



**Senators Theresa Gavarone and Jane Timken  
Sponsor Testimony: Senate Bill 146**

Chair Manning, Vice Chair Reynolds, Ranking Member Hicks Hudson, and members of the Senate Judiciary Committee thank you for this opportunity for myself and my joint sponsor, Senator Gavarone to provide sponsor testimony on Senate Bill 146. The intention of this bill is to codify the elements of the common law cause of action for piercing the corporate veil.

The corporate form has been in existence since ancient Rome, then known as the *peculium*. In fact, the Virginia Company, a British joint-stock company established the General Assembly, the first legislature in America. (Fordham Journal of Corporate & Financial Law, *A Brief History of Corporate Form and Why it Matters*, 2018) In essence, corporations, limited liability companies, and other similarly organized entities allow for the aggregation of capital from individuals to achieve tasks too large for an individual and to minimize the risks to the individual. The essential component of a corporation, limited liability company, or a similar organization is the protection of limited liability to the individual. The law has recognized this for centuries.

In fact, Ohio law recognizes this limited liability. R.C. 1706.26 specifically states, “A person who is a member of a limited liability company is not liable, solely by reason of being a member, for a debt, obligation, or liability of the limited liability company or a series thereof, whether arising in contract, tort, or otherwise; or for the acts or omissions of any other member, agent, or employee of the limited liability company or a series thereof. The failure of a limited liability company or any of its

members to observe any formalities relating to the exercise of the limited liability company's powers or the management of its activities is not a factor to consider in, or a ground for, imposing liability on the members for the debts, obligations, or liability of the limited liability company.”

What is not codified and why this legislation is needed is when that limited liability may be disregarded.

Common law has held that this limited liability may be severed in specific circumstances. The Ohio Supreme Court ruled in *Belvedere Condo. Unit Owners' Ass'n. v. R.E. Roark Cos. Inc.*, 67 Ohio St. 3d 274, and in *Dombronski v. Wellpoint, Inc.*, 119 Ohio St. 3d 506, that the corporate form may be disregarded and individual shareholders may be held liable when 1) the shareholder's control over the corporate entity is so complete that the corporation has no separate mind, will, or existence of its own; 2) the shareholders exercised control over the corporation in such a manner to commit fraud, an illegal act, or a similarly unlawful act; and 3) that the plaintiff sustained injury or unjust loss as a result of the shareholder's control and wrongful conduct. This is known as piercing the corporate veil.

The impetus for this legislation is that actions have been filed against individuals charging personal liability to employees of corporation and or limited liability corporations based on actions the employee has or has not taken as part of his or her employment. The legal claim in such action is Participation Theory, such that, anyone in the chain of decision-making authority could be held individually liable. S.B. 146 seeks to remedy this by enacting in statute the common law rule of piercing the corporate veil. Failing to do so will have a chilling effect on investment and economic growth in Ohio, as individuals will not wish to expose themselves to personal liability for the actions of a corporation, limited liability

company or similarly organized entity. I ask that you vote in support of S.B. 146.  
And I welcome your questions.