

AUXILIARY ORGANIZATIONS ASSOCIATION

2019 ANNUAL LEGISLATIVE REPORT

for 2020 AOA Annual Conference

The 2019 *Legislative Report* is a summary compilation of recently enacted bills by the California Legislature. The *Report* will be posted on the AOA Conference website.

This *Report* first (at Section I) reaches back to identify significant changes in 2018 (effective January 1, 2019) to key California Codes affecting auxiliary organizations; then to any changes in those same Codes effective January 1, 2020, unless otherwise noted. The *Report* then summarizes (in Section II) a broader range of enactments (effective January 1, 2020, unless otherwise noted) that may relate or be of interest auxiliary organizations. Any measure-analysis and commentary should not be construed as legal advice or as a position taken by the Auxiliary Organizations Association. Links to source documents are included or can be provided on request.

I. 2019 and 2020 Key California Code Changes

At calendar year end, this report includes a review and summary of any changes affecting or of interest to auxiliary organizations in key California Codes:

- Business and Professions Code (including *Commercial Fundraisers*);
- Corporations Code (for nonprofit public benefit corporations);
- Education Code (for student body and auxiliary organizations);
- Government Code (*Supervision of Trustees and Fundraisers for Charitable Purposes Act*); and
- Probate Code (*Uniform Principal and Income Act, and Uniform Prudent Management of Institutional Funds Act*).

Changes Effective January 1, 2019 (from 2017-18 Legislative Session)

Business and Professions Code. AB 3144 amended several sections on professional fiduciaries and extended the law relating to them to January 2023. It will be recalled that qualifying nonprofit exempt organizations are excluded from this law (§ 6501(f)(4)(D)(i-iii). See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3144

Corporations Code. AB 2557 amended the Nonprofit Public Benefit Corporation Law, Sections 5211 and 5220. See:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2557

Section 5211(b). *Board Actions Without a Meeting*. Amendments clarify terms and circumstances of holding such a meeting. **Note:** This authority should not be expressed in auxiliary organization bylaws, or utilized in practice. See Ed Code §§89305.1(a) and 89920. See attached example Bylaws at Article VI, §§ 6.6 and 6.9 on how not to do it.

Section 5220(a). *Maximum Four (4) year Director Term*. Amendments clarify specified exceptions to four-year director term limit.

Section 5220(f). *Ex Officio Board Directors*. Adds new subsection. Articles or bylaws may provide for directors to hold office ex officio with specified conditions. **Note:** It is common in auxiliary organization bylaws for designated university officers to be governing board directors. Such provisions should restate the language of 5220(f) as applied to such designations.

Education Code No changes.

Government Code No changes.

Probate Code No changes.

Changes Effective January 1, 2020 (from 2019-20 Legislative Session)

Business and Professions Code No changes.

Corporations Code. SB 540. *Officer & Director Split-Dollar Life Insurance*. This measure amends Section 5236 to allow nonprofit public benefit corporations offer directors or officers split-dollar life insurance policies as compensation when secured by the cash value or death benefit, instead of both the cash value and death benefit.

Education Code

SB 467. *Web-posting Student Housing Cost Information*. This measure amends Section 66014.2 requiring each CSU campus to post the following on its internet website, on or before February 1, 2020, and on or before February 1 each year thereafter: information about the market cost of one- and two- bedroom apartments and of one-person bedrooms in private houses in the areas surrounding that campus where its students commonly reside. See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB467

AB 514. *Student Trustee Voting*. This measure amends Section 66602 to give voting rights to the first-year student member of the Board of Trustees. See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB514

AB 381. *Student Orientation/Training: Intimate Partner & Dating Violence*. This measure amends Section 67386 to require the inclusion in outreach programming that is part of every incoming postsecondary education institution student's orientation informing students about specific topics relating to intimate partner and dating violence. See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB381

Government Code

AB 669. *AG Assurance of Voluntary Compliance*. This measure amends the *Supervision of Trustees and Fundraisers for Charitable Purposes Act* in Section 12533 to authorize the Attorney General the flexibility to accept an *assurance of voluntary*

compliance, in lieu of a *stipulated judgment*, to resolve an action by settlement. See: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB669

AB 1013. *Grant Evaluator Conflicts*. This measure adds Section 11000.5 prohibiting a state agency from using an evaluator to review a discretionary grant application submitted by an organization or a person for which the evaluator was a representative, voting member, or staff member within the 2-year period preceding receipt of that application.

Section 11000.5(b)(1) excludes an auxiliary organization from the term “organization.” See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1013

Probate Code No changes.

II. Other 2019 Bills Affecting CSU Auxiliary Organizations:

Note: CSU Sponsored and Priority measures are followed through the CSU Advocacy & State Relations Office reporting system. See:

<https://www2.calstate.edu/impact-of-the-csu/government/advocacy-and-state-relations/Pages/default.aspx>

Assembly Bills

AB 5. Employee & Independent Contractor Classification. The measure codifies the *Dynamex West* decision and further establishes a comprehensive worker classification framework and independent contractor exception criteria. See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB5

A Summary Analysis is attached. This law will be an AOA 2020 Annual Conference session topic.

AB 51. Employment Judicial Forum Rights Waivers Prohibited. This measure prohibits requiring applicants for employment or employees to waive their right to a judicial forum as a condition of employment or continued employment. See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB51

AB 59. Election Campus Polling Places. This measure requires elections officials, when developing the draft plan for the administration of elections conducted pursuant to the California Voter's Choice Act (CVCA), to consider, at a minimum, placing a vote center location on a public or private university or college campus. See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB59

AB 697. Preferential Student Treatment -- Related Alumni and Donors. This measure requires an annual CSU report to the Legislature whether any manner of preferential treatment is provided in admission to applicants on the basis of their relationships to donors or alumni of [at campus]. If a [campus] provides such preferential treatment, reporting is required on specified admissions and enrollment information regarding these applicants for the academic year commencing in the previous calendar year.

See: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB697

AB 1278. Student Information on Public Services and Programs. This measure requires each campus website to include for an enrolled student, notification of, and a link to information on, specified public services and programs, including the CalFresh program, county or local housing resources, and county or local mental health services.

See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1278

AB 1313. Student Debt Collection Practices. This measure amends, in part, the Education Code requiring the Trustees to adopt student debt collection regulations within a specified framework.

See:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1313

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AB-5: Summary Notes (Updated)

Subject: Worker Status – Employees and Independent Contractors (2019-20 Regular Session)

Updated: September 18, 2019

Author: Lorena Gonzalez, Assembly District 80, (D-San Diego) and others

Status: 6 Amendments; adopted, and signed by Governor (Chapter 296, Statutes of 2019)

Code Changes: *Labor Code* (adds § 2750.3 and amends § 3351); and *Unemployment Insurance Code* (amends § 606.5 and 621.5)

Effective: January 1, 2020

Brief Analysis: In brief, this legislation:

- Codifies the *Dynamex West* decision establishing an employee-status presumption, the 3-factors (“ABC” test) for independent contractor status, and clarifies application of the decision;
- Extends the presumption and IC “ABC” test to all *Labor and Unemployment Insurance Code* provisions and IWC wage orders, unless –
 - ✓ Any statutory exception from employment status; **or**
 - ✓ Any extension of employer status or liability remains in effect, **and** court rules the ABC test cannot be applied, **then** the *Borello* multi-factor relationship test applies.
- Exempts specified occupations* (but places them *Borello* test);
- Applies specific *Labor Code* provisions retroactively to existing claims and actions, while other provisions apply to work performed on or after January 1, 2020;
- Prohibits reclassification of worker who was employee on January 1, 2019 to an independent contractor due to bill’s enactment;
- Requires workers’ compensation insurance coverage starting July 1, 2020 for anyone deemed and employee; and
- Adds injunctive relief action (by AG or DAs) as a remedy to prevent continued misclassification.

Comment: Expect follow-on legislation in 2020 attempting to nuance AB-5 effects.

Bill Link: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5

* Exempt occupations include, among others, psychologists, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisors, direct salespersons, real estate licensees, commercial fishermen (only until 1/1/23), workers providing licensed barber or cosmetology services, and others performing work under contract for professional services, with another business entity, or under a construction industry subcontract. Also deals with construction trades trucking and trucks used by owner-operator truckers as employees.