

August 14, 2020

Open Letter to the California Assembly and Senate

Dear California Assembly Members and Senators,

As President of the American Translators Association, I am the elected representative of nearly 9,000 professional translators and interpreters, including nearly 1,000 in California.

Our membership is dismayed and shocked by the sudden and inexplicable inclusion of “certified translators and interpreters” under services provided by “referral agencies” in the proposed amendment to AB 5 found in AB 2257.

The economic damage done to California’s professional translators and interpreters by AB 5 has been well known, as is the damage to our ability to provide the necessary and federally mandated language access services to large groups of California’s minority population. Professional translators and interpreters must be exempted from the onerous and unrealistic ABC test under AB 5 and subject to the more proper and fairer Borello test under which professionals historically provided their needed services.

AB 1850, introduced by Assembly Member Lorena Gonzalez, properly included “certified translators” under “professional services,” although the language should have referred to “professional translators and interpreters.”

Following the legitimate outcry about the total exclusion of interpreters from the provisions of AB 1850, Assembly Member Gonzalez publicly promised to remedy that problem and stated that the provisions of AB 1850 would be incorporated into AB 2257. They were not.

In what a skeptic might call a “bait and switch,” translators and interpreters now find themselves included under “referral services,” lumped in by way of an apparent willy-nilly add-on clause with a host of non-professional workers such as dog walkers and dog groomers, yard cleaners, movers, and errand runners. While such workers are needed and desired, they are in no way in the same class as professional translators and interpreters with advanced university degrees and advanced professional training in fields such as law, science and medicine, finance and accounting, or numerous technical or engineering fields. They are also the only workers listed who will also be required to meet the higher standard of holding certification where it is available. Maintaining certification also requires undergoing continuing education, which is usually at the worker’s expense.

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Translators and interpreters are highly educated and highly trained professional service providers who undertake life-long education and professional development. Over 95% of ATA members have university or advanced degrees, and most specialize in complex fields such as software localization, legal proceedings, medical translation or interpreting, financial translations, or educational interpreting.

In addition, the inclusion of translators and interpreters under “referral agencies” ignores the reality of the relationship between individual language service providers (i.e., professional translators and interpreters) and corporate language service providers (sometimes called translation agencies or companies). Translation agencies and companies are not mere referral agencies who simply match up individual service providers with clients and take a “finder’s fee.” These agencies and companies provide a host of added-value services such as editing and proofreading, project management, terminology management, software testing, and desktop publishing.

Further rebutting the existence of a referral agency business model is the fact that there is no “Angie’s List” for translation and interpreting services. There is no website or service where clients find and select a translator or interpreter from among several service provider profiles and where the website operator takes a fee for providing the means to find the service provider. Most potential end-users of translation and interpreting services (i.e., the current clients of translation companies) are not qualified to select a language service provider. They have little or no understanding of the processes or skills required. Many may think that translation is nothing more than reading a text and “typing in a foreign language,” or that any bilingual person can interpret medical terminology for a doctor and patient or the legalese spoken by a lawyer to their client.

This lack of awareness by the general public, end-users of language services, and apparently many legislators and legislative aides, is an unavoidable result of the nature of our work. While the public is generally aware of the existence of interpreters thanks to the appearance of American Sign Language interpreters at government and other public events and on TV in courtroom dramas, translators are rarely seen by the public. As a former member of the intelligence community, I often make the analogy that translators are a lot like CIA operatives and other intelligence agents. The only time the public ever hears about us is when we screw up and a scandal ensues. The rest of the time we work quietly in the shadows without any recognition of the necessary work we provide for individuals, businesses, and governments. When we do our work well, we are invisible. It is when we are not there to perform the work, or our work is either not done or done poorly by an unqualified person or machine, that our importance is made clear.

Certification

Moreover, in spite of the publication of research showing that no more than 13% of all California translators and interpreters have any certification, AB 2257 continues to require certification, regardless of the domain or language.

ATA is the only widely recognized certifying body for translators in the United States. ATA certification is currently available from English into 15 languages, and from 14 languages into English¹, and is based on direction (e.g., certification from Spanish into English does not comprise certification from English into Spanish). As recently noted by Nimdzi, a leading translation and interpreting market researcher, there are at least 350 languages other than English spoken in the United States, meaning that ATA certification can only cover a small fraction of those languages.

The scope of coverage by entities certifying interpreters is similar. The number of languages for which interpreter certification is available for both legal and medical interpreters is similar to or even less than the number offered by ATA.

While certification is indeed a qualifying characteristic of a professional language service provider and is suitable as a potential qualifier for classification as a professional independent contractor, the limited number of languages in which translator or interpreter certification is available makes certification unsuitable as the **primary** criterion for such classification.

Both ATA translator certification and interpreter certifications are rigorous psychometrically valid programs, tested and verified by independent professional and/or accrediting bodies. The term “qualified” as used by insurance adjusters and other functionaries does not meet this standard.

Unlike state licensure, such as for medical and legal professionals, ATA certification is not a test of entry-level competency. As noted in the Guide to the ATA Certification Program, “ATA certification is a ***mid-career credential*** for experienced, professional translators or interpreters.” (emphasis added) As such, mandating certification of translators as a prerequisite for classification as a professional service provider for worker classification purposes would effectively and unfairly disqualify almost all newcomers to the profession.

¹ Into English from Arabic, Chinese, Croatian, Dutch, French, German, Italian, Japanese, Polish, Portuguese, Russian, Spanish, Swedish, and Ukrainian, and from English into Arabic, Croatian, Dutch, Finnish, French, German, Hungarian, Italian, Japanese, Polish, Portuguese, Russian, Spanish, Swedish, and Ukrainian. See https://atanet.org/certification/aboutcert_overview.php#1 for details

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Legislators of California, this is your chance to recognize us and the invaluable services we provide to the people of California and the world. We are highly educated, highly-skilled PROFESSIONALS on par with the recognized professions and other highly-skilled wordsmiths and creative professionals already exempted from the ABC test such as graphic designers, copy editors, and freelance writers. We believe our profession should be included under the professional services section of this legislation and that the verbiage should include “professional translators and interpreters.”