

AMENDED IN ASSEMBLY APRIL 23, 2014

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~~ *Sections 10032.1 and 10032.2* to, the Business and Professions Code, *and to repeal Section 2 of Chapter 679 of the Statutes of 1991*, 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 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” is conclusive 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.~~

This bill would recast and codify the provision relating to the interpretation and application of law on existing obligations of a real estate broker, as described above. The bill would also state findings and declarations and the intent of the Legislature to reiterate the application of existing law regarding the validity and enforceability of the election made by the parties to a real estate retention agreement to characterize their relationship as one of “independent contractor” or “employee.”

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 *brokers and real estate* salespersons, and all other
- 6 obligations of brokers and real estate salespersons to members of
- 7 the public shall apply regardless of whether the real estate
- 8 salesperson and the broker to whom he or she is licensed have
- 9 characterized their relationship as one of “independent contractor”
- 10 or of “employee.”
- 11 (b) A real estate broker and a real estate salesperson licensed
- 12 under that broker may contract between themselves as independent
- 13 contractors or as employer and ~~employee. The characterization~~
- 14 *employee, for purposes of their legal relationship with and*

1 *obligations to each other. Characterization of a relationship as*
2 *either “employer and employee” or “independent contractor” shall*
3 *be conclusive for statutory, regulatory, and common law purposes*
4 *if the requirements of for statutory purposes, including, but not*
5 *limited to, withholding taxes on wages and for purposes of*
6 *unemployment compensation, shall be governed by Section 650*
7 *and Sections 13000 to 13054, inclusive, of the Unemployment*
8 *Insurance Code are met. Code. For purposes of workers’*
9 *compensation the characterization of the relationship shall be*
10 *governed by Section 3200, and following, of the Labor Code.*

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

13 *10032.1. Section 10032 shall not be interpreted or applied to*
14 *affect the obligation or ability, if any, of a real estate broker to*
15 *maintain workers’ compensation insurance, or the holding in*
16 *Gipson v. Davis Realty Co. (1963) 215 Cal.App.2d 190, that a real*
17 *estate broker may be vicariously liable under the doctrine of*
18 *respondeat superior for tortious acts of a salesperson licensed*
19 *under that broker; and further, that real estate salespersons cannot*
20 *be classified as independent contractors for purposes of liability*
21 *to third parties, and that any provision in a contract that purports*
22 *to change that relationship from that of an agent to independent*
23 *contractor is invalid as being contrary to law for purposes of tort*
24 *liability to third parties.*

25 ~~SEC. 2.~~

26 *SEC. 3. Section ~~10032.1~~ 10032.2 is added to the Business and*
27 *Professions Code, immediately following Section ~~10032~~ 10032.1,*
28 *to read:*

29 ~~10032.1.~~

30 *10032.2. (a) It is the intent of the Legislature in enacting the*
31 *amendments to Section 10032 that the codification of Section 2*
32 *of Chapter 679 of the Statutes of 1991 made by Assembly Bill*
33 *2169 of the 2013–14 Regular Session to restate existing law for*
34 *purposes of clarification and is to reiterate the application of*
35 *existing law regarding the validity and enforceability of the election*
36 *made by the parties to a real estate retention agreement to*
37 *characterize their relationship as one of “independent contractor”*
38 *or “employee.”*

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

1 (1) The real estate marketplace is an important part of
2 California's economy. The continued smooth functioning of the
3 existing marketplace model of supervising real estate brokers and
4 real estate salespersons is important in order to avoid a disruption
5 of the market, which could result in a significant negative effect
6 on California's economic recovery.

7 (2) The retention relationship of real estate brokers and real
8 estate salespersons is unique and operates under a special statutory
9 scheme, the Real Estate Law, and the implementing regulations
10 of the Real Estate Commissioner, notwithstanding the general
11 statutory provisions that govern employment relationships.

12 (3) The contractual relationship of nearly 300,000 real estate
13 salespersons and their ongoing retention is put at risk if they and
14 their affiliated offices cannot be confident in the validity and
15 enforceability of their choice to characterize their relationship as
16 one of "independent contractor" or of "employer and employee"
17 under their retention agreement.

18 (4) The overwhelming majority of real estate salespersons and
19 real estate brokers have relied in good faith upon the ability to
20 make the choice to characterize their relationship as one of
21 "independent contractor" for all statutory purposes, with the
22 understanding that their choice is conclusive as to the
23 characterization of their legal relationship, as allowed pursuant to
24 Section 10032, by satisfying the three-part criteria set forth in
25 Section 650 and Sections 13000 to 13054, inclusive, of the
26 Unemployment Insurance Code, and related portions of the Real
27 Estate Law, which ~~governs~~ govern the applicability of certain
28 Labor Code provisions.

29 (5) ~~The amendments made to Section 10032 by codification of~~
30 *Section 2 of Chapter 679 of the Statutes of 1991 made by Assembly*
31 *Bill 2169 of the 2013–14 Regular Session* ~~do~~ does not change the
32 rights and obligations of either real estate brokers or real estate
33 salespersons under Section 650 and Sections 13000 to 13054,
34 inclusive, of the Unemployment Insurance Code, or the
35 characterization of their respective relationship for purposes of
36 workers' compensation under Section 3200, and following, of the
37 Labor Code.

38 *SEC. 4. Section 2 of Chapter 679 of the Statutes of 1991 is*
39 *repealed.*

1 ~~SEC. 2. This act shall not be interpreted or applied to affect the~~
2 ~~obligation or ability, if any, of a broker to maintain workers~~
3 ~~compensation insurance, or the holding in Gibson v. Davis Realty~~
4 ~~Co. (1964) 215 Cal. App. 2d 190, that a real estate broker may be~~
5 ~~vicariously liable under the doctrine of respondeat superior for~~
6 ~~tortious acts of a salesperson licensed under the broker; and further,~~
7 ~~that real estate salespersons cannot be classified as independent~~
8 ~~contractors for purposes of liability to third parties and that any~~
9 ~~provision in a contract which purports to change that relationship~~
10 ~~from that of an agent to independent contractor is invalid as being~~
11 ~~contrary to law for purposes of tort liability to third parties.~~

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