OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

S.B. 146*

136th General Assembly

Bill Analysis

Click here for S.B. 146's Fiscal Note

Version: As Reported by Senate Judiciary

Primary Sponsors: Sens. Gavarone and Timken

Ashley F. Dean, Attorney

SUMMARY

- Enacts elements that must be proved with respect to the liability of a covered person of a covered entity for damages or other penalties under the common law doctrine of "piercing the corporate veil."
- Provides that a covered person has no obligation to, and has no liability to any governmental entity for damages or other penalties unless the governmental entity seeks to pierce the corporate veil and demonstrates specified preconditions.
- Provides that its provisions apply to all claims for damages or other penalties against a covered person commenced on or after the act's effective date or commenced prior to and pending on that effective date that has not had a final appealable order issued on the merits.
- States that nothing in the provisions can 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.
- States that nothing in the provisions limits or otherwise affects the liabilities imposed on a general partner of a limited partnership.

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

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

"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 governmental entity for "damages or other penalties," unless either of the following applies:[2]

- The obligation or liability of the covered person to the governmental entity for damages or other penalties is expressly provided for in the Revised Code.
- The governmental entity seeks to pierce the corporate veil.

A governmental agency seeking to pierce the corporate veil must demonstrate all of the following:[3]

- 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 exercised control over the covered entity in such a manner as to commit a fraud, an illegal act, or a similarly unlawful act against the governmental entity seeking to pierce the corporate veil.
- The governmental entity seeking to pierce the corporate veil sustained an injury or unjust loss as a direct result of the conduct 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 exercised control over the covered entity in such a manner as to commit a fraud, an illegal act, or a similarly unlawful act solely as a result of any of the following actions, events, or relationships:[4]

- The covered person 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 acted or failed to act within the scope of the covered person's authority or employment.
- The covered person loans funds to the covered entity or guarantees the obligations of the covered entity.

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

[2] R.C. 2307.36(B).

[3] R.C. 2307.36(B)(2).

[4] R.C. 2307.36(C).

- The officers, directors, owners, and members of the covered person are also the officers, directors, owners, and members 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 governmental entity making a claim for damages or other penalties against a covered person has the burden of proof on each and every element of the governmental entity's claim to pierce the corporate veil.[5]

The bill applies to all claims for damages or other 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 that has not had a final appealable order issued on the merits.[6] Nothing in the bill can 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] Nothing in the bill limits or otherwise affects the liabilities imposed on a general partner of a limited partnership.[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]
- "**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 are generally not responsible for the debts and obligations of the covered entity.[10]
- "**Covered person**" means any of the following:[11]
  - A person who is the holder, owner, or subscriber of shares or any other ownership interest of a covered entity;
  - A member, officer, or director of a covered entity;

[5] R.C. 2307.36(D).

[6] R.C. 2307.36(E).

[7] R.C. 2307.36(F).

[8] R.C. 2307.36(G).

[9] R.C. 2307.36(A)(1).

[10] R.C. 2307.36(A)(2).

[11] R.C. 2307.36(A)(3).

- An affiliate of any person who is the holder, owner, or subscriber of shares or any other ownership interest of a covered entity, or any of the affiliate's members, officers, or directors.

- "**Damages or other penalties**" means damages of any kind or civil or administrative 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.[12]

- "**Governmental entity**" means every organized body, office, political subdivision or agency of a political subdivision, or agency established by the Ohio Constitution or the laws of Ohio for the exercise of any function of state government.[13]

HISTORY

Action	Date
Introduced	03-12-25
Reported S. Judiciary	--

ANSB0146RS-136/ar

[12] R.C. 2307.36(A)(4).

[13] R.C. 2307.36(A)(5).