PROTECT ARTISTS AND CALIFORNIA MUSIC!

AB 983 would dictate the terms of record deals by statute in ways that would reduce advance payments and opportunities for working artists and new acts, limit flexibility, innovation, and artist choice, and weaken California's economic recovery

Under California's current law, artists are thriving in a vibrant, growing music business – with robust advances, greater opportunities, and more pathways to success than ever.

Contracts currently allow creative and commercial flexibility while protecting artists by limiting personal-services obligations under record deals to a maximum 7 years.

By abandoning this strong, well-working framework and freezing deal terms in inflexible statutory text, the harmful, unnecessary proposals circulating in Sacramento would:

- Reduce advances for all but the biggest superstars;
- Make it harder for new artists to get signed and divert time, resources and funding needed to break new acts to those who have already made it;
- Erect new obstacles for diverse, innovative, and less commercial voices and genres; and
- Undermine California's economic recovery by eliminating high-wage recording, touring and other music-related jobs.

Background on AB 983

- Record contracts typically require an artist to deliver a certain number of records and give the label "options" for more. California law currently limits these contracts – like all personal services contracts – to seven years, but if an artist fails to deliver the records they promised (and were paid for) for during the contract period, the record company can seek to recover its losses.
- That is a strong, fair framework consistent with basic principles of contract law that encourages all parties to hold up their end of a deal.
- But AB 983 would upend that framework and radically destabilize California's music economy.

- By narrowly limiting any recourse for the record company to "an amount equal to contractual advances" related to undelivered recordings, AB 983 would artificially render most of a label's investment in artist development, marketing, promotion as well as any expected return on those investments unrecoverable when an artist fails to deliver promised recordings during the term of the agreement. That would drive down those investments by cutting off any possible upside, hurting artist development and the long-term prospects for their careers.
- It's also completely unnecessary – the law already limits any recovery to actual, concrete harms that the label can prove to the satisfaction of a court. If a label cannot meet its burden and prove that damages exist, the artist pays nothing. But if a label does meet its burden, it should be made whole. Courts are already fully empowered to limit damages in accordance with evidence and basic principles of fairness.
- AB 983 would also force record companies to decide whether to exercise options for subsequent records within twelve months of the previous album, effectively rendering what is supposed to be a seven-year rule for recording contracts to a single year for option albums.
- It would freeze into statutory law vague conditions for renegotiation of contracts that will create massive litigation risk around any renegotiated deal. It would lead to a steep drop in renegotiations (which typically deliver significant paydays to artists) and tie the hands of artists who seek longer term partnerships and greater investment and promotion from their label.
- It would apply retroactively to all "existing" employment contracts, in violation of both the federal and state constitutions.

- These proposals have already been rejected multiple times by California's legislature because of the threat they pose to working artists and new acts trying to get signed.
  - After a full legislative process in the early 2000s, the legislature decided the proposed changes would hurt working artists and undermine the state's creative economy and left the existing labor code provisions in place.
  - Last session, AB 1395 was introduced and failed to receive either a hearing or a vote.
  - Earlier this year, AB 2926 was introduced but was pulled off the calendar of the Assembly Arts and Entertainment because the sponsors lacked the votes to advance it.
  - Now it is being resurrected in the Senate on a limited and incomplete record through a flawed "gut and amend" shortcut designed to short circuit Assembly review.
  - This is a bad idea that does not deserve a fifth bite at the apple.

The Legislature Should Again Reject This Flawed Proposal That Would Hurt Working Artists and Wrongly Freeze Contract Terms in Law

I. A Threat to California's Music Ecosystem and the Vast Majority of Artists in the State

- ***Reduce investment in artists.*** Record companies invest significant human and financial resources in artists to help them achieve their creative and commercial potential. AB 983 introduces vast new uncertainty that will undermine these investments, leading to lower advance payments to artists, fewer artist signings, and reduced development and promotion of new acts in California.
- ***Reduce opportunities for aspiring artists.*** By removing any meaningful recourse for a record label if an artist chooses to end their contract after seven years without delivering the recordings promised in their contract, AB 983 would greatly increase the financial risk for record companies while cutting off potential upside gains. This will have predictable results: fewer California artists will be signed to record deals and those who do will be paid less. All to give new leverage to established stars and generate big new paydays for millionaire lawyers, managers, and agents seeking to breach existing contracts without the consequences provided for in existing law.
- ***Put artists "on the clock."*** Today's model allows artists and labels flexibility in the recording schedule and to decide when a record is ready for delivery. By forcing premature option decisions on an arbitrary twelve-month timeframe, AB 983 would rush the creative process, truncate tours, limit development and marketing opportunities, and, perversely, discourage labels from exercising lucrative options artists negotiated for.
- ***Pose a threat to diverse voices and genres.*** By disincentivizing financial risks for labels, AB 983 would hurt diverse voices, niche genres, and artists seeking to break new ground and take creative risks. Acts without an obvious and immediate path to commercial success would be unviable. Record labels could no longer take chances on new artists. Vital but less commercial genres like jazz, classical, gospel, folk, and Tejano would wither.
- ***Largely bar artists from lucrative renegotiations.*** By limiting renegotiation and introducing vague and contrived requirements that renegotiations must create separate royalty accounts and be a "material improvement" in order to be effective, AB 983 would sharply limit renegotiations that often produce large payments to artists and increased long-term investment in their careers.
- ***Undermine California's economic recovery.*** Music currently adds nearly $40 billion annually to California's GDP, supporting over 430,000 jobs and 72,000 venues across the state. Destabilizing a major California industry will drive down pay and penalize thousands of working artists and the businesses that support them.

II. Don't Fix What's Not Broken – California Law is Working Better Than Ever for Artists

- ***Artists Are ALREADY Protected by California's Seven-Year Rule*** – This is legislation in search of a problem: already under California law, recording artists CANNOT be forced to stay with a label longer than seven years. If an artist fails to deliver recordings they agreed to produce, a label can seek to recover damages, but still cannot hold that artist to any personal services obligation past seven years.
    - This creates strong incentives for both sides to perform during the life of a recording contract, allowing flexibility for labels to routinely renegotiate contracts mid-term and pay new and larger advances and higher royalty rates (even when artists are already under contract).
    - Replacing this simple background rule with inflexible and unworkable terms for damages and vague statutory requirements for contract renegotiations would only limit options for artists and frustrate dealmaking to no one's benefit.
    - Overriding private negotiations between professionally represented parties and dictating specific contract terms by statute would gut the existing and well-working framework for recording deals and breach core principles of free market choice that seek to encourage negotiated agreements.
- ***Robust Advances and Royalties*** – The current system is producing robust advances and royalties and record payments to artists. California should build on that success, not undermine it.
- ***An Unnecessary and Counterproductive Giveaway to a Handful of the Most Successful Acts*** – This bill will only benefit a small number of commercially successful, established superstars by giving them even greater leverage to threaten not to deliver under existing contracts. Meanwhile, most working artists will see lower advances and fewer options exercised.
- ***An Unconstitutional Waste of Time*** – By purporting to change the terms of existing music contracts, these proposals are plainly unconstitutional and would mire the music industry in years of costly and harmful litigation.