

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1067**

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**Introduced by Assembly Member Huber**

February 18, 2011

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An act to amend Section 1008 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1067, as amended, Huber. Civil procedure: orders.

Existing law provides that when an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order.

This bill would provide that an order denying a motion *for reconsideration* made pursuant to the provision described above is not *separately* appealable. The bill would provide, however, that ~~a determination made pursuant to that provision may be reviewed on appeal from an appealable order that was the subject of a motion made pursuant to that provision~~ *if the order that was the subject of the motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1008 of the Code of Civil Procedure is  
2 amended to read:

3 1008. (a) When an application for an order has been made to  
4 a judge, or to a court, and refused in whole or in part, or granted,  
5 or granted conditionally, or on terms, any party affected by the  
6 order may, within 10 days after service upon the party of written  
7 notice of entry of the order and based upon new or different facts,  
8 circumstances, or law, make application to the same judge or court  
9 that made the order, to reconsider the matter and modify, amend,  
10 or revoke the prior order. The party making the application shall  
11 state by affidavit what application was made before, when and to  
12 what judge, what order or decisions were made, and what new or  
13 different facts, circumstances, or law are claimed to be shown.

14 (b) A party who originally made an application for an order  
15 which was refused in whole or part, or granted conditionally or on  
16 terms, may make a subsequent application for the same order upon  
17 new or different facts, circumstances, or law, in which case it shall  
18 be shown by affidavit what application was made before, when  
19 and to what judge, what order or decisions were made, and what  
20 new or different facts, circumstances, or law are claimed to be  
21 shown. For a failure to comply with this subdivision, any order  
22 made on a subsequent application may be revoked or set aside on  
23 ex parte motion.

24 (c) If a court at any time determines that there has been a change  
25 of law that warrants it to reconsider a prior order it entered, it may  
26 do so on its own motion and enter a different order.

27 (d) A violation of this section may be punished as a contempt  
28 and with sanctions as allowed by Section 128.7. In addition, an  
29 order made contrary to this section may be revoked by the judge  
30 or commissioner who made it, or vacated by a judge of the court  
31 in which the action or proceeding is pending.

32 (e) This section specifies the court's jurisdiction with regard to  
33 applications for reconsideration of its orders and renewals of  
34 previous motions, and applies to all applications to reconsider any  
35 order of a judge or court, or for the renewal of a previous motion,  
36 whether the order deciding the previous matter or motion is interim  
37 or final. No application to reconsider any order or for the renewal

1 of a previous motion may be considered by any judge or court  
2 unless made according to this section.

3 (f) For the purposes of this section, an alleged new or different  
4 law shall not include a later enacted statute without a retroactive  
5 application.

6 ~~(g) An order denying a motion made pursuant to subdivision  
7 (a) is not appealable. However, a determination made pursuant to  
8 subdivision (a) may be reviewed on appeal from an appealable  
9 order that was the subject of a motion made pursuant to this section.~~

10 *(g) An order denying a motion for reconsideration made  
11 pursuant to subdivision (a) is not separately appealable. However,  
12 if the order that was the subject of a motion for reconsideration  
13 is appealable, the denial of the motion for reconsideration is  
14 reviewable as part of an appeal from that order.*

15 (h) This section applies to all applications for interim orders.