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HOUSE BILL 1013

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO LICENSING; CREATING THE TALENT AGENCIES BOARD;  
PROVIDING LICENSING REQUIREMENTS FOR TALENT AGENTS; PRESCRIBING  
DUTIES OF THE TALENT AGENCIES BOARD; PROVIDING PENALTIES;  
PROVIDING FOR A DELAYED REPEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Talent Agencies Act".

Section 2. DEFINITIONS.--As used in the Talent Agencies  
Act:

- A. "board" means the talent agencies board;
- B. "department" means the regulation and licensing  
department;
- C. "entertainment industry" means the film,  
television, modeling and music industry;

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1           D. "fee" means any money or other valuable  
2 consideration paid, charged or promised to be paid for services  
3 rendered by any person conducting the business of a talent  
4 agent under the Talent Agencies Act;

5           E. "license" means a license issued by the  
6 department to carry on the business of a talent agent under the  
7 Talent Agencies Act;

8           F. "licensee" means a talent agent who holds a  
9 valid license under the Talent Agencies Act;

10          G. "performer" means a person employed in the  
11 entertainment industry;

12          H. "person" means any individual, company, firm,  
13 association, corporation, limited liability company, agent,  
14 broker, manager or the person's agents or employees;

15          I. "registration fee" means any charge made to a  
16 performer for any purpose related to employment in the  
17 entertainment industry, including promotion, marketing, listing  
18 a performer for employment, photographs, videotapes and courses  
19 in the entertainment industry, or any activity to promote,  
20 train or further the employment opportunities of a performer by  
21 a talent agent; and

22          J. "talent agent" means a person who engages in the  
23 occupation of procuring, training, promoting or attempting to  
24 procure employment for a performer in the entertainment  
25 industry in New Mexico.

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1 Section 3. TALENT AGENCIES ACT--APPLICATION--PERSONS  
2 EXEMPTED.--

3 A. The Talent Agencies Act shall apply to a person  
4 acting as a talent agent in the entertainment industry.

5 B. The Talent Agencies Act shall not apply to or  
6 affect:

7 (1) an accredited university or college  
8 offering courses for employment in the entertainment industry;  
9 and

10 (2) a person deemed exempt by the board.

11 Section 4. TALENT AGENCIES BOARD CREATED--MEMBERS--  
12 TERMS--REMOVAL--COMPENSATION.--

13 A. The "talent agencies board" is created. The  
14 board is administratively attached to the department. The  
15 board consists of nine members. Terms shall be staggered terms  
16 of three years, and appointments shall be made in a manner that  
17 the terms of the board members expire on June 30. Board  
18 members include:

19 (1) one member of the New Mexico arts  
20 commission;

21 (2) one member appointed by the New Mexico  
22 arts commission;

23 (3) one member of the governor's council on  
24 film and media industries;

25 (4) one member appointed by the governor's

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1 council on film and media industries;

2 (5) the superintendent of regulation and  
3 licensing or the superintendent's designee;

4 (6) one member of the New Mexico film division  
5 of the economic development department;

6 (7) one member appointed by the governor  
7 licensed as a talent agent from the film or television  
8 industry;

9 (8) one member appointed by the governor  
10 licensed as a talent agent from the music industry; and

11 (9) one member appointed by the governor  
12 representing a film union or the screen actors guild.

13 B. A vacancy shall be filled by appointment by the  
14 governor for the remainder of the unexpired term and shall be  
15 filled by a person having similar qualifications to those of  
16 the member being replaced. Board members shall serve until  
17 their successors have been qualified and appointed.

18 C. The board shall meet within sixty days of the  
19 beginning of a fiscal year and elect from its membership a  
20 chair and vice chair. The board shall meet at other times as  
21 it deems necessary or advisable or as deemed necessary or  
22 advisable by the chair or majority of its members or the  
23 governor, but in no event less than twice a year. Reasonable  
24 notice of all meetings shall be given in the manner prescribed  
25 by the board. A majority of the board members constitutes a

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1 quorum at any meeting or hearing.

2 D. The governor may remove a member from the board  
3 for neglect of a duty required by law, for incompetence, for  
4 improper or unprofessional conduct as defined by board rule or  
5 for any reason that would justify the suspension or revocation  
6 of the member's license to operate as a talent agent.

7 E. A board member shall not serve more than two  
8 consecutive full terms, and a member failing to attend three  
9 consecutive meetings shall automatically be removed as a board  
10 member after proper notice, unless excused for reasons set  
11 forth in board rules.

12 F. Members of the board shall be reimbursed as  
13 provided in the Per Diem and Mileage Act and shall receive no  
14 other compensation, perquisite or allowance.

15 Section 5. TALENT AGENCIES BOARD--POWERS--DUTIES.--The  
16 board:

17 A. shall adopt rules to carry out the purposes and  
18 policies of the Talent Agencies Act, including regulations  
19 relating to professional conduct, standards of performance,  
20 professional licensure, reasonable license, application,  
21 renewal and late fees and ethical standards of practice for a  
22 person holding a license to practice as a talent agent in New  
23 Mexico;

24 B. shall administer and coordinate the provisions  
25 of the Talent Agencies Act and rules adopted by the board. The

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1 board may investigate allegations of violations of the  
2 provisions of the Talent Agencies Act and report violations to  
3 the department;

4 C. shall keep records and minutes necessary to  
5 carry out its functions; and

6 D. may adopt a common seal for use by a talent  
7 agent.

8 Section 6. ADMINISTRATION--RULES.--The department shall:

9 A. enforce and administer rules necessary to carry  
10 out the provisions of the Talent Agencies Act;

11 B. conduct hearings upon charges relating to  
12 discipline of a licensee or the denial, suspension or  
13 revocation of a license; and

14 C. maintain an official roster showing the name,  
15 address and license number of each talent agent licensed  
16 pursuant to the Talent Agencies Act.

17 Section 7. REQUIREMENTS FOR LICENSURE.--The department  
18 shall issue a license for a talent agent to a person who files  
19 a completed application accompanied by the required fees and  
20 who submits satisfactory evidence that the applicant:

21 A. is at least eighteen years of age;

22 B. has shown to the satisfaction of the department  
23 familiarity with state labor laws;

24 C. has not been convicted of a felony offense in  
25 the last five years involving fraud or dishonesty;

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1 D. demonstrates the payment of all applicable taxes  
2 owed to the state and local government or proves that the  
3 applicant is not subject to a tax; and

4 E. is otherwise qualified with experience and  
5 training or meets other requirements deemed necessary by the  
6 board.

7 Section 8. LICENSE--FEES--RENEWAL.--

8 A. Each applicant for licensure shall pay a fee set  
9 by the department not to exceed one thousand dollars (\$1,000).

10 B. On or before June 30 of each odd-numbered year,  
11 every applicant or person licensed under the Talent Agencies  
12 Act shall submit registration or renewal registration on a form  
13 prescribed and furnished by the department. Information  
14 required on the application and renewal form shall include the  
15 licensee's current address, state tax identification number and  
16 proof of compliance with requirements for licensure promulgated  
17 by the department.

18 C. Failure to renew a license by June 30 of each  
19 renewal year shall cause the license to be suspended until a  
20 late fee not to exceed one hundred dollars (\$100), together  
21 with the unpaid renewal fee, is received by the department.

22 D. Any license that is not renewed within one year  
23 from the date of the expired license shall be automatically  
24 revoked.

25 Section 9. BOND REQUIRED.--

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1           A. A license shall not be issued under the Talent  
2 Agencies Act unless the applicant files with the department a  
3 surety bond in an amount determined by the board executed by a  
4 surety company authorized to do business in this state. The  
5 form of bond, its execution and the sufficiency of the surety  
6 shall be verified by the department.

7           B. A licensee shall maintain the surety bond, and  
8 upon failure to do so, the license of the licensee shall be  
9 suspended and shall not be reinstated until an application in  
10 the form prescribed by the department is filed together with a  
11 proper surety bond. The department may deny the application  
12 notwithstanding the applicant's compliance with this section:

13                   (1) for any reason that would justify a  
14 refusal to issue or a suspension or a revocation of a license;  
15 or

16                   (2) for the performance by the applicant of  
17 any practice while under suspension for failure to keep the  
18 applicant's bond in force for which a license under the Talent  
19 Agencies Act is required.

20           C. Bonds executed and filed with the department  
21 pursuant to the Talent Agencies Act shall remain in force until  
22 the surety company has terminated future liability by thirty-  
23 day notice to the department.

24           Section 10. DENIAL, SUSPENSION OR REVOCATION OF LICENSE  
25 OR REGISTRATION.--In accordance with procedures contained in

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1 the Uniform Licensing Act, the department may deny, suspend or  
2 revoke any license held or applied for under the Talent  
3 Agencies Act upon grounds that the licensee, registrant or  
4 applicant:

5 A. made a false statement or gave false information  
6 in connection with an application for a license or renewal or  
7 reinstatement of a license;

8 B. violated any provision of the Talent Agencies  
9 Act;

10 C. committed or permitted any employee to commit  
11 any act while the license was expired that would be cause for  
12 the suspension or revocation of a license or grounds for the  
13 denial of an application for a license;

14 D. willfully failed or refused to render to a  
15 client services or a report as agreed between the parties for  
16 which compensation has been paid or tendered in accordance with  
17 the agreement of the parties;

18 E. knowingly violated, or advised, encouraged or  
19 assisted the violation of, any court order or injunction in the  
20 course of business of the licensee;

21 F. knowingly issued a worthless or otherwise  
22 fraudulent payroll check that is not redeemed within two days  
23 of denial of payment by any bank; or

24 G. violated a rule promulgated by the board that  
25 the board has determined may warrant denial, suspension or

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1 revocation.

2 Section 11. VIOLATIONS--REMEDIES.--

3 A. The attorney general, a district attorney or a  
4 city attorney may institute an action for a violation of the  
5 Talent Agencies Act, including, but not limited to, an action  
6 to restrain and enjoin a violation.

7 B. A person who willfully violates any provision of  
8 the Talent Agencies Act is guilty of a misdemeanor. Each  
9 violation is punishable by imprisonment in the county jail for  
10 not more than one year or by a fine not exceeding ten thousand  
11 dollars (\$10,000) or by both. Payment of restitution to a  
12 performer shall take precedence over the payment of a fine.

13 C. A person who is injured by any violation of the  
14 Talent Agencies Act or by breach of contract subject to that  
15 act may bring an action for recovery of damages or an action to  
16 restrain and enjoin a violation, or both, and:

17 (1) the amount awarded for damages for a  
18 violation of the Talent Agencies Act may be up to three times  
19 the damages actually incurred, but not less than the amount  
20 paid by the performer to the talent agent or person without a  
21 valid license acting as a talent agent;

22 (2) when a talent agent cannot or refuses to  
23 pay damages awarded by a final judgment, the judgment may be  
24 satisfied from the bond maintained by the department;

25 (3) if the performer prevails as plaintiff,

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1 the plaintiff shall be awarded reasonable attorney fees and  
2 costs;

3 (4) if the court determines, by clear and  
4 convincing evidence, that the breach of contract or violation  
5 of the Talent Agencies Act was willful, the court, in its  
6 discretion, may award punitive damages in addition to other  
7 amounts; and

8 (5) the remedies provided in the Talent  
9 Agencies Act are not exclusive and shall be in addition to any  
10 other remedies or procedures provided in any other law.

11 Section 12. PROHIBITED ACTS.--

12 A. It is unlawful for a person to act as a talent  
13 agent unless the person is licensed pursuant to the Talent  
14 Agencies Act.

15 B. A person shall not make any representation or  
16 advertise as being a talent agent or as being employed by a  
17 talent agent unless the person or the person's employer is  
18 licensed pursuant to the Talent Agencies Act.

19 C. Any waiver by the performer of the provisions of  
20 the Talent Agencies Act is deemed contrary to public policy,  
21 void and unenforceable. Any attempt by a talent agent to waive  
22 the performer's rights pursuant to the Talent Agencies Act is a  
23 violation of that act.

24 D. A license issued pursuant to the Talent Agencies  
25 Act is not transferable or reassignable.

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