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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

Introduced by Senators Hoffman, Stallings and Dunaskiss

ENROLLED SENATE BILL No. 495

AN ACT to amend 1986 PA 89, entitled "An act to promote economic development by providing for the licensing and regulation of business and industrial development corporations; to provide penalties; and to repeal certain acts and parts of acts," 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:

Sec. 102. The purposes of this act are all of the following:

(a) Promote economic development by encouraging the formation of business and industrial development companies, a new type of private institution, and to help meet the financing assistance and management assistance needs of business firms in this state.

(b) Provide for a system of licensing, regulation, and enforcement that will enable business and industrial development companies to satisfy eligibility requirements to participate, if they so choose, in the program of the small business administration under section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636, and other programs for which they may be eligible.

(c) Provide for a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement and to promote competent management, accurate record keeping, and appropriate communication with owners; in order to provide both of the following:

(i) Comfort to prospective owners so as to facilitate equity investments in business and industrial development companies.

(ii) Comfort to prospective debt sources so as to facilitate the borrowing of money by business and industrial development companies.

(d) Safeguard the general reputation of business and industrial development companies as a type of institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.

(e) Eliminate unnecessary restrictions that have discouraged the formation of business development corporations under former 1963 PA 117, by repealing that act and substituting a more flexible regulatory framework.

Sec. 104. (1) "Affiliate" means, if used with respect to a specified person other than a natural person, a person controlling or controlled by that specified person, or a person controlled by a person who also controls the specified person.

(2) "BIDCO" means a business and industrial development company licensed under this act.

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

(4) "Commissioner" means the commissioner of the financial institutions bureau of the department of consumer and industry services.

(5) "Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through 1 or more intermediaries, the management and policies of that specified person, whether by contract, other than a commercial contract for goods or nonmanagement services, or otherwise. A natural person shall not be considered to control a person solely on account of being a director, officer, manager, or employee of that person. A person who, directly or indirectly, has the power to vote or direct the voting of 20% or more of the total ownership vote, shall be rebuttably presumed to control that entity.

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

Sec. 105. (1) "Incorporating statute" means the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, or the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.

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

(3) "Interests of the licensee" includes the interests of shareholders of a licensee organized as a Michigan corporation and members of a licensee organized as a Michigan limited liability company.

(4) "License" means a license issued under this act authorizing a Michigan corporation or Michigan limited liability company to transact business as a BIDCO.

(5) "Licensee" means a Michigan corporation or Michigan limited liability company which is licensed under this act.

(6) "Manager" means a person designated by the members of a Michigan limited liability company to manage the limited liability company as provided in its articles of organization or an operating agreement.

(7) "Member" means a person with ownership interest in a BIDCO organized as a Michigan limited liability company.

(8) "Michigan corporation" means a corporation incorporated under the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, or the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(9) "Michigan limited liability company" means a limited liability company organized under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200.

(10) "Michigan nonprofit corporation" means a corporation incorporated under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

Sec. 106. (1) "Officer" means either of the following:

(a) If used with respect to a corporation, a person appointed or designated as an officer of that corporation by or under applicable law or the articles of incorporation or bylaws of that corporation, or a person who performs with respect to that corporation functions usually performed by an officer of a corporation.

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

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

(3) "Owner" means a shareholder of a BIDCO organized as a Michigan corporation or a member of a BIDCO organized as a Michigan limited liability company.

(4) "Person" means an individual, proprietorship, joint venture, partnership, limited liability company, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, government, agency of a government, or any other organization. If used with respect to acquiring control of or controlling a specified person, person includes a combination of 2 or more persons acting in concert.

(5) "Principal owner" means a person that owns, directly or indirectly, of record or beneficially, stock or membership interest representing 10% or more of the outstanding stock or membership interest of a corporation or limited liability company.

(6) "Subject person" means a controlling person, subsidiary or affiliate of a licensee, a director, officer, manager, or employee of a licensee or of a controlling person, subsidiary or affiliate of a licensee, or any other person who participates in the conduct of the business of a licensee.

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

(8) "Total ownership vote" means, if used with respect to a corporation, the total outstanding shares of stock entitled to vote and, if used with respect to a Michigan limited liability company, the total vote of the members entitled to vote.

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

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

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

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

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is a Michigan nonprofit corporation or Michigan limited liability company, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

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

(c) Other information that the commissioner may require.

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

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

(3) A director, officer, manager, or employee of a licensee or of a subsidiary of a licensee being examined by the commissioner, or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary, shall provide the commissioner, on request, any of the books, accounts, and other records of the licensee or of the subsidiary and shall otherwise facilitate the examination so far as it is in their power to do so.

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

Sec. 301. A Michigan corporation or Michigan limited liability company may apply to the commissioner for licensure as a BIDCO. A person other than a Michigan corporation or Michigan limited liability company shall not apply for a license.

Sec. 303. (1) After a review of information regarding the directors, officers, managers, and controlling persons of the applicant, a review of the applicant's business plan, including at least 3 years of detailed financial projections and other relevant information, and a review of additional information considered relevant by the commissioner, the commissioner shall approve an application for a license if, and only if, the commissioner determines all of the following:

(a) The applicant has a net worth, or firm financing commitments that demonstrate that the applicant will have a net worth when the applicant begins transacting business as a BIDCO, in liquid form available to provide financing assistance, that is adequate for the applicant to transact business as a BIDCO as determined under subsection (2).

(b) Each director, officer, manager, and controlling person of the applicant is of good character and sound financial standing, is competent to perform his or her functions with respect to the applicant, and that the directors, officers, and managers of the applicant are collectively adequate to manage the business of the applicant as a BIDCO.

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

(d) The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.

(e) If the applicant is or will be a Michigan limited liability company, the applicant's operating agreement and business plan are consistent with the objectives of promoting the stability and viability of the applicant and will not impede the ability of the applicant to retain any earnings or increases to fund balances and borrow funds to support the

applicant's continued operations. The applicant's operating agreement or articles of organization shall contain provisions as the commissioner considers necessary to satisfy this subsection.

(2) In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO, the commissioner shall consider the types and variety of financing assistance that the applicant plans to provide, the experience that the directors, officers, managers, and controlling persons of the applicant have in providing financing assistance and managerial assistance to business firms, the financial projections and other relevant information from the applicant's business plan, and whether the applicant intends to operate as a profit or nonprofit corporation or as a limited liability company. Except as otherwise provided in this act, the commissioner shall require a minimum net worth of not less than \$1,000,000.00 and not more than \$10,000,000.00. The commissioner may require a minimum net worth of less than \$1,000,000.00, but not less than \$500,000.00, if, in the context of the applicant's business plan, the initial capitalization amount is adequate for the applicant to transact business as a BIDCO because of special circumstances including, but not limited to, funded overhead, low overhead, or specialized opportunities.

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

(a) That a director, officer, manager, or controlling person of an applicant is not of good character if the director, officer, manager, or controlling person, or a director, officer, or manager of a controlling person, has been convicted of or has pleaded nolo contendere to a crime involving fraud or dishonesty.

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

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

Sec. 305. (1) A person may apply to the commissioner for preliminary approval of an application for a license. Notwithstanding that commitments to invest in the equity of the applicant have not been obtained and that all directors, officers, and managers of the applicant have not been identified, the commissioner may grant preliminary approval. In issuing an order granting preliminary approval, the commissioner shall indicate that, for the commissioner to determine that the requirements of section 303 are satisfied, final approval is conditioned on review by the commissioner of the applicant's completion of fund-raising, including the controlling persons, and review by the commissioner of the completion of the roster of directors and officers. If an application for preliminary approval has been granted, before granting final approval of the application for a license, the commissioner may request an updated balance sheet and other information considered relevant by the commissioner.

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

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

(2) Before being issued a license under this act, a Michigan corporation or Michigan limited liability company that proposes to apply for a license or that applies for a license may, under a name that indicates that it is a business and industrial development company, perform the acts necessary to obtain a license and to otherwise prepare to transact business as a licensee. A corporation or limited liability company shall not represent that it is a licensee until after the license has been obtained.

Sec. 315. (1) A Michigan corporation or Michigan limited liability company that is licensed under another law of this state or the United States may be issued a license under this act unless the transaction of business as a licensee under the other law of this state or the United States would violate this act or would be contrary to the purposes of this act.

(2) A Michigan corporation or Michigan limited liability company that is licensed under this act may apply for and be issued a license under another law of this state or the United States unless the transaction of business as a licensee under the other law of this state or the United States would violate this act or would be contrary to the purposes of this act.

Sec. 317. (1) Upon approval of a 2/3 vote of its board of directors and after complying with subsection (2), a Michigan corporation licensee may apply to the commissioner to have the commissioner accept the surrender of the licensee's license. If a Michigan limited liability company licensee dissolves and after it has provided the notice required under subsection (2), it shall apply to the commissioner to surrender its license. If the commissioner determines that the requirements of this section have been satisfied, the commissioner shall approve the application unless in the opinion of the commissioner the purpose of the application is to evade a current or prospective action by the commissioner under

article 7. A Michigan corporation licensee shall not dissolve and a Michigan limited liability company shall not complete winding up of its affairs until the commissioner has accepted the surrender of the licensee's license.

(2) Upon the dissolution of a licensee organized as a Michigan limited liability company or before dissolution of a licensee organized as a Michigan corporation, a licensee shall notify all of its owners and all of its creditors of its dissolution and intention to file the application. Each creditor shall be notified of the right to comment to the commissioner. Each owner shall be notified of the right to file with the licensee for a period of 60 days after the date of the notice an objection to the proposed surrender of the license and shall be advised that, if the owner files an objection, the owner should send a copy of the objection to the commissioner. If owners representing 20% or more of the total ownership vote of the licensee file an objection, the licensee shall not proceed with the application under subsection (1) unless the application is approved by a vote of owners representing 2/3 or more of the total ownership vote.

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

Sec. 403. (1) A licensee shall have a board of directors. The board of directors of each licensee shall consist of not less than 7 directors. If the licensee is a Michigan limited liability company, the board may consist of members who are not managers of the licensee.

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

Sec. 405. Within 30 days after the death, resignation, or removal of a director, officer, or manager, the election of a director, or the appointment of an officer or manager, the licensee shall notify the commissioner in writing of the event and shall provide any additional information which the commissioner may require.

Sec. 407. (1) A licensee shall not pay, or obligate itself to pay, a cash dividend or distribution or dividend and distribution in kind to its owners, unless that payment is consistent with a dividend and distribution policy that has been adopted by the licensee and approved by the commissioner. In reviewing dividend and distribution policies under this section, the commissioner shall protect against unsafe or unsound acts which could threaten the viability of the licensee as an ongoing BIDCO but be flexible in recognizing the special characteristics of BIDCOs and the diverse range of potentially appropriate dividend policies for BIDCOs. The commissioner may at any time withdraw any previous approval of a dividend and distribution policy if the commissioner determines that the withdrawal is necessary to prevent unsafe or unsound acts.

(2) Without the prior approval of the commissioner, a licensee shall not buy back, or obligate itself to buy back a share of stock or a membership interest from an owner.

Sec. 503. (1) The business of a licensee shall be providing financing assistance and management assistance to business firms. A licensee shall not engage in a business other than the business of providing financing assistance and management assistance to business firms.

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

(a) To borrow money and otherwise incur indebtedness for its purposes, including issuance of corporate bonds, debentures, notes, or other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured, and may involve equity features including, but not limited to, provisions for conversion to stock or membership interests and warrants to purchase stock or membership interests.

(b) To make contracts.

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

(d) To purchase, receive, hold, lease, or otherwise acquire or to sell, convey, mortgage, lease, pledge, or otherwise dispose of, real or personal property, together with rights and privileges that are incidental and appurtenant to these transactions of real or personal property, if the real or personal property is for the licensee's use in operating its business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or enforcement of obligations.

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

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

Sec. 505. (1) A licensee may determine the form and the terms and conditions for financing assistance provided by that licensee to a business firm including, but not limited to, forms such as loans, purchase of debt instruments, straight equity investments such as purchase of common stock, preferred stock, or membership interests, debt with equity

features such as warrants to purchase stock or membership interests, convertible debentures, or receipt of a percent of net income or sales, royalty based financing, guaranteeing of debt, or leasing of property. A licensee may purchase securities and membership interests of a business firm either directly or indirectly through an underwriter. A licensee may participate in the program of the small business administration under section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636, or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing assistance or management assistance to business firms. If a licensee participates in a program referred to in this subsection, the licensee shall comply with the requirements of that program.

(2) Management assistance provided by a licensee to a business firm may encompass both management or technical advice and management or technical services.

(3) Financing assistance or management assistance provided by a licensee to a business firm shall be for the business purposes of that business firm.

(4) A licensee may exercise incidental powers to carry on the business of, or are reasonably related to the business of, providing financing assistance and management assistance to business firms.

(5) Except as provided in subsection (6), in connection with an extension of credit by a person to a licensee or an extension of credit by a licensee to a limited liability company or a business entity as defined in section 1 of 1970 PA 52, MCL 438.61, the parties may agree to any rate of interest, including a rate in excess of the rate set forth in 1968 PA 259, MCL 438.41 to 438.42.

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

Sec. 507. (1) Either by itself or in concert with a director, officer, principal owner, manager, or affiliate, another licensee, or a director, officer, principal owner, manager, or affiliate of another licensee, a licensee shall not hold control of a business firm, except as follows:

(a) A licensee that had provided financing assistance to a business firm may acquire and hold control of that business firm to the extent necessary to protect the licensee's interest as creditor of, or investor in, the business firm. Unless the commissioner approves a longer period, a licensee holding control of a business firm under this subdivision shall divest itself of the interest that constitutes holding control as soon as practicable or within 3 years after acquiring that interest, whichever is sooner.

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

(c) With the approval of the commissioner, a licensee may acquire and hold control of a company located in this state that is a local development company in accordance with the small business investment act of 1958, Public Law 85-699, 72 Stat. 689, whether the development company is or may become a qualified state or local development company by the small business administration under section 503 of title V of the small business investment act of 1958, Public Law 85-699, 15 U.S.C. 697.

(d) With the approval of the commissioner, a licensee may acquire and hold control of another business firm with offices only in this state that is engaged only in the business of providing financing assistance and management assistance to business firms.

(e) With the approval of the commissioner, a licensee may acquire and hold control of a business firm not referred to in subdivisions (a) to (d). The commissioner shall not approve an application under this subdivision unless the commissioner determines that the approval will not cause the amount of the licensee's investments in business firms covered by this subdivision to exceed 15% of the amount of the assets of the licensee and that in the commissioner's judgment the approval will promote the purposes of this act. An approval by the commissioner under this subdivision shall be for a period of not more than 3 years, except that in a particular case the commissioner may subsequently extend the period beyond 3 years if the commissioner determines that a longer period is needed and is consistent with the purposes of this act.

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

(3) For the purposes of subsection (1), "hold control" means the power to vote or direct the voting, directly or indirectly, of either of the following:

(a) For a business firm with outstanding voting stock or voting membership interests held by fewer than 50 owners, more than 40% of the total ownership vote.

(b) For a business firm with outstanding voting stock or voting membership interests held by 50 or more owners, more than 25% of the total ownership vote.

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

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

(b) The percentage of outstanding voting stock or voting membership interests of the business firm the licensee plans to own.

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

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

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

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

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

(3) Subsection (2) does not limit the authority of the commissioner to do any of the following:

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

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

(c) Require that a licensee have in effect a written financing assistance policy, approved by its board of directors, including credit evaluation and other matters. The commissioner shall not require that a licensee adopt a financing assistance policy that contains standards that prevent the licensee from exercising needed flexibility in evaluating and structuring financing assistance to business firms on a deal by deal basis.

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

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

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

(2) If a licensee provides financing assistance to a business firm or engages in another business transaction, and if that financing assistance or transaction involves a potential conflict of interest, the terms and conditions under which the licensee provides the financing assistance or engages in the transaction shall not be less favorable to the licensee than the terms and conditions that would be required by the licensee in the ordinary course of business if the transaction did not involve a potential conflict of interest. Each person who participates in the decision of the licensee relating to a transaction described in this section and has knowledge of a potential conflict of interest involving that transaction shall take care that the potential conflict of interest is disclosed in the financing documents of the transaction or, for a business transaction not involving financing assistance, in another appropriate document.

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

(a) Providing financing assistance to a principal owner of the licensee, to a person controlled by a principal owner of the licensee, or to a director, officer, manager, partner, relative, controlling person, or affiliate of a principal owner of the licensee.

(b) Providing financing assistance to a business firm that a principal owner of the licensee, a director, officer, manager, partner, relative, controlling person, or affiliate of a principal owner of a licensee, or a person controlled by a principal owner of the licensee provides or plans to provide contemporaneous financing assistance.

(c) Providing financing assistance to a business firm that has or is expected to have a substantial business relationship with another business firm that has a director, officer, manager, or controlling person who is also a director, officer, manager, or controlling person of the licensee or who is the spouse of a director, officer, manager, or controlling person of the licensee.

(d) Providing financing assistance to a business firm if that business firm, or a director, officer, manager, or controlling person of that business firm, contemporaneously has lent or will lend money to an associate of the licensee.

(e) Providing financing assistance for the purchase of property of an associate or principal owner of the licensee.

(f) Selling or otherwise transferring any of its assets to an associate or principal owner of the licensee.

(4) Nothing in this act limits the authority of the commissioner to determine that an act involves a conflict of interest and is an unsafe or unsound act.

Sec. 601. (1) Without the prior approval of the commissioner, a person shall not acquire control of a licensee.

(2) With respect to an application for approval to acquire control of a licensee, if the commissioner determines, that the applicant and the directors, officers, and managers of the applicant are of good character and sound financial standing, that it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with this act, and that the applicant's plans, if any, to make a major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee, the commissioner shall approve the application. If, after notice and a hearing, the commissioner determines otherwise, the commissioner shall deny the application.

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

(a) That an applicant or a director, officer, or manager of an applicant is not of good character if that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

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

(4) The conditions described in subsection (3) are not the only conditions upon which the commissioner may determine that an applicant or a director, officer, or manager of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee.

Sec. 603. (1) A licensee shall not merge with another business firm unless 1 of the following applies:

(a) If the licensee is the surviving business firm, the merger is approved by the commissioner.

(b) If the licensee is a disappearing business firm, the surviving business firm is a licensee and the merger is approved by the commissioner.

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

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

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

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

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

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

Sec. 709. (1) If the commissioner determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

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

(3) Within 30 days after an order is issued under subsection (1) or (2), the subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to

commence a hearing within 15 business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a subject person or former subject person of a licensee to whom an order is issued under subsection (1) or (2) to petition for judicial review of the order is not affected by the failure of the person to apply to the commissioner for a hearing on the order issued under this subsection.

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

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

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

Sec. 711. If, in the opinion of the commissioner, disclosure to owners regarding a matter is warranted, the commissioner may require a licensee, in a form and manner as the commissioner may specify, to disclose to the owners of a licensee the results of a communication or order from the commissioner addressed to the licensee or to a subject person of the licensee.

Sec. 713. (1) If the commissioner considers it expedient, the commissioner may call a meeting of the board of directors of a licensee by giving notice of the time, place, and purpose of the meeting not less than 5 days before the meeting to each director either by personal service or by registered or certified mail sent to the director's last known address as shown in the records of the commissioner.

(2) If the commissioner considers it expedient, the commissioner may call a meeting of the owners of a licensee by giving notice of the time, place, and purpose of the meeting not less than 5 days before the meeting to each owner either by personal service or by registered or certified mail sent to the owner's last known address as shown by the books of the licensee. The licensee shall pay the expenses of the notice and of a meeting called under this subsection.

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

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

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

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

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

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

(iv) A close relative of a person referred to in subparagraph (i).

(v) A person of which a person referred to in subparagraphs (i) to (iv) is a director, officer, or manager.

(vi) A person in which a person referred to in subparagraphs (i) to (iv), or any combination of those persons acting in concert, owns or controls, directly or indirectly, a 20% or greater equity interest.

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

(d) "Closing services" means services performed in connection with the providing of financing assistance. Closing services includes, but is not limited to, appraising property and preparing credit reports. Closing services does not include a service performed after the providing of financing assistance.

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

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

(a) A person who is in a relationship referred to in that subdivision within 6 months before or after a licensee provides financing assistance shall be considered to be in that relationship as of the date that licensee provides that financing assistance.

(b) If a licensee, in order to protect its interests, designates a person to serve as a director, officer, manager, or in any capacity in the management of a business firm to which that licensee provides financing assistance, that person shall not, on that account, be considered to have a relationship with that business firm. This subdivision does not apply if the person has, directly or indirectly, any other financial interest in the business firm or if the person, at any time before

the licensee provides the financing assistance, served as a director, officer, manager, or in any other capacity in the management of the business firm for a period of 30 days or more.

Sec. 807. A person shall not, with intent to deceive a director, officer, manager, employee, auditor, or attorney of a licensee, the commissioner, or a governmental agency, make a false entry in the books, accounts, or other records of that licensee, omit to make an entry in those books, accounts, or other records which that person is required to make, or alter, conceal, or destroy any of those books, accounts, or other records.

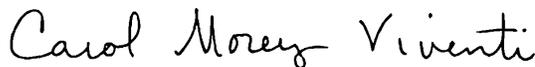
Sec. 813. (1) A licensee shall not provide, directly or indirectly, financing assistance to a business firm to which an associate of that licensee provides financing assistance, either contemporaneously with, or within 1 year before or after, the providing of financing assistance by the licensee, if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

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

- (a) If the associate is a controlling person of the licensee and is also the only owner of the licensee.
- (b) If the associate is a subsidiary of the licensee.
- (c) A transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

Sec. 905. Except as otherwise provided in this section, the provisions of a licensee's incorporating or organizing statute apply to the licensee. If a provision of the licensee's incorporating or organizing statute conflicts with any provision of this act, this act controls.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.