

SECOND REGULAR SESSION

SENATE BILL NO. 998

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR FLOTRON.

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TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 620, RSMo, by adding thereto twenty new sections relating to business and industrial development companies.

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

Section A. Chapter 620, RSMo, is amended by adding thereto twenty new sections, to be known as sections 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:

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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