

AMENDED IN ASSEMBLY AUGUST 2, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 877, as amended, Harman. 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. *This bill would become operative only if an unspecified bill is enacted and takes effect on or before January 1, 2011.*

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 357 of the Statutes of 2006,
- 3 is amended to read:

1 1282.4. (a) A party to the arbitration has the right to be  
2 represented by an attorney at any proceeding or hearing in  
3 arbitration under this title. A waiver of this right may be revoked;  
4 but if a party revokes that waiver, the other party is entitled to a  
5 reasonable continuance for the purpose of procuring an attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (g) Notwithstanding any other provision of law, including  
37 Section 6125 of the Business and Professions Code, an attorney  
38 who is a member in good standing of the bar of any state may  
39 represent the parties in connection with rendering legal services

1 in this state in the course of and in connection with an arbitration  
2 pending in another state.

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

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

12 (j) (1) In enacting the amendments to this section made by  
13 Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent  
14 of the Legislature to respond to the holding in *Birbrower v.*  
15 *Superior Court* (1998) 17 Cal.4th 117, as modified at 17 Cal.4th  
16 643a (hereafter *Birbrower*), to provide a procedure for nonresident  
17 attorneys who are not licensed in this state to appear in California  
18 arbitration proceedings.

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

25 (3) Except as otherwise specifically provided in this section, in  
26 enacting the amendments to this section made by Assembly Bill  
27 2086 of the 1997–98 Regular Session, it is the Legislature’s intent  
28 that nothing in this section is intended to expand or restrict the  
29 ability of a party prior to the decision in *Birbrower* to elect to be  
30 represented by any person in a nonjudicial arbitration proceeding,  
31 to the extent those rights or abilities existed prior to that decision.  
32 To the extent that *Birbrower* is interpreted to expand or restrict  
33 that right or ability pursuant to the laws of this state, it is hereby  
34 abrogated except as specifically provided in this section.

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

1 SEC. 2. Section 1282.4 of the Code of Civil Procedure, as  
2 amended by Section 2 of Chapter 357 of the Statutes of 2006, is  
3 repealed.

4 *SEC. 3. This act shall become operative only if Assembly Bill*  
5 *\_\_\_\_\_ of the 2009–10 Regular Session is enacted and takes effect*  
6 *on or before January 1, 2011.*

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