



General Assembly

January Session, 2019

Raised Bill No. 7340

LCO No. 5574



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING THE USE OF THE INSTRUMENTALITY TEST TO DETERMINE THE LIABILITY OF THE SHAREHOLDERS OF A CORPORATION AND THE MEMBERS OR MANAGERS OF A LIMITED LIABILITY COMPANY.

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

1 Section 1. Section 33-673 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 (a) A purchaser from a corporation of its own shares is not liable to
4 the corporation or its creditors with respect to the shares except to pay
5 the consideration for which the shares were authorized to be issued as
6 provided in section 33-672 or specified in the subscription agreement
7 as provided in section 33-671.

8 (b) Unless otherwise provided in the certificate of incorporation, a
9 shareholder [of a corporation] or other person is not personally liable
10 for the acts or debts of [the] a corporation except [that he may become
11 personally liable by reason of his own acts or conduct] as set forth in
12 subsection (c) of this section.

13 (c) A shareholder or other person shall be personally liable for the
14 acts or debts of a corporation when the corporation is an instrument or
15 agent of the shareholder or such person. A court shall find, in
16 accordance with the provisions of this section, that a corporation is an
17 instrument or agent of a shareholder or such person when: (1) The
18 shareholder or person exerts complete control and domination of the
19 finances, policy and business practice with respect to a corporate
20 transaction, such that the corporate entity to the transaction had, at the
21 time, no separate mind, will or existence of its own; (2) such control is
22 used by the shareholder or person to (A) commit fraud or wrong, (B)
23 perpetrate a violation of a statutory duty or other legal duty, or (C) to
24 commit a dishonest or unjust act in contravention of another person's
25 legal rights; and (3) the control exerted by the shareholder or person,
26 as described in subdivisions (1) and (2) of this subsection, proximately
27 caused the injury or unjust loss complained of.

28 (d) In making a determination under subsection (c) of this section, a
29 court shall consider factors that include, but are not limited to: (1)
30 Whether the corporation was inadequately capitalized, (2) whether
31 funds were added to or removed from the corporation for personal
32 purposes rather than corporate purposes, (3) whether there was
33 overlapping ownership, officers, directors and personnel, (4) the
34 existence of common office spaces, addresses and telephone numbers,
35 (5) the amount of business discretion retained by an allegedly
36 dominated corporation, (6) whether corporate transactions involving
37 the same shareholder or person were at arm's length, (7) whether a
38 corporation was treated as an independent profit center, (8) whether
39 an allegedly dominated corporation paid or guaranteed its own debts,
40 and (9) whether an allegedly dominated corporation had property that
41 was used by another person as if it were its own.

42 (e) The failure of a corporation to observe formalities relating to the
43 exercise of its powers or management of its activities and affairs is not
44 a ground for imposing liability on a shareholder of a corporation for
45 the acts or debts of the corporation.

46 (f) When determining whether a shareholder or person is personally
47 liable for the acts or debts of the corporation, a court shall exclusively
48 make such determination in accordance with the provisions of this
49 section.

50 Sec. 2. Section 34-251a of the general statutes is repealed and the
51 following is substituted in lieu thereof (*Effective October 1, 2019*):

52 (a) A debt, obligation or other liability of a limited liability company
53 is solely the debt, obligation or other liability of the company. A
54 member, [or] manager or other person is not personally liable, directly
55 or indirectly, by way of contribution or otherwise, for a debt,
56 obligation or other liability of the company solely by reason of being or
57 acting as a member or manager, except as set forth in subsection (b) of
58 this section. This subsection applies regardless of the dissolution of the
59 company.

60 (b) A member, manager or other person shall be personally liable
61 for the acts or debts of a limited liability company when the limited
62 liability company is an instrument or agent of the member, manager or
63 such person. A court may find, in accordance with the provisions of
64 this section, that a limited liability company is an instrument or agent
65 of a member, manager or such person when: (1) The member, manager
66 or person exerts complete control and domination of the finances,
67 policy and business practice with respect to a company transaction,
68 such that the company to the transaction had, at the time, no separate
69 mind, will or existence of its own; (2) such control is used by the
70 member, manager or person to (A) commit fraud or wrong, (B)
71 perpetrate a violation of a statutory duty or other legal duty, or (C) to
72 commit a dishonest or unjust act in contravention of a person's legal
73 rights; and (3) the control exerted by a member, manager or person, as
74 described in subdivisions (1) and (2) of this subsection, proximately
75 caused the injury or unjust loss complained of.

76 (c) In making a determination under subsection (b) of this section, a
77 court shall consider factors that include, but are not limited to: (1)

78 Whether the limited liability company was inadequately capitalized,
79 (2) whether funds were added to or removed from the limited liability
80 company for personal purposes rather than corporate purposes, (3)
81 whether there is overlapping ownership, officers, directors and
82 personnel, (4) the existence of common office spaces, addresses and
83 telephone numbers, (5) the amount of business discretion retained by
84 an allegedly dominated limited liability company, (6) whether limited
85 liability company transactions involving the same member, manager
86 or person were at arm's length, (7) whether a limited liability company
87 was treated as an independent profit center, (8) whether an allegedly
88 dominated limited liability company paid or guaranteed its own debts,
89 and (9) whether an allegedly dominated limited liability company had
90 property that was used by another person as if it were its own.

91 [(b)] (d) The failure of a limited liability company to observe
92 formalities relating to the exercise of its powers or management of its
93 activities and affairs is not a ground for imposing liability on a
94 member or manager of the company for a debt, obligation or other
95 liability of the company.

96 (e) When determining whether a member, manager or person is
97 personally liable for the acts or debts of the limited liability company, a
98 court shall exclusively make such determination in accordance with
99 the provisions of this section.

100 [(c)] (f) Nothing contained in sections 34-243 to 34-283d, inclusive,
101 shall be interpreted to abolish, repeal, modify, restrict or limit the law
102 in effect on July 1, 2017, in this state applicable to the professional
103 relationship and liabilities between the person furnishing the
104 professional services and the person receiving such professional
105 service and to the standards for professional conduct, provided (1) any
106 member, manager, agent or employee of a limited liability company
107 rendering professional services formed under sections 34-243 to 34-
108 283d, inclusive, shall be personally liable and accountable only for
109 negligent or wrongful acts or misconduct committed by such person,
110 or by any person under such person's direct supervision and control,

111 while rendering professional services on behalf of the limited liability
112 company to the person for whom such professional services were
113 being rendered; and (2) the personal liability of members of a limited
114 liability company rendering professional services formed under
115 sections 34-243 to 34-283d, inclusive, in their capacity as members of
116 such limited liability company, shall be not greater in any aspect than
117 that of a shareholder who is an employee of a corporation formed
118 under chapter 601. A limited liability company rendering professional
119 services shall be liable for up to the full value of its property for any
120 negligent or wrongful acts or misconduct committed by any of its
121 members, managers, agents or employees while they are engaged on
122 behalf of the limited liability company in the rendering of professional
123 services.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	33-673
Sec. 2	<i>October 1, 2019</i>	34-251a

Statement of Purpose:

To codify the common law use of the instrumentality test when making determinations as to (1) the liability of the shareholders of a corporation for the act or debts of the corporation, and (2) the liability of the members or managers of a limited liability company for the debts, obligations or other liability of the limited liability company.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]