

MICHIGAN BIDCO ACT (EXCERPT)
Act 89 of 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.

(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 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.