

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 258

BY SENATORS TRUMP AND TARR

[Introduced January 11, 2019; Referred
to the Committee on the Judiciary]

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 the 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.

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 liable
 4 for a debt, obligation or liability of the company solely by reason of being or acting as a member
 5 or manager. It is the intent and policy of the Legislature that common law corporate “veil piercing”
 6 claims may not be used to impose personal liability on a member or manager of a limited liability
 7 company, and that the West Virginia Supreme Court of Appeals decision in *Joseph Kubican v.*
 8 *The Tavern, LLC*, 232 W.Va. 268, 752 S.E. 2d 299 (2013) be nullified.

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

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

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

NOTE: The purpose of this bill is to the intent and policy of the Legislature that common

law corporate “veil piercing” claims may not be used to impose personal liability on a member or manager of a limited liability company. The bill nullifies the West Virginia Supreme Court of Appeals decision in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E. 2d 299 (2013).

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.