

SENATE BILL NO. 458
INTRODUCED BY W. MCNUTT

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

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

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

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

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

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

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

- (i) a predecessor in interest;
- (ii) the officers or directors of a predecessor in interest;

(iii) the legal advisers or consultants to the predecessor in interest; or

(iv) any successor of the predecessor in interest that is not a successor in interest.

(3) Subsection (2) does not apply:

(a) to a successor in interest to a public utility regulated by the public service commission pursuant to Title 69, chapter 3, on May 2, 1997, whose shareholders received stock as a result of the sale of a public utility; or

(b) if the liabilities resulting from, related to, or arising out of a reorganization, restructuring, or plan of merger were explicitly assumed by written contract to be the liabilities of the successor to the predecessor in interest.

(4) For the purposes of this section:

(a) "predecessor in interest" means a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, in which an interest was purchased through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption; and

(b) "successor in interest" means the purchaser of all or a portion of a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, through an arm's-length transaction in which the market value of the public utility property purchased was paid for in cash, debt assumption, or a combination of cash and debt assumption.

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

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

(a) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

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

(d) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) the articles of incorporation of the surviving corporation are amended to the extent provided in the

plan of merger; and

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

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

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

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

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

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

Section 3. Section 35-8-1203, MCA, is amended to read:

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

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

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

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a

party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (a) the date on which the company receives the process, notice, or demand;
- (b) the date shown on the return receipt, if signed on behalf of the company; or
- (c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

(6) (a) Except as provided in subsection (6)(b), the liabilities resulting from, related to, or arising out of a sale, reorganization, restructuring, or plan of merger of a limited liability company become the sole liabilities of the entity in which the members or shareholders have an ownership interest after the sale, reorganization, restructuring, or merger if:

(i) as a result of a sale, reorganization, restructuring, or plan of merger, the members or shareholders of the selling, reorganizing, restructuring, or merging limited liability company become members or shareholders of an entity other than the surviving or acquiring entity; or

(ii) a majority of the officers and directors of the selling, reorganizing, restructuring, or merging limited liability company become officers and directors of an entity other than the surviving or acquiring entity.

(b) Subsection (6)(a) does not apply if the liabilities resulting from, related to, or arising out of a sale, reorganization, restructuring, or plan of merger are explicitly assumed by written contract as the liabilities of the surviving entity or the acquiring entity."

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 69, chapter 8, part 2, and the provisions of Title 69, chapter 8, part 2, apply to [section 1].

NEW SECTION. **Section 5. Nonseverability.** It is the intent of the legislature that each part of [section 1] is essentially dependent upon every other part of [section 1], and if one part of [section 1] is held unconstitutional or invalid, all other parts are invalid.

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

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to cases filed but in which a judgment has not been entered on [the effective date of this act].

- END -

