

AMENDED IN SENATE JUNE 26, 2006

AMENDED IN ASSEMBLY MAY 16, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2482

Introduced by Assembly Member Harman

February 23, 2006

An act to amend and repeal Section 1282.4 of the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 2482, as amended, Harman. Arbitration: legal representation.

Existing law, effective until January 1, 2007, permits persons admitted to the bar of any other state to represent a party in an arbitration proceeding in this state, or to render legal services in this state in connection with an arbitration proceeding in another state. Existing law requires out-of-state attorneys representing a party in a California arbitration proceeding to serve upon the arbitrator, the State Bar of California, the parties, and counsel, a certificate containing specified information prior to the first scheduled hearing in the arbitration. Existing law also permits any party to an arbitration arising under certain collective bargaining agreements to be represented by any person.

This bill would revise those provisions to require out-of-state attorneys to serve upon the arbitrator, the parties, *the State Bar of California*, and counsel, a certificate containing specified information within a reasonable period of time after the attorney expresses his or her intent to appear in an arbitration. ~~This~~ *The* bill would require, if the certificate of that attorney is approved by the arbitrator, to file the

approved certificate with the State Bar of California. ~~This~~ *The* bill would require the State Bar of California to report findings and recommendations, as specified, regarding the appearance of out-of-state attorneys in arbitration ~~hearing~~ *hearings* or proceedings in this state to the Legislature by July 1, ~~2009~~ *2010*.

This bill would remove the January 1, 2007, repeal date, thereby extending those provisions indefinitely, and make related, conforming changes.

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 1282.4 of the Code of Civil Procedure,
2 as amended by Section 1 of Chapter 607 of the Statutes of 2005,
3 is amended to read:

4 1282.4. (a) A party to the arbitration has the right to be
5 represented by an attorney at any proceeding or hearing in
6 arbitration under this title. A waiver of this right may be revoked;
7 but if a party revokes that waiver, the other party is entitled to a
8 reasonable continuance for the purpose of procuring an attorney.

9 (b) Notwithstanding any other provision of law, including
10 Section 6125 of the Business and Professions Code, an attorney
11 admitted to the bar of any other state may represent the parties in
12 the course of, or in connection with, an arbitration proceeding in
13 this state, provided that the attorney, if not admitted to the State
14 Bar of California, satisfies all of the following:

15 (1) He or she timely serves the certificate described in
16 subdivision (c).

17 (2) The attorney's appearance is approved in writing on that
18 certificate by the arbitrator, the arbitrators, or the arbitral forum.

19 (3) The approval of the attorney's appearance is filed with the
20 State Bar of California and served on the parties as described in
21 this section.

22 (c) Within a reasonable period of time after the attorney
23 described in subdivision (b) indicates an intention to appear in
24 the arbitration, the attorney shall serve a certificate in a form
25 prescribed by the State Bar of California on the arbitrator,
26 arbitrators, or arbitral forum, *the State Bar of California*, and all
27 other parties and counsel in the arbitration whose addresses are

1 known to the attorney. The certificate shall state all of the
2 following:

3 (1) The case name and number, and the name of the arbitrator,
4 arbitrators, or arbitral forum assigned to the proceeding in which
5 the attorney seeks to appear.

6 (2) The attorney's residence and office address.

7 (3) The courts before which the attorney has been admitted to
8 practice and the dates of admission.

9 (4) That the attorney is currently a member in good standing
10 of, and eligible to practice law before, the bar of those courts.

11 (5) That the attorney is not currently on suspension or
12 disbarred from the practice of law before the bar of any court.

13 (6) That the attorney is not a resident of the State of
14 California.

15 (7) That the attorney is not regularly employed in the State of
16 California.

17 (8) That the attorney is not regularly engaged in substantial
18 business, professional, or other activities in the State of
19 California.

20 (9) That the attorney agrees to be subject to the jurisdiction of
21 the courts of this state with respect to the law of this state
22 governing the conduct of attorneys to the same extent as a
23 member of the State Bar of California.

24 (10) The title of the court and the cause in which the attorney
25 has filed an application to appear as counsel pro hac vice in this
26 state or filed a certificate pursuant to this section in the preceding
27 two years, the date of each application or certificate, and whether
28 or not it was granted. If the attorney has made repeated
29 appearances, the certificate shall reflect the special circumstances
30 that warrant the approval of the attorney's appearance in the
31 arbitration.

32 (11) The name, address, and telephone number of the active
33 member of the State Bar of California who is the attorney of
34 record.

35 (d) The arbitrator, arbitrators, or arbitral forum may approve
36 the attorney's appearance if the attorney has complied with
37 subdivision (c). Failure to timely file and serve the certificate
38 described in subdivision (c) or, absent special circumstances,
39 repeated appearances shall be grounds for disapproval of the

1 appearance and disqualification from serving as an attorney in
2 the arbitration in which the certificate was filed.

3 (e) Within a reasonable period of time after the arbitrator,
4 arbitrators, or arbitral forum approves the certificate, the attorney
5 shall file the certificate with the State Bar of California and serve
6 the certificate as described in Section 1013a on all parties and
7 counsel in the arbitration whose address is known to the attorney.

8 (f) An attorney who fails to file or serve the certificate
9 required by this section or files or serves a certificate containing
10 false information or who otherwise fails to comply with the
11 standards of professional conduct required of members of the
12 State Bar of California shall be subject to the disciplinary
13 jurisdiction of the State Bar with respect to that certificate or any
14 of his or her acts occurring in the course of the arbitration.

15 (g) Notwithstanding any other provision of law, including
16 Section 6125 of the Business and Professions Code, an attorney
17 who is a member in good standing of the bar of any state may
18 represent the parties in connection with rendering legal services
19 in this state in the course of and in connection with an arbitration
20 pending in another state.

21 (h) Notwithstanding any other provision of law, including
22 Section 6125 of the Business and Professions Code, any party to
23 an arbitration arising under collective bargaining agreements in
24 industries and provisions subject to either state or federal law
25 may be represented in the course of, and in connection with,
26 those proceedings by any person, regardless of whether that
27 person is licensed to practice law in this state.

28 (i) Nothing in this section shall apply to Division 4
29 (commencing with Section 3201) of the Labor Code.

30 (j) (1) In enacting the amendments to this section made by
31 Assembly Bill 2086 of the 1997–98 Regular Session, it is the
32 intent of the Legislature to respond to the holding in *Birbrower v.*
33 *Superior Court* (1998) 17 Cal.4th 117, as modified at 17 Cal.4th
34 643a (hereafter *Birbrower*), to provide a procedure for
35 nonresident attorneys who are not licensed in this state to appear
36 in California arbitration proceedings.

37 (2) In enacting subdivision (h), it is the intent of the
38 Legislature to make clear that any party to an arbitration arising
39 under a collective bargaining agreement governed by the laws of
40 this state may be represented in the course of and in connection

1 with those proceedings by any person regardless of whether that
2 person is licensed to practice law in this state.

3 (3) Except as otherwise specifically provided in this section, in
4 enacting the amendments to this section made by Assembly Bill
5 2086 of the 1997–98 Regular Session, it is the Legislature’s
6 intent that nothing in this section is intended to expand or restrict
7 the ability of a party prior to the decision in *Birbrower* to elect to
8 be represented by any person in a nonjudicial arbitration
9 proceeding, to the extent those rights or abilities existed prior to
10 that decision. To the extent that *Birbrower* is interpreted to
11 expand or restrict that right or ability pursuant to the laws of this
12 state, it is hereby abrogated except as specifically provided in this
13 section.

14 (4) In enacting subdivision (i), it is the intent of the Legislature
15 to make clear that nothing in this section shall affect those
16 provisions of law governing the right of injured workers to elect
17 to be represented by any person, regardless of whether that
18 person is licensed to practice law in this state, as set forth in
19 Division 4 (commencing with Section 3200) of the Labor Code.

20 SEC. 2. Section 1282.4 of the Code of Civil Procedure, as
21 amended by Section 2 of Chapter 607 of the Statutes of 2005, is
22 repealed.

23 SEC. 3. (a) The State Bar of California shall collect and
24 record the information reported to the State Bar on certificates
25 described in Section 1282.4 of the Code of Civil Procedure. ~~The~~
26 ~~State Bar shall also collect other information that the State Bar~~
27 ~~and any other information reported to the State Bar that the State~~
28 ~~Bar deems appropriate to assist the Legislature in evaluating the~~
29 ~~appearance by out-of-state attorneys in arbitration hearings or~~
30 ~~proceedings in this state as described in Section 1282.4 of the~~
31 ~~operation and enforcement of, and compliance with, Section~~
32 ~~1282.4 of the Code of Civil Procedure, including, but not limited~~
33 to, all of the following:

34 (1) The extent ~~that to which~~ out-of-state attorneys apply for
35 and are approved to make repeated appearances in arbitration
36 hearings or proceedings ~~in this state or as counsel pro hac vice~~
37 ~~pursuant to Section 1282.4 of the Code of Civil Procedure,~~
38 during the two-year period covered by the certificate.

39 (2) The names of the arbitrators or arbitral forums approving
40 each appearance by the out-of-state attorney.

1 (3) Any special circumstances that warrant repeat appearances.
2 ~~(4) Other information regarding compliance with or~~
3 ~~complaints regarding the provisions of Section 1282.4 of the~~
4 ~~Code of Civil Procedure.~~

5 (b) On or before July 1, ~~2009~~ 2010, the State Bar of California
6 shall report to the Legislature the findings and recommendations
7 of the State Bar regarding the information described in
8 subdivision (a). Those findings and recommendations shall
9 include, but are not limited to, the need to improve compliance
10 with the provisions of Section 1282.4 of the Code of Civil
11 Procedure, ~~the need to permit out-of-state attorneys to appear in~~
12 ~~arbitration hearings or proceedings in this state, and, if requested~~
13 ~~by the Legislature, any supporting documentation regarding~~
14 ~~those findings and recommendations.~~ *If requested by the*
15 *Legislature, the State Bar of California shall provide supporting*
16 *documentation regarding its findings and recommendations.*