# CONTROLLING MORAL HAZARD IN LIMITED LIABILITY WITH THE CONSUMER SALES PRACTICES ACT

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*The few states that have passed the Model Consumer Sales Practices Act have common definitions and case law regarding the definition of a "supplier." This definition is broad enough to include managers of companies in limited liability entities in the states that have adopted the model act. The practicality is that business principals, owners, and managers can be held personally liable for deceptive practices under the state acts. But this is not a piercing of the corporate veil or of the limited-liability company. This Article is meant to accomplish four purposes: (1) exhibit the origins of the act, (2) show examples from three states that have adopted the model legislation in their interpretation of the term "supplier," (3) contrast the differences between a claim for piercing the entity veil as opposed to an action for supplier liability under state laws that have adopted the model legislation, and (4) examine the full effects in an economic framework regarding moral hazard.*



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## INTRODUCTION

The field of state consumer protection has been growing since the 1960s with the push of "Nader's Raiders," defective designs like the Chevrolet Corvair, and the ABA Commission reports coming from Richard Posner.[1] In response, every state has enacted, or tightened, its own version of consumer sales practices legislation. This marked the end of the *caveat emptor* business model and acknowledged that industry self-regulation was not working in the marketplace.[2] Like the authority given to the Federal Trade Commission by Congress, state legislatures passed consumer protection acts covering many areas in the marketplace from sales practices, debt-management, pawn broker activities, and telephone solicitations.[3] It is the consumer sales practices act that will be the focus of this article.

Consumer sales practices acts clarify whether specific business practices are legal, define what businesses can and cannot claim in their advertisements, and outline the legal remedies available when businesses break the law.[4] Most states have enacted their own organic legislation for consumer sales practices or rely on a close analogue in the Uniform Deceptive Trade Practices Act, but three states have adopted the consumer sales practices model legislation. In application of case precedent, any holding may be persuasive if on–point, but the case law from these three jurisdictions is especially apt and conducive to accomplishing the express purposes of all model legislation in the application of these rules across jurisdictions.

There is a common question in the application of how the consumer sales practices acts apply the definition of "supplier." As will be shown, the definition in the acts is very broad and has unique applications in each of the three states that have adopted the model legislation. The practicality is that business principals, owners, or managers can be held personally liable for deceptive practices under the state acts. This raises the question of whether these deceptive practices can pierce an entity's limited liability veil. It will be shown this is not the case. The legal actions are different by simple fact that one is statutory and the other a common law claim, and one is the express action of a legislature while the other is brought in equity.

Thus, this Article is meant to accomplish four purposes: (1) exhibit the origins of the act, (2) show how the three states that have adopted the model legislation have interpreted the term 'supplier,' (3) contrast the differences between a piercing of the entity's limited liability veil claim against supplier liability under state laws that have adopted the model legislation, and (4) apply economic theory from Kenneth Arrow's framework of moral hazard. The consumer sales practices

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[1] Henry N. Butler & Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts?*, 63 FLA. L. REV. 163, 167 (2011).

[2] *See* Robert S. Tongren & Margaret Ann Samuels, *The Development of Consumer Protection Activities in the Ohio Attorney General's Office*, 37 OHIO ST. L.J. 581, 583 (1976).

[3] For instance, the Utah Division of Consumer Protection administers and enforces over twenty separate state consumer protection acts as of 2023. UTAH CODE ANN. § 13-2-1(2) (West 2023).

[4] *See Ohio Consumer Law Overview*, OHIO ATTORNEY GENERAL, https://www.ohioattorneygeneral.gov/Business/Services-for-Business/Business-Guide/Ohio-Consumer-Law-Overview [https://perma.cc/59CH-9C7U] (last visited Jan. 9, 2021).

acts are not the only family of state consumer protection acts to hold disreputable company managers accountable, and this Article is but one example.

## I. THE MODEL ACT

The Uniform Consumer Sales Practices Act ("Model Act") traces back to 1970 with the National Conference of Commissioners on Uniform State Laws.[5] A form of the Model Act was adopted in three states: Kansas in 1973, Utah in 1973, and Ohio in 1972.[6] The Model Act has overlap with the Federal Trade Commission Acts as well as the Uniform Commercial Code and the Uniform Deceptive Trade Practices Act.[7] The Model Act had nineteen sections with section commentary covering basic definitions, enforcement, rule–making, and private remedies to recover actual damages as well as class actions. The goals and purposes of the Model Act were to clarify consumer sales practices, protect consumers from deceptive suppliers, promote fair trade practices, create a workable state version of the Federal Trade Commission decisions and rules, and make uniform the consumer sales laws among the states that adopt the Model Act.[8] It is the second goal mentioned at § 1(2) regarding the purpose of the Model Act protecting consumers from the deceptive acts of suppliers that is of most interest.

A supplier is defined in § 2(5) as "a seller, lessor, assignor, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer."[9] The commentary mentions that "[i]n addition to manufacturers, wholesalers, and dealers, debt collection agencies and advertising agencies fall within this definition."[10] This definition is very broad and loops in parties to lease agreements in addition to traditional sales transactions. But the commentary to § 2(5) also mentions that § 14 defines some boundaries to the application of the act.[11]

Section 14(a) of the Model Act defines the boundaries of application to any practice allowed under federal or state law, the publication or broadcast of information that is done in conformance with the Model Act, wrongful death or product liability claims arising out of a consumer transaction under the Model Act, or the

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5 UNIF. CONSUMER SALES PRACS. ACT (UNIF. L. COMM'N 1970).

6 *Id.* (Kansas Consumer Protection Act, ch. 217, 1973 Kan. Sess. Laws 804 (1973) (codified as amended at KAN. STAT. ANN. § 50-624 (West 2022)); Utah Consumer Sales Practices Act, ch. 188, 1973 Utah Laws 562 (1973) (codified as amended at UTAH CODE ANN. § 13-11-1 (West 2022)); Ohio Consumer Sales Practices Act, 1972 Ohio Laws 134 (1972) (codified as amended at OHIO REV. CODE ANN. § 1345.01 (West 2023))).

7 The Uniform Consumer Sales Practices Act defines practices that are deceptive under § 2(a)(5) of the Uniform Deceptive Trade Practice Act. UNIF. CONSUMER SALES PRACS. ACT § 3(b)(1) (UNIF. L. COMM'N 1970).

8 *Id.* § 1; *see also* Federal Trade Commission Act, ch. 311, 38 Stat. 717 (1914) (codified as amended in 15 U.S.C. §§ 41–58).

9 *Id.* § 2(5).

10 *Id.* § 2 cmt. 5.

11 *Id.* § 14. However, the limitation of application is not part of the Utah act. *See* § 13-11-1.

terms of credit that would be under the Model Act.[12] In § 14(b), the burden of establishing an exemption from the Model Act is on the supplier.[13]

The Model Act is consumer friendly as illustrated by the broad definition of a supplier in § 2(5) and the onerous burden on the supplier to prove an exemption from the act in § 14. This may be the reason that it was not wholly adopted in the 1970s. However, the states that have enacted the supplier definition into their consumer protection statutes have created an isolated characteristic for business law for a handful of jurisdictions that can impose personal liability on individual company principals even with limited liability entity shields.

## II. THE STATE ADOPTIONS

The Model Act has only been formally adopted in Kansas, Utah, and Ohio,[14] but there has been a widespread adoption of consumer protection statutes in all states. Aligning well with the Model Act, at least four other states have adopted organic consumer protection statutes: Indiana,[15] Maryland,[16] Wisconsin,[17] and Washington.[18] These statutes mirror the interpretation of supplier liability in the formal adoption states.[19] This is not unknown as there was an obvious push in the 1960s and 1970s for state legislatures to adopt consumer protection measures that complemented the Federal Trade Commission's movement against deceptive practices.[20]

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[12] UNIF. CONSUMER SALES PRACS. ACT § 14(a).

[13] *Id.* § 14(b).

[14] "Utah, Ohio, and Kansas have consumer protection laws derived from the same Uniform Consumer Sales Practices Act." Brown v. Constantino, No. 2:09CV00357DAK, 2009 U.S. Dist. LEXIS 100552, at *5 (D. Utah Oct. 26, 2009).

[15] *See* IND. CODE ANN. § 24-5-0.5-2 (West 2022); *see also* Classic Car Ctr., Inc. v. Haire Mach. Corp., 580 N.E.2d 722, 723 (Ind. Ct. App. 1991), *superseded by statute,* Act of May 13, 1997, 1997 Ind. Acts 18, *as recognized in* Liberty Publ'g, Inc. v. Carter, 868 N.E.2d 1142, 1145 (Ind. Ct. App. 2007).

[16] *See* 2023 Md. Legis. Serv. § 13-101 (West) (note that Maryland uses the term "merchant" instead of supplier but the definitions are similar).

[17] "[M]any if not all of the other states adopted similar statutes patterned on a number of model laws such as the Unfair Trade Practices and Consumer Protection Law, the Uniform Deceptive Trade Practices Act and the Uniform Consumer Sales Practices Act." Uniek, Inc. v. Dollar Gen. Corp., 474 F. Supp. 2d 1034, 1037 (W.D. Wis. 2007).

[18] WASH. REV. CODE ANN. § 19.86.010 (West 2023) (Washington's Unfair Business Practices–Consumer Protection Statute defines "person" broadly enough to cover any business organization engaged in "commerce.").

[19] There are many other states that have modeled their own consumer protection acts after the Uniform Consumer Sales Practices Act such as: Indiana ("The Deceptive Consumer Sales Act borrows extensively from the Uniform Consumer Sales Practices Act." *Classic Car Ctr.*, 580 N.E.2d at 723; and Tennessee (*see* Sherwood v. Microsoft Corp., No. M2000-01850-COA-R9-CV, 2003 Tenn. App. LEXIS 539, at *110 (Tenn. Ct. App. July 31, 2003). However, states like Maine do not align with the Model Act. New Motor Vehicles Canadian Exp. Antitrust Litig., 350 F. Supp. 2d 160, 178 n.24 (D. Me. 2004) ("I do not look to the Uniform Consumer Sales Practices Act for guidance in interpreting the ADTPA because, although both statutes prohibit enumerated deceptive and unconscionable practices, the language of the two statutes differs considerably.").

[20] "State legislatures beginning in the early 1960s enacted broad new measures to compliment Federal Trade Commission prosecution of deceptive practices. Most laws were modeled after uniform model codes—the Uniform Trade Deceptive Practices Act (UTPA), the

The analysis of the statutory definitions and court application reveals the nuance to supplier liability in these states.

### *A. The Utah Consumer Sales Practices Act*[21]

Many Utah state court and federal court cases acknowledge that Utah's Consumer Sales Practices Act is derived from the Model Act.[22] The Utah Consumer Sales Practices Act (UCSPA) gives a definition for a supplier in line with the Model Act. "'Supplier' means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer."[23] It is broad enough to cover almost any actor conducting a commercial transaction, thus, putting all business under the UCSPA for the state of Utah.[24] Deceptive trade practices of a supplier are regulated under Utah Code § 13-11-4.[25]

Utah is unique among the other jurisdictions in that it has a state agency, the Utah Department of Commerce, with a Division of Consumer Protection given jurisdiction to administer and enforce the UCSPA among twenty–seven other consumer protection statutes.[26] This creates a Utah state version of the Federal Trade Commission complete with its own administrative law court for adjudications.[27]

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Uniform Consumer Sales Practices Act (USCSPA), and the Unfair Trade Practices and Consumer Protection Act (UTP–CPA). The broadest (followed by New York and four other states at the time) sweepingly barred all 'deceptive or unfair practices.' Robert E. Reyna, State Little FTC Acts and Unfair Methods of Competition, SB75 ALI–ABA 47 (1997) (describing evolution of Uniform Acts). Today, although they take varying forms, private rights of action exist in all states but Arkansas, Iowa, and North Dakota." Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc., 178 F. Supp. 2d 198, 239 (E.D.N.Y. 2001), *rev'd*, Empire Healthchoice, Inc. v. Philip Morris USA, Inc., 393 F.3d 312 (2d Cir. 2004).

[21] This analysis is a byproduct of work done at the Utah Department of Commerce with Bruce Dibb, retired ALJ; 1973 Bachelor of Science in Political Science from Brigham Young University; 1976 Juris Doctor from the J. Reuben Clark Law School, Brigham Young University.

[22] *See* Brown v. Constantino, No. 2:09CV00357DAK, 2009 U.S. Dist. LEXIS 100552, at *5 (D. Utah Oct. 26, 2009); Utah v. GAF Corp., 760 P.2d 310, 313 (Utah 1988); Naranjo v. Cherrington Firm, 285 F. Supp. 3d 1242, 1244 n.1 (D. Utah 2018); Carlie v. Morgan, 922 P.2d 1, 7 (Utah 1996) (Howe, J., concurring); Wade v. Jobe, 818 P.2d 1006, 1014 (Utah 1991), *superseded by statute*, Utah Fit Premises Act, 1990 Utah Laws 314, *as recognized in* Carlie, 922 P.2d at 6; Martinez v. Johnson, No. 2:11cv157-DN, 2013 U.S. Dist. LEXIS 35826, at *42 (D. Utah Mar. 14, 2013); Iadanza v. Mather, 820 F. Supp. 1371, 1379 (D. Utah 1993); and Miller v. Basic Rsch., L.L.C, 285 F.R.D. 647, 655 (D. Utah 2010); Copeland v. Albion Lab'ys, Inc., No. C15-585 MJP, 2015 U.S. Dist. LEXIS 154757, at *7 (W.D. Wash. Nov. 16, 2015).

[23] UTAH CODE ANN. § 13-11-3(6) (West 2022).

[24] The breadth also includes attorneys that work in debt collection. *See Brown*, No. 2:09CV00357DAK, 2009 U.S. Dist. LEXIS 100552, at *13 (D. Utah Oct. 26, 2009).

[25] UTAH CODE ANN. § 13-11-4 (West 2022).

[26] *Id.* §§ 13-2-1, 13-2-6.

[27] *Id.* §§ 13-2-6, 13-1-11 (using administrative law judges to conduct hearings for the department).

Although there is a private right of action under the UCSPA,[28] the bulk of the UCSPA cases are handled pursuant to administrative informal proceedings.[29] After an agency review procedure, judicial review is conducted in *de novo* hearings in a Utah District Court.[30]

A 1988 federal district court case, *Utah v. B & H Auto*,[31] dealt with a situation of a deceptive original supplier, an innocent middleman merchant, and an aggrieved consumer. The court stated the purpose of the UCSPA "is to be construed liberally 'to protect consumers from suppliers who commit deceptive and unconscionable sales practices.'"[32] Further, the court held that "[t]o interpret 'supplier' narrowly to include only those in privity with the consumer would defeat the clear purpose of the act, and could not have been intended by the Utah legislature."[33] While the deceptive supplier does not directly deal with the consumer, his actions significantly impact the later consumer transaction. Clearly it is the consumer who is victimized by the original supplier and is indirectly "engaging in" the later transaction between the middleman and the consumer. The UCSPA employs a broad definition of supplier to find liability along the chain of the transaction.

Thirty years after *B & H Auto*, a Utah district court confirmed the broad application of the term "supplier." It came on judicial review of an informal proceeding handled by a Utah Department of Commerce administrative law judge. In *Tub City L.L.C. v. Utah Division of Consumer Protection*, the principal member of an LLC was found personally liable for UCSPA violations of warranty misrepresentations and deceptive practices of the entity.[34] The district court agreed with the Utah Department of Commerce that under the Utah Code there is personal liability "whether or not he deals directly with the consumer."[35]

In the *Purdue Pharma* opioid agency action filed by the Utah Division of Consumer Protection in 2019, claims under the UCSPA for deceptive practices were brought against two individuals in the Sackler family, who were executive officers and directors of Purdue Pharma.[36] No allegation was made that these two individuals were engaged in any actual sales of opioids to consumers; however, the Division of Consumer Protection's citation alleged that these particular individuals were central to directing the deceptive sales practices related to the opioids sold by the Purdue entity and its affiliates. These individual respondents brought motions to dismiss, denying personal liability under the UCSPA. The motions to dismiss were extensively briefed on the issue of personal liability of principals of

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[28] *Id.* § 13-11-19 (providing a right of action for a consumer as under the UCSPA).

[29] "All adjudicative proceedings within the Division are designated as informal proceedings." UTAH ADMIN. CODE r. 152-6-1(A) (LexisNexis 2022). Any party to a proceeding may request that the action be converted from an informal proceeding to a formal proceeding under UTAH CODE ANN. § 63G-4-202(3) (West 2022). These requests to convert are liberally granted.

[30] UTAH CODE ANN. § 63G-4-402(1)(a) (West 2022).

[31] 701 F. Supp. 201 (D. Utah 1988).

[32] *Id.* at 204 (quoting UTAH CODE ANN. § 13-11-2 (West 2022)) (emphasizing that the UCSPA should be liberally construed).

[33] *Id.*

[34] Civ. No. 170902052 (Utah 3d. Jud. Dist. 2018).

[35] § 13-11-3(6); *see* Civ. No. 170902052.

[36] Order on Motion to Dismiss of Respondents, Purdue Pharma, Inc., CP-2019-005, (July 15, 2019).

a business engaged in alleged deceptive practices. The Order denying the motions to dismiss stated that

> [T]he Sackler Respondents are suppliers within the meaning of the statute, and clearly cannot be dismissed on this basis at the motion to dismiss stage of these proceedings [sic]. Whether defined as suppliers or merchants under the respective statutes in Utah, Ohio, Maryland, Washington or Wisconsin,[37] ample authority exists to hold officers and directors liable under the UCSPA or similar consumer protection statutes.[38]

A Utah Division of Consumer Protection administrative agency case made its way to *de novo* judicial review in the Utah Fifth District Court.[39] The matter concerned a filling station in a remote area of central Utah. The filling station employed mechanics that were paid on a commission basis. Customers from all over the country would stop to get gas and be confronted by service center mechanics recommending costly repairs. Much of the UCSPA was found to be violated at the agency level, and the Utah Fifth District Court also found that an individual, an officer of the respondent entity, was personally liable for the entity's violations of the UCSPA.[40] The district court decision was appealed to the Utah Court of Appeals, but the supplier issue was inadequately briefed and was not substantively reviewed.[41] The district court's review of supplier liability stands as the controlling precedent and affirmance of supplier liability in the state of Utah.

Utah applies a broad definition of the term supplier, as well as a liberal application of the UCSPA.

### *B. The Kansas Consumer Protection Act*

There are two Kansas state cases that acknowledge the origins of the Kansas Consumer Protection Act (KCPA) with the Model Act.[42] The KCPA keeps the Model Act's supplier definition with the inclusion of a Uniform Commercial Code concept of a person acting "in the ordinary course of business" to supplement the Model Act's definition.

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[37] Although the referenced states of Maryland, Washington and Wisconsin have not adopted the Model Act, each has adopted specialized consumer protection legislation that imposes statutory personal liability on principals or managers of businesses when the entities that they direct are engaged in deceptive practices. *See id.*

[38] *Id.* at 33, *see also id.* at 13–16 for further discussion.

[39] Heath v. Utah Div. of Consumer Prot., Nos. 170500129, 180500155 (Utah 5th Jud. Dist. 2018).

[40] *Id.* at 31, 33.

[41] Heath. v. Div. of Consumer Prot., 530 P.3d 170, 179 (Utah Ct. App. 2023).

[42] *See* Williamson v. Amrani, 152 P.3d 60, 69 (Kan. 2007), *superseded by statute*, Act of May 11, 2007, 2007 Kan. Sess. Laws 194, *as recognized in* Kelly v. VinZant, 197 P.3d 803 (Kan. 2008); *see also* State *ex rel.* Miller v. Midwest Serv. Bureau of Topeka, Inc., 623 P.2d 1343, 1348 (Kan. 1981).

> "Supplier" means a manufacturer, distributor, dealer, seller, lessor, assignor, or other person who, in the ordinary course of business, solicits, engages in or enforces consumer transactions, whether or not dealing directly with the consumer.[43]

Again, this definition is broad and covers all conceivable consumer transactions. Deceptive trade practices by a supplier are broadly covered under Kansas Statutes Annotated § 50-626.[44] The Attorney General of Kansas has the power to enforce the KCPA,[45] though there are also private remedies available under the act.[46]

Personal supplier liability may be found for principals of a company under the KCPA. In *Kahn v. Denison State Bank*,[47] a buyer gave a mortgage to a bank for what the consumer thought was one home. The bank actually took a mortgage on another home the consumer owned without her notice or approval. The consumer sued the bank and the vice president of the bank for common law fraud as well as deceptive acts of a supplier under the KCPA. The Kansas Appellate Court found that there was sufficient legal justification for the action against the bank vice president to survive a motion to dismiss.[48]

The case law for a supplier definition is expansive to include the solicitation of consumer transactions. In *Alexander v. Certified Master Builders Corp.*, a trade agency that informed or accommodated its members in a transaction was a supplier for promoting the industry, distributing brochures, and advertising its programs in newspapers.[49] In *Cooper v. Zimmer Holdings, Inc.*, the court found supplier liability for soliciting medical implants.[50]

In *Watkins v. Roach Cadillac, Inc.*,[51] an auto leasing company was found to be a supplier and lessees were considered consumers under KCPA.

A hog seller was considered a supplier under the KCPA in *Musil v. Hendrich*.[52] The argument that agricultural products were exempt under the act was not persuasive.[53]

In *Hayes v. Find Track Locate, Inc.*, a property tracking and locating company was found to be a supplier under the KCPA, likely due to the nature of its business in debt collection.[54]

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43 KAN. STAT. ANN. § 50-624(l) (West 2022); U.C.C. § 2-201(3)(a) (AM. L. INST. & UNIF. L. COMM'N 1977).

44 KAN. STAT. ANN. § 50-626 (West 2022).

45 KAN. STAT. ANN. § 50-628 (West 2022).

46 KAN. STAT. ANN. § 50-634 (West 2022).

47 Kahn v. Denison State Bank, No. 113,248, 2016 WL 687728 (Kan. Ct. App. 2016).

48 *Id.* at *1–3, 8.

49 1 P.3d 899, 909 (Kan. 2000).

50 320 F. Supp. 2d 1154, 1163 (D. Kan. 2004).

51 637 P.2d 458, 462–63 (Kan. Ct. App. 1981).

52 627 P.2d 367, 371 (Kan. Ct. App. 1981).

53 *Id.* at 371–74.

54 60 F. Supp. 3d 1144, 1153 (D. Kan. 2014); *see also* State *ex rel.* Miller v. Midwest Serv. Bureau of Topeka, Inc., 623 P.2d 1343, 1348 (Kan. 1981).

Privity is not required under the KCPA.[55] The *Lynd v. Brickie* court found that the KCPA is to be construed liberally to promote certain public policies, including the protection of consumers from deceptive and unconscionable practices.[56]

One clear exemption is that banks, trust companies, and lending institutions are exempt from the KCPA.[57] "The plain text of the KCPA states that [these entities] are not included in the definition of supplier if the [entity] is subject to state or federal regulation related to disposition of repossessed collateral."[58]

Kansas and its KCPA have a broad application of the 'supplier' definition, having interesting exemptions for certain banking transactions. Kansas state precedent also supplies agricultural applications of the Consumer Sales Practices Act that are not found in Utah or Ohio case precedent.

### *C. The Ohio Consumer Sales Practices Act*

Ohio has a relatively large body of case law in comparison to Utah and Kansas. There are many Ohio state decisions and federal Sixth Circuit cases that affirm that the Ohio Consumer Protection Act (OCSPA) follows the Model Act.[59] The OCSPA provides,

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[55] "The court finds that nothing in the Kansas Consumer Protection Act requires privity of contract as a basis for liability as a supplier under the Act." Lynd v. Brickie, No. 89-4193-S, 1990 U.S. Dist. LEXIS 16509, at *6 (D. Kan. 1990).

[56] *Id.* at *6–7.

[57] Cmty. First Nat'l Bank v. Nichols, 443 P.3d 322, 330 (Kan. Ct. App. 2019) ("[The counterplaintiffs] assert that this court has already 'disposed of the blanket exemption argument by examining the facts at issue, and [held] banks *are* suppliers under the KCPA, except in cases dealing with the disposition of repossessed collateral.'") (internal quotations omitted); *see also In re* Larkin, 553 B.R. 428, 442 (Bankr. D. Kan. 2016).

[58] *Cmty. First Nat'l Bank*, 443 P.3d at 331.

[59] There are thirty-four Ohio cases that acknowledge the origins of the OCSPA with the Model Act: Frank v. WNB Grp., L.L.C., 135 N.E.3d 1142, 1145 (Ohio Ct. App. 2019); Taylor v. First Resol. Inv. Corp., 72 N.E.3d 573, 601 (Ohio 2016); Powers v. Green Tree Servicing, L.L.C., No. 102753, 2015 WL 4987744, at *4 (Ohio Ct. App. Aug. 20, 2015); Sterling Constr., Inc. v. Alkire, No. CA2013-08-028, 2014-Ohio-2897, at *4 (Ohio Ct. App. June 30, 2014) (Bloomberg Law); OneWest Bank v. Ruth, No. CV 2012-07-4287, 2014 Ohio Misc. LEXIS 2, at *30 (Ohio Ct. Com. Pl. Feb. 6, 2014); Anderson v. Barclay's Capital Real Est., Inc., 989 N.E. 2d. 997, 1001 (Ohio 2013); Ferron v. Echostar Satellite, L.L.C., 727 F. Supp. 2d 647, 649 (S.D. Ohio 2009), *aff'd*, 410 F. App'x 903, 907 (6th Cir. 2010); Shumaker v. Hamilton Chevrolet, Inc., 920 N.E.2d 1023, 1030 (Ohio Ct. App. 2009); Culbreath v. Golding Enters., 872 N.E.2d 284, 290 (Ohio 2007), *reconsideration denied*, 903 N.E.2d 327 (Ohio 2009); Burdge v. Kerasotes Showplace Theatres, L.L.C., No. CA2006-02-023, 2006 WL 2535762, at *5 (Ohio Ct. App. Sept. 5, 2006), *cert. denied*, 861 N.E.2d 144 (Ohio 2007); Marrone v. Philip Morris USA, Inc., 850 N.E.2d 31, 38 (Ohio 2006) (Grady, J., concurring); Ferron & Assoc., LPA v. U.S. Four, Inc., No. 05AP-659, 2005 WL 3550760, at *4 (Ohio Ct. App. Dec. 29, 2005); Eagle v. Fred Martin Motor Co., 809 N.E.2d 1161, 1169 (Ohio Ct. App. 2004); Johnson v. Microsoft Corp., 802 N.E.2d 712, 721 (Ohio Ct. App. 2003); Yo-Can, Inc. v. Yogurt Exch., Inc., 778 N.E.2d 80, 84 (Ohio Ct. App. 2002); Ostrander v. Andrew, No. 19833, 2000 Ohio App. LEXIS 2290, at *2 (Ohio Ct. App. May 31, 2000); Rose v. Zaring Homes, Inc., 702 N.E.2d 952, 956 (Ohio Ct. App. 1997); Crye v. Smolak, 674 N.E.2d 779, 784 (Ohio Ct. App. 1996); Buddies, Inc. v. Fair, No. 62433, 1993 Ohio App. LEXIS 2386, at *9 (Ohio Ct. App. May 6, 1993); Keiber v. Spicer Constr. Co., 619 N.E.2d 1105, 1108 (Ohio Ct. App. 1993); Couto v. Gibson, Inc., No. 1475, 1992 Ohio App. LEXIS 756, at *12 (Ohio Ct. App. Feb. 26, 1992); State *ex rel.* Celebrezze v. Howard, 602 N.E.2d 665, 669 (Ohio Ct. App. 1991); Jackson v. Krieger Ford,

> "Supplier" means a seller, lessor, assignor, franchisor, or other person engaged in the business of effecting or soliciting consumer transactions, whether or not the person deals directly with the consumer. If the consumer transaction is in connection with a residential mortgage, "supplier" does not include an assignee or purchaser of the loan for value, except as otherwise provided in section 1345.091 of the Revised Code. For purposes of this division, in a consumer transaction in connection with a residential mortgage, "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.[60]

The state of Ohio adopted the Model Act, incorporating it into its Ohio Consumer Sales Practices Act (OCSPA), in 1973.[61] The impact of Ohio's supplier definition is expected given the relative size of the state and the number of reported cases.[62] The supplier definition contains language familiar to the Model Act's definition but there are significant additions, including a specific reference to certain transactions related to residential mortgages.[63] The OCSPA also specifically provides that a "seller" means a loan officer, mortgage broker, or nonbank mortgage lender.[64] A supplier's deceptive practices are prohibited under Ohio code.[65] The Ohio Attorney General's office is given power to bring actions,[66] enforcing the OCSPA, and there is also a means for private remedies.[67]

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Inc., No. 88AP-1030, 1989 Ohio App. LEXIS 1201, at *9 (Ohio Ct. App. Mar. 28, 1989); Heritage Hills, Ltd. v. Deacon, No. 1423, 1988 Ohio App. LEXIS 2946, at *9 (Ohio Ct. App. July 22, 1988), *aff'd*, 551 N.E.2d 125 (Ohio 1990); Renner v. Procter & Gamble Co., 561 N.E.2d 959, 965 (Ohio Ct. App. 1988); Bierlein v. Bernie's Motor Sales, No. 9590, 1986 Ohio App. LEXIS 7181, at *6 (Ohio Ct. App. June 12, 1986); Peterman v. Waite, No. 79-CA-19, 1980 WL 131229, at *3 (Ohio Ct. App. June 25, 1980); Pomianowski v. Merle Norman Cosms., Inc., 507 F. Supp. 435, 438 (S.D. Ohio 1980); Thomas v. Sun Furniture & Appliance Co., 399 N.E.2d 567, 569 (Ohio Ct. App. 1978); Toledo Metro Fed. Credit Union v. Ted Papenhagen Oldsmobile, Inc., 381 N.E.2d 1337, 1339 (Ohio Ct. App. 1978); Potter v. Dangler Mobile Homes, 401 N.E.2d 956, 958 (Ohio Ct. Com. Pl. 1977); Weaver v. J.C. Penney Co., 372 N.E.2d 633, 634 (Ohio. Ct. App. 1977); Santiago v. S.S. Kresge Co., No. 948069, 1976 Ohio Misc. LEXIS 64, at *3–4 (Ohio Ct. Com. Pl. Mar. 2, 1976); Clayton v. McCary, 426 F. Supp. 248, 261 (N.D. Ohio 1976).

60 OHIO REV. CODE ANN. § 1345.01(C) (West 2023).

61 Ohio Consumer Sales Practices Act, 1972 Ohio Laws 134 (1972) (codified as amended at OHIO REV. CODE ANN. § 1345.01 (West 2023))).

62 Ohio is the seventh largest state by population with a 2022 US Census estimate of 11,756,058. *Quick Facts: Ohio*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/OH [https://perma.cc/4RG7-38Y6] (last visited Oct. 18, 2023).

63 *See* Todd V. McMurtry, *Is Home Construction a Consumer Transaction Under Kentucky's Consumer Protection Act?*, 24 N. KY. L. REV. 309, 312 ("The general statutory notes of the Uniform Consumer Sales Practices Act indicate that Ohio substantially adopted the major provisions of the Uniform Act with numerous variations, omissions and additions. It is important to note that the Uniform Act does not specifically exclude causes of action arising from residential construction disputes.").

64 OHIO REV. CODE ANN. § 1345.01(C) (West 2023).

65 *Id.* § 1345.02

66 *Id.* § 1345.07.

67 *Id.* § 1345.09(A).

In terms of personal liability for a principal, in *Garber v. STS Concrete Co.*, personal liability was found for both an entity and its owner as suppliers under the OCSPA.[68] The *Garber* court stated that

> [I]ndividuals can be held to answer for the actions of the company. Violations of the CSPA offer such a context. Where officers or shareholders of a company take part or direct the actions of others that constitute a violation of the CSPA, that person may be held individually liable.[69]

In addition to this characteristic, Ohio has unique applications of the supplier definition that none of the other states have. An assignee of an installment contract who provided financing for the supplier is not subject to OCSPA under the supplier definition.[70] A credit card company is not a supplier since a credit card company fits into the definition of a "financial institution,"[71] but a "collection agency" is included under the act.[72] Insurers may not be liable as suppliers for telemarketing if they have an indirect effect on a consumer transaction where an agent is acting without direction.[73]

Privity of contract is not required for supplier liability but there must be a substantive connection.[74] Substantive connection was defined in *Lester v. Wow Car Co.* where the court found that a passive, posted web advertisement could not sustain an OCSPA claim if the events were not 'in connection' with the consumer transaction. [75] "Under the express provisions of the OSCPA, a violative act must be done 'in connection with' the consumer transaction at issue."[76] Further, a car dealership may be a supplier, but a car manufacturer is not under the OCSPA due to the lack of a substantive connection with a consumer.[77]

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[68] 991 N.E.2d 1225 (Ohio Ct. App. 2013).

[69] *Id.* at 1233.

[70] Jenkins v. Hyundai Motor Fin. Co., 389 F. Supp. 2d 961, 970 (S.D. Ohio 2005).

[71] *See* Lewis v. ACB Bus. Servs., 135 F.3d 389, 412 (6th Cir. 1998) (". . . the OCSPA specifically excludes 'financial institutions' and 'dealers in intangibles.' (quoting Ohio Rev. Code § 1345.01(A))).

[72] Celebrezze v. United Rsch., Inc., 482 N.E.2d 1260, 1262 (Ohio Ct. App. 1984) ("Rather, we hold that Universal is a person engaged in the business of effecting consumer transactions (*i.e.*, payment) and, as such, is a supplier pursuant to R.C. 1345.01(C)."); *see also* Liggins v. May Co., 337 N.E.2d 816, 818 (Ohio Ct. Com. Pl. 1975).

[73] Charvat v. Farmers Ins. Columbus, Inc., 897 N.E.2d 167, 178 (Ohio Ct. App. 2008).

[74] "[T]he defendant must have some connection to the consumer transaction in question in order to be liable as a supplier for deceptive practices which violate the Ohio Consumer Sales Practices Act." Garner v. Borcherding Buick, Inc., 616 N.E.2d 283, 285 (Ohio Ct. App. 1992).

[75] No. 2:11-cv-850, 2014 U.S. Dist. LEXIS 77567, at *25 (June 6, 2014), *aff'd*, 601 F. App'x 399 (6th Cir. 2015).

[76] *Id. See also* OHIO REV. CODE ANN. § 1345.02(A) (West 2023) which provides "[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction." The Kansas statute has nearly identical language. *See* KAN. STAT. ANN. § 50-626(a) (West 2022). However, the Kansas cases have not focused on the "in connection" language. The Utah statute does not include similar language.

[77] Michelson v. Volkswagen Aktiengesellschaft, 99 N.E.3d 475, 478 (Ohio Ct. App. 2018) ("Although there is no requirement of privity between the supplier and the consumer for the CSPA

The OCSPA requires that the supplier be engaged in the line of work continually.[78] In the 2020 case of *Sims v. Haghighi*, a mechanic that only did work on car warranties was not a supplier of auto repairs because the mechanic did not regularly engage in that type of business.[79] The mechanic asserted that he only did minor repairs and was not a full-time auto mechanic, thus falling outside of the definition.[80] This requirement of continuous and active engagement in the work of a supplier was also found in *Moore v. Florida Bank of Commerce.*

> Although no Ohio court has defined the level of business activity required for a finding that one is "engaged in the business of" effecting or soliciting consumer transactions, the Defendant urges and the Court agrees that the phrase implies more than one isolated sale, especially when that sale is not within the seller's usual course of business. The phrase "engaged in the business of" is commonly used in statutory schemes and has generally been held to connote continuous or regular activity, rather than a singular or isolated sale.[81]

In another case, a seller that sold no more than three vehicles per year was not deemed to be a supplier under the OCSPA.[82] By contrast, where there was a dispute over payment for renovations, the court found sufficient evidence that the contractor was a supplier based on it performing work on at least one other residential project.[83]

The OCSPA also applies outside of the state of Ohio if the supplier is in Ohio. In *TolTest, Inc. v. Nelson-Delk*, Petitioner, an Ohio corporation, had its

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to be applicable, 'the defendant must have some connection to the consumer transaction in question in order to be liable as a supplier for deceptive practices which violate the Ohio Consumer Sales Practices Act.' . . . [A] party must 'have some connection to a consumer transaction, beyond merely manufacturing a product, in order to be liable for a violation of the CSPA.'" (first quoting Garner v. Borcherding Buick, Inc., 616 N.E.2d 283, 285 (Ohio Ct. App. 1992); then quoting Hahn v. Doe, No. 94APE07-1024, 1995 Ohio App. LEXIS 1057, at *25 (Mar. 23, 1995))).

[78] There is no comparable case law in Kansas or Utah on this subject. The Ohio cases rely on the language in the statute "engaged in the business" to require continuous and regular activity in the business in question. OHIO REV. CODE ANN. § 1345.01(C) (West 2023). The Kansas statute employs the phrase "in the ordinary course of business . . . engages in . . . consumer transactions." KAN. STAT. ANN. § 50-624(l) (West 2023). The Utah statute uses the more compelling language of "regularly . . . engages in . . . consumer transactions." UTAH CODE ANN. § 13-11-3(6) (West 2023). The Kansas and Utah statutes have yet to be tested on this issue.

[79] No. 2018-P-0037, 2020 WL 1000068, at *3 (Ohio Ct. App. Mar. 2, 2020).

[80] *Id.*

[81] Moore v. Fla. Bank of Com., 654 F. Supp 38, 41 (S.D. Ohio 1986) (first quoting United States v. Tarr, 589 F.2d 55 (1st Cir.1978) (the words "to engage in the business of" strongly imply more than one isolated sale or transaction) (then quoting Fillippo v. S. Bonaccurso & Sons, Inc., 466 F.Supp. 1008 (E.D. Pa.1978) ("being engaged in an activity requires more than a single act or transaction or occasional participation"); (and then quoting UFITEC, S.A. v. Carter, 20 Cal.3d 238, 571 P.2d 990, 142 Cal. Rptr. 279 (1977) (the phrase "engaged in the business of" connotes a certain regularity of participation). *See also* Perrucci v. Whittington, 118 N.E.3d 311, 340–41, (Ohio Ct. App. 2018) directly quoting *Moore* in its similar reasoning.

[82] LaVeck v. Al's Mustang Stable, 598 N.E.2d 154, 156 (Ohio Ct. App. 1991).

[83] Baaron, Inc. v. Davidson, 44 N.E.3d 1062, 1066 (Ohio Ct. App. 2015).

principal place of business in Toledo, on the northern border near Michigan.[84] It performed renovations as part of insurance work for flooding for a home in Marshall, Michigan. A material breach occurred, and multiple claims and counter claims were filed in both states. The court held, "[t]he OCSPA applies to the actions of suppliers in Ohio, even if the ultimate subject of the transaction is located outside the state and even if the supplier itself is based outside the state."[85]

The OCSPA also applies to the case of professional schools.[86] A school was found to be a supplier of services and the student found to be a consumer in a consumer transaction as defined by the statute.[87]

Similar to Utah, attorney debt buyers are considered debt collectors and fall under the OCPSA.[88] Both the debt buyer and its attorneys solicited the debtor, so the court found that they were suppliers. There was no "financial institution" exemption for the attorneys because they contracted with and represented the debt buyer.[89]

Membership organizations may be suppliers under the OCSPA. In *Knoth v. Prime Time Marketing Management, Inc.*, an organization, which sold memberships to individuals to buy furniture, was liable as a supplier under the OCSPA, although its members ordered furniture from manufacturers.[90] It does not matter whether suppliers deal directly with consumers as the scope of the OCSPA includes operations like an organization that takes orders for goods from consumers and also accepts payment of the purchase price.[91]

## III. COMPARISON OF THE PIERCING OF THE ENTITY VEIL AND THE STATE ACTS

After the analysis of the states' statutes and case interpretation, the question arises as to whether this is a piercing of the entity veil. The quick answer is: no, this is not the same kind of liability that a principal would incur by simply being involved in management misfeasance; but it is very similar and may be confusing to those who do not appreciate the breadth of the Model Act.

Under the Revised Uniform Limited Liability Company Act and the Uniform Limited Liability Company Act, noncompliance with organizational formalities or requirements relating to company powers or management of a limited liability company is not grounds for imposing personal liability on the members or

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84 No. 3:03 CV 7315, 2008 U.S. Dist. LEXIS 32920 (N.D. Ohio Apr. 22, 2008).

85 *Id.* at *29–30 (quoting Detrick v. 84 Lumber Co., 2007 U.S. Dist. LEXIS 35517, at *14 (N.D. Ohio May 10, 2007)). *See also* Shorter v. Champion Home Builders Co., 776 F. Supp. 333, 339 (N.D. Ohio 1991); Arnold v. Volkswagen of Am., Inc., No. 2003 CA 102, 2005 Ohio App. LEXIS 1644, at *11 (Ohio Ct. App. Apr. 8, 2005); Brown v. Mkt. Dev., Inc., 322 N.E.2d 367, 369 (Ohio Ct. Com. Pl. 1974).

86 Krueck v. Youngstown State Univ., 131 N.E.3d 1030, 1034 (Ohio Ct. App. 2019).

87 *Id.*

88 Taylor v. First Resol. Inv. Corp., 72 N.E.3d 573, 577 (Ohio 2016).

89 *Id.* at 601; *see also* Kline v. Mortg. Elec. Registration Sys., Inc., No. 3:08cv408, 2010 WL 1267809, at *5 (S.D. Ohio Mar. 30, 2010) (holding that the financial-institution exemption in the OCSPA applies to national banks and not to subsidiaries of those banks).

90 No. 21431, 2006 WL 3114273, at *2 (Ohio Ct. App. 2006).

91 *Id.* at *3.

managers of the company.[92] Similarly, principals and shareholders are insulated from personal liability for corporate obligations under the Revised Model Business Corporation Act.[93]

Generally, the four factors for piercing the entity veil are: (1) fraud; (2) inadequate capitalization; (3) failure to observe company formalities; and (4) intermingling the business, finances of the company, and the owner to the point of indifference.[94] The actual cases of piercing of the entity veil are rare with a 2010 Wake Forest Law Review article finding a declining rate of 27.12% of cases resulting in principal liability.[95] Although there are no statistics for supplier personal liability under state acts, it is likely to be at a substantially higher rate.

In Utah, the law is similar: "[w]here a shareholder, officer, or director abuses the corporate form, and treats the legal entity as [the] alter ego, [the] law allows a creditor to pierce the veil" to allow claimants to go after the assets of an individual in the unusual circumstance in which the corporate entity is not really distinct from the individual.[96] This is usually applied to one–person operations.[97]

The context matters with the principal similarity being that some debtor–creditor relationship has occurred. The differences are stark when examined, as the legal analysis is different with actions under the Model Act. This brief analysis will show the similarities and differences if there is ever a question as to supplier liability being likened to a piercing claim.

### *A. Similar End Results*

In both a Consumer Sales Practices Act action and a piercing of the corporate veil, there has been some wrong that has happened in a business transaction or a deceptive sales practice under the act,[98] and an aggrieved party is seeking redress against the principal of the entity. If the business practice is deceptive under the act, then statutorily defined damages may be recovered.

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92 REVISED UNIF. LTD. LIAB. CO. ACT § 304(b) (UNIF. L. COMM'N 2013); UNIF. LTD. LIAB. CO. ACT § 303(b) (UNIF. L. COMM'N 1996); 51 AM. JUR. 2D *Limited Liability Companies* § 20 (2023).

93 REVISED MODEL BUS. CORP. ACT § 2.02(b)(4) (AM. BAR ASS'N, amended 2016).

94 *See* Gasstop Two, L.L.C. v. Seatwo, L.L.C., 225 P.3d 1072, 1077 (Wyo. 2010), *superseded by statute*, 2010 Wyoming Limited Liability Company Act, ch. 94, 2010 Wyo. Sess. Laws 429, *as recognized in* GreenHunter Energy, Inc. v. W. Ecosystems Tech., Inc., 337 P.3d 454 (Wyo. 2014). Wyoming was the first state to recognize limited liability companies in 1977. *See* Susan Pace Hamill, *The Story of LLCs: Combining the Best Features of a Flawed Business Tax Structure*, *in* BUSINESS TAX STORIES 295 (Found. Press 2005).

95 Richmond McPherson & Nader Raja, *Corporate Justice: An Empirical Study of Piercing Rates and Factors Courts Consider When Piercing the Corporate Veil*, 45 WAKE FOREST L. REV. 931, 943 (2010). "Even with its widespread use and existence, piercing the corporate veil has been 'disparaged as a confusing anomaly.' Others have pointed out that '"[p]iercing" seems to happen freakishly.' Application of the doctrine, '[l]ike lightning,' seems to be rare, severe, and unprincipled." *Id.* at 934 (first quoting Daniel J. Morrissey, *Piercing All the Veils: Applying an Established Doctrine to a New Business Order*, 32 J. CORP. L. 529, 542 (2007); and then quoting Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89, 89 (1985)).

96 M.J. v. Wisan, 371 P.3d 21, 35 (Utah 2016).

97 *See* Dockstader v. Walker, 510 P.2d 526, 528 (Utah 1973).

98 UNIF. CONSUMER SALES PRACS. ACT § 3 (UNIF. L. COMM'N 1970).

The thought is similar in seeking redress under pleading a piercing action in a district court. The factors are in common law, but if there was fraud in a business transaction, in addition to other factors, like under–capitalization and non–observance of structural formalities, then a piercing action may have a result similar to those under a CSPA.

The end result of personal liability and the context arising from business transactions are the end of the similarities. The legal analysis shows how different these actions are.

### *B. Differences in Legal Analysis*

The best argument for the difference is that one is an action under a statute and the other is a claim at common law. As has been expressed under the Model Act, a supplier means a seller, lessor, assignor, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.[99] Also, as has been shown, the three states that have adopted the Model Act have established a broad application of the supplier definition. That is the ultimate point: the legislatures in all three states have enacted their own versions of the Model Act with its broad definition of suppliers and sections on deceptive acts. This removes much of the haze of common law application that is baked–in with a piercing claim.

There is some room for varied interpretation, as Ohio has shown with its Attorney General's enforcement giving the richest set of case law.[100] This is contrasted with Utah, which has few reported cases in state courts of record,[101] but has shown it has a robust application in administrative agency law that can apply the statute with great dexterity.

## IV. CONTROLLING MORAL HAZARD IN LIMITED LIABILITY WITH STATE ACTS

Economic theory applies most aptly in business settings. The concept of moral hazard has its modern origins in the study of health care and insurance.[102] The basic idea is, for those who have health insurance—particularly cheap, comprehensive health insurance—there is less incentive for prognostic care, tests, or to exercise and eat right. It's the insurance that's causing the problem as stated in his article:

> The outbreak of fire in one's house or business may be largely uncontrollable by the individual, but the probability of fire is somewhat influenced by carelessness, and of course arson is a possibility, if an extreme one. Similarly, in medical policies the cost of medical care is not completely determined by the illness suffered by the

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99 UNIF. CONSUMER SALES PRACS. ACT § 2(5) (UNIF. L. COMM'N 1970).

100 *See supra* note 59 (listing thirty-four cases).

101 Utah identifies the Supreme Court, Courts of Appeals, District Courts, and Juvenile Courts as "courts of record." *See* UTAH CODE ANN. § 78A-1-101 (West 2023).

102 Kenneth J. Arrow, *Uncertainty and the Welfare Economics of Medical Care*, 53 AM. ECON. REV. 941, 961–63 (1963).

> individual but depends on the choice of a doctor and his willingness to use medical services. It is frequently observed that widespread medical insurance increases the demand for medical care. Coinsurance provisions have been introduced into many major medical policies to meet this contingency as well as the risk aversion of the insurance companies.[103]

The insurance framework from Kenneth Arrow is also seen in automotive insurance especially with corporate owned fleet vehicles and rental car companies.[104] It is comedy to not think about getting rental car insurance.[105]

Kenneth Arrow identified insurance as the issue. Limited liability entities have become this form of insurance. The company fails, the creditors can secure the business assets but not the personal assets of the entity managers. But there is a public policy issue when the entity uses deceptive tactics to fleece consumers with undisclosed fees, renege on warranties, refuse refunds, or use pressured, coercive tactics to achieve sales. The consumer sales practices acts used in the states that have adopted some form of the Model Act have worked to trim the moral hazard of entities. Again, it is not piercing the veil but holding the real managers and suppliers of the entities from engaging in deceptive practices liable. It also hedges against the possibility of a subsequent entity dissolution or bankruptcy stay. Moral hazard is controlled in these isolated instances.

## CONCLUSION

This topic holds such intrigue due to personal liability of principals of a company being anathema to the purpose of corporations and limited liability business organizations. However, the Model Act makes it clear that there is possible personal liability under state statutory law for those directing deceptive practices, even though the individuals implicated do not deal directly with the consumer.

This Article showed the origins of the Model Act with its common language and definitions that Utah, Kansas, and Ohio have adopted. This Article has shown how the three states that have adopted the model legislation have interpreted the term "supplier." And this Article has shown the contrast between a piercing of the veil claim and a supplier liability action under state laws that have adopted the model legislation.

There is a common application of state consumer sales practices acts regarding the definition of supplier. The definition in the acts is broad and has unique applications in each of the three states that have adopted the Model Act. Principals of businesses—including owners, and managers—can be personally liable for deceptive practices under the state acts. But this is not a piercing of the veil of an entity, it is statutory liability under the adopted acts. Moral hazard is

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103 *Id.* at 961.

104 *See generally* Wayne R. Dunham, *Moral Hazard and the Market for Used Automobiles*, 23 REV. OF INDUS. ORG. 65 (2003).

105 *Seinfeld: The Alternate Side* (NBC television broadcast Dec. 4, 1991) ("Yeah, you better give me the insurance, because I am gonna beat the hell out of this car.").

limited under the consumer sales practices acts and other state consumer protection legislation to effect balance to the good that limited liability entities offer.