



National Press Photographers Association

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May 18, 2020

Hon. Ash Kalra, Chair
Labor and Employment Committee
California State Assembly
Capitol Office, Room 2196
Sacramento, CA 94249-0027

Hon. Heath Flora, Vice Chair
Labor and Employment Committee
California State Assembly
Capitol Office, Room 3098
Sacramento, CA 94249-0027

Re: Objections to AB 1850 and AB 2257

Honorable Assembly Members;

We write on behalf of the National Press Photographers Association (NPPA), representing over 500 visual journalists in California—many of them independent contractors. Our members have suffered extreme economic harm under the restrictions imposed by AB5 on their ability to freelance, resulting in NPPA being one of two plaintiffs in a lawsuit challenging certain aspects of that law. While we appreciate the language of AB 1850 and AB 2257 removing the 35-submission (per client, per year) limit along with the revision to the “not replacing an employee” clause, we still have strong objections to the bill language found in the proposed section 2750.3(d)(2)(B)(xi)(I)(ia). Of specific concern is:

- The requirement that “a still photographer, photojournalist, videographer, or photo editor” have a provision that specifies in advance “intellectual property rights” in order to retain independent contractor status. Failure to do so would automatically convert their status to one of employee. Under copyright law, when a contract does not specify copyright ownership, the default is the copyright vests in and is retained by the creator of the work. The AB5 provision would make the opposite true in California and put unwary photographers who do business with California clients at risk of losing their copyright. Therefore, we propose this “intellectual property rights” language be stricken.
- The requirement that “a still photographer, photojournalist, videographer, or photo editor” have a provision that specifies in advance “the obligation to pay by a defined time.” Failure to do so would automatically convert their status to one of employee and will adversely impact those who cover breaking news (because such assignments are often made by phone without all terms being specified in advance), as well as those who do not have well-developed business practices. Therefore, we propose the “in advance” and “the obligation to pay by a defined time” language be stricken.
- The definition of “motion picture,” as including “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 distribution platform” (emphasis added). Such convoluted, confusing and all-encompassing language would still bar “a still photographer, photojournalist, videographer, or photo editor” from shooting video lest they lose their independent contractor status. Therefore, we propose that “motion pictures” be more narrowly and clearly defined so as to be not so overly inclusive of what our members do unrelated to the actual motion picture industry.

- For clarity, we propose the following revised language:

2750.3(d)(2)(B)(xi)(I)(ia) *By a still photographer, photojournalist, videographer, or photo editor who works under a contract that specifies ~~in advance~~ the rate of pay, ~~intellectual property rights, and obligation to pay by a defined time~~, as long as the individual providing the services is not replacing an employee performing the same work at the same volume, the individual does not primarily perform the work at the hiring entity's business location, and the individual is not restricted from working for more than one hiring entity. This subclause is not applicable to a still photographer, photojournalist, videographer, or photo editor who works ~~on~~ in the motion pictures industry, which includes, but is not limited to, projects produced for theatrical, ~~television, internet streaming for any device~~, commercial, productions, ~~broadcast news, and~~ music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of distribution platform. Nothing in this section shall impose limitations on a photographer or artist from displaying their work product for sale.*

Without such revisions the language and restrictions noted above will continue to be to the detriment of freelance still photographers, photojournalists, videographers, and photo editors. We oppose legislation that applies materially different rules to freelance journalism as an ongoing unconstitutional abridgment of our members' First and Fourteenth Amendment rights.

We respectfully request that we be allowed to remotely testify at the Labor and Employment Committee hearing scheduled for Wednesday, May 20, 2020 and that you also schedule a call with us as soon as possible to discuss our concerns, objections and proposed revisions.

Thank you.

Yours truly,

Mickey H. Osterreicher

Mickey H. Osterreicher, General Counsel
National Press Photographers Association

Alicia Calzada

Alicia Calzada, Deputy General Counsel
National Press Photographers Association

cc:

Hon. Wendy Carrillo

Hon. Tyler Diep

Hon. Lorena Gonzales

Hon. Reginald Byron Jones-Sawyer, Sr.

Hon. Luz Rivas