
THIRD READING

Bill No: AB 323
Author: Blanca Rubio (D), et al.
Amended: 8/27/20 in Senate
Vote: 21

PRIOR VOTES NOT RELEVANT

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 5-0, 8/11/20
AYES: Hill, Morrell, Jackson, Mitchell, Pan

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/20/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Newspapers: state agency advertising: worker status: independent contractors

SOURCE: Author

DIGEST: This bill extends an existing exemption for newspaper distributors from the “ABC” test from January 1, 2021, to January 1, 2022, and requires an assessment of the effectiveness of contracts to conduct outreach and marketing to specified communities.

Senate Floor Amendments of 8/27/20 move the exemption up a year and contain chaptering out language with AB 2257 (Gonzalez).

Senate Floor Amendments of 8/25/20 set a sunset for the assessment and reporting requirements for ethnic media, as defined.

ANALYSIS:

Existing law:

- 1) Establishes a comprehensive set of protections for employees, including a time-sure minimum wage, meal and rest periods, workers’ compensation coverage in the event of an industrial injury, sick leave, disability insurance (DI) in the

event of a non-industrial disability, paid family leave, and unemployment insurance (UI). (Labor Code §§201, 226.7, 246, 512, 1182.12, & 3600 and UI Code §§1251 & 2601)

- 2) Provides that, except as otherwise stated, a person providing labor or services for remuneration *must* be considered an employee *unless* the hiring entity demonstrates that all of the following conditions are satisfied:
 - a) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
 - b) The person performs work that is outside the usual course of the hiring entity's business.
 - c) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
(Labor Code §2750.3)
- 3) Exempts, among others, newspaper distributors working under contract with a newspaper from the "ABC" test, instead placing such workers under the *Borello* standard. *The newspaper distributor exemption expires on January 1, 2021.*

This bill:

- 1) Extends the newspaper distributor exemption described above to January 1, 2022.
- 2) States that the state should assess and evaluate the effectiveness of its contracts to determine how it can best utilize its media and marketing and communication efforts to reach its ethnic residents, including, but not limited to, Latino, African American, Asian-Pacific Islander, Indigenous, and Middle Eastern communities, and its LGBTQIA residents.
- 3) Requires the Department of General Services to report annually on contracts and subcontracts, if available, for marketing and outreach to specific communities including, but not limited to, Latino, African American, Asian-Pacific Islander, Indigenous, Middle Eastern, and LGBTQIA communities.
- 4) Sets the inoperative date for the reporting requirements described above become inoperative on July 1, 2023, and are repealed on January 1, 2024.

5) Contains provisions to avoid chaptering-out challenges with AB 2257.

Comments

Need for this bill? The proponents of AB 323, the California News Publishers Association, argues the following:

AB 323 would address the economic crisis faced by newspapers by requiring state departments and agencies to place marketing and outreach advertising in ethnic and community newspapers. This requirement would not require new allocations in the state budget but rather would apply to those amounts already allocated in the budget. Most importantly, it would ensure that more Californians, including those in hard-to-reach communities, are reached with important messages that further the state's public health and safety goals....

The two-year extension of the sunset date for the exemption for newspaper carriers from the ABC test, would give ethnic, medium and daily newspapers the necessary breathing room to work through the issues associated with converting carriers to employees with the involvement of all interested parties.

Related/Prior Legislation

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the recent *Dynamex* decision, requiring that employers prove that their workers can meet a three-part "ABC" test in order to be lawfully classified as independent contractors.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- The enacted 2020-21 state budget provides resources to implement AB 5 (see below), including \$17.5 million for the Department of Industrial Relations, and \$3.4 million for the Employment Development Department. Both agencies indicate that they can implement this bill's requirements with the above provided resources.
- The Department of General Services indicates that it would incur annual General Fund costs of \$152,000 to implement its provisions of this bill.
- The Franchise Tax Board (FTB) indicates that this bill would have an unknown impact on revenues. FTB's implementation costs would be minor and absorbable.

SUPPORT: (Verified 8/28/20)

California News Publishers Association
Los Angeles County Business Federation
Sacramento LGBT Community Center

OPPOSITION: (Verified 8/28/20)

None received

ARGUMENTS IN SUPPORT: The proponent of AB 323, the California News Publishers Association, argues the following:

Over the last several months, California news organizations have worked on the front lines of the COVID-19 pandemic inquiring, authenticating and reporting information Californians rely on for a deeper understanding of the threat and to help them make well-informed decisions about their health and safety. In addition to providing real-time information to subscribers, many of our members have dropped their paywalls to provide access to key coronavirus coverage as a public service.

The vital news coverage provided by our local and ethnic news outlets is gravely imperiled, however, by the economic crisis exacerbated by the coronavirus pandemic. Newspapers have been financially devastated by declines in advertising resulting from COVID-19. The average monthly loss of print advertising revenue reported by our ethnic and community newspapers for April/May/June was **56%**. The average monthly loss of print advertising revenue reported by our daily newspaper members for April/May/June was **48%**.

The COVID-19 crisis hit newspapers at a time when, after weathering years of financial declines, newspapers are actively taking measures that allow for continued operation while transition strategies are being developed. But regardless of the change in operations and the efforts to create new revenue sources, the industry in large part continues to rely on traditional newspaper advertising sales and delivery....

In this transition period, the industry's dire position cannot be overstated. Nationwide, newsroom employees have declined from 114,000 in 2008 to 78,000 in 2019, with 7,800 jobs lost last year alone. In the Bay Area, when the San Francisco Chronicle and Examiner were merged in 2000 there were over 600 reporters; today that number is 150.

Nowhere is the financial impact on the newspaper business more evident than in Sacramento. The McClatchy Company has declared bankruptcy and has dropped Saturday print publications at many of its properties. Without financial assistance to address the revenue losses the industry is experiencing as a result of the pandemic, many newspapers will close, more ownerships will consolidate, leading to less reporting of key developments in our communities....

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Without relief, decreased revenue combined with increased costs is a potentially devastating blow for an industry already struggling to generate profits. Daily newspapers will likely publish fewer days and weekly newspapers may disappear as well as African American, Latino, Asian and other ethnic and niche papers. Some counties in the State may become "news deserts" with no paper of record.

The latter may be the most devastating consequence of all. Communities without newspapers lose touch with government, business, education, and neighbors. They operate without journalists working to keep them informed, uncover truth, expose corruption and share common goals and experiences. They lose a focal point for conversation and decision making. And they are left without local sources on the stories that have the greatest impact on their lives.

Prepared by: Gideon L. Baum / L., P.E. & R. / (916) 651-1556

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