

Assembly Bill No. 2602

CHAPTER 259

An act to add Section 927 to the Labor Code, relating to employment.

[Approved by Governor September 17, 2024. Filed with
Secretary of State September 17, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2602, Kalra. Contracts against public policy: personal or professional services: digital replicas.

Existing law prohibits an employer from requiring an employee or applicant for employment to agree, in writing, to any term or condition that is known by the employer to be illegal. Existing law provides that certain contractual agreements between an employer and employee are against public policy, including specified provisions affecting an employee's membership in a labor organization and the protection of state law in employment. Under existing law, enforcement of state labor laws is generally committed to the Division of Labor Standards Enforcement within the Department of Industrial Relations under the direction of the Labor Commissioner.

This bill would provide that a provision in an agreement between an individual and any other person for the performance of personal or professional services is unenforceable only as it relates to a new performance, fixed on or after January 1, 2025, by a digital replica of the individual if the provision meets specified conditions relating to the use of a digital replica of the voice or likeness of an individual in lieu of the work of the individual. The bill would define "digital replica" to mean a computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work, or transmission in which the actual individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered, except as prescribed.

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

SECTION 1. Section 927 is added to the Labor Code, to read:

927. (a) A provision in an agreement between an individual and any other person for the performance of personal or professional services is unenforceable only as it relates to a new performance, fixed on or after January 1, 2025, by a digital replica of the individual if the provision meets all of the following conditions:

(1) The provision allows for the creation and use of a digital replica of the individual's voice or likeness in place of work the individual would otherwise have performed in person.

(2) (A) Except as provided in subparagraph (B), the provision does not include a reasonably specific description of the intended uses of the digital replica.

(B) Failure to include a reasonably specific description of the intended uses of a digital replica does not render the provision unenforceable if the uses are consistent with the terms of the contract for the performance of personal or professional services and the fundamental character of the photography or soundtrack as recorded or performed.

(3) The individual was not represented in any of the following manners:

(A) By legal counsel who negotiated on behalf of the individual licensing the individual's digital replica rights, and the commercial terms are stated clearly and conspicuously in a contract or other writing signed or initialed by the individual.

(B) By a labor union representing workers who do the proposed work, and the terms of their collective bargaining agreement expressly addresses uses of digital replicas.

(b) This section does not affect provisions of a contract other than a provision that falls under subdivision (a) and does not impact, abrogate, or otherwise affect any exclusivity grants contained in, or related to, a provision subject to subdivision (a).

(c) (1) As used in this section, "digital replica" means a computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work, or transmission in which the actual individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered.

(2) "Digital replica" does not include the electronic reproduction, use of a sample of one sound recording or audiovisual work into another, remixing, mastering, or digital remastering of a sound recording or audiovisual work authorized by the copyright holder.