

ESHB 2362 - S COMM AMD

By Committee on Law & Justice

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9A.08.030 and 2011 c 336 s 352 are each amended to
4 read as follows:

5 (1) As used in this section:

6 (a) "Agent" means any director, officer, or employee of a
7 ~~((corporation))~~ business entity, or any other person who is
8 authorized to act on behalf of the ~~((corporation))~~ business entity;

9 (b) ~~(("Corporation"))~~ "Business entity" includes ~~((a joint stock
10 association))~~ any domestic entity formed under or governed as to its
11 internal affairs by Title 23, 23B, or 25 RCW, or chapter 24.06 RCW,
12 or any foreign business entity formed under or governed as to its
13 internal affairs by the laws of a jurisdiction other than this state;

14 (c) "High managerial agent" means an officer or director of a
15 ~~((corporation))~~ business entity or any other agent in a position of
16 comparable authority ~~((with respect to the formulation of corporate
17 policy or the supervision))~~ to exercise the powers of the business
18 entity and manage the affairs and activities of the business entity
19 or to exercise supervision in a managerial capacity of subordinate
20 employees.

21 (2) A ~~((corporation))~~ business entity is guilty of an offense
22 when:

23 (a) The conduct constituting the offense consists of an omission
24 to discharge a specific duty of performance imposed on
25 ~~((corporations))~~ business entities by law; or

26 (b) The conduct constituting the offense is engaged in,
27 authorized, solicited, requested, commanded, or tolerated by ~~((the
28 board of directors or by))~~ a high managerial agent acting within the
29 scope of his or her employment and on behalf of the ~~((corporation))~~
30 business entity; or

31 (c) The conduct constituting the offense is engaged in by an
32 agent of the ~~((corporation))~~ business entity, other than a high

1 managerial agent, while acting within the scope of his or her
2 employment and (~~in~~) on behalf of the (~~corporation~~) business
3 entity and (i) the offense is a gross misdemeanor or misdemeanor, or
4 (ii) the offense is one defined by a statute which clearly indicates
5 a legislative intent to impose such criminal liability on a
6 (~~corporation~~) business entity.

7 (3) A person is criminally liable for conduct constituting an
8 offense which he or she performs or causes to be performed in the
9 name of or on behalf of a (~~corporation~~) business entity to the same
10 extent as if such conduct were performed in his or her own name or
11 behalf.

12 (4) Whenever a duty to act is imposed by law upon a
13 (~~corporation~~) business entity, any agent of the (~~corporation~~)
14 business entity who knows he or she has or shares primary
15 responsibility for the discharge of the duty is criminally liable for
16 a reckless omission or, if a high managerial agent, criminally
17 negligent omission to perform the required act to the same extent as
18 if the duty were by law imposed directly upon such agent.

19 (5) Every (~~corporation~~) business entity, whether foreign or
20 domestic, which shall violate any provision of RCW 9A.28.040, shall
21 forfeit every right and franchise to do business in this state. The
22 attorney general shall begin and conduct all actions and proceedings
23 necessary to enforce the provisions of this subsection.

24 **Sec. 2.** RCW 10.01.070 and 1987 c 202 s 147 are each amended to
25 read as follows:

26 (1) Whenever an indictment or information shall be filed in any
27 superior court against a (~~corporation~~) business entity charging it
28 with the commission of a crime, a summons shall be issued by the
29 clerk of such court, signed by one of the judges thereof, commanding
30 the sheriff forthwith to notify the accused thereof, and commanding
31 it to appear before such court at such time as shall be specified in
32 said summons. Such summons and a copy of the indictment or
33 information shall be at once delivered by such clerk to said sheriff
34 and by the sheriff forthwith served and returned in the manner
35 provided for service of summons upon such (~~corporation~~) business
36 entity in a civil action. Whenever a complaint against a
37 (~~corporation~~) business entity, charging it with the commission of a
38 crime, shall be made before any district or municipal judge, a like
39 summons, signed by such judge, shall be issued, which, together with

1 a copy of said complaint, shall be delivered to the sheriff at once
2 and by the sheriff forthwith served as herein provided.

3 (2) For the purposes of this section, "business entity" has the
4 same meaning as provided in RCW 9A.08.030.

5 **Sec. 3.** RCW 10.01.090 and 1987 c 202 s 148 are each amended to
6 read as follows:

7 ~~((If the corporation shall be found guilty and a fine imposed,~~
8 ~~it)) (1) A business entity convicted of an offense may be ordered to
9 pay legal financial obligations, including restitution, crime
10 victims' assessments, costs, fines, penalties, and other assessments
11 authorized or required by law. Legal financial obligations imposed
12 upon a business entity shall be entered and docketed by the clerk, or
13 district or municipal court as a judgment against the ((corporation))
14 business entity, and it shall be of the same force and effect and be
15 enforced against such ((corporation)) business entity in the same
16 manner as a judgment in a civil action. Notwithstanding any other
17 provisions pertaining to legal financial obligations, all legal
18 financial obligations imposed in a judgment against a business entity
19 under this section bear interest from the date of the judgment until
20 payment at the rate applicable to civil judgments under RCW 4.56.110.
21 When a business entity is ordered to pay restitution, payments to the
22 clerk must be distributed to restitution prior to all other
23 obligations.~~

24 (2) Except as otherwise provided under subsection (1) of this
25 section, payments on legal financial obligations must be collected
26 and distributed according to the requirements under RCW 3.50.100,
27 3.62.020, 3.62.040, 9.92.070, 9.94A.760, 10.01.160, 10.01.170,
28 10.01.180, 10.46.190, 10.64.015, 10.73.160, 10.82.090, 35.20.220, and
29 any other sections applicable to legal financial obligations imposed
30 as a result of a criminal conviction.

31 (3) For the purposes of this section, "business entity" has the
32 same meaning as provided in RCW 9A.08.030.

33 **Sec. 4.** RCW 10.01.100 and 1925 ex.s. c 101 s 1 are each amended
34 to read as follows:

35 ~~((Every corporation guilty of a violation of any law of the state~~
36 ~~of Washington, where the prescribed penalty is, for any reason,~~
37 ~~incapable of execution or enforcement against such corporation, shall~~
38 ~~be punished by a fine of not more than ten thousand dollars, if such~~

1 ~~offense is a felony; or, by a fine of not more than one thousand~~
2 ~~dollars if such offense is a gross misdemeanor; or, by a fine of not~~
3 ~~more than five hundred dollars if such offense is a misdemeanor.)~~
4 (1) When imposed on a business entity for any criminal offense for
5 which no special business fine is specified, a sentence to pay a fine
6 may not exceed:
7 (a) One million dollars for a class A felony;
8 (b) Seven hundred fifty thousand dollars for a class B felony;
9 (c) Five hundred thousand dollars for a class C felony;
10 (d) Two hundred fifty thousand dollars for a gross misdemeanor;
11 and
12 (e) Fifty thousand dollars for a misdemeanor.
13 (2) If a special fine for business entities is expressly
14 specified in the statute that defines an offense, the fine fixed must
15 be within the limits specified in the statute.
16 (3) For the purposes of this section, "business entity" has the
17 same meaning as provided in RCW 9A.08.030."

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18 On page 1, line 1 of the title, after "entities;" strike the
19 remainder of the title and insert "amending RCW 9A.08.030, 10.01.070,
20 10.01.090, and 10.01.100; and prescribing penalties."

EFFECT: Decreases the maximum criminal fine that may be assessed against a business entity from \$1 million to \$750,000 for a Class B felony and from \$750,000 to \$500,000 for a Class C felony.

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