

RECEIVED

FEB 08 2008

ELECTIONS / LICENSING
SECRETARY OF STATE

INDIVIDUAL LIABILITY FOR CORPORATE WRONGDOING

Amended Text
2007-2008
#57

Be it enacted by the People of the State of Colorado:

SECTION 1. Section 18-1-606, Colorado Revised Statutes, is amended to read:

18-1-606. Criminal liability of business entities ~~Liability of Business Entities.~~

(1) A business entity, AGENT, OR HIGH MANAGERIAL AGENT ARE ~~AND ANY ASSOCIATED PERSON~~ is guilty of an offense if:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on the business entity by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the governing body or individual authorized to manage the affairs of the business entity or by a high managerial agent acting within the scope of his or her employment or in behalf of the business entity.

(2) As used in this section:

(a) "Agent" means any director, officer, or employee of a business entity, or any other person who is authorized to act in behalf of the business entity, and "high managerial agent" means an officer of a business entity or any other agent in a position of comparable authority with respect to the formulation of the business entity's policy or the supervision in a managerial capacity of subordinate employees.

~~(a-1) "ASSOCIATED PERSON" MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MEMBER, PARTNER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY COVERED BY THIS SECTION.~~

(b) "Business entity" means a corporation or other entity that is subject to the provisions of title 7, C.R.S.; foreign corporations qualified to do business in this state pursuant to article 115 of title 7, C.R.S., specifically including federally chartered or authorized financial institutions; a corporation or other entity that is subject to the provisions of title 11, C.R.S.; or a sole proprietorship or other association or group of individuals doing business in the state.

(3) Every offense committed by a corporation prior to July 1, 1985, which would be a felony if committed by an individual shall subject the corporation to the payment of a fine of not less than one thousand dollars nor more than fifteen thousand dollars. For such offenses committed on or after July 1, 1985, the corporation shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). Every offense committed by a corporation which would be a misdemeanor or petty offense if committed by an individual shall subject the corporation to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the corporation is convicted. For an offense committed on or after July 1, 2003, a business entity

shall be subject to the payment of a fine within the presumptive ranges authorized by section 18-1.3-401 (1) (a) (III). An offense committed by a business entity that would be a misdemeanor or petty offense if committed by an individual shall subject the business entity to the payment of a fine within the minimum and maximum fines authorized by sections 18-1.3-501 and 18-1.3-503 for the particular offense of which the business entity is convicted.

(4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY INDIVIDUAL CHARGED AS AN ~~ASSOCIATED PERSON~~ AGENT OR HIGH MANAGERIAL AGENT UNDER SUBSECTION (1) OF THIS SECTION THAT, PRIOR TO BEING CHARGED, HE OR SHE REPORTED TO THE OFFICE OF THE ATTORNEY GENERAL ALL FACTS OF WHICH HE OR SHE WAS AWARE CONCERNING THE BUSINESS ENTITY'S CONDUCT COVERED BY PARAGRAPH THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.

(5) (a) ~~NOTWITHSTANDING PARAGRAPH (4), ANY CITIZEN OF ANY INDIVIDUAL RESIDING IN COLORADO MAY SEEK CIVIL DAMAGES AGAINST ANY BUSINESS ENTITY, AGENT, OR HIGH MANAGERIAL AGENT ASSOCIATED PERSON FOR THEIR CONDUCT COVERED BY PARAGRAPH THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OF THIS SECTION.~~

(b) ANY SUCH AWARD OF DAMAGES SHALL BE PAID TO THE GENERAL FUND OF THE STATE OF COLORADO TO BE APPROPRIATED BY THE GENERAL ASSEMBLY.

(c) THE AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (4) OF THIS SECTION SHALL NOT APPLY TO CIVIL ACTIONS INITIATED UNDER THIS SUBSECTION (5).

(d) SUCH MONEYS, WHEN APPROPRIATED, SHALL BE EXEMPT FROM THE REVENUE AND SPENDING PROVISIONS OF SECTION 24-75-201.1, COLORADO REVISED STATUTES SECTION 20 OF ARTICLE X OF THE COLORADO CONSTITUTION.

(e) ~~WHERE~~ IF AN AWARD IS MADE UNDER THIS SUBSECTION (5), THE CITIZEN FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE ~~ATTORNEYS~~ ATTORNEY FEES AND COSTS FOR DEFENDING THE INTERESTS OF THE STATE. NO SUCH AWARD SHALL BE MADE FOR CLAIMS THAT LACKED SUBSTANTIAL JUSTIFICATION OR WERE INTERPOSED FOR DELAY OR HARASSMENT.