

By: Buckingham

S.B. No. 1258

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 ~~7~~ 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  
16 criminally responsible for conduct that the individual ~~[he]~~  
17 performs in the name of or in behalf of a corporation, an ~~[or]~~  
18 association, a limited liability company, or another business  
19 entity to the same extent as if the conduct were performed in the  
20 individual's ~~[his]~~ 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

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.