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S.B. 146
136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Gavarone and Timken

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SUMMARY

- Enacts elements that must be proved with respect to the liability of a covered person of a covered entity for damages or civil penalties under the common law doctrine of “piercing the corporate veil.”
- Provides that a covered person has no liability to any person for damages or civil penalties unless the person seeks to pierce the corporate veil and demonstrates specified preconditions.
- Specifies that any liability of the covered person for damages or civil penalties preempts any other related liability imposed upon that covered person for those damages or civil penalties under common law, the Revised Code, Administrative Code, or otherwise.
- States that its provisions are intended to codify the elements of the common law cause of action for piercing the corporate veil and to abrogate statutory and common law causes of action and remedies involving claims for damages or civil penalties.
- Provides that its provisions apply to all claims for damages or civil penalties against a covered person commenced on or after the act’s effective date or commenced prior to and pending on that effective date.
- States that the General Assembly finds the act to be remedial in nature.
- Provides that the intent of the General Assembly is to provide for the prospective and retroactive application of the codification of the common law doctrine of piercing the corporate veil, and the abrogation of the statutory and common law causes of action and remedies involving damages or civil penalties from a covered person.
- States that if the Ohio Supreme Court determines that the retroactive application of any provision of that section would violate the U.S. Constitution or the Ohio Constitution, it is

the intent of the General Assembly that the retroactive application of the contested provision be severed.

DETAILED ANALYSIS

Piercing the corporate veil

Under common law in Ohio, piercing the corporate veil is an equitable remedy, available not where a set list of factors is established but where maintaining the corporate form would work injustice upon an innocent party. Under this exception, the “veil” of the corporation can be “pierced” and individual shareholders held liable for corporate misdeeds when it would be unjust to allow the shareholders to hide behind the fiction of the corporate entity. However, courts will permit individual shareholder liability only if the shareholder is indistinguishable from, or the “alter ego” of, the corporation itself. To succeed under the alter ego doctrine, a plaintiff must show that the individual and the corporation are fundamentally indistinguishable and that the shareholder’s control of the corporation proximately caused the plaintiff’s injury or loss.¹ The bill states that a “covered person” has no obligation to, and has no liability to, any person for “damages or civil penalties,” unless the person seeks to “pierce the corporate veil” (see “**Definitions**” below), demonstrating all of the following:²

- The covered person exerted such control over the “covered entity” (see “**Definitions**” below) that the covered entity had no separate mind, will, or existence of its own.
- The covered person caused the covered entity to be used for the purpose of perpetuating, and the covered entity perpetrated, an actual fraud on the person seeking to pierce the corporate veil primarily for the direct pecuniary benefit of the covered person.
- The person seeking to pierce the corporate veil sustained an injury or unjust loss as a direct result of the control and fraud described above.

A court cannot find the covered person to have exerted such control over the covered entity that the covered entity did not have a separate mind, will, or existence of its own or to have caused the covered entity to be used for the purpose of perpetrating an actual fraud solely as a result of any of the following actions, events, or relationships:³

- The covered person is an “affiliate” (see “**Definitions**” below) of the covered entity and provides legal, accounting, consulting, treasury, cash management, human resources, administrative, or other similar services to the covered entity, leases assets to the covered entity, or makes its employees available to the covered entity.
- The covered person is an owner, officer, director, agent, or employee that acted or failed to act within the scope of the covered person’s authority or employment.

¹ 11 Ohio Jur. 3d Business Relationships §99.

² R.C. 2307.36(B).

³ R.C. 2307.36(C).

- The covered person loans funds to the covered entity or guarantees the obligations of the covered entity.
- The officers and directors of the covered person are also the officers and directors of the covered entity.
- The covered entity makes payments of dividends or other distributions to the covered person or repays loans owed to the covered person.
- In the case of a covered entity that is a limited liability company, the covered person or its employees or agents serves as the manager of the covered entity.

The person making a claim for damages or civil penalties against a covered person has the burden of proof on each and every element of the person's claim and must prove each element by a preponderance of the evidence.⁴

Any liability or obligation of the covered person for damages or civil penalties where a person seeking to pierce the corporate veil has demonstrated the required elements listed above is exclusive and preempts any other related obligation or liability imposed upon that covered person for those damages or civil penalties under the common law, any section of the Revised Code or the Administrative Code, or otherwise.⁵ This limitation applies to all claims for damages or civil penalties brought against a covered person commenced on or after the effective date of the bill, or commenced prior to and pending on the effective date of the bill.⁶

The intent of the General Assembly in enacting these provisions is to codify the elements of the common law cause of action for piercing the corporate veil, and to abrogate statutory and common law causes of action and remedies involving claims for damages or civil penalties brought against a covered person. Nothing may be construed as creating a right or cause of action that did not exist under the common law as it existed on the effective date of the bill.⁷

The General Assembly finds these provisions to be remedial in nature, and it is therefore the intent of the General Assembly to provide for both the prospective and retroactive application of the codification of the common law doctrine of piercing the corporate veil, and the abrogation of statutory and common law causes of action and remedies involving damages or civil penalties from a covered person, including those actions that are pending on the effective date of the bill. If, however, the Supreme Court determines, in any litigation that may be commenced to contest the constitutionality of the bill, that the retroactive application of any of the provisions listed above would be violative of either the U.S. Constitution or the Ohio Constitution, it is the intent of the General Assembly that the retroactive application of the

⁴ R.C. 2307.36(D).

⁵ R.C. 2307.36(E).

⁶ R.C. 2307.36(F).

⁷ R.C. 2307.36(G)(1).

contested provision be severed, and that the bill's remaining provisions be given prospective application.⁸

Definitions

The bill defines the following terms:

- **"Affiliate"** means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or acts in concert with, a specified person.⁹
- **"Beneficial owner"** of shares means a person who, with respect to particular shares, meets any of the following conditions:¹⁰
 - The person directly or indirectly, alone or with others, including affiliates or associates of that person, beneficially owns the shares;
 - The person directly or indirectly, alone or with others, including affiliates or associates of that person, has the right, whether exercisable immediately or only after the passage of time, conditionally, unconditionally, or otherwise, to acquire the shares pursuant to a written or unwritten agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants, calls, options, or otherwise;
 - The person directly or indirectly, alone or with others, including affiliates or associates of that person, has the right to vote or direct the voting of the shares pursuant to a written or unwritten agreement, arrangement, or understanding;
 - The person has a written or unwritten agreement, arrangement, or understanding with another person who is directly or indirectly a beneficial owner, or whose affiliates or associates are direct or indirect beneficial owners, of the shares, if the agreement, arrangement, or understanding is for the purpose of the first person's or the other person's acquiring, holding, disposing of, voting, or directing the voting of the shares to or for the benefit of the first person. A bank, broker, nominee, trustee, or other person who acquires shares for the benefit of others in the ordinary course of business in good faith and not for the purpose of circumventing the provisions of Ohio Corporation Law must, however, be deemed to be the beneficial owner only of shares in respect of which that person, without further instruction from others, holds voting power.
- **"Covered entity"** means a corporation, limited liability company, limited partnership, or any other entity organized under the laws of any jurisdiction, domestic or foreign, of which the covered persons, owners, or members are generally not responsible for the

⁸ R.C. 2307.36(G)(2).

⁹ R.C. 2307.36(A)(1), by reference to R.C. 1704.01, not in the bill.

¹⁰ R.C. 2307.36(A)(1), by reference to R.C. 1704.01, not in the bill.

debts and obligations of the covered entity. This definition does not limit or otherwise affect the liabilities imposed on a general partner of a limited partnership.¹¹

- **“Covered person”** means any of the following:¹²
 - A person who is the holder, beneficial owner, or subscriber of shares or any other ownership interest of a covered entity;
 - A member, officer, director, agent, or employee of a covered entity;
 - An affiliate of any person who is the holder, beneficial owner, or subscriber of shares or any other ownership interest of a covered entity, or any of the affiliate’s officers, directors, or employees.
- **“Damages or civil penalties”** means damages of any kind, or civil penalties, for which liability may exist under the laws of Ohio resulting from, arising out of, or related to an obligation or liability of a covered entity.¹³
- **“Piercing the corporate veil”** means any and all common law doctrines by which a covered person may be liable for an obligation or liability of a covered entity on the basis that the covered person controlled the covered entity, the covered person is or was the alter ego of the covered entity, or the covered entity has been used for the purpose of actual or constructive fraud or as a sham to perpetrate a fraud, or any other common law doctrine by which the covered entity is disregarded for purposes of imposing liability on a covered person for the debts or obligations of that covered entity.¹⁴
- **“Person”** means any of the following:¹⁵
 - A natural person;
 - A corporation, whether for profit or nonprofit;
 - A partnership;
 - A limited liability company;
 - A business trust;
 - An estate;
 - A trust;
 - An unincorporated society or association;
 - Two or more persons having a joint or common interest;

¹¹ R.C. 2307.36(A)(2).

¹² R.C. 2307.36(A)(3).

¹³ R.C. 2307.36(A)(4).

¹⁴ R.C. 2307.36(A)(5).

¹⁵ R.C. 2307.36(A)(6).

- Every organized body, office, or agency established by the Ohio Constitution or the laws of Ohio for the exercise of any function of state government.

HISTORY

Action	Date
Introduced	03-12-25