

## RÉSUMÉ DIGEST

HB 313

2020 Regular Session

Pressly

Present law as developed in jurisprudence permits courts to disregard the separate legal personalities otherwise existing between two or more business entities for purposes of imposing liability, based on a list of factors that include many control-related characteristics that are lawful and commonly found among affiliated business entities.

Proposed law would have provided that a separate juridical personality of an affiliated business organization shall not be disregarded between one business organization and another, except on grounds that would justify a disregard of the separate personality of a business organization, as between the business organization and a natural person.

Proposed law would have provided that the separate juridical personalities of business organizations may not be disregarded merely because one or more of the following circumstances exist for business organizations:

- (1) Control of one another or under common control of the same person or business organization.
- (2) Common directors, officers, shareholders, members, managers, partners, or employees.
- (3) Common offices.
- (4) Subject to unified administrative control.
- (5) Utilizes a centralized accounting system.
- (6) One business organization finances, incorporates, or organizes another.
- (7) One business organization makes properly documented payments on behalf of another or makes properly documented use of the property of another.
- (8) Employees of one business organization provide properly documented services for another.
- (9) One business organization receives no business other than that given to it by another.

Proposed law would have defined "business organization" as a business corporation, nonprofit corporation, limited liability company, partnership, trust, or other form of business organization that is treated as a juridical person or legal entity under the laws of the state or country under which it is incorporated or organized.

Proposed law would not have affected any legal or regulatory action taken by the commissioner of insurance.

Proposed law would not have affected any law or administrative rule that permits or requires a group of business organizations to be consolidated, unified, or disregarded for the purposes provided in the applicable law or administrative rule.

Proposed law would have applied prospectively to all business organizations including those in existence on the effective date of this Act.

The provisions of the proposed law would have legislatively overruled *Green v. Champion Ins. Co.*, 577 So. 2d 249 (La. App. 1st Cir. 1991) in favor of a traditional veil piercing analysis.

(Proposed to add R.S. 12:1705)

VETO MESSAGE: "Please be advised that I have vetoed House Bill 313 of the 2020 Regular Session.

House Bill 313 would have effectively eliminated the Single Business Enterprise Doctrine, a jurisprudential doctrine that allows courts to consider closely related businesses to be a single business entity when attempting to impose liability or collect debts. This rarely used and difficult to prove doctrine is designed to prevent bad actors from establishing undercapitalized shell corporations in an effort to avoid creditors and shirk public obligations. Such a significant change in this doctrine could make it more difficult for creditors to pursue their claims and could inadvertently hurt small businesses, independent contractors, investors, and pension funds in Louisiana.

Additionally, some of the language of House Bill 313 could lead to confusion and possible unintended consequences. For example, the proposed La. R.S. 12:1705(C) defines "business organization" to include a trust. According to the Louisiana Trust Code (La. R.S. 9:1721, et seq.), a trust is a contractual fiduciary relationship - not a distinct juridical person or "business organization." If House Bill 313 were to become law, the potential unintended, unforeseen, and unstudied consequences of such a change in our law would be problematic and unjustified."