



Sep 16, 2019

Governor Gavin Newsom  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

## Re: AB-5 Will Harm Legitimate Consulting Businesses

Dear Governor Newsom,

We understand that AB-5 is headed to you for signature. We want to make sure that you, as our Governor, are aware of how concerned we are about the potential impact on not just our businesses operating in California but on those of thousands of other consultants, if this bill is passed as it is currently written (as of 9/11/19).

We run the Society for the Advancement of Consulting, the premier global organization for independent consulting professionals. While we have members in 14 countries, nearly 30% of our members reside in California. Our members hire independent contractors who provide services to companies in California, other US states, and across the globe.

As it is currently written, AB-5 has significant unintended consequences, particularly for consulting firms like the one we operate, and those who belong to our association.

While **Professional Services; Marketing** is listed as an exclusion, the paragraph describing the exclusion is unclear and does not make sense. This language was added to the bill at the last minute and was not written with an understanding of how marketing services are delivered.

*(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.*

Furthermore, there does not seem to be any exclusion for other bona fide consultants, including those involved in organizational development, supply chain and operations, and strategy consulting, as a few examples.

The entire approach to the preparation of AB-5 has been messy, and unfair to small business owners like us, and those we represent. You have stated that you might still modify the bill based on negotiations with Uber and Lyft: <https://www.nytimes.com/2019/09/11/business/economy/uber-california-bill.html>

There are many companies in California who operate small businesses predicated on the occasional use of specific contractors with specialized skills who work with multiple companies. Forcing companies like these to compensate such individuals as employees when the bulk of their work is not with that firm

seems inconceivable. And it also seems aimed at pushing companies like ours, and those of our members, out of California, while negotiating a better deal for Uber and Lyft through their lobbyists.

Small consulting companies like ours, and those we represent, both work as independent contractors (IC) and they hire independent contractors to maintain the flexibility needed to meet the ever-changing nature of the short-term projects that make up a consultant's livelihood. Having to make each contractor an employee, even ones who only work for short periods or occasionally, is a potential administrative nightmare that threatens the entire livelihood of thousands of people. For their part, the people we hire as independent contractors are highly compensated professionals who have no interest in becoming employees.

These independent contractors have their own businesses working with multiple clients and they have their own corporate entities, which offer them 401Ks, SEP IRAs/Roth IRAs and other employee benefits. The opportunity to invest in their retirement would not be available if classified as employees of their clients, nor would they be able to work for multiple clients simultaneously.

**AB5 will increase costs significantly (estimates are in excess of 50%) for contractors hired in California.** As a business owner in a state that already has a higher cost than most others, it will be very difficult to increase rates enough to cover these new expenses.

**We request that you not sign AB-5 without making appropriate modification to prevent harm to small consulting businesses like ours and the hundreds of bona fide businesses that don't have the clout of a large firm or belong to wealthy professional organizations that can pay expensive lobbyists.**

To decrease the negative impact on independent consulting firms, we suggest the bill be modified to **exempt all bona fide independent consulting, training, and coaching professional services firms.**

Exemptions have already been made for lawyers, accountants, travel agents, graphic designers and engineers – all of whom are professionals who work in a manner similar to solo consultants. No additional description of the services is necessary, nor has this been done for other professions excluded in the bill. Consulting firms are already required to hold business licenses; adding a requirement that they become legal entities, such as S or C Corps or LLCs, would identify bona fide firms who should be excluded from this legislation.

**Without this modification, AB-5 has the potential to turn into a major burden for small independent consulting firms like ours, and those of our members.**

**In its current state, AB5 will limit hiring California contractors and it may drive businesses out of state.**

We know that is not the intent of this legislation. We hope you will consider these modifications before signing the bill.

Linda Popky and Lisa Anderson  
Executive Directors  
**Society for the Advancement of Consulting**