

AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1385

Introduced by Assembly Member Lorena Gonzalez

February 19, 2021

~~An act to amend Section 2870 of the Labor Code, relating to employment.~~ *An act to amend Section 2855 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1385, as amended, Lorena Gonzalez. ~~Employment.~~ *Employee obligations: exclusivity options: music talent and actors.*

Existing law, except as specified, prohibits enforcement of a personal service contract beyond 7 years from the commencement of service under the contract. Under existing law, an employee who is a party to a contract to render personal services in the production of specified phonorecords is prohibited from invoking this provision without first giving written notice to the employer that the employee, from and after a specified date, will no longer render service under the contract by reason of the above provision. Existing law specifies that a party to a contract to render personal services in the production of specified phonorecords may still pursue an action for certain damages.

This bill would eliminate that provision requiring an employee who is a party to a contract to render personal services in the production of specified phonorecords to give written notice and would also repeal the provisions related to damages. The bill would instead authorize a music talent, as defined, to terminate, at any time, their personal services agreement by sending notice to the contracting party, if an option has not been exercised within 6 months of the earlier of the satisfaction of

the delivery obligation for a contract period by the musical talent or the initial commercial release of the applicable music product, and would also prohibit the inclusion of option periods that extend more than 6 months after the earlier of the satisfaction of the delivery obligation for a contract period by the musical talent or the initial commercial release of the applicable music product.

This bill would additionally prohibit the initial term, as specified, of a contract for the exclusive or first-priority personal services of an actor on an episodic series, as defined, from extending over 12 months after the earlier of delivery of the executed contract or commencement of the actor’s performance on the pilot or first episode of an episodic series. The bill would also require those contracts containing options exercisable by any person other than the actor to have all options exercised, and all of the actor’s performance services for optioned seasons completed, within 12 months after the completion of the actor’s performance services for the prior season. The bill would specify that if these timeframes are not met, the actor may, at any time, terminate their personal services agreement by sending notice to the contracting party.

This bill would prohibit the waiver of its provisions in an individual negotiation, collective bargaining agreement, or other agreement, and void any contract provision that would deprive a music talent or actor of the protections of this bill. The bill would provide that it applies to all unexercised option periods after January 1, 2022, regardless of the start date of the contract containing those option periods.

~~Existing law, with specified exceptions, prohibits an employer from requiring an employee to sign an employment agreement that assigns to the employer the employee’s rights to an invention developed on the employee’s own time and without using the employer’s facilities, equipment, or trade secrets.~~

~~This bill would make nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
 State-mandated local program: no.

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

- 1 SECTION 1. Section 2855 of the Labor Code is amended to
- 2 read:
- 3 2855. (a) ~~Except as otherwise provided in subdivision (b), a~~
- 4 A contract to render personal service, other than a contract of

1 apprenticeship as provided in Chapter 4 (commencing with Section
2 3070), may not be enforced against the employee beyond seven
3 years from the commencement of service under it. Any contract,
4 otherwise valid, to perform or render service of a special, unique,
5 unusual, extraordinary, or intellectual character, which gives it
6 peculiar value and the loss of which cannot be reasonably or
7 adequately compensated in damages in an action at law, may
8 nevertheless be enforced against the person contracting to render
9 the service, for a term not to exceed seven years from the
10 commencement of service under it. If the employee voluntarily
11 continues to serve under it beyond that time, the contract may be
12 referred to as affording a presumptive measure of the
13 compensation.

14 (b) ~~Notwithstanding subdivision (a):~~ *For purposes of this*
15 *section, the following definitions apply:*

16 (1) *“Actor” means an actor, stunt performer, voiceover*
17 *performer, or any other performing artist rendering on-screen or*
18 *off-screen performance services.*

19 (1)

20 ~~Any employee who is~~

21 (2) ~~“Episodic series” means a party to a contract to render~~
22 ~~personal service in the production series of phonorecords in which~~
23 ~~sounds are first fixed, two or more motion pictures, as defined in~~
24 ~~Section 101 of Title 17 of the United States Code, may not invoke~~
25 ~~the provisions of subdivision (a) without first giving written notice~~
26 ~~to the employer in accordance with Section 1020 of the Code of~~
27 ~~Civil Procedure, specifying that the employee from and after a~~
28 ~~future date certain specified in the notice will no longer render~~
29 ~~service under the contract by reason of subdivision (a).~~ *produced*
30 *for initial exhibition on television, streaming, or other distribution,*
31 *but excluding motion pictures produced for initial theatrical*
32 *distribution.*

33 (3) *“Music product” means a phonorecord or sound recording,*
34 *as defined in Section 101 of Title 17 of the United States Code.*

35 (4) *“Music talent” means a recording artist.*

36 (c) (1) *A contract for the exclusive personal services of a music*
37 *talent may not contain a term that includes option periods which*
38 *extend more than six months after the earlier of:*

39 (A) *The satisfaction of the delivery obligation for a contract*
40 *period by the musical talent.*

1 (B) *The initial commercial release of the applicable music*
2 *product.*

3 (1) *If the music talent’s option has not been formally exercised*
4 *within the time period specified in paragraph (1), the music talent*
5 *may, at any time, terminate their personal services agreement by*
6 *sending notice to the contracting party.*

7 (d) (1) *The initial term, including in aggregate any automatic*
8 *renewal or extension terms, of a contract for the exclusive or*
9 *first-priority personal services of an actor on an episodic series*
10 *may not extend for more than 12 months after the earlier of:*

11 (A) *The delivery to the employer or employer’s representative*
12 *of the contract executed by or on behalf of the actor or the actor’s*
13 *personal services company.*

14 (B) *The actor’s commencement of performance services for the*
15 *pilot of the episodic series, or the first episode of the first season*
16 *or cycle of the episodic series if there is no pilot.*

17 (2) ~~Any party to a contract described in paragraph (1) shall have~~
18 ~~If one or more contracts for the right to recover damages exclusive~~
19 ~~or first-priority personal services of an actor on an episodic series~~
20 ~~includes options for a breach subsequent seasons or cycles,~~
21 ~~exercisable by any person other than the actor, then each option~~
22 ~~must be exercised, and all of the contract occurring during its term~~
23 ~~in an action commenced during or actor’s performance services~~
24 ~~for each optioned season must be completed, within 12 months~~
25 ~~after its term, but within the applicable period prescribed~~
26 ~~completion of the prior season’s performance services by law. the~~
27 ~~actor.~~

28 (3) ~~If a party to a contract described an actor’s performance~~
29 ~~services will not be completed within the timeframes set forth in~~
30 ~~paragraph (1) is, or could contractually be, required to render~~
31 ~~personal service in (2), the production of a specified quantity of~~
32 ~~actor may, at any time, terminate their personal services~~
33 ~~aggreement by sending notice to the phonorecords and fails to~~
34 ~~render contracting party.~~

35 (e) *No part of this section may be waived in an individual*
36 *negotiation, collective bargaining agreement, or other agreement.*

37 (f) *Any provision in a contract that would deprive the music*
38 *talent or actor of the protections of this section shall be void.*

1 (g) This section shall apply to all unexercised option periods
2 after January 1, 2022, regardless of the start date of the contract
3 containing those option periods.

4 SECTION 1. ~~Section 2870 of the Labor Code is amended to~~
5 ~~read:~~

6 ~~2870. (a) A provision in an employment agreement which~~
7 ~~provides that an employee shall assign, or offer to assign, any of~~
8 ~~their rights in an invention to their employer shall not apply to an~~
9 ~~invention that the employee developed entirely on their own time~~
10 ~~without using the employer's equipment, supplies, facilities, or~~
11 ~~trade secret information unless the invention meets either of the~~
12 ~~following criteria:~~

13 ~~(1) The invention relates at the time of conception or reduction~~
14 ~~to practice of the invention to the employer's business, or actual~~
15 ~~or demonstrably anticipated research or development of the~~
16 ~~employer.~~

17 ~~(2) The invention resulted from any work performed by the~~
18 ~~employee for the employer.~~

19 ~~(b) To the extent a provision in an employment agreement~~
20 ~~purports to require an employee to assign an invention otherwise~~
21 ~~excluded from being required to be assigned under subdivision~~
22 ~~(a), the provision is against the public policy of this state and is~~
23 ~~unenforceable.~~