
Public Safety Committee

HB 2362

Brief Description: Concerning crime committed by business entities.

Sponsors: Representatives Pellicciotti, Sawyer, Robinson, Dolan, Chapman, Kilduff, Stanford, Macri, Ryu, Ormsby and Doglio.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Expands the liability standards and penalties for crimes committed by corporations to include other specified business entities.• Increases maximum fines for crimes committed by business entities. |
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Hearing Date: 1/11/18

Staff: Kelly Leonard (786-7147).

Background:

Crimes Committed by Corporations. The Washington State Criminal Code contains criminal standards for corporate liability. In the Criminal Code, a "corporation" includes any joint stock association. A "high managerial agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

A corporation is guilty of an offense when one of the following applies:

1. the conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law;
2. the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment and on behalf of the corporation; or

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.

3. the conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his or her employment and on behalf of the corporation and:
 - the offense is a gross misdemeanor or misdemeanor, or
 - the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

An individual is criminally liable for conduct constituting an offense which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or on his or her behalf. In addition, whenever a duty to act is legally imposed upon a corporation, any agent who knows he or she has or shares primary responsibility for the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were imposed directly upon the agent.

Every corporation convicted of criminal conspiracy to commit any offense forfeits the right to do business in Washington. The Attorney General is required to conduct proceedings to enforce the requirement relating to forfeiture of business rights.

Classification of Crimes. Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement (prison or jail) and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

| <u>Classification</u> | <u>Maximum Confinement</u> | <u>Maximum Fine</u> |
|-----------------------|----------------------------|---------------------|
| Misdemeanor | 90 days | \$1,000 |
| Gross Misdemeanor | 364 days | \$5,000 |
| Class C Felony | 5 years | \$10,000 |
| Class B Felony | 10 years | \$20,000 |
| Class A Felony | Life | \$50,000 |

When a person is convicted of a felony, the Sentencing Reform Act applies and determines a specific range of confinement for the offender within the statutory maximum. Other maximum fines are established for corporations convicted of crimes in some circumstances. If a prescribed penalty is incapable of execution or enforcement against a corporation, the maximum fines are as follows:

| <u>Classification</u> | <u>Maximum Fine</u> |
|-----------------------|---------------------|
| Misdemeanor | \$500 |
| Gross Misdemeanor | \$1,000 |
| Felony | \$10,000 |

Summary of Bill:

The liability standards for corporations are expanded to include other specified business entities.

"Business entity" includes any domestic entity formed under or governed as to its internal affairs by specified statutes or any foreign business entity formed under or governed as to its internal affairs by the laws of a jurisdiction other than this state. Business entities governed by the specified statutes include all of those under Titles 23, 23B, and 25 RCW, including business corporations, limited liability companies, partnerships, limited partnerships, cooperative associations, employee cooperative associations, and Massachusetts Trusts.

A "high managerial agent" means an officer or director of a business entity or any other agent in a position of comparable authority to exercise the powers of the entity and manage the affairs and activities of the entity or to exercise supervision in a managerial capacity of subordinate employees.

The fines established for corporations convicted of offenses are expanded to include business entities. The maximum thresholds for fines are increased. When a business entity is convicted of any criminal offense, the maximum fines are as follows:

| <u>Classification</u> | <u>Maximum Fine</u> |
|-----------------------|---------------------|
| Misdemeanor | \$50,000 |
| Gross Misdemeanor | \$250,000 |
| Class C Felony | \$750,000 |
| Class A or B Felony | \$1,000,000 |

However, if a special fine for business entities is expressly specified for an offense, then the special fine applies.

Appropriation: None.

Fiscal Note: Requested on January 8, 2018.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.