

# SENATE BILL REPORT

## HB 1252

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As Passed Senate - Amended, April 8, 2019

**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:** Passed House: 2/07/19, 96-0.

**Committee Activity:** Law & Justice: 2/25/19, 3/14/19 [DPA].

**Floor Activity:**

Passed Senate - Amended: 4/08/19, 47-0.

### Brief Summary of Bill

- Modernizes terminology relating to corporate criminal culpability.
- Clarifies that a business entity found guilty of committing a crime may be liable for legal financial obligations including restitution, crime victims' assessments, costs, fines, and penalties.
- Increases the maximum financial penalties for the criminal conduct of a business entity.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer and Wilson, L..

**Staff:** Shani Bauer (786-7468)

**Background:** 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

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*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.*

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 may be held criminally liable when:

- the corporation fails to discharge a specific duty of performance imposed on the corporation; or
- the conduct constituting the offense was authorized, solicited, requested, commanded, or tolerated by a high managerial agent acting on behalf of the corporation; or
- the conduct constituting the offense was committed by an agent of the corporation acting within the scope of the agent's employment and the conduct constitutes a criminal offense under state law.

An individual is criminally liable for conduct constituting an offense which the individual 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 the individual's own name or on the individual's behalf.

In addition, whenever a duty to act is legally imposed upon a corporation, any agent who knows the agent 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.

When an individual is found guilty of committing a crime, the person is subject to the following maximum terms and penalties:

| Classification    | Maximum Confinement | Maximum Fine |
|-------------------|---------------------|--------------|
| 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 corporation is found guilty of committing a crime, the corporation is subject to the following maximum penalties:

| Classification    | Maximum Fine |
|-------------------|--------------|
| Misdemeanor       | \$500        |
| Gross Misdemeanor | \$1,000      |
| Felony            | \$10,000     |

**Summary of Bill:** Terminology and definitions in relation to corporation, agent, and high managerial agent are updated. Corporation is changed to entity, to include any domestic entity governed by the Washington Corporations Act or laws governing partnerships and nonprofit associations as well as any foreign business entity. High managerial agent means a governor or person in a comparable position of authority any other agent who manages

subordinate employees. Governor has the same meaning as provided in the Uniform Business Organizations Code.

An 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. All LFOs bear interest from the date of the judgment at the rate applicable to civil judgments. When an entity is ordered to pay restitution, payments must be distributed to restitution prior to all other obligations. Otherwise, payments on LFOs are to be collected and distributed pursuant to current statutory requirements.

When an entity is found guilty of committing a crime and no special business fine is specified, the entity is subject to the following maximum penalties:

| Classification    | Maximum Fine |
|-------------------|--------------|
| Misdemeanor       | \$50,000     |
| Gross Misdemeanor | \$250,000    |
| Class C Felony    | \$500,000    |
| Class B Felony    | \$750,000    |
| Class A Felony    | \$1,000,000  |

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The statute and the fines related to financial corporate crimes have not been updated since 1925. This bill catches the law up with the times by better aligning the statute with more modern terminology and increasing the financial penalty amounts.

24.03 corporations would not be covered by the bill and there are substantial organizations that really should be criminally liable in the same way.

Part of the criminal justice system is designed to be a deterrent. The current financial penalties are so small that they do not have that effect. Updating the penalties is an important step to hold corporations accountable and provide a deterrent for bad actors or employers that do not follow ethical standards.

**Persons Testifying:** PRO: Representative Mike Pellicciotti, Prime Sponsor; Russell Brown, Washington Association of Prosecuting Attorneys; Sean Bagsby, Political Director, International Brotherhood Of Electrical Workers Local 77.

**Persons Signed In To Testify But Not Testifying:** No one.