

AMENDED IN SENATE AUGUST 7, 2020

AMENDED IN ASSEMBLY APRIL 2, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 323

Introduced by Assembly Members ~~Daly, Cooper, Frazier, Grayson, Irwin, Ramos, Blanca Rubio, and Salas~~ Member Blanca Rubio
(Principal coauthors: Senators Dodd, Hertzberg, and McGuire)
(Coauthor: Senator Mitchell)

January 30, 2019

~~An act to add Article 21 (commencing with Section 8669) to Chapter 7 of Division 1 of Title 2 of the Government Code, relating to state government. An act to amend Section 2750.3 of the Labor Code, and to add Chapter 2.8 (commencing with Section 11800) to Part 2 of Division 2 of the Public Contract Code, relating to newspapers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 323, as amended, ~~Daly~~ Blanca Rubio. ~~Disaster Preparedness Account.~~ Newspapers: state agency advertising: worker status: independent contractors.

(1) Existing law sets out the various responsibilities of the Department of General Services and state agencies in overseeing and implementing state contracting procedures and policies.

Existing law also provides that whenever any official advertising, notice, resolution, order, or other matter of any nature whatsoever is required by law to be published in a newspaper, the publication is required to be made only in a newspaper of general circulation, as specified.

This bill would require a state agency to give preference to local news organizations, as specified, in contracts or subcontracts for the placement of marketing or outreach advertising services. The bill would require the Department of General Services to be responsible for ensuring that state agencies give local news organizations that preference. The bill would require the department to ensure that state agencies are in compliance by publicly issuing a report by April 1 of each year containing specified information relating to payments for placement of marketing or outreach advertising material by each state agency. The bill would provide that these provisions are not intended to amend any of the above-described provisions relating to required publications of official advertising, notices, resolutions, orders, or other matters.

(2) Existing law, as established in the case of Dynamex Operations W. v. Superior Court (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to determine if workers are employees or independent contractors for those purposes.

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the “ABC” test, as described above. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of Dynamex and the provisions described above. These exemptions include a temporary exemption for newspaper distributors working under contract with a newspaper publisher, and newspaper carriers working under contract either with a newspaper publisher or newspaper distributor, as those terms are defined, until January 1, 2021.

This bill would expand the exemption applicable to newspaper carriers by deleting the condition that a newspaper carrier work under contract either with a newspaper publisher or newspaper distributor. The bill would extend the exemption period to January 1, 2023.

~~Existing law establishes the various funds in the State Treasury, including the Disaster Response Emergency Operations Account, Disaster Relief Fund, and the Disaster Assistance Fund.~~

~~This bill would establish the Disaster Preparedness Account in the State Treasury and would provide that funds in the account are available only for specified purposes, for appropriation by the Legislature, upon the Governor's proclamation of a state of emergency, as provided.~~

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

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

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *Every day, journalism plays an essential role in California*
- 4 *and in local communities. The COVID-19 crisis has brought into*
- 5 *stark relief the importance of quality local journalism. No other*
- 6 *industry impacts the well-being of the neighborhoods they serve*
- 7 *by keeping their communities informed and up to date on the news.*
- 8 (b) *Over the last two months, journalists for California news*
- 9 *organizations have worked on the front lines of the COVID-19*
- 10 *pandemic inquiring, authenticating, and reporting information*
- 11 *Californians rely on for a deeper understanding of the threat and*
- 12 *to help them make well-informed decisions about their health and*
- 13 *safety. In addition to providing real-time information to*
- 14 *subscribers, many news organizations have dropped their paywalls*
- 15 *to provide access to key coronavirus coverage as a public service.*
- 16 (c) *On March 22, 2020, the California State Public Health*
- 17 *Officer reaffirmed the importance of news organizations as*
- 18 *essential businesses by declaring workers who support news media*
- 19 *are critical infrastructure workers in the communications sector*
- 20 *who may continue to operate during the COVID-19 crisis.*
- 21 (d) *The vital news coverage provided by state and local news*
- 22 *outlets is gravely imperiled, however, by an economic crisis that*
- 23 *has been exacerbated by the coronavirus pandemic.*

1 (e) Many newspapers in California are facing financial failure.
2 Nationwide advertising revenues have dropped from \$25 billion
3 in 2012 to \$11 billion in 2019. Economists expect the drop to
4 exceed 25 percent in 2021 as a result of the COVID-19 impact on
5 businesses. In California the immediate advertising revenue loss,
6 which for many is one-half of total revenue, has been 50 percent
7 to 70 percent. This could force dozens, perhaps hundreds, of
8 newspapers out of business. We have already seen dozens of
9 mergers and several significant bankruptcies. The demise of
10 newspapers will mean many lost jobs, but even more devastating,
11 will leave many communities without local journalism. As we all
12 know, a functioning democracy is dependent on a well-informed
13 constituency.

14 (f) In addition, the businesses face the specter of an average
15 increase of 85 percent in distribution costs if the California
16 Legislature does not extend the AB 170 exemption for news
17 carriers, forcing papers to abandon their contract delivery model
18 in 2021.

19 (g) According to “An Analysis of the Financial Crisis Facing
20 California Local, Daily Newspapers,” an April 22, 2020, study
21 by FTI Consulting in Denver, Colorado, the collision of forces –
22 a perfect storm of lost revenue and rising costs – calls into question
23 the very future of the news industry. Newspapers cannot cut costs
24 deep enough or fast enough to keep up with declines in revenue.
25 In most cases, moving to fewer publishing days or going all digital
26 will not change the financial picture, as the loss of print advertising
27 and print subscriber revenues is higher than the expense reductions
28 that might be realized from these moves.

29 (h) Without relief, decreased revenue combined with increased
30 costs is a potentially devastating blow for an industry already
31 struggling to generate profits. Daily newspapers will likely publish
32 fewer days and weekly newspapers may disappear as well as
33 African American, Latino, Asian, and other ethnic and niche
34 papers. Some counties in the state may become “news deserts”
35 with no paper of record.

36 (i) The latter may be the most devastating consequence of all.
37 Communities without newspapers lose touch with government,
38 business, education, and neighbors. They operate without
39 journalists working to keep them informed, uncover truth, expose
40 corruption, and share common goals and experiences. They lose

1 *a focal point for conversation and decisionmaking, and they are*
2 *left without local sources on the big stories.*

3 *(j) It is the declared policy of the Legislature that the state*
4 *should assist and protect, to the maximum extent possible,*
5 *journalism and the ability of local news organizations to continue*
6 *to provide readers with important information about news and*
7 *events in their communities.*

8 *SEC. 2. Section 2750.3 of the Labor Code is amended to read:*

9 2750.3. (a) (1) For purposes of ~~the provisions of~~ this code
10 and the Unemployment Insurance Code, and for the *purposes of*
11 wage orders of the Industrial Welfare Commission, a person
12 providing labor or services for remuneration shall be considered
13 an employee rather than an independent contractor unless the hiring
14 entity demonstrates that all of the following conditions are satisfied:

15 (A) The person is free from the control and direction of the
16 hiring entity in connection with the performance of the work, both
17 under the contract for the performance of the work and in fact.

18 (B) The person performs work that is outside the usual course
19 of the hiring entity's business.

20 (C) The person is customarily engaged in an independently
21 established trade, occupation, or business of the same nature as
22 that involved in the work performed.

23 (2) Notwithstanding paragraph (1), any exceptions to the terms
24 "employee," "employer," "employ," or "independent contractor,"
25 and any extensions of employer status or liability, that are expressly
26 made by a provision of this code, the Unemployment Insurance
27 Code, or in an applicable order of the Industrial Welfare
28 Commission, including, but not limited to, the definition of
29 "employee" in subdivision 2(E) of Wage Order No. 2, shall remain
30 in effect for the purposes set forth therein.

31 (3) If a court of law rules that the three-part test in paragraph
32 (1) cannot be applied to a particular context based on grounds other
33 than an express exception to employment status as provided under
34 paragraph (2), then the determination of employee or independent
35 contractor status in that context shall instead be governed by the
36 California Supreme Court's decision in *S. G. Borello & Sons, Inc.*
37 *v. Department of Industrial Relations* (1989) 48 Cal.3d 341
38 (Borello).

39 (b) Subdivision (a) and the holding in *Dynamex Operations*
40 ~~West, Inc. W. v. Superior Court of Los Angeles~~ (2018) 4 Cal.5th

903—(~~Dynamex~~); (*Dynamex*) do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello.

(1) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code.

(2) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall apply to the employment settings currently or potentially governed by collective bargaining agreements for the licensees identified in this paragraph.

(3) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, engineer, private investigator, or accountant.

(4) A securities broker-dealer or investment adviser or their agents and representatives that are ~~registered~~ *either of the following*:

(A) *Registered* with the Securities and Exchange Commission or the Financial Industry Regulatory ~~Authority~~ *or licensed Authority*.

(B) *Licensed* by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.

(A) For the purposes of this paragraph:

1 (i) “American vessel” has the same meaning as defined in
2 Section 125.5 of the Unemployment Insurance Code.

3 (ii) “Commercial fisherman” means a person who has a valid,
4 unrevoked commercial fishing license issued pursuant to Article
5 3 (commencing with Section 7850) of Chapter 1 of Part 3 of
6 Division 6 of the Fish and Game Code.

7 (iii) “Working on an American vessel” means the taking or the
8 attempt to take fish, shellfish, or other fishery resources of the state
9 by any means, and includes each individual aboard an American
10 vessel operated for fishing purposes who participates directly or
11 indirectly in the taking of these raw fishery products, including
12 maintaining the vessel or equipment used aboard the vessel.
13 However, “working on an American vessel” does not apply to
14 anyone aboard a licensed commercial fishing vessel as a visitor
15 or guest who does not directly or indirectly participate in the taking.

16 (B) For the purposes of this paragraph, a commercial fisherman
17 working on an American vessel is eligible for unemployment
18 insurance benefits if they meet the definition of “employment” in
19 Section 609 of the Unemployment Insurance Code and are
20 otherwise eligible for those benefits pursuant to the provisions of
21 the Unemployment Insurance Code.

22 (C) (i) On or before March 1, 2021, and each March 1
23 thereafter, the Employment Development Department shall issue
24 an annual report to the Legislature on the use of unemployment
25 insurance in the commercial fishing industry. This report shall
26 include, but not be limited to, ~~reporting all of the following:~~

27 (I) *Reporting* the number of commercial fishermen who apply
28 for unemployment insurance ~~benefits, the benefits.~~

29 (II) *The* number of commercial fishermen who have their claims
30 ~~disputed, the disputed.~~

31 (III) *The* number of commercial fishermen who have their claims
32 ~~denied, and the denied.~~

33 (IV) *The* number of commercial fishermen who receive
34 unemployment insurance benefits. ~~The~~

35 (ii) *The* report required by this subparagraph shall be submitted
36 in compliance with Section 9795 of the Government Code.

37 (D) This paragraph shall become inoperative on January 1, 2023,
38 unless extended by the Legislature.

39 (7) (A) A newspaper distributor working under contract with
40 a newspaper publisher, as defined in subparagraph ~~(A), and (B),~~

1 ~~or a newspaper carrier working under contract either with a~~
2 ~~newspaper publisher or newspaper distributor. carrier.~~

3 (A)

4 (B) For purposes of this paragraph:

5 (i) “Newspaper” means a newspaper of general circulation, as
6 defined in Section 6000 of the Government Code, and any other
7 publication circulated to the community in general as an extension
8 of or substitute for that newspaper’s own publication, whether that
9 publication be designated a “shoppers’ guide,” as a zoned edition,
10 or otherwise.

11 (ii) “Publisher” means the natural or corporate person that
12 manages the newspaper’s business operations, including
13 circulation.

14 (iii) “Newspaper distributor” means a person or entity that
15 contracts with a publisher to distribute newspapers to the
16 community.

17 (iv) “Carrier” means a person who effects physical delivery of
18 the newspaper to the customer or reader.

19 ~~(B)~~

20 (C) This paragraph shall become inoperative on January 1, ~~2021,~~
21 ~~2023~~, unless extended by the Legislature.

22 (c) (1) Subdivision (a) and the holding in *Dynamex* do not
23 apply to a contract for “professional services” as defined below,
24 and instead the determination of whether the individual is an
25 employee or independent contractor shall be governed by *Borello*
26 if the hiring entity demonstrates that all of the following factors
27 are satisfied:

28 (A) The individual maintains a business location, which may
29 include the individual’s residence, that is separate from the hiring
30 entity. Nothing in this subdivision prohibits an individual from
31 choosing to perform services at the location of the hiring entity.

32 (B) If work is performed more than six months after the effective
33 date of this section, the individual has a business license, in
34 addition to any required professional licenses or permits for the
35 individual to practice in their profession.

36 (C) The individual has the ability to set or negotiate their own
37 rates for the services performed.

38 (D) Outside of project completion dates and reasonable business
39 hours, the individual has the ability to set the individual’s own
40 hours.

1 (E) The individual is customarily engaged in the same type of
2 work performed under contract with another hiring entity or holds
3 themselves out to other potential customers as available to perform
4 the same type of work.

5 (F) The individual customarily and regularly exercises discretion
6 and independent judgment in the performance of the services.

7 (2) For purposes of this subdivision:

8 (A) An “individual” includes an individual providing services
9 through a sole proprietorship or other business entity.

10 (B) “Professional services” means services that meet any of the
11 following:

12 (i) Marketing, provided that the contracted work is original and
13 creative in character and the result of which depends primarily on
14 the invention, imagination, or talent of the employee or work that
15 is an essential part of or necessarily incident to any of the
16 contracted work.

17 (ii) Administrator of human resources, provided that the
18 contracted work is predominantly intellectual and varied in
19 character and is of such character that the output produced or the
20 result accomplished cannot be standardized in relation to a given
21 period of time.

22 (iii) Travel agent services provided by either of the following:

23 ~~(I)~~ a

24 (I) A person regulated by the Attorney General under Article
25 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of
26 Division 7 of the Business and Professions Code, or ~~(II) an~~ Code.

27 (II) An individual who is a seller of travel within the meaning
28 of subdivision (a) of Section 17550.1 of the Business and
29 Professions Code and who is exempt from the registration under
30 subdivision (g) of Section 17550.20 of the Business and Professions
31 Code.

32 (iv) Graphic design.

33 (v) Grant writer.

34 (vi) Fine artist.

35 (vii) Services provided by an enrolled agent who is licensed by
36 the United States Department of the Treasury to practice before
37 the Internal Revenue Service pursuant to Part 10 of Subtitle A of
38 Title 31 of the Code of Federal Regulations.

39 (viii) Payment processing agent through an independent sales
40 organization.

(ix) (I) Services provided by a still photographer or photojournalist who ~~do~~ does not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. ~~For~~

(II) For purposes of this ~~clause~~ clause, a “submission” is one or more items or forms of content produced by a still photographer or photojournalist ~~that: (I) pertains that meets all of the following:~~

(ia) ~~Pertains to a specific event or specific subject; (II) is subject.~~

(ib) ~~Is provided for in a contract that defines the scope of the work; and (III) is work.~~

(ic) ~~Is accepted by and licensed to the publication or stock photography company and published or posted. Nothing in this~~

(ia) This section shall *not* prevent a photographer or artist from displaying their work product for sale.

(x) (I) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. ~~For~~

(II) For purposes of this clause, a “submission” is one or more items or forms of content by a freelance journalist ~~that: (I) pertains that meets all of the following:~~

(ia) ~~Pertains to a specific event or topic; (II) is topic.~~

(ib) ~~Is provided for in a contract that defines the scope of the work; (III) is work.~~

(ic) ~~Is accepted by the publication or company and published or posted for sale.~~

(xi) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:

(I) Sets their own rates, processes their own payments, and is paid directly by clients.

1 (II) Sets their own hours of work and has sole discretion to
2 decide the number of clients and which clients for whom they will
3 provide services.

4 (III) Has their own book of business and schedules their own
5 appointments.

6 (IV) Maintains their own business license for the services
7 offered to clients.

8 (V) If the individual is performing services at the location of
9 the hiring entity, then the individual issues a Form 1099 to the
10 salon or business owner from which they rent their business space.

11 (VI) This subdivision shall become inoperative, with respect to
12 licensed manicurists, on January 1, 2022.

13 (d) Subdivision (a) and the holding in *Dynamex* do not apply
14 to the following, which are subject to the Business and Professions
15 Code:

16 (1) A real estate licensee licensed by the State of California
17 pursuant to Division 4 (commencing with Section 10000) of the
18 Business and Professions Code, for whom the determination of
19 employee or independent contractor status shall be governed by
20 subdivision (b) of Section 10032 of the Business and Professions
21 Code. If that section is not applicable, then this determination shall
22 be governed as follows: ~~(A) for~~

23 *(A) For* purposes of unemployment insurance by Section 650
24 of the Unemployment Insurance Code; ~~(B) for Code.~~

25 *(B) For* purposes of ~~workers~~ *workers'* compensation by Section
26 3200 ~~et seq.~~; and ~~(C) for seq.~~

27 *(C) For* all other purposes in the Labor Code by Borello. The
28 statutorily imposed duties of a responsible broker under Section
29 10015.1 of the Business and Professions Code are not factors to
30 be considered under the Borello test.

31 (2) A repossession agency licensed pursuant to Section 7500.2
32 of the Business and Professions Code, for whom the determination
33 of employee or independent contractor status shall be governed
34 by Section 7500.2 of the Business and Professions Code, if the
35 repossession agency is free from the control and direction of the
36 hiring person or entity in connection with the performance of the
37 work, both under the contract for the performance of the work and
38 in fact.

(e) Subdivision (a) and the holding in *Dynamex* do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(1) If a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation (“business service provider”) contracts to provide services to another such business (“contracting business”), the determination of employee or independent contractor status of the business services provider shall be governed by *Borello*, if the contracting business demonstrates that all of the following criteria are satisfied:

(A) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business.

(C) The contract with the business service provider is in writing.

(D) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.

(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(G) The business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.

(H) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(I) The business service provider provides its own tools, vehicles, and equipment to perform the services.

(J) The business service provider can negotiate its own rates.

(K) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

1 (L) The business service provider is not performing the type of
2 work for which a license from the ~~Contractor's~~ *Contractors'* State
3 License Board is required, pursuant to Chapter 9 (commencing
4 with Section 7000) of Division 3 of the Business and Professions
5 Code.

6 (2) This subdivision does not apply to an individual worker, as
7 opposed to a business entity, who performs labor or services for
8 a contracting business.

9 (3) The determination of whether an individual working for a
10 business service provider is an employee or independent contractor
11 of the business service provider is governed by paragraph (1) of
12 subdivision (a).

13 (4) This subdivision does not alter or supersede any existing
14 rights under Section 2810.3.

15 (f) Subdivision (a) and the holding in *Dynamex* do not apply to
16 the relationship between a contractor and an individual performing
17 work pursuant to a subcontract in the construction industry, and
18 instead the determination of whether the individual is an employee
19 of the contractor shall be governed by Section 2750.5 and by
20 *Borello*, if the contractor demonstrates that all the following criteria
21 are satisfied:

22 (1) The subcontract is in writing.

23 (2) The subcontractor is licensed by the ~~Contractors~~ *Contractors'*
24 State License Board and the work is within the scope of that
25 license.

26 (3) If the subcontractor is domiciled in a jurisdiction that requires
27 the subcontractor to have a business license or business tax
28 registration, the subcontractor has the required business license or
29 business tax registration.

30 (4) The subcontractor maintains a business location that is
31 separate from the business or work location of the contractor.

32 (5) The subcontractor has the authority to hire and to fire other
33 persons to provide or to assist in providing the services.

34 (6) The subcontractor assumes financial responsibility for errors
35 or omissions in labor or services as evidenced by insurance, legally
36 authorized indemnity obligations, performance bonds, or warranties
37 relating to the labor or services being provided.

38 (7) The subcontractor is customarily engaged in an
39 independently established business of the same nature as that
40 involved in the work performed.

(8) (A) Paragraph (2) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(i) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(ii) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(iii) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(iv) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(B) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(C) For purposes of this paragraph, "construction trucking services" mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(D) This paragraph shall only apply to work performed before January 1, 2022.

(E) Nothing in this paragraph prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall be reimbursed by the trucking company for the reasonable expense incurred for the use of the ~~employee-owned~~ *employee-owned* truck.

1 (g) Subdivision (a) and the holding in *Dynamex* do not apply
2 to the relationship between a referral agency and a service provider,
3 as defined below, under the following conditions:

4 (1) If a business entity formed as a sole proprietor, partnership,
5 limited liability company, limited liability partnership, or
6 corporation (“service provider”) provides services to clients through
7 a referral agency, the determination of whether the service provider
8 is an employee of the referral agency shall be governed by *Borello*,
9 if the referral agency demonstrates that all of the following criteria
10 are satisfied:

11 (A) The service provider is free from the control and direction
12 of the referral agency in connection with the performance of the
13 work for the client, both as a matter of contract and in fact.

14 (B) If the work for the client is performed in a jurisdiction that
15 requires the service provider to have a business license or business
16 tax registration, the service provider has the required business
17 license or business tax registration.

18 (C) If the work for the client requires the service provider to
19 hold a state contractor’s license pursuant to Chapter 9 (commencing
20 with Section 7000) of Division 3 of the Business and Professions
21 Code, the service provider has the required contractor’s license.

22 (D) The service provider delivers services to the client under
23 *the* service provider’s name, rather than under the name of the
24 referral agency.

25 (E) The service provider provides its own tools and supplies to
26 perform the services.

27 (F) The service provider is customarily engaged in an
28 independently established business of the same nature as that
29 involved in the work performed for the client.

30 (G) The service provider maintains a clientele without any
31 restrictions from the referral agency and the service provider is
32 free to seek work elsewhere, including through a competing agency.

33 (H) The service provider sets its own hours and terms of work
34 and is free to accept or reject clients and contracts.

35 (I) The service provider sets its own rates for services performed,
36 without deduction by the referral agency.

37 (J) The service provider is not penalized in any form for
38 rejecting clients or contracts. This subparagraph does not apply if
39 the service provider accepts a client or contract and then fails to
40 fulfill any of its contractual obligations.

1 (2) For purposes of this subdivision, the following definitions
2 apply:

3 (A) “Animal services” means services related to daytime and
4 nighttime pet care including pet boarding under Section 122380
5 of the Health and Safety Code.

6 (B) “Client” means a person or business that engages a service
7 contractor through a referral agency.

8 (C) “Referral agency” is a business that connects clients with
9 service providers that provide graphic design, photography,
10 tutoring, event planning, minor home repair, moving, home
11 cleaning, errands, furniture assembly, animal services, dog walking,
12 dog grooming, web design, picture hanging, pool cleaning, or yard
13 cleanup.

14 (D) “Referral agency contract” is the agency’s contract with
15 clients and service contractors governing the use of its intermediary
16 services described in subparagraph (C).

17 (E) “Service provider” means a person or business who agrees
18 to the referral agency’s contract and uses the referral agency to
19 connect with clients.

20 (F) “Tutor” means a person who develops and teaches their own
21 curriculum. A “tutor” does not include a person who teaches a
22 curriculum created by a public school or who contracts with a
23 public school through a referral company for purposes of teaching
24 students of a public school.

25 (3) This subdivision does not apply to an individual worker, as
26 opposed to a business entity, who performs services for a client
27 through a referral agency. The determination of whether such an
28 individual is an employee of a referral agency is governed by
29 subdivision (a).

30 (h) Subdivision (a) and the holding in *Dynamex* do not apply
31 to the relationship between a motor club holding a certificate of
32 authority issued pursuant to Chapter 2 (commencing with Section
33 12160) of Part 5 of Division 2 of the Insurance Code and an
34 individual performing services pursuant to a contract between the
35 motor club and a third party to provide motor club services utilizing
36 the employees and vehicles of the third party and, instead, the
37 determination of whether such an individual is an employee of the
38 motor club shall be governed by *Borello*, if the motor club
39 demonstrates that the third party is a separate and independent
40 business from the motor club.

1 ~~(i) (1) The addition of subdivision (a) to this section of the~~
2 ~~Labor Code by this act~~

3 (i) (1) Subdivision (a) does not constitute a change in, but is
4 declaratory of, existing law with regard to wage orders of the
5 Industrial Welfare Commission and violations of the Labor Code
6 *this code* relating to wage orders.

7 (2) Insofar as the application of subdivisions (b), (c), (d), (e),
8 (f), (g), and (h) ~~of this section~~ would relieve an employer from
9 liability, those subdivisions shall apply retroactively to existing
10 claims and actions to the maximum extent permitted by law.

11 (3) Except as provided in paragraphs (1) and ~~(2) of this~~
12 ~~subdivision~~, (2), the provisions of this section ~~of the Labor Code~~
13 shall apply to work performed on or after January 1, 2020.

14 (j) In addition to any other remedies available, an action for
15 injunctive relief to prevent the continued misclassification of
16 employees as independent contractors may be prosecuted against
17 the putative employer in a court of competent jurisdiction by the
18 Attorney General or by a city attorney of a city having a population
19 in excess of 750,000, or by a city attorney in a city and county or,
20 with the consent of the district attorney, by a city prosecutor in a
21 city having a full-time city prosecutor in the name of the people
22 of the State of California upon their own complaint or upon the
23 complaint of a board, officer, person, corporation, or association.

24 SEC. 3. Chapter 2.8 (commencing with Section 11800) is added
25 to Part 2 of Division 2 of the Public Contract Code, to read:

26
27 *CHAPTER 2.8. LOCAL NEWS PREFERENCE IN MARKETING OR*
28 *OUTREACH ADVERTISING*
29

30 11800. For purposes of this chapter, the following definitions
31 shall apply:

32 (a) "Department" means the Department of General Services.

33 (b) "State agency" means each entity identified in Section 11000
34 of the Government Code, and includes the California State
35 University.

36 11801. It is the declared policy of the Legislature that the state
37 should assist, and protect, to the maximum extent possible, the
38 ability of local news organizations to continue to provide readers
39 with important information about news and events in their
40 communities. Important information provided by local news

1 organizations to communities includes marketing or outreach
2 advertising placed by state agencies and departments.

3 11802. A state agency shall give preference to local news
4 organizations, inclusive of ethnic and community news
5 organizations, in contracts or subcontracts for the placement of
6 marketing or outreach advertising services.

7 11803. (a) The department shall be responsible for ensuring
8 that state agencies give preference to local news organizations,
9 inclusive of ethnic and community news organizations, in contracts
10 or subcontracts for the placement of marketing or outreach
11 advertising services.

12 (b) To ensure that state agencies are in compliance with the
13 policy that state and local agencies give preference to local news
14 organizations, in contracts or subcontracts for the placement of
15 marketing or outreach advertising services, the department shall
16 publicly issue a report by April 1 of each year that identifies the
17 following:

18 (1) Each state agency that paid for placement of marketing or
19 outreach advertising material pursuant to a contract or
20 subcontract.

21 (2) The amounts paid by each state agency to each media
22 platform pursuant to a contract or subcontract to place marketing
23 or outreach advertising material.

24 (3) The recipients of the amounts paid by each state agency to
25 media platforms with which the agency contracted or subcontracted
26 to place marketing or outreach advertising materials.

27 11804. This chapter is not intended to amend any of the
28 provisions of Chapter 1 (commencing with Section 6000) of
29 Division 7 of Title 1 of the Government Code.

30 ~~SECTION 1. The Legislature finds and declares all of the~~
31 ~~following:~~

32 ~~(a) The effects of climate change are happening now and will~~
33 ~~continue to increase both around the world and in California,~~
34 ~~creating a new climate norm that must be addressed.~~

35 ~~(b) These changing conditions have significantly increased both~~
36 ~~the likelihood and severity of wildfires in California, with each~~
37 ~~fire season entering into new and uncharted territory.~~

38 ~~(c) Wildfires related to climate change affect all Californians,~~
39 ~~with the state's large population and economy significantly~~
40 ~~heightening the risk of catastrophic damage due to a wildfire.~~

1 ~~(d) Much of the damage caused by catastrophic fires must be~~
2 ~~dealt with immediately.~~

3 ~~(e) The costs associated with recovery efforts quickly add up.~~
4 ~~The three wildfires that occurred in California in November 2018,~~
5 ~~the Camp Fire, the Hill Fire, and the Woolsey Fire, totaled nearly~~
6 ~~three billion dollars (\$3,000,000,000).~~

7 ~~(f) While most of the recovery costs are reimbursed by federal~~
8 ~~assistance, those reimbursements take time, making it crucial that~~
9 ~~the state has the financial capability to provide funding for~~
10 ~~immediate assistance.~~

11 ~~(g) Establishing the Disaster Preparedness Account will allow~~
12 ~~the state to prepare for future natural disasters in advance of a~~
13 ~~recession, thus eliminating concerns that immediate assistance will~~
14 ~~not be as readily available during an economic downturn.~~

15 ~~SEC. 2. Article 21 (commencing with Section 8669) is added~~
16 ~~to Chapter 7 of Division 1 of Title 2 of the Government Code, to~~
17 ~~read:~~

18
19 ~~Article 21. Disaster Preparedness Account~~
20

21 ~~8669. (a) The Disaster Preparedness Account is hereby created~~
22 ~~in the State Treasury.~~

23 ~~(b) (1) Funds may be deposited in the Disaster Preparedness~~
24 ~~Account by the annual Budget Act, a bill relating to the budget,~~
25 ~~reimbursement by the federal government related to a major~~
26 ~~disaster, or any other measure.~~

27 ~~(2) Funds deposited in the Disaster Preparedness Account shall~~
28 ~~be funds that are not required to meet any obligation pursuant to~~
29 ~~Proposition 98.~~

30 ~~(c) Funds in the Disaster Preparedness Account shall be~~
31 ~~available for appropriation by the Legislature upon the Governor's~~
32 ~~proclamation of a state of emergency.~~