

SENATE BILL NO. 483
INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE CORPORATE BAD ACTOR ACT; IMPLEMENTING ARTICLE XIII, SECTION 1, OF THE MONTANA CONSTITUTION; DEFINING TERMS; REQUIRING A LISTING OF NONCOMPLIANCE WITH STATE AND FEDERAL LAWS FOR CERTAIN PRIVATE SECTOR ENTITIES; ESTABLISHING A PENALTY FOR BAD ACTORS; PROHIBITING STATE OR POLITICAL SUBDIVISION CONTRACTS WITH OR AWARDS TO BAD ACTORS; PROHIBITING THE APPROVAL OF NEW PERMITS, LICENSES, OR CERTIFICATES FOR BAD ACTORS; ALLOWING DISSOLUTIONS OR REVOCATIONS OF CERTIFICATES OF AUTHORITY FOR PRIVATE SECTOR ENTITIES ON THE BAD ACTOR LIST; AMENDING SECTIONS 18-1-111, 35-1-938, 35-1-1038, 35-2-728, 35-6-102, 35-8-1011, 35-10-624, AND 35-12-1308, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as "The Corporate Bad Actor Act".

NEW SECTION. **Section 2. Purpose.** (1) The purpose of [sections 1 through 6] is to recognize and reward good corporate and private sector behavior by prohibiting public contracts with or awards to a private sector entity against which there have been repeated civil judgments, criminal convictions, or notices of violations for actions that have negatively impacted the health, safety, or welfare of the state, its political subdivisions, its citizens, or its environment.

(2) The further objective of [sections 1 through 6] is to provide protection for the people of this state against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations, as provided in Article XIII, section 1, of the Montana constitution.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Applicant" means a private sector entity that plans to do business with the state or its political subdivisions.

(2) "Bad actor" means:

(a) a private sector entity or its parent company or holding company, if any, that has accumulated three or more major violations in the preceding 10 years; or

(b) a private sector entity with subsidiaries that have accumulated collectively three or more major violations in the preceding 10 years.

(3) "Compliance history" is a record compiled by a private sector entity and sworn to or affirmed by an authorized agent of the private sector entity in which are listed:

(a) the applicant's name;

(b) the name of a parent corporation or holding company, if any;

(c) the name of each subsidiary entity;

(d) the names of the directors and officers of the applicant in the last 12-month period;

(e) other private sector entities on which the directors or officers listed in subsection (3)(d) serve as directors or officers;

(f) any name under which the private sector entity, its parent or holding company, if any, or any subsidiaries operate or have operated;

(g) all violations attributed to the applicant for the most recent 10-year period, excluding any violations before [the effective date of this act] and including the date of the violation notice and the applicable statute or federal law under which the violation was cited; and

(h) all major violations of the applicant's parent corporation or holding company, if any, or of any subsidiaries of the applicant, along with the date of the major violation notice and the applicable statute or federal law under which the major violation was cited, including all major violations for the most recent 10-year period, but excluding any major violations before [the effective date of this act].

(4) "Major violation" means a violation that involves:

(a) physical injury or death;

(b) intentional or malicious conduct; or

(c) fraudulent conduct or behavior.

(5) "Political subdivision" has the meaning provided in 2-16-602.

(6) "Private sector entity" means any entity registered with the secretary of state under Title 35 as a domestic or foreign for-profit or not-for-profit corporation, a limited liability company, a general partnership, or a limited liability partnership.

(7) (a) "Violation" includes:

(i) a violation of a state or federal law that is confirmed in any civil or criminal court proceeding; or
(ii) a violation of a state or federal regulation that results in any final notice of violation or administrative order for which a fine of more than \$1,000 is levied or a penalty of more than \$1,000 is assessed.

(b) For the purposes of [sections 1 through 6], multiple violations arising from a single event equal one violation, and violations before [the effective date of this act] may not be counted.

NEW SECTION. Section 4. Compliance history -- filing -- contents -- penalty. (1) (a) A private sector entity shall file a compliance history with the secretary of state at the same time that the private sector entity:

(i) submits a bid with a total contract value in excess of \$100,000 on a contract with the state or a political subdivision;

(ii) submits a proposal with a total contract value in excess of \$100,000 in response to a request for proposals solicited by the state or a political subdivision; or

(iii) seeks a permit, license, or certificate from the state under Title 75, chapters 2, 5, 10, or 20, or under Title 82, chapter 4.

(b) The information in the compliance history must be current and complete as of the date of the first filing made each year pursuant to subsection (1)(a).

(2) A compliance history is an official document in the class of public writings provided for in 2-6-101 and may be included in the electronic filing system provided for in 2-15-404.

(3) A private sector entity that knowingly omits or falsely represents its record of violations in its compliance history filed with the secretary of state is liable under 45-7-202 for each filing in which the information is omitted or misrepresented.

NEW SECTION. Section 5. Bad actors -- review -- notification -- investigation -- listing. (1) The secretary of state shall file each compliance history and, after review, report to the attorney general the name of any private sector entity or its parent or holding company, if any, that has three or more major violations within the preceding 10 years. If the review indicates that the sum of major violations from all subsidiaries of a private sector entity equals three or more violations within the preceding 10 years, the secretary of state shall report the name of the private sector entity to the attorney general.

(2) Any state or political subdivision may review a private sector entity's compliance history and notify the secretary of state and the attorney general of potential errors of omission or misrepresentation.

(3) (a) Any citizen may review a private sector entity's compliance history and notify the secretary of state

and the attorney general of potential errors of omission or misrepresentation.

(b) Any citizen may notify and provide information to the attorney general indicating that a private sector entity or its parent or holding company, if any, is a potential bad actor.

(4) Failure to notify the attorney general under subsections (1) and (2) may not result in a mandamus action.

(5) (a) The attorney general shall research reports or notifications received pursuant to this section to verify the date of the violation and whether the violations qualify as major violations.

(b) The attorney general shall maintain a data base of major violations after investigating reports from the compliance history and notifications received pursuant to subsections (2) and (3).

(c) Failure by the attorney general to investigate pursuant to notifications made under subsections (2) and (3) may result in a mandamus action against the attorney general.

(6) (a) The attorney general shall maintain a bad actor list compiled from the data base of major violations and shall make the list available to the public. The bad actor list must contain:

(i) the name of any private sector entity that has had three or more major violations in a 10-year period or whose subsidiaries have collectively had three or more major violations in a 10-year period;

(ii) the name of the parent or holding company of a private sector entity if the parent or holding company has had three or more major violations in a 10-year period; and

(iii) the date of each major violation and the applicable statute or federal law under which the violation was cited for each entity described in subsection (6)(a)(i) and (6)(a)(ii).

(b) A bad actor must be removed from the list if it has not had new major violations after 10 years.

NEW SECTION. Section 6. Bad actor penalty. (1) The state or a political subdivision may not enter into a contract with, award a bid to, or approve any new permit, license, or certificate for an applicant on the bad actor list provided for in [section 5].

(2) A multiyear contract awarded by a state or a political subdivision must be canceled at the earliest annual anniversary of its signing if the contractor is added to the bad actor list. Cancellation of a contract under this subsection is not a breach of contract or an unfair trade practice.

Section 7. Section 18-1-111, MCA, is amended to read:

"18-1-111. Impartiality to be shown in letting contracts -- exceptions. (1) The department may not show any partiality or favoritism not provided for by law in making awards or contracts.

(2) The department may not make an award or enter into a contract with an applicant that is on the bad actor list provided for in [section 5]."

Section 8. Section 35-1-938, MCA, is amended to read:

"35-1-938. Grounds for judicial dissolution. The district court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

- (a) the corporation obtained its articles of incorporation through fraud; ~~or~~
- (b) the corporation has continued to exceed or abuse the authority conferred upon it by law; or
- (c) the corporation is a Montana corporation on the bad actor list provided for in [section 5];

(2) in a proceeding by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) the corporate assets are being misapplied or wasted;

(3) in a proceeding by a creditor if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision."

Section 9. Section 35-1-1038, MCA, is amended to read:

"35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent or registered office in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state under 35-1-1033 or 35-1-1036 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing;

(6) the foreign corporation is on the bad actor list provided for in [section 5]; or

~~(6)~~(7) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger."

Section 10. Section 35-2-728, MCA, is amended to read:

"35-2-728. Grounds for judicial dissolution. (1) The district court may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted;

(iv) the corporation is a Montana corporation on the bad actor list provided for in [section 5]; or

~~(iv)~~(v) the corporation is a public benefit corporation and is no longer able to carry out its purposes;

(b) in a proceeding by 50 members or members holding 5% of the voting power, whichever is less, or by a director or any person specified in the articles, except as provided in the articles or bylaws of a religious corporation, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to breach the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have or would otherwise have expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a public benefit corporation or religious corporation and is no longer able to carry out its purposes;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether:

(a) there are reasonable alternatives to dissolution;

(b) dissolution is in the public interest, if the corporation is a public benefit corporation; and

(c) dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation."

Section 11. Section 35-6-102, MCA, is amended to read:

"35-6-102. Involuntary dissolution -- grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and ~~such~~ the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused ~~such~~ the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state;

(e) the corporation is a Montana corporation on the bad actor list provided for in [section 5]; or

~~(e)(f)~~ the corporation has failed for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of ~~such~~ the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) ~~of this section~~, the secretary of state may ~~se~~ dissolve order a dissolution only when such fact is established by an order of the a district court establishes the facts required in subsection (1)(b) or (1)(c). In addition to other persons ~~se~~ authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 12. Section 35-8-1011, MCA, is amended to read:

"35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state under 35-8-105 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance;

(4) the attorney general lists the foreign limited liability company on the bad actor list pursuant to [section 5]; or

~~(4)(5)~~ the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger."

Section 13. Section 35-10-624, MCA, is amended to read:

"35-10-624. Events causing dissolution and winding up of partnership business. Except as provided in 35-10-625, a partnership is dissolved and its business must be wound up only upon:

(1) receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under 35-10-616(2) through (10), of that partner's express will to withdraw as a partner or upon any later date specified

in the notice;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a partner's wrongful dissociation under 35-10-617 or a partner's dissociation by death or otherwise under 35-10-616(6) through (10), receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;

(b) the express will of all the partners; or

(c) the expiration of the term or the completion of the undertaking unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) a judicial decree, issued upon application by a partner, that:

(a) the economic purpose of the partnership is likely to be unreasonably frustrated;

(b) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) a judicial decree, issued upon application by a transferee of a partner's transferable interest, that it is equitable to wind up the partnership business:

(a) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(b) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time; or

(7) a judicial decree based upon the partnership being listed on the bad actor list provided for in [section 5]."

Section 14. Section 35-12-1308, MCA, is amended to read:

"35-12-1308. Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of 35-12-1301 through 35-12-1307 or [sections 1 through 6]."

NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to [sections 1 through 6].

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2005.

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