



March 23, 2022

TO: Members, Assembly Committee on Labor & Public Employment and Retirement

**SUBJECT: AB 2926 (KALRA) EMPLOYEE OBLIGATIONS: EXCLUSIVITY OPTIONS
OPPOSE – AS INTRODUCED FEBURARY 18, 2022**

The California Chamber of Commerce is **OPPOSED** to your **AB 2926 (Kalra)**, which impermissibly circumvents the collective bargaining process in the entertainment industry by legislating specific items that were not agreed to during recent negotiations and retroactively invalidates certain contract provisions in violation of the California and federal constitutions.

AB 2926 is Unconstitutional Because it Retroactively Invalidates Exclusivity Contracts in All Industries

Proposed Labor Code Section 2855(e) prohibits the inclusion of exclusivity provisions in any contract for personal or professional services, not only in the music and television industries that the remainder of the bill is concerned with. **AB 2926** fails to acknowledge the legitimate reasons for which those provisions may be appropriate in certain industries or contracts and that they can often benefit workers who are able to leverage their talent or experience for higher compensation and consistent projects.

Worse, proposed sections (g) and (h) provide that this ban on exclusivity provisions would apply to existing contracts, meaning it retroactively invalidates contract provisions that were previously bargained for. Any law that substantially impairs pre-existing contractual obligations violates the contract clauses of both the federal and California Constitutions. As the Supreme Court has noted, “the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly”.¹ This is an inappropriate exercise of Legislative power that will deter investments in California.

AB 2926 Inappropriately Circumvents Collective Bargaining

Through their unions, workers in the entertainment industry negotiate collective bargaining agreements every few years. The terms of those agreements have been refined and developed through years of bargaining to balance the needs of workers and the industry. **AB 2926** attempts to undermine that collective bargaining process by legislating around it. The bill is sponsored in part by the unions representing these workers. The provisions in **AB 2926** such as those dealing with exclusivity provisions in a contract and option periods were terms that members of those unions wanted to be included in recent collective bargaining agreement but were not. The parties ultimately reached an agreement that did not include the terms sought here and **AB 2926** seeks to undo that agreement.

Further, the bill makes these provisions permanent by explicitly prohibiting them from being waived in future collective bargaining or any individually negotiated contract. Legislative interference in collective bargaining is impermissible and is preempted by the National Labor Relations Act. See *Lodge 76, Int'l Assoc. of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976).

Where the union and employer reach an agreement, it is inappropriate to then seek legislative action to undermine those negotiations simply because one party did not get everything they desired. Enacting **AB 2926** would set a

¹*Landgraf v. USI Film Prods.*, 511 U.S. 244, 265–66 (1994) (quoting *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990), (Scalia, J., concurring) (citations omitted) (emphasis added)).

dangerous precedent that when a union does not get everything it wants during bargaining it can instead appeal to the Legislature to codify its specific requests.

For these and other reasons, we respectfully **OPPOSE** your **AB 2926**.

Sincerely,



Ashley Hoffman
Policy Advocate

cc: Legislative Affairs, Office of the Governor
Erika Ngo, Office of Assemblymember Kalra
Lauren Pritchard, Assembly Republican Caucus

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