

ASSEMBLY BILL

No. 1631

Introduced by Assembly Member Monning

February 9, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1631, as introduced, Monning. Arbitration: legal representation.

Existing law, until January 1, 2013, 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 those 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 of January 1, 2013, thereby making these provisions operative indefinitely. This bill would make conforming changes to an existing provision of law.

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 277 of the Statutes of 2010,
- 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 ~~(k) This section shall remain in effect only until January 1, 2013,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2013, deletes or extends that date.~~

4 SEC. 2. Section 1282.4 of the Code of Civil Procedure, as
5 amended by Section 2 of Chapter 277 of the Statutes of 2010, is
6 repealed.

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

12 ~~(b) This section shall become operative on January 1, 2013.~~