

MICHIGAN BIDCO ACT (EXCERPT)
Act 89 of 1986

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 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.

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.

(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, 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.