

Advance-Fee Talent Services Law

California Labor Code 1701

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Definitions

1701. For purposes of this chapter, the following terms have the following meanings:

(a)

(1) "Advance fee" means any fee due from or paid by an artist prior to the artist obtaining actual employment as an artist or prior to the artist receiving actual earnings as an artist or that exceeds the actual earnings received by the artist as an artist.

(2) "Advance fee" does not include reimbursements for out-of-pocket costs actually incurred by the payee on behalf of the artist for services rendered or goods provided to the artist by an independent third party if all of the following conditions are met:

(A) The payee has no direct or indirect financial interest in the third party.

(B) The payee does not accept any referral fee or other consideration for referring the artist.

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

(D) The payee maintains adequate records to establish that the amount to be reimbursed was actually advanced or owed to a third party and that the third party is not a person in which the payee has a direct or indirect financial interest or from which the payee receives any consideration for referring the artist.

(E) The burden of producing evidence to support a defense based upon an exemption or an exception provided in this paragraph is upon the person claiming it.

(b) "Advance-fee talent service" means a person who charges, attempts to charge, or receives an advance fee from an artist for one or more of the following:

(1) Procuring, offering, promising, or attempting to procure employment or engagements for the artist.

(2) Managing or directing the development or advancement of the artist's career as an artist.

(3) Career counseling, career consulting, vocational guidance, aptitude testing, evaluation, or planning, in each case relating to the preparation of the artist for employment as an artist.

(c) "Artist" or "artists" means persons who seek to become or are actors or actresses rendering

services on the legitimate stage or 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, extras, and other artists or persons rendering professional services in motion picture, theatrical, radio, television, and other entertainment enterprises.

(d) "Fee" means any money or other valuable consideration paid or promised to be paid by or for an artist for services rendered or to be rendered by any person conducting the business of an advance-fee talent service.

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

1701.1. This chapter does not apply to any person exempt from regulation under the Employment Agency, Employment Counseling, and Job Listing Services Act (Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code) pursuant to paragraph (2) of subdivision (b) of Section 1812.501 or Section 1812.502 of the Civil Code.

1701.2. Compliance with this chapter does not satisfy or is not a substitute for the requirements mandated by any other applicable law, including the obligation to obtain a license under the Talent Agencies Act (Chapter 4 (commencing with Section 1700)), prior to procuring, offering, promising, or attempting to procure employment or engagements for artists.

Contract Agreement Provisions and Recordkeeping

1701.4.

(a) Every contract or agreement between an artist and an advance-fee talent service for an advance fee shall be in writing. The contract shall contain all of the following provisions and the additional provisions, if any, as may be set forth in regulations adopted by the Labor Commissioner from time to time:

(1) The name, address, and telephone number of the advance-fee talent service, the artist to whom the services are to be provided, and the representative executing the contract on behalf of the advance-fee talent service.

(2) A description of the services to be performed, a statement when those services are to be provided, the duration of the contract, and refund provisions if the described services are not provided according to the contract.

(3) The amount of any fees to be charged to or collected from the artist receiving the services or any other person and the date or dates when those fees are required to be paid.

(4) The following statements, in type no smaller than 10-point boldface type and in close proximity to the artist's signature, shall be included in the contract:

RIGHT TO REFUND

"If you pay all or any portion of a fee and you fail to receive the services promised or that you were led to believe would be performed, then (name of advance-fee talent service) shall, upon your request, return the amount paid by you within 48 hours of your request for a refund. If the refund is not made within 48 hours, then (name of advance-fee talent service) shall, in addition, pay you a sum equal to the amount of the refund."

YOUR RIGHT TO CANCEL (enter date of transaction)

You may cancel this contract for advance-fee talent services, without any penalty or obligation, if notice of cancellation is given, in writing, within 10 business days from the above date. To cancel this contract, mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, or send a telegram containing a notice of cancellation to (name of advance-fee talent service) at (address of its place of business), NOT LATER THAN MIDNIGHT OF (date). ONLY A TALENT AGENT LICENSED PURSUANT TO SECTION 1700.5 OF THE LABOR CODE MAY ENGAGE IN THE OCCUPATION OF PROCURING, OFFERING, PROMISING, OR ATTEMPTING TO PROCURE EMPLOYMENT OR ENGAGEMENTS FOR AN ARTIST.

CANCELLATION NOTICE

I hereby cancel this contract.

Dated: _____

_____ Artist Signature.

(b) All contracts subject to this section shall be dated and shall be made and numbered consecutively in triplicate, the original and each copy to be signed by the artist and the person acting for the advance-fee talent service. The advance-fee talent service shall provide an original and one copy of the contract to the artist at the same time the artist signs the contract and before the artist or any person acting on his or her behalf becomes obligated to pay or pays any fee. The additional copy shall be kept on file at the advance-fee talent service's place of business.

(c) The full agreement between the parties shall be contained in a single document containing the elements set forth in this section.

(d) Any contract subject to this section that does not comply with subdivisions (a) to (c), inclusive, of this section shall be voidable at the election of the artist and, in that case, shall not be enforceable by the advance-fee talent service.

(e) Refunds shall be made as follows:

(1) In the event that an artist does not receive the services promised or that the artist was led to believe would be performed, the advance-fee talent service shall, upon demand therefor, repay the artist the fees collected for those services. If repayment is not made within 48 hours after the artist's demand, the advance-fee talent service shall pay the artist an additional sum equal to the amount of the fee.

(2) In the event that an artist cancels the contract, the advance-fee talent service shall refund in full any advance fees demanded by the artist in writing within 10 business days after delivery of the demand to the advance-fee talent service, provided that the artist furnishes a notice of cancellation to the advance-fee talent service in the manner specified in paragraph (4) of subdivision (a). Unless repayment is made within 10 business days after the demand, the advance-fee talent service shall pay the artist an additional sum equal to the amount of the fee.

1701.5.

(a) Every person engaging in the business of an advance-fee talent service shall keep and maintain records of the person's advance-fee talent service business. The records shall contain all of the following:

(1) The name and address of each artist employing that person as an advance-fee talent service.

(2) The amount of the advance fees paid by or for the artist during the term of the contract with

the advance-fee talent service.

(3) A record of all advertisements by the advance-fee talent service, including the date and the publication in which the advertisement appeared, which shall be maintained for a period of three years following publication.

(4) Records described in subparagraph (D) of paragraph (2) of subdivision (a) of Section 1701.

(5) Any other information that the Labor Commissioner requires.

(b) All books, records, and other papers kept pursuant to this chapter by an advance-fee talent service shall be open at all reasonable hours to inspection by the Labor Commissioner and his or her representatives and to the representative of the Attorney General, any district attorney, or any city attorney. Every advance-fee talent service shall furnish to the Labor Commissioner and to the representative of the Attorney General, any district attorney, or any city attorney, upon request, a true copy of those books, records, and papers, or any portion thereof, and shall make reports as the Labor Commissioner requires.

(c) Every advance-fee talent service shall post in a conspicuous place in the office of the advance-fee talent service a printed copy of this chapter and of other statutes as may be specified by regulation of the Labor Commissioner. Those copies shall also contain the name and address of the officer charged with the enforcement of this chapter. The Labor Commissioner shall furnish to the advance-fee talent service printed copies of any statute required to be posted under this section.

Written Disclosure

1701.8. Prior to requesting any advance fee, an advance-fee talent service shall provide an artist with written disclosure of all of the following:

(a) The name, address, and telephone number of the advance-fee talent service, and evidence of compliance with any applicable bonding requirements, including the bond number, if any.

(b) A copy of the advance-fee talent service fee schedule and payment terms.

Bond Requirements and Fees

1701.10.

(a) Prior to engaging in the business or acting in the capacity of an advance-fee talent service, a person shall file with the Labor Commissioner a bond in the amount of ten thousand dollars (\$10,000) or a deposit in lieu of the bond pursuant to Section 995.710 of the Code of Civil Procedure. The bond shall be executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to ten thousand dollars (\$10,000). The bond may be terminated pursuant to Section 995.440 of, or Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the advance-fee talent service while acting within the scope of that employment or agency.

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

(d) The Labor Commissioner shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits.

(e)

(1) Whenever a deposit is made in lieu of the bond otherwise required by this section, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Labor Commissioner of a money judgment entered by a court, together with evidence that the claimant is a person described in subdivision (b).

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

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

(4) Whenever the Labor Commissioner approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which paragraph (3) applies with respect to any amount remaining in the deposit.

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

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

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

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

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

(C) The account number of the deposit.

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

(8) A superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the court that there are no outstanding claims against the deposit, or

order the Labor Commissioner to retain the deposit for a specified period beyond the two years to resolve outstanding claims against the deposit.

(9) This subdivision applies to all deposits retained by the Labor Commissioner. The Labor Commissioner shall notify each assignor of a deposit it retains and of the applicability of this section. (10) Compliance with Sections 1700.15 and 1700.16 of this code or Section 1812.503, 1812.510, or 1812.515 of the Civil Code shall satisfy the requirements of this section.

Prohibited Acts

1701.12. An advance-fee talent service, or its agent or employee, may not do any of the following:

- (a) Make, or cause to be made, any false, misleading, or deceptive advertisement or representation concerning the services the artist will receive or the costs the artist will incur.
- (b) Publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement.
- (c) Give an artist any false information or make any false promise or misrepresentation concerning any engagement or employment, or make any false or misleading verbal or written promise or guarantee of any job or employment to an artist.
- (d) Make any false promise or representation, by choice of name or otherwise, that the advance-fee talent service is a talent agency or will procure or attempt to procure employment or engagements for the artist as an artist.
- (e) Charge or attempt to charge, directly or indirectly, an artist for registering or listing the artist for employment in the entertainment industry or as a customer of the advance-fee talent service.
- (f) Charge or attempt to charge, directly or indirectly, an artist for creating or providing photographs, filmstrips, videotapes, audition tapes, demonstration reels, or other reproductions of the artist, casting or talent brochures, or other promotional materials for the artist.
- (g) Charge or attempt to charge, directly or indirectly, an artist for creating or providing costumes for the artist.
- (h) Charge or attempt to charge, directly or indirectly, an artist for providing lessons, coaching, or similar training for the artist.
- (i) Charge or attempt to charge, directly or indirectly, an artist for providing auditions for the artist.
- (j) Refer an artist to any person who charges the artist a fee for the services described in subdivisions (e) to (i), inclusive, in which the advance-fee talent service has a direct or indirect financial interest.
- (k) Accept any compensation for referring an artist to any person charging the artist a fee for the services described in subdivisions (e) to (i), inclusive.

Remedies

1701.13. A person who willfully violates any provision of this chapter is guilty of a misdemeanor. Each violation is punishable by imprisonment in the county jail for not more than one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment.

However, payment of restitution to an artist shall take precedence over the payment of a fine.

1701.15. The Attorney General, any district attorney, or any city attorney may institute an action for a violation of this chapter, including, but not limited to, an action to restrain and enjoin a violation.

1701.16. A person who is injured by any violation of this chapter or by the breach of a contract subject to this chapter may bring an action for recovery of damages or to restrain and enjoin a violation, or both. The amount awarded for damages for a violation of this chapter may be up to three times the damages actually incurred, but not less than the amount paid by the artist to the advance-fee talent service. When an advance-fee talent service refuses or is unwilling to pay damages awarded by a judgment that has become final, the judgment may be satisfied from the bond or deposit maintained by the Labor Commissioner. If the plaintiff prevails in an action under this chapter, the plaintiff shall be awarded reasonable attorney's fees and costs. If the court determines, by clear and convincing evidence, that the breach of contract or violation of this chapter was willful, the court, in its discretion, may award punitive damages in addition to any other amounts.

1701.17. The provisions of this chapter are not exclusive and do not relieve any person subject to this chapter from the duty to comply with all other laws.

1701.18. The remedies provided in this chapter are not exclusive and shall be in addition to any other remedies or procedures provided in any other law.

1701.19. Any waiver by the artist of the provisions of this chapter is deemed contrary to public policy and void and unenforceable. Any attempt by an advance-fee talent service to have an artist waive his or her rights under this chapter is a violation of this chapter.

1701.20. If any provision of this chapter or the application thereof to any person or circumstances is held unconstitutional, the remainder of the chapter and the application of that provision to other persons and circumstances shall not be affected thereby.