

AMENDED IN SENATE MARCH 8, 2010

**SENATE BILL**

**No. 877**

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**Introduced by Senator Harman**

January 12, 2010

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~~An act to amend Section 12370 of the Penal Code, relating to body armor.~~ *An act to amend and repeal Section 1282.4 of the Code of Civil Procedure, relating to arbitration.*

LEGISLATIVE COUNSEL'S DIGEST

SB 877, as amended, Harman. ~~Body armor.~~ *Arbitration: legal representation.*

*Existing law, until January 1, 2011, 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 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 bill would delete the repeal date, thereby extending these provisions indefinitely.*

~~Existing law provides that any person who has been convicted of a violent felony who purchases, owns, or possesses body armor, as defined in the California Code of Regulations, except as authorized, is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or 2 or 3 years. However, the court, in *People v. Saleem* (Cal.App.2nd Dist., Dec. 17, 2009, B204646), held that this provision is unconstitutionally vague in violation of due process.~~

~~This bill would change the definition of body armor for purposes of this provision to mean any bullet-resistant material intended to provide ballistic and trauma protection for the wearer.~~

~~By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: ~~yes~~-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 357 of the Statutes of 2006,  
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 certificate bearing approval of the attorney's appearance  
20    is filed with the State Bar of California and served on the parties  
21    as described in this section.

22    (c) Within a reasonable period of time after the attorney  
23    described in subdivision (b) indicates an intention to appear in the  
24    arbitration, the attorney shall serve a certificate in a form prescribed  
25    by the State Bar of California on the arbitrator, arbitrators, or

1 arbitral forum, the State Bar of California, and all other parties  
2 and counsel in the arbitration whose addresses are known to the  
3 attorney. The certificate shall state all of the following:

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

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

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

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

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

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

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

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

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

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

1 disapproval of the appearance and disqualification from serving  
2 as an attorney in 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 required  
9 by this section or files or serves a certificate containing false  
10 information or who otherwise fails to comply with the standards  
11 of professional conduct required of members of the State Bar of  
12 California shall be subject to the disciplinary jurisdiction of the  
13 State Bar with respect to that certificate or any of his or her acts  
14 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 may  
25 be represented in the course of, and in connection with, those  
26 proceedings by any person, regardless of whether that person is  
27 licensed to practice law in this state.

28 (i) Nothing in this section shall apply to Division 4 (commencing  
29 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 intent  
32 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 nonresident  
35 attorneys who are not licensed in this state to appear in California  
36 arbitration proceedings.

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

1 proceedings by any person regardless of whether that person is  
2 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 intent  
6 that nothing in this section is intended to expand or restrict the  
7 ability of a party prior to the decision in *Birbrower* to elect to be  
8 represented by any person in a nonjudicial arbitration proceeding,  
9 to the extent those rights or abilities existed prior to that decision.  
10 To the extent that *Birbrower* is interpreted to expand or restrict  
11 that right or ability pursuant to the laws of this state, it is hereby  
12 abrogated except as specifically provided in this section.

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

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

21 *SEC. 2. Section 1282.4 of the Code of Civil Procedure, as*  
22 *amended by Section 2 of Chapter 357 of the Statutes of 2006, is*  
23 *repealed.*

24 ~~1282.4. (a) A party to the arbitration has the right to be~~  
25 ~~represented by an attorney at any proceeding or hearing in~~  
26 ~~arbitration under this title. A waiver of this right may be revoked;~~  
27 ~~but if a party revokes the waiver, the other party is entitled to a~~  
28 ~~reasonable continuance for the purpose of procuring an attorney.~~

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

30 ~~SECTION 1. Section 12370 of the Penal Code is amended to~~  
31 ~~read:~~

32 ~~12370. (a) Any person who has been convicted of a violent~~  
33 ~~felony, as defined in subdivision (e) of Section 667.5, under the~~  
34 ~~laws of the United States, the State of California, or any other state,~~  
35 ~~government, or country, who purchases, owns, or possesses body~~  
36 ~~armor, as defined in subdivision (f), except as authorized under~~  
37 ~~subdivision (b), is guilty of a felony, punishable by imprisonment~~  
38 ~~in a state prison for 16 months, or two or three years.~~

39 ~~(b) Any person whose employment, livelihood, or safety is~~  
40 ~~dependent on the ability to legally possess and use body armor,~~

1 who is subject to the prohibition imposed by subdivision (a) due  
2 to a prior violent felony conviction, may file a petition with the  
3 chief of police or county sheriff of the jurisdiction in which he or  
4 she seeks to possess and use the body armor for an exception to  
5 this prohibition. The chief of police or sheriff may reduce or  
6 eliminate the prohibition, impose conditions on reduction or  
7 elimination of the prohibition, or otherwise grant relief from the  
8 prohibition as he or she deems appropriate, based on the following:

9 (1) A finding that the petitioner is likely to use body armor in  
10 a safe and lawful manner.

11 (2) A finding that the petitioner has a reasonable need for this  
12 type of protection under the circumstances.

13 In making its decision, the chief of police or sheriff shall consider  
14 the petitioner's continued employment, the interests of justice, any  
15 relevant evidence, and the totality of the circumstances. It is the  
16 intent of the Legislature that law enforcement officials exercise  
17 broad discretion in fashioning appropriate relief under this  
18 paragraph in cases in which relief is warranted. However, this  
19 paragraph may not be construed to require law enforcement  
20 officials to grant relief to any particular petitioner. Relief from this  
21 prohibition does not relieve any other person or entity from any  
22 liability that might otherwise be imposed.

23 (c) The chief of police or sheriff shall require, as a condition of  
24 granting an exception under subdivision (b), that the petitioner  
25 agree to maintain on his or her person a certified copy of the law  
26 enforcement official's permission to possess and use body armor,  
27 including any conditions or limitations.

28 (d) Law enforcement officials who enforce the prohibition  
29 specified in subdivision (a) against a person who has been granted  
30 relief pursuant to subdivision (b), shall be immune from any  
31 liability for false arrest arising from the enforcement of this  
32 subdivision unless the person has in his or her possession a certified  
33 copy of the permission granting the person relief from the  
34 prohibition, as required by subdivision (c). This immunity from  
35 liability does not relieve any person or entity from any other  
36 liability that might otherwise be imposed.

37 (e) For purposes of this section only, "violent felony" refers to  
38 the specific crimes listed in subdivision (c) of Section 667.5, and  
39 to crimes defined under the applicable laws of the United States

1 or any other state, government, or country that are reasonably  
2 equivalent to the crimes listed in subdivision (e) of Section 667.5.

3 (f) For purposes of this section, “body armor” means any  
4 bullet-resistant material intended to provide ballistic and trauma  
5 protection for the wearer.

6 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
7 ~~Section 6 of Article XIII B of the California Constitution because~~  
8 ~~the only costs that may be incurred by a local agency or school~~  
9 ~~district will be incurred because this act creates a new crime or~~  
10 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
11 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
12 ~~the Government Code, or changes the definition of a crime within~~  
13 ~~the meaning of Section 6 of Article XIII B of the California~~  
14 ~~Constitution.~~