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SB-766 International commercial arbitration: representation. (2017-2018)

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Senate Bill No. 766

CHAPTER 134

An act to add Article 1.5 (commencing with Section 1297.185) to Chapter 5 of Title 9.3 of Part 3 of the Code of Civil Procedure, relating to international commercial disputes.

[Approved by Governor July 18, 2018. Filed with Secretary of State July 18, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 766, Monning. International commercial arbitration: representation.

Existing law includes provisions that govern arbitration and conciliation proceedings for international commercial disputes. Existing law authorizes the parties in a conciliation proceeding to appear in person or be represented or assisted by any person of their choice, and provides that a person representing or assisting a party is not required to be a member of the legal profession or licensed to practice law in California.

This bill would permit an individual who is not admitted to practice law in California but who is a member in good standing of a recognized legal profession in the United States or a foreign jurisdiction and is subject to effective regulation and discipline by a duly constituted professional body or public authority to provide legal services in an international commercial arbitration or related proceeding, as specified. Additionally, the bill would subject an individual rendering legal services pursuant to this provision to the disciplinary jurisdiction of the State Bar, and it would direct the State Bar to annually report to the Supreme Court regarding the number and nature of any complaints that it has received against these attorneys and any actions it has taken in response to these complaints.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 1.5 (commencing with Section 1297.185) is added to Chapter 5 of Title 9.3 of Part 3 of the Code of Civil Procedure, to read:

Article 1.5. Representation by Foreign and Out-of-State Attorneys

1297.185. For purposes of this article, a "qualified attorney" means an individual who is not admitted to practice law in this state but is all of the following:

(a) Admitted to practice law in a state or territory of the United States or the District of Columbia or a member of a recognized legal profession in a foreign jurisdiction, the members of which are admitted or otherwise authorized to practice as attorneys or counselors at law or the equivalent.

(b) Subject to effective regulation and discipline by a duly constituted professional body or public authority of that jurisdiction.

(c) In good standing in every jurisdiction in which he or she is admitted or otherwise authorized to practice.

1297.186. (a) Notwithstanding any other law, including Section 6125 of the Business and Professions Code, a qualified attorney may provide legal services in an international commercial arbitration or related conciliation, mediation, or alternative dispute resolution proceeding, if any of the following conditions is satisfied:

(1) The services are undertaken in association with an attorney who is admitted to practice in this state and who actively participates in the matter.

(2) The services arise out of or are reasonably related to the attorney's practice in a jurisdiction in which the attorney is admitted to practice.

(3) The services are performed for a client who resides in or has an office in the jurisdiction in which the attorney is admitted or otherwise authorized to practice.

(4) The services arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the attorney is admitted or otherwise authorized to practice.

(5) The services arise out of a dispute governed primarily by international law or the law of a foreign or out-of-state jurisdiction.

(b) This section does not apply to a dispute or controversy concerning any of the following:

(1) An individual's acquisition or lease of goods or services primarily for personal, family, or household use.

(2) An individual's coverage under a health insurance plan or an interaction between an individual and a healthcare provider.

(3) An application for employment in California.

(4) The terms and conditions of, or right to, employment in California, unless the dispute or controversy primarily concerns intellectual property rights, including those involving trademarks, patents, copyright, and software programs.

(c) This section does not affect the right of an attorney admitted to practice law in this state to provide legal services in an international commercial arbitration or related conciliation, mediation, or alternative dispute resolution proceeding, or the right of representation established in Section 1297.351.

1297.187. A qualified attorney rendering legal services pursuant to this article shall not appear in a court of this state unless he or she has applied for and received permission to appear as counsel pro hac vice pursuant to the California Rules of Court, as applicable.

1297.188. (a) A qualified attorney rendering legal services pursuant to this article is subject to the jurisdiction of the courts and disciplinary authority of this state with respect to the California Rules of Professional Conduct and the laws governing the conduct of attorneys to the same extent as a member of the State Bar of California.

(b) The State Bar of California may report complaints and evidence of disciplinary violations against an attorney practicing pursuant to this article to the appropriate disciplinary authority of any jurisdiction in which the attorney is admitted or otherwise authorized to practice law. This section does not limit or affect the authority of the State Bar to report information about an attorney to authorities in any jurisdiction in which the attorney is admitted or otherwise authorized to practice law.

(c) On or before May 1 of each year, the State Bar shall submit a report to the Supreme Court that specifies the number and nature of any complaints that it has received during the prior calendar year against attorneys who provide legal services pursuant to this article and any actions it has taken in response to those complaints.

1297.189. The Supreme Court may issue rules implementing this article.