

BILL ANALYSIS

Senate Research Center
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S.B. 1258
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1258 clarifies the definition of corporation in the Penal Code to ensure state laws apply to all legal business entities in the state.

Under current law, a "person" is defined as "an individual, corporation, or association." While the intent of these definitions is to capture all types of business entities, interested parties have raised concerns that these definitions do not clearly include limited liability companies as a type of entity covered by the definition of person. Without this inclusion, such entities could evade the same type of criminal liability as every other type of legal entity.

By including limited liability companies in the definition of person in the Penal Code, the Office of the Attorney General would be able to prosecute any and all business entities that are not following the law.

To address this issue, S.B. 1258 updates the definition of person to make the penal laws of the state applicable to all legal entities.

As proposed, S.B. 1258 amends current law relating to the prosecution of limited liability companies and other business entities under the Penal Code.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.07(a)(38), Penal Code, to redefine "person" to include a limited liability company or other entity or organization governed by the Business Organization Code.

SECTION 2. Amends Subchapter B, Chapter 7, Penal Code, as follows:

New heading: SUBCHAPTER B. CORPORATIONS, ASSOCIATIONS, LIMITED
LIABILITY COMPANIES, AND OTHER BUSINESS ENTITIES

Sec. 7.21. DEFINITIONS. Redefines "agent" and "high managerial agent" and defines "business entity" for purposes of this subchapter.

Sec. 7.22. New heading: CRIMINAL RESPONSIBILITY OF CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. (a) Provides that if conduct constituting an offense is performed by an agent acting in behalf of a corporation, an association, a limited liability company, or another business entity within the scope of the agent's office or employment, the corporation, association, limited liability company, or other business entity is criminally responsible for an offense defined, rather than providing that if conduct constituting an offense is performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment, the corporation or association is criminally responsible for an offense defined:

(1)–(3) makes conforming and nonsubstantive changes.

(b) Makes conforming and nonsubstantive changes.

Sec. 7.23. New heading: CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF OF CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. (a) Provides that an individual is criminally responsible for conduct that the individual performs in the name of or in behalf of a corporation, an association, a limited liability company, or another business entity to the same extent as if the conduct were performed in the individual's own name or behalf, rather than an individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf.

(b)-(c) Makes conforming and nonsubstantive changes to these subsections.

Sec. 7.24. New heading: DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 12.51, Penal Code, as follows:

Sec. 12.51. New heading: AUTHORIZED PUNISHMENTS FOR CORPORATIONS, ASSOCIATIONS, LIMITED LIABILITY COMPANIES, AND OTHER BUSINESS ENTITIES.

(a)-(e) Makes conforming and nonsubstantive changes to these subsections.

(f) Defines "business entity" for purposes of this section.

SECTION 4. Amends Section 20.01(4), Penal Code, to redefine "person" to include a limited liability company or other entity or organization governed by the Business Organizations Code.

SECTION 5. Amends Section 32.43(e), Penal Code, as follows:

(e) Provides that this subsection does not affect the application of Section 12.51(c) to an offense under this section committed by a corporation, an association, a limited liability company, or another business entity, as defined by Section 7.21, rather than providing that this subsection does not affect the application of Section 12.51(c) to an offense under this section committed by a corporation or association.

SECTION 6. Makes application of this Act prospective. Provides that an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 7. Effective date: September 1, 2019.