

Date of Hearing: April 15, 2024

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 2432 (Gabriel) – As Amended April 10, 2024

SUBJECT: Corporations: criminal enhancements

SUMMARY: Establishes a criminal restitution fine and separate corporate criminal enhancement for corporations, as defined, convicted of a misdemeanor or felony.

Specifically, **this bill:**

- 1) Defines a “corporation” to mean a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity, or any other legal entity.
- 2) Requires a court to impose a separate and additional restitution fine if a corporation is convicted of a misdemeanor or felony offense, unless the court finds a compelling and extraordinary reason for not doing so and states those reasons on the record. The court may determine the amount of the restitution fine, which must be commensurate with the seriousness of the offense and not less than \$100,000 for a felony or \$1,000 for a misdemeanor.
- 3) Authorizes the court to order a corporation convicted of a misdemeanor or felony offense to pay an additional “corporate white collar criminal enhancement,” not to exceed the greater of:
 - a) If the offense resulted in the taking of another person’s or entity’s money, labor, or real or personal property, an amount equal to two times the value of the taking or loss, as admitted or found to be true by the trier of fact.
 - b) \$25 million.
- 4) Requires a court to consider the following factors determining the amount of the corporate white collar criminal enhancement:
 - a) The nature and seriousness of the offense.
 - b) The number of offenses committed.
 - c) The persistence of the criminal contact.
 - d) The length of time over which the criminal conduct occurred.
 - e) The willfulness of the corporation’s criminal conduct.
 - f) The corporation’s assets, liabilities, and net worth.
- 5) Requires a portion of the moneys collected pursuant to 2) and all of the moneys collected pursuant to 3) to be deposited into the California Crime Victims Fund.

EXISTING LAW:*California Constitution*

Provides that victims have a right to restitution from the convicted wrongdoer in every case and that all payments collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

Penal Code:

- 1) Provides that the word “person” includes a corporation as well as a natural person. (Penal Code Section 7)
- 2) Requires the court, in every case where a person is convicted of a crime, to impose a separate and additional restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. This fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. (Penal Code Section 1202.4)
- 3) Authorizes the court, in setting a felony restitution fine, to determine the amount of the fine as the product of the minimum fine, as specified, multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted. (Penal Code Section 1202.4)
- 4) Requires the court, in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, to require that the defendant make full restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. (Penal Code Section 1202.4)

Corporations Code

- 1) Establishes formation and governance requirements related to corporations pursuant to the General Corporation Law and the Nonprofit Corporation Law, which applies to nonprofit corporations such as a nonprofit public benefit corporation (Corp. Code Section 5110 et seq.), a nonprofit mutual benefit corporation (Corp. Code Section 7110 et seq.), a nonprofit religious corporation (Corp. Code Section 9110 et seq.), and a cooperative corporation (Corp. Code Section 1200 et seq.).
- 2) Establishes formation and governance requirements related to partnerships pursuant to the Uniform Limited Partnership Act of 2008 (Corp. Code Section 15900-19912.07) and the Uniform Partnership Act of 1994 (Corp. Code Section 16100-16962).
- 3) Establishes formation and governance requirements related to limited liability companies pursuant to the California Revised Uniform Limited Liability Company Act, which governs all California LLCs. (Corp. Code Sections 17701.01-17713.13)

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

- 1) **Purpose.**

According to the author:

AB 2432 will provide a critical revenue source for crime victim services programs across the state. These programs serve vulnerable populations, including domestic violence victims, survivors of human trafficking, and vulnerable LGBTQ+ youth. By modeling after the federal Victims of Crime program, we can create better financial stability for crucial crime victim services in California.

2) Background: Victims of Crime Act of 1984 (VOCA).

Under VOCA, the federal government provides grants for qualifying state victim compensation and victim assistance programs. Funds that are distributed to California are distributed through CalOES, which provides financial assistance and reimbursement to victims.

VOCA funding in California is expected to decline. While the amount of money available to be distributed is capped each year, funding is still expected to decline in future years amid uncertainty about its long-term stability. According to the Assembly Appropriations Committee, VOCA funding is expected to decline from \$154 million in 2023-24 to \$87.5 million in 2024-25, a 43% decline.

3) Background: Victims of Corporate Fraud Compensation Fund (VCFCF).

In 2002, the Legislature established the VCFCF to provide limited restitution to victims of corporate fraud who have otherwise been unable to collect on their judgment. Payment from the VCFCF is limited to \$50,000 for any one claimant per single judgment. In order to be eligible, the claimant must have a final civil court judgment, judgment based on an arbitration award, or a criminal restitution order. If it's a criminal restitution order, that order must be against a corporation, or a corporation's officers or director, based on corporate fraud, misrepresentation, or deceit made with the intent to defraud.

Like with VOCA and the programs it supports, the VCFCF faces significant financial uncertainty. The VCFCF is administered by the Secretary of State and funded by a \$2.50 for each corporate annual Statement of Information Filed with the Secretary, and current funding levels can support only a fraction of applications that are submitted each year.

4) What does AB 2432 do?

AB 2432 establishes additional fines for business and non-business entities such as corporations, limited liability companies, associations, or other types of legal entities convicted of felony or misdemeanor offenses. These proposed fines would be in addition to any existing fines that may be imposed.

The first proposed fine is a separate and additional restitution fine imposed when the legal entity is convicted of a misdemeanor or felony offense. Under AB 2432, the court must impose this fine, and it must be commensurate with the seriousness of the offense and must be a least \$100,000 for a felony offense and \$1,000 for a misdemeanor.

The second proposed fine is a "corporate white collar criminal enhancement," which a court is authorized – but not required – to impose on a legal entity convicted of a misdemeanor or

felony offense. This fine cannot exceed the greater of either \$25 million or two times the value of the taking of another person's or entity's money, labor, or real or personal property, if applicable. Moreover, the court must consider specified factors when determining the fine, such as the nature of the seriousness of the offense, the number of offenses, the corporation's assets, liabilities, and net worth, and the willfulness of the criminal conduct.

The money collected for both the restitution fine and the enhancement are deposited into a new proposed fund titled the California Crime Victims Fund.

5) **Is AB 2432 really about corporations?**

AB 2432 was recently amended to revise its definition of "corporation" for a third time. Under the new definition, a corporation means a firm, association, organization, partnership, business trust, company, corporation, limited liability company, public entity, or any other legal entity. In effect, AB 2432's new enhancement would apply broadly to a range of business or non-business entities convicted of a misdemeanor or felony offense.

This bill's definition of "corporation" does not match what most would understand to be a corporation. The core idea of a "corporation" is that it is a legal entity that is separate and distinct from its owners, and that possesses many of the same rights as individuals, such as borrowing money, paying taxes, and entering into contracts. In public discourse, "corporation" is often associated with large businesses with shareholders and a board of directors, but corporations can be quite diverse in their structure, size, and formation purpose.

AB 2432 is better understood as applying to the wide variety of legal entities that exist today. A partnership is generally a legal arrangement between people to share responsibility for a business. A firm is a business organization that sells goods and services, and a firm can be organized as a corporation or a partnership. A company is often understood to be a legal entity, such as a corporation or a firm, formed by a group of people to operate a business. And so on. AB 2432 encompasses these many arrangements and their various combinations.

Thus, AB 2432's definition of a corporation is very inclusive, and it applies more broadly than what is seen in other states with separate "corporate" restitution fines. For instance, Texas Penal Code Section 12.51 allows for an additional fine for "corporations, associations, limited liability companies, and other business entities," a definition that is more narrow than this bill.

6) **Can we fix the VCFCF?**

As noted in Comment #3, the VCFCF pays out claims of up to \$50,000 to eligible victims of corporate fraud. The VCFCF is also broken and in need of serious reforms if it is to work through the existing backlog of claims. Possible reforms include narrowing the program to fewer types of corporate fraud cases, providing less money to claimants, or finding a new funding source.

AB 2432, by focusing on white collar crimes committed by legal entities like corporations, may be able to infuse funding into the VCFCF as part of other program reforms. AB 2432 presents an opportunity to use funding from fines on white collar crime to help support a fund that provides limited restitution to victims of white collar crime. As the bill moves through the legislative process, the author may want to use this opportunity to solve multiple

problems at once, provided there are agreements on additional parameters to the VCFCF to make it more sustainable.

7) **Support**

AB 2432 is co-sponsored by Attorney General Rob Bonta, whose letter provides the following example of why the proposed enhancement is necessary:

Had AB 2432 existed at that time, this white-collar criminal enhancement would have furthered DOJ's commitment to securing restitution for victims of the Santa Barbara oil spill. In that case, then-Attorney General Xavier Becerra and then-Santa Barbara County District Attorney Joyce E. Dudley secured a guilty verdict Plains All American Pipeline (Plains), L.P. for the 2015 Refugio Oil Spill in Santa Barbara County. Plains was sentenced to pay \$3,347,650 in total fines and penalty assessments, but the corporation fought against and stiffed many victims of their restitution.

Moreover, the California Partnership to End Domestic Violence, Children's Advocacy Centers of California, the Coalition to Abolish Slavery and Trafficking, the Culturally Responsive Domestic Violence Network, and ValorUS are also sponsors of AB 2432. Their coalition letter argues:

Our organizations are dedicated to supporting victims of crime, advocates, and their communities. Our large coalition works to advance the rights of survivors of trafficking, child abuse, domestic violence, sexual assault, and others. With a common goal to fearlessly advocate for our communities, we center equitable access to victim services in our decisions. We represent the diverse types of crime victim services supported by VOCA funding and are at risk of devastating cuts.

In addition to immediate action to prevent a shortfall to victim services, California also needs a long-term, permanent funding stream to support crime victims' service providers, and crime victims and survivors by extension. Congressional negotiations notwithstanding, federal funding has typically been sustained through the prosecution of large companies with deep pockets. But comparable legal options are not available at the state level.

Like many states, the California code lacks a sufficient mechanism to hold bad corporate actors criminally accountable for certain harms committed against Californians. Individuals who are found responsible for crimes in a criminal court in California face significant sentences. Yet, corporations that harm Californians face minimal accountability. For example, PG&E was charged with 84 counts of involuntary manslaughter and required to pay a fine of \$3.5 million, which is "equivalent to two weeks' worth of annual revenue" for the corporation.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta (Sponsor)

California Partnership to End Domestic Violence (Co-Sponsor)

Children's Advocacy Centers of California (Co-Sponsor)
Coalition to Abolish Slavery & Trafficking (CAST) (Co-Sponsor)
Culturally Responsive Domestic Violence Network (CRDVN) (Co-Sponsor)
ValorUS (Co-Sponsor)
Asian Americans for Community Involvement
Bill Wilson Center
California Elder Justice Coalition (CEJC)
Californians for Safety and Justice
Californians United for A Responsible Budget
Center for Community Solutions
Center for Domestic Peace
Center for The Pacific Asian Family
Child Guidance Center, INC.
Crime Survivors for Safety and Justice
Ella Baker Center for Human Right
Empower Tehama
Family Services of Tulare County
Family Violence Appellate Project
Felony Murder Elimination Project
Free to Thrive
Healthy Alternatives to Violent Environments
Homebridge
House of Ruth, INC.
Humboldt Domestic Violence Services
Initiate Justice
Initiate Justice Action
Interface Children & Family Services
Jewish Family Service of Los Angeles (UNREG)
Journey Out
Just Detention International
Next Door Solutions to Domestic Violence
Onejustice
Peace Over Violence
Project Sanctuary, INC.
Rubicon Programs
San Francisco Public Defender
Santa Clara County District Attorney's Office
Senior Advocacy Network
Shelter From the Storm, INC.
Smart Justice California, a Project of Tides Advocacy
Stand Up Placer INC.
Ventura County District Attorney's Office
Victims Empowerment Support Team
Waymakers
Wild Iris Family Counseling & Crisis Center
Woman INC
Ywca Golden Gate Silicon Valley

Opposition

None

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