

MICHIGAN BIDCO ACT (EXCERPT)

Act 89 of 1986

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.

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.

(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.

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 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.