By:  Buckingham S.B. No. 1258

(In the Senate - Filed February 28, 2019; March 7, 2019, read first time and referred to Committee on Business & Commerce; April 24, 2019, reported favorably by the following vote: Yeas 9, Nays 0; April 24, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire             X

Zaffirini            X

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of limited liability companies and other business entities under the Penal Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 1.07(a)(38), Penal Code, is amended to read as follows:

(38)  "Person" means an individual or a[~~,~~] corporation, [~~or~~] association, limited liability company, or other entity or organization governed by the Business Organizations Code.

SECTION 2.  Subchapter B, Chapter 7, Penal Code, is amended to read as follows:

SUBCHAPTER B. CORPORATIONS, [~~AND~~] ASSOCIATIONS, LIMITED LIABILITY COMPANIES, AND OTHER BUSINESS ENTITIES

Sec. 7.21.  DEFINITIONS. In this subchapter:

(1)  "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation, an [~~or~~] association, a limited liability company, or another business entity.

(1-a)  "Business entity" means an entity or organization governed by the Business Organizations Code, other than a corporation, association, or limited liability company.

(2)  "High managerial agent" means:

(A)  a partner in a partnership;

(B)  an officer of a corporation, an [~~or~~] association, a limited liability company, or another business entity;

(C)  an agent of a corporation, an [~~or~~] association, a limited liability company, or another business entity who has duties of such responsibility that the agent's [~~his~~] conduct reasonably may be assumed to represent the policy of the corporation, [~~or~~] association, limited liability company, or other business entity.

Sec. 7.22.  CRIMINAL RESPONSIBILITY OF CORPORATION, [~~OR~~] ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. (a)  If conduct constituting an offense is performed by an agent acting in behalf of a corporation, an [~~or~~] association, a limited liability company, or another business entity and within the scope of the agent's [~~his~~] office or employment, the corporation, [~~or~~] association, limited liability company, or other business entity is criminally responsible for an offense defined:

(1)  in this code where corporations, [~~and~~] associations, limited liability companies, and other business entities are made subject thereto;

(2)  by law other than this code in which a legislative purpose to impose criminal responsibility on corporations, [~~or~~] associations, limited liability companies, and other business entities plainly appears; or

(3)  by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations, [~~or~~] associations, limited liability companies, or other business entities plainly appears.

(b)  A corporation, an [~~or~~] association, a limited liability company, or another business entity is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1)  a majority of the governing body [~~board~~] acting in behalf of the corporation, [~~or~~] association, limited liability company, or other business entity; or

(2)  a high managerial agent acting in behalf of the corporation, [~~or~~] association, limited liability company, or other business entity and within the scope of the agent's [~~his~~] office or employment.

Sec. 7.23.  CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF OF CORPORATION, [~~OR~~] ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. (a)  An individual is criminally responsible for conduct that the individual [~~he~~] performs in the name of or in behalf of a corporation, an [~~or~~] association, a limited liability company, or another business entity to the same extent as if the conduct were performed in the individual's [~~his~~] own name or behalf.

(b)  An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation, an [~~or~~] association, a limited liability company, or another business entity is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on the agent [~~him~~].

(c)  If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation, an [~~or~~] association, a limited liability company, or another business entity, the individual [~~he~~] is subject to the sentence authorized by law for an individual convicted of the offense.

Sec. 7.24.  DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION, [~~OR~~] ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. It is an affirmative defense to prosecution of a corporation, an [~~or~~] association, a limited liability company, or another business entity under Section 7.22(a)(1) or (a)(2) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

SECTION 3.  Section 12.51, Penal Code, is amended to read as follows:

Sec. 12.51.  AUTHORIZED PUNISHMENTS FOR CORPORATIONS, [~~AND~~] ASSOCIATIONS, LIMITED LIABILITY COMPANIES, AND OTHER BUSINESS ENTITIES. (a)  If a corporation, an [~~or~~] association, a limited liability company, or another business entity is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation, [~~or~~] association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b)  If a corporation, an [~~or~~] association, a limited liability company, or another business entity is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation, [~~or~~] association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed:

(1)  $20,000 if the offense is a felony of any category;

(2)  $10,000 if the offense is a Class A or Class B misdemeanor;

(3)  $2,000 if the offense is a Class C misdemeanor; or

(4)  $50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

(c)  In lieu of the fines authorized by Subsections (a), (b)(1), (b)(2), and (b)(4), if a court finds that the corporation, [~~or~~] association, limited liability company, or other business entity gained money or property or caused personal injury or death, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation, [~~or~~] association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation, [~~or~~] association, limited liability company, or business entity to be lost or damaged, whichever is greater.

(d)  In addition to any sentence that may be imposed by this section, a corporation, an [~~or~~] association, a limited liability company, or another business entity that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

(e)  On conviction of a corporation, an [~~or~~] association, a limited liability company, or another business entity, the court shall notify the attorney general of that fact.

(f)  In this section, "business entity" has the meaning assigned by Section 7.21.

SECTION 4.  Section 20.01(4), Penal Code, is amended to read as follows:

(4)  "Person" means an individual or a[~~,~~] corporation, [~~or~~] association, limited liability company, or other entity or organization governed by the Business Organizations Code.

SECTION 5.  Section 32.43(e), Penal Code, is amended to read as follows:

(e)  In lieu of a fine that is authorized by Subsection (d), and in addition to the imprisonment that is authorized by that subsection, if the court finds that an individual who is a fiduciary gained a benefit through the commission of an offense under Subsection (b), the court may sentence the individual to pay a fine in an amount fixed by the court, not to exceed double the value of the benefit gained. This subsection does not affect the application of Section 12.51(c) to an offense under this section committed by a corporation, an [~~or~~] association, a limited liability company, or another business entity, as defined by Section 7.21.

SECTION 6.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 7.  This Act takes effect September 1, 2019.

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