

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2169

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

February 20, 2014

An act to amend Section 10032 of, *and to add Section 10032.1 to*, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2169, as amended, 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~~ *would clarify that the 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 is 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 for statutory, regulatory, or common law purposes, if certain statutory requirements are satisfied. The bill would state findings and declarations and the intent of the Legislature in this regard.*

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~~. ~~Except as provided in~~
 13 ~~subdivision (a) and for purposes of workers compensation, the~~
 14 ~~contractual employee. The~~ characterization of a relationship as
 15 either “employer and employee” or “independent contractor” shall
 16 be conclusive for ~~all statutory, regulatory, and common law~~
 17 ~~purposes, including, but not limited to, withholding taxes on wages,~~
 18 ~~unemployment compensation, and all other statutory, regulatory,~~
 19 ~~common law, and contractual purposes, if the requirements of~~
 20 Section 650 and Sections 13000 to 13054, inclusive, of the
 21 Unemployment Insurance Code are met. For purposes of workers

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

3 *SEC. 2. Section 10032.1 is added to the Business and*
4 *Professions Code, immediately following Section 10032, to read:*

5 *10032.1. (a) It is the intent of the Legislature in enacting the*
6 *amendments to Section 10032 made by Assembly Bill 2169 of the*
7 *2013–14 Regular Session to restate existing law for purposes of*
8 *clarification and to reiterate the application of existing law*
9 *regarding the validity and enforceability of the election made by*
10 *the parties to a real estate retention agreement to characterize*
11 *their relationship as one of “independent contractor” or “employer*
12 *and employee.”*

13 *(b) The Legislature finds and declares all of the following:*

14 *(1) The real estate marketplace is an important part of*
15 *California’s economy. The continued smooth functioning of the*
16 *existing marketplace model of supervising real estate brokers and*
17 *real estate salespersons is important in order to avoid a disruption*
18 *of the market, which could result in a significant negative effect*
19 *on California’s economic recovery.*

20 *(2) The retention relationship of real estate brokers and real*
21 *estate salespersons is unique and operates under a special statutory*
22 *scheme, the Real Estate Law, and the implementing regulations*
23 *of the Real Estate Commissioner, notwithstanding the general*
24 *statutory provisions that govern employment relationships.*

25 *(3) The contractual relationship of nearly 300,000 real estate*
26 *salespersons and their ongoing retention is put at risk if they and*
27 *their affiliated offices cannot be confident in the validity and*
28 *enforceability of their choice to characterize their relationship as*
29 *one of “independent contractor” or of “employer and employee”*
30 *under their retention agreement.*

31 *(4) The overwhelming majority of real estate salespersons and*
32 *real estate brokers have relied in good faith upon the ability to*
33 *make the choice to characterize their relationship as one of*
34 *“independent contractor” for all statutory purposes, with the*
35 *understanding that their choice is conclusive as to the*
36 *characterization of their legal relationship, as allowed pursuant*
37 *to Section 10032, by satisfying the three-part criteria set forth in*
38 *Section 650 and Sections 13000 to 13054, inclusive, of the*
39 *Unemployment Insurance Code, and related portions of the Real*

1 *Estate Law, which governs the applicability of certain Labor Code*
2 *provisions.*
3 *(5) The amendments made to Section 10032 by Assembly Bill*
4 *2169 of the 2013–14 Regular Session do not change the rights and*
5 *obligations of either real estate brokers or real estate salespersons*
6 *under Section 650 and Sections 13000 to 13054, inclusive, of the*
7 *Unemployment Insurance Code, or the characterization of their*
8 *respective relationship for purposes of workers’ compensation*
9 *under Section 3200, and following, of the Labor Code.*

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