**South Carolina General Assembly**

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**H. 4235**

**STATUS INFORMATION**

General Bill

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Summary: Talent agencies

**HISTORY OF LEGISLATIVE ACTIONS**

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12/15/2009 House Referred to Committee on **Labor, Commerce and Industry**

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**VERSIONS OF THIS BILL**

[12/15/2009](file:///p:\pprever\2009-10\4235_20091215.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 84 TO TITLE 40 SO AS TO REGULATE TALENT AGENCIES AND TALENT AGENTS IN THIS STATE; TO CREATE A SOUTH CAROLINA BOARD OF TALENT AGENCIES AND TALENT AGENTS AND TO PROVIDE FOR THE BOARD MEMBERS’ APPOINTMENT, TERMS OF OFFICE, AND APPOINTMENT OF SUCCESSORS, AMONG OTHER THINGS; TO PROVIDE CERTAIN DEFINITIONS; TO PROHIBIT A PERSON FROM ENGAGING IN THE WORK OF A TALENT AGENCY OR TALENT AGENT WITHOUT OBTAINING A LICENSE FROM THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; TO PROVIDE A PROCEDURE FOR LICENSURE OF A TALENT AGENCY OR TALENT AGENT; TO SPECIFY CERTAIN OBLIGATIONS OF A TALENT AGENCY OR TALENT AGENT AND CONDUCT PROHIBITED OF A TALENT AGENCY OR TALENT AGENT, AMONG OTHER THINGS; AND TO AMEND SECTION 40‑1‑40, RELATING TO THE DOMAIN OF THE DEPARTMENT, SO AS TO ADD THE BOARD OF TALENT AGENCIES AND TALENT AGENTS TO THE LIST OF BOARDS UNDER THE DOMAIN OF THE DEPARTMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 40 of the 1976 Code is amended by adding:

“CHAPTER 84

Talent Agencies and Talent Agents

Section 40‑84‑10. Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to talent agencies and talent agents. However, if there is a conflict between this chapter and Article 1, Chapter 1, Title 40, the provisions of this chapter control.

Section 40‑84‑20. (A) There is created the South Carolina Board of Talent Agencies and Talent Agents which is responsible for the administration and enforcement of this chapter. The board shall consist of five members, two of whom appointed by the Speaker of the House, two of whom are appointed by the President Pro Tempore of the Senate, and one appointed by the Governor, all of whom must be residents of this State. A member of the board may not be engaged in the practice of being a talent agent, may have no financial interest in a talent agency, and may have no immediate family member practicing as a talent agent or who has a financial interest in a talent agency. As used in this section, ‘immediate family member’ is defined in Section 8‑13‑100(18).

(B) A member is appointed for a term of four years and serves until his successor is appointed and qualified. A vacancy must be filled for the unexpired portions of the term in the manner in which the vacating member was appointed. The Governor shall remove a member of the board in accordance with Section 1‑3‑240.

Section 40‑84‑30. As used in this chapter:

(1) ‘Artist’ means an actor or actress rendering a service on the legitimate stage and in the production of motion pictures, a radio artist, a musical artist, a musical organization, a director of a legitimate stage, motion picture and radio production, a musical director, a writer, a cinematographer, a composer, a lyricist, an arranger, a model, or another artist or person rendering a professional service in a motion picture, theatrical, radio, television, or other entertainment enterprise.

(2) ‘Board’ means the South Carolina Board of Talent Agencies and Talent Agents.

(3) ‘Emergency engagement’ means an engagement that must be performed within twenty‑four hours from the time when the contract for this engagement is made.

(4) ‘Department’ means the South Carolina Department of Labor, Licensing and Regulation.

(5) ‘Fee’ means:

(a) money or other valuable consideration paid or promised to be paid for a service rendered or to be rendered by a person conducting the business of a talent agency or acting as a talent agent under this chapter;

(b) money received by a person in excess of that which has been paid out by him for transportation, transfer of baggage, or board and lodging for an applicant for employment; or

(c) the difference between the amount of money received by a person who furnished an employee, a performer, or an entertainer for circus, vaudeville, theatrical, or other entertainment, exhibition, or performance, and the amount paid by him to the employee, performer, or entertainer.

(6) ‘License’ means a license issued by the department to conduct the business of a talent agency under this chapter.

(7) ‘Licensee’ means a talent agency or talent agent that holds a valid, unrevoked, and unforfeited license under this chapter.

(8) ‘Motion picture engagement’ means an engagement or employment of a person as an actor, actress, director, scenario, or continuity writer, camera man, or in another capacity concerned with the making of motion pictures.

(9) ‘Registration fee’ means a charge made, or attempted to be made, to an artist for:

(a) registering or listing an applicant for employment in the entertainment industry;

(b) letter writing;

(c) photographs, film strips, video tapes, or other reproductions of the applicant;

(d) costumes for the applicant; or

(e) another similar activity.

(10) ‘Talent agency’ or ‘talent agent’ means a person or corporation who engages in the occupation of procuring, offering, promising, or attempting to procure employment or engagements for an artist, except that the activities of procuring, offering, or promising to procure recording contracts for an artist alone may not subject a person or corporation to regulation and licensing under this chapter. A talent agency or talent agent also may counsel or direct an artist in the development of the artist’s professional career.

(11) ‘Theatrical engagement’ means the engagement or employment of a person as an actor, performer, or entertainer in a circus, vaudeville, theatrical, or other entertainment, exhibition, or performance.

Section 40‑84‑40. (A) A person may not engage in the occupation of a talent agent or the business of a talent agency until he has obtained a license for that occupation from the department pursuant to this chapter.

(B) A licensee under this chapter must post this license in a conspicuous place in his office and shall refer to his license number in advertisements or other paid communication intended to solicit an artist for representation by the licensee.

Section 40‑84‑50. (A)(1) A person seeking licensure as a talent agent or talent agency, or the renewal of this license, shall apply to the department in a form provided by the department. This form must, at a minimum, require an applicant to provide:

(a) this applicant’s name;

(b) the physical street address and telephone number of the location where the applicant intends to conduct business;

(c) the applicant’s telephone number;

(d) the business or occupation engaged in by the applicant for at least two years immediately preceding the date of application;

(e)(i) if the applicant is not a corporation, the names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the operation of the talent agency for which the license would apply, together with the amount of their respective interests; or

(ii) if the applicant is a corporation, the corporate name, the names, residential addresses, and telephone numbers of all officers of the corporation, the names of all persons exercising managerial responsibility in the applicant’s office, and the names and addresses of all persons having a financial interest of ten percent or more in the business and the percentage of financial interest owned by those persons.

(2) A person seeking licensure as a talent agent or talent agency, or the renewal of this license, shall submit with the application and information required in subsection (A) of this section a filing fee of twenty‑five dollars. In addition to this fee, every talent agency annually at the time a license is issued or renewed shall pay the department a license fee of:

(a) two hundred twenty‑five dollars; and

(b) fifty dollars for each branch office maintained by the licensee in this state.

(B)(1) A license may not be transferred or assigned unless written consent is obtained from the department, which may grant these requests. A person seeking consent of the department to transfer or assign a license issued under this chapter shall submit a written request and a twenty‑five dollar filing fee to the department. A license fee is not required for the transfer or assignment of a license, but is required for its renewal following the transfer or assignment. The renewal fee of a transferred or assigned license is based on the renewal date provided for the original license and may not be based on the transfer date.

(2) A licensee shall pay a filing fee of twenty‑five dollars to the department with the application for consent to the transfer or assignment of a talent agency license. A licensee fee may not be required upon the assignment or transfer of a license.

Section 40‑84‑60. The department may issue a temporary or provisional license valid for ninety or fewer days to an applicant during the pendency of the department’s review of his application for a new license or renewal of a license. A temporary or provisional license issued under this section is subject to automatic and summary revocation by the department.

Section 40‑84‑70. (A) When a person licensed to conduct talent agency business dies or has a conservator appointed by a probate court to protect his interests, the department may issue a certificate of convenience to enable a person to conduct this talent agency’s business.

(B) To be eligible for a certificate of convenience, a person must be the:

(1) executor or personal representative of the estate of a deceased person licensee;

(2) surviving spouse or, if no surviving spouse exists, another heir appointed by the probate court; or

(3) conservator of the estate of a person licensed to conduct the business of a talent agency.

(C) This certificate of convenience shall continue in force for a period of not to exceed ninety days and may be renewed for additional time as considered appropriate by the department, pending the disposal of the talent agency license or the procurement of a new license under the provisions of this chapter, and subject to approval by the probate court of competent jurisdiction.

Section 40‑84‑80. The department may not grant a license:

(1) for a talent agency or agent to operate in a place that would endanger the health, safety, or welfare of the artist; or

(2) to a person whose license has been revoked within three years from the date of application.

Section 40‑84‑90. A license issued under this section shall include:

(1) the name of the licensee;

(2) a designation of the city, street, and number of the premises in which the licensee is authorized to conduct the business of a talent agency;

(3) the date of issuance of the license; and

(4) a number determined by the department that is unique to the license and by which the department may readily identify the licensee.

Section 40‑84‑100. (A) A licensee shall develop a form it intends to use to create a written contract with an artist for the employment of the licensee’s service by this artist. This form must include:

(1) an agreement by the licensee to refer a controversy between the artist and the licensee relating to the terms of the contract to the board for adjustment;

(2) language printed on its face in prominent type stating: ‘This talent agency or talent agent is licensed by the South Carolina Department of Labor, Licensing and Regulation’; and

(3) other information the department considers essential to the formation of a valid contract.

(B) The licensee shall submit this form to the department and secure its approval of the form. The department may not withhold approval of a submitted form unless it considers the form unfair, unjust, and oppressive to the artist.

Section 40‑84‑110. A licensee shall file with the department a schedule of fees charged for its services and conspicuously post this schedule for public view in its place of business. A licensee periodically may change the schedule, but no new fee or change of an existing fee may become effective until seven days after the date of filing of this new fee or fee change with the department and until posted for not less than seven days in a conspicuous place in the licensee’s place of business.

Section 40‑84‑120. (A) A licensee who receives a payment of funds on behalf of an artist immediately shall deposit that amount in a trust fund account the licensee maintains in a bank or other recognized depository. The funds, less the licensee’s commission, must be disbursed to the artist within thirty days after receipt, except the licensee may retain the funds beyond thirty days of receipt to the extent necessary to offset an outstanding obligation of the artist to the licensee.

(B) A licensee shall maintain a separate record of all funds received on behalf of an artist and detailing the disposition of those funds.

Section 40‑84‑130. (A) A licensee shall keep records of:

(1) the name and address of each artist employing the talent agency;

(2) the amount of fees received from the artist;

(3) employment secured by the artist during the term of the contract between the artist and the licensee, and the amount of compensation received by the artists pursuant to that employment; and

(4) other information which the department or board requires.

(B) The department shall develop a form for the maintenance of records required under subsection (A) of this section.

(C) A licensee or his agent may make no false entry in a record required under this section.

Section 40‑84‑140. A licensee shall:

(1)(a) make all books, records, and other papers kept pursuant to this chapter open at reasonable hours for inspection by the department; and

(b) furnish to the department, upon request, a true copy of these books, records, and papers or a portion of them, and shall make these reports as the department prescribes; and

(2) post in a conspicuous place in the office of the licensee a printed copy of this chapter and other statutes specified by the department. These copies also shall contain the name and address of the officer charged with the enforcement of this chapter. The department shall furnish to talent agencies printed copies of any statute required to be posted under the provisions of this section.

Section 40‑84‑150. A licensee may not:

(1) ell, transfer, or give away to a person other than a director, officer, manager, employee, or shareholder of the licensee an interest in or the right to participate in the profits of a talent agency without the written consent of the department;

(2) knowingly issue a contract for employment containing a term or condition which, if complied with, would violate a law, or attempt to fill an order for help to be employed in violation of a law;

(3) publish or cause to be published false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a licensee by means of cards, circulars, signs, newspapers or other publications, and all letterheads, receipts, and blanks must be printed and contain the licensed name and address of the licensee and the words ‘talent agency’ or ‘talent agent’ as applicable;

(4) give false information or make a false promise or representation concerning an engagement or employment to an applicant who applies for an engagement or employment;

(5) send or cause to be sent, an artist to a place where the health, safety, or welfare of the artist could be adversely affected, the character of which place the talent agency could have ascertained upon reasonable inquiry;

(6) send a minor to a saloon or place where intoxicating liquors are sold to be consumed on the premises;

(7) knowingly permit persons of bad character, prostitutes, gamblers, intoxicated persons, or procurers to frequent, or be employed in, the licensee’s place of business;

(8) knowingly secure employment for an artist in a place where a strike, lockout, or other labor trouble exists, without notifying the artist of such conditions; and

(9) divide fees with an employer, an agent or other employee of an employer.

Section 40‑84‑160. (A) A minor cannot disaffirm an otherwise valid contract entered into during minority, either during the actual minority of the minor entering into this contract or at any time afterward, with a licensee to secure him engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field including, but without being limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor, or designer if the contract is made:

(1) on the form approved by the department under Section 40‑84‑120; and

(2) where the contract has been approved by the court of general sessions of the county where the minor resides or is employed. This approval may be given by the court on the petition of either party to the contract after reasonable notice an opportunity to be heard at a hearing before the court has been given to the other parties to the contract.

Section 40‑84‑170. In cases where an artist is sent by a talent agency beyond the limits of the city in which the office of the talent agency is located upon the representation of this licensee that employment of a particular type will there be available for the artist and the artist does not find this employment available, the licensee shall reimburse the artist for actual expenses incurred in going to and returning from the place where the artist was sent unless the artist has been otherwise reimbursed.”

SECTION 2. Section 40‑1‑40(B) of the 1976 Code is amended to read:

“(B) The following boards and the professions and occupations they license or otherwise regulate must be administered by the Department of Labor, Licensing and Regulation pursuant to this article:

Board of Accountancy

Board of Architectural Examiners

Athletic Commission

Auctioneers Commission

Board of Barber Examiners

Accessibility Committee of the Building Codes Council

Building Code Council

Board of Chiropractic Examiners

Contractors’ Licensing Board

Board of Cosmetology

Board of Dentistry

Engineers and Land Surveyors Board

Environmental Certification Board

Board of Registration for Foresters

Board of Funeral Service

Board of Registration for Geologists

Manufactured Housing Board

Board of Medical Examiners

Modular Buildings Board of Appeals

Board of Nursing

Long Term Health Care Administrators Board

Board of Occupational Therapy

Board of Examiners in Opticianry

Board of Examiners in Optometry

Board of Pharmacy

Board of Physical Therapy Examiners

Pilotage Commission

Board of Podiatry Examiners

Board of Examiners for Licensure of Professional Counselors and Marital and Family Therapists

Board of Examiners in Psychology

Board of Pyrotechnic Safety

Real Estate Appraisers Board

Real Estate Commission

Residential Builders Commission

Board of Social Work Examiners

Board of Talent Agencies and Talent Agents

Board of Examiners in Speech‑Language Pathology and Audiology

Board of Veterinary Medical Examiners”

SECTION 3. This act takes effect upon approval by the Governor.

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