

California Governor Signs Bill to Prevent Automatic Stays of Litigation Pending Arbitration Appeal

Article By:

Spencer C. Skeen

Zachary V. Zagger

On October 10, 2023, Governor Gavin Newsom signed into law a bill that will allow plaintiffs in California to continue pursuing claims during the pendency of an appeal to an order denying a petition to compel arbitration. The law is a significant blow to employers in litigation as it could force them to continue the costly and burdensome defense of claims that should be subject to valid arbitration agreements.

Quick Hits

- California Governor Gavin Newsom signed into law a bill that will allow litigation to continue during an appeal of a denial of a petition to compel arbitration.
- The law is set to take effect on January 1, 2024.

California [Senate Bill \(SB\) 365](#) amends the California Code of Civil Procedure to state that “the perfecting of such an appeal shall not *automatically* stay any proceedings in the trial court during the pendency of the appeal.” (Emphasis added).

Under existing law Section 916 of the Code of Civil Procedure, proceedings are generally stayed in the trial court with limited exceptions

until an appeal is perfected, meaning it has been fully briefed and ready to be heard by the appellate court. SB 365 is set to take effect on January 1, 2024.

The law undermines the purpose of arbitration as an efficient method of alternative dispute resolution. Employers, which regularly use arbitration clauses in employment agreements, could be forced to continue defending claims from employees that are arguably subject to arbitration while they appeal a trial court's order denying arbitration.

Supporters of the legislation argued that defendants have more ability to wait out delays in litigation whereas the increasing litigation costs during a postponement may be more burdensome on plaintiffs.

However, business groups argued that the legislation discriminates against the use of valid arbitration agreements as it will require defendants to continue litigating many claims that are ultimately found to be subject to arbitration.

Arbitration has been generally favored in federal courts. In February 2023, the Ninth Circuit Court of Appeals [blocked a California law](#) that prohibited employers from requiring employees and job applicants to sign arbitration agreements that are subject to the Federal Arbitration Act (FAA) as a condition of employment. Further, the Supreme Court of the United States in [June 2023 ruled](#) that federal district courts must stay proceedings during an appeal over the question of whether the underlying claims are subject to arbitration.

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