

REPRINT

**SUBSTITUTE FOR
SENATE BILL NO. 495**

(As Passed the Senate May 22, 1997)

A bill to amend 1986 PA 89, entitled
"Michigan BIDCO act,"
by amending 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, 813, and 905 (MCL 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, 487.1813, and 487.1905).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) Promote economic development by encouraging the
4 formation of business and industrial development ~~corporations~~

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

2

1 COMPANIES, a new type of private institution, AND to help meet
2 the financing assistance and management assistance needs of busi-
3 ness firms in this state.

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

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

16 (i) Comfort to prospective ~~shareholders~~ OWNERS so as to
17 facilitate equity investments in business and industrial develop-
18 ment ~~corporations~~ COMPANIES.

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

22 (d) Safeguard the general reputation of business and indus-
23 trial development ~~corporations~~ COMPANIES as a type of institu-
24 tion in order to increase the confidence of prospective equity
25 investors in and prospective debt sources for those
26 institutions.

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

3

1 (e) Eliminate unnecessary restrictions ~~which~~ THAT have
2 discouraged the formation of business development corporations
3 under ~~Act No. 117 of the Public Acts of 1963~~ FORMER 1963 PA
4 117, by repealing that act and substituting a more flexible regu-
5 latory framework.

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

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

12 (3) "Business firm" means a person that transacts business
13 on a regular and continual basis, or a person that proposes to
14 transact business on a regular and continual basis.

15 (4) "Commissioner" means the commissioner of the financial
16 institutions bureau of the department of ~~commerce~~ CONSUMER AND
17 INDUSTRY SERVICES.

18 (5) "Control" means, if used with respect to a specified
19 person, the power to direct or cause the direction of, directly
20 or indirectly through 1 or more intermediaries, the management
21 and policies of that specified person, whether ~~through the~~
22 ~~ownership of voting securities;~~ by contract, other than a com-
23 mercial contract for goods or nonmanagement services, ~~or~~ or
24 otherwise. A natural person shall not be considered to control a
25 person solely on account of being a director, officer, MANAGER,
26 or employee of that person. A person who, directly or
27 indirectly, ~~owns of record or beneficially holds with power to~~

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

4

1 ~~vote, or holds proxies with discretionary authority to vote,~~ HAS
2 THE POWER TO VOTE OR DIRECT THE VOTING OF 20% or more of the
3 ~~then outstanding voting securities issued by a corporation~~
4 TOTAL OWNERSHIP VOTE, shall be rebuttably presumed to control
5 that ~~corporation~~ ENTITY.

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

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

11 Sec. 105. (1) "Incorporating statute" means ~~the act under~~
12 ~~which a licensee is incorporated, either~~ the business corpora-
13 tion act, ~~Act No. 284 of the Public Acts of 1972, being sections~~
14 ~~450.1101 to 450.2099 of the Michigan Compiled Laws, or~~ 1972 PA
15 284, MCL 450.1101 TO 450.2098, the nonprofit corporation act,
16 ~~Act No. 162 of the Public Acts of 1982, being sections 450.2101~~
17 ~~to 450.3192 of the Michigan Compiled Laws~~ 1982 PA 162, MCL
18 450.2101 TO 450.3192, OR THE MICHIGAN LIMITED LIABILITY COMPANY
19 ACT, 1993 PA 23, MCL 450.4101 TO 450.5200.

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

24 (3) "Interests of the licensee" includes the interests of
25 shareholders of ~~the~~ A licensee ORGANIZED AS A MICHIGAN CORPORA-
26 TION AND MEMBERS OF A LICENSEE ORGANIZED AS A MICHIGAN LIMITED
27 LIABILITY COMPANY.

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

5

1 (4) "License" means a license issued under this act
2 authorizing a Michigan corporation OR MICHIGAN LIMITED LIABILITY
3 COMPANY to transact business as a BIDCO.

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

6 (6) "MANAGER" MEANS A PERSON DESIGNATED BY THE MEMBERS OF A
7 MICHIGAN LIMITED LIABILITY COMPANY TO MANAGE THE LIMITED LIABIL-
8 ITY COMPANY AS PROVIDED IN ITS ARTICLES OF ORGANIZATION OR AN
9 OPERATING AGREEMENT.

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

12 (8) ~~(6)~~ "Michigan corporation" means a corporation incor-
13 porated under the business corporation act, ~~Act No. 284 of the~~
14 ~~Public Acts of 1972~~ 1972 PA 284, MCL 450.1101 TO 450.2098, or
15 the nonprofit corporation act, ~~Act No. 162 of the Public Acts of~~
16 ~~1982~~ 1982 PA 162, MCL 450.2101 TO 450.3192.

17 (9) "MICHIGAN LIMITED LIABILITY COMPANY" MEANS A LIMITED
18 LIABILITY COMPANY ORGANIZED UNDER THE MICHIGAN LIMITED LIABILITY
19 COMPANY ACT, 1993 PA 23, MCL 450.4101 TO 450.5200.

20 (10) ~~(7)~~ "Michigan nonprofit corporation" means a corpora-
21 tion incorporated under the nonprofit corporation act, ~~Act~~
22 ~~No. 162 of the Public Acts of 1982~~ 1982 PA 162, MCL 450.2101 TO
23 450.3192.

24 Sec. 106. (1) "Officer" means EITHER OF THE FOLLOWING:

25 (a) If used with respect to a corporation, a person
26 appointed or designated as an officer of that corporation by or
27 ~~pursuant to~~ UNDER applicable law or the articles of

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

6

1 incorporation ~~—~~ or bylaws of that corporation, or a person who
2 performs with respect to that corporation functions usually per-
3 formed by an officer of a corporation.

4 (b) If used with respect to a specified person other than a
5 natural person or a corporation, a person who performs with
6 respect to that specified person functions usually performed by
7 an officer of a corporation with respect to that corporation.

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

13 (3) "OWNER" MEANS A SHAREHOLDER OF A BIDCO ORGANIZED AS A
14 MICHIGAN CORPORATION OR A MEMBER OF A BIDCO ORGANIZED AS A
15 MICHIGAN LIMITED LIABILITY COMPANY.

16 (4) ~~(3)~~ "Person" means an individual, proprietorship,
17 joint venture, partnership, LIMITED LIABILITY COMPANY, trust,
18 business trust, syndicate, association, joint stock company, cor-
19 poration, cooperative, government, agency of a government, or any
20 other organization. If used with respect to acquiring control of
21 or controlling a specified person, person includes a combination
22 of 2 or more persons acting in concert.

23 (5) ~~(4)~~ "Principal ~~shareholder~~ OWNER" means a person
24 that owns, directly or indirectly, of record or beneficially,
25 ~~securities~~ STOCK OR MEMBERSHIP INTEREST representing 10% or
26 more of the outstanding ~~voting securities~~ STOCK OR MEMBERSHIP
27 INTEREST of a corporation OR LIMITED LIABILITY COMPANY.

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

7

1 (6) ~~(5)~~ "Subject person" means a controlling person,
2 subsidiary ~~,~~ or affiliate of a licensee, ~~+~~ a director, offi-
3 cer, MANAGER, or employee of a licensee or of a controlling
4 person, subsidiary ~~,~~ or affiliate of a licensee, ~~+~~ or any
5 other person who participates in the conduct of the business of a
6 licensee.

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

10 (8) "TOTAL OWNERSHIP VOTE" MEANS, IF USED WITH RESPECT TO A
11 CORPORATION, THE TOTAL OUTSTANDING SHARES OF STOCK ENTITLED TO
12 VOTE AND, IF USED WITH RESPECT TO A MICHIGAN LIMITED LIABILITY
13 COMPANY, THE TOTAL VOTE OF THE MEMBERS ENTITLED TO VOTE.

14 (9) ~~(7)~~ "This act" includes an order issued or rule
15 promulgated under this act.

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

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

24 (3) Not more than 90 days after the close of each calendar
25 year or a longer period if specified by the commissioner, a
26 licensee shall file with the commissioner an audit report
27 containing all of the following:

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

8

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

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

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

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

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

20 (3) A director, officer, MANAGER, or employee of a licensee
21 or of a subsidiary of a licensee being examined by the commis-
22 sioner, or a person having custody of any of the books, accounts,
23 or records of the licensee or of the subsidiary, shall ~~exhibit~~
24 ~~to~~ PROVIDE the commissioner, on request, any of the books,
25 accounts, and other records of the licensee or of the subsidiary
26 and shall otherwise facilitate the examination so far as it is in
27 their power to do so.

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

9

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

8 Sec. 301. A Michigan corporation OR MICHIGAN LIMITED
9 LIABILITY COMPANY may apply to the commissioner for licensure as
10 a BIDCO. A person other than a Michigan corporation OR MICHIGAN
11 LIMITED LIABILITY COMPANY shall not apply for a license.

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

20 (a) The applicant has a net worth, or firm financing commit-
21 ments ~~which~~ THAT demonstrate that the applicant will have a net
22 worth when the applicant begins transacting business as a BIDCO,
23 in liquid form available to provide financing assistance, that is
24 adequate for the applicant to transact business as a BIDCO as
25 determined under subsection (2).

26 (b) Each director, officer, MANAGER, and controlling person
27 of the applicant is of good character and sound financial

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

10

1 standing, ~~;~~ ~~each director and officer of the applicant~~ is
2 competent to perform his or her functions with respect to the
3 applicant, ~~;~~ and THAT the directors, ~~and~~ officers, AND
4 MANAGERS of the applicant are collectively adequate to manage the
5 business of the applicant as a BIDCO.

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

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

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

20 (2) In determining if the applicant has a net worth or firm
21 financing commitments adequate to transact business as a BIDCO,
22 the commissioner shall consider the types and variety of financ-
23 ing assistance that the applicant plans to provide, ~~;~~ the
24 experience that the directors, officers, MANAGERS, and control-
25 ling persons of the applicant have in providing financing
26 ASSISTANCE and managerial assistance to business firms, ~~;~~ the
27 financial projections and other relevant information from the

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

11

1 applicant's business plan, ~~and~~ and whether the applicant intends
2 to operate as a profit or nonprofit corporation OR AS A LIMITED
3 LIABILITY COMPANY. Except as otherwise provided in this act, the
4 commissioner shall require a minimum net worth of not less than
5 \$1,000,000.00 and not more than \$10,000,000.00. The commissioner
6 may require a minimum net worth of less than \$1,000,000.00, but
7 not less than \$500,000.00, if, in the context of the applicant's
8 business plan, the initial capitalization amount is adequate for
9 the applicant to transact business as a BIDCO because of special
10 circumstances including, but not limited to, funded overhead, low
11 overhead, or specialized opportunities.

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

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

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

24 (4) For purposes of subsection (1), subsection (3) shall not
25 be considered to be the only grounds upon which the commissioner
26 may find that a director, officer, MANAGER, or controlling person
27 of an applicant is not of good character or that it is not

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

12

1 reasonable to believe that an applicant, if licensed, will comply
2 with this act.

3 Sec. 305. (1) A person may apply to the commissioner for
4 preliminary approval of an application for a license.

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

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

23 Sec. 311. (1) Except as otherwise provided in subsection
24 (2), a person transacting business in this state, other than a
25 licensee, shall not use a name or title ~~which~~ THAT indicates
26 that the person is a business and industrial development
27 ~~corporation~~ COMPANY including, but not limited to, use of the

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

13

1 term "BIDCO", and shall not otherwise represent that the person
2 is a business and industrial development ~~corporation~~ COMPANY or
3 a licensee.

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

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

22 (2) A Michigan corporation OR MICHIGAN LIMITED LIABILITY
23 COMPANY that is licensed under this act may apply for and be
24 issued a license under another law of this state or ~~a law of~~
25 the United States unless the transaction of business ~~by that~~
26 ~~corporation~~ as a licensee under ~~another~~ THE OTHER law of this

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

14

1 state or ~~a law of~~ the United States would violate this act or
2 would be contrary to the purposes of this act.

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

18 (2) ~~Not less than 60 days before filing an application with~~
19 ~~the commissioner under subsection (1)~~ UPON THE DISSOLUTION OF A
20 LICENSEE ORGANIZED AS A MICHIGAN LIMITED LIABILITY COMPANY OR
21 BEFORE DISSOLUTION OF A LICENSEE ORGANIZED AS A MICHIGAN
22 CORPORATION, a licensee shall notify all of its ~~shareholders~~
23 OWNERS and all of its creditors of its DISSOLUTION AND intention
24 to file the application. Each creditor shall be notified of the
25 right to comment to the commissioner. Each ~~shareholder~~ OWNER
26 shall be notified of the right to file with the licensee FOR A
27 PERIOD OF 60 DAYS AFTER THE DATE OF THE NOTICE an objection to

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

15

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

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

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

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

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

16

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~~ THAT 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 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 assist-
26 ance and management assistance to business firms.

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

17

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.

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

18

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.

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

19

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~~ SECTION 1 OF
13 1970 PA 52, MCL 438.61, the parties may agree to any rate of
14 interest, including a rate in excess of the rate set forth in
15 ~~Act No. 259 of the Public Acts of 1968, being sections 438.41 to~~
16 ~~438.42 of the Michigan Compiled Laws~~ 1968 PA 259, MCL 438.41 TO
17 438.42.

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

20

1 warrants to purchase stock in the borrower, and convertibility of
2 debentures.

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

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

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

25 (c) With the approval of the commissioner, a licensee may
26 acquire and hold control of a company located in this state
27 ~~which~~ THAT is a local development company in accordance with

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

21

1 the small business investment act of 1958, PUBLIC LAW 85-699, 72
2 STAT. 689, whether ~~or not such a~~ THE development company is or
3 may become ~~certified~~ A QUALIFIED STATE OR LOCAL DEVELOPMENT
4 COMPANY by the small business administration under section 503 of
5 TITLE V OF the small business investment act of 1958, PUBLIC LAW
6 85-699, 15 U.S.C. 697.

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

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

26 (2) If the commissioner fails to issue an order approving or
27 denying an application under subsection (1)(b) or (c), within 45

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

22

1 days from receipt by the commissioner of an application which
2 complies with section 203, the application shall be considered
3 approved by the commissioner.

4 (3) For the purposes of subsection (1), "hold control" means
5 ~~ownership~~ THE POWER TO VOTE OR DIRECT THE VOTING, directly or
6 indirectly, of ~~record or beneficially, of voting securities~~
7 ~~greater than~~ EITHER OF THE FOLLOWING:

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

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

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

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

23 (b) The percentage of outstanding voting ~~securities~~ STOCK
24 OR VOTING MEMBERSHIP INTERESTS of the business firm the licensee
25 plans to own.

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

23

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

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

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

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

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

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

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

26 (c) Require that a licensee have in effect a written
27 financing assistance policy, approved by its board of directors,

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

24

1 including credit evaluation and other matters. The commissioner
2 shall not require that a licensee adopt a financing assistance
3 policy that contains standards ~~which~~ THAT prevent the licensee
4 from exercising needed flexibility in evaluating and structuring
5 financing assistance to business firms on a deal by deal basis.

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

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

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

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

25

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

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

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

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

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

26

1 (e) Providing financing assistance for the purchase of
2 property of an associate or principal ~~shareholder~~ OWNER of the
3 licensee.

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

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

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

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

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

26 (a) That an applicant or a director, ~~or~~ officer, OR
27 MANAGER of an applicant is not of good character if that person

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

27

1 has been convicted of, or has pleaded nolo contendere to, a crime
2 involving fraud or dishonesty.

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

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

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

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

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

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

25 (3) A licensee shall not sell all or substantially all of
26 its business or of the business of any of its offices to another

1 person unless that other person is a licensee and the sale is
2 approved by the commissioner.

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

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

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

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

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

29

1 participating in any manner in the conduct of the business of the
2 licensee, except with the consent of the commissioner.

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

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

30

1 of the person to apply to the commissioner for a hearing on the
2 order issued under this subsection.

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

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

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

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

25 Sec. 713. (1) If the commissioner considers it expedient,
26 the commissioner may call a meeting of the board of directors of
27 a licensee by giving notice of the time, place, and purpose of

1 the meeting not less than 5 days before the meeting to each
2 director either by personal service or by registered or certified
3 mail sent to the director's last known address as shown in the
4 records of the commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) If a licensee, in order to protect its interests, desig-
24 nates a person to serve as a director, ~~of,~~ officer, ~~of,~~
25 MANAGER, or in any capacity in the management of a business firm
26 to which that licensee provides financing assistance, that person
27 shall not, on that account, be considered to have a relationship

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

33

1 with that business firm. This subdivision does not apply if the
2 person has, directly or indirectly, any other financial interest
3 in the business firm or if the person, at any time before the
4 licensee provides the financing assistance, served as a director,
5 ~~of,~~ officer, ~~of,~~ MANAGER, or in any other capacity in the
6 management of the business firm for a period of 30 days or more.

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

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

SB0495, As Passed House, November 12, 1997

Senate Bill No. 495

34

1 least as favorable to the licensee as the terms on which the
2 associate provided financing assistance to the business firm.

3 (2) This section does not apply to any of the following:

4 (a) If the associate is a controlling person of the licensee
5 and is also the only ~~shareholder~~ OWNER of the licensee.

6 (b) If the associate is a subsidiary of the licensee.

7 (c) A transaction effected by an associate of a licensee in
8 the normal course of that associate's business involving a line
9 of credit or short-term financing assistance.

10 Sec. 905. Except as otherwise provided in this section, the
11 provisions of a licensee's incorporating OR ORGANIZING statute
12 apply to the licensee. If a provision of the licensee's incor-
13 porating OR ORGANIZING statute conflicts with any provision of
14 this act, this act controls.