

AMENDED IN SENATE AUGUST 27, 1998

AMENDED IN SENATE AUGUST 10, 1998

AMENDED IN SENATE JULY 22, 1998

AMENDED IN ASSEMBLY APRIL 22, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2086

Introduced by Assembly Member Keeley

February 18, 1998

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2086, as amended, Keeley. Arbitration: attorneys.

Existing law requires any person rendering legal services in this state to be admitted to the State Bar of California. Existing law provides that a party to an arbitration has the right to be represented by an attorney.

This bill would *enact provisions, effective only until January 1, 2001, to* permit 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. ~~The bill~~ *These provisions* would require those attorneys 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.

~~The bill~~—*These provisions* would also permit any party to an arbitration arising under certain collective bargaining agreements to be represented by any person. *The bill would include a statement of legislative intent.*

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
2 Procedure is amended to read:

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

9 (b) Notwithstanding any other provision of law,
10 including Section 6125 of the Business and Professions
11 Code, an attorney admitted to the bar of any *other* state
12 may represent the parties in the course of, or in
13 connection with, an arbitration proceeding in this state,
14 provided that the attorney, *if not admitted to the State*
15 *Bar of California*, timely files the certificate described in
16 subdivision (c) and the attorney’s appearance is
17 approved by the arbitrator, the arbitrators, or the arbitral
18 forum.

19 (c) Prior to the first scheduled hearing in an
20 arbitration, the attorney described in subdivision (b)
21 shall serve a certificate on the arbitrator or arbitrators,
22 the State Bar of California, and all other parties and
23 counsel in the arbitration whose addresses are known to
24 the attorney. In the event that the attorney is retained
25 after the first hearing has commenced, then the
26 certificate shall be served prior to the first hearing at
27 which the attorney appears. The certificate shall state all
28 of the following:

- 29 (1) The attorney’s residence and office address.
- 30 (2) The courts before which the attorney has been
- 31 admitted to practice and the dates of admission.



1 (3) That the attorney is currently a member in good
2 standing *of*, and eligible to practice law ~~by~~ *before*, the bar
3 of those courts.

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

7 (5) That the attorney is not a resident of the State of
8 California.

9 (6) That the attorney is not regularly employed in the
10 State of California.

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

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

18 (9) The title of the court and the cause in which the
19 attorney has filed an application to appear as counsel pro
20 hac vice in this state or filed a certificate pursuant to this
21 section in the preceding two years, the date of each
22 application, and whether or not it was granted.

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

26 (d) Failure to timely file the certificate described in
27 subdivision (c) or, absent special circumstances,
28 repeated appearances shall be grounds for
29 disqualification from serving as the attorney of record in
30 the arbitration in which the certificate was filed.

31 (e) An attorney who files a certificate containing false
32 information or who otherwise fails to comply with the
33 standards of professional conduct required of members of
34 the State Bar of California shall be subject to the
35 disciplinary jurisdiction of the State Bar with respect to
36 any of his or her acts occurring in the course of the
37 arbitration.

38 (f) Notwithstanding any other provision of law,
39 including Section 6125 of the Business and Professions
40 Code, an attorney who is a member in good standing of



1 the bar of any state may represent the parties in
2 connection with rendering legal services in this state in
3 the course of and in connection with an arbitration
4 pending in another state.

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

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

15 (i) (1) *In enacting the amendments to this section*
16 *made by Assembly Bill 2086 of the 1997–98 Regular*
17 *Session, it is the intent of the Legislature to respond to the*
18 *holding in Birbrower v. Superior Court (1998) 17 Cal.4th*
19 *117, as modified at 17 Cal.4th 643a (hereafter Birbrower),*
20 *to provide a procedure for nonresident attorneys who are*
21 *not licensed in this state to appear in California*
22 *arbitration proceedings.*

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

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



1 of this state, it is hereby abrogated except as specifically
2 provided in this section.

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

10 (j) This section shall be operative until January 1, 2001,
11 and on that date shall be repealed.

12 SEC. 2. Section 1282.4 is added to the Code of Civil
13 Procedure, to read:

14 1282.4. (a) A party to the arbitration has the right to
15 be represented by an attorney at any proceeding or
16 hearing in arbitration under this title. A waiver of this
17 right may be revoked; but if a party revokes the waiver,
18 the other party is entitled to a reasonable continuance for
19 the purpose of procuring an attorney.

20 (b) This section shall become operative on January 1,
21 2001.

