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ELECTIONS

SECRETARY OF STATE

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

Proposed Initiative
2007-2008 #73

REVISED/HIGHLIGHTED

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

18-1-606. ~~Criminal liability of business entities~~ Liability for criminal conduct by businesses.

(1) A business entity 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 "~~executive official~~" "high managerial agent" acting within the scope of his or her employment or in behalf of the business entity.

(1.5) AN EXECUTIVE OFFICIAL IS GUILTY OF AN OFFENSE IF THE CONDUCT CONSTITUTING THE OFFENSE CONSISTS OF AN OMISSION TO DISCHARGE A SPECIFIC DUTY OF AFFIRMATIVE PERFORMANCE IMPOSED ON THE BUSINESS ENTITY BY LAW AND THE EXECUTIVE OFFICIAL KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE SPECIFIC DUTY TO BE PERFORMED AND KNEW THAT THE BUSINESS ENTITY FAILED TO PERFORM THAT DUTY.

(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 "~~executive official~~" "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.5) "EXECUTIVE OFFICIAL" MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MANAGING PARTNER, MANAGING MEMBER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY.~~

(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.

(c) "EXECUTIVE OFFICIAL" MEANS ANY NATURAL PERSON WHO IS AN OFFICER, DIRECTOR, MANAGING PARTNER, MANAGING MEMBER, OR SOLE PROPRIETOR OF A BUSINESS ENTITY.

(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. FOR AN OFFENSE COMMITTED ON OR AFTER ~~JANUARY~~ FEBRUARY 1, 2009, AN EXECUTIVE OFFICIAL SHALL BE SUBJECT TO THE PAYMENT OF A FINE WITHIN THE PRESUMPTIVE RANGES AUTHORIZED BY SECTION 18-1.3-401 (1) ~~(A)~~ (a) (III). AN OFFENSE COMMITTED BY AN EXECUTIVE OFFICIAL THAT WOULD BE A MISDEMEANOR OR PETTY OFFENSE SHALL SUBJECT THE EXECUTIVE OFFICIAL 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 EXECUTIVE OFFICIAL IS CONVICTED.

(4) IT SHALL BE A COMPLETE AFFIRMATIVE DEFENSE FOR ANY EXECUTIVE OFFICIAL CHARGED UNDER SUBSECTION ~~(4)~~ (1.5) 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 THAT MET THE CRITERIA SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION.

(5) (a) ANY INDIVIDUAL RESIDING IN COLORADO MAY FILE A PRIVATE RIGHT OF ACTION AGAINST ANY BUSINESS ENTITY OR ITS EXECUTIVE OFFICIALS FOR THEIR CONDUCT THAT MEETS THE CRITERIA SET FORTH IN SUBSECTION (1) OR SUBSECTION (1.5) OF THIS SECTION.

(b) IN A CIVIL ACTION BROUGHT UNDER THIS SECTION, COMPENSATORY OR PUNITIVE DAMAGES MAY BE AWARDED TO ANY GOVERNMENTAL ENTITY THAT IMPOSED BY LAW THE SPECIFIC DUTY TO BE PERFORMED BY THE BUSINESS ENTITY.

(c) THE AFFIRMATIVE DEFENSE SET FORTH IN SUBSECTION (4) OF THIS SECTION SHALL APPLY TO CIVIL ACTIONS INITIATED UNDER THIS SUBSECTION (5).

(d) SUCH MONEYS, WHEN APPROPRIATED, SHALL BE EXEMPT FROM ALL REVENUE AND SPENDING LIMITATIONS PROVIDED BY LAW.

(e) IF AN AWARD IS MADE UNDER THIS SUBSECTION (5), THE INDIVIDUAL FILING THE LAWSUIT SHALL BE ENTITLED TO REASONABLE 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.