



Arbitration reform: SB 365 signed!

A CONSUMER VICTORY OVER A TOP CHAMBER OF COMMERCE “KILL” BILL

Our co-sponsored Senate Bill 365 (Wiener) was signed by Gov. Newsom over strong objections by the business community. SB 365, effective January 1, 2024, will prevent powerful corporations from delaying and denying justice for workers and consumers in cases where a court rules either that a company’s arbitration agreement is invalid or that a signed agreement does not exist.

Current law allows corporate defendants to stay the worker’s or consumer’s case by simply filing an appeal. SB 365 instead grants the judge discretion to determine whether or not such a case can move forward if a company files an appeal, instead of automatically staying the case in all instances.

When a court rules that a company’s arbitration agreement with a victim is invalid, or that a signed agreement does not exist, too often the corporation will file a frivolous appeal to delay the victim’s case – sometimes for years on end. Existing law gives the defendant corporation the right to an interlocutory appeal when a court denies the defendant’s petition to compel a case to private arbitration. (CCP § 1294(a).) Corporations routinely exercise this right in order to obtain the automatic stay while the appeal is heard.

SB 365 amends Code of Civil Procedure section 1294 to establish that an appeal of a court’s decision denying a corporation’s motion to compel arbitration will not automatically stay the consumer’s or worker’s court proceedings in the trial court while the appeal is pending, allowing the judge discretion to determine if the case can move forward while the appeal is being considered.

The California Chamber of Commerce fiercely opposed SB 365 and named this bill a “job killer,” which places it on the list of their top kill bills for the year. This “job killer” title carries weight in Sacramento among moderate Democrats, as the Chamber strategically uses this title to stop important legislation. In 2023, the Chamber identified 19 job killers, and only seven of those 19 made it to the governor.

Three were signed into law, including SB 365, and four were vetoed.

The U.S. Supreme Court rules for arbitration in *Coinbase*

In late June, the U.S. Supreme Court came down with a pro-arbitration decision in *Coinbase v. Bielski* resolving a split in federal law on this very issue: whether an appeal of a denied motion to compel arbitration stays the underlying case. In a 5-4 decision, SCOTUS sided in favor of arbitration, finding that an appeal does automatically stay the case. Conservative Justice Brett Kavanaugh wrote the ruling and specifically cautioned about the risk of allowing trial courts to proceed while the arbitration question plays out on appeal, saying such a scenario could cause the benefits of arbitration, such as efficiency and cost savings, to be “irretrievably lost – even if the court of appeals later concluded that the case actually had belonged in arbitration all along.” Liberal Justice Ketanji Brown Jackson, in the dissenting opinion, said the ruling invented a new rule “perpetually favoring” the party seeking arbitration.

Despite this negative development in the federal law, we continued our efforts on SB 365, as now that justice will unfortunately be delayed on the federal level, it is that much more important that California acts to curb abuses in state courts. Further, *Coinbase* decided an issue of federal civil procedure, not applicable in California courts. The law has long held that states can have their own distinct procedural laws regarding arbitration in their state courts. California enacted the California Arbitration Act in 1961 to do just that, and that law has not been preempted by the Federal Arbitration Act.

The Chamber’s efforts to stop SB 365 included heavy lobbying on the assembly floor during the last few weeks of session. The Chamber argued that this bill discriminates against arbitration by requiring a corporation to continue in court while an appeal is pending (even though consumers must continue in arbitration and can only file an appeal

regarding the proper venue when the arbitration concludes). At the eleventh hour, there were even arguments that the bill should have been limited to the most egregious of circumstances when no arbitration agreement was ever signed, gutting protections for all other cases where agreements were invalid for other reasons. These suggestions were never presented as amendments at any point in the legislative process.

Our CAOC team worked to counter these arguments, urging the passage of the bill and highlighting how the current process prevents justice. For example, workers seeking justice from Tesla’s racial discrimination faced five years of delay, women whose eggs and embryos were destroyed due to a tank failure could not recover and continue to pursue their fertility treatments, elders who were neglected or abused cannot receive the care they need, and even our state enforcement attorneys like the attorney general and city attorneys are delayed by these same tactics.

Ultimately, the assembly voted to pass the bill with 47 votes in favor, 22 no votes and 11 abstaining. Of the 62 Democrats, five voted no and 10 abstained. In addition to the strong authorship of Senator Wiener, we thank Assemblymember Diane Papan for helping secure passage by serving as the assembly bill jockey. We also thank attorneys in the legislature who spoke in favor of the bill, such as assemblymembers Matt Haney, Damon Connolly, Ash Kalra and Pilar Schiavo, by emphasizing the importance of this legislation and dispelling the counterarguments. CAOC President Greg Rizio, Past President Niall McCarthy and Board Member Sarah London were key to the success of SB 365. Lastly, Gov. Newsom’s signature on SB 365 allowed us to finally cross the finish line and enact this important legislation into law.

Join us at our Convention in San Francisco, where we’ll honor Senator Wiener and in MCLE will discuss SB 365 and other new legislation that impacts your practice. Register now at caoc-convention.com.