



# SENATE BILL No. 1200

November 7, 1996, Introduced by Senator HOFFMAN and  
referred to the Committee on Financial Services.

A bill to amend sections 102, 104, 105, 106, 211, 217, 301,  
303, 305, 311, 315, 317, 401, 403, 405, 407, 503, 505, 507, 509,  
511, 601, 603, 709, 711, 713, 801, 807, and 813 of Act No. 89 of  
the Public Acts of 1986, entitled

"Michigan BIDCO act,"

being sections 487.1102, 487.1104, 487.1105, 487.1106, 487.1211,  
487.1217, 487.1301, 487.1303, 487.1305, 487.1311, 487.1315,  
487.1317, 487.1401, 487.1403, 487.1405, 487.1407, 487.1503,  
487.1505, 487.1507, 487.1509, 487.1511, 487.1601, 487.1603,  
487.1709, 487.1711, 487.1713, 487.1801, 487.1807, and 487.1813 of  
the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 102, 104, 105, 106, 211, 217, 301, 303,  
2 305, 311, 315, 317, 401, 403, 405, 407, 503, 505, 507, 509, 511,  
3 601, 603, 709, 711, 713, 801, 807, and 813 of Act No. 89 of the

1 Public Acts of 1986, being sections 487.1102, 487.1104, 487.1105,  
2 487.1106, 487.1211, 487.1217, 487.1301, 487.1303, 487.1305,  
3 487.1311, 487.1315, 487.1317, 487.1401, 487.1403, 487.1405,  
4 487.1407, 487.1503, 487.1505, 487.1507, 487.1509, 487.1511,  
5 487.1601, 487.1603, 487.1709, 487.1711, 487.1713, 487.1801,  
6 487.1807, and 487.1813 of the Michigan Compiled Laws, are amended  
7 to read as follows:

8       Sec. 102. The purposes of this act are ~~to do~~ all of the  
9 following:

10       (a) Promote economic development by encouraging the forma-  
11 tion of business and industrial development ~~corporations~~  
12 COMPANIES, a new type of private institution, AND to help meet  
13 the financing ~~assistance~~ and management assistance needs of  
14 business firms in this state.

15       (b) Provide for a system of licensing, regulation, and  
16 enforcement that will enable business and industrial development  
17 ~~corporations~~ COMPANIES to satisfy eligibility requirements to  
18 participate, if they so choose, in the program of the small busi-  
19 ness administration ~~pursuant to~~ UNDER section 7(a) of the small  
20 business act, Public Law 85-536, 15 U.S.C. ~~636(a)~~ 636, and  
21 other programs for which they may be eligible.

22       (c) Provide for a system of licensing, regulation, and  
23 enforcement designed to prevent fraud, conflict of interest, and  
24 mismanagement ~~—~~ and to promote competent management, accurate  
25 record keeping, and appropriate communication with ~~shareholders~~  
26 OWNERS; in order to provide BOTH OF the following:

1 (i) Comfort to prospective ~~shareholders~~ OWNERS so as to  
2 facilitate equity investments in business and industrial  
3 development ~~corporations~~ COMPANIES.

4 (ii) Comfort to prospective debt sources so as to facilitate  
5 the borrowing of money by business and industrial development  
6 ~~corporations~~ COMPANIES.

7 (d) Safeguard the general reputation of business and indus-  
8 trial development ~~corporations~~ COMPANIES as a type of institu-  
9 tion in order to increase the confidence of prospective equity  
10 investors in and prospective debt sources for those  
11 institutions.

12 (e) Eliminate unnecessary restrictions ~~which~~ THAT have  
13 discouraged the formation of business development corporations  
14 under FORMER Act No. 117 of the Public Acts of 1963, by repealing  
15 that act and substituting a more flexible regulatory framework.

16 Sec. 104. (1) "Affiliate" means, if used with respect to a  
17 specified person other than a natural person, a person control-  
18 ling or controlled by that specified person, or a person con-  
19 trolled by a person who also controls the specified person.

20 (2) "BIDCO" means a business and industrial development  
21 ~~corporation~~ COMPANY licensed under this act.

22 (3) "Business firm" means a person that transacts business  
23 on a regular and continual basis, or a person that proposes to  
24 transact business on a regular and continual basis.

25 (4) "Commissioner" means the commissioner of the financial  
26 institutions bureau of the department of ~~commerce~~ CONSUMER AND  
27 INDUSTRY SERVICES.

1 (5) "Control" means, if used with respect to a specified  
 2 person, the power to direct or cause the direction of, directly  
 3 or indirectly through 1 or more intermediaries, the management  
 4 and policies of that specified person, whether ~~through the~~  
 5 ~~ownership of voting securities,~~ by contract, other than a com-  
 6 mercial contract for goods or nonmanagement services, ~~—~~ or  
 7 otherwise. A natural person shall not be considered to control a  
 8 person solely on account of being a director, officer, MANAGER,  
 9 or employee of that person. A person who, directly or indirect-  
 10 ly, ~~owns of record or beneficially holds with power to vote, or~~  
 11 ~~holds proxies with discretionary authority to vote,~~ HAS THE  
 12 POWER TO VOTE OR DIRECT THE VOTING OF 20% or more of the ~~then~~  
 13 ~~outstanding voting securities issued by a corporation~~ TOTAL  
 14 OWNERSHIP VOTE, shall be rebuttably presumed to control that  
 15 ~~corporation~~ ENTITY.

16 (6) "Controlling person" means, if used with respect to a  
 17 specified person, a person who controls that specified person,  
 18 directly or indirectly through 1 or more intermediaries.

19 ~~(7) "Corporate name" means the name of a corporation as set~~  
 20 ~~forth in the articles of incorporation of that corporation.~~

21 Sec. 105. (1) "Incorporating statute" means ~~the act under~~  
 22 ~~which a licensee is incorporated, either~~ the business corpora-  
 23 tion act, Act No. 284 of the Public Acts of 1972, being sections  
 24 450.1101 to 450.2099 of the Michigan Compiled Laws, ~~or~~ the non-  
 25 profit corporation act, Act No. 162 of the Public Acts of 1982,  
 26 being sections 450.2101 to 450.3192 of the Michigan Compiled  
 27 Laws, OR THE MICHIGAN LIMITED LIABILITY COMPANY ACT, ACT NO. 23

1 OF THE PUBLIC ACTS OF 1993, BEING SECTIONS 450.4101 TO 450.5200  
2 OF THE MICHIGAN COMPILED LAWS.

3 (2) "Insolvent" means a licensee that ceases to pay its  
4 debts in the ordinary course of business, that cannot pay its  
5 debts as they become due, or whose liabilities exceed its  
6 assets.

7 (3) "Interests of the licensee" includes the interests of  
8 shareholders of ~~the~~ A licensee ORGANIZED AS A MICHIGAN CORPORA-  
9 TION AND MEMBERS OF A LICENSEE ORGANIZED AS A MICHIGAN LIMITED  
10 LIABILITY COMPANY.

11 (4) "License" means a license issued under this act autho-  
12 rizing a Michigan corporation OR MICHIGAN LIMITED LIABILITY  
13 COMPANY to transact business as a BIDCO.

14 (5) "Licensee" means a Michigan corporation OR MICHIGAN  
15 LIMITED LIABILITY COMPANY which is licensed under this act.

16 (6) "MANAGER" MEANS A PERSON WITH AN OWNERSHIP INTEREST IN A  
17 BIDCO ORGANIZED AS A MICHIGAN LIMITED LIABILITY COMPANY.

18 (7) "MEMBER" MEANS A PERSON WITH OWNERSHIP INTEREST IN A  
19 BIDCO ORGANIZED AS A MICHIGAN LIMITED LIABILITY COMPANY.

20 (8) ~~(6)~~ "Michigan corporation" means a corporation incor-  
21 porated under ~~the business corporation act,~~ Act No. 284 of the  
22 Public Acts of 1972 ~~,~~ or ~~the nonprofit corporation act,~~ Act  
23 No. 162 of the Public Acts of 1982.

24 (9) "MICHIGAN LIMITED LIABILITY COMPANY" MEANS A LIMITED  
25 LIABILITY COMPANY ORGANIZED UNDER ACT NO. 23 OF THE PUBLIC ACTS  
26 OF 1993.

1       (10) ~~(7)~~ "Michigan nonprofit corporation" means a  
2 corporation incorporated under ~~the nonprofit corporation act,~~  
3 Act No. 162 of the Public Acts of 1982.

4       Sec. 106. (1) "Officer" means BOTH OF THE FOLLOWING:

5       (a) If used with respect to a corporation, a person  
6 appointed or designated as an officer of that corporation by or  
7 ~~pursuant to~~ UNDER applicable law or the articles of incorpora-  
8 tion, or bylaws of that corporation, or a person who performs  
9 with respect to that corporation functions usually performed by  
10 an officer of a corporation.

11       (b) If used with respect to a specified person other than a  
12 natural person or a corporation, a person who performs with  
13 respect to that specified person functions usually performed by  
14 an officer of a corporation with respect to that corporation.

15       (2) "Order" means an approval, consent, authorization,  
16 exemption, denial, prohibition, or requirement applicable to a  
17 specific case issued by the commissioner. Order includes a con-  
18 dition of a license and an agreement made by a person with the  
19 commissioner under this act.

20       (3) "OWNER" MEANS A SHAREHOLDER OF A BIDCO ORGANIZED AS A  
21 MICHIGAN CORPORATION OR A MEMBER OF A BIDCO ORGANIZED AS A  
22 MICHIGAN LIMITED LIABILITY COMPANY.

23       (4) ~~(3)~~ "Person" means an individual, proprietorship,  
24 joint venture, partnership, LIMITED LIABILITY COMPANY, trust,  
25 business trust, syndicate, association, joint stock company, cor-  
26 poration, cooperative, government, agency of a government, or any  
27 other organization. If used with respect to acquiring control of

1 or controlling a specified person, person includes a combination  
2 of 2 or more persons acting in concert.

3 (5) ~~(4)~~ "Principal ~~shareholder~~ OWNER" means a person  
4 that owns, directly or indirectly, of record or beneficially,  
5 ~~securities~~ STOCK OR MEMBERSHIP INTEREST representing 10% or  
6 more of the outstanding ~~voting securities~~ STOCK OR MEMBERSHIP  
7 INTEREST of a corporation OR LIMITED LIABILITY COMPANY.

8 (6) ~~(5)~~ "Subject person" means a controlling person, sub-  
9 sidiary ~~or~~ or affiliate of a licensee, ~~or~~ a director, officer,  
10 MANAGER, or employee of a licensee or of a controlling person,  
11 subsidiary ~~or~~ or affiliate of a licensee, ~~or~~ or any other  
12 person who participates in the conduct of the business of a  
13 licensee.

14 (7) ~~(6)~~ "Subsidiary" means, if used with respect to a  
15 licensee, a company or business firm ~~which~~ THAT the licensee  
16 holds control of as permitted by section 507(1)(b), (c), or (d).

17 (8) ~~(7)~~ "This act" includes an order issued or rule  
18 promulgated under this act.

19 Sec. 211. (1) A licensee shall make and keep books,  
20 accounts, and other records in ~~such~~ a form and manner as the  
21 commissioner may require. These records shall be kept at ~~such~~  
22 a place and ~~shall~~ be preserved for ~~such~~ a length of time as  
23 the commissioner may ~~specify~~ REQUIRE.

24 (2) The commissioner may require by order that a licensee  
25 write down any asset on its books and records to a valuation  
26 ~~which~~ THAT represents its then value.

1 (3) Not more than 90 days after the close of each calendar  
2 year or a longer period if specified by the commissioner, a  
3 licensee shall file with the commissioner an audit report con-  
4 taining all of the following:

5 (a) Financial statements, including balance sheet, statement  
6 of income or loss, statement of changes in capital accounts, and  
7 statement of changes in financial position or, for a licensee  
8 that is a Michigan nonprofit corporation OR MICHIGAN LIMITED  
9 LIABILITY COMPANY, comparable financial statements for, or as of  
10 the end of, the calendar year, prepared with an audit by an inde-  
11 pendent certified public accountant or an independent public  
12 accountant in accordance with generally accepted accounting  
13 principles.

14 (b) A report, certificate, or opinion of the independent  
15 certified public accountant or independent public accountant who  
16 performs the audit, stating that the financial statements were  
17 prepared in accordance with generally accepted accounting  
18 principles.

19 (c) Other information that the commissioner may require.

20 Sec. 217. (1) The commissioner shall examine each licensee  
21 not less than once each calendar year.

22 (2) The commissioner may at any time examine a licensee or  
23 subsidiary of a licensee.

24 (3) A director, officer, MANAGER, or employee of a licensee  
25 or of a subsidiary of a licensee being examined by the commis-  
26 sioner, or a person having custody of any of the books, accounts,  
27 or records of the licensee or of the subsidiary, shall ~~exhibit~~



1 to- PROVIDE the commissioner, on request, any of the books,  
2 accounts, and other records of the licensee or of the subsidiary  
3 and shall otherwise facilitate the examination so far as it is in  
4 their power to do so.

5 (4) If in the commissioner's opinion it is necessary in the  
6 examination of a licensee or of a subsidiary of a licensee, the  
7 commissioner may retain a certified public accountant, attorney,  
8 appraiser, or other person to assist the commissioner. Within 10  
9 days after receipt of a statement from the commissioner, the  
10 licensee being examined shall pay the fees of a person retained  
11 by the commissioner under this subsection.

12 Sec. 301. A Michigan corporation OR MICHIGAN LIMITED  
13 LIABILITY COMPANY may apply to the commissioner for licensure as  
14 a BIDCO. A person other than a Michigan corporation OR MICHIGAN  
15 LIMITED LIABILITY COMPANY shall not apply for a license.

16 Sec. 303. (1) After a review of information regarding the  
17 directors, officers, MANAGERS, and controlling persons of the  
18 applicant, a review of the applicant's business plan, including  
19 at least 3 years of detailed financial projections and other rel-  
20 evant information, and a review of additional information consid-  
21 ered relevant by the commissioner, the commissioner shall approve  
22 an application for a license if, and only if, the commissioner  
23 determines all of the following:

24 (a) The applicant has a net worth, or firm financing commit-  
25 ments which demonstrate that the applicant will have a net worth  
26 when the applicant begins transacting business as a BIDCO, in  
27 liquid form available to provide financing assistance, that is

1 adequate for the applicant to transact business as a BIDCO as  
2 determined under subsection (2).

3 (b) Each director, officer, MANAGER, and controlling person  
4 of the applicant is of good character and sound financial  
5 standing, ~~each director and officer of the applicant~~ is com-  
6 petent to perform his or her functions with respect to the  
7 applicant, ~~and~~ and THAT the directors, ~~and~~ officers, AND  
8 MANAGERS of the applicant are collectively adequate to manage the  
9 business of the applicant as a BIDCO.

10 (c) It is reasonable to believe that the applicant, if  
11 licensed, will comply with this act.

12 (d) The applicant has reasonable promise of being a viable,  
13 ongoing BIDCO and of satisfying the basic objectives of its busi-  
14 ness plan.

15 (E) IF THE APPLICANT IS OR WILL BE A MICHIGAN LIMITED  
16 LIABILITY COMPANY, THE APPLICANT'S OPERATING AGREEMENT AND BUSI-  
17 NESS' PLAN ARE CONSISTENT WITH THE OBJECTIVES OF PROMOTING THE  
18 STABILITY AND VIABILITY OF THE APPLICANT AND WILL NOT IMPEDE THE  
19 ABILITY OF THE APPLICANT TO RETAIN ANY EARNINGS OR INCREASES TO  
20 FUND BALANCES AND BORROW FUNDS TO SUPPORT THE APPLICANT'S CONTIN-  
21 UED OPERATIONS. THE APPLICANT'S OPERATING AGREEMENT OR ARTICLES  
22 OF ORGANIZATION SHALL CONTAIN PROVISIONS AS THE COMMISSIONER CON-  
23 SIDERS NECESSARY TO SATISFY THIS SUBSECTION.

24 (2) In determining if the applicant has a net worth or firm  
25 financing commitments adequate to transact business as a BIDCO,  
26 the commissioner shall consider the types and variety of  
27 financing assistance that the applicant plans to provide, ~~and~~ the

1 experience that the directors, officers, MANAGERS, and  
2 controlling persons of the applicant have in providing financing  
3 and managerial assistance to business firms, ~~the~~ the financial  
4 projections and other relevant information from the applicant's  
5 business plan, ~~and~~ and whether the applicant intends to operate  
6 as a profit or nonprofit corporation OR AS A LIMITED LIABILITY  
7 COMPANY. Except as otherwise provided in this act, the commis-  
8 sioner shall require a minimum net worth of not less than  
9 \$1,000,000.00 and not more than \$10,000,000.00. The commissioner  
10 may require a minimum net worth of less than \$1,000,000.00, but  
11 not less than \$500,000.00, if, in the context of the applicant's  
12 business plan, the initial capitalization amount is adequate for  
13 the applicant to transact business as a BIDCO because of special  
14 circumstances including, but not limited to, funded overhead, low  
15 overhead, or specialized opportunities.

16 (3) For the purposes of subsection (1), the commissioner may  
17 find any of the following:

18 (a) That a director, officer, MANAGER, or controlling person  
19 of an applicant is not of good character if the director, offi-  
20 cer, MANAGER, or controlling person, or a director, ~~or~~ officer,  
21 OR MANAGER of a controlling person, has been convicted of or has  
22 pleaded nolo contendere to a crime involving fraud or  
23 dishonesty.

24 (b) That it is not reasonable to believe that an applicant,  
25 if licensed, will comply with this act, if the applicant has been  
26 convicted of or has pleaded nolo contendere to a crime involving  
27 fraud or dishonesty.

1 (4) For purposes of subsection (1), subsection (3) shall not  
2 be considered to be the only grounds upon which the commissioner  
3 may find that a director, officer, MANAGER, or controlling person  
4 of an applicant is not of good character or that it is not rea-  
5 sonable to believe that an applicant, if licensed, will comply  
6 with this act.

7 Sec. 305. (1) A person may apply to the commissioner for  
8 preliminary approval of an application for a license.  
9 Notwithstanding that commitments to invest in the equity of the  
10 applicant have not been obtained and that all directors, ~~and~~  
11 officers, AND MANAGERS of the applicant have not been identified,  
12 the commissioner may grant preliminary approval. In issuing an  
13 order granting preliminary approval, the commissioner shall indi-  
14 cate that, for the commissioner to determine that the require-  
15 ments of section 303 are satisfied, final approval is conditioned  
16 on review by the commissioner of the applicant's completion of  
17 fund-raising, including the controlling persons, and review by  
18 the commissioner of the completion of the roster of directors and  
19 officers. If an application for preliminary approval has been  
20 granted, before granting final approval of the application for a  
21 license, the commissioner may request an updated balance sheet  
22 and ~~such~~ other information considered relevant by the  
23 commissioner.

24 (2) If a person files an application under this section, the  
25 fee required by section 209(1)(a) is payable at the time the  
26 application is filed with the commissioner.

1       Sec. 311. (1) Except as otherwise provided in subsection  
 2 (2), a person transacting business in this state, other than a  
 3 licensee, shall not use a name or title which indicates that the  
 4 person is a business and industrial development ~~corporation~~  
 5 COMPANY including, but not limited to, use of the term "BIDCO",  
 6 and shall not otherwise represent that the person is a business  
 7 and industrial development ~~corporation~~ COMPANY or a licensee.

8       (2) Before being issued a license under this act, a Michigan  
 9 corporation OR MICHIGAN LIMITED LIABILITY COMPANY that proposes  
 10 to apply for a license or that applies for a license may,  
 11 ~~perform,~~ under a name that indicates that ~~the corporation~~ IT  
 12 is a business and industrial development ~~corporation,~~ COMPANY,  
 13 PERFORM the acts necessary to ~~apply for and~~ obtain a license  
 14 and ~~to otherwise prepare to commence transacting~~ TRANSACT busi-  
 15 ness as a licensee. ~~Such a~~ A corporation OR LIMITED LIABILITY  
 16 COMPANY shall not represent that it is a licensee until after the  
 17 license has been obtained.

18       Sec. 315. (1) A Michigan corporation OR MICHIGAN LIMITED  
 19 LIABILITY COMPANY that is licensed under another law of this  
 20 state or ~~under any law of~~ the United States may ~~apply for and~~  
 21 be issued a license under this act unless the transaction of  
 22 business ~~by that corporation~~ as a licensee under ~~another~~ THE  
 23 OTHER law of this state or ~~a law of~~ the United States  
 24 ~~violates~~ WOULD VIOLATE this act or ~~is~~ WOULD BE contrary to  
 25 the purposes of this act.

26       (2) A Michigan corporation OR MICHIGAN LIMITED LIABILITY  
 27 COMPANY that is licensed under this act may apply for and be

1 issued a license under another law of this state or ~~a law of~~  
2 the United States unless the transaction of business ~~by that~~  
3 ~~corporation~~ as a licensee under ~~another~~ THE OTHER law of this  
4 state or ~~a law of~~ the United States would violate this act or  
5 would be contrary to the purposes of this act.

6       Sec. 317. (1) Upon approval of a 2/3 vote of its board of  
7 directors and after complying with subsection (2), a MICHIGAN  
8 CORPORATION licensee may apply to the commissioner to have the  
9 commissioner accept the surrender of the licensee's license. IF  
10 A MICHIGAN LIMITED LIABILITY COMPANY LICENSEE DISSOLVES AND AFTER  
11 IT HAS PROVIDED THE NOTICE REQUIRED UNDER SUBSECTION (2), IT  
12 SHALL APPLY TO THE COMMISSIONER TO SURRENDER ITS LICENSE. If the  
13 commissioner determines that the requirements of this section  
14 have been satisfied, the commissioner shall approve the applica-  
15 tion unless in the opinion of the commissioner the purpose of the  
16 application is to evade a current or prospective action by the  
17 commissioner under article 7. A MICHIGAN CORPORATION LICENSEE  
18 SHALL NOT DISSOLVE AND A MICHIGAN LIMITED LIABILITY COMPANY SHALL  
19 NOT COMPLETE WINDING UP OF ITS AFFAIRS UNTIL THE COMMISSIONER HAS  
20 ACCEPTED THE SURRENDER OF THE LICENSEE'S LICENSE.

21       (2) ~~Not less than 60 days before filing an application with~~  
22 ~~the commissioner under subsection (1), a~~ A licensee shall notify  
23 all of its ~~shareholders~~ OWNERS and all of its creditors of its  
24 DISSOLUTION AND intention to file the application. Each creditor  
25 shall be notified of the right to comment to the commissioner.  
26 Each ~~shareholder~~ OWNER shall be notified of the right to file  
27 with the licensee FOR A PERIOD OF 60 DAYS AFTER THE DATE OF THE

1 NOTICE an objection to the proposed surrender of the license  
2 ~~within the 60 day period~~ and shall be advised that, if the  
3 ~~shareholder~~ OWNER files an objection, the ~~shareholder~~ OWNER  
4 should send a copy of the objection to the commissioner. If  
5 ~~shareholders~~ OWNERS representing 20% OR MORE of the  
6 ~~outstanding voting securities~~ TOTAL OWNERSHIP VOTE of the  
7 licensee file an objection, the licensee shall not proceed with  
8 the application under subsection (1) unless the application is  
9 approved by a vote of ~~shareholders~~ OWNERS representing 2/3 OR  
10 MORE of the ~~outstanding voting securities of the licensee~~ TOTAL  
11 OWNERSHIP VOTE.

12 Sec. 401. The ~~corporate~~ name of each licensee shall  
13 include the word "BIDCO". A licensee shall not transact business  
14 under a name other than its ~~corporate~~ name.

15 Sec. 403. (1) A LICENSEE SHALL HAVE A BOARD OF DIRECTORS.  
16 The board of directors of each licensee shall consist of not less  
17 than 7 directors. IF THE LICENSEE IS A MICHIGAN LIMITED LIABIL-  
18 ITY COMPANY, THE BOARD MAY CONSIST OF MEMBERS WHO ARE NOT MANAG-  
19 ERS OF THE LICENSEE.

20 (2) The board of directors of ~~each~~ A licensee shall hold a  
21 meeting not less than once each calendar quarter.

22 Sec. 405. Within 30 days after the death, resignation, or  
23 removal of a director, ~~or~~ officer, ~~—~~ OR MANAGER, the election  
24 of a director, ~~—~~ or the appointment of an officer OR MANAGER,  
25 the licensee shall notify the commissioner in writing of the  
26 event and shall provide any additional information which the  
27 commissioner may require.

1       Sec. 407. (1) A licensee shall not pay, or obligate itself  
2 to pay, a cash dividend OR DISTRIBUTION or dividend AND  
3 DISTRIBUTION in kind to its ~~shareholders~~ OWNERS, unless that  
4 payment is consistent with a dividend AND DISTRIBUTION policy  
5 which has been adopted by the licensee and approved by the  
6 commissioner. In reviewing dividend AND DISTRIBUTION policies  
7 under this section, the commissioner shall PROTECT AGAINST UNSAFE  
8 OR UNSOUND ACTS WHICH COULD THREATEN THE VIABILITY OF THE  
9 LICENSEE AS AN ONGOING BIDCO BUT be flexible in recognizing the  
10 special characteristics of BIDCOs and the diverse range of poten-  
11 tially appropriate dividend policies for BIDCOs. ~~while at the~~  
12 ~~same time protecting against unsafe or unsound acts which could~~  
13 ~~threaten the viability of the licensee as an ongoing BIDCO.~~ The  
14 commissioner may at any time withdraw any previous approval of a  
15 dividend AND DISTRIBUTION policy if the commissioner determines  
16 that the withdrawal is necessary to prevent unsafe or unsound  
17 acts.

18       (2) Without the prior approval of the commissioner, a  
19 licensee shall not buy back, or obligate itself to buy back a  
20 share of stock ~~from a shareholder~~ OR A MEMBERSHIP INTEREST FROM  
21 AN OWNER.

22       Sec. 503. (1) The business of a licensee shall be the  
23 ~~business of~~ providing OF financing ~~assistance~~ and management  
24 assistance to business firms. A licensee shall not engage in a  
25 business other than the business of providing financing  
26 ~~assistance~~ and management assistance to business firms.



1       (2) In addition to the powers and privileges provided to a  
2 licensee by this act, a licensee has all powers and privileges  
3 conferred by its incorporating statute which are not inconsistent  
4 with ~~or limited by~~ this act. The powers of a licensee include,  
5 but are not limited to, all of the following:

6       (a) To borrow money and otherwise incur indebtedness for its  
7 purposes, including issuance of corporate bonds, debentures,  
8 notes, or other evidence of indebtedness. A licensee's indebted-  
9 ness may be secured or unsecured, and may involve equity features  
10 including, but not limited to, provisions for conversion to stock  
11 OR MEMBERSHIP INTERESTS and warrants to purchase stock OR MEMBER-  
12 SHIP INTERESTS.

13       (b) To make contracts.

14       (c) To incur and pay necessary and incidental operating  
15 expenses.

16       (d) To purchase, receive, hold, lease, or otherwise acquire  
17 ~~—~~ or to sell, convey, mortgage, lease, pledge, or otherwise  
18 dispose of, real or personal property, together with rights and  
19 privileges that are incidental and appurtenant to these transac-  
20 tions of real or personal property, if the real or personal prop-  
21 erty is for the licensee's use in operating its business or if  
22 the real or personal property is acquired by the licensee from  
23 time to time in satisfaction of debts or enforcement of  
24 obligations.

25       (e) To make donations for charitable, educational, research,  
26 or similar purposes.

1 (f) To implement a reasonable and prudent policy for  
2 conserving and investing its money before the money is used to  
3 provide financing assistance to business firms or to pay the  
4 expenses of the licensee.

5 Sec. 505. (1) A licensee may determine the form and the  
6 terms and conditions for financing assistance provided by that  
7 licensee to a business firm including, but not limited to, forms  
8 such as loans, ~~—~~ purchase of debt instruments, ~~—~~ straight  
9 equity investments such as purchase of common stock, ~~or~~ pre-  
10 ferred stock, ~~—~~ OR MEMBERSHIP INTERESTS, debt with equity fea-  
11 tures such as warrants to purchase stock OR MEMBERSHIP INTERESTS,  
12 convertible debentures, or receipt of a percent of net income or  
13 sales, ~~—~~ royalty based financing, ~~—~~ guaranteeing of debt, ~~—~~  
14 or leasing of property. A licensee may purchase securities AND  
15 MEMBERSHIP INTERESTS of a business firm either directly or indi-  
16 rectly through an underwriter. A licensee may participate in the  
17 program of the small business administration ~~pursuant to~~ UNDER  
18 section 7(a) of the small business act, Public Law 85-536, 15  
19 U.S.C. ~~636(a)~~ 636, or any other government program for which  
20 the licensee is eligible and which has as its function the provi-  
21 sion or facilitation of financing assistance or management  
22 assistance to business firms. If a licensee participates in a  
23 program referred to in this subsection, the licensee shall comply  
24 with the requirements of that program.

25 (2) Management assistance provided by a licensee to a busi-  
26 ness firm may encompass both management or technical advice and  
27 management or technical services.

1 (3) Financing assistance or management assistance provided  
2 by a licensee to a business firm shall be for the business pur-  
3 poses of that business firm.

4 (4) A licensee may exercise ~~the~~ incidental powers ~~that~~  
5 ~~are necessary or convenient~~ to carry on the business of, or are  
6 reasonably related to the business of, providing financing  
7 ~~assistance~~ and management assistance to business firms.

8 (5) Except as provided in subsection (6), in connection with  
9 an extension of credit by a person to a licensee or an extension  
10 of credit by a licensee to a LIMITED LIABILITY COMPANY OR A busi-  
11 ness entity as defined in Act No. 52 of the Public Acts of 1970,  
12 being section 438.61 of the Michigan Compiled Laws, the parties  
13 may agree to any rate of interest, including a rate in excess of  
14 the rate set forth in Act No. 259 of the Public Acts of 1968,  
15 being sections 438.41 to 438.42 of the Michigan Compiled Laws.

16 (6) In connection with an extension of credit described in  
17 subsection (5), a person shall not knowingly charge, take, or  
18 receive money or other property as interest on the loan at a rate  
19 exceeding 25% simple interest per annum. A person who violates  
20 this subsection is guilty of a felony punishable by imprisonment  
21 for not more than 5 years or a fine of not more than \$10,000.00,  
22 or both. As used in this subsection, "interest" does not include  
23 anything of value that is contingent on the performance or value  
24 of the borrower including, but not limited to, a percentage of  
25 net income of the borrower, royalties, stock in the borrower,  
26 warrants to purchase stock in the borrower, and convertibility of  
27 debentures.

1       Sec. 507. (1) Either by itself or in concert with a  
2 director, officer, principal ~~shareholder~~ OWNER, MANAGER, or  
3 affiliate, ~~or~~ another licensee, ~~or~~ or a director, officer,  
4 principal ~~shareholder~~ OWNER, MANAGER, or affiliate of another  
5 licensee, a licensee shall not hold control of a business firm,  
6 except as follows:

7       (a) ~~If and to~~ A LICENSEE THAT HAD PROVIDED FINANCING  
8 ASSISTANCE TO A BUSINESS FIRM MAY ACQUIRE AND HOLD CONTROL OF  
9 THAT BUSINESS FIRM TO the extent necessary to protect the  
10 licensee's interest as creditor of, or investor in, the business  
11 firm. ~~, a licensee that had provided financing assistance to a~~  
12 ~~business firm may acquire and hold control of that business~~  
13 ~~firm.~~ Unless the commissioner approves a longer period, a  
14 licensee holding control of a business firm under this subdivi-  
15 sion shall divest itself of the interest which constitutes hold-  
16 ing control as soon as practicable or within 3 years after  
17 acquiring that interest, whichever is sooner.

18       (b) With the approval of the commissioner, a licensee may  
19 acquire and hold control of a ~~corporation which~~ COMPANY THAT  
20 has offices located only in this state and which is licensed as a  
21 small business investment company under the small business  
22 investment act of 1958, Public Law 85-699, 72 Stat. 689.

23       (c) With the approval of the commissioner, a licensee may  
24 acquire and hold control of a company located in this state  
25 ~~which~~ THAT is a local development company in accordance with  
26 the small business investment act of 1958, whether ~~or not such~~  
27 ~~a~~ THE development company is or may become ~~certified~~ A

1 QUALIFIED DEVELOPMENT COMPANY by the small business  
2 administration under section 503 of TITLE V OF the small business  
3 investment act of 1958, PUBLIC LAW 85-699, 15 U.S.C. 697.

4 (d) With the approval of the commissioner, a licensee may  
5 acquire and hold control of another business firm with offices  
6 only in this state ~~which~~ THAT is engaged ~~in no business other~~  
7 ~~than~~ ONLY IN the business of providing financing ~~assistance~~  
8 and management assistance to business firms.

9 (e) With the approval of the commissioner, a licensee may  
10 acquire and hold control of a business firm not referred to in  
11 subdivisions (a) to (d). The commissioner shall not approve an  
12 application under this subdivision unless the commissioner deter-  
13 mines that ~~such an~~ THE approval will not cause the amount of  
14 the licensee's investments in business firms covered by this sub-  
15 division to exceed 15% of the amount of the assets of the  
16 licensee and that in the commissioner's judgment ~~such an~~ THE  
17 approval will promote the purposes of this act. An approval by  
18 the commissioner under this subdivision shall be for a period of  
19 not more than 3 years, except that in a particular case the com-  
20 missioner may subsequently extend the period beyond 3 years if  
21 the commissioner determines that a longer period is needed and is  
22 consistent with the purposes of this act.

23 (2) If the commissioner fails to issue an order approving or  
24 denying an application under subsection (1)(b) or (c), within 45  
25 days from receipt by the commissioner of an application which  
26 complies with section 203, the application shall be considered  
27 approved by the commissioner.

1 (3) For the purposes of subsection (1), "hold control" means  
2 ~~ownership~~ THE POWER TO VOTE OR DIRECT THE VOTING, directly or  
3 indirectly, of ~~record or beneficially, of voting securities~~.

4 ~~greater than~~ ALL OF THE FOLLOWING:

5 (a) For a business firm with outstanding voting ~~securities~~  
6 STOCK OR VOTING MEMBERSHIP INTERESTS held by fewer than 50  
7 ~~shareholders,~~ OWNERS, MORE THAN 40% of the ~~outstanding voting~~  
8 ~~securities~~ TOTAL OWNERSHIP VOTE.

9 (b) For a business firm with outstanding voting ~~securities~~  
10 STOCK OR VOTING MEMBERSHIP INTERESTS held by 50 or more  
11 ~~shareholders,~~ OWNERS, MORE THAN 25% of the ~~outstanding voting~~  
12 ~~securities~~ TOTAL OWNERSHIP VOTE.

13 (4) If a licensee anticipates acquiring and holding control  
14 of a business firm under subsection (1)(a), the licensee shall  
15 file with the commissioner a plan for acquiring and holding con-  
16 trol of the business firm that shall include at least all of the  
17 following:

18 (a) The reasons it is necessary for the licensee to acquire  
19 and hold control of the business firm.

20 (b) The percentage of outstanding voting ~~securities~~ STOCK  
21 OR VOTING MEMBERSHIP INTERESTS of the business firm the licensee  
22 plans to own.

23 (c) The licensee's proposed course of action upon obtaining  
24 control of the business firm.

25 (d) The length of time the licensee anticipates it will be  
26 necessary to hold control of the business firm.

1 (5) The commissioner may require the licensee to demonstrate  
2 the necessity for the licensee to hold control of a business firm  
3 under subsection (1)(a).

4 Sec. 509. (1) A licensee shall transact its business in a  
5 safe and sound manner and shall maintain itself in a safe and  
6 sound condition.

7 (2) In determining whether a licensee is transacting busi-  
8 ness in a safe and sound manner or has committed an unsafe or  
9 unsound act, the commissioner shall not consider the risk of a  
10 provision of financing assistance to a business firm, unless the  
11 commissioner determines that the risk is so great compared with  
12 the realistically expected return as to demonstrate gross  
13 mismanagement.

14 (3) Subsection (2) does not limit the authority of the com-  
15 missioner to do any of the following:

16 (a) Determine that a licensee's financing assistance to a  
17 single business firm or a group of affiliated business firms is  
18 in violation of subsection (1) or constitutes an unsafe or  
19 unsound act, if the amount of that financing assistance is unduly  
20 large in relation to the total assets or the total ~~shareholders~~  
21 OWNERS equity of the licensee.

22 (b) Require that a licensee maintain a reserve in the amount  
23 of anticipated losses.

24 (c) Require that a licensee have in effect a written financ-  
25 ing assistance policy, approved by its board of directors,  
26 including credit evaluation and other matters. The commissioner  
27 shall not require that a licensee adopt a financing assistance

1 policy that contains standards ~~which~~ THAT prevent the licensee  
2 from exercising needed flexibility in evaluating and structuring  
3 financing assistance to business firms on a deal by deal basis.

4 Sec. 511. (1) For purposes of this section:

5 (a) "Associate" means that term as defined as in article 8.

6 (b) "Relative" means parent, child, sibling, spouse,  
7 father-in-law, mother-in-law, son-in-law, brother-in-law,  
8 daughter-in-law, sister-in-law, grandparent, grandchild, nephew,  
9 niece, uncle, or aunt.

10 (2) If a licensee provides financing assistance to a busi-  
11 ness firm or engages in another business transaction, and if that  
12 financing assistance or transaction involves a potential conflict  
13 of interest, the terms and conditions under which the licensee  
14 provides the financing assistance or engages in the transaction  
15 shall not be less favorable to the licensee than the terms and  
16 conditions that would be required by the licensee in the ordinary  
17 course of business if the transaction did not involve a potential  
18 conflict of interest. Each person who participates in the deci-  
19 sion of the licensee relating to a transaction described in this  
20 section and has knowledge of a potential conflict of interest  
21 involving that transaction shall take care that the potential  
22 conflict of interest is disclosed in the financing documents of  
23 the transaction or, for a business transaction not involving  
24 financing assistance, in another appropriate document.

25 (3) For the purposes of subsection (2), transactions engaged  
26 in by a licensee ~~which~~ THAT involve a potential conflict of  
27 interest include, but are not limited to, the following:



1 (a) Providing financing assistance to a principal  
2 ~~shareholder~~ OWNER of the licensee, to a person controlled by a  
3 principal ~~shareholder~~ OWNER of the licensee, or to a director,  
4 officer, MANAGER, partner, relative, controlling person, or  
5 affiliate of a principal ~~shareholder~~ OWNER of the licensee.

6 (b) Providing financing assistance to a business firm ~~to~~  
7 ~~which~~ THAT a principal ~~shareholder~~ OWNER of the licensee, ~~or~~  
8 a director, officer, MANAGER, partner, relative, controlling  
9 person, or affiliate of a principal ~~shareholder~~ OWNER of a  
10 licensee, ~~or~~ or a person controlled by a principal ~~shareholder~~  
11 OWNER of the licensee provides or plans to provide contemporane-  
12 ous financing assistance.

13 (c) Providing financing assistance to a business firm  
14 ~~which~~ THAT has or is expected to have a substantial business  
15 relationship with another business firm ~~which~~ THAT has a direc-  
16 tor, officer, MANAGER, or controlling person who is also a direc-  
17 tor, officer, MANAGER, or controlling person of the licensee or  
18 who is the spouse of a director, officer, MANAGER, or controlling  
19 person of the licensee.

20 (d) Providing financing assistance to a business firm if  
21 that business firm, or a director, officer, MANAGER, or control-  
22 ling person of that business firm, contemporaneously has lent or  
23 will lend money to an associate of the licensee.

24 (e) Providing financing assistance for the purchase of prop-  
25 erty of an associate or principal ~~shareholder~~ OWNER of the  
26 licensee.

1 (f) Selling or otherwise transferring any of its assets to  
2 an associate or principal ~~shareholder~~ OWNER of the licensee.

3 (4) Nothing in this ~~section or in any other section of~~  
4 ~~this~~ act limits the authority of the commissioner to determine  
5 that an act involves a conflict of interest and ~~therefore~~ is an  
6 unsafe or unsound act.

7 Sec. 601. (1) Without the prior approval of the commission-  
8 er, a person shall not acquire control of a licensee.

9 (2) With respect to an application for approval to acquire  
10 control of a licensee, if the commissioner determines, that the  
11 applicant and the directors, ~~and~~ officers, AND MANAGERS of the  
12 applicant are of good character and sound financial standing, ~~and~~  
13 that it is reasonable to believe that, if the applicant acquires  
14 control of the licensee, the applicant will comply with this act,  
15 ~~and~~ and that the applicant's plans, if any, to make a major  
16 change in the business, corporate structure, or management of the  
17 licensee are not detrimental to the safety and soundness of the  
18 licensee, the commissioner shall approve the application. If,  
19 after notice and a hearing, the commissioner determines other-  
20 wise, the commissioner shall deny the application.

21 (3) For purposes of subsection (2), the commissioner may  
22 determine any of the following:

23 (a) That an applicant or a director, ~~or~~ officer, OR  
24 MANAGER of an applicant is not of good character if that person  
25 has been convicted of, or has pleaded nolo contendere to, a crime  
26 involving fraud or dishonesty.

1 (b) That an applicant's plan to make a major change in the  
2 management of a licensee is detrimental to the safety and  
3 soundness of the licensee if the plan provides for a person to  
4 become a director, ~~or~~ officer, OR MANAGER of the licensee and  
5 that person has been convicted of, or has pleaded nolo contendere  
6 to, a crime involving fraud or dishonesty.

7 (4) The conditions described in subsection (3) are not the  
8 only conditions upon which the commissioner may determine that an  
9 applicant or a director, ~~or an~~ officer, OR MANAGER of an appli-  
10 cant is not of good character or that an applicant's plan to make  
11 a major change in the management of a licensee is detrimental to  
12 the safety and soundness of the licensee.

13 Sec. 603. (1) A licensee shall not merge with another  
14 ~~corporation~~ BUSINESS FIRM unless 1 OF THE FOLLOWING APPLY:

15 (a) If the licensee is the surviving ~~corporation~~ BUSINESS  
16 FIRM, the merger is approved by the commissioner.

17 (b) If the licensee is a disappearing ~~corporation~~ BUSINESS  
18 FIRM, the surviving ~~corporation~~ BUSINESS FIRM is a licensee and  
19 the merger is approved by the commissioner.

20 (2) A licensee shall not purchase all or substantially all  
21 of the business of another person unless the purchase is approved  
22 by the commissioner.

23 (3) A licensee shall not sell all or substantially all of  
24 its business or of the business of any of its offices to another  
25 person unless that other person is a licensee and the sale is  
26 approved by the commissioner.

1       (4) The commissioner shall approve an application for  
2 approval of a merger, purchase, or sale, if ~~and only if~~ the  
3 commissioner determines all of the following:

4       (a) That the merger, purchase, or sale will be safe and  
5 sound with respect to the acquiring licensee.

6       (b) That, upon consummation of the merger, purchase, or  
7 sale, it is reasonable to believe that the acquiring licensee  
8 will comply with this act.

9       (c) That the merger, purchase, or sale will not have a major  
10 detrimental impact on competition in the providing of financial  
11 ~~assistance~~ or management assistance to business firms, or if  
12 there will be ~~such~~ a detrimental impact, the merger, purchase,  
13 or sale is necessary in the interests of the safety and soundness  
14 of any of the parties to the merger, purchase, or sale, or is  
15 otherwise, on balance, in the public interest.

16       Sec. 709. (1) If the commissioner determines that a subject  
17 person of a licensee has been indicted by a grand jury or has  
18 been bound over for trial by a court for a crime involving dis-  
19 honesty or breach of trust, and that the fact that the person  
20 continues to be a subject person of the licensee may threaten the  
21 interests of the licensee or may threaten to impair public confi-  
22 dence in the licensee, the commissioner may issue an order sus-  
23 pending the subject person from his or her office, if any, with  
24 the licensee and prohibiting the subject person from further par-  
25 ticipating in any manner in the conduct of the business of the  
26 licensee, except with the consent of the commissioner.

1       (2) If the commissioner determines that a subject person or  
2 former subject person of a licensee to whom an order was issued  
3 under subsection (1), or another subject person of a licensee,  
4 has been convicted of a crime ~~which~~ THAT is punishable by  
5 imprisonment for a term of not less than 1 year and ~~which~~ THAT  
6 involves dishonesty or breach of trust, and that the fact that  
7 the person continues to be or will resume to be a subject person  
8 of the licensee may threaten the interests of the licensee or may  
9 threaten to impair public confidence in the licensee, the commis-  
10 sioner may issue an order suspending or removing the subject  
11 person or former subject person from his or her office, if any,  
12 with the licensee and prohibiting the subject person from further  
13 participating in any manner in the conduct of the business of the  
14 licensee, except with the prior consent of the commissioner.

15       (3) Within 30 days after an order is issued under subsection  
16 (1) or (2), the subject person of a licensee to whom the order is  
17 directed may file with the commissioner an application for a  
18 hearing on the order. If the commissioner fails to commence a  
19 hearing within 15 business days after the application is filed or  
20 within a longer period to which the subject person consents, the  
21 order shall be considered rescinded. Upon the hearing, the com-  
22 missioner shall affirm, modify, or rescind the order. The right  
23 of a subject person or former subject person of a licensee to  
24 whom an order is issued under subsection (1) or (2) to petition  
25 for judicial review of the order is not affected by the failure  
26 of the person to apply to the commissioner for a hearing on the  
27 order issued under this subsection.

1 (4) The fact that a subject person of a licensee charged  
2 with a crime involving dishonesty or breach of trust is not con-  
3 victed of the crime shall not preclude the commissioner from  
4 issuing an order to the subject person under any other provision  
5 of this act.

6 (5) A person to whom an order is issued under this section  
7 may apply to the commissioner to modify or rescind the order.  
8 The commissioner shall not modify or rescind the order unless the  
9 commissioner determines that it is in the public interest to do  
10 so and that it is reasonable to believe that the person, if and  
11 when he or she becomes a subject person of a licensee, will  
12 comply with this act.

13 (6) As used in this section, "office", if used with respect  
14 to a licensee, means the position of director, officer, MANAGER,  
15 or employee of the licensee or of a subsidiary of the licensee.

16 Sec. 711. If, in the opinion of the commissioner, disclo-  
17 sure to ~~shareholders~~ OWNERS regarding a matter is warranted,  
18 the commissioner may require a licensee, in ~~such~~ a form and  
19 manner as the commissioner may specify, to disclose to the  
20 ~~shareholders~~ OWNERS of a licensee the results of a communica-  
21 tion or order from the commissioner addressed to the licensee or  
22 to a subject person of the licensee.

23 Sec. 713. (1) If the commissioner considers it expedient,  
24 the commissioner may call a meeting of the board of directors of  
25 a licensee by giving notice of the time, place, and purpose of  
26 the meeting not less than 5 days before the meeting to each  
27 director either by personal service or by registered or certified

1 mail sent to the director's last known address as shown in the  
2 records of the commissioner.

3 (2) If the commissioner considers it expedient, the commis-  
4 sioner may call a meeting of the ~~shareholders~~ OWNERS of a  
5 licensee by giving notice of the time, place, and purpose of the  
6 meeting not less than 5 days before the meeting to each  
7 ~~shareholder~~ OWNER either by personal service or by registered  
8 or certified mail sent to the ~~shareholder's~~ OWNER'S last known  
9 address as shown by the books of the licensee. The licensee  
10 shall pay the expenses of the notice and of a meeting called  
11 under this subsection.

12 Sec. 801. (1) As used in this article, unless the context  
13 otherwise requires:

14 (a) "Advisor", means a person who regularly provides legal,  
15 accounting, or management services or advice to a licensee.

16 (b) "Associate" means, if used with respect to a licensee:

17 (i) A controlling person, director, officer, MANAGER, agent,  
18 or advisor of that licensee.

19 (ii) A director, officer, MANAGER, or partner of a person  
20 referred to in subparagraph (i).

21 (iii) A person who controls, is controlled by, or is under  
22 common control with a person referred to in subparagraph (i),  
23 directly or indirectly through 1 or more intermediaries.

24 (iv) ~~Any~~ A close relative of ~~any~~ A person referred to in  
25 subparagraph (i).

26 (v) A person of which a person referred to in subparagraphs  
27 (i) to (iv) is a director, ~~or~~ officer, OR MANAGER.

1 (vi) A person in which a person referred to in subparagraphs  
2 (i) to (iv), or any combination of those persons acting in con-  
3 cert, owns or controls, directly or indirectly, a 20% or greater  
4 equity interest.

5 (c) "Close relative" means parent, child, sibling, spouse,  
6 father-in-law, mother-in-law, son-in-law, brother-in-law,  
7 daughter-in-law, or sister-in-law.

8 (d) "Closing services" means services performed in connec-  
9 tion with the providing of financing assistance. Closing serv-  
10 ices includes, but is not limited to, appraising property and  
11 preparing credit reports. Closing services does not include a  
12 service performed after the providing of financing assistance.

13 (e) "Short-term financing assistance" means financing  
14 assistance with a term of not more than 5 years.

15 (2) For the purposes of subsection (1)(b):

16 (a) A person who is in a relationship referred to in that  
17 subdivision within 6 months before or after a licensee provides  
18 financing assistance shall be considered to be in that relation-  
19 ship as of the date that licensee provides that financing  
20 assistance.

21 (b) If a licensee, in order to protect its interests, desig-  
22 nates a person to serve as a director, ~~of,~~ officer, ~~of,~~  
23 MANAGER, or in any capacity in the management of a business firm  
24 to which that licensee provides financing assistance, that person  
25 shall not, on that account, be considered to have a relationship  
26 with that business firm. This subdivision does not apply if the  
27 person has, directly or indirectly, any other financial interest



1 in the business firm or if the person, at any time before the  
2 licensee provides the financing assistance, served as a director,  
3 ~~off~~ officer, ~~of~~ MANAGER, or in any other capacity in the  
4 management of the business firm for a period of 30 days or more.

5       Sec. 807. A person shall not, with intent to deceive a  
6 director, officer, MANAGER, employee, auditor, or attorney of a  
7 licensee, ~~—~~ the commissioner, ~~—~~ or a governmental agency,  
8 make a false entry in the books, accounts, or other records of  
9 that licensee, ~~—~~ omit to make an entry in those books,  
10 accounts, or other records which that person is required to make,  
11 ~~—~~ or alter, conceal, or destroy any of those books, accounts,  
12 or other records.

13       Sec. 813. (1) A licensee shall not provide, directly or  
14 indirectly, financing assistance to a business firm to which an  
15 associate of that licensee provides financing assistance, either  
16 contemporaneously with, or within 1 year before or after, the  
17 providing of financing assistance by the licensee, if the terms  
18 on which the licensee provides financing assistance are less  
19 favorable to the licensee than the terms on which the associate  
20 provides financing assistance to the business firm. If the  
21 financing assistance provided by the associate of the licensee is  
22 of a different kind from the financing assistance provided by the  
23 licensee, the burden shall be on the licensee to prove that the  
24 terms on which the licensee provided financing assistance were at  
25 least as favorable to the licensee as the terms on which the  
26 associate provided financing assistance to the business firm.

- 1       (2) This section does not apply to any of the following:
- 2       (a) If the associate is a controlling person of the licensee
- 3 and is also the only ~~shareholder~~ OWNER of the licensee.
- 4       (b) If the associate is a subsidiary of the licensee.
- 5       (c) A transaction effected by an associate of a licensee in
- 6 the normal course of that associate's business involving a line
- 7 of credit or short-term financing assistance.