

As Passed by the Senate

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Sub. S. B. No. 146

Senators Gavarone, Timken

**Cosponsors: Senators Manning, Chavez, Cirino, Cutrona, Ingram, O'Brien,
Reineke, Roegner, Romanchuk, Schaffer, Wilson**

To enact section 2307.36 of the Revised Code to 1
codify the elements of the common law cause of 2
action for "piercing the corporate veil." 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2307.36 of the Revised Code be 4
enacted to read as follows: 5

Sec. 2307.36. (A) As used in this section: 6

(1) "Affiliate" means a person that directly, or 7
indirectly through one or more intermediaries, controls, is 8
controlled by, is under common control with, or acts in concert 9
with, a specified person. 10

(2) "Covered entity" means a corporation, limited 11
liability company, limited partnership, or any other entity 12
organized under the laws of any jurisdiction, domestic or 13
foreign, of which the covered persons are generally not 14
responsible for the debts and obligations of the covered entity. 15

(3) "Covered person" means any of the following: 16

(a) A person who is the holder, owner, or subscriber of 17

shares or any other ownership interest of a covered entity; 18

(b) A member, officer, or director of a covered entity; 19

(c) An affiliate of any person who is described in 20
division (A) (3) (a) or (b) of this section. 21

(4) "Damages or other penalties" means damages of any kind 22
or civil or administrative penalties for which liability may 23
exist under the laws of this state resulting from, arising out 24
of, or related to an obligation or liability of a covered 25
entity. 26

(5) "Governmental entity" means every organized body, 27
office, political subdivision or agency of a political 28
subdivision, or agency established by the Ohio Constitution or 29
the laws of this state for the exercise of any function of state 30
government. 31

(B) A covered person has no obligation to, and has no 32
liability to, any governmental entity for damages or other 33
penalties, unless either of the following applies: 34

(1) The obligation or liability of the covered person to 35
the governmental entity for damages or other penalties is 36
expressly provided for in the Revised Code. 37

(2) The governmental entity seeks to pierce the corporate 38
veil by demonstrating all of the following: 39

(a) The covered person exerted such control over the 40
covered entity that the covered entity had no separate mind, 41
will, or existence of its own. 42

(b) The covered person exercised control over the covered 43
entity in such a manner as to commit a fraud, an illegal act, or 44
a similarly unlawful act against the governmental entity seeking 45

to pierce the corporate veil. 46

(c) The governmental entity seeking to pierce the 47
corporate veil sustained an injury or unjust loss as a result of 48
the conduct described in divisions (B) (2) (a) and (b) of this 49
section. 50

(C) A court shall not find the covered person to have 51
engaged in the conduct described in division (B) (2) of this 52
section solely as a result of any of the following actions, 53
events, or relationships: 54

(1) The covered person provides legal, accounting, 55
consulting, treasury, cash management, human resources, 56
administrative, or other similar services to the covered entity, 57
leases assets to the covered entity, or makes its employees 58
available to the covered entity. 59

(2) The covered person acted or failed to act within the 60
scope of the covered person's authority or employment. 61

(3) The covered person loans funds to the covered entity 62
or guarantees the obligations of the covered entity. 63

(4) The officers, directors, owners, and members of the 64
covered person are also the officers, directors, owners, and 65
members of the covered entity. 66

(5) The covered entity makes payments of dividends or 67
other distributions to the covered person or repays loans owed 68
to the covered person. 69

(6) In the case of a covered entity that is a limited 70
liability company, the covered person or its employees or agents 71
serves as the manager of the covered entity. 72

(D) The governmental entity making a claim for damages or 73

other penalties against a covered person has the burden of proof 74
on each and every element of the governmental entity's claim to 75
pierce the corporate veil. 76

(E) This section applies to all claims for damages or 77
other penalties brought against a covered person commenced on or 78
after the effective date of this section or commenced prior to 79
and pending on the effective date of this section that has not 80
had a final appealable order issued on the merits. 81

(F) Nothing in this section shall be construed as creating 82
a right or cause of action that did not exist under the common 83
law as it existed on the effective date of this section. 84

(G) Nothing in this section limits or otherwise affects 85
the liabilities imposed on a general partner of a limited 86
partnership. 87