

AMENDED IN SENATE APRIL 17, 2020

SENATE BILL

No. 990

**Introduced by ~~Senator Moorlach~~ *Senators Moorlach and Grove*
(Coauthors: ~~Senators Bates, Borgeas, Chang, Dahle, Grove, Jones,~~
Morrell, Nielsen, and Wilk)**

February 12, 2020

~~An act to amend Section 2750.3 of the Labor Code, relating to employment.~~ *An act to repeal and add Section 2750.3 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

SB 990, as amended, Moorlach. Worker status: independent contractors: transportation network companies.

Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Under the ABC test, 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. 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 the ABC test described above. Existing law, instead, provides that these exempt relationships are governed by the

multifactor test previously established in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

This bill would repeal these existing ABC test provisions and instead makes them operative on January 1, 2022.

~~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, including various professional services provided by graphic designers, grant writers, and fine artists, among others.~~

~~This bill would also exempt transportation network companies from the application of Dynamex and the above provisions.~~

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. *Section 2750.3 of the Labor Code is repealed.*
- 2 2750.3. ~~(a) (1) For purposes of the provisions of this code~~
- 3 ~~and the Unemployment Insurance Code, and for the wage orders~~
- 4 ~~of the Industrial Welfare Commission, a person providing labor~~
- 5 ~~or services for remuneration shall be considered an employee rather~~

1 than an independent contractor unless the hiring entity demonstrates
2 that all of the following conditions are satisfied:

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

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

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

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

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

27 (b) Subdivision (a) and the holding in *Dynamex Operations*
28 *West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903
29 (*Dynamex*), do not apply to the following occupations as defined
30 in the paragraphs below, and instead, the determination of
31 employee or independent contractor status for individuals in those
32 occupations shall be governed by *Borello*.

33 (1) A person or organization who is licensed by the Department
34 of Insurance pursuant to Chapter 5 (commencing with Section
35 1621), Chapter 6 (commencing with Section 1760), or Chapter 8
36 (commencing with Section 1831) of Part 2 of Division 1 of the
37 Insurance Code.

38 (2) A physician and surgeon, dentist, podiatrist, psychologist,
39 or veterinarian licensed by the State of California pursuant to
40 Division 2 (commencing with Section 500) of the Business and

1 ~~Professions Code, performing professional or medical services~~
2 ~~provided to or by a health care entity, including an entity organized~~
3 ~~as a sole proprietorship, partnership, or professional corporation~~
4 ~~as defined in Section 13401 of the Corporations Code. Nothing in~~
5 ~~this subdivision shall apply to the employment settings currently~~
6 ~~or potentially governed by collective bargaining agreements for~~
7 ~~the licensees identified in this paragraph.~~

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

12 ~~(4) A securities broker-dealer or investment adviser or their~~
13 ~~agents and representatives that are registered with the Securities~~
14 ~~and Exchange Commission or the Financial Industry Regulatory~~
15 ~~Authority or licensed by the State of California under Chapter 2~~
16 ~~(commencing with Section 25210) or Chapter 3 (commencing with~~
17 ~~Section 25230) of Division 1 of Part 3 of Title 4 of the~~
18 ~~Corporations Code.~~

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

22 ~~(6) A commercial fisherman working on an American vessel~~
23 ~~as defined in subparagraph (A) below:~~

24 ~~(A) For the purposes of this paragraph:~~

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

27 ~~(ii) “Commercial fisherman” means a person who has a valid,~~
28 ~~unrevoked commercial fishing license issued pursuant to Article~~
29 ~~3 (commencing with Section 7850) of Chapter 1 of Part 3 of~~
30 ~~Division 6 of the Fish and Game Code.~~

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

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

7 ~~(C) On or before March 1, 2021, and each March 1 thereafter,~~
8 ~~the Employment Development Department shall issue an annual~~
9 ~~report to the Legislature on the use of unemployment insurance in~~
10 ~~the commercial fishing industry. This report shall include, but not~~
11 ~~be limited to, reporting the number of commercial fishermen who~~
12 ~~apply for unemployment insurance benefits, the number of~~
13 ~~commercial fishermen who have their claims disputed, the number~~
14 ~~of commercial fishermen who have their claims denied, and the~~
15 ~~number of commercial fishermen who receive unemployment~~
16 ~~insurance benefits. The report required by this subparagraph shall~~
17 ~~be submitted in compliance with Section 9795 of the Government~~
18 ~~Code.~~

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

21 ~~(7) A newspaper distributor working under contract with a~~
22 ~~newspaper publisher, as defined in subparagraph (A), and a~~
23 ~~newspaper carrier working under contract either with a newspaper~~
24 ~~publisher or newspaper distributor.~~

25 ~~(A) For purposes of this paragraph:~~

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

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

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

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

1 ~~(B) This paragraph shall become inoperative on January 1, 2021,~~
2 ~~unless extended by the Legislature.~~

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

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

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

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

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

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

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

28 ~~(2) For purposes of this subdivision:~~

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

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

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

38 ~~(ii) Administrator of human resources, provided that the~~
39 ~~contracted work is predominantly intellectual and varied in~~
40 ~~character and is of such character that the output produced or the~~

- 1 result accomplished cannot be standardized in relation to a given
2 period of time.
- 3 (iii) ~~Travel agent services provided by either of the following:~~
4 ~~(I) a person regulated by the Attorney General under Article 2.6~~
5 ~~(commencing with Section 17550) of Chapter 1 of Part 3 of~~
6 ~~Division 7 of the Business and Professions Code, or (II) an~~
7 ~~individual who is a seller of travel within the meaning of~~
8 ~~subdivision (a) of Section 17550.1 of the Business and Professions~~
9 ~~Code and who is exempt from the registration under subdivision~~
10 ~~(g) of Section 17550.20 of the Business and Professions Code.~~
- 11 ~~(iv) Graphic design.~~
12 ~~(v) Grant writer.~~
13 ~~(vi) Fine artist.~~
14 ~~(vii) Services provided by an enrolled agent who is licensed by~~
15 ~~the United States Department of the Treasury to practice before~~
16 ~~the Internal Revenue Service pursuant to Part 10 of Subtitle A of~~
17 ~~Title 31 of the Code of Federal Regulations.~~
- 18 ~~(viii) Payment processing agent through an independent sales~~
19 ~~organization.~~
- 20 ~~(ix) Services provided by a still photographer or photojournalist~~
21 ~~who do not license content submissions to the putative employer~~
22 ~~more than 35 times per year. This clause is not applicable to an~~
23 ~~individual who works on motion pictures, which includes, but is~~
24 ~~not limited to, projects produced for theatrical, television, internet~~
25 ~~streaming for any device, commercial productions, broadcast news,~~
26 ~~music videos, and live shows, whether distributed live or recorded~~
27 ~~for later broadcast, regardless of the distribution platform. For~~
28 ~~purposes of this clause a “submission” is one or more items or~~
29 ~~forms of content produced by a still photographer or photojournalist~~
30 ~~that: (I) pertains to a specific event or specific subject; (II) is~~
31 ~~provided for in a contract that defines the scope of the work; and~~
32 ~~(III) is accepted by and licensed to the publication or stock~~
33 ~~photography company and published or posted. Nothing in this~~
34 ~~section shall prevent a photographer or artist from displaying their~~
35 ~~work product for sale.~~
- 36 ~~(x) Services provided by a freelance writer, editor, or newspaper~~
37 ~~cartoonist who does not provide content submissions to the putative~~
38 ~~employer more than 35 times per year. Items of content produced~~
39 ~~on a recurring basis related to a general topic shall be considered~~
40 ~~separate submissions for purposes of calculating the 35 times per~~

1 year. For purposes of this clause, a “submission” is one or more
2 items or forms of content by a freelance journalist that: (I) pertains
3 to a specific event or topic; (II) is provided for in a contract that
4 defines the scope of the work; (III) is accepted by the publication
5 or company and published or posted for sale.

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

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

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

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

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

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

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

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

26 ~~(1) A real estate licensee licensed by the State of California
27 pursuant to Division 4 (commencing with Section 10000) of the
28 Business and Professions Code, for whom the determination of
29 employee or independent contractor status shall be governed by
30 subdivision (b) of Section 10032 of the Business and Professions
31 Code. If that section is not applicable, then this determination shall
32 be governed as follows: (A) for purposes of unemployment
33 insurance by Section 650 of the Unemployment Insurance Code;
34 (B) for purposes of workers compensation by Section 3200 et seq.;~~
35 ~~and (C) for all other purposes in the Labor Code by Borello. The
36 statutorily imposed duties of a responsible broker under Section
37 10015.1 of the Business and Professions Code are not factors to
38 be considered under the Borello test.~~

39 ~~(2) A repossession agency licensed pursuant to Section 7500.2
40 of the Business and Professions Code, for whom the determination~~

1 of employee or independent contractor status shall be governed
2 by Section 7500.2 of the Business and Professions Code, if the
3 repossession agency is free from the control and direction of the
4 hiring person or entity in connection with the performance of the
5 work, both under the contract for the performance of the work and
6 in fact.

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

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

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

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

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

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

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

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

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

- 1 ~~(H) The business service provider advertises and holds itself~~
2 ~~out to the public as available to provide the same or similar~~
3 ~~services.~~
- 4 ~~(I) The business service provider provides its own tools,~~
5 ~~vehicles, and equipment to perform the services.~~
- 6 ~~(J) The business service provider can negotiate its own rates.~~
- 7 ~~(K) Consistent with the nature of the work, the business service~~
8 ~~provider can set its own hours and location of work.~~
- 9 ~~(L) The business service provider is not performing the type of~~
10 ~~work for which a license from the Contractor's State License Board~~
11 ~~is required, pursuant to Chapter 9 (commencing with Section 7000)~~
12 ~~of Division 3 of the Business and Professions Code.~~
- 13 ~~(2) This subdivision does not apply to an individual worker, as~~
14 ~~opposed to a business entity, who performs labor or services for~~
15 ~~a contracting business.~~
- 16 ~~(3) The determination of whether an individual working for a~~
17 ~~business service provider is an employee or independent contractor~~
18 ~~of the business service provider is governed by paragraph (1) of~~
19 ~~subdivision (a).~~
- 20 ~~(4) This subdivision does not alter or supersede any existing~~
21 ~~rights under Section 2810.3.~~
- 22 ~~(f) Subdivision (a) and the holding in Dynamex do not apply to~~
23 ~~the relationship between a contractor and an individual performing~~
24 ~~work pursuant to a subcontract in the construction industry, and~~
25 ~~instead the determination of whether the individual is an employee~~
26 ~~of the contractor shall be governed by Section 2750.5 and by~~
27 ~~Borello, if the contractor demonstrates that all the following criteria~~
28 ~~are satisfied:~~
- 29 ~~(1) The subcontract is in writing.~~
- 30 ~~(2) The subcontractor is licensed by the Contractors State~~
31 ~~License Board and the work is within the scope of that license.~~
- 32 ~~(3) If the subcontractor is domiciled in a jurisdiction that requires~~
33 ~~the subcontractor to have a business license or business tax~~
34 ~~registration, the subcontractor has the required business license or~~
35 ~~business tax registration.~~
- 36 ~~(4) The subcontractor maintains a business location that is~~
37 ~~separate from the business or work location of the contractor.~~
- 38 ~~(5) The subcontractor has the authority to hire and to fire other~~
39 ~~persons to provide or to assist in providing the services.~~

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

5 ~~(7) The subcontractor is customarily engaged in an~~
6 ~~independently established business of the same nature as that~~
7 ~~involved in the work performed.~~

8 ~~(8) (A) Paragraph (2) shall not apply to a subcontractor~~
9 ~~providing construction trucking services for which a contractor's~~
10 ~~license is not required by Chapter 9 (commencing with Section~~
11 ~~7000) of Division 3 of the Business and Professions Code, provided~~
12 ~~that all of the following criteria are satisfied:~~

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

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

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

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

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

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

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

39 ~~(E) Nothing in this paragraph prohibits an individual who owns~~
40 ~~their truck from working as an employee of a trucking company~~

1 and utilizing that truck in the scope of that employment. An
2 individual employee providing their own truck for use by an
3 employer trucking company shall be reimbursed by the trucking
4 company for the reasonable expense incurred for the use of the
5 employee owned truck.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 ~~(C) “Referral agency” is a business that connects clients with~~
15 ~~service providers that provide graphic design, photography,~~
16 ~~tutoring, event planning, minor home repair, moving, home~~
17 ~~cleaning, errands, furniture assembly, animal services, dog walking,~~
18 ~~dog grooming, web design, picture hanging, pool cleaning, or yard~~
19 ~~cleanup.~~

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

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

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

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

36 ~~(h) Subdivision (a) and the holding in Dynamex do not apply~~
37 ~~to the relationship between a motor club holding a certificate of~~
38 ~~authority issued pursuant to Chapter 2 (commencing with Section~~
39 ~~12160) of Part 5 of Division 2 of the Insurance Code and an~~
40 ~~individual performing services pursuant to a contract between the~~

1 motor club and a third party to provide motor club services utilizing
 2 the employees and vehicles of the third party and, instead, the
 3 determination whether such an individual is an employee of the
 4 motor club shall be governed by Borello, if the motor club
 5 demonstrates that the third party is a separate and independent
 6 business from the motor club.

7 (i) (1) The addition of subdivision (a) to this section of the
 8 Labor Code by this act does not constitute a change in, but is
 9 declaratory of, existing law with regard to wage orders of the
 10 Industrial Welfare Commission and violations of the Labor Code
 11 relating to wage orders.

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

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

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

29 *SEC. 2. Section 2750.3 is added to the Labor Code, to read:*

30 *2750.3. (a) (1) For purposes of the provisions of this code*
 31 *and the Unemployment Insurance Code, and for the purposes of*
 32 *wage orders of the Industrial Welfare Commission, a person*
 33 *providing labor or services for remuneration shall be considered*
 34 *an employee rather than an independent contractor unless the*
 35 *hiring entity demonstrates that all of the following conditions are*
 36 *satisfied:*

37 *(A) The person is free from the control and direction of the*
 38 *hiring entity in connection with the performance of the work, both*
 39 *under the contract for the performance of the work and in fact.*

1 (B) *The person performs work that is outside the usual course*
2 *of the hiring entity’s business.*

3 (C) *The person is customarily engaged in an independently*
4 *established trade, occupation, or business of the same nature as*
5 *that involved in the work performed.*

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

14 (3) *If a court of law rules that the three-part test in paragraph*
15 *(1) cannot be applied to a particular context based on grounds*
16 *other than an express exception to employment status as provided*
17 *under paragraph (2), then the determination of employee or*
18 *independent contractor status in that context shall instead be*
19 *governed by the California Supreme Court’s decision in S. G.*
20 *Borello & Sons, Inc. v. Department of Industrial Relations (1989)*
21 *48 Cal.3d 341 (Borello).*

22 (b) *Subdivision (a) and the holding in Dynamex Operations*
23 *West, W. Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th*
24 *903 (Dynamex), (Dynamex) do not apply to the following*
25 *occupations as defined in the paragraphs below, and instead, the*
26 *determination of employee or independent contractor status for*
27 *individuals in those occupations shall be governed by Borello.*

28 (1) *A person or organization who is licensed by the Department*
29 *of Insurance pursuant to Chapter 5 (commencing with Section*
30 *1621), Chapter 6 (commencing with Section 1760), or Chapter 8*
31 *(commencing with Section 1831) of Part 2 of Division 1 of the*
32 *Insurance Code.*

33 (2) *A physician and surgeon, dentist, podiatrist, psychologist,*
34 *or veterinarian licensed by the State of California pursuant to*
35 *Division 2 (commencing with Section 500) of the Business and*
36 *Professions Code, performing professional or medical services*
37 *provided to or by a health care entity, including an entity organized*
38 *as a sole proprietorship, partnership, or professional corporation*
39 *as defined in Section 13401 of the Corporations Code. Nothing in*
40 *this subdivision shall apply to the employment settings currently*

1 *or potentially governed by collective bargaining agreements for*
2 *the licensees identified in this paragraph.*

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

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

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

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

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

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

22 (A) *For the purposes of this paragraph:*

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

25 (ii) *“Commercial fisherman” means a person who has a valid,*
26 *unrevoked commercial fishing license issued pursuant to Article*
27 *3 (commencing with Section 7850) of Chapter 1 of Part 3 of*
28 *Division 6 of the Fish and Game Code.*

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

39 (B) *For the purposes of this paragraph, a commercial fisherman*
40 *working on an American vessel is eligible for unemployment*

1 insurance benefits if they meet the definition of “employment” in
2 Section 609 of the Unemployment Insurance Code and are
3 otherwise eligible for those benefits pursuant to the provisions of
4 the Unemployment Insurance Code.

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

10 (I) The number of commercial fishermen who apply for
11 unemployment insurance benefits.

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

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

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

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

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

22 (7) A newspaper distributor working under contract with a
23 newspaper publisher, as defined in subparagraph (A), and a
24 newspaper carrier working under contract either with a newspaper
25 publisher or newspaper distributor.

26 (A) For purposes of this paragraph:

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

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

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

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

1 (B) This paragraph shall become inoperative on January 1,
2 2021, unless extended by the Legislature.

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

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

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

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

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

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

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

29 (2) For purposes of this subdivision:

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

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

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

39 (ii) Administrator of human resources, provided that the
40 contracted work is predominantly intellectual and varied in

1 *character and is of such character that the output produced or the*
2 *result accomplished cannot be standardized in relation to a given*
3 *period of time.*

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

5 *(I) A person regulated by the Attorney General under Article*
6 *2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of*
7 *Division 7 of the Business and Professions Code.*

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

13 *(iv) Graphic design.*

14 *(v) Grant writer.*

15 *(vi) Fine artist.*

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

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

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

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

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

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

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

39 *(III) Nothing in this section shall prevent a photographer or*
40 *artist from displaying their work product for sale.*

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

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

10 (ia) *Pertains to a specific event or topic.*

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

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

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

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

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

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

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

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

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

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

35 (1) *A real estate licensee licensed by the State of California*
36 *pursuant to Division 4 (commencing with Section 10000) of the*
37 *Business and Professions Code, for whom the determination of*
38 *employee or independent contractor status shall be governed by*
39 *subdivision (b) of Section 10032 of the Business and Professions*

1 *Code. If that section is not applicable, then this determination*
2 *shall be governed as follows:*

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

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

7 *(C) For all other purposes in the Labor Code by Borello. The*
8 *statutorily imposed duties of a responsible broker under Section*
9 *10015.1 of the Business and Professions Code are not factors to*
10 *be considered under the Borello test.*

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

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

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

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

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

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

38 *(D) If the work is performed in a jurisdiction that requires the*
39 *business service provider to have a business license or business*

1 tax registration, the business service provider has the required
2 business license or business tax registration.

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

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

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

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

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

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

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

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

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

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

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

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

40 (1) The subcontract is in writing.

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

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

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

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

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

15 (7) *The subcontractor is customarily engaged in an*
16 *independently established business of the same nature as that*
17 *involved in the work performed.*

18 (8) (A) *Paragraph (2) shall not apply to a subcontractor*
19 *providing construction trucking services for which a contractor's*
20 *license is not required by Chapter 9 (commencing with Section*
21 *7000) of Division 3 of the Business and Professions Code, provided*
22 *that all of the following criteria are satisfied:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (C) *“Referral agency” is a business that connects clients with*
25 *service providers that provide graphic design, photography,*
26 *tutoring, event planning, minor home repair, moving, home*
27 *cleaning, errands, furniture assembly, animal services, dog*
28 *walking, dog grooming, web design, picture hanging, pool*
29 *cleaning, or yard cleanup.*

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

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

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

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

6 (h) *Subdivision (a) and the holding in Dynamex do not apply*
7 *to the relationship between a motor club holding a certificate of*
8 *authority issued pursuant to Chapter 2 (commencing with Section*
9 *12160) of Part 5 of Division 2 of the Insurance Code and an*
10 *individual performing services pursuant to a contract between the*
11 *motor club and a third party to provide motor club services*
12 *utilizing the employees and vehicles of the third party and, instead,*
13 *the determination of whether such an individual is an employee*
14 *of the motor club shall be governed by Borello, if the motor club*
15 *demonstrates that the third party is a separate and independent*
16 *business from the motor club.*

17 (i) (1) *The addition of subdivision (a) does not constitute a*
18 *change in, but is declaratory of, existing law with regard to wage*
19 *orders of the Industrial Welfare Commission and violations of this*
20 *code relating to wage orders.*

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

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

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

37 (k) *This section shall become operative on January 1, 2022.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 12, 2020. (JR11)**

O