

ASSEMBLY BILL

No. 2169

**Introduced by Assembly Member Cooley
(Principal coauthor: Assembly Member Bonilla)**

February 20, 2014

An act to amend Section 10032 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2169, as introduced, Cooley. Business and professions.

Existing law, the Real Estate Law, governs the licensure and regulation of real estate salespersons and real estate brokers. Existing law requires all obligations under the Real Estate Law, all regulations issued by the Real Estate Commissioner relating to real estate salespersons, and all other obligations of brokers and real estate salespersons to members of the public to apply regardless of whether the real estate salespersons and the broker to whom he or she is licensed have characterized their relationship as one of “independent contractor” or of “employer and employee.”

Existing law authorizes a real estate broker and a real estate salesperson licensed under that broker to contract between themselves as independent contractors or as an employer and employee, for the purposes of their legal relationship with, and obligations to, each other. Under existing law, the characterization of a relationship as either “employer and employee” or “independent contractor” for purposes, including, but not limited to, withholding taxes on wages and unemployment compensation is governed by certain specified provisions of law. Existing uncodified law prohibits the above provisions from being interpreted or applied to affect existing obligations of a real estate

broker regarding liability or workers compensation insurance or from altering existing case law.

This bill instead would require the contractual characterization of a relationship of a real estate broker and a real estate salesperson licensed under that broker as either “employer and employee” or “independent contractor” to be conclusive, except as provided, for all purposes, including, but not limited to, withholding taxes on wages, unemployment compensation, and all other statutory, regulatory, common law, and contractual purposes, if certain statutory requirements are satisfied.

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 10032 of the Business and Professions
2 Code is amended to read:
3 10032. (a) All obligations created under Section 10000, and
4 following, all regulations issued by the commissioner relating to
5 real estate salespersons, and all other obligations of brokers and
6 real estate salespersons to members of the public shall apply
7 regardless of whether the real estate salesperson and the broker to
8 whom he or she is licensed have characterized their relationship
9 as one of “independent contractor” or of “employer and employee.”
10 (b) A real estate broker and a real estate salesperson licensed
11 under that broker may contract between themselves as independent
12 contractors or as employer and employee, ~~for purposes of their~~
13 ~~legal relationship with and obligations to each other.~~
14 ~~Characterization~~ *Except as provided in subdivision (a) and for*
15 *purposes of workers compensation, the contractual*
16 *characterization* of a relationship as either “employer and
17 employee” or “independent contractor” *shall be conclusive* for
18 ~~statutory~~ *all* purposes, including, but not limited to, withholding
19 taxes on wages ~~and for purposes of~~, unemployment compensation,
20 ~~shall be governed by~~ *and all other statutory, regulatory, common*
21 *law, and contractual purposes, if the requirements of* Section 650
22 and Sections 13000 to 13054, inclusive, of the Unemployment
23 Insurance Code *are met*. For purposes of workers compensation

1 the characterization of the relationship shall be governed by Section
2 3200, and following, of the Labor Code.

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