

1 AMENDMENT TO HOUSE BILL 3053

2 AMENDMENT NO. _____. Amend House Bill 3053 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The State Finance Act is amended by adding
5 Section 5.595 as follows:

6 (30 ILCS 105/5.595 new)

7 Sec. 5.595. The Corporate Crime Fund.

8 Section 10. The Criminal Code of 1961 is amended by
9 changing Section 29A-3 and adding Sections 17-26, 17-27, and
10 29A-4 as follows:

11 (720 ILCS 5/17-26 new)

12 Sec. 17-26. Misconduct by a corporate official.

13 (a) A person is guilty of a crime when:

14 (1) being a director of a corporation, he knowingly
15 with a purpose to defraud, concurs in any vote or act of
16 the directors of the corporation, or any of them, which
17 has the purpose of:

18 (A) making a dividend except in the manner
19 provided by law;

20 (B) dividing, withdrawing or in any manner

1 paying any stockholder any part of the capital stock
2 of the corporation except in the manner provided by
3 law;

4 (C) discounting or receiving any note or other
5 evidence of debt in payment of an installment of
6 capital stock actually called in and required to be
7 paid, or with purpose of providing the means of
8 making such payment;

9 (D) receiving or discounting any note or other
10 evidence of debt with the purpose of enabling any
11 stockholder to withdraw any part of the money paid
12 in by him on his stock; or

13 (E) applying any portion of the funds of such
14 corporation, directly or indirectly, to the purchase
15 of shares of its own stock, except in the manner
16 provided by law; or

17 (2) being a director or officer of a corporation,
18 he, with purpose to defraud:

19 (A) issues, participates in issuing, or
20 concurs in a vote to issue any increase of its
21 capital stock beyond the amount of the capital stock
22 thereof, duly authorized by or in pursuance of law;

23 (B) sells, or agrees to sell, or is directly
24 interested in the sale of any share of stock of such
25 corporation, or in any agreement to sell such stock,
26 unless at the time of the sale or agreement he is an
27 actual owner of such share, provided that the
28 foregoing shall not apply to a sale by or on behalf
29 of an underwriter or dealer in connection with a
30 bona fide public offering of shares of stock of such
31 corporation;

32 (C) executes a scheme or attempts to execute a
33 scheme to obtain any share of stock of such
34 corporation by means of false representation; or

1 (3) Being a director or officer of a corporation,
 2 he with purpose to defraud or evade a financial
 3 disclosure reporting requirement of this State or of
 4 Section 13(A) or 15(D) of the Securities Exchange Act of
 5 1934, as amended, 15 U. S. C. 78M(A) or 78O(D), he:

6 (A) causes or attempts to cause a corporation
 7 or accounting firm representing the corporation or
 8 any other individual or entity to fail to file a
 9 financial disclosure report as required by State or
 10 federal law; or

11 (B) causes or attempts to cause a corporation
 12 or accounting firm representing the corporation or
 13 any other individual or entity to file a financial
 14 disclosure report, as required by State or federal
 15 law, that contains a material omission or
 16 misstatement of fact.

17 (b) If the benefit derived from a violation of this
 18 Section is \$500,000 or more, the offender is guilty of a
 19 Class 2 felony. If the benefit derived from a violation of
 20 this Section is less than \$500,000, the offender is guilty of
 21 a Class 3 felony.

22 (720 ILCS 5/17-27 new)

23 Sec. 17-27. Fraud in insolvency.

24 (a) A person commits a crime if, knowing that
 25 proceedings have or are about to be instituted for the
 26 appointment of a receiver or other person entitled to
 27 administer property for the benefit of creditors, or that any
 28 other composition or liquidation for the benefit of creditors
 29 has been or is about to be made, he:

30 (1) destroys, removes, conceals, encumbers,
 31 transfers, or otherwise deals with any property or
 32 obtains any substantial part of or interest in the
 33 debtor's estate with purpose to defeat or obstruct the

claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors;

(2) knowingly falsifies any writing or record relating to the property; or

(3) knowingly misrepresents or refuses to disclose to a receiver or other person entitled to administer property for the benefit of creditors, the existence, amount, or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.

(b) If the benefit derived from a violation of this Section is \$500,000 or more, the offender is guilty of a Class 2 felony. If the benefit derived from a violation of this Section is less than \$500,000, the offender is guilty of a Class 3 felony.

(720 ILCS 5/29A-3) (from Ch. 38, par. 29A-3)
Sec. 29A-3. Sentence.

(a) If the benefit offered, conferred, or agreed to be conferred, solicited, accepted or agreed to be accepted is less than \$500,000, commercial bribery or commercial bribe receiving is a Class A misdemeanor and the sentence shall include, but not be limited to, business-offense-for-which a fine shall-be-imposed not to exceed \$5,000.

(b) If the benefit offered, conferred, or agreed to be conferred, solicited, accepted, or agreed to be accepted in violation of this Article is \$500,000 or more, the offender is guilty of a Class 3 felony.

(Source: P.A. 77-2638.)

(720 ILCS 5/29A-4 new)
Sec. 29A-4. Corporate Crime Fund.

(a) In addition to any fines, penalties, and assessments

1 otherwise authorized under this Code, any person convicted of
2 a violation of this Article or Section 17-26 or 17-27 of this
3 Code shall be assessed a penalty of not more than 3 times the
4 value of all property involved in the criminal activity.

5 (b) The penalties assessed under subsection (a) shall be
6 deposited into the Corporate Crime Fund, a special fund
7 hereby created in the State treasury. Moneys in the Fund
8 shall be used to make restitution to a person who has
9 suffered property loss as a result of violations of this
10 Article. The court may determine the reasonable amount,
11 terms, and conditions of the restitution. In determining the
12 amount and method of payment of restitution, the court shall
13 take into account all financial resources of the defendant."