

## CONCURRENCE IN SENATE AMENDMENTS

AB 1506 (Kalra)

As Amended September 3, 2021

Majority vote

**SUMMARY**

Original Committee of Reference: L. & E.

Extends the sunset to the newspaper carriers' exemption from the ABC test for employment status to January 1, 2025. Require newspaper publishers and distributors to annually report information regarding carrier employment, wage claims and lawsuits, and average wage rate, to the Labor and Workforce Development Agency (LWDA).

**Senate Amendments**

Current Committee Recommendation: Concur

- 1) Delete the prior version of this bill.
- 2) Define "newspaper" to also mean a publication that is published in print and that may be posted in a digital format, and distributed periodically at daily, weekly, or other short intervals, for the dissemination of news of a general or local character and of a general or local interest.
- 3) Require, on or before March 1, 2022, March 1, 2023, and March 1, 2024, every newspaper publisher or distributor that hires or directly contracts with newspaper carriers to submit to the LWDA, in a manner prescribed by the LWDA and in conformity with existing law, the following information:
  - a) The number of carriers for which the publisher or distributor paid payroll taxes in the previous year and the number of carriers for which the publisher or distributor did not pay payroll taxes in the previous year.
  - b) The average wage rate paid to carriers classified as independent contractors and as employees.
  - c) The number of carrier wage claims filed, if any, with the Labor Commissioner (LC) or in a court of law.
- 4) Require, for the March 1, 2022, reporting date only, every newspaper publisher and distributor to also report the number of carrier wage claims filed with the LC or in a court of law for the preceding three years.
- 5) State that the information submitted to the LWDA shall only be disclosed in accordance with Government Code Section 6254(k), relating to trade secrets or other proprietary business information.
- 6) Extend the sunset date on the newspaper carriers' exemption from the ABC test for employment status to January 1, 2025.

- 7) Address chaptering out with AB 1561 (Labor and Employment Committee) of the current legislative session.

## COMMENTS

The use of newspaper carriers to deliver the printed news dates back to the late 19th Century. While much has changed in the demographics and working conditions of carriers since then, questions remain around carrier misclassification. The employment status of newspaper carriers has been, and continues to be, litigated. As recently as 2017, a California appellate court – applying the *Borello* test for causes of action under the Labor Code – affirmed a trial court decision that newspaper carriers were employees.<sup>1</sup> In addition, in *Sawin v. The McClatchy Co.* (d/b/a Sacramento Bee), No. 34-2009-00033950 (Cal. Super. Ct. Sept. 22, 2014), the Superior Court for Sacramento County found that the Bee's carriers were employees on the grounds that they were an integral part of the publisher's business, picked up the newspapers at the Bee's warehouses, and delivered them to the Bee's clients.

While this measure continues the temporary exemption for newspaper publishers and distributors who utilize carriers from the application of the ABC test, it conditions the exemption on annual reporting of key data on carrier classification, including information on wage claims or lawsuits filed by carriers. This data can better inform state policy makers on employment trends in the industry and how they can best be addressed.

### According to the Author

"Since the passage of AB 5 (Gonzalez) in 2019, newspaper carriers have been temporarily exempted from coverage under the ABC test established in the *Dynamex* decision of the California Supreme Court. The last exemption was provided in the form of a one-year extension in AB 323 (Rubio) of 2020. That extension will sunset on January 1, 2022. This measure will extend the sunset for three additional years while providing critical reporting requirements in order to assess the use of the independent contractor model in the industry, understand any trends in carrier misclassification, and ensure that publishers and distributors are complying with the *Borello* test for employment status. This bill both recognizes the importance of the newspaper industry in providing essential news and information to our communities while seeking confirmation that newspaper carriers are appropriately classified and are receiving the labor law protections they are entitled to."

### Arguments in Support

The California News Publishers Association is in support and states, "Newspaper[s] are frontline community resources, reporting essential news and providing information that informs and entertains readers in diverse communities across the state. The provides information about local COVID-19 cases, the location of vaccine centers, county protocols and restrictions, school districts reopening plans, local crime, city and county government news, transportation projects, and sports and entertainment. Newspapers connect neighbors and neighborhoods -- and when they are gone, numerous studies show that crime increases, the local economy suffers, and corruption goes unnoticed.

Without AB 1506 and the extension of the sunset clause, publications already struggling to survive will see costs increase anywhere from 40 to 100%. A recent survey of California

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<sup>1</sup> *Espejo v. The Copley Press, Inc.* (2017) 207 Cal.App.5th 329, 342-352.

publications shows that 40% of publications would have to consider closing their doors forever, 64% would eliminate delivery areas, 57% would raise prices, and 71 percent would reduce staff (in addition to those laid off or furloughed from the pandemic).

In a crisis and in everyday life, news organizations play an essential role in California and in local communities. No other industry impacts the well-being of the neighborhoods they serve by keeping their communities informed and up to date on local news. In an age where disinformation has an ever-increasing impact on the lives and decisions made by Californians, the best antidote to disinformation is accurate and authoritative news coverage provided by credible sources like printed newspapers and news websites.”

### **Arguments in Opposition**

None on file.

### **FISCAL COMMENTS**

According to the Senate Appropriations Committee:

- 1) LWDA indicates that it would incur significant costs, minimally in the hundreds of thousands of dollars annually through 2024, to develop a data collection process, collect and analyze the data.
- 2) Any costs to the Employment Development Department (EDD) would be minor and absorbable.
- 3) The Department of Industrial Relations (DIR) can implement its provisions of this bill with funding from AB 5 (Gonzalez), Chapter 296, Statutes of 2019.

### **VOTES**

#### **ASM LABOR AND EMPLOYMENT: 5-1-1**

**YES:** Kalra, Lorena Gonzalez, Jones-Sawyer, Stone, Ward

**NO:** Flora

**ABS, ABST OR NV:** Seyarto

#### **ASSEMBLY FLOOR: 60-14-5**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Cooley, Cooper, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

**NO:** Bigelow, Cunningham, Megan Dahle, Davies, Fong, Gallagher, Kiley, Lackey, Nguyen, Patterson, Smith, Valladares, Voepel, Waldron

**ABS, ABST OR NV:** Choi, Flora, Mathis, Mayes, Seyarto

**SENATE FLOOR: 38-0-2**

**YES:** Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Eggman, Stern

**ASM LABOR AND EMPLOYMENT: 5-0-2**

**YES:** Kalra, Flora, Jones-Sawyer, Reyes, Ward

**ABS, ABST OR NV:** Lorena Gonzalez, Seyarto

**UPDATED**

VERSION: September 3, 2021

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