

By: Moody

H.B. No. 2361

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]~~

1 association, a limited liability company, or another business
2 entity;

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

9 Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION, [~~OR~~]
10 ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY.

11 (a) If conduct constituting an offense is performed by an agent
12 acting in behalf of a corporation, an [~~or~~] association, a limited
13 liability company, or another business entity and within the scope
14 of the agent's [~~his~~] office or employment, the corporation, [~~or~~]
15 association, limited liability company, or other business entity is
16 criminally responsible for an offense defined:

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

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

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

1 appears.

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

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

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

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

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

27 (c) If an individual is convicted of conduct constituting an

1 offense performed in the name of or on behalf of a corporation, an
2 ~~[or]~~ association, a limited liability company, or another business
3 entity, the individual ~~[he]~~ is subject to the sentence authorized
4 by law for an individual convicted of the offense.

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

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

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

24 (b) If a corporation, an ~~[or]~~ association, a limited
25 liability company, or another business entity is adjudged guilty of
26 an offense that provides a penalty including imprisonment, or that
27 provides no specific penalty, a court may sentence the corporation,

1 ~~[or]~~ association, limited liability company, or other business
2 entity to pay a fine in an amount fixed by the court, not to exceed:

3 (1) \$20,000 if the offense is a felony of any category;

4 (2) \$10,000 if the offense is a Class A or Class B
5 misdemeanor;

6 (3) \$2,000 if the offense is a Class C misdemeanor; or

7 (4) \$50,000 if, as a result of an offense classified as
8 a felony or Class A misdemeanor, an individual suffers serious
9 bodily injury or death.

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

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

26 (e) On conviction of a corporation, an ~~[or]~~ association, a
27 limited liability company, or another business entity, the court

1 shall notify the attorney general of that fact.

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

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

6 (4) "Person" means an individual or a [~~7~~] corporation,
7 [~~or~~] association, limited liability company, or other entity or
8 organization governed by the Business Organizations Code.

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

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

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

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1 this Act if any element of the offense was committed before that
2 date.

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