



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

November 1, 2021

Action Requested

For Your Information

To

Members of the Administrative Presiding
Justices Advisory Committee
Members of the Appellate Advisory
Committee
Appellate Court/Clerk Executive Officers

Deadline

N/A

Contact

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From

Cory T. Jasperson, Director
Governmental Affairs

Subject

Final Report of 2021 Legislation of Interest to
Appellate Courts

Attached are three charts reflecting final action on legislation of interest to appellate courts in the 2021–2022 legislative session. The first chart consists of legislation affecting appellate court procedure. The second consists of legislation in response to California appellate and Supreme Court decisions. Given the significant number of bills introduced in the Legislature in the last few years on the topic of independent contractors vs. employees, the third chart consists of legislation in response to Assembly Bill 5 and the Dynamex case.

Additional legislative information is available at online <http://leginfo.legislature.ca.gov/>.

CTJ/KN/yc-s

Attachments

cc: Martin Hoshino
Millicent Tidwell

2021–22 LEGISLATION AFFECTING CALIFORNIA APPELLATE PROCEDURE

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 624</u>	Bauer-Kahan	<p>Juveniles: transfer to court of criminal jurisdiction: appeals</p> <p>Creates a new procedure authorizing immediate appellate review of an order transferring a minor from the juvenile court to a court of criminal jurisdiction if a notice of appeal is filed within 30 days of the transfer order. Requires the appeal to have precedence in the court to which the appeal is taken and to be determined as soon as practicable after the notice of appeal is filed. (W&I add Section 801)</p>	Signed into law (Stats. 2021, ch. 195)
<u>AB 1194</u>	Low	<p>Conservatorship</p> <p>Amends section 1471 of the Probate Code to require the Court of Appeal to appoint legal counsel to represent a conservatee or proposed conservatee before the court in an appeal or writ proceeding arising out of a proceeding to terminate the conservatorship, or a proceeding to remove the conservator, or a proceeding for a court order affecting the legal capacity of the conservatee, or a proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee’s place of residence if the conservatee, or proposed conservatee is not represented by legal counsel. (B&P amend 6580, add 6563; PROB amend 1051, 1460, 1471, 1826, 1850, 1850.5, 1851, 1851.1, 1860, 1860.5, 1862, 1863, 2250, 2250.6, 2253, 2401, 2620, 2623, 2640, 2641, 2653, add 1851.6, 2112, add and repeal 1458)</p>	Signed into law (Stats. 2021, ch. 417)

NOTE: This cumulative table is current through 10/31/2021. For additional information such as bill analyses, legislative deadlines, hearing dates, or Judicial Council positions on legislation, please contact the Judicial Council’s Governmental Affairs office at 916-323-3121. Bill information is available online at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

2021–22 LEGISLATION AFFECTING CALIFORNIA APPELLATE PROCEDURE

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 1277</u>	Rubio, Blanca	<p>California Environmental Quality Act: student housing development projects: expedited judicial review</p> <p>Adds expedited judicial review provisions for CEQA review of “student housing development projects,” as defined. Requires the Judicial Council, on or before July 1, 2022, to adopt rules of court for any action challenging the certification of an environmental impact report for a student housing development project, including any appeals, to be resolved, to the extent feasible, within 270 business days of the filing of the certified record of proceedings with the court. (PRC add Chapter 6.8 at 21189.60 et seq.) [As amended April 19, 2021]</p>	<p>Assembly Natural Resources Committee</p> <p>2-year bill.</p>
<u>SB 7</u>	Atkins	<p>Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2021</p> <p>Renews the authority of the Governor, through January 1, 2026, to certify a project pursuant to the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 (Leadership Act) and seeks to broaden the reach of the Leadership Act to include housing projects meeting certain conditions as projects eligible for certification. Also requires the Judicial Council to adopt a rule of court to establish procedures that require actions or proceedings brought to attack, review, set aside, void, or annul the certification of an environmental impact report for an environmental leadership development project certified by the Governor under the Leadership Act or the granting of any project approvals that require the actions or proceedings, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. Further requires the project applicant, as a condition of certification, to agree to pay the costs of the trial court and the court of appeal in hearing and deciding a case challenging a lead agency’s action on a certified project. Urgency clause makes this bill operative May 20, 2021. (PRC add and repeal Chapter 6.5 at 22178 et seq.)</p>	<p>Signed into law (Stats. 2021, ch. 19)</p>

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2021–22 LEGISLATION AFFECTING CALIFORNIA APPELLATE PROCEDURE

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>SB 44</u>	Allen	<p>California Environmental Quality Act: streamlined judicial review: environmental leadership transit projects</p> <p>Adds expedited judicial review provisions for CEQA review of “environmental leadership transit projects,” as defined. Requires the Judicial Council, on or before January 1, 2023, to adopt rules of court for any action challenging the certification of an environmental impact report for an environmental leadership transit project, including any appeals, to be resolved, to the extent feasible, within 365 days of the filing of the certified record of proceedings with the court. Requires a project applicant to pay the trial court and court of appeal costs associated with the expedited judicial review. (PRC add and repeal 21168.6.9)</p>	Signed into law (Stats. 2021, ch. 633)
<u>SB 807</u>	Wieckowski	<p>Enforcement of civil rights: Department of Fair Employment and Housing</p> <p>Makes procedural modifications to the Department of Fair Employment and Housing (DFEH) enforcement of civil rights laws, including changing an appeal to the court of appeal of a superior court order to compel discovery from a writ of mandamus to an interlocutory appeal. Specifies that such an appeal shall have precedence and determined as soon as practicable after the notice of appeal is filed. (GOV amend 12930, 12946, 12960, 12961, 12962, 12963.5, 12965, 12981, 12989.1)</p>	Signed into law (Stats. 2021, ch. 278)

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2021–22 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 260</u>	Stone	<p>Guardianships</p> <p>Abrogates holding in <i>In re Kaylee H.</i> (2012) 205 Cal.App.4th 92, in which the court held that in addition to finding that the child comes within the jurisdiction of the dependency court, the juvenile court must make an additional finding about whether a dependency petition is necessary to protect the child; also held that if the probate court has already taken action to provide for the temporary custody needs of the child by granting a temporary guardianship, then the child is determined to no longer be at risk of harm. AB 260 states that it is the intent of the Legislature that guardianship laws in the Probate Code and juvenile court laws in the Welfare and Institutions Code operate together as a cohesive statutory structure that ensures all cases referred by the probate court for a child welfare investigation are subject to review by the juvenile court without limiting the probate court's ability to take immediate action to protect the child while the child welfare investigation and juvenile court review are pending. States that the purpose of this statutory structure is to ensure the protection of every child's health, safety, and welfare and to provide due process to every child, parent, and family. Clarifies that if a juvenile court commences dependency proceedings, the guardianship proceeding shall be stayed, and if the juvenile court does not commence the dependency proceeding, the probate court shall retain jurisdiction to hear the guardianship matter. (GOV amend 68511.1; PROB amend 1511, 1513; W&I amend 329, 331)</p>	Signed into law (Stats. 2021, ch. 578)

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2021–2022 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 625</u>	Arambula	<p>State Public Defender: indigent defense: study</p> <p>This bill is responding to the constitutional guarantee of an individual’s right to counsel and analysis by the Legislative Analyst’s Office finding that various statewide and county trends suggest that indigent defense is generally less resourced than district attorney offices. The bill, subject to an appropriation by the Legislature, requires the State Public Defender, in consultation with the California Public Defenders Association and other subject matter experts, to undertake a study to assess appropriate workloads for public defenders and indigent defense attorneys and submit a report with their findings and recommendations to the Legislature no later than January 1, 2024. (GOV add and repeal 15403)</p>	Signed into law (Stats. 2021, ch. 583)
<u>AB 788</u>	Calderon	<p>Juveniles: reunification</p> <p>Codifies <i>In re B.E. (2020) 46 Cal.App.5th 932</i> by adding language to WIC 361.5 specifying that "resisted" means that the parent or guardian refused to participate meaningfully in a prior court-ordered treatment program and does not include "passive resistance," as specified. (W&I amend 361.5)</p>	Signed into law (Stats. 2021, ch. 201)

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2021–2022 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 826</u>	Irwin	<p>County Employees Retirement Law of 1937: compensation and compensation earnable</p> <p>Amends the definition of “compensation earnable” to include remunerations, whether paid in cash or as in-kind benefits if certain conditions are met. States that the change to compensation earnable is “declarative of existing law,” in order to immunize the inclusion of otherwise prohibited remuneration paid between July 1, 2012 and July 30, 2020, from the requirements of the Public Employees’ Pension Reform Act (PEPRA) and the Supreme Court’s decision in <i>Alameda County Deputy Sheriff’s Assn. v. Alameda County Employee Retirement Assn.</i>, (2020) 9 Cal. 5th 1032. (GOV add 31461.7)[As amended August 31, 2021]</p>	<p>Inactive file</p> <p>2-year bill.</p>
<u>AB 849</u>	Reyes	<p>Skilled nursing facilities: intermediate care facilities: liability</p> <p>Clarifies that in private enforcement actions brought in certain situations by a current or former resident or patient of a skilled nursing facility against the licensee of a facility that violates any rights of the resident or patient, as provided in the Patients’ Bill of Rights or in other state and federal laws and regulations, the aggrieved resident or patient is entitled to \$500 for each violation of their rights. Abrogates the holding in <i>Jarman v. HCR ManorCare, Inc.</i> (2020) 10 Cal.5th 375, which found the \$500 cap was per lawsuit, and not per violation. (HSC amend 1430)</p>	<p>Signed into law (Stats. 2021, ch. 471)</p>

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2021–2022 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 1259</u>	Chiu	<p>Criminal procedure: motion to vacate</p> <p>Responds to <i>Padilla v. Kentucky</i> (2010) 559 U.S. 356, which held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. (Id. At 360.) Specifically, the United States Supreme Court held that defense counsel is constitutionally deficient if there is a failure to advise a noncitizen client entering a plea to a criminal offense of the risk of deportation. (PEN amend 1473.7)</p>	Signed into law (Stats. 2021, ch. 420)
<u>AB 1578</u>	Committee on Judiciary	<p>Judiciary Omnibus</p> <p>Codifies the California Supreme Court's holding in <i>Property Reserve Inc. v. Superior Court</i> (2016) 1 Cal.5th 151, providing that a property owner subject to an eminent domain action may seek to recover damages as a defendant and that the property owner possesses a waivable right to a jury trial to seek compensation for pre-condemnation damages. (CCP amend 1245.060, 1250.320, 1260.230)</p>	Signed into law (Stats. 2021, ch. 401)
<u>SB 774</u>	Hertzberg	<p>Lawyer-client privilege: Department of Fair Employment and Housing</p> <p>Clarifies that confidential communications between attorneys for the Department of Fair Employment and Housing (DFEH) and individuals who file administrative complaints through the agency are protected by the attorney-client privilege due to the attorney-client relationship between DFEH and its own lawyers. Abrogates the holding in <i>Wood v. Superior Court</i> (2020) 46 Cal.App.5th 562, which held, among other things, that communications between Wood, who had filed a complaint with DFEH, and DFEH attorneys during DFEH's investigation of the complaint were not covered by an attorney-client privilege. (EVID add and repeal 952.1)</p>	Inactive file 2-year bill.

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2021–2022 LEGISLATION RESPONDING TO CALIFORNIA APPELLATE AND SUPREME COURT DECISIONS

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>SB 775</u>	Becker	<p>Felony murder: resentencing</p> <p>Among other things, codifies the holding in <i>People v. Lewis</i> (2021) 11 Cal.5th 952, at pages 961–970, regarding petitioners’ right to counsel and the standard for determining the existence of a prima facie case. Specifically, the legislation amends section 1170.95 to clarify that counsel must be appointed, if requested, upon the filing of a facially sufficient petition and that only after the appointment of counsel and the opportunity for briefing may the court determine whether the petitioner has established a prima facie case for relief. Also based on <i>People v. Lewis, supra</i>, at pages 970–972, the legislation amends section 1170.95 to address what evidence a court may consider at a resentencing hearing. (PEN amend 1170.95)</p>	Signed into law (Stats. 2021, ch. 551)

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2021–22 LEGISLATION RELATED TO AB 5¹ and THE DYNAMEX CASE²

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 25</u>	Kiley	Worker classification: employees and independent contractors Repeals the ABC test for varied occupations and business relationships and replaces it with the multifactor test set forth in <i>S.G. Borello & Sons, Inc. v. Department of Industrial Relations</i> (1989) 48 Cal.3d 341. (LAB amend 2750.5, add 2750.7, repeal 2775 et seq.) [As introduced December 7, 2020]	Assembly Labor and Employment Committee 2-year bill.
<u>AB 231</u>	Nguyen	Worker classification: employees and independent contractors: licensed manicurists Removes the January 1, 2022 sunset on the exemption for licensed manicurists from the ABC test. (LAB amend 2778) [As introduced January 12, 2021]	Assembly Labor and Employment Committee 2-year bill.
<u>AB 612</u>	Mayes	Worker classification: business-to-business voluntary deposit arrangements Creates a new exemption from the ABC test for bona fide business-to-business arrangements that involve a voluntary deposit, as specified under certain conditions. (LAB add Section 2776.5) [As amended March 23, 2021]	Assembly Labor and Employment Committee 2-year bill.
<u>AB 1227</u>	Levine	Worker classification: employees and independent contractors: workers in seasonal live theatre Adds workers in seasonal live theatre to the list of occupations and business relations that are governed by the test adopted in <i>S.G. Borello & Sons, Inc. v. Department of Industrial Relations</i> (1989) 48 Cal.3d 341. (LAB add Section 2784.3) [As introduced February 19, 2021]	Assembly Labor and Employment Committee 2-year bill.

¹ Assembly Bill 5 (Gonzalez) Statutes of 2019, Chapter 296.

² *Dynamex Operations West, Inc., v. Superior Court* (2018) 4 Cal.5th 903

2021–22 LEGISLATION RELATED TO AB 5¹ and THE DYNAMEX CASE²

BILL	AUTHOR	SUMMARY	STATUS as of October 31, 2021
<u>AB 1506</u>	Kalra	<p>Worker status: employees and independent contractors: newspaper distributors and carriers</p> <p>Extends the exemption from the application of the ABC test for newspaper distributors working under contract with a newspaper publisher and newspaper carriers from January 1, 2022 to January 1, 2025. (LAB amend 2783)</p>	Signed into law (Stats. 2021, ch. 328)
<u>AB 1561</u>	Committee on Labor and Employment	<p>Worker classification: employees and independent contractors</p> <p>Makes various changes to the list of occupations and business relations that are governed by the test adopted in <i>S.G. Borello & Sons, Inc. v. Department of Industrial Relations</i> (1989) 48 Cal.3d 341, including extending the exemption from application of the ABC test to January 1, 2025 for licensed manicurists and certain construction subcontractors, and making amendments to the requirements for other types of relationships, such as data aggregators and persons providing insurance claims adjustment services. (LAB amend Sections 2778, 2781, 2782, 2783)</p>	Signed into law (Stats. 2021, ch. 422)

¹ Assembly Bill 5 (Gonzalez) Statutes of 2019, Chapter 296.

² *Dynamex Operations West, Inc., v. Superior Court* (2018) 4 Cal.5th 903