

SENATE BILL REPORT

SB 5125

As Passed Senate, February 23, 2017

Title: An act relating to defining independent contractor relationships in the context of real estate licensing.

Brief Description: Defining independent contractor relationships in the context of real estate licensing.

Sponsors: Senators Braun, Conway, Rossi and Wilson.

Brief History:

Committee Activity: Commerce, Labor & Sports: 1/19/17 [DP, w/oRec].

Floor Activity:

Passed Senate: 2/23/17, 48-1.

Brief Summary of Bill

- Defines "independent contractor relationship" for the purposes of real estate license law.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Majority Report: Do pass.

Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway, Rossi, Saldaña and Wilson.

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa.

Staff: Jarrett Sacks (786-7448)

Background: Washington law requires that real estate brokers and firms be licensed by the Department of Licensing (DOL). A real estate broker provides real estate brokerage services on behalf of a real estate firm, under the supervision of a managing broker or a designated 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.

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.

Real estate brokerage services include:

- listing, selling, purchasing, exchanging, optioning, leasing, or renting real estate, as well as negotiating those transactions;
- advertising real estate brokerage services;
- advising or consulting buyers, sellers, landlords, or tenants in connection with real estate transactions;
- issuing broker's price opinions;
- performing property management services; and
- collecting, holding, or disbursing funds in connection with real estate transactions.

A real estate firm is a sole proprietorship or business entity licensed by DOL that conducts real estate brokerage services in Washington State.

Generally, employment standards and benefits only apply if an employer-employee relationship exists rather than an independent contractor relationship. The term "independent contractor" is not defined in statute. Instead, several different multi-part tests are used to determine whether an individual is an independent contractor.

Currently, a real estate broker, managing broker, or designated broker is exempt from state overtime compensation requirements unless the broker provides real estate brokerage services under a written contract with a real estate firm that specifies the broker is an employee.

Under state unemployment insurance law, a real estate broker is excluded from the definition of "employment" to the extent that the broker is compensated by commission.

Summary of Bill: For the purposes of real state license law, an "independent contractor relationship" is defined as a relationship between a broker, or managing broker, and a real estate firm that satisfies the following criteria:

1. There is no written agreement with the broker or managing broker that they are an employee of the real estate firm.
2. Substantially all of the broker or managing broker's compensation is for services related to the real estate brokerage service provided by the firm.

It is specified that the new definition is not intended to relieve a managing broker or real estate firm of any supervisory duties established in current law.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Defining real estate brokers as independent contractors explicitly cleans up the statute, defines current practices, and avoids ambiguity. It

does not impact the other independent contractor tests in the unemployment insurance, workers' compensation, and tax statutes, and gives the industry more certainty.

Persons Testifying: PRO: Senator John Braun, Prime Sponsor; Bob Mitchell, Washington REALTORS; Annette Fitzsimmons, Washington REALTORS.

Persons Signed In To Testify But Not Testifying: No one.