

Assembly Bill No. 323

CHAPTER 341

An act to amend Sections 2750.3 and 2783 of the Labor Code, and to add and repeal Chapter 2.8 (commencing with Section 11800) of Part 2 of Division 2 of the Public Contract Code, relating to newspapers.

[Approved by Governor September 30, 2020. Filed with
Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 323, Blanca Rubio. 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 the department to publish, on the department's internet website, an annual report by July 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. The bill would make these provisions inoperative on July 1, 2023.

(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, 2022.

(3) This bill would incorporate the changes to Section 2750.3 of the Labor Code proposed by this bill to Section 2783 of the Labor Code, as proposed to be added by AB 2257, to be operative only if this bill and AB 2257 are enacted and this bill is enacted last.

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

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

(a) Every day, journalism plays an essential role in California and in local communities. The COVID-19 crisis has brought into stark relief the importance of quality local journalism. No other industry impacts the well-being of the neighborhoods they serve by keeping their communities informed and up to date on the news.

(b) Over the last two months, journalists for 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 news organizations have dropped their paywalls to provide access to key coronavirus coverage as a public service.

(c) On March 22, 2020, the California State Public Health Officer reaffirmed the importance of news organizations as essential businesses by declaring workers who support news media are critical infrastructure workers in the communications sector who may continue to operate during the COVID-19 crisis.

(d) The vital news coverage provided by state and local news outlets is gravely imperiled, however, by an economic crisis that has been exacerbated by the coronavirus pandemic.

(e) Many newspapers in California are facing financial failure. Nationwide advertising revenues have dropped from \$25 billion in 2012 to \$11 billion in 2019. Economists expect the drop to exceed 25 percent in 2021 as a result of the COVID-19 impact on businesses. In California the immediate advertising revenue loss, which for many is one-half of total revenue, has

been 50 percent to 70 percent. This could force dozens, perhaps hundreds, of newspapers out of business. We have already seen dozens of mergers and several significant bankruptcies. The demise of newspapers will mean many lost jobs, but even more devastating, will leave many communities without local journalism. As we all know, a functioning democracy is dependent on a well-informed constituency.

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

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

(h) 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.

(i) 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 decisionmaking, and they are left without local sources on the big stories.

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

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

2750.3. (a) (1) For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor 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.

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

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

(b) Subdivision (a) and the holding in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 (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 either of the following:

(A) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory 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:

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

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

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

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

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

(I) Reporting the number of commercial fishermen who apply for unemployment insurance benefits.

(II) The number of commercial fishermen who have their claims disputed.

(III) The number of commercial fishermen who have their claims denied.

(IV) The number of commercial fishermen who receive unemployment insurance benefits.

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

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

(7) (A) A newspaper distributor working under contract with a newspaper publisher, as defined in subparagraph (B), or a newspaper carrier.

(B) For purposes of this paragraph:

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

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

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

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

(C) This paragraph shall become inoperative on January 1, 2022, unless extended by the Legislature.

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

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

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

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

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

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

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

(2) For purposes of this subdivision:

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

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

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

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

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

(I) A person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.

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

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

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

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

(ix) (I) Services provided by a still photographer or photojournalist who 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.

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

(ia) Pertains to a specific event or specific subject.

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

(ic) Is accepted by and licensed to the publication or stock photography company and published or posted.

(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.

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

(ia) Pertains to a specific event or topic.

(ib) Is provided for in a contract that defines the scope of the 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.

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

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

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

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

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

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

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

(A) For purposes of unemployment insurance by Section 650 of the Unemployment Insurance Code.

(B) For purposes of workers' compensation by Section 3200 et seq.

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

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

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

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

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

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

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

(1) The subcontract is in writing.

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

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

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

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

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

(7) The subcontractor is customarily engaged in an independently established business of the same nature as that 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 truck.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) “Referral agency” is a business that connects clients with service providers that provide graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning, errands, furniture assembly,

animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, or yard cleanup.

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

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

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

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

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

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

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

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

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

SEC. 2.5. Section 2783 of the Labor Code, as proposed to be added by Assembly Bill 2257 of the 2019–20 Regular Session, is amended to read:

2783. Section 2775 and the holding in *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*:

(a) 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 or a person who provides underwriting inspections, premium audits, risk management, or loss control work for the insurance and financial service industries.

(b) 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 circumvent, undermine, or restrict the rights under federal law to organize and collectively bargain.

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

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

(1) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.

(2) 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.

(e) 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.

(f) A manufactured housing salesperson, subject to all obligations under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, including all regulations promulgated by the Department of Housing and Community Development relating to manufactured home salespersons and all other obligations of manufactured housing salespersons to members of the public.

(g) A commercial fisher working on an American vessel.

(1) For the purposes of this subdivision:

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

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

(C) “Working on an American vessel” means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means,

and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, “working on an American vessel” does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(2) For the purposes of this subdivision, a commercial fisher working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of “employment” in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(3) (A) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, all of the following:

(i) Reporting the number of commercial fishers who apply for unemployment insurance benefits.

(ii) The number of commercial fishers who have their claims disputed.

(iii) The number of commercial fishers who have their claims denied.

(iv) The number of commercial fishers who receive unemployment insurance benefits.

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

(4) This subdivision shall become inoperative on January 1, 2023, unless extended by the Legislature.

(h) (1) A newspaper distributor working under contract with a newspaper publisher, as defined in paragraph (2), or a newspaper carrier.

(2) For purposes of this subdivision:

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

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

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

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

(3) This subdivision shall become inoperative on January 1, 2022, unless extended by the Legislature.

(i) An individual who is engaged by an international exchange visitor program that has obtained and maintains full official designation by the United States Department of State under Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations for the purpose of conducting, instead of participating in, international and cultural exchange

visitor programs and is in full compliance with Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations.

(j) A competition judge with a specialized skill set or expertise providing services that require the exercise of discretion and independent judgment to an organization for the purposes of determining the outcome or enforcing the rules of a competition. This includes, but is not limited to, an amateur umpire or referee.

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

CHAPTER 2.8. LOCAL NEWS PREFERENCE IN MARKETING OR OUTREACH
ADVERTISING

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

(a) “Department” means the Department of General Services.

(b) “State agency” means each entity identified in Section 11000 of the Government Code, and includes the California State University.

11801. It is the declared policy of the Legislature 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.

11802. (a) Beginning July 1, 2021, the department shall publish, by July 1 of each year and on the department’s internet website, a report that identifies all of the following:

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

(2) The amounts paid by each state agency to each media platform pursuant to a contract, including pursuant to a subcontract if the information is available, to place marketing or outreach advertising material.

(3) The recipients of the amounts paid by each state agency to media platforms, including to any subcontractors if the information is available, with which the agency contracted or subcontracted to place marketing or outreach advertising materials.

(4) The information required in paragraphs (1) to (3), inclusive, shall be further disaggregated to report information on contracts, including on subcontracts if the information is available, for both of the following:

(A) For the placement of marketing or outreach advertising material targeting specific ethnic communities, including, but not limited to, Latino, African American, Asian-Pacific Islander, Indigenous, and Middle Eastern communities.

(B) For the placement of marketing or outreach advertising material targeting the LGBTQIA community.

11803. This chapter is not intended to amend any of the provisions of Chapter 1 (commencing with Section 6000) of Division 7 of Title 1 of the Government Code.

11804. This chapter shall become inoperative on July 1, 2023, and, as of January 1, 2024, is repealed.

SEC. 4. The amendments made to Section 2783 of the Labor Code, as amended by Section 2.5 of this act, shall only become operative if (1) both this bill and Assembly Bill 2257 of the 2019–20 Regular Session are enacted and become effective on or before January 1, 2021, (2) Assembly Bill 2257 of the 2019–20 Regular Session repeals, and this bill amends, Section 2750.3 of the Labor Code, and (3) this bill is enacted after Assembly Bill 2257 of the 2019–20 Regular Session, in which case Section 2783 of the Labor Code, as proposed to be added by Assembly Bill 2257 of the 2019–20 Regular Session, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.