

# With AI threat looming, California lawmakers look to codify performer protections

By Eric He

01/18/2024 08:00 AM EST

The historic actors' strike that rocked Hollywood last year ended with [an agreement](#) between SAG-AFTRA and the studios that included what [the union called](#) “unprecedented provisions for consent and compensation that will protect members from the threat” of artificial intelligence. But California legislators, worried about the uncertainty of the burgeoning technology, are trying to codify consent protections around AI as law.

[AB 459](#) — which would require that performers receive informed consent and representation if their contract includes the ability to digitally replicate their voice or likeness — is just one of [more than a dozen AI-related measures](#) that lawmakers in the Golden State plan to introduce this year.

In addition to [lingering concerns](#) that the SAG-AFTRA agreement doesn't go far enough in protections against generative AI and synthetic performers, the bill would cover performers who are not represented by a lawyer or a union and would preempt contracts involving performers in other spaces — such as recording artists whose careers could be impacted by digital replication of their voices.

The measure from Assemblymember [Ash Kalra](#) (D-San Jose), which will be heard in committee later this year, is expected to receive pushback from studios representing media companies.

Kalra said that the actors' strike inspired him to work with SAG-AFTRA to bring forward the measure.

“In the last couple of years in particular, we've seen this dramatic growth in the use of AI,” he told POLITICO. “So it seems very timely for us to engage because if we wait, the technology is moving so quickly that we're going to be too late.”

## WHAT'S IN THE BILL?

*This Pro Bill Analysis is based on the [text of the bill](#) as amended in the Senate on Sept. 13, 2023.*

The bill would add a section to the [California Labor Code](#) deeming contracts that violate the measure “contrary to public policy” and “unconscionable.” The contract would be subject to a court order to either not be enforced or have its application limited to not include the unconscionable clause, per [Section 1670.5 of the Civil Code](#) (Sec. 1).

Specifically, the measure would create a process to void contracts that both:

— Permit a performer's voice or likeness to be digitally replicated and used instead of the work that the individual would have performed in-person, or allow a performer's voice or likeness to train a generative AI system

— Fail to clearly define what the digital replica or generative AI system would be used for.

However, the measure would not apply to performers who are represented by lawyers or a union when negotiating a contract including AI provisions. Contracts negotiated through a lawyer would need to have the licensing terms of the performer's digital replica rights outlined in a standalone written agreement and for agreements negotiated through a union, the contract would have to specifically cover the use of digital replicas and generative AI systems.

The measure would apply retroactively to existing contracts.

## WHO ARE THE POWER PLAYERS?

**SAG-AFTRA**, which negotiated with the Alliance of Motion Picture and Television Producers during the 118-day strike last year, worked with Assemblymember [Ash Kalra](#) (D-San Jose) to [introduce the bill](#) in September. The group is also pushing a [similar bill \(H.R. 6943\)](#) at the federal level.

Assemblymember [Matt Haney](#) (D-San Francisco) is the principal co-author of AB 459.

Kalra, who represents a Silicon Valley district, told POLITICO he doesn't want to stifle innovation — but added that the tech sector should not be allowed to have free rein. The trick is finding the right balance, but the industry just wanting to “take care of it on their own [is] not an option,” Kalra said.

Even if the union reached informed consent protections during bargaining, it was still planning to pursue a legislative achievement as well, according to **Jeffrey Bennett**, general counsel for SAG-AFTRA. Bennett, in an interview with POLITICO, said the protections “shouldn't just live in our film and television collective bargaining agreement.”

“California has always led the way in progressive worker protections,” Bennett said. “And we think this is a great example of a progressive worker protection to a specific type of worker who uses voice and likeness to make a living. It acknowledges what technology can now do, and is starting to do in a big way.”

Bennett said the goal is not to ban the use of AI technology in the industry, but rather to ensure performers have an ability to review the terms and understand contracts that govern replicating their voice or likeness.

“Because you're talking about, fundamentally, job replacement,” Bennett said.

When the bill was first introduced in September, studio companies reached out to Kalra with their concerns — but he said they were more focused on achieving a bargaining agreement than the legislation.

A spokesperson for the **Motion Picture Association** — which represents Disney, Paramount, Sony Pictures, Universal, WB and Netflix — said in a statement to POLITICO that the proposal takes on areas of law and technology that are complex and evolving, contains vague language and could “upend routine practices for virtually all film, television and streaming productions.”

The trade group is also worried that the provision in the bill that would apply to contracts retroactively “potentially undermines aspects of existing agreements that have nothing to do with current AI concerns.”

The **Recording Industry Association of America** and the **Entertainment Software Association**, trade groups for the recording and video game industries, respectively, declined to comment on the legislation.

## WHAT'S HAPPENED SO FAR?

The bill was introduced last September before SAG-AFTRA and the studios agreed to their new contract to end the labor strike. It was not intended to be taken up before the Legislature wrapped up the 2023 session, but rather to send a message to the industry expressing concerns over how generative AI would be used. The contract, [approved in December](#), requires consent and describes compensation for using digital replicas — but some union members have cited worries about [potential loopholes](#) over the AI provisions.

For the studios, the provision applying the measure to contracts retroactively could prove to be a sticking point as negotiations over the bill begin in earnest. But Kalra said the goal is to ensure that language in contracts governing generative AI adheres to the measure — not to blow up existing contracts or shut down Hollywood.

SAG-AFTRA is also seeking a standalone agreement regarding the licensing of digital replica rights for contracts overseen by legal counsel, which could also be a point of contention for studios that want to use generative AI during the editing process, after the contract has already been signed. Kalra said there should be no gray area over what a performer consents to regarding their image, voice or likeness, citing a need for “genuine informed consent.”

AB 459 is not Kalra's first attempt at regulating AI. In 2022, unions rallied behind [his bill](#) that would have curbed industry's ability to monitor workers and dictate labor conditions with AI tools — only to see it blocked amid opposition from business foes, including insurers, grocers and bankers.

It was a show of force that Kalra called a testament to AI's “broad impact on every single person.”

Meanwhile, SAG-AFTRA [reached an agreement](#) on Jan. 9 regarding AI use for voice-overs, allowing Replica Studios to license performers for their voice, as long as there is consent and compensation.

Record contracts are a focal point for the union with Kalra's measure, according to Bennett, SAG-AFTRA's legal counsel. Bennett called contracts for musicians "historically, unfortunately, one-sided agreements," where newer artists have little leverage over the studios.

"I would hate to see production or record labels introduce the concept of replicating somebody's voice, meaning we're going to potentially release things that are having you perform, but you didn't actually perform," said Bennett. "Those types of concepts, in my view, should be very, very well-informed, well-protected."

### **WHAT'S NEXT?**

The bill, which gut-and-amended a health care bill last September, awaits a hearing in the Senate — but it's not expected to come before a committee until this summer.

Kalra has said he's open to working with the studios on AI regulation, and hopes that they will be more supportive now than they were prior to the SAG-AFTRA strike, since they've already acknowledged a need to protect performers from AI technology.

The fact that this recognition "has not only been made publicly, but in a contract, I think it certainly helps our cause in terms of getting legislation to the governor's desk," Kalra added.

### **WHAT ARE SOME STORIES ON THE BILL?**

[Read POLITICO news on AB 459.](#)

*Jeremy B. White contributed to this report.*