

AMENDED IN ASSEMBLY MARCH 20, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 308**

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**Introduced by Assembly Member Leonard**

February 14, 1997

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An act to amend Section ~~641.3~~ of 10177.4 of the *Business and Professions Code*, and to add Section 641.4 to the *Penal Code*, relating to ~~crimes~~ *real estate*.

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Leonard. Commercial bribery: real estate sales.

(1) Existing law provides, except as specified, that every employee, as defined, who solicits, accepts, or agrees to accept any money or thing of value from any person other than his or her employer, other than in trust for the employer, corruptly, as defined, and without the knowledge or consent of the employer, in return for using or agreeing to use his or her position for the benefit of that other person, and any person who offers or gives an employee money or any thing of value under those circumstances, is guilty of commercial bribery, except as specified. Existing law further provides that commercial bribery is punishable by imprisonment in a county jail for not more than one year if the amount of the bribe is \$1,000 or less, or by imprisonment in a county jail, or in the state prison for 16 months, or 2 or 3 years if the amount of the bribe exceeds \$1,000.

~~This bill would expand the definition of “employee” for purposes of the above provisions to include a real estate salesperson licensed under a real estate broker and a real estate broker acting in the employ of another real estate broker. The bill would also provide that a payment or a compensation to a real estate salesperson or to a real estate broker acting in the employ of another real estate broker, is presumed to be made corruptly if it is not paid through the employing broker of the salesperson or broker or pursuant to written authorization of the employing broker provide that an employee of a title insurer, underwritten title company, or controlled escrow company who corruptly violates a certain statutory provision by paying, directly or indirectly, a commission, compensation, or other consideration to a real estate salesperson or real estate broker, or a real estate salesperson or real estate broker who corruptly violates another statutory provision by receiving from an employee of a title insurer, underwritten title company, or controlled escrow company a commission, compensation, or other consideration, as an inducement for the placement or referral of title business, is also guilty of commercial bribery.~~

*(2) Existing law authorizes the Real Estate Commissioner, after hearing in accordance with certain provisions, to suspend or revoke the license of a real estate licensee who claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any escrow agent, structural pest control firm, home protection company, or underwritten title company.*

*This bill would prohibit a licensee from being disciplined for reporting to the commissioner violations of the above provision by another licensee, unless the licensee making the report had guilty knowledge of, or committed or participated in, the violation of that provision. By expanding the scope of an existing crime by making the crime of commercial bribery applicable to a new category of persons and by creating a new crime, this bill would impose a state-mandated local program.*

~~(2)~~

*(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs*



mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 641.3 of the Penal Code is~~

2 *SECTION 1. The Legislature finds and declares that*  
3 *illegal rebates and kickbacks are a significant problem in*  
4 *the marketing of title insurance in California, and have*  
5 *been a problem for more than two decades.*  
6 *Administrative penalties available to the Department of*  
7 *Insurance and the Department of Real Estate are*  
8 *ineffective in curtailing this illegal activity, which stifles*  
9 *competition, increases costs to consumers, and prejudices*  
10 *legitimate competitors in the marketplace.*

11 *It is the intent of the Legislature in enacting this bill to*  
12 *provide an effective deterrent to illegal rebates and*  
13 *kickbacks by clarifying that those who knowingly violate*  
14 *the law are guilty of commercial bribery.*

15 *It is further the intent of the Legislature to ensure that*  
16 *real estate licensees who are not participating in this*  
17 *illegal rebate and kickback activity report, without fear*  
18 *of license sanctions, their knowledge of participation in*  
19 *this activity by other licensees to the Real Estate*  
20 *Commissioner.*

21 *SEC. 2. Section 10177.4 of the Business and*  
22 *Professions Code is amended to read:*

23 *10177.4. (a) Notwithstanding any other provision of*  
24 *law, the commissioner may, after hearing in accordance*  
25 *with the provisions of this part relating to hearings,*  
26 *suspend or revoke the license of a real estate licensee who*  
27 *claims, demands, or receives a commission, fee, or other*  
28 *consideration, as compensation or inducement, for*  
29 *referral of customers to any escrow agent, structural pest*  
30 *control firm, home protection company, title insurer,*  
31 *controlled escrow company, or underwritten title*



1 company. A licensee may not be disciplined under any  
2 provision of this part for reporting to the commissioner  
3 violations of this section by another licensee, unless the  
4 licensee making the report had guilty knowledge of, or  
5 committed or participated in, the violation of this section.

6 (b) The term “other consideration” as used in this  
7 section does not include any of the following:

8 (1) Bona fide payments for goods or facilities actually  
9 furnished by a licensee or for services actually performed  
10 by a licensee, provided—~~such~~ these payments are  
11 reasonably related to the value of the goods, facilities, or  
12 services furnished;

13 (2) Furnishing of documents, services, information,  
14 advertising, educational materials, or items of a like  
15 nature ~~which~~ that are customary in the real estate  
16 business and ~~which~~ that relate to the product or services  
17 of the furnisher and ~~which~~ that are available on a similar  
18 and essentially equal basis to all customers or the agents  
19 of ~~such~~ the customers of the furnisher;

20 (3) Moderate expenses for food, meals, beverages, and  
21 similar items furnished to individual licensees or groups  
22 or associations of licensees within a context of customary  
23 business, educational, or promotional practices  
24 pertaining to the business of the furnisher;

25 (4) Items of a character and magnitude similar to those  
26 in ~~subsections~~ paragraphs (2) and (3)—~~which~~ that are  
27 promotional of the furnisher’s business customary in the  
28 real estate business, and available on a similar and  
29 essentially equal basis to all customers, or the agents of  
30 ~~such~~ the customers, of the furnisher.

31 (c) Nothing in this section shall relieve any licensee of  
32 the obligation of disclosure otherwise required by this  
33 part.

34 SEC. 3. Section 641.4 is added to the Penal Code, to  
35 read:

36 641.4. (a) An employee of a title insurer,  
37 underwritten title company, or controlled escrow  
38 company who corruptly violates Section 12404 of the  
39 Insurance Code by paying, directly or indirectly, a  
40 commission, compensation, or other consideration to a



1 licensee, as defined in Section 10011 of the Business and  
2 Professions Code, or a licensee who corruptly violates  
3 Section 10177.4 of the Business and Professions Code by  
4 receiving from an employee of a title insurer,  
5 underwritten title company, or controlled escrow  
6 company a commission, compensation, or other  
7 consideration, as an inducement for the placement or  
8 referral of title business, is guilty of commercial bribery.

9 (b) This section does not apply where the amount of  
10 money or monetary worth of the thing of value is one  
11 hundred dollars (\$100) or less.

12 (c) Commercial bribery is punishable by  
13 imprisonment in a county jail for not more than one year  
14 if the amount of the bribe is one thousand dollars (\$1,000)  
15 or less, or by imprisonment in a county jail, or in the state  
16 prison for 16 months, or two or three years if the amount  
17 of the bribe exceeds one thousand dollars (\$1,000).

18 (d) For purposes of this section, "title business" has the  
19 same meaning as that used in Section 12404 of the  
20 Insurance Code.

21 (e) This section shall not be construed to supersede or  
22 affect Section 641.3. A person may be charged with a  
23 violation of this section and Section 641.3. However, a  
24 defendant may not be punished under this section and  
25 Section 641.3 for the same act that constitutes a violation  
26 of both this section and Section 641.3.

27 ~~amended to read:~~

28 ~~641.3. (a) Any employee who solicits, accepts, or~~  
29 ~~agrees to accept money or any thing of value from a~~  
30 ~~person other than his or her employer, other than in trust~~  
31 ~~for the employer, corruptly and without the knowledge~~  
32 ~~or consent of the employer, in return for using or~~  
33 ~~agreeing to use his or her position for the benefit of that~~  
34 ~~other person, and any person who offers or gives an~~  
35 ~~employee money or any thing of value under those~~  
36 ~~circumstances, is guilty of commercial bribery.~~

37 ~~(b) This section does not apply where the amount of~~  
38 ~~money or monetary worth of the thing of value is one~~  
39 ~~hundred dollars (\$100) or less.~~



1 ~~(c) Commercial bribery is punishable by~~  
 2 ~~imprisonment in a county jail for not more than one year~~  
 3 ~~if the amount of the bribe is one thousand dollars (\$1,000)~~  
 4 ~~or less, or by imprisonment in a county jail, or in the state~~  
 5 ~~prison for 16 months, or two or three years if the amount~~  
 6 ~~of the bribe exceeds one thousand dollars (\$1,000).~~

7 ~~(d) For purposes of this section:~~

8 ~~(1) "Employee" means an officer, director, agent,~~  
 9 ~~trustee, partner, or employee. "Employee" also includes~~  
 10 ~~a real estate salesperson, as defined in Section 10132 of the~~  
 11 ~~Business and Professions Code, licensed under a real~~  
 12 ~~estate broker, and a real estate broker acting in the~~  
 13 ~~employ of another real estate broker.~~

14 ~~(2) "Employer" means a corporation, association,~~  
 15 ~~organization, trust, partnership, or sole proprietorship.~~

16 ~~(3) "Corruptly" means that the person specifically~~  
 17 ~~intends to injure or defraud one or more of the following:~~

18 ~~(A) His or her employer.~~

19 ~~(B) The employer of the person to whom he or she~~  
 20 ~~offers, gives, or agrees to give the money or a thing of~~  
 21 ~~value.~~

22 ~~(C) The employer of the person from whom he or she~~  
 23 ~~requests, receives, or agrees to receive the money or a~~  
 24 ~~thing of value.~~

25 ~~(D) A competitor of any employer specified in~~  
 26 ~~subparagraph (C).~~

27 ~~(4) For purposes of this section, a payment or a~~  
 28 ~~compensation to a real estate salesperson or to a real~~  
 29 ~~estate broker acting in the employ of another real estate~~  
 30 ~~broker, is presumed to be made corruptly if it is not paid~~  
 31 ~~through the employing broker of the salesperson or~~  
 32 ~~broker or pursuant to written authorization of the~~  
 33 ~~employing broker.~~

34 ~~SEC. 2.~~

35 *SEC. 4.* No reimbursement is required by this act  
 36 pursuant to Section 6 of Article XIII B of the California  
 37 Constitution because the only costs that may be incurred  
 38 by a local agency or school district will be incurred  
 39 because this act creates a new crime or infraction,  
 40 eliminates a crime or infraction, or changes the penalty



1 for a crime or infraction, within the meaning of Section  
2 17556 of the Government Code, or changes the definition  
3 of a crime within the meaning of Section 6 of Article  
4 XIII B of the California Constitution.

5 Notwithstanding Section 17580 of the Government  
6 Code, unless otherwise specified, the provisions of this act  
7 shall become operative on the same date that the act  
8 takes effect pursuant to the California Constitution.

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