

1-1 By: Buckingham S.B. No. 1258
1-2 (In the Senate - Filed February 28, 2019; March 7, 2019,
1-3 read first time and referred to Committee on Business & Commerce;
1-4 April 24, 2019, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 24, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the prosecution of limited liability companies and
1-20 other business entities under the Penal Code.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 1.07(a)(38), Penal Code, is amended to
1-23 read as follows:

1-24 (38) "Person" means an individual or a ~~[r]~~ corporation,
1-25 ~~[or]~~ association, limited liability company, or other entity or
1-26 organization governed by the Business Organizations Code.

1-27 SECTION 2. Subchapter B, Chapter 7, Penal Code, is amended
1-28 to read as follows:

1-29 SUBCHAPTER B. CORPORATIONS, ~~[AND]~~ ASSOCIATIONS, LIMITED LIABILITY
1-30 COMPANIES, AND OTHER BUSINESS ENTITIES

1-31 Sec. 7.21. DEFINITIONS. In this subchapter:

1-32 (1) "Agent" means a director, officer, employee, or
1-33 other person authorized to act in behalf of a corporation, an ~~[or]~~
1-34 association, a limited liability company, or another business
1-35 entity.

1-36 (1-a) "Business entity" means an entity or
1-37 organization governed by the Business Organizations Code, other
1-38 than a corporation, association, or limited liability company.

1-39 (2) "High managerial agent" means:

1-40 (A) a partner in a partnership;

1-41 (B) an officer of a corporation, an ~~[or]~~
1-42 association, a limited liability company, or another business
1-43 entity;

1-44 (C) an agent of a corporation, an ~~[or]~~
1-45 association, a limited liability company, or another business
1-46 entity who has duties of such responsibility that the agent's ~~[his]~~
1-47 conduct reasonably may be assumed to represent the policy of the
1-48 corporation, association, limited liability company, or other
1-49 business entity.

1-50 Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION, ~~[OR]~~
1-51 ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY.

1-52 (a) If conduct constituting an offense is performed by an agent
1-53 acting in behalf of a corporation, an ~~[or]~~ association, a limited
1-54 liability company, or another business entity and within the scope
1-55 of the agent's ~~[his]~~ office or employment, the corporation, ~~[or]~~
1-56 association, limited liability company, or other business entity is
1-57 criminally responsible for an offense defined:

1-58 (1) in this code where corporations, ~~[and]~~
1-59 associations, limited liability companies, and other business
1-60 entities are made subject thereto;

1-61 (2) by law other than this code in which a legislative

2-1 purpose to impose criminal responsibility on corporations, ~~[or]~~
 2-2 associations, limited liability companies, and other business
 2-3 entities plainly appears; or

2-4 (3) by law other than this code for which strict
 2-5 liability is imposed, unless a legislative purpose not to impose
 2-6 criminal responsibility on corporations, ~~[or]~~ associations,
 2-7 limited liability companies, or other business entities plainly
 2-8 appears.

2-9 (b) A corporation, ~~an~~ ~~[or]~~ association, a limited liability
 2-10 company, or another business entity is criminally responsible for a
 2-11 felony offense only if its commission was authorized, requested,
 2-12 commanded, performed, or recklessly tolerated by:

2-13 (1) a majority of the governing body ~~[board]~~ acting in
 2-14 behalf of the corporation, ~~[or]~~ association, limited liability
 2-15 company, or other business entity; or

2-16 (2) a high managerial agent acting in behalf of the
 2-17 corporation, ~~[or]~~ association, limited liability company, or other
 2-18 business entity and within the scope of the agent's ~~[his]~~ office or
 2-19 employment.

2-20 Sec. 7.23. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN
 2-21 BEHALF OF CORPORATION, ~~[OR]~~ ASSOCIATION, LIMITED LIABILITY
 2-22 COMPANY, OR OTHER BUSINESS ENTITY. (a) An individual is
 2-23 criminally responsible for conduct that the individual ~~[he]~~
 2-24 performs in the name of or in behalf of a corporation, an ~~[or]~~
 2-25 association, a limited liability company, or another business
 2-26 entity to the same extent as if the conduct were performed in the
 2-27 individual's ~~[his]~~ own name or behalf.

2-28 (b) An agent having primary responsibility for the
 2-29 discharge of a duty to act imposed by law on a corporation, ~~an~~ ~~[or]~~
 2-30 association, a limited liability company, or another business
 2-31 entity is criminally responsible for omission to discharge the duty
 2-32 to the same extent as if the duty were imposed by law directly on the
 2-33 agent ~~[him]~~.

2-34 (c) If an individual is convicted of conduct constituting an
 2-35 offense performed in the name of or on behalf of a corporation, ~~an~~
 2-36 ~~[or]~~ association, a limited liability company, or another business
 2-37 entity, the individual ~~[he]~~ is subject to the sentence authorized
 2-38 by law for an individual convicted of the offense.

2-39 Sec. 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF
 2-40 CORPORATION, ~~[OR]~~ ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER
 2-41 BUSINESS ENTITY. It is an affirmative defense to prosecution of a
 2-42 corporation, an ~~[or]~~ association, a limited liability company, or
 2-43 another business entity under Section 7.22(a)(1) or (a)(2) that the
 2-44 high managerial agent having supervisory responsibility over the
 2-45 subject matter of the offense employed due diligence to prevent its
 2-46 commission.

2-47 SECTION 3. Section 12.51, Penal Code, is amended to read as
 2-48 follows:

2-49 Sec. 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATIONS, ~~[AND]~~
 2-50 ASSOCIATIONS, LIMITED LIABILITY COMPANIES, AND OTHER BUSINESS
 2-51 ENTITIES. (a) If a corporation, ~~an~~ ~~[or]~~ association, a limited
 2-52 liability company, or another business entity is adjudged guilty of
 2-53 an offense that provides a penalty consisting of a fine only, a
 2-54 court may sentence the corporation, ~~[or]~~ association, limited
 2-55 liability company, or other business entity to pay a fine in an
 2-56 amount fixed by the court, not to exceed the fine provided by the
 2-57 offense.

2-58 (b) If a corporation, ~~an~~ ~~[or]~~ association, a limited
 2-59 liability company, or another business entity is adjudged guilty of
 2-60 an offense that provides a penalty including imprisonment, or that
 2-61 provides no specific penalty, a court may sentence the corporation,
 2-62 ~~[or]~~ association, limited liability company, or other business
 2-63 entity to pay a fine in an amount fixed by the court, not to exceed:

2-64 (1) \$20,000 if the offense is a felony of any category;
 2-65 (2) \$10,000 if the offense is a Class A or Class B
 2-66 misdemeanor;

2-67 (3) \$2,000 if the offense is a Class C misdemeanor; or

2-68 (4) \$50,000 if, as a result of an offense classified as
 2-69 a felony or Class A misdemeanor, an individual suffers serious

3-1 bodily injury or death.
 3-2 (c) In lieu of the fines authorized by Subsections (a),
 3-3 (b)(1), (b)(2), and (b)(4), if a court finds that the corporation,
 3-4 ~~[or]~~ association, limited liability company, or other business
 3-5 entity gained money or property or caused personal injury or death,
 3-6 property damage, or other loss through the commission of a felony or
 3-7 Class A or Class B misdemeanor, the court may sentence the
 3-8 corporation, ~~[or]~~ association, limited liability company, or other
 3-9 business entity to pay a fine in an amount fixed by the court, not to
 3-10 exceed double the amount gained or caused by the corporation, ~~[or]~~
 3-11 association, limited liability company, or business entity to be
 3-12 lost or damaged, whichever is greater.

3-13 (d) In addition to any sentence that may be imposed by this
 3-14 section, a corporation, an ~~[or]~~ association, a limited liability
 3-15 company, or another business entity that has been adjudged guilty
 3-16 of an offense may be ordered by the court to give notice of the
 3-17 conviction to any person the court deems appropriate.

3-18 (e) On conviction of a corporation, an ~~[or]~~ association, a
 3-19 limited liability company, or another business entity, the court
 3-20 shall notify the attorney general of that fact.

3-21 (f) In this section, "business entity" has the meaning
 3-22 assigned by Section 7.21.

3-23 SECTION 4. Section 20.01(4), Penal Code, is amended to read
 3-24 as follows:

3-25 (4) "Person" means an individual or a ~~[r]~~ corporation,
 3-26 ~~[or]~~ association, limited liability company, or other entity or
 3-27 organization governed by the Business Organizations Code.

3-28 SECTION 5. Section 32.43(e), Penal Code, is amended to read
 3-29 as follows:

3-30 (e) In lieu of a fine that is authorized by Subsection (d),
 3-31 and in addition to the imprisonment that is authorized by that
 3-32 subsection, if the court finds that an individual who is a fiduciary
 3-33 gained a benefit through the commission of an offense under
 3-34 Subsection (b), the court may sentence the individual to pay a fine
 3-35 in an amount fixed by the court, not to exceed double the value of
 3-36 the benefit gained. This subsection does not affect the
 3-37 application of Section 12.51(c) to an offense under this section
 3-38 committed by a corporation, an ~~[or]~~ association, a limited
 3-39 liability company, or another business entity, as defined by
 3-40 Section 7.21.

3-41 SECTION 6. The changes in law made by this Act apply only to
 3-42 an offense committed on or after the effective date of this Act. An
 3-43 offense committed before the effective date of this Act is governed
 3-44 by the law in effect on the date the offense was committed, and the
 3-45 former law is continued in effect for that purpose. For purposes of
 3-46 this section, an offense was committed before the effective date of
 3-47 this Act if any element of the offense was committed before that
 3-48 date.

3-49 SECTION 7. This Act takes effect September 1, 2019.

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