



House of Representatives

General Assembly

File No. 784

January Session, 2019

Substitute House Bill No. 7340

House of Representatives, April 25, 2019

The Committee on Judiciary reported through REP. STAFSTROM of the 129th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE USE OF VEIL PIERCING TO DETERMINE THE PERSONAL RESPONSIBILITY OF AN INTEREST HOLDER OF A DOMESTIC ENTITY FOR THE DEBTS, OBLIGATIONS OR OTHER LIABILITIES OF SUCH ENTITY AND THE RESPONSIBILITY OF A DOMESTIC ENTITY FOR THE DEBTS, OBLIGATIONS OR OTHER LIABILITIES OF AN INTEREST HOLDER OF SUCH ENTITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage and applicable to any civil*
2 *action filed on or after the effective date of this section*) As used in this
3 section and sections 2 and 3 of this act:

4 (1) "Affiliate" means with respect to any specified person, any other
5 person directly or indirectly controlling, controlled by or under
6 common control with such specified person. As used in this
7 subdivision, "control" has the same meaning given to that term in 17
8 CFR 240.12b-2, as amended from time to time;

9 (2) "Domestic entity" means an entity whose internal affairs are
10 governed by the law of this state;

11 (3) "Entity" means (A) a business corporation, (B) a nonstock
12 corporation, (C) a limited liability partnership, (D) a limited
13 partnership, including a limited liability limited partnership, (E) a
14 limited liability company, or (F) any other person that (i) has a separate
15 legal existence, and (ii) is subject to a provision of the general statutes
16 which provides that an interest holder of such person is not personally
17 liable for a debt, obligation or other liability of such person solely by
18 reason of being or acting as such interest holder;

19 (4) "Governance interest" has the same meaning as provided in
20 section 34-600 of the general statutes;

21 (5) "Governor" has the same meaning as provided in section 34-600
22 of the general statutes;

23 (6) "Interest" means (A) a governance interest in an entity, (B) a
24 transferable interest in an entity, or (C) a share, membership interest or
25 other ownership interest in an entity;

26 (7) "Interest holder" has the same meaning as provided in section 34-
27 600 of the general statutes;

28 (8) "Person" has the same meaning as provided in section 34-600 of
29 the general statutes; and

30 (9) "Transferable interest" has the same meaning as provided in
31 section 34-600 of the general statutes.

32 Sec. 2. (NEW) (*Effective from passage and applicable to any civil action*
33 *filed on or after the effective date of this section*) (a) A statutory limitation
34 on the liability of an interest holder of a domestic entity for a debt,
35 obligation or other liability of such domestic entity, including without
36 limitation, the limitation set forth in section 33-673 or 34-251a of the
37 general statutes, may not be disregarded based upon a veil piercing
38 doctrine, claim or remedy in connection with a transaction to which
39 the entity is a party, unless a court finds by clear and convincing
40 evidence that: (1) The interest holder exerted complete domination and
41 control over the management, finances, policies and activities of such

42 entity with respect to such transaction; (2) such domination and
43 control was used by the interest holder to (A) commit fraud or other
44 intentional wrong against the person asserting such doctrine, claim or
45 remedy, (B) intentionally violate a statutory or common law duty to
46 such person, or (C) commit a deceitful or other unlawful act against
47 such person; and (3) the domination and control exerted by the interest
48 holder and the breach of duty or other act proximately caused injury or
49 loss to the person asserting such doctrine, claim or remedy.

50 (b) In making a determination under subdivision (1) of subsection
51 (a) of this section, a court shall consider factors that include, but are not
52 limited to, whether: (1) The entity was adequately capitalized, (2)
53 assets of the entity were distributed or otherwise transferred from the
54 entity to the interest holder or any affiliate of such interest holder
55 without any lawful business purpose, (3) there were overlapping
56 interest holders, governors or other management personnel between
57 the entity and the interest holder or any affiliate of such interest
58 holder, (4) the interest holder or any affiliate of such interest holder
59 shared office spaces, addresses and telephone numbers with the entity
60 without payment of fair consideration, (5) transactions involving the
61 entity and the interest holder or any affiliate of such interest holder
62 were at arm's length and for fair consideration, (6) funds of the entity
63 were commingled with funds of the interest holder or any affiliate of
64 such interest holder, (7) the entity was treated as a separate legal entity
65 for financial and other business purposes as evidenced by having its
66 own contractual relationships, bank accounts, books of account and
67 financial statements, (8) the entity was insolvent or rendered insolvent
68 by the acts of the interest holder or any affiliate of such interest holder,
69 and (9) the property of the entity was used by the interest holder or
70 any affiliate of such interest holder without payment of fair
71 consideration.

72 (c) The burden of proof shall be on the person seeking to hold the
73 interest holder of a domestic entity responsible for the debts,
74 obligations or other liabilities of such entity.

75 (d) The failure of a domestic entity to observe formalities relating to
 76 the exercise of its powers or the management of its activities and
 77 affairs is not grounds for imposing personal liability on an interest
 78 holder of such entity for a debt, obligation or other liability of such
 79 entity based upon a veil piercing doctrine, claim or remedy.

80 (e) When determining whether a statutory limitation on the liability
 81 of an interest holder of a domestic entity for a debt, obligation or other
 82 liability of such domestic entity, including without limitation, the
 83 limitation set forth in section 33-673 or 34-251a of the general statutes,
 84 may be disregarded based upon on a veil piercing doctrine, claim or
 85 remedy, a court shall make such determination exclusively in
 86 accordance with the provisions of this section and section 1 of this act.

87 Sec. 3. (NEW) (*Effective from passage and applicable to any civil action*
 88 *filed on or after the effective date of this section*) No domestic entity shall be
 89 responsible for a debt, obligation or other liability of an interest holder
 90 of such entity based upon a reverse veil piercing doctrine, claim or
 91 remedy.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to any civil action filed on or after the effective date of this section</i>	New section
Sec. 2	<i>from passage and applicable to any civil action filed on or after the effective date of this section</i>	New section
Sec. 3	<i>from passage and applicable to any civil action filed on or after the effective date of this section</i>	New section

Statement of Legislative Commissioners:

In Section 1, the definition of "control" was included in Subdivision (1) and the remaining subdivisions were renumbered accordingly for consistency with standard drafting conventions.

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill codifies a court methodology for determination of personal liability on interest holders of a corporation and does not result in a fiscal impact.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 7340**

AN ACT CONCERNING THE USE OF VEIL PIERCING TO DETERMINE THE PERSONAL RESPONSIBILITY OF AN INTEREST HOLDER OF A DOMESTIC ENTITY FOR THE DEBTS, OBLIGATIONS OR OTHER LIABILITIES OF SUCH ENTITY AND THE RESPONSIBILITY OF A DOMESTIC ENTITY FOR THE DEBTS, OBLIGATIONS OR OTHER LIABILITIES OF AN INTEREST HOLDER OF SUCH ENTITY.

SUMMARY

“Veil piercing” is a common law doctrine that allows a court to impose personal liability on interest holders of an entity (e.g., a corporation) for the entity’s actions.

This bill sets specific limits on when a veil piercing claim can override statutory limitations on a domestic entity interest holder’s liability in connection with the entity’s transactions. In doing so, the bill generally codifies the “instrumentality test,” one of two methods Connecticut courts currently use to determine whether to grant a veil-piercing claim.

Under the bill, a court can override statutory limitations on an interest holder’s liability for an entity’s debt, obligation, or other liability only if the court makes certain findings. These findings include, among other things, that the interest holder used his or her domination or control over the entity to commit fraud or another violation of the law or his or her duties, which proximately caused injury or loss to the claimant. The statutory limitations above include laws that generally provide corporate shareholders and limited liability company (LLC) members and managers with immunity from liability for the corporation’s or LLC’s actions, respectively.

Under the bill, the court must make a decision on a veil piercing claim regarding statutory limitations on liability in accordance with the bill's provisions.

The bill also specifies that a domestic entity's failure to observe formalities relating to exercising its powers or managing its activities and affairs is not grounds to impose personal liability on an interest holder for the entity's debt, obligation, or other liability based on a veil piercing claim.

The bill additionally prohibits "reverse veil piercing," in which a domestic entity is held responsible for an interest holder's debt, obligation, or other liability.

EFFECTIVE DATE: Upon passage and applicable to any civil action filed on or after that date.

ENTITIES, AFFILIATES, AND INTEREST HOLDERS

Under the bill, an "entity" is:

1. a business or nonstock corporation;
2. a limited partnership, including a limited liability limited partnership;
3. an LLC or limited liability partnership;
4. any other person that (a) has a separate legal existence and (b) is subject to the law's provisions that grant its interest holders immunity from personal liability for its debt, obligation, or other liability solely for being or acting as an interest holder.

An "affiliate" means, with respect to a specified person, any other person directly or indirectly controlling, controlled by, or under common control with that person.

An "interest holder" is the direct holder of a (1) governance interest in an unincorporated entity, (2) a transferable interest in an

unincorporated entity, or (3) a share or membership in a corporation.

COURT FINDINGS

Under the bill, in order to find that a statutory limitation on interest holder liability may be disregarded on the basis of a veil piercing claim as described above, the court must find by clear and convincing evidence the following:

1. the interest holder exerted complete domination and control over the entity's management, finances, policies, and activities with respect to the transaction;
2. the interest holder used the domination and control to (a) commit fraud or other intentional wrong-doing against the person asserting the veil piercing claim, (b) intentionally violate a statutory or common law duty to that person, or (c) commit a deceitful or other unlawful act against that person; and
3. the domination and control and the breach of duty or other act proximately caused injury or loss to the person asserting the veil piercing claim.

Under the bill, the person seeking to hold the interest holder responsible for the domestic entity's liabilities has the burden of proof.

CONSIDERATIONS

When making the above determination, the court must consider certain factors, including whether:

1. the entity was adequately capitalized;
2. the entity distributed or otherwise transferred assets to the interest holder without any lawful business purpose;
3. there were overlapping interest holders, governors, or other management personnel between the entity and the interest holder;

4. the interest holder shared office spaces, addresses, and telephone numbers with the entity without paying fair consideration;
5. transactions involving the entity and the interest holder were at arm's length and for fair consideration;
6. the entity's funds were commingled with the interest holder's funds;
7. the entity was treated as a separate legal entity for financial and other business purposes as evidenced by having its own contractual relationships, bank accounts, account books, and financial statements;
8. the entity was insolvent or rendered insolvent by the interest holder's acts; and
9. the interest holder used the entity's property without paying fair consideration.

These provisions also apply to such actions involving the interest holder's affiliates.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (04/08/2019)