

HOUSE BILL REPORT

ESHB 2362

As Passed House:
February 8, 2018

Title: An act relating to crime committed by business entities.

Brief Description: Concerning crime committed by business entities.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Pellicciotti, Sawyer, Robinson, Dolan, Chapman, Kilduff, Stanford, Macri, Ryu, Ormsby and Doglio).

Brief History:

Committee Activity:

Public Safety: 1/11/18, 1/25/18 [DPS].

Floor Activity:

Passed House: 2/8/18, 97-1.

Brief Summary of Engrossed Substitute Bill

- 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.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Minority Report: Without recommendation. Signed by 1 member: Representative Hayes, Assistant Ranking Minority Member.

Staff: Kelly Leonard (786-7147).

Background:

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.

Crimes Committed by Corporations. The Washington State Criminal Code (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
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 and Penalties. 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

If a corporation is found guilty of an offense and the court imposes a fine, the judgment is enforced in the same manner as a civil judgment.

Summary of Engrossed Substitute Bill:

"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, and chapter 24.06 RCW, including business corporations, limited liability companies, partnerships, limited partnerships, mutual corporations, miscellaneous corporations, 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 criminal liability standards and procedures for corporations are expanded to include business entities.

The fines established for corporations convicted of offenses are expanded to include business entities. The maximum thresholds for fines are increased. Except where a special fine for business entities is expressly specified for an offense, the maximum fines for business entities 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

A business entity convicted of an offense may be ordered to pay legal financial obligations (LFOs), including restitution, crime victims' assessments, costs, fines, penalties, and other assessments authorized or required by law. Legal financial obligations bear interest from the date of the judgment until payment at the rate applicable to civil judgments. Payments on LFOs must be distributed to restitution prior to all other obligations. Payments must be collected and distributed according to current requirements applicable to LFOs imposed as a result of a criminal conviction.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill is similar to House Bill 1806 (2017), and the reasons for supporting it are the same. It has been almost a century since the maximum fines for corporations convicted of crimes were established. It is time to update them.

A corporation convicted of a crime does not face jail time, and therefore, the maximum available penalties should be commensurate to what a person would face. For example, Murder and Manslaughter are class A felonies. Currently, the only options for penalizing a corporation engaging in such conduct are a maximum \$10,000 fine or dissolution. This bill creates more latitude for reaching a just result. Dissolution may not be preferable if a corporation is providing services to the community. However, they should still be held accountable.

Any business charged with a crime is entitled to due process. The prosecutor must prove the case beyond a reasonable doubt. This includes both the elements of the offense and the liability requirements for businesses. These cases are extremely rare.

Large businesses are insulated from liability through middle management, which makes prosecuting them more difficult than smaller businesses and organizations. This bill motivates prosecutors to go after big businesses for criminal conduct.

The bill has been modified to include contemporary language on business entities.

(Opposed) None.

Persons Testifying: Representative Pellicciotti, prime sponsor; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.