

# HOUSE BILL REPORT

## SHB 1853

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### As Passed Legislature

**Title:** An act relating to clarifying that real estate brokers licensed under chapter 18.85 RCW are independent contractors

**Brief Description:** Clarifying that real estate brokers licensed under chapter 18.85 RCW are independent contractors.

**Sponsors:** House Committee on Labor & Workforce Development (originally sponsored by Representatives Maxwell, Hayes, Van De Wege, Kretz, Springer, Sells, Seaquist, Morrell, Ryu, Tharinger and Freeman).

#### **Brief History:**

##### **Committee Activity:**

Labor & Workforce Development: 2/19/13 [DPS].

##### **Floor Activity:**

Passed House: 3/4/13, 98-0.

Passed Senate: 4/15/13, 48-0.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Exempts licensed real estate brokers, managing brokers, and designated brokers from overtime requirements unless a broker is designated as an employee in his or her contract with a real estate firm.

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### HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Sells, Chair; Reykdal, Vice Chair; Manweller, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Green, Holy, Moeller, Ormsby and Short.

**Staff:** Alexa Silver (786-7190).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Overtime Requirements.

Both federal and state minimum wage laws establish requirements related to overtime work. These laws require that covered employees receive overtime pay for hours worked over 40 hours per week.

Individuals who are exempt from state overtime requirements include certain truck and bus drivers, seamen, seasonal employees at a fair, certain farm workers, and employees who receive compensatory time off in lieu of overtime pay. Individuals who are excluded from the definition of "employee" in the Minimum Wage Act and who are therefore not required to be paid overtime include individuals employed in a bona fide executive, administrative, or professional capacity, farm workers, domestic workers, and newspaper carriers.

### Real Estate Brokers.

Washington law requires that real estate brokers, managing brokers, designated brokers, and real estate firms be licensed by the Department of Licensing. A real estate broker acts on behalf of a real estate firm to perform real estate brokerage services under the supervision of a designated broker or managing broker. A managing broker performs the same services but may supervise other brokers. A designated broker is a person who either owns a sole proprietorship real estate firm or who has a controlling interest in a real estate firm and is designated to act on behalf of the firm.

Real estate brokerage services include:

- listing, selling, purchasing, and renting real estate, as well as negotiating those transactions;
- advising buyers, sellers, landlords, and tenants in connection with a real estate transaction;
- collecting, holding, or disbursing funds in connection with a real estate transaction;
- performing property management services, including marketing, leasing, renting, physical maintenance, administrative maintenance, and financial maintenance of real property, as well as supervising such actions;
- issuing brokers' price opinions; and
- advertising real estate brokerage services.

### **Summary of Substitute Bill:**

A real estate broker, managing broker, or designated broker is exempt from overtime requirements, unless he or she provides real estate brokerage services under a written contract with a real estate firm that provides that he or she is an employee. "Real estate brokerage services" and "real estate firm" are defined the same as in the licensing law.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

### **Staff Summary of Public Testimony:**

(In support) This bill clarifies that real estate brokers are independent contractors. Under a number of state and federal laws, real estate brokers are considered independent contractors. There has been litigation in other states, and it is preferable to clarify that real estate brokers are independent contractors to avoid problems in the future.

(Opposed) None.

**Persons Testifying:** Representative Maxwell, prime sponsor; and Bill Clarke, Washington Realtors.

**Persons Signed In To Testify But Not Testifying:** None.