

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 258**

SENATORS TRUMP AND TARR, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on January 22, 2019]



1 A BILL to amend and reenact §31B-3-303 of the Code of West Virginia, 1931, as amended,  
2 relating to establishing that the intent and policy of the Legislature is that common law  
3 corporate “veil piercing” claims may not be used to impose personal liability on a member  
4 or manager of a limited liability company; and nullifying the Supreme Court of Appeals of  
5 West Virginia’s decision in *Joseph Kubican v. The Tavern, LLC*. 232 W. Va. 268, 752  
6 S.E.2d 299 (2013).

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING  
WITH LIMITED LIABILITY COMPANY.**

**§31B-3-303. Liability of members and managers.**

1 (a) Except as otherwise provided in §31B-3-303(c) of this code, the debts, obligations, and  
2 liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely  
3 the debts, obligations, and liabilities of the company. A member or manager is not personally  
4 liable for a debt, obligation, or liability of the company solely by reason of being or acting as a  
5 member or manager. It is the intent and policy of the Legislature that for any claim against a  
6 limited liability company arising after the effective date of the reenactment of this section during  
7 the regular session of the Legislature, 2019, common law corporate “veil piercing” claims may not  
8 be used to impose personal liability on a member or manager of a limited liability company, and  
9 that the West Virginia Supreme Court of Appeals decision in *Joseph Kubican v. The Tavern, LLC*,  
10 232 W.Va. 268, 752 S.E. 2d 299 (2013) be nullified.

11 (b) The failure of a limited liability company to observe the usual company formalities or  
12 requirements relating to the exercise of its company powers or management of its business is not  
13 a ground for imposing personal liability on the members or managers for liabilities of the company.

14 (c) All or specified members of a limited liability company are liable in their capacity as  
15 members for all or specified debts, obligations, or liabilities of the company if:

- 16           (1) A provision to that effect is contained in the articles of organization; and
- 17           (2) A member so liable has consented in writing to the adoption of the provision or to be
- 18 bound by the provision.