

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 867 & 552
90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAXWELL.

Offered February 15, 2000.

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TERRY L. SPIELER, Secretary.

3852S.05P

AN ACT

To repeal sections 135.500, 135.503 and 135.516, RSMo Supp. 1999, relating to tax credit programs, and to enact in lieu thereof twenty-four new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 135.500, 135.503 and 135.516, RSMo Supp. 1999, are repealed and twenty-four new sections enacted in lieu thereof, to be known as sections 135.500, 135.503, 135.516, 135.630, 620.1730, 620.1733, 620.1736, 620.1739, 620.1742, 620.1745, 620.1748, 620.1751, 620.1754, 620.1757, 620.1760, 620.1763, 620.1766, 620.1769, 620.1772, 620.1775, 620.1778, 620.1781, 620.1784 and 620.1787, to read as follows:

135.500. 1. Sections 135.500 to 135.529 shall be known and may be cited as the "Missouri Certified Capital Company Law".

2. As used in sections 135.500 to 135.529, the following terms mean:

(1) "Affiliate of a certified company":

(a) Any person, directly or indirectly owning, controlling or holding power to vote **[ten] fifteen** percent or more of the outstanding voting securities or other ownership interests of the Missouri certified capital company;

(b) Any person **[ten] fifteen** percent or more of whose outstanding voting securities or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

other ownership interest are directly or indirectly owned, controlled or held with power to vote by the Missouri certified capital company;

(c) Any person directly or indirectly controlling, controlled by, or under common control with the Missouri certified capital company;

(d) A partnership in which the Missouri certified capital company is a general partner;

(e) Any person who is an officer, director or agent of the Missouri certified capital company or an immediate family member of such officer, director or agent;

(2) "Applicable percentage", one hundred percent;

(3) "Capital in a qualified Missouri business **or qualified Missouri agricultural business**", any debt, equity or hybrid security, of any nature and description whatsoever, including a debt instrument or security which has the characteristics of debt but which provides for conversion into equity or equity participation instruments such as options or warrants which are acquired by a Missouri certified capital company as a result of a transfer of cash to a business. Capital in a qualified Missouri business shall not include secured debt instruments **other than in the case of investments in qualified Missouri agricultural businesses which may include secured debt**;

(4) "Certified capital", an investment of cash by an investor in a Missouri certified capital company;

(5) "Certified capital company", any partnership, corporation, trust or limited liability company, whether organized on a profit or not for profit basis, that is located, headquartered and registered to conduct business in Missouri that has as its primary business activity, the investment of cash in qualified Missouri businesses, and which is certified by the department as meeting the criteria of sections 135.500 to 135.529;

(6) "Department", the Missouri department of economic development;

(7) "Director", the director of the department of economic development or a person acting under the supervision of the director;

(8) "Investor", any insurance company that contributes cash;

(9) "Liquidating distribution", payments to investors or to the certified capital company from earnings;

(10) "Person", any natural person or entity, including a corporation, general or limited partnership, trust or limited liability company;

(11) "Qualified distribution", any distribution or payment [to equity holders of a certified capital company] **by a certified capital company from certified capital** in connection with the following:

(a) Reasonable costs [and expenses] of forming[, syndicating, managing and operating] **and syndicating** the certified capital company. **For certified capital companies that raise certified capital after August 28, 2000, these costs shall not exceed ten percent of the**

certified capital raised after that date;

(b) [Management fees for] **Reasonable costs of** managing and operating the certified capital company, **including but not limited to, an annual management fee, plus reasonable and necessary fees paid for professional services such as legal and accounting services related to the operation of the certified capital company. For certified capital companies designated as certified capital companies after August 28, 2000, the annual management fee shall not exceed two and one half percent of the certified capital of the certified capital company;** and

(c) Any increase in federal or state taxes, penalties and interest, including those related to state and federal income taxes, of equity owners of a certified capital company which related to the ownership, management or operation of a certified capital company;

(12) "Qualified investment", the investment of cash by a Missouri certified capital company, **directly or indirectly through a wholly-owned subsidiary of the Missouri certified capital company**, in such a manner as to acquire capital in a qualified Missouri business, **in the case of certified capital companies certified after August 28, 2000, or a qualified Missouri agricultural business;**

(13) "Qualified Missouri business", an independently owned and operated business, which is headquartered and located in Missouri and which is in need of venture capital and cannot obtain conventional financing. Such business shall have no more than two hundred employees, eighty percent of which are employed in Missouri. Such business shall be involved in commerce for the purpose of manufacturing, processing or assembling products, conducting research and development, or providing services in interstate commerce, but excluding retail, real estate, real estate development, insurance and professional services provided by accountants, lawyers or physicians. If such business has been in existence for three years or less, its gross sales during its most recent complete fiscal years shall not have exceeded four million dollars. If such business has been in existence for longer than three years, its gross sales during its most recent complete fiscal year shall not have exceeded three million dollars. **Notwithstanding the two immediately preceding sentences, a business with gross sales during its most recent complete fiscal year in excess of four million or three million dollars, as applicable, but not more than seven million five hundred thousand dollars, will also be a qualified Missouri business provided that it received an investment from a certified capital company that, within four years after the date on which it is designated as a certified capital company, invests at least fifty percent of the amount required by subdivision (3) of subsection 1 of section 135.516 in qualified investments in businesses which are qualified Missouri development stage businesses. Failure of the certified capital company to place, within four years after the date on which it was designated as a certified capital company, at least fifty percent of the amount required by subdivision**

(3) of subsection 1 of section 135.516 in qualified Missouri development stage businesses will cause the subsequent disqualification as a qualified Missouri business of any business which had qualified under the exception contained in this subdivision. Any business which is classified as a qualified Missouri business at the time of the first investment in such business by a Missouri certified capital company shall, for a period of seven years from the date of such first investment, remain classified as a qualified Missouri business and may receive follow-on investments from any Missouri certified capital company and such follow-on investments shall be qualified investments even though such business may not meet the other qualifications of this subsection at the time of such follow-on investments;

(14) "Qualified Missouri agricultural business", any independently owned and operated business which is either:

(a) A rural agricultural business whose projects add value to agricultural projects and aid the economy of a rural community, including any development facility as defined in subdivision (3) of subsection 2 of section 348.430, RSMo; or

(b) Any business that is an eligible borrower as described pursuant to Section 4279.108 of the Rural Development Instructions of the United States Department of Agriculture. Any qualified investment made in a qualified Missouri agricultural business that also satisfies the definition of a qualified Missouri development stage business shall be counted towards both the percentage requirement of subdivision (13) of this subsection with respect to qualified Missouri development stage businesses and the percentage requirement of subdivision (3) of subsection 1 of section 135.516 with respect to qualified Missouri agricultural businesses;

(15) "Qualified Missouri development stage business", a business that either meets all of the requirements contained in subdivision (13) of this subsection for a qualified Missouri business, except that its gross sales during its most recent complete fiscal year shall not have exceeded two million dollars;

[(14)] (16) "State premium tax liability", any liability incurred by an insurance company under the provisions of section 148.370, RSMo, and related provisions.

135.503. 1. Any investor that makes an investment of certified capital shall, in the year of investment, earn a vested credit against state premium tax liability equal to the applicable percentage of the investor's investment of certified capital. An investor shall be entitled to take up to ten percent of the vested credit in any taxable year of the investor. Any time after three years after [August 28, 1996,] **August 28, 2000**, the director, with the approval of the commissioner of administration, may reduce the applicable percentage on a prospective basis. Any such reduction in the applicable percentage by the director shall not have any effect on credits against state premium tax liability which have been claimed or will be claimed by any investor with respect to credits which have been earned and vested pursuant to an investment of certified capital prior to the effective date of any such change.

2. An insurance company claiming a state premium tax credit earned through an investment in a certified capital company shall not be required to pay any additional retaliatory tax levied pursuant to section 375.916, RSMo, as a result of claiming such credit.

3. The credit against state premium tax liability which is described in subsection 1 of this section may not exceed the state premium tax liability of the investor for any taxable year. All such credits against state premium tax liability may be carried forward indefinitely until the credits are utilized. The maximum amount of certified capital [in one or more certified capital companies for which earned and vested tax credits will be allowed in any year to any one investor or its affiliates shall be limited to ten million dollars] **that any one investor or its affiliates may invest in one or more certified capital companies in any one calendar year shall be limited to ten million dollars.**

4. Except as provided in subsection 5 of this section, the aggregate amount of certified capital for which earned and vested credits against state premium tax liability are allowed for all persons pursuant to sections 135.500 to 135.529 shall not exceed the following amounts: for calendar year 1996, \$0.00; for calendar year 1997, an amount which would entitle all Missouri certified capital company investors to take aggregate credits of five million dollars; [and for any year thereafter, an additional amount to be determined by the director but not to exceed aggregate credits of ten million dollars for any year with the approval of the commissioner of administration and reported to the general assembly as provided in subsection 2 of section 33.282, RSMo, provided that the amount so determined shall not impair the ability of an investor with earned and vested credits which have been allowed in previous years to take them, pursuant to subsection 1 of this section] **in calendar year 1998, an amount which would entitle all Missouri certified capital company investors, on an aggregate basis, to take an additional five million dollars in tax credits; and for calendar year 2000, an amount which would entitle all Missouri certified capital company investors, on an aggregate basis, to take an additional ten million dollars in tax credits. Thereafter, the aggregate amount of earned and vested certified capital company credits that may be taken on an annual basis by all Missouri certified capital company investors shall not exceed an amount equal to ten percent of the cumulative credits earned in respect of certified capital invested in previous years.** During any calendar year in which the limitation described in this subsection will limit the amount of certified capital for which earned and vested credits against state premium tax liability are allowed, certified capital for which credits are allowed will be allocated in order of priority based upon the date of filing of information described in subdivision (1) of subsection 5 of section 135.516. Certified capital limited in any calendar year by the application of the provisions of this subsection shall be allowed and allocated in the immediately succeeding calendar year in the order of priority set forth in this subsection. The department shall make separate allocations of certified capital for which credits are allowed under the limitations

described in this subsection and under the limitations described in subsection 5 of this section.

5. In addition to the maximum amount pursuant to subsection 4 of this section, the aggregate amount of certified capital for which earned and vested credits against state premium tax liability are allowed for persons pursuant to sections 135.500 to 135.529 shall be the following: for calendar year 1999 and for any year thereafter, an amount to be determined by the director which would entitle all Missouri certified capital company investors to take aggregate credits not to exceed four million dollars for any year with the approval of the commissioner of administration and reported to the general assembly as provided in subsection 2 of section 33.282, RSMo, provided that the amount so determined shall not impair the ability of an investor with earned and vested credits which have been allowed in previous years or pursuant to the provisions of subsection 4 of this section to take them, pursuant to subsection 1 of this section. For purposes of any requirement regarding the schedule of qualified investments for certified capital for which earned and vested credits against state premium tax liability are allowed pursuant to this subsection only, the definition of a "qualified Missouri business" as set forth in subdivision (13) of subsection 2 of section 135.500 means a Missouri business that is located in a distressed community as defined in section 135.530, and meets all of the requirements of subdivision (13) of subsection 2 of section 135.500, except that its gross sales during its most recent complete fiscal year shall not have exceeded five million dollars. During any calendar year in which the limitation described in this subsection limits the amount of additional certified capital for which earned and vested credits against state premium tax liability are allowed, additional certified capital for which credits are allowed shall be allocated in order of priority based upon the date of filing of information described in subdivision (1) of subsection 5 of section 135.516 with respect to such additional certified capital. The department shall make separate allocations of certified capital for which credits are allowed under the limitations described in this subsection and under the limitations described in subsection 4 of this section. No limitation applicable to any certified capital company with respect to certified capital for which credits are allowed pursuant to subsection 4 of this section shall limit the amount of certified capital for which credits are allowed pursuant to this subsection. No limitation applicable to any certified capital company with respect to certified capital for which credits are allowed pursuant to this subsection shall limit the amount of certified capital for which credits are allowed pursuant to subsection 4 of this section.

6. The department shall advise any Missouri certified capital company, in writing, within fifteen days after receiving the filing described in subdivision (1) of subsection 5 of section 135.516 whether the limitations of subsection ~~3~~ 4 of this section then in effect will be applicable with respect to the investments and credits described in such filing with the department.

135.516. 1. To continue to be certified, a Missouri certified capital company shall make qualified investments according to the following schedule:

(1) Within two years after the date on which a Missouri certified capital company is

designated as a Missouri certified capital company at least twenty-five percent of its certified capital shall be, or have been, placed in qualified investments;

(2) Within three years after the date on which a Missouri certified capital company is designated as a Missouri certified capital company at least forty percent of its certified capital shall be, or have been, placed in qualified investments;

(3) Within four years after the date on which a Missouri certified capital company is designated as a Missouri certified capital company, at least fifty percent of its total certified capital shall be, or have been, placed in qualified investments[. A Missouri certified capital company may not make an investment in an affiliate of the certified capital company. For the purposes of this subsection, if a legal entity is not an affiliate before a certified capital company initially invests in the entity, it will not be an affiliate if a certified capital company provides additional investment in such entity subsequent to its initial investment], **at least twenty-five percent of which in terms of dollars, in the case of any certified capital raised after August 28, 2000, shall be, or have been, placed in qualified investments in qualified Missouri agricultural businesses;**

(4) An investment by a Missouri certified capital company into an entity which, at the time of the certified capital company's initial investment, is an affiliate of the certified capital company shall not be eligible for consideration as a qualified investment. If an entity becomes an affiliate of the certified capital company as a result of a certified capital company's investment in the entity, then subsequent investments by the certified capital company or an affiliate of the certified capital company shall be eligible for consideration as a qualified investment;

[(4)] (5) A certified capital company, at least fifteen working days prior to making what it determines to be an initial qualified investment in a specific qualified Missouri business, shall certify to the department that the company in which it proposes to invest meets the definition of a qualified Missouri business pursuant to subdivision (14) of subsection 2 of section 135.500. The certified capital company shall state the amount of capital it intends to invest and the name of the business in which it intends to invest. The certified capital company shall also provide to the department an explanation of its determination that the business meets the definition of a qualified Missouri business. If the department determines that the business does not meet the definition of a qualified Missouri business, it shall, within the fifteen-working-day period prior to the making of the proposed investment, notify the certified capital company of its determination and an explanation thereof. If the department fails to notify the certified capital company with respect to the proposed investment within the fifteen-working-day period prior to the making of the proposed investment, the company in which the certified capital company proposes to invest shall be deemed to be a qualified Missouri business. If a certified capital company fails to notify the department prior to making an initial investment in a business, the department may

subsequently determine that the business in which the certified capital company invested was not a qualified Missouri business even though the business, at the time of the investment, met the requirements of subdivision (14) of subsection 2 of section 135.500;

[(5)] (6) All certified capital which is not required to be placed in qualified investments or which has been placed in qualified investments and can be received by the company, may be held or invested in such manner as the Missouri certified capital company, in its discretion, deems appropriate. The proceeds of all certified capital which is received by a certified capital company after it was originally placed in qualified investments may be placed again in qualified investments and shall count toward any requirement in sections 135.500 to 135.529 with respect to placing certified capital in qualified investments, **except that a certified capital company designated as a certified capital company after August 28, 2000, shall not invest more than five percent of its certified capital in any security or policy issued by an insurance company or an affiliate of an insurance company or any account maintained by an insurance company or an affiliate of an insurance company.**

2. A certified capital company may make qualified distributions at any time. In order to make distributions **from certified capital**, other than qualified distributions, a certified capital company must have placed an amount cumulatively equal to one hundred percent of its certified capital in qualified investments **and, with respect to qualified investments made with certified capital raised after August 28, 2000, twenty-five percent of such qualified investment must be in qualified Missouri agricultural businesses.** Cumulative distributions to equity holders, other than qualified distributions, in excess of the certified capital company's original certified capital and any additional capital contributions to the certified capital company shall be subject to audit by a nationally recognized certified public accounting firm acceptable to the department, at the expense of the certified capital company. The audit shall determine whether aggregate cumulative distributions to all investors and equity holders, other than qualified distributions, when combined with all tax credits utilized by investors pursuant to sections 135.500 to 135.529, have resulted in an annual internal rate of return of fifteen percent computed on the sum of total original certified capital of the certified capital company and any additional capital contributions to the certified capital company. Twenty-five percent of distributions made, other than qualified distributions, in excess of the amount required to produce a fifteen percent annual internal rate of return, as determined by the audit, shall be payable by the certified capital company to the Missouri development finance board. Distributions or payments to debt holders of a certified capital company, however, may be made without restriction with respect to debt owed to them by a certified capital company. A debt holder that is also an investor or equity holder of a certified capital company may receive distributions or payments with respect to such debt without restriction.

3. No qualified investment may be made at a cost to a Missouri certified capital company

greater than fifteen percent of the total certified capital under management of the Missouri certified capital company at the time of investment.

4. Documents and other materials submitted by Missouri certified capital companies or by businesses for purposes of the continuance of certification may be deemed "closed records" pursuant to the provisions of section 620.014, RSMo.

5. Each Missouri certified capital company shall report the following to the department:

(1) As soon as practicable after the receipt of certified capital, the name of each investor from which the certified capital was received, the amount of each investor's investment of certified capital and tax credits computed without regard to any limitations under subsection [3] 4 of section 135.503, and the date on which the certified capital was received;

(2) On a quarterly basis, the amount of the Missouri certified capital company's certified capital at the end of the quarter, whether or not the Missouri certified capital company has invested more than fifteen percent of the total certified capital under management in any one company, and all qualified investments that the Missouri certified capital company has made;

(3) Each Missouri certified capital company shall provide annual audited financial statements to the department which include an opinion of an independent certified public accountant to the department within ninety days of the close of the fiscal year. The audit shall address the methods of operation and conduct of the business of the Missouri certified capital company to determine if the Missouri certified capital company is complying with the statutes and program rules and that the funds received by the Missouri certified capital company have been invested as required within the time limits provided by sections 135.500 to 135.529.

135.630. 1. As used in this section, the following terms shall mean:

(1) **"Contribution", a donation of cash, stock, bonds or other marketable securities;**

(2) **"Director", the director of the department of social services;**

(3) **"State tax liability", in the case of a business taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapters 143, 147, 148 and 153, RSMo, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265, RSMo, and related provisions, and in the case of an individual taxpayer, any liability incurred by such taxpayer pursuant to the provisions of chapter 143, RSMo;**

(4) **"Taxpayer", a person, firm, a partner in a firm, corporation or a shareholder in an S corporation doing business in the state of Missouri and subject to the state income tax imposed by the provisions of chapter 143, RSMo, or a corporation subject to the annual corporation franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance company paying an annual tax on its gross premium receipts in this state, or other financial institution paying taxes to the state of Missouri or any**

political subdivision of this state pursuant to the provisions of chapter 148, RSMo, or an express company which pays an annual tax on its gross receipts in this state pursuant to chapter 153, RSMo, or an individual subject to the state income tax imposed by the provisions of chapter 143, RSMo;

(5) "Unplanned pregnancy resource center", a nonresidential facility located in this state:

(a) Established and operating primarily to provide assistance to women with crisis pregnancies or unplanned pregnancies by offering pregnancy testing, counseling, emotional and material support, and other similar services to encourage and assist such women in carrying their pregnancies to term; and

(b) Where childbirths are not performed; and

(c) Which does not perform or refer for abortions and which does not hold itself out as performing or referring for abortions; and

(d) Which provides direct client services at the facility, as opposed to merely providing counseling or referral services by telephone; and

(e) Which provides its services at no cost; and

(f) Which is exempt from income taxation pursuant to the United States Internal Revenue Code.

2. A taxpayer shall be allowed to claim a tax credit against the taxpayer's state tax liability, in an amount equal to fifty percent of the amount such taxpayer contributed to an unplanned pregnancy resource center.

3. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the taxable year that the credit is claimed, and such taxpayer shall not be allowed to claim a tax credit in excess of fifty thousand dollars per taxable year. However, any tax credit that cannot be claimed in the taxable year the contribution was made may be carried over to the next four succeeding taxable years until the full credit has been claimed.

4. Except for any excess credit which is carried over pursuant to subsection 3 of this section, a taxpayer shall not be allowed to claim a tax credit unless the total amount of such taxpayer's contribution or contributions to an unplanned pregnancy resource center or centers in such taxpayer's taxable year has a value of at least one hundred dollars.

5. The director shall determine, at least annually, which facilities in this state may be classified as unplanned pregnancy resource centers. The director may require of a facility seeking to be classified as an unplanned pregnancy resource center whatever information which is reasonably necessary to make such a determination. The director shall classify a facility as an unplanned pregnancy resource center if such facility meets the definition set forth in subsection 1 of this

section.

6. The director shall establish a procedure by which a taxpayer can determine if a facility has been classified as an unplanned pregnancy resource center. Unplanned pregnancy resource centers shall be permitted to decline a contribution from a taxpayer. The cumulative amount of tax credits which may be claimed by all the taxpayers contributing to unplanned pregnancy resource centers in any one fiscal year shall not exceed two million dollars.

7. The director shall establish a procedure by which, from the beginning of the fiscal year until some point in time later in the fiscal year to be determined by the director, the cumulative amount of tax credits are equally apportioned among all facilities classified as unplanned pregnancy resource centers. If an unplanned pregnancy resource center fails to use all, or some percentage to be determined by the director, of its apportioned tax credits during this predetermined period of time, the director may reapportion these unused tax credits to those unplanned pregnancy resource centers that have used all, or some percentage to be determined by the director, of their apportioned tax credits during this predetermined period of time. The director may establish more than one period of time and reapportion more than once during each fiscal year. To the maximum extent possible, the director shall establish the procedure described in this subsection in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits available for the fiscal year.

8. Each unplanned pregnancy resource center shall provide information to the director concerning the identity of each taxpayer making a contribution to the unplanned pregnancy resource center and the amount of the contribution. The director shall provide the information to the director of the department of revenue.

9. This section shall become effective January 1, 2001, and shall apply to all tax years after December 31, 2000.

620.1730. Sections 620.1730 to 620.1787 shall be known and cited as the "Missouri Business and Industrial Development Companies Act" or "Missouri BIDCO Act".

620.1733. As used in sections 620.1730 to 620.1787, the following terms mean:

(1) "Affiliate of a BIDCO":

(a) Any person, directly or indirectly owning, controlling or holding power to vote fifteen percent or more of the outstanding voting securities or other ownership interests of the Missouri business and industrial development company;

(b) Any person fifteen percent or more of whose outstanding voting securities or other ownership interest are directly or indirectly owned, controlled, or held with power to vote by the Missouri business and industrial development company;

(c) Any person directly or indirectly controlling, controlled by, or under common control with the Missouri business and industrial development company;

(d) A partnership in which the Missouri business and industrial development company is a general partner;

(e) Any person who is an officer, director, or agent of the Missouri business and industrial development company or an immediate family member of such officer, director, or agent;

(2) "BIDCO", a business and industrial development company licensed under this act;

(3) "Business firm", 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;

(4) "Department", the Missouri department of economic development;

(5) "Director", the director of the department of economic development or a person acting under the supervision of the director;

(6) "Entity", a general partnership, a limited partnership, a corporation, including a not-for-profit corporation, or limited liability company;

(7) "License", a license issued under this act authorizing a Missouri entity to transact business as a BIDCO;

(8) "Licensee", a Missouri entity which is licensed under this act;

(9) "Person", 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;

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

620.1736. 1. The director shall administer this act. The director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce, and effectuate the purposes of this act. Any rules promulgated shall be promulgated in accordance with the administrative procedure and review act contained in chapter 536, RSMo.

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

3. The director 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 director under this act is subject to judicial review in accordance with law.

5. An application filed with the director under this act shall be in such a form and contain such information as the director may require.

620.1739. 1. The director may make public or private investigations within or outside this state that the director considers necessary to determine whether to approve an application filed with the director 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 director 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 director considers relevant or material to the proceeding.

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

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

620.1742. 1. The director may establish annually a schedule of fees sufficient to pay for the department's costs of administering the Missouri BIDCO act. The fees may be charged for:

- (1) For filing an application for a licensee;**
- (2) For filing an application for approval to acquire control of a licensee;**
- (3) For filing an application for approval for a licensee to merge with another Missouri entity, 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;**
- (4) For annual license renewal; and**
- (5) For examination of the licensee.**

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

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 in the Missouri BIDCO act is subject to a penalty of twenty-five dollars for each day the report is delinquent or one thousand dollars, whichever is less.

5. Money collected under this section shall be paid into the state treasury to the

credit of the department and used only for the operation of the department.

620.1745. 1. A licensee shall make and keep books, accounts, and other records in a form and manner as the director may require. These records shall be kept at a place and shall be preserved for a length of time as the director may require.

2. The director may require by order that a licensee write down any asset on its books and records to a valuation which represents its then value.

3. Not more than one hundred twenty days after the close of each calendar year or a longer period if specified by the director, a licensee shall file with the director an audit report containing all of the following:

(1) Financial statements, including balance sheet, statement of income or loss, statement of change in capital accounts, and statement of changes in financial position or, for a licensee that is a Missouri nonprofit corporation, 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;

(2) 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; and

(3) Other information that the director may reasonably require.

4. 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.

5. 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 section 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.

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

620.1748. Each licensee, each affiliate of a licensee, and each subsidiary of a license shall file with the director such reports as and when the director may require. A report under this section shall be in such a form and shall contain such information as the director may require.

620.1751. 1. After a review of information regarding the directors, officers, partners, managers, and controlling persons of the applicant, a review of the applicant's business plan, including at least three years of detailed financial projections and other

relevant information, and a review of additional information considered relevant by the director, the director shall approve an application for a license if, and only if, the director determines all of the following:

(1) The applicant has a net worth, or firm financing commitments which 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 this section;

(2) Each director, officer, partner, 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, partners, and managers of the applicant are collectively adequate to manage the business of the applicant as a BIDCO;

(3) It is reasonable to believe that the applicant, if licensed, will comply with this act; and

(4) The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.

2. In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO, the director shall consider the types and variety of financing assistance that the applicant plans to provide, the experience that the directors, officers, partners, managers, and controlling persons of the applicant have in providing financing 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. Except as otherwise provided in this act, the director shall require a minimum net worth of one million dollars.

620.1754. If the director denies an application under sections 620.1730 to 620.1787, the director shall provide the applicant with a written statement explaining the basis for the denial.

620.1757. If an application for a license is approved and all conditions precedent to the issuance of that license are fulfilled, the director 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 without the permission of the director.

620.1760. 1. Except as otherwise provided in subsection 2 of this section, a person transacting business in this state, other than a licensee, shall not use a name or title which 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 Missouri entity that proposes to apply for a license or that applies for a license may perform, under a name that indicates that the entity is a business and industrial development entity, the acts necessary to apply for and obtain a license and to otherwise prepare to commence transacting business as a licensee. Such an entity shall not represent that it is a licensee until after the license has been obtained.

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

4. The name of each licensee shall include the word "BIDCO". A licensee shall not transact business under any other name.

620.1763. 1. After complying with subsection 2 a licensee may apply to the director to have the director accept the surrender of the licensee's license. If the director determines that the requirements of this section have been satisfied, the director shall approve the application unless in the opinion of the director the purpose of the application is to evade a current or prospective action by the director.

2. Not less than sixty days before filing an application with the director under subsection 1, a licensee shall notify all of its creditors of its intention to file the application.

620.1766. 1. Each corporate licensee shall have at least three members of its board of directors, each general partnership licensee shall have at least three general partners, each limited partnership shall have at least three general partners or a corporate general partner that has at least three directors and each limited liability company licensee shall have at least three managers.

2. The managers of each licensee described in subsection 1 of this section shall hold a meeting not less than once each calendar quarter.

3. Within thirty days after the death, resignation, or removal of a director, officer, partner, or manager, the election of a director or manager or the appointment of an officer, or the admission of a partner, the licensee shall notify the director in writing of the event and shall provide any additional information which the director may require.

620.1769. 1. A licensee shall maintain not less than one office in this state.

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

3. Upon written notice to the director, a licensee may establish, relocate, or close an office.

620.1772. 1. The business of a licensee shall be to provide financing assistance and management assistance to business firms. A licensee shall not engage in a business other than providing financing assistance and management assistance to business

firms.

2. The powers of a licensee include, but are not limited to, all of the following:

(1) 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 and warrants to purchase stock;

(2) To make contracts;

(3) To incur and pay necessary and incidental operating expenses;

(4) 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;

(5) To make donations for charitable, educational, research, or similar purposes;

(6) 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 so pay the expenses of the licensee; and

(7) To lend money upon such terms and conditions as it deems reasonable.

620.1775. 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 at 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 pursuant to section 7(a) of the Small Business Act, Public Law 85:536, 15 U.S.C. 636(a), 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 license 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 the incidental powers that are necessary or convenient to carry on the business of, or are reasonably related to the business of, providing financing assistance and management assistance to business firms.

620.1778. 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 director shall not consider the risk of a provision of financing assistance to a business firm, unless the director determines that the risk is so great compared with the realistically expected return as to demonstrate gross mismanagement.

3. Subsection 2 of this section authorizes but does not limit the authority of the director to do any of the following:

(1) 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 of this section 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 shareholders equity of the licensee;

(2) Require that a licensee maintain a reserve in the amount of anticipated losses; and

(3) 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 director shall not require that a licensee adopt a financing assistance policy that contains standards which prevent the licensee from exercising needed flexibility in evaluating and structuring financing assistance to business firms on a deal by deal basis.

620.1781. 1. Without the prior approval of the director, 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 director 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 director shall approve the application. If, after notice and a hearing, the director determines otherwise, the director shall deny the application.

3. For purposes of this section, the director may determine any of the following:

(1) 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;

(2) 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; and

(3) The conditions described in subsection 3 of this section 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.

620.1784. 1. A licensee shall not merge with another entity:

(1) If the licensee is the surviving entity, the merger is approved by the director;

or

(2) If the licensee is a disappearing entity, the surviving entity is a licensee and the merger is approved by the director.

2. A licensee shall not purchase all or substantially all of the business of another person unless the purchase is approved by the director.

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 director.

4. The director shall approve an application for approval of a merger, purchase, or sale, if, and only if, the director determines all of the following:

(1) That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee;

(2) That, upon consummation of the merger, purchase, or sale, it is reasonable to believe that the acquiring licensee will comply with this act; and

(3) That the merger, purchase, or sale will not have a major detrimental impact on competition in the providing of financial assistance or management assistance to business firms, or if there will be such a detrimental impact, that 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.

620.1787. 1. If in the opinion of the director, a person violates, or there is reasonable cause to believe that a person is about to violate this act, the director 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 director to post a bond in an action brought under this act.

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

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