance-fee talent service fails or refuses to disclose
27 information to a state attorney; providing criminal
28 penalties for failing to comply with the requirements
29 pertaining to records; directing a talent agency or
30 advance-fee talent service to post an itemized schedule of
31 maximum fees, charges, or commissions that it intends to
32 charge and collect for its services; providing for the
33 location for posting of the schedule; providing criminal
34 penalties for failing to post the fee schedule; requiring
35 that an artist and a talent agency or advance-fee talent
36 service enter into a written contract when such entity
37 agrees to perform services for the artist; providing an
38 exception under specified circumstances; providing for the
39 content of the written contract; requiring that a talent
40 agency or advance-fee talent service provide each artist
41 with a copy of the contract; requiring any person who
42 holds himself or herself out as an employee or agent of a
43 talent agency or advance-fee talent service to submit
44 fingerprints for background screening requirements prior
45 to owning, operating, soliciting business for, or
46 otherwise engaging in or carrying on the business of a
47 talent agency or advance-fee talent service in this state;
48 directing that a talent agency or advance-fee talent
49 service provide each artist with a copy of the screening
50 results; directing that all money collected by a talent
51 agency from an employer or buyer be paid to the artist

52 | within a specified period; providing that a contract is
 53 | voidable under certain circumstances; permitting an artist
 54 | to cancel a contract by giving written notice of the
 55 | cancellation to the talent agency or advance-fee talent
 56 | service within a specified period; prohibiting an artist
 57 | from waiving the right to cancel a contract; providing the
 58 | way in which a talent agency or advance-fee talent service
 59 | must refund money to an artist; providing criminal
 60 | penalties for violating provisions relating to
 61 | contracting; specifying certain prohibited acts by a
 62 | talent agency or advance-fee talent service; providing
 63 | criminal penalties for failure to comply; providing for
 64 | certain specified civil remedies for violations of the
 65 | act; removing the authority of the Department of Business
 66 | and Professional Regulation to regulate talent agencies;
 67 | providing for the use of certain funds after the effective
 68 | date of the act; requiring the department to rebate talent
 69 | agency license fees; authorizing the department to
 70 | continue to prosecute any legal proceedings and related
 71 | administrative cases that are pending on the effective
 72 | date of the act; providing an appropriation; providing an
 73 | effective date.

74 |

75 | Be It Enacted by the Legislature of the State of Florida:

76 |

77 | Section 1. Part VII of chapter 468, Florida Statutes,
 78 | consisting of sections 468.401, 468.402, 468.403, 468.404,

HB 873 CS

2005
CS

79 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411,
80 468.412, 468.413, 468.414, and 468.415, is repealed.

81 Section 2. Definitions.--As used in sections 2 through 7
82 of this act, the term:

83 (1) "Advance-fee talent service" means a service practiced
84 by a person or business entity, or the person's or business
85 entity's employees or authorized agents, which charges, attempts
86 to charge, or receives an advance fee from an artist for the
87 purpose of promoting, but not procuring, the employment or
88 engagement of the artist. Promoting the employment or engagement
89 of an artist includes, but is not limited to, the following
90 activities:

91 (a) Promoting or advertising an artist to a casting
92 director, talent agency, talent manager, or any other person
93 represented to be in a position to offer assistance in procuring
94 engagements or employment for the artist.

95 (b) Promoting or advertising an artist by using the
96 Internet, trade publications, or other media.

97 (c) Registering or listing an artist for employment in the
98 entertainment industry or as a customer of the advance-fee
99 talent service.

100 (d) Managing, directing, developing, or advancing the
101 artist's career.

102 (e) Preparing the artist for employment through career
103 counseling or consulting, vocational guidance, aptitude testing,
104 or evaluation.

105 (2) "Advance fee" means a fee that is due from or paid by
106 an artist before the artist obtains employment as an artist or

HB 873 CS

2005
CS

107 before the artist receives earnings as an artist. An advance fee
108 also includes money paid by the artist which exceeds the
109 earnings received by the artist.

110 (a) An advance fee does not include reimbursement for out-
111 of-pocket costs actually incurred by an advance-fee talent
112 service on behalf of the artist when paying for services
113 rendered or goods provided to the artist by an independent third
114 party if all of the following conditions are met:

115 1. The advance-fee talent service does not have a direct
116 or an indirect financial interest in the third party.

117 2. The advance-fee talent service does not accept a
118 referral fee or other consideration from the third party.

119 3. The services rendered or goods provided for the out-of-
120 pocket costs are not represented to be, and are not, a condition
121 for the advance-fee talent service to register or list the
122 artist with the advance-fee talent service.

123 4. The advance-fee talent service maintains adequate
124 records documenting that any amount to be reimbursed to the
125 advance-fee talent service was actually advanced or owed to a
126 third party, that the third party is not a person in which the
127 advance-fee talent service has a direct or indirect financial
128 interest, and that the advance-fee talent service did not
129 receive any consideration for referring the artist.

130 (b) The burden of producing evidence to support a defense
131 based upon an exemption or an exception provided in paragraph
132 (a) is on the advance-fee talent service claiming the exemption
133 or exception.

134 (3) "Artist" means a person who seeks to become or is an
 135 actor, actress, director, writer, cinematographer, composer,
 136 lyricist, arranger, model, extra, or other person rendering
 137 professional services on the legitimate stage or in the
 138 production of motion pictures, radio productions, musicals,
 139 television productions, print advertisements, or other
 140 entertainment enterprises.

141 (4) "Buyer" or "employer" means a person, company,
 142 partnership, corporation, or other business entity that uses the
 143 services of a talent agency or advance-fee talent service.

144 (5) "Compensation" means any one or more of the following:

145 (a) Money or other valuable consideration paid or promised
 146 to be paid for services rendered by an individual conducting the
 147 business of a talent agency or an advance-fee talent service;

148 (b) Money received by a person in excess of that which has
 149 been paid by the person for transportation, transfer of baggage,
 150 or board and lodging for an applicant for employment; or

151 (c) The difference between the amount of money received by
 152 a person who furnishes employees, performers, or entertainers
 153 for circus, vaudeville, theatrical, or other entertainments,
 154 exhibitions, engagements, or performances and the amount paid by
 155 the person to an employee, performer, or entertainer.

156 (6) "Divided fee" means the process by which, without
 157 written contractual approval of the artist, any two or more
 158 persons receive compensation for performing services for an
 159 artist and the total compensation paid to these persons exceeds
 160 the compensation that would have been paid to only one person
 161 acting on behalf of the artist.

162 (7) "Engagement" means any employment or placement of an
 163 artist during which the artist performs in his or her artistic
 164 capacity. The term does not apply to procuring opera, music,
 165 theater, or dance engagements for any nonprofit organization
 166 defined in s. 501(c)(3) of the Internal Revenue Code or any
 167 nonprofit arts organization in this state which has received a
 168 grant from the Division of Cultural Affairs of the Department of
 169 State or has participated in the state touring program of the
 170 Division of Cultural Affairs.

171 (8) "Operator" means the person who is or who will be in
 172 actual charge of a talent agency or an advance-fee talent
 173 service.

174 (9) "Owner" means a partner in a partnership, member of a
 175 firm, or one or more principal officers of a corporation whose
 176 partnership, firm, or corporation owns a talent agency or an
 177 advance-fee talent service, or an individual who is the sole
 178 owner of a talent agency or an advance-fee talent service.

179 (10) "Talent agency" or "agency" means a business entity
 180 or person who, for compensation, engages in the occupation or
 181 business of procuring or attempting to procure engagements for
 182 an artist and includes the agency's employees and authorized
 183 agents.

184 Section 3. Bond required.--

185 (1) Each talent agency or advance-fee talent service shall
 186 obtain a bond in the form of a surety by a reputable company
 187 engaged in the bonding business which is authorized to do
 188 business in this state. The bond must be for the penal sum of
 189 not less than \$10,000 and be conditioned on the talent agency or

190 advance-fee talent service conforming to and not violating any
 191 duty, term, condition, provision, or requirement of this act.

192 (2) A talent agency or advance-fee talent service must
 193 provide the artist with a copy of the bond.

194 (3) If a person fails to obtain or maintain a bond
 195 according to this section, the person commits:

196 (a) A misdemeanor of the second degree for a first
 197 violation, punishable as provided in s. 775.082 or s. 775.083,
 198 Florida Statutes.

199 (b) A misdemeanor of the first degree for a second
 200 violation, punishable as provided in s. 775.082 or s. 775.083,
 201 Florida Statutes.

202 (c) A felony of the third degree for a third or subsequent
 203 violation, punishable as provided in s. 775.082, s. 775.083, or
 204 s. 775.084, Florida Statutes.

205 Section 4. Office and records.--

206 (1) A talent agency or advance-fee talent service must
 207 maintain a permanent office and must maintain regular operating
 208 hours at that office. The office shall not be located on or
 209 within any property where intoxicating liquor is sold, where
 210 gambling is permitted, or where acts of prostitution are
 211 committed.

212 (2) A talent agency or advance-fee talent service must
 213 keep on file the application, registration, and fully executed
 214 contract of each artist that the talent agency or advance-fee
 215 talent service represents. The artist file of a talent agency
 216 must also include the total amount of compensation received by
 217 the artist, the amount of compensation received by the artist

218 for each performance, and documentation of all attempts made by
 219 the talent agency to procure engagements for the artist. The
 220 artist file of an advance-fee talent service must also include
 221 documentation of all attempts to promote or advertise the
 222 artist.

223 (3) A talent agency or advance-fee talent service shall
 224 not knowingly make a false entry in an applicant's file or
 225 receipt file.

226 (4) Each document in the file must be preserved for a
 227 period of not less than 5 years after the date of the last entry
 228 entered into the file.

229 (5)(a) All books, records, and other papers kept under
 230 this act by a talent agency or advance-fee talent service must
 231 be open to the inspection of a state attorney, or the state
 232 attorney's authorized agent, at any reasonable hour. The talent
 233 agency or advance-fee talent service must give the state
 234 attorney a true copy of the books, records, and papers, or any
 235 portion thereof, when so requested.

236 (b) A person may not refuse to disclose any information
 237 within his or her knowledge as required by this subsection, or
 238 fail or refuse to produce any document, book, or record for
 239 inspection which is in his or her possession, to a state
 240 attorney or the state attorney's authorized agent.

241 (c) If a person fails or refuses to disclose information
 242 to a state attorney as required by this subsection, the person
 243 commits a misdemeanor of the second degree, punishable as
 244 provided in s. 775.082 or s. 775.083, Florida Statutes.

245 (6) A talent agency must maintain records that contain all
 246 of the following information or documents:

247 (a) The name and current address of each artist employing
 248 the talent agency.

249 (b) The amount of commissions the talent agency has
 250 received from each artist.

251 (c) A record sheet for each engagement obtained by the
 252 talent agency. The record sheet is the only record required to
 253 show engagements. The record sheet must be kept in the artist's
 254 file for a period of not less than 5 years after the date of the
 255 last record sheet that was posted in the artist's file.

256 (d) The engagement the artist was performing in at the
 257 time the artist was retained by the talent agency. The documents
 258 must include the amount of compensation received by the artist
 259 from this engagement.

260 (e) The engagements the talent agency procured for the
 261 artist after the artist and talent agency entered into a
 262 contract. The documents must include the amount of compensation
 263 received by the artist from the engagements obtained for the
 264 artist during the life of the contract.

265 (7) An advance-fee talent service must maintain records
 266 that contain all of the following information or documents:

267 (a) The name and current address of each artist employing
 268 the advance-fee talent service.

269 (b) The amount of the advance fees paid by or for the
 270 artist during the term of the contract with the advance-fee
 271 talent service.

272 (c) A record of all efforts made in promoting the artist.
 273 A record of each effort to promote the artist must be maintained
 274 in the artist's file for a period of not less than 5 years after
 275 the effort to promote the artist was made.

276 (8)(a) If a person fails to maintain a permanent office
 277 and keep regular hours at that office, fails to maintain records
 278 and files as required by subsection (7), or knowingly makes
 279 false entries in an artist's files, the person commits:

280 1. A misdemeanor of the second degree for a first
 281 violation, punishable as provided in s. 775.082 or s. 775.083,
 282 Florida Statutes.

283 2. A misdemeanor of the first degree for a second
 284 violation, punishable as provided in s. 775.082 or s. 775.083,
 285 Florida Statutes.

286 3. A felony of the third degree for a third or subsequent
 287 violation, punishable as provided in s. 775.082, s. 775.083, or
 288 s. 775.084, Florida Statutes.

289 (b) If a person establishes or keeps an office where
 290 intoxicating liquor is sold, where gambling is permitted, or
 291 where acts of prostitution are committed, the person commits a
 292 felony of the second degree, punishable as provided in s.
 293 775.082, s. 775.083, or s. 775.084, Florida Statutes.

294 Section 5. Contracts and fees.--

295 (1)(a) A talent agency or advance-fee talent service shall
 296 post an itemized schedule of maximum fees, charges, or
 297 commissions that it intends to charge and collect for its
 298 services. The schedule must be posted in a conspicuous place in

299 each place of business. The schedule must be printed in not less
 300 than 30-point boldfaced type.

301 (b) A talent agency that uses a written contract
 302 containing a schedule of its maximum fees, charges, and
 303 commissions is not required to post the schedule.

304 (c) If a person fails to post in a conspicuous place a
 305 schedule of the itemized fees, charges, and commissions, if
 306 required to do so, the person commits:

307 1. A misdemeanor of the second degree for a first
 308 violation, punishable as provided in s. 775.082 or s. 775.083,
 309 Florida Statutes.

310 2. A misdemeanor of the first degree for a second
 311 violation, punishable as provided in s. 775.082 or s. 775.083,
 312 Florida Statutes.

313 3. A felony of the third degree for a third or subsequent
 314 violation, punishable as provided in s. 775.082, s. 775.083, or
 315 s. 775.084, Florida Statutes.

316 (2) An artist and a talent agency or advance-fee talent
 317 service must enter into a written contract when the parties
 318 agree that a talent agency or advance-fee talent service shall
 319 perform services for the artist. If the circumstances of the
 320 arrangement between the artist and the talent agency or advance-
 321 fee talent service prevent the execution of a contract before
 322 the artist performs, the artist and the talent agency or
 323 advance-fee talent service must execute the contract no later
 324 than 7 days after the first performance.

325 (3) The contract must incorporate the full agreement
 326 between the artist and the talent agency or advance-fee talent

327 service, be contained in a single document, and include the
 328 elements set forth in this section.

329 (4) Each contract between an artist and an advance-fee
 330 talent service must contain all of the following provisions:

331 (a) A description of the specific services to be performed
 332 by the advance-fee talent service, the duration of the contract,
 333 and the refund provisions if the services are not provided
 334 according to the contract.

335 (b) A statement of the fees that the advance-fee talent
 336 service will charge to or collect from the artist receiving the
 337 services and the date or dates when the artist must pay the
 338 fees.

339 (c) The following statement, in type no smaller than 10-
 340 point boldfaced type and in close proximity to the artist's
 341 signature, must be included in each advance-fee talent service
 342 contract:

343 RIGHT TO REFUND

344
 345 If you pay in advance all or any portion of a fee
 346 charged to you by (name of advance-fee talent service)
 347 and you fail to receive the services promised to you
 348 or that you were led to believe would be performed,
 349 (name of advance-fee talent service) shall, upon your
 350 request, return the full amount paid by you within 48
 351 hours after your request for a refund. If the refund
 352 is not made within 48 hours, (name of advance-fee
 353 talent service) shall also pay to you, in addition to

354 | the refund due to you, a sum equal to the amount of
 355 | the refund.

356 | YOUR RIGHT TO CANCEL

359 | (enter date of transaction)

361 | You may cancel this contract for advance-fee talent
 362 | services without any penalty or obligation if you give
 363 | notice of the cancellation, in writing, no later than
 364 | 14 days after the date of the transaction stated
 365 | above. If you wish to cancel the contract, you must
 366 | mail or deliver a signed and dated copy of the
 367 | following cancellation notice, another written
 368 | document notifying the advance-fee talent service that
 369 | you intend to cancel the contract, or send a telegram,
 370 | fax, or e-mail notifying the advance-fee talent
 371 | service that you intend to cancel the contract, to
 372 | (name of advance-fee talent service) at (address of
 373 | its place of business) NOT LATER THAN MIDNIGHT AFTER
 374 | (enter the date). ONLY A TALENT AGENCY MAY ENGAGE IN
 375 | THE OCCUPATION OF PROCURING, OFFERING, PROMISING, OR
 376 | ATTEMPTING TO PROCURE EMPLOYMENT OR ENGAGEMENTS FOR AN
 377 | ARTIST.

378 | CANCELLATION NOTICE

381 | I hereby cancel this contract.

HB 873 CS

2005
CS

382 Dated:

383 _____

384 Artist Signature.

385

386 (5) A talent agency or advance-fee talent service must
 387 give each artist a copy of the signed or authenticated contract
 388 listing the services to be provided and the fees, charges, or
 389 commissions to be charged at the time the contract is signed.

390 (6) A talent agency or advance-fee talent service must
 391 give each artist a copy of this act at the time the contract is
 392 signed.

393 (7)(a) Before owning, operating, soliciting business for,
 394 or otherwise engaging in or carrying on the business of a talent
 395 agency or advance-fee talent service in this state, each agent,
 396 owner, operator, or other person who is acting as or has a
 397 financial interest in a talent agency or advance-fee talent
 398 service must submit a full set of fingerprints as required by
 399 paragraph (b) and must obtain and maintain a letter, as provided
 400 in paragraph (e), from the Department of Business and
 401 Professional Regulation documenting that the results of the
 402 criminal history check do not disqualify the agent, owner,
 403 operator, or other person who is acting as or has a financial
 404 interest in a talent agency or advance-fee talent service.

405 (b) Each owner of a talent agency or advance-fee talent
 406 service shall submit to the Department of Business and
 407 Professional Regulation a full set of fingerprints, along with
 408 all applicable fees for processing and maintenance, of each

409 agent, owner, operator, or other person having a financial
 410 interest in the talent agency or advance-fee talent service.

411 (c) The fingerprint card or electronic fingerprints must
 412 be forwarded to the Department of Law Enforcement for purposes
 413 of processing the fingerprints to determine if the applicant has
 414 a state criminal history record. The fingerprints must also be
 415 forwarded to the Federal Bureau of Investigation for purposes of
 416 processing the fingerprints to determine if the applicant has a
 417 national criminal history record. The information obtained by
 418 the processing of the fingerprints by the Department of Law
 419 Enforcement and the Federal Bureau of Investigation shall be
 420 sent to the Department of Business and Professional Regulation
 421 for the purpose of determining if any agent, owner, operator, or
 422 other person having a financial interest in the talent agency or
 423 advance-fee talent service has been found guilty of, regardless
 424 of adjudication, or entered a plea of nolo contendere or guilty
 425 to sexual battery, lewd acts, or other sexual misconduct
 426 proscribed in chapter 800, Florida Statutes, or in s. 794.011,
 427 s. 827.071, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or
 428 s. 847.0145, Florida Statutes.

429 (d) The cost for the fingerprint processing shall be borne
 430 by the person subject to the criminal history record check. The
 431 fingerprint processing and maintenance fee shall be collected by
 432 the Department of Business and Professional Regulation through a
 433 process established by rule in an amount not to exceed \$100. The
 434 Department of Law Enforcement shall render a bill to the
 435 Department of Business and Professional Regulation for the

HB 873 CS

2005
CS

436 fingerprints submitted by the Department of Business and
437 Professional Regulation each month.

438 (e) Upon receipt and review of each criminal history
439 record, the Department of Business and Professional Regulation
440 shall, within 30 days, issue a letter to the talent agency or
441 advance-fee talent service notifying the talent agency or
442 advance-fee talent service:

443 1. That the results of the criminal history check do not
444 disqualify the agent, owner, operator, or other person who is
445 acting as or has a financial interest in a talent agency or
446 advance-fee talent service; or

447 2. That the results of the criminal history check
448 disqualify the agent, owner, operator, or other person who is
449 acting as or has a financial interest in a talent agency or
450 advance-fee talent service.

451 (f) Each talent agency and advance-fee talent service must
452 give the artist a copy of the letter issued by the Department of
453 Business and Professional Regulation documenting that the
454 results of the criminal history check do not disqualify the
455 agent, owner, operator, or other person who is acting as or has
456 a financial interest in a talent agency or advance-fee talent
457 service, as provided under subparagraph (e)2., before executing
458 a contract with an artist. The letter must have been issued
459 within the previous 36 months.

460 (g) If any talent agency or advance-fee talent service
461 agent, owner, or operator, or any other person who is acting as
462 or has a financial interest in a talent agency or advance-fee
463 talent service, fails to submit fingerprints for the background

464 check as required by this subsection, the person commits a
465 felony of the second degree, punishable as provided in s.
466 775.082, s. 775.083, or s. 775.084, Florida Statutes.

467 (8)(a) All money collected by a talent agency from an
468 employer or buyer for the benefit of an artist must be paid to
469 the artist within 7 business days after receiving the money from
470 the employer. The talent agency may reduce the amount paid to
471 the artist by the talent agency's commission.

472 (b) A talent agency is not required to pay money to an
473 artist until the talent agency receives payment from the
474 employer or buyer.

475 (9) A contract entered into by a talent agency or advance-
476 fee talent service which does not conform to this act is
477 voidable by the artist. If an artist voids a contract with a
478 talent agency or advance-fee talent service, the artist is not
479 required to pay or return any consideration received from the
480 talent agency or advance-fee talent service to induce the artist
481 to enter into the contract.

482 (10) An artist may cancel a contract with a talent agency
483 or advance-fee talent service by giving written notice of the
484 cancellation to the talent agency or advance-fee talent service
485 no later than 14 days after the date of transaction. If an
486 artist cancels a contract, the artist is not required to pay or
487 return any consideration received from the talent agency or
488 advance-fee talent service to induce the artist to enter into
489 the contract.

490 (11) An artist shall not waive the right to cancel a
491 contract with a talent agency or advance-fee talent service as

492 provided in this act. Any attempt by a talent agency or advance-
 493 fee talent service to induce an artist to waive the artist's
 494 right to cancel the contract is a violation of this act.

495 (12)(a) If an artist gives consideration to a talent
 496 agency to be used for expenses to obtain a specific engagement
 497 or employment and the talent agency fails to procure the
 498 specific engagement or employment for the artist, the talent
 499 agency shall, upon the artist's demand, repay all consideration
 500 paid by the artist.

501 (b) The talent agency must refund the consideration to the
 502 artist no later than 48 hours after receiving the demand from
 503 the artist. If the talent agency does not refund the artist
 504 within the prescribed time period, the talent agency must pay
 505 the artist a penalty that is equal to the amount of all
 506 consideration paid to the talent agency.

507 (13) An advance-fee talent service must refund fees as
 508 follows:

509 (a) If the artist does not receive the services promised
 510 or the services the artist was led to believe would be
 511 performed, the advance-fee talent service must, upon the
 512 artist's demand, refund the artist any fees collected by the
 513 advance-fee talent service for those services. The advance-fee
 514 talent service must make the refund to the artist no later than
 515 48 hours after the artist demands the refund. If the advance-fee
 516 talent service does not refund the artist within the prescribed
 517 time period, the advance-fee talent service must pay the artist
 518 a penalty that is equal to the amount of all fees paid to the
 519 advance-fee talent service.

520 (b) If an artist cancels the contract, the advance-fee
 521 talent service must refund in full all fees paid by the artist.
 522 The advance-fee talent service must refund the fees no later
 523 than 14 days after the artist cancels the contract. If the
 524 advance-fee talent service does not refund the artist within the
 525 prescribed time period, the advance-fee talent service must pay
 526 the artist a penalty that is equal to the amount of all fees
 527 paid to the advance-fee talent service.

528 (14) A talent agency or advance-fee talent service that
 529 violates this section commits:

530 (a) A misdemeanor of the second degree for a first
 531 violation, punishable as provided in s. 775.082 or s. 775.083,
 532 Florida Statutes.

533 (b) A misdemeanor of the first degree for a second
 534 violation, punishable as provided in s. 775.082 or s. 775.083,
 535 Florida Statutes.

536 (c) A felony of the third degree for a third or subsequent
 537 violation, punishable as provided in s. 775.082, s. 775.083, or
 538 s. 775.084, Florida Statutes.

539 Section 6. Prohibitions and penalties.--

540 (1)(a) A person, business entity, talent agency, or
 541 advance-fee talent service shall not accept an advance fee for
 542 procuring, offering, promising, or attempting to procure
 543 employment or engagements for an artist.

544 (b) A person, business entity, talent agency, or advance-
 545 fee talent service that violates this subsection commits a
 546 felony of the second degree, punishable as provided in s.
 547 775.082, s. 775.083, or s. 775.084, Florida Statutes.

548 (2)(a) An advance-fee talent service shall not make any
 549 false statement, representation, promise, or implication by its
 550 choice of name that it is a talent agency. An advance-fee talent
 551 service shall not state, promise, or represent that it will
 552 procure, or attempt to procure, employment or engagements for
 553 the artist.

554 (b) A person or advance-fee talent service that violates
 555 this subsection commits a felony of the second degree,
 556 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 557 Florida Statutes.

558 (3)(a) A person, talent agency, or advance-fee talent
 559 service, or an owner, operator, employee, or agent of a talent
 560 agency or advance-fee talent service, shall not:

561 1. Give an artist false information, make a false promise
 562 or misrepresentation concerning any engagement or employment, or
 563 make a false or misleading verbal or written promise or
 564 guarantee of any engagement as an artist.

565 2. Print, publish, distribute, or cause, authorize, or
 566 knowingly permit the making, printing, publication, or
 567 distribution of any false statement, description, or promise
 568 that would reasonably induce a person to act to his or her
 569 damage or injury.

570 3. Knowingly commit, or be a party to, any material fraud,
 571 misrepresentation, concealment, conspiracy, collusion, trick,
 572 scheme, or device whereby any other person lawfully relying upon
 573 the work, representation, or conduct of the talent agency or
 574 advance-fee talent service acts or has acted to his or her
 575 injury or damage.

576 4. Commit fraud or deceit in the operation of a talent
577 agency or advance-fee talent service.

578 5. Conspire with another talent agency or advance-fee
579 talent service or with another person to commit an act that
580 coerces, intimidates, or precludes another talent agency or
581 advance-fee talent service from advertising its services.

582 6. Solicit business, either personally or through any
583 other person, using fraud, deception, or misleading statements
584 or through the exercise of intimidation or undue influence.

585 7. Exercise undue influence on the artist in order to
586 exploit the artist for the financial gain of the talent agency,
587 advance-fee talent service, or a third party.

588 8. Commit sexual misconduct with an artist. An owner,
589 operator, employee, or agent of the talent agency or advance-fee
590 talent service shall not use the artist-agent relationship to
591 induce or attempt to induce the artist to engage or attempt to
592 engage in sexual activity.

593 9. Employ an employee, agent, owner, operator, or other
594 person with a financial interest who has been convicted of
595 sexual battery, lewd acts, or other sexual misconduct proscribed
596 in chapter 800, Florida Statutes, or in s. 794.011, s. 827.071,
597 s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, or s.
598 847.0145, Florida Statutes.

599 10. Send, or cause to send, an artist to a house of ill
600 fame, a house or place of amusement for immoral purposes, a
601 place where prostitution is performed, or a place for the
602 modeling or photographing of a minor in the nude, the character

603 of which could have been ascertained upon reasonable inquiry by
 604 the talent agency or advance-fee talent service.

605 a. For the purposes of this subparagraph, the term
 606 "modeling or photographing of a minor in the nude" means the
 607 visual display of the buttocks, genitals, or female breast,
 608 areolae, or nipples of a person younger than 18 years of age.

609 b. This subparagraph does not apply if both parents or the
 610 legal guardian of the minor are fully advised of the intended
 611 activity and both parents or the guardian execute a written
 612 consent for the visual display of their child or ward.

613 11. Fail to submit to the fingerprint background check
 614 when required by this act.

615 (b) A person, talent agency, or advance-fee talent service
 616 that violates this subsection commits a felony of the second
 617 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 618 775.084, Florida Statutes.

619 (4)(a) A person, talent agency, or advance-fee talent
 620 service shall not:

621 1. Make, or cause to be made, any false, misleading, or
 622 deceptive advertisement or representation concerning the
 623 services the artist will receive or the costs the artist will
 624 incur.

625 2. Publish or cause to be published any false, fraudulent,
 626 or misleading information, representation, notice, or
 627 advertisement.

628 3. Charge, collect, or receive compensation for any
 629 service performed by the talent agency or advance-fee talent

630 service greater than the charge, fee, or compensation specified
 631 in its schedule of maximum fees, charges, and commissions.

632 4. Advertise goods or services in a manner that is
 633 fraudulent, false, deceptive, or misleading in form or content.

634 5. Permit, aid, assist, procure, or advise a person to
 635 operate a talent agency or advance-fee talent service contrary
 636 to this act.

637 6. Fail to perform any statutory or legal obligation
 638 required by law for a talent agency or advance-fee talent
 639 service.

640 7. Require the applicant or artist to subscribe to or
 641 purchase any publication, postcard service, advertisement,
 642 resume service, photography service, website service, or video
 643 or audiotapes, or attend any school, acting school, workshop, or
 644 acting class as a condition to performing services for an
 645 applicant or artist.

646 8. Charge or attempt to charge, directly or indirectly, an
 647 artist for creating or providing photographs, filmstrips,
 648 videotapes, audition tapes, demonstration reels, talent
 649 brochures, or other reproductions of the artist, or for
 650 providing costumes, lessons, coaching, or similar training for
 651 the artist.

652 9. Refer an artist to a person who charges the artist a
 653 fee for the services described in this act in which the talent
 654 agency or advance-fee talent service has a direct or indirect
 655 financial interest.

656 10. Accept any compensation for referring an artist to a
 657 person charging the artist a fee for the services described in
 658 this act.

659 11. Knowingly issue a contract containing any term or
 660 condition that, if complied with, would be in violation of law.

661 12. Knowingly send or influence an artist to go to a
 662 prospective employer or place of business the character or
 663 operation of which the talent agency or advance-fee talent
 664 service knows to be in violation of the laws of the United
 665 States or this state.

666 13. Divide fees with anyone, including, but not limited
 667 to, an agent or other employee of an employer, buyer, casting
 668 director, producer, or director.

669 14. Fail to maintain records required by this act or
 670 knowingly making false entries in the records.

671 15. Fail, either before or at the time of executing a
 672 contract, to give the artist a copy of the signed or
 673 authenticated contract listing the services to be provided; an
 674 itemized schedule of maximum fees, charges, and commissions that
 675 it intends to charge and collect for its services; a copy of
 676 this act; a copy of the letter from the Department of Business
 677 and Professional Regulation indicating the results of the
 678 criminal history record; and a copy of a bond.

679 16. Charge a registration fee, except as permitted for
 680 advance-fee talent services.

681 17. Fail to notify an artist that there is a strike,
 682 lockout, or other labor dispute in active progress before
 683 sending the artist to an engagement.

684 (b) A person, talent agency, or advance-fee talent service
 685 that violates this subsection commits:

686 1. A misdemeanor of the second degree for a first offense,
 687 punishable as provided in s. 775.082 or s. 775.083, Florida
 688 Statutes.

689 2. A misdemeanor of the first degree for a second
 690 violation, punishable as provided in s. 775.082 or s. 775.083,
 691 Florida Statutes.

692 3. A felony of the third degree for a third or subsequent
 693 violation, punishable as provided in s. 775.082, s. 775.083, or
 694 s. 775.084, Florida Statutes.

695 Section 7. Remedies.--

696 (1)(a) If a state attorney believes there is probable
 697 cause that a talent agency, advanced-fee talent service, or
 698 other person has violated subsection (1), subsection (2), or
 699 subsection (3) of section 6 of this act, the state attorney may
 700 file a civil action in the circuit court to enjoin the talent
 701 agency, advanced-fee talent service, or other person from
 702 continuing the violation or doing any act in furtherance
 703 thereof, and for such other relief as the court deems
 704 appropriate.

705 (b) A state attorney may file a civil action in circuit
 706 court upon the sworn affidavit of a person alleging a violation
 707 of this act. The court may grant a temporary or permanent
 708 injunction restraining any talent agency, advanced-fee talent
 709 service, or other person from violating this act and the
 710 injunction shall issue without bond.

711 (2)(a) If an artist or other person is injured by the
 712 misconduct of a talent agency or advance-fee talent service, the
 713 artist may file a civil action in his or her own name upon the
 714 bond of the talent agency or advance-fee talent service in any
 715 court having jurisdiction of the amount claimed.

716 (b) The artist or other person filing the complaint may
 717 bring the action for temporary or permanent injunctive relief
 718 and may seek other relief, including, but not limited to,
 719 restitution for damages, court costs, a civil penalty not to
 720 exceed \$5,000 for each violation, treble damages for injured
 721 parties, and reasonable attorney's fees.

722 (c) Any claim made by an artist or other person is
 723 assignable, and the assignee is entitled to the same remedies
 724 upon the bond of the talent agency or advance-fee talent service
 725 or otherwise as the artist or other person aggrieved would be
 726 entitled to if the claim had not been assigned. A claim so
 727 assigned may be enforced in the name of the assignee.

728 (3) The remedies provided in this section are cumulative
 729 and not exclusive of any other remedy provided by law.

730 Section 8. The regulation of talent agencies by the
 731 Department of Business and Professional Regulation is abolished.
 732 Any funds and balances associated with the regulation of talent
 733 agencies remaining in the Professional Regulation Trust Fund
 734 after July 1, 2005, shall be used to pay any remaining expenses
 735 associated with this regulation. The department shall rebate
 736 talent agency license fees, on a pro rata basis, for the period
 737 beginning July 1, 2005, through the period for which license
 738 fees have been paid. If the account is in a deficit balance, the

HB 873 CS

2005
CS

739 funds shall be provided from the General Revenue Fund. Another
740 profession regulated by the Department of Business and
741 Professional Regulation shall not be assessed the cost of any
742 refund. Any funds or balances remaining in the trust fund after
743 January 1, 2006, shall be transferred to the General Revenue
744 Fund.

745 Section 9. The Department of Business and Professional
746 Regulation may continue to prosecute any legal proceedings and
747 related administrative cases that are pending on July 1, 2005.

748 Section 10. For fiscal year 2005-2006, \$59,331 in
749 nonrecurring funds is appropriated to the Department of Business
750 and Professional Regulation from the General Revenue Fund to
751 provide pro rata rebates of license fees paid by registrants.

752 Section 11. This act shall take effect July 1, 2005.