Introduced by Senator Murray  
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January 7, 2002

An act to amend Section 2855 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST
Existing law provides that, except as specified, a contract to render personal service may not be enforced against an employee beyond 7 years from the commencement of service under the contract. However, an employee who is a party to a contract to render personal services in the production of specified phonorecords may not invoke this provision without first giving written notice to the employer, as specified, that the employee will no longer render service under the contract by reason of the above provision. Existing law also specifies the rights of the parties to recover damages for certain breaches of contracts related to the production of phonorecords.
This bill would state the intent of the Legislature to review the application of this provision to the contracts of recording artists to make findings and declarations concerning the 7-year limitation, would declare as the policy of the state that it may not be waived by the employee, and would delete the provisions relating to personal services in the production of phonorecords and the recovery of damages for certain breaches of contracts related to the production of phonorecords.

This bill would also provide for certain limitations on damages in an action for breach of contract against a recording artist who is a party to a contract to render personal service in the production of phonorecords and would provide that a recording company may not recover damages if the recording artist elects to produce albums for which damages are owed.

This bill would also provide that costs and advances for the albums produced under the provisions of this bill shall be borne in accordance with the contract between the parties, that a recording company may apply an advance already paid to a recording artist to an album or albums produced under the provisions of this bill, and that a recording company may recover certain advances for albums never delivered by a recording artist to a recording company under a contract between the parties.


The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to review the application of Section 2855 of the Labor Code to the contracts of recording artists.

SECTION 1. It is the fundamental policy of the State of California that no employee shall be contractually bound to an employer beyond seven years. The Legislature confirms the holding in De Haviland v. Warner Bros. Pictures (1944) 67 Cal.App.2d 225, that seven years is fixed as the maximum time for which employees “may contract for their services without the right to change employers or occupations. Thereafter, they may make a change if they deem it necessary or advisable” in order to employ their abilities to “the best advantage and for the highest obtainable compensation.”
In accordance with this holding, it is the policy of this state that this protection may not be waived by an employee and that employees as a group have the right to change employers or occupations after seven years. The Legislature finds that if it were possible for an employee to waive by agreement his or her rights under the law, the law would be meaningless. Therefore, the Legislature declares that a contract for personal services, whether for general services or “exceptional” services as described in De Haviland v. Warner Bros. Pictures, supra, may only be enforced for a term not exceeding seven years from the commencement of services under it.

Furthermore, it is the policy of the state that these protections be afforded to each and every resident of the State of California and that this requirement may not be waived by contract.

SEC. 2. It is the intent of the Legislature to restore the rights, obligations, and remedies contained in Section 2855 of the Labor Code, prior to its amendment by Chapter 591 of the Statutes of 1987.

The Legislature does not intend that the enactment of this act support any inference about the meaning of Section 2855 of the Labor Code prior to the date of this act’s enactment or with respect to any industry other than the phonorecord industry.

SEC. 3. Section 2855 of the Labor Code is amended to read:

2855. (a) Except as otherwise provided in subdivision (b), a contract to render personal service, other than a contract of apprenticeship as provided in Chapter 4 (commencing with Section 3070), may not be enforced against the employee beyond seven years from the commencement of service under it. Any contract, otherwise valid, to perform or render service of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value and the loss of which can not be reasonably or adequately compensated in damages in an action at law, may nevertheless be enforced against the person contracting to render the service, for a term not to exceed seven years from the commencement of service under it. If the employee voluntarily continues to serve under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

(b) Notwithstanding subdivision (a):
(1) Any employee who is a party to a contract to render personal service in the production of phonorecords in which sounds are first fixed, as defined in Section 101 of Title 17 of the United States Code, may not invoke the provisions of subdivision (a) without first giving written notice to the employer in accordance with Section 1020 of the Code of Civil Procedure, specifying that the employee from and after a future date certain specified in the notice will no longer render service under the contract by reason of subdivision (a).

(2) Any party to such a contract shall have the right to recover damages for a breach of the contract occurring during its term in an action commenced during or after its term, but within the applicable period prescribed by law.

(3) In the event a party to such a contract is, or could contractually be, required to render personal service in the production of a specified quantity of the phonorecords and fails to render all of the required service prior to the date specified in the notice provided in paragraph (1), the party damaged by the failure shall have the right to recover damages for each phonorecord as to which that party has failed to render service in an action which, notwithstanding paragraph (2), shall be commenced within 45 days after the date specified in the notice.

(b) Notwithstanding subdivision (a), in an action for breach of contract brought after the expiration of the seven-year period provided for in subdivision (a) against a recording artist who has availed himself or herself of the protections of this section and who is a party to a contract to render personal service in the production of phonorecords in which sounds are first fixed, as defined in Section 101 of Title 17 of the United States Code, damages, if any, are limited as follows:

(1) If the recording artist has delivered three albums or fewer under the contract and the contract required the recording artist to produce at least two more albums, the recording company may recover damages for the nondelivery of two albums.

(2) If the recording artist has delivered four, five, or six albums under the contract and the contract required the recording artist to produce at least two more albums, the recording company may recover damages for the nondelivery of one album.

(3) No damages may be recovered if at least seven albums have been produced under the contract.
(4) The recording company may not recover damages pursuant to this subdivision if the recording artist elects to produce, as applicable, the requisite number of albums specified in paragraph (1) or (2).

(c) An action brought against an artist that is commenced prior to the expiration of the seven-year period in subdivision (a) of Section 2855 shall, upon the expiration of the seven-year period, be subject to the limits on damages in this section.

(d) Costs and advances for the albums produced pursuant to paragraph (4) of subdivision (b) shall be borne by the parties as outlined in the contract between the parties. A record company may apply an advance already paid to a recording artist for a specific album that was not delivered, to an album or albums produced and delivered pursuant to paragraph (4) of subdivision (b). A record company may also recover an advance, which has not yet been recouped and that has already been paid to a recording artist for a specific album required in the contract between the parties that has not been delivered and for which damages are not provided pursuant to subdivision (b).

SEC. 4. Section 2 of this act does not apply to a civil action commenced prior to the effective date of this act.