

## 1 SENATE BILL NO. 458

2 INTRODUCED BY MCNUTT, FORRESTER, LASZLOFFY, SHEA, SPRAGUE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROTECTION FOR RATEPAYERS AND FOR THE  
5 SHAREHOLDERS OF INNOCENT THIRD-PARTY PURCHASERS FOR THE ERRORS OR OMISSIONS OF  
6 A PREDECESSOR UTILITY; ~~PROVIDING FOR SUCCESSOR LIABILITY WHERE THERE IS A CONTINUITY~~  
7 ~~OF SHAREHOLDERS OR OFFICERS AND DIRECTORS WITH A SUCCESSOR CORPORATION OR LIMITED~~  
8 ~~LIABILITY COMPANY THAT IS NOT AN ACQUIRING CORPORATION OR ENTITY UNDER A SALE,~~  
9 ~~REORGANIZATION, RESTRUCTURING, OR MERGER; AMENDING SECTIONS 35-1-817 AND 35-8-1203,~~  
10 ~~MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."~~  
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 NEW SECTION. **Section 1. Ratepayer and shareholder protection.** (1) Rates established pursuant  
15 to Title 69, chapter 3, part 3, may not allow for the recovery of any portion of a civil judgment in a lawsuit arising  
16 out of litigation brought by the shareholders of a predecessor in interest against:

- 17 (a) the predecessor in interest;  
18 (b) the officers or directors of a predecessor in interest;  
19 (c) the legal advisers or consultants to the predecessor in interest; or  
20 (d) any successor of the predecessor in interest, including a successor in interest.

21 (2) (a) Subject to subsection (3), an entity subject to regulation under Title 69, including the entity's  
22 subsidiaries and affiliates, may not be made a party to litigation brought by the shareholders of a predecessor  
23 in interest against:

- 24 (i) the predecessor in interest;  
25 (ii) the officers or directors of a predecessor in interest;  
26 (iii) the legal advisers or consultants to the predecessor in interest; or  
27 (iv) any successor of the predecessor in interest that is not a successor in interest.

28 (b) Except as provided in subsection (3), an entity subject to regulation under Title 69 may not be held  
29 liable for a civil judgment entered against:

- 30 (i) a predecessor in interest;

- 1 (ii) the officers or directors of a predecessor in interest;
- 2 (iii) the legal advisers or consultants to the predecessor in interest; or
- 3 (iv) any successor of the predecessor in interest that is not a successor in interest.
- 4 (3) Subsection (2) does not apply:
- 5 (a) to a successor in interest to ~~to~~ of a public utility regulated by the public service commission pursuant
- 6 to Title 69, chapter 3, on May 2, 1997, whose shareholders received stock as a result of the sale of a public
- 7 utility; or
- 8 (b) if the liabilities resulting from, related to, or arising out of a reorganization, restructuring, or plan of
- 9 merger were explicitly assumed by written contract to be the liabilities of the successor to the predecessor in
- 10 interest.
- 11 (4) For the purposes of this section:
- 12 (a) "predecessor in interest" means a public utility regulated by the commission pursuant to Title 69,
- 13 chapter 3, on May 2, 1997, in which an interest was purchased through an arm's-length transaction in which the
- 14 market value of the public utility property purchased was paid for in cash, debt assumption, or a combination
- 15 of cash and debt assumption; and
- 16 (b) "successor in interest" means the purchaser of all or a portion of a public utility regulated by the
- 17 commission pursuant to Title 69, chapter 3, on May 2, 1997, through an arm's-length transaction in which the
- 18 market value of the public utility property purchased was paid for in cash, debt assumption, or a combination
- 19 of cash and debt assumption.

20

21 ~~Section 2.~~ Section 35-1-817, MCA, is amended to read:

22 ~~"35-1-817. Effect of merger or share exchange. (1) When~~ Except as provided in subsection (3), when

23 ~~a merger takes effect:~~

24 ~~(a) every other corporation party to the merger merges into the surviving corporation and the separate~~

25 ~~existence of every corporation except the surviving corporation ceases;~~

26 ~~(b) the title to all real estate and other property owned by each corporation party to the merger is vested~~

27 ~~in the surviving corporation without reversion or impairment;~~

28 ~~(c) the surviving corporation has all liabilities of each corporation party to the merger;~~

29 ~~(d) a proceeding pending against any corporation party to the merger may be continued as if the merger~~

30 ~~did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose~~

1 ~~existence ceased;~~

2 ~~—— (e) the articles of incorporation of the surviving corporation are amended to the extent provided in the~~  
3 ~~plan of merger; and~~

4 ~~—— (f) the shares of each corporation party to the merger that are to be converted into shares, obligations,~~  
5 ~~or other securities of the surviving or any other corporation or into cash or other property are converted and the~~  
6 ~~former shareholders are entitled only to the rights provided in the articles of merger or to their rights under~~  
7 ~~35-1-826 through 35-1-839.~~

8 ~~—— (2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as~~  
9 ~~provided in the plan and the former shareholders are entitled only to the exchange rights provided in the articles~~  
10 ~~of share exchange or to their rights under 35-1-826 through 35-1-839.~~

11 ~~—— (3) (a) Except as provided in subsection (3)(b), the liabilities resulting from, related to, or arising out of~~  
12 ~~a reorganization, restructuring, or plan of merger become the sole liabilities of the corporation in which the~~  
13 ~~shareholders have an ownership interest after the reorganization, restructuring, or merger if:~~

14 ~~—— (i) as a result of a reorganization, restructuring, or plan of merger, the shareholders of the reorganizing,~~  
15 ~~restructuring, or merging corporation become shareholders of a corporation other than the surviving or acquiring~~  
16 ~~corporation; or~~

17 ~~—— (ii) a majority of the officers and directors of the reorganizing, restructuring, or merging corporation~~  
18 ~~become officers and directors of a corporation other than the surviving or acquiring corporation.~~

19 ~~—— (b) Subsection (3)(a) does not apply if the liabilities resulting from, related to, or arising out of a~~  
20 ~~reorganization, restructuring, or plan of merger are explicitly assumed by written contract as the liabilities of the~~  
21 ~~surviving corporation or the acquiring corporation."~~

22

23 ~~—— **Section 3.** Section 35-8-1203, MCA, is amended to read:~~

24 ~~—— **"35-8-1203. Effect of merger.** (1) When Except as provided in subsection (6), when a merger takes~~  
25 ~~effect:~~

26 ~~—— (a) the separate existence of each limited liability company and other entity that are a party to the~~  
27 ~~merger, other than the surviving entity, terminates;~~

28 ~~—— (b) all property owned by each of the limited liability companies and other entities that are a party to the~~  
29 ~~merger vests in the surviving entity;~~

30 ~~—— (c) all debts, liabilities, and other obligations of each limited liability company and other entity that are~~

- 1 a party to the merger become the obligations of the surviving entity;
- 2 ~~——— (d) an action or proceeding pending by or against a limited liability company or other entity that is a party~~  
3 ~~to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as~~  
4 ~~a party to the action or proceeding; and~~
- 5 ~~——— (e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of~~  
6 ~~every limited liability company and other entity that are a party to a merger vest in the surviving entity.~~
- 7 ~~——— (2) The secretary of state is an agent for service of process in an action or proceeding against a~~  
8 ~~surviving foreign entity to enforce an obligation of any party to the merger if the surviving foreign entity fails to~~  
9 ~~appoint or maintain an agent designated for service of process in this state or if the agent for service of process~~  
10 ~~cannot with reasonable diligence be found at the designated office. Upon receipt of process, the secretary of~~  
11 ~~state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the~~  
12 ~~address set forth in the articles of merger. Service is effected under this subsection at the earliest of:~~
- 13 ~~——— (a) the date on which the company receives the process, notice, or demand;~~  
14 ~~——— (b) the date shown on the return receipt, if signed on behalf of the company; or~~  
15 ~~——— (c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.~~
- 16 ~~——— (3) A member of the surviving limited liability company is liable for all obligations of a party to the merger~~  
17 ~~for which the member was personally liable before the merger.~~
- 18 ~~——— (4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in~~  
19 ~~the merger does not require the limited liability company to wind up its business under this chapter or to pay its~~  
20 ~~liabilities and distribute its assets pursuant to this chapter.~~
- 21 ~~——— (5) Articles of merger serve as articles of dissolution for a limited liability company that is not the~~  
22 ~~surviving entity in the merger.~~
- 23 ~~——— (6) (a) Except as provided in subsection (6)(b), the liabilities resulting from, related to, or arising out of~~  
24 ~~a sale, reorganization, restructuring, or plan of merger of a limited liability company become the sole liabilities~~  
25 ~~of the entity in which the members or shareholders have an ownership interest after the sale, reorganization,~~  
26 ~~restructuring, or merger if:~~
- 27 ~~——— (i) as a result of a sale, reorganization, restructuring, or plan of merger, the members or shareholders~~  
28 ~~of the selling, reorganizing, restructuring, or merging limited liability company become members or shareholders~~  
29 ~~of an entity other than the surviving or acquiring entity; or~~
- 30 ~~——— (ii) a majority of the officers and directors of the selling, reorganizing, restructuring, or merging limited~~

1 ~~liability company become officers and directors of an entity other than the surviving or acquiring entity.~~  
 2 ~~—— (b) Subsection (6)(a) does not apply if the liabilities resulting from, related to, or arising out of a sale,~~  
 3 ~~reorganization, restructuring, or plan of merger are explicitly assumed by written contract as the liabilities of the~~  
 4 ~~surviving entity or the acquiring entity."~~

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 6 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an  
 7 integral part of Title 69, chapter 8, part 2, and the provisions of Title 69, chapter 8, part 2, apply to [section 1].

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 9 **NEW SECTION. Section 3. Nonseverability.** It is the intent of the legislature that each part of [section  
 10 1] is essentially dependent upon every other part of [section 1], and if one part of [section 1] is held  
 11 unconstitutional or invalid, all other parts are invalid.

12  
 13 ~~—— **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are~~  
 14 ~~severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,~~  
 15 ~~the part remains in effect in all valid applications that are severable from the invalid applications.~~

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 17 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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 19 **NEW SECTION. Section 5. Retroactive applicability.** [This act] applies retroactively, within the  
 20 meaning of 1-2-109, to cases filed but in which a judgment has not been entered on [the effective date of this  
 21 act].

22 - END -