

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 19-181—sHB 7340

Judiciary Committee

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, despite statutory limitations that generally grant them immunity.

This act sets specific conditions that must be met in granting a veil piercing claim to override limitations on a domestic entity interest holder’s liability in connection with the entity’s transactions. (Under the act, a “domestic entity” is an entity whose internal affairs are governed by Connecticut law.) In doing so, the act generally codifies the “instrumentality test,” one of two methods Connecticut courts use to determine whether to grant a veil-piercing claim.

Under the act, a court may 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 in accordance with its provisions. 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 act 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 act 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 civil actions filed on or after that date.

ENTITIES, AFFILIATES, AND INTEREST HOLDERS

Under the act, 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; or

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

COURT FINDINGS

Under the act, 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 a preponderance of the 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 act, 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 a 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;

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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.