

Assembly Bill No. 2482

Passed the Assembly August 30, 2006

Chief Clerk of the Assembly

Passed the Senate August 29, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2482, 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. 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. 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 hearings or proceedings in this state to the Legislature by December 31, 2009. The bill would also require the State Bar of California to promptly notify the Chairs of the Senate and Assembly Committees on Judiciary if the State Bar finds a pattern of noncompliance with or abuse of those provisions, as specified.

This bill would revise the January 1, 2007, repeal date, thereby extending those provisions until January 1, 2011, and make related, conforming changes.

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

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

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

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

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

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

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

(c) Within a reasonable period of time after the attorney described in subdivision (b) indicates an intention to appear in the arbitration, the attorney shall serve a certificate in a form prescribed by the State Bar of California on the arbitrator, arbitrators, or arbitral forum, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. The certificate shall state all of the following:

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

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

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

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

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

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

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

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

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

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

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

(d) The arbitrator, arbitrators, or arbitral forum may approve the attorney's appearance if the attorney has complied with subdivision (c). Failure to timely file and serve the certificate described in subdivision (c) shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed. In the absence of special circumstances, repeated appearances shall be grounds for disapproval of the appearance and disqualification from serving as an attorney in the arbitration in which the certificate was filed.

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

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

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

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

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

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

(2) In enacting subdivision (h), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the Legislature’s intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in *Birbrower* to elect to

be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that *Birbrower* is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

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

(k) This section shall be operative until January 1, 2011, and on that date shall be repealed.

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

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

(b) This section shall become operative on January 1, 2011.

SEC. 3. (a) The State Bar of California shall collect and record the information reported to the State Bar on certificates described in Section 1282.4 of the Code of Civil Procedure and any other information reported or otherwise readily available to the State Bar that the State Bar deems appropriate to assist the Legislature in evaluating the operation and enforcement of, and compliance with, Section 1282.4 of the Code of Civil Procedure, including, but not limited to, all of the following:

(1) The extent to which out-of-state attorneys apply for and are approved to make repeated appearances in arbitration hearings or proceedings pursuant to Section 1282.4 of the Code of Civil Procedure, during the two-year period covered by the certificate, including the extent to which the attorneys who apply to appear as out-of-state arbitration counsel have previously appeared as counsel *pro hac vice*.

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

(3) Any special circumstances that have been found by an arbitrator, arbitrators, or arbitral forum to warrant repeat appearances.

(4) The volume, nature, and status of any complaints, inquiries, or referrals to the State Bar of California, an arbitrator, arbitrators, or arbitral forum regarding an alleged violation of this section.

(b) On or before December 31, 2009, the State Bar of California shall report to the Legislature the findings and recommendations of the State Bar regarding the information described in subdivision (a). Those findings and recommendations shall include, but are not limited to, the need to improve compliance with the provisions of Section 1282.4 of the Code of Civil Procedure. If requested by the Legislature, the State Bar of California shall provide supporting documentation regarding its findings and recommendations.

(c) If, prior to the report described in subdivision (b), the State Bar of California finds a pattern of noncompliance with, or abuse of, Section 1282.4 of the Code of Civil Procedure, the State Bar shall promptly notify the Chairs of the Senate and Assembly Committees on the Judiciary of that pattern of noncompliance or abuse.

(d) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

Approved _____, 2006

Governor