

HOUSE BILL REPORT

HB 1252

As Amended by the Senate

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

Brief Description: Concerning crime committed by business entities.

Sponsors: Representatives Pellicciotti, Klippert, Dolan, Valdez, Orwall, Pollet, Riccelli, Goodman, Kilduff, Bergquist, Robinson, Doglio, Macri, Appleton, Hudgins, Peterson, Fitzgibbon, Stonier, Lovick, Jinkins, Tharinger, Stanford, Senn, Leavitt, Slatter, Chapman, Frame, Fey and Wylie.

Brief History:

Committee Activity:

Public Safety: 1/21/19, 1/31/19 [DP].

Floor Activity:

Passed House: 2/7/19, 96-0.

Senate Amended.

Passed Senate: 4/8/19, 47-0.

Brief Summary of Bill

- Modifies corporate criminal liability standards to include other specified business entities.
- Increases maximum fines for crimes committed by business entities.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Kelly Leonard (786-7147).

Background:

Crimes Committed by Corporations. The Washington State Criminal Code (Criminal Code) contains criminal standards for corporate liability. In the Criminal Code, a "corporation"

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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:

- the conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law;
- 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
- 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, a 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 Office of the Attorney General is required to conduct proceedings to enforce the requirement relating to forfeiture of business rights.

Classification of Crimes and Fines. 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 unable to be executed or enforced 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 Bill:

The criminal liability standards for corporations are modified to include 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, 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.

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	\$500,000
Class B Felony	\$750,000
Class A 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.

EFFECT OF SENATE AMENDMENT(S):

References to "business entity" are replaced with "entity," and its definition is expanded to include nonprofit corporations and associations.

The definition of "high managerial agent" is modified, providing that it means a governor or person in a position of comparable authority in an entity not governed by the Uniform Business Organizations Code, and any other agent who manages subordinate employees (rather than an officer or director of a business entity or any other agent in a position of comparable authority to exercise the powers of the business entity and manage the affairs and activities of the business entity or to exercise supervision in a managerial capacity of subordinate employees). The term "governor" has the same meaning as provided in the Uniform Business Organizations Code.

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) If a person commits a class A felony, he or she faces a punishment of up to life in prison. However, if a corporation commits the same offense, it will only be required to pay a fine of up to \$10,000. This is shocking. This law has not been amended since 1924, before the Capitol building was constructed. It is time to catch the law up with the current times.

The Office of the Attorney General is responsible for handling these cases, but it has been limited by the very low cap on fines. This is a necessary change, and it is the right time to make it.

This bill has been passed by the House of Representatives on two previous occasions, and its contents have been improved in the process. Suggested changes are included in this version. It is time to advance it into law.

(Opposed) None.

Persons Testifying: Representative Pellicciotti, prime sponsor; and Brittany Gregory, Office of the Attorney General.

Persons Signed In To Testify But Not Testifying: None.