MICHIGAN BIDCO ACT
Act 89 of 1986

AN ACT to promote economic development by providing for the licensing and regulation of business and industrial development corporations; to prescribe the powers and duties of certain public officers and agencies; to provide for the promulgation of rules; to provide remedies and penalties; and to repeal acts and parts of acts.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

The People of the State of Michigan enact:

ARTICLE 1
SHORT TITLE, PURPOSES, AND DEFINITIONS

487.1101 Short title.

Sec. 101. This act shall be known and may be cited as the “Michigan BIDCO act”.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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487.1102 Purposes of act.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1103 Meanings of words and phrases.

Sec. 103. For the purposes of this act, unless the context clearly indicates otherwise, the words and phrases defined in sections 104 to 106 have the meaning ascribed to them in those sections.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1104 Definitions; A to C.

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 that also controls the specified person.

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

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(3) "Business development enterprise" means a business and industrial development company that meets all of the following:

(a) Has as part of its business plan the objective of providing public benefit.

(b) Is licensed under this act.

(c) Is designated as a qualified business development enterprise by the Michigan strategic fund under section 304.

(4) "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.

(5) "Commissioner" means the commissioner of the office of financial and insurance regulation in the department of licensing and regulatory affairs.

(6) "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 is not considered to control a person solely because he or she is a director, officer, manager, or employee of that person. A person that, directly or indirectly, has the power to vote or direct the voting of 20% or more of the total ownership vote is rebuttably presumed to control that entity.

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

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

Compiler's note: For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

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487.1105 Definitions; I to M.

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. The term includes a BIDCO license issued to a business development enterprise.

(5) "Licensee" means a Michigan corporation or Michigan limited liability company that holds a license 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 that has an 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.

(11) "Michigan strategic fund" means the Michigan strategic fund as described in the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1106 Definitions; O to T.

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

(a) If used with respect to a corporation, an individual who is 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 an individual who performs functions with respect to that corporation that are usually performed by an officer of

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a corporation.

(b) If used with respect to a specified person other than an individual or a corporation, an individual who performs functions with respect to that specified person that are usually performed by an officer of a corporation for 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) "Public benefit" means making capital available, or facilitating the availability of capital, to businesses in this state that have 750 or fewer employees, the intent of which is to create or retain employment opportunities for residents of this state, stabilize or increase the tax base of this state, or support the redevelopment of facilities for use by small businesses.

(7) "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 that participates in the conduct of the business of a licensee.

(8) "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).

(9) "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.

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

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

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ARTICLE 2

REGULATION, REPORTING, AND EXAMINATION

487.1201 Administration of act; orders; rules; imposition of conditions; applications for declaratory rulings; judicial review.

Sec. 201. (1) The commissioner shall administer this act. The commissioner may issue orders and promulgate rules that, in the opinion of the commissioner, are necessary to execute, enforce, and effectuate the purposes of this act. Any rules promulgated shall be promulgated in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Whenever the commissioner issues an order or license under this act, the commissioner may impose conditions that are necessary, in the opinion of the commissioner, to carry out this act and the purposes of this act.

(3) The commissioner may honor applications from interested persons for declaratory rulings regarding any provision of this act.

(4) Every final order, decision, license, or other official act of the commissioner under this act is subject to judicial review in accordance with law.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1203 Application; form; information; business plan.

Sec. 203. (1) An applicant for a license under this act shall file an application with the commissioner. Subject to subsection (2), the commissioner shall establish the form of the application and the information the applicant must provide on or with the application form.

(2) For purposes of section 303, an application for a license under this act shall include a business plan. If the applicant is applying for a license as a business development enterprise, the business plan must include the objective of providing public benefit.

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History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1205 Investigations; purposes; oaths and affirmations; witnesses; evidence; documents or records; failure to comply with subpoena.

Sec. 205. (1) The commissioner may make public or private investigations within or outside this state that the commissioner considers necessary to determine whether to approve an application filed with the commissioner under this act, to determine whether a person has violated or is about to violate this act, to aid in the enforcement of this act, or to aid in issuing an order or promulgating a rule under this act.

(2) For purposes of an investigation, examination, or other proceeding under this act, the commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner considers relevant or material to the proceeding.

(3) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to a matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1207 Service of process.

Sec. 207. Service of process authorized to be made by the commissioner in connection with a noncriminal proceeding under this act may be made by registered or certified mail.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1209 Establishment of annual schedule of fees; payment; action for recovery of fees or penalties; failure to submit report; disposition.

Sec. 209. (1) The commissioner shall establish annually a schedule of fees sufficient to pay for the bureau's costs of enforcing this act. The fees shall be as follows:

(a) For filing an application for a license, not less than $2,500.00 or more than $8,000.00.

(b) For filing an application for approval to acquire control of a licensee, not less than $1,250.00 or more than $6,000.00.

(c) For filing an application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, not less than $1,250.00 or more than $6,000.00. Two or more applications relating to the same merger, purchase, or sale may be filed, for the same fee as for filing a single application.

(d) For annual license renewal, not less than $2,500.00 or more than $8,000.00, payable at a time prescribed by the commissioner. A license renewal fee not paid when due is subject to a penalty of $25.00 for each day the fee is delinquent or $1,000.00, whichever is less.

(e) For examination of the licensee, not less than $40.00 or more than $70.00 per hour for each examiner involved in the examination. If the commissioner examines a licensee or a subsidiary of a licensee, within 10 days after receiving a statement from the commissioner, the licensee shall pay the fee, plus travel expenses.

(2) A fee for filing an application with the commissioner is nonrefundable and is to be paid at the time the application is filed with the commissioner.

(3) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee to recover the fees or penalties together with interest and costs.

(4) A licensee or an affiliate or subsidiary of a licensee that fails to submit a report as required by section 215 is subject to a penalty of $25.00 for each day the report is delinquent or $1,000.00, whichever is less.

(5) Money collected under this section shall be paid into the state treasury to the credit of the financial institutions bureau and used only for the operation of the financial institutions bureau.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1992, Act 74, Imd. Eff. June 2, 1992.

487.1211 Books, accounts, and other records of licensee; location and preservation; valuation of assets; audit report.

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

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1213 Making or keeping of books, accounts, or other records by person other than licensee; applicability of act; approval of commissioner.

Sec. 213. (1) If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this act applies to that person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if that person were the licensee.

(2) If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts, or other records of that affiliate or subsidiary, this act applies to that person with respect to those books, accounts, and other records to the same extent as if that person were the affiliate or subsidiary.

(3) If the commissioner considers it expedient, the commissioner may require any particular licensee to obtain the approval of the commissioner before permitting another person to make or keep any of the books, accounts, or other records of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1215 Filing reports with commissioner; form; contents.

Sec. 215. Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the commissioner such reports as and when the commissioner may require. A report under this section shall be in such a form and shall contain such information as the commissioner may require.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1216 Publication and distribution of information on impact of act.

Sec. 216. (1) The commissioner shall publish annually and provide to the house committee on economic development and energy and senate committee on economic development, trade and tourism information on the impact of this act in promoting economic development in this state. At the minimum, the information shall include aggregate statistics on each of the following:

(a) The number and dollar amount of provisions of financing assistance made by licensees to business firms.

(b) The number and dollar amount of provisions of financing assistance made by licensees to business firms classified in broad categories of industry such as divisions of the standard industrial classification manual.

(c) The number and dollar amount of provisions of financing assistance made by licensees to minority owned business firms and to woman owned business firms.

(d) Estimates of the number of jobs created or retained.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1217 Examination of licensee or subsidiary of licensee; exhibiting books, accounts, and other records; facilitating examination; retention of person to assist commissioner.

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

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

ARTICLE 3
LICENSING

487.1301 Licensure; eligibility.

Sec. 301. A Michigan corporation or Michigan limited liability company may apply to the commissioner for a license under this act. A person that is not a Michigan corporation or Michigan limited liability company shall not apply for, and the commissioner shall not grant, a license under this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1303 Review of information; approval of application for license; determinations; net worth; findings; grounds.

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 licensee.

(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.

(f) If the applicant is applying for a license as a business development enterprise, the applicant has been designated as a qualified business development enterprise by the Michigan strategic fund under section 304.

(2) In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO under subsection (1)(a), 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. For purposes of subsection (1)(a), the commissioner shall require that the applicant demonstrate that the applicant will have a net worth when it begins transacting business that meets 1 of the following:

(a) Unless subdivision (b) or (c) applies, a minimum net worth of not less than $1,000,000.00 and not more than $10,000,000.00.

(b) 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.

(c) If the applicant is applying for a license as a business development enterprise, a minimum net worth and firm financing commitments of not less than $25,000,000.00.

(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

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1304 Business development enterprise; designation; application; criteria; notification by board of Michigan strategic fund.

Sec. 304. (1) Beginning January 1, 2012, the board of the Michigan strategic fund may designate a Michigan corporation or Michigan limited liability company as a qualified business development enterprise under this section. The commissioner shall not grant a license to an applicant for a license as a business development enterprise under this act if the applicant has not applied for and received a designation as a qualified business development enterprise from the board of the Michigan strategic fund.

(2) An application for designation as a qualified business development enterprise shall include all of the following:

(a) A copy of the application and supporting documentation submitted to the commissioner under section 301.

(b) A copy of the applicant's articles of incorporation and bylaws if the applicant is a Michigan corporation, or its articles or organization and operating agreement if the applicant is a Michigan limited liability company.

(c) Documentation satisfactory to the board of the Michigan strategic fund that the applicant meets the net worth requirements of section 303(2)(c).

(d) Information concerning the background and business experience of the directors, officers, managers, and controlling persons of the applicant.

(e) A summary business plan, including at least 3 years of detailed financial projections and other relevant information.

(f) Any other information considered relevant by the board of the Michigan strategic fund.

(3) The board of the Michigan strategic fund shall apply the following criteria in determining whether to designate a Michigan corporation or Michigan limited liability company a qualified business development enterprise:

(a) Whether the size and composition of the board of the applicant meets section 403.

(b) Whether the business plan of the enterprise includes providing a public benefit acceptable to the board of the Michigan strategic fund.

(c) Whether the applicant has demonstrated to the satisfaction of the board of the Michigan strategic fund that it will meet any transparency, reporting, and accountability requirements established by the board by rule with respect to the public policy objective or objectives of the enterprise.

(d) Whether the directors, officers, managers, and controlling persons of the applicant have sufficient experience to demonstrate to the satisfaction of the board of the Michigan strategic fund that they have the ability to implement the proposed business plan of the enterprise.

(4) For purposes of section 303(1)(f), the board of the Michigan strategic fund shall notify the commissioner if it designates a Michigan corporation or Michigan limited liability company a qualified business development enterprise under this section.

History: Add. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1304a Reports.

Sec. 304a. (1) A business development enterprise shall report to the Michigan strategic fund at least annually the following information for each business it supported, by providing or facilitating the securing of capital, in the preceding 5-year period:

(a) The total amount of private capital secured by the business from its support.

(b) The estimated number of jobs the business created or retained.

(c) An estimate of the state and local tax collections attributable to its support of that business.

(2) The commissioner shall provide to the Michigan strategic fund an annual summary report containing its assessment of the financial condition of each business development enterprise. The commissioner shall establish the form and contents of the report. At a minimum, the report shall include an assessment of the

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business development enterprise's ability to fund its operations in the future.

(3) A business development enterprise shall provide the commissioner any information he or she reasonably requests in connection with his or her assessment of the financial condition of the business development enterprise and the preparation of the report described in subsection (2).

History: Add. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1305 Application for preliminary approval of application for license; order; conditions to final approval; fee.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1307 Denial of application; written statement of explanation.

Sec. 307. If the commissioner denies an application under sections 301 to 305, the commissioner shall provide the applicant with a written statement explaining the basis for the denial.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1309 License; issuance; posting; nontransferable and nonassignable.

Sec. 309. If an application for a license is approved and all conditions precedent to the issuance of that license are fulfilled, the commissioner shall issue a license to the applicant. A licensee shall post the license in a conspicuous place in the licensee's principal office. A license is not transferable or assignable.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1311 Prohibited representations; permissible acts.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1313 Misrepresentation of license.

Sec. 313. A licensee shall not misrepresent the meaning or effect of its license.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1315 Michigan corporation or limited liability company licensed under another law.

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.

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History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1317 Application to commissioner to accept surrender of license; approval; notice to owners and creditors; filing objection; sending copy of objection to commissioner.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

ARTICLE 4
CORPORATE MATTERS

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487.1401 Name of licensee; inclusion of word "BIDCO."

Sec. 401. (1) Except as provided in subsection (2), the name of each licensee shall include the word "BIDCO".

(2) A business development enterprise is not required to include the word "BIDCO" in its name.

(3) A licensee shall not transact business under a name other than its name.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1403 Board of directors; number of directors; membership; meetings.

Sec. 403. (1) A licensee shall have a board of directors.

(2) The board of directors of a licensee that is not a business development enterprise shall consist of at least 7 directors. All of the following apply to the board of directors of a licensee that is a business development enterprise:

(a) The board shall consist of at least 3 directors.

(b) At least 1/3 of the members of the board shall be individuals designated by the board of the Michigan strategic fund.

(3) If the licensee is a Michigan limited liability company, the board may consist of members who are not managers of the licensee.

(4) The board of directors of a licensee shall hold a meeting at least once each calendar quarter.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997;—Am. 2012, Act 358, Imd. Eff. Dec. 13, 2012.

487.1405 Death, resignation, or removal of director, officer, or manager; election of director; appointment of officer or manager; notice to commissioner; additional information.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1407 Dividend and distribution policies; buying back share of stock or membership interest.

Sec. 407. (1) A licensee shall not pay, or obligate itself to pay, a cash dividend or distribution or dividend

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

ARTICLE 5

TRANSACTION OF BUSINESS

487.1501 Offices of licensee; number; location; posting sign bearing corporate name; personnel; establishing, relocating, or closing office.

Sec. 501. (1) A licensee shall maintain not less than 1 office in this state.

(2) A licensee shall not maintain an office at any place outside this state.

(3) Each office of a licensee shall be located in a place which is reasonably accessible to the public.

(4) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.

(5) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.

(6) Upon written notice to the commissioner, a licensee may establish, relocate, or close an office.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1503 Business of licensee; powers and privileges of licensee.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1505 Forms, terms, and conditions of financing assistance; participation in program of small business administration; compliance; scope of management assistance; purpose of financing assistance or management assistance; exercise of incidental powers; extension of credit; interest; violation as felony; penalty; "interest" defined.

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

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

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487.1507 Holding control of business firm; order approving or denying application; "hold control" defined; plan for acquiring and holding control of business firm; demonstrating necessity to hold control of business firm.

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.

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(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).

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1509 Transacting business in safe and sound manner; considering risks; authority of commissioner not limited.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1511 Definitions; transactions involving potential conflict of interest; authority of commissioner to determine conflict of interest not limited.

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,

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1513 Lien on or security interest in property of licensee.

Sec. 513. Except with the approval of the commissioner, a licensee shall not provide a lien on or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, another person.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

ARTICLE 6

MERGERS AND ACQUISITIONS

487.1601 Acquiring control of licensee; application for approval; determinations by commissioner.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1603 Merger of licensee with another business firm; conditions; purchase by licensee of business of another person; sale of business; application for approval of merger, purchase, or sale; determinations.

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

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

ARTICLE 7
ENFORCEMENT

487.1701 Action to enjoin violation or enforce compliance; restraining order, preliminary or permanent injunction, or writ of mandamus; appointment of receiver or conservator; bond.

Sec. 701. If in the opinion of the commissioner, a person violates, or there is reasonable cause to believe that a person is about to violate this act, the commissioner may bring an action in the name of the people of this state in a circuit court to enjoin the violation or to enforce compliance with this act. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner to post a bond in an action brought under this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1703 Violation of MCL 487.1311; cease and desist order; filing application for hearing on order; rescission of order; judicial review.

Sec. 703. (1) If the commissioner finds that a person has violated or that there is reasonable cause to believe that a person is about to violate section 311, the commissioner may order the person to cease and desist from the violation unless and until the person is issued a license.

(2) Within 30 days after an order is issued under subsection (1), the person 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 that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a person to whom an order is issued under subsection (1) 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.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1705 Cease and desist order; affirmative action to correct condition; application for hearing on order; affirming, modifying, or rescinding order; judicial review.

Sec. 705. (1) If, after notice and a hearing, the commissioner determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject person of a licensee is about to violate, this act or another applicable law, or that a licensee or subject person of a licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate, in an unsafe or unsound act with respect to the business of that licensee, the commissioner may order that licensee or subject person to cease and desist from the action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(2) If the commissioner determines that any of the factors set forth in subsection (1) are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously weaken the condition of the licensee; or is likely to otherwise seriously prejudice the interests of the licensee before the completion of proceedings conducted under subsection (1), the commissioner may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

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(3) Within 30 days after an order is issued under subsection (2), the licensee or 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 licensee or 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 licensee or subject person to whom an order is issued under subsection (2) to petition for judicial review of the order is not affected by the failure of the licensee or subject person to apply to the commissioner for a hearing on the order issued under this subsection.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1707 Order removing subject person from office and prohibiting further participation in business of licensee; notice and hearing; determinations; order suspending subject person from office and prohibiting further participation in business of licensee; application for hearing on order; affirming, modifying, or rescinding order; judicial review; "office" defined.

Sec. 707. (1) The commissioner may issue an order removing a subject person of a licensee 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, if, after notice and a hearing, the commissioner determines all of the following are true:

(a) The subject person has violated this act or another applicable law; the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.

(b) The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

(c) The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

(2) The commissioner may issue an order removing the subject person from his or her office with the licensee, if any, 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, if, after notice and a hearing, the commissioner determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of a licensee has demonstrated both of the following:

(a) Dishonesty or willful or continuing disregard for the safety and soundness of the financial or other business institution.

(b) Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) If the commissioner determines that the factors set forth in subsection (1) or (2) are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of 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 conducting the business of the licensee, except with the consent of the commissioner.

(4) Within 30 days after an order is issued under subsection (3), 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 begin 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 of a licensee to whom an order is issued under subsection (3) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order issued under this subsection.

(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.

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

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1709 Crime involving dishonesty or breach of trust; order suspending subject person from office and prohibiting further participation in business of licensee; application for hearing on order; affirming, modifying, or rescinding order; judicial review; conviction not required; "office" defined.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1711 Disclosure to owners.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1713 Calling meeting of board of directors of licensee or of owners of licensee; notice; expenses.

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

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1715 Order directing licensee to refrain from providing additional financing assistance to business firms; notice and hearing; determinations; request for hearing; affirming, modifying, or rescinding order; resumption of financing assistance; application to modify or rescind order.

Sec. 715. (1) The commissioner may issue an order directing a licensee to refrain from providing any additional financing assistance to business firms if, in the opinion of the commissioner, the order is necessary to protect the interests of the licensee or the public interest, and if, after notice and a hearing, the commissioner determines that any of the following are true:

(a) The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated this act or another applicable law.

(b) The licensee is conducting its business in an unsafe and unsound manner.

(c) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(d) The licensee has ceased to transact business as a business and industrial development corporation.

(e) The licensee is insolvent.

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved of or consented to the action or such relief has been granted.

(h) A fact or condition exists which would have been grounds for denying the application if the fact or condition had existed at the time the licensee applied for its license.

(2) If the commissioner determines that any of the factors set forth in subsection (1) are true with respect to a licensee and that it is necessary for the protection of the interest of the licensee or the public interest that the commissioner immediately issue an order directing the licensee to refrain from providing any additional financing assistance to business firms, the commissioner may issue such an order without a hearing. Within 30 days after an order is issued under this subsection, the licensee to whom the order is directed may file with the commissioner a request for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order.

(3) With the consent of the commissioner, a licensee which has been the subject of an order under subsection (1) or (2) may resume providing financing assistance to business firms under such conditions as the commissioner may prescribe.

(4) A person to whom an order is issued under subsection (1) or (2) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application 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 the order is modified or rescinded, will comply with this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1717 Appointment of conservator for licensee; reimbursement of expenses of conservatorship; powers and duties of conservator; liquidation of licensee; appointment of receiver; determinations; manner of liquidation.

Sec. 717. (1) If the commissioner finds that any of the factors set forth in section 715(1) are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may appoint a conservator for the licensee. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau of the department of consumer and industry services or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by the bureau in connection with the conservatorship as expenses. Upon the approval of the commissioner, the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

(2) Under the direction of the commissioner, the conservator shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of

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the licensee or any other action as may be necessary to conserve the assets of the licensee or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the commissioner may terminate the conservatorship and permit the licensee to resume the transaction of its business subject to the terms, conditions, restrictions, and limitations the commissioner may prescribe.

(3) If in the opinion of the commissioner it is appropriate that the licensee be liquidated, the commissioner, with the attorney general representing the commissioner, may apply to the circuit court for the county in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the commissioner determines that any of the following are true:

(a) The licensee is insolvent.

(b) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(c) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law.

(d) A person has applied for the relief described under subdivision (c) against any licensee and that licensee has by an affirmative act approved of or consented to the action or the relief has been granted.

(e) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(4) If a receiver is appointed under subsection (3), the receiver shall liquidate the property and business of the licensee in the manner provided for in sections 2401 to 2403 of the banking code of 1999, 1999 PA 276, MCL 487.12401 to 487.12403, as if the licensee were a bank.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 2000, Act 445, Imd. Eff. Jan. 9, 2001.

487.1719 Violation of act; amount and disposition of civil penalty; applicability of section; provisions cumulative; liability for certain violations.

Sec. 719. (1) If, after notice and a hearing, the commissioner finds that a person has violated this act, the commissioner may order that person to pay to the commissioner a civil penalty in the amount the commissioner specifies. However, the amount of the civil penalty shall not exceed $1,000.00 for each violation, or in the case of a continuing violation, $1,000.00 for each day for which the violation continues. Money collected for a civil penalty under this section shall be paid into the state treasury and credited to the general fund of this state.

(2) This section does not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the commissioner, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(3) The provisions of subsection (1) are additional to, and not alternative to, other provisions of this act which authorize the commissioner to issue orders or to take other action on account of a violation of this act. A person who is convicted under section 819 on account of a violation of article 8 shall not be liable to pay a civil penalty under subsection (1) on account of that violation. A person who pays a civil penalty under subsection (1) on account of a violation of article 8 shall not be liable to prosecution under section 819 on account of that violation.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

ARTICLE 8

CERTAIN UNLAWFUL ACTIVITIES

487.1801 Definitions.

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.

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(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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1803 Willful untrue statement or omission of material fact in application or report.

Sec. 803. A person shall not willfully make an untrue statement of a material fact in an application or report filed with the commissioner under this act, or willfully omit to state in such an application or report a material fact required to be stated in the application or report.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1805 Willful refusal to allow inspection or making copies of books, accounts, and other records.

Sec. 805. A person having custody of any of the books, accounts, or other records of a licensee shall not willfully refuse to allow the commissioner, upon request, to inspect or make copies of any of those books, accounts, or other records.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1807 Books, accounts, or other records; false entries; omission of required entry; alteration, concealment, or destruction.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1809 Financing assistance to associate of licensee.

Sec. 809. A licensee shall not provide, directly or indirectly, financing assistance to an associate of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1811 Financing assistance to discharge obligation to associate of licensee; transactions to which section inapplicable.

Sec. 811. A licensee shall not provide, directly or indirectly, financing assistance to discharge, or to free other money for use in discharging, in whole or in part, an obligation to an associate of that licensee. This section does not apply to 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.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1813 Financing assistance to business firm to which associate of licensee provides financing assistance; applicability of section.

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

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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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1815 Compensation of associate of licensee for procuring or influencing licensee's action with respect to providing financing assistance; section inapplicable to fees received for bona fide closing services; criteria.

Sec. 815. An associate of a licensee shall not receive, directly or indirectly, from a person to whom that licensee provides financing assistance, compensation in connection with the providing of that financing assistance or anything of value for procuring, influencing, or attempting to procure or influence the licensee's action with respect to the providing of the financing assistance. This section does not apply to the receipt of fees by an associate of a licensee for bona fide closing services performed by that associate if all of the following are true:

(a) The associate, with the consent and knowledge of the person to whom the financing assistance is provided, is designated by the licensee to perform the services.

(b) The services are appropriate and necessary in the circumstances.

(c) The fees for the services are approved as reasonable by the licensee.

(d) The fees for the services are collected by the licensee on behalf of the associate.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1817 Exemptions.

Sec. 817. (1) By such orders or rules the commissioner considers necessary and appropriate, the commissioner may exempt from sections 809 to 815, either unconditionally or upon specified terms and conditions and for specified periods, a person or transaction or class of persons or transactions, if the commissioner finds that the exemption is in the public interest and that the regulation of the person, transaction, or class is not necessary for the purposes of this act.

(2) In exempting a person or transaction or class of persons or transactions, the commissioner shall give consideration, as considered appropriate by the commissioner, to conflict of interest provisions of federal law or regulation that may be applicable to that person or transaction governing participants in federal financing programs.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1819 Violation of article; penalty; applicability of section; power of state to punish not limited by act.

Sec. 819. (1) A person who knowingly commits an act which act violates this article shall be fined not more than $10,000.00 or shall be imprisoned for not more than 1 year, or both.

(2) This section does not apply to an act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the commissioner, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(3) Nothing in this act limits the power of the state to punish a person for an act which constitutes a crime under any statute.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

ARTICLE 9
GENERAL PROVISIONS

487.1901 Liberal construction.

Sec. 901. This act shall be liberally construed to accomplish its purposes.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

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487.1903 Proceedings subject to administrative procedures act; exemptions.

Sec. 903. A proceeding to promulgate rules or a proceeding regarding civil penalties under section 719 shall be subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any other proceedings under this act are exempt from the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

487.1905 Applicability of provisions of licensee's incorporating or organizing statute.

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.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

ARTICLE 10
REPEAL

487.2001 Repeal of MCL 487.851 to 487.867; certain statutory references considered references to BIDCO.

Sec. 1001. Act No. 117 of the Public Acts of 1963, being sections 487.851 to 487.867 of the Michigan Compiled Laws, is repealed. A reference in another law of this state to a business development corporation under Act No. 117 of the Public Acts of 1963 shall be considered to be a reference to a BIDCO under this act.

History: 1986, Act 89, Imd. Eff. May 1, 1986.

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