



An overview of AB 2257. New CA law signed by Governor Newsom on September 1, 2020 includes additional exemptions and clarifications to AB 5 for arts sector and others.

CAA- Lobbying and AB 5



- In 2019-20 CAA worked with Senate Labor and several legislators for exemptions to be included in AB5 for workers providing services to the arts and creative sector. Due to our efforts, Fine Artists were exempt under professional services.
- In 2020-21, CAA worked with advocates, union leaders and legislators to continue to identify issues and impacts for our sector
- CAA supports AB 2257 but understands not all concerns for field have been addressed in new legislation
- AB 2257 new signed by Governor Newsom on September 1, 2020 is effective immediately and includes additional exemptions and clarifications to AB 5 for arts sector

AB 2257 – what is new?



AB 2257 includes more exemptions than AB 5 from the Dynamex decision and includes more definitions:

- For musicians in many circumstances
- Performing artists for single engagements
- Specialized performers teaching master classes
- A definition of fine artists
- Modification to business to business exemption
- Clarifies relationship of individuals acting as sole proprietors

MUSICIANS



Dynamex do not apply to the following occupations in connection with creating, marketing, promoting, or distributing **sound recordings or musical compositions**, and instead the holding in Borello shall apply to all of the following:

- (A) Recording artists, subject to the below.
- (B) Songwriters, lyricists, composers, and proofers.
- (C) Managers of recording artists.
- (D) Record producers and directors.
- (E) Musical engineers and mixers engaged in the creation of sound recordings.
- (F) Musicians engaged in the creation of sound recordings, subject to the below.
- (G) Vocalists, subject to the below.
- (H) Photographers working on recording photo shoots, album covers, and other press and publicity purposes.
- (I) Independent radio promoters.
- (J) Any other individual engaged to render any creative, production, marketing, or independent music publicist services related primarily to the creation, marketing, promotion, or distribution of sound recordings or musical composition

MUSICIANS



This subdivision shall not apply to any of the following:

(A) Film and television unit production crews, as such term is commonly used in the film and television industries, working on live or recorded performances for audiovisual works, including still photographers and cinematographers.

(B) Publicists who are not independent music publicists.

(c) (1) Subdivision (a) and the holding in *Dynamex* **do not apply to a musician or musical group for the purpose of a single-engagement live performance event**, and instead the determination of employee or independent contractor status shall be governed by *Borello*, unless one of the following conditions is met:

(A) The musical group is performing as a symphony orchestra, the musical group is performing at a theme park or amusement park, or a musician is performing in a musical theater production.

(B) The musical group is an event headliner for a performance taking place in a venue location with more than 1,500 attendees.

(C) The musical group is performing at a festival that sells more than 18,000 tickets per day.

AB 2257 - MUSICIANS



This subdivision is inclusive of rehearsals related to the single-engagement live performance event.

As used in this subdivision:

“Musical group” means a solo artist, band, or a group of musicians who perform under a distinct name.

“Musical theater production” means a form of theatrical performance that combines songs, spoken dialogue, acting, and dance.

“Single-engagement live performance event” means a stand-alone musical performance in a single venue location, or a series of performances in the same venue location no more than once a week. This does not include performances that are part of a tour or series of live performances at various locations.

“Venue location” means an indoor or outdoor location used primarily as a space to hold a concert or musical performance. “Venue location” includes, but is not limited to, a restaurant, bar, or brewery that regularly offers live musical entertainment.

PERFORMANCE ARTIST



The determination of employee or independent contractor status shall be governed by Borello:

(1) **An individual performance artist presenting material that is their original work** and creative in character and the result of which depends primarily on the individual's invention, imagination, or talent, given all of the following conditions are satisfied:

(A) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both as a matter of contract and in fact. This includes, and is not limited to, the right for the performer to exercise artistic control over all elements of the performance.

(B) The individual retains the rights to their intellectual property that was created in connection with the performance.

(C) Consistent with the nature of the work, the performer sets their terms of work and has the ability to set or negotiate their rates.

PERFORMANCE ARTIST



(D) The performer is free to accept or reject each individual performance engagement without being penalized in any form by the hiring entity.

(2) In all events, the terms and conditions of any current or future collective bargaining agreements or contractual agreements between the applicable labor unions and respective employer shall govern the determination of employment status.

(3) This subdivision does not apply to an individual participating in a theatrical production, or a musician or musical group as defined in subdivision

“Individual performance artist” shall include, but is not limited to, an individual performing comedy, improvisation, stage magic, illusion, mime, spoken word, storytelling, or puppetry

MASTER CLASS



Added to Professional Services;

A specialized performer hired by a performing arts company or organization to teach a master class for no more than one week. “Master class” means a specialized course for limited duration that is not regularly offered by the hiring entity and is taught by an expert in a recognized field of artistic endeavor who does not work for the hiring entity to teach on a regular basis.

FINE ARTIST



Added, definition of “Fine Artist”

For the purposes of this subparagraph, “fine artist” means an individual who creates works of art to be appreciated primarily or solely for their imaginative, aesthetic, or intellectual content, including drawings, paintings, sculptures, mosaics, works of calligraphy, works of graphic art, crafts, or mixed media.

SOLE PROPRIETORSHIP



Added, Sole Proprietorship

Creates an exemption for business-to-business relationships between 2 or more sole proprietors, for a single engagement. The bill would provide that a hiring entity need only satisfy all of the conditions of one of the exemption provisions to qualify for the exemption from the ABC Test.

SOLE PROPRIETORSHIP



- (1) Neither individual is subject to control and direction by the other, in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (2) Each individual has the ability to negotiate their rate of pay with the other individual.
- (3) The written contract between both individuals specifies the total payment for services provided by both individuals at the single-engagement event, and the specific rate paid to each individual.
- (4) Each individual maintains their own business location, which may include the individual's personal residence.
- (5) Each individual provides their own tools, vehicles, and equipment to perform the services under the contract.

SOLE PROPRIETORSHIP



(6) If the work is performed in a jurisdiction that requires an individual to have a business license or business tax registration, then each individual has the required business license or business tax registration.

(7) Each individual is customarily engaged in the same or similar type of work performed under the contract or each individual separately holds themselves out to other potential customers as available to perform the same type of work.

(8) Each individual can contract with other businesses to provide the same or similar services and maintain their own clientele without restrictions.

(b) “Single-engagement event” means a stand-alone non-recurring event in a single location, or a series of events in the same location no more than once a week.

B2B MODIFICATION



If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation (“business service provider”) contracts to provide services to another such business or to a public agency or quasi-public corporation (“contracting business”), goes to Borello if:

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.

The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This subparagraph does not apply if the business service provider’s employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.

The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.

ADVOCACY GOALS



- We need **increased private & public investment** in the arts in order for arts to be accessible for all Californians and to build systems for a sustainable, supported and prospering industry. **Arts and culture have been systemically undercapitalized.** We need to advocate for significant funding in order to afford to comply with AB 2257.
- Artists should be valued for their work and there needs to be a **paradigm shift from starving artist to thriving artist.** We need to stop perpetuating arts as an unrealistic career option and create models that are sustainable with fair wages and benefits.

ADVOCACY GOALS



- Even before AB 5, many of our small budget non-profit arts organizations were financially fragile and struggling to be sustainable. Many of the programs are in culturally specific communities serving people of color and low income neighborhoods.
- Without these subsidies, arts programs would only be available to those who can afford a high-ticket price or private tuition. Educational and outreach programs without funding cannot be delivered at a low cost or free.
- **We need significant funding to achieve diversity and inclusion for arts to survive and thrive equitably across CA.**

What can you do?



- Visit our resource page for more information
<https://www.californiansforthearts.org/ab-5>
- Join our mailing list for latest news and action alerts
<http://www.californiansforthearts.org>
- Let your local state elected officials know about the unintended consequences of AB 5/AB 2257 on your business or livelihood. See template on our resource page.
- Volunteer on our AB 5 Follow up planning group to address next steps.
- Support our efforts by joining our our organization!

Raise your Voice for the Arts



#artsareessential #artistsR2ndResponders #investinarts #payartists
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