

MICHIGAN BIDCO ACT (EXCERPT)

Act 89 of 1986

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 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 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.

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.