

**LOUISIANA BUSINESS AND INDUSTRIAL  
DEVELOPMENT COMPANY ACT  
TITLE 51 - CHAPTER 39-B.**

**§2386. Short title**

This Chapter shall be known and may be cited as the “Louisiana Business and Industrial Development Company Act” or the “Louisiana BIDCO Act”.

**§2387. Declaration of purpose**

The purposes of this Chapter are to:

- (1) Promote economic development by encouraging the formation of business and industrial development companies, a new type of private institution, to help grow the financial services industry in Louisiana, create high-paying job opportunities in this sector and meet the financing assistance and management assistance needs of business firms in this state and elsewhere.
- (2) Provide for a system of licensing, regulation, and enforcement that will enable business and industrial development companies to satisfy eligibility requirements to participate, if they so choose, in the program of the Small Business Administration pursuant to Part 7(a) of the Small Business Act, Public Law 85-536, 15 U.S.C. 636(a), and other programs for which they may be eligible.
- (3) Provide for a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement, and to promote competent management, accurate recordkeeping, and appropriate communication with shareholders or members, in order to provide the following:
  - (a) Comfort to prospective shareholders or members so as to facilitate equity investments in business and industrial development companies.
  - (b) Comfort to prospective debt sources so as to facilitate the borrowing of money by business and industrial development companies.
- (4) Safeguard the general reputation of business and industrial development companies as a type of nondepository financial institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.

**§2388. Definitions**

The following words and phrases as used in this Chapter shall have the following meanings unless a different meaning clearly appears from the context:

- (1) “Affiliate”, when used with respect to a specified person, means any person, other than a natural person, controlling, controlled

by or under common control with, such specified person, directly or indirectly through one or more intermediaries.

(2) “BIDCO” means a business and industrial development company licensed under this Chapter.

(3) “Business firm” means a person who transacts business on a regular and continual basis, or a person that proposes to transact business on a regular and continual basis.

(4) “Cash equivalent” shall include cash, time certificates of deposit, or readily marketable securities issued by an agency of the United States government or the state of Louisiana or any of its political subdivisions.

(5) “Commissioner” means the commissioner of the Office of Financial Institutions within the office of the governor.

(6) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a licensee or a small concern whether through the ownership of voting securities, by contract, or otherwise. A person who, directly or indirectly, owns of record or beneficially holds with power to vote, or holds proxies with discretionary authority to vote, twenty percent or more of the then outstanding voting securities issued by an entity shall be rebuttably presumed to control that entity.

(7) “Controlling person” when used with respect to a specified person, means a person who controls that specified person, directly or indirectly through one or more intermediaries.

(8) “Corporate name” means the name of a corporation or limited liability company as set forth in the articles of incorporation of a corporation or the articles of organization of a limited liability company.

(9) “Financing assistance” means to lend money or otherwise extend credit to a person or to purchase securities issued by a person, either directly or indirectly through an underwriter.

(10) “Incorporating statute” means the Louisiana Business Corporation Law, R.S. 12:1 et seq., the Louisiana Limited Liability Company Law, R.S. 12:1301 et seq., or any other provision of law under which a licensee is incorporated or organized.

(11) “Insolvent” means a licensee that ceases to pay its debts in the ordinary course of business, that cannot pay its debts as they become due, or whose aggregate liabilities exceed its aggregate assets.

(12) “Interests of the licensee” includes the interests of shareholders of the licensee.

(13) “License” means a license issued under this Chapter authorizing a Louisiana corporation or a Louisiana limited liability company to transact business as a BIDCO.

(14) "Licensee" means a Louisiana corporation or Louisiana limited liability company which is licensed under this Chapter.

(15) "Louisiana corporation" means a corporation incorporated under the Louisiana Business Corporation Law, R.S. 12:1 et seq.

(16) "Louisiana nonprofit corporation" means a corporation incorporated under the Nonprofit Corporation Law, R.S. 12:201 etseq.

(17) "Louisiana limited liability company" means a limited liability company organized under the Louisiana Limited Liability Company Law, R.S. 12:1301 et seq.

(18) "Management assistance" means management or technical advice or services provided to a person.

(19) "Officer" means:

(a) If used with respect to a corporation, a person appointed or designated as an officer of that corporation by or pursuant to applicable law or the articles of incorporation, or bylaws of that corporation.

(b) If used with respect to a specified person other than a natural person or a corporation, a person who performs with respect to that specified person functions usually performed by an officer of a corporation with respect to that corporation, including but not limited to a manager or managing member of a limited liability company.

(20) "Order" means an approval, consent, authorization, cease and desist, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner under this Chapter. "Order" includes a condition of a license and an agreement made by a person with the commissioner under this Chapter.

(21) "Person" means a natural person or legal entity. If used with respect to acquiring control of or controlling a specified person, "person" includes a combination of two or more persons acting in concert.

(22) "Principal shareholder or member" means a person that owns, directly or indirectly, of record or beneficially, securities representing ten percent or more of the outstanding voting securities of a corporation or limited liability company.

(23) "Subject person" means a controlling person, subsidiary, or affiliate of a licensee; a director, manager, officer, or employee of a licensee or of a controlling person, subsidiary, or affiliate of a licensee, or any other person who participates in the conduct of the business of a licensee.

(24) "Subsidiary" means, if used with respect to a licensee, a company or business firm of which the licensee holds control.

(25) "This Chapter" includes an order issued or rule promulgated under this Chapter.

### **§2389. Regulation, reporting, and examination**

A.(1) The commissioner shall administer this Chapter. The commissioner may issue orders and promulgate rules and regulations that, in the opinion of the commissioner, are necessary to execute, enforce, and effectuate the purposes of this Chapter. Any rules and regulations promulgated shall be promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

(2) Whenever the commissioner issues an order or license under this Chapter, the commissioner may impose conditions that are necessary, in the opinion of the commissioner, to carry out the provisions of this Chapter and its purposes.

(3) The commissioner may honor applications from interested persons for declaratory rulings regarding any provision of this Chapter.

(4) Every final order, decision, license, or other official act of the commissioner under this Chapter is subject to judicial review in accordance with law.

B. An application filed with the commissioner under this Chapter shall be in such form and contain such information as the commissioner may require by regulation.

C.(1) The commissioner may make public or private investigations within or outside this state that the commissioner considers necessary to determine whether to approve an application filed with the commissioner under this Chapter, to determine whether a person has violated or is about to violate this Chapter, to aid in the enforcement of this Chapter, or to aid in issuing an order or promulgating a rule under this Chapter.

(2) For purposes of an investigation, examination, or other proceeding under this Chapter, the commissioner 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 commissioner considers relevant or material to the proceeding.

(3) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to a matter concerning which the person may lawfully be questioned, the district court for the parish of East Baton Rouge, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

D. Service of process authorized to be made by the commissioner in connection with a noncriminal proceeding under this Chapter may be made by registered or certified mail.

E.(1) A fee shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for a license is five thousand dollars.

(b) The fee for filing an application for approval to acquire control of a licensee is five thousand dollars.

(c) The fee for filing an application for approval for a licensee to merge with another corporation or limited liability company, 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 officers to another licensee is five thousand dollars. If two or more applications relating to the same merger, purchase, or sale are filed, the fee for filing each application shall be the quotient determined by dividing five thousand dollars by the number of the applications.

(d) Whenever the commissioner examines a licensee or a subsidiary of a licensee, within ten days after receiving a statement from the commissioner, the licensee shall pay a fee established by the commissioner based on the number of examiner hours used for the examination, plus travel expenses. Examiner time shall be billed at a rate not less than fifty dollars per hour or five hundred dollars, whichever is greater.

(2) A fee for filing an application with the commissioner is nonrefundable and shall be paid at the time the application is filed with the commissioner.

F.(1) A licensee shall make and keep books, accounts, and other records in such a form and manner as the commissioner may require. These records shall be kept in Louisiana at such a place and shall be preserved for such a length of time as the commissioner may specify.

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

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

(a) Financial statement, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is a Louisiana 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 in accordance with generally accepted accounting principles.

(b) Other reasonable information that the commissioner may require.

G.(1) If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this Chapter 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.

(2) 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 Chapter 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.

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

(4) All of the books, accounts, or other records of the licensee shall be made available to the commissioner upon request and shall be maintained at the principal corporate offices of the licensee at all times.

(5) All of the records and reports provided to the office of financial institutions shall be kept strictly confidential within the office. All such records and reports shall not be subject to subpoena or other legal process, except as set forth in R.S. 9:3518.1. The provisions of R.S. 9:3518.1 shall also apply to any request by a third party for any record in the custody or control of the office of financial institutions relating to the supervision and regulation of any entity licensed by the office of financial institutions pursuant to this Chapter.

H. If the licensee elects to provide financing assistance outside of this state, then beginning October 1, 2004, and each quarter thereafter, the licensee shall report to the commissioner a listing of all financing assistance provided to business firms that the licensee made during the previous calendar quarter. Such report shall segregate all investments made outside of this state and include but not be limited to the following:

- (1) The legal name and address of the company receiving the investment.
- (2) A brief description of the nature of the business.
- (3) The NAICS code for the investment.
- (4) The date and amount of the investment.
- (5) The percent guaranteed, the guaranteed amount, and from whom the guarantee was received.
- (6) Whether the investment was a participation purchased or sold, and whom it was purchased from or sold to.

#### **§2389.1. Guidance by commissioner; advisory opinions**

A. Advisory opinions and interpretations of the office shall not be considered rules requiring compliance with the rulemaking process under the Louisiana Administrative Procedure Act.

B. This Section shall only have prospective application.

## **§2390. Reports**

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

## **§2391. Impact information**

A. The commissioner shall provide to the House Commerce Committee and Senate Commerce Committee upon their request information on the impact of this Chapter in promoting economic development in this state. At the minimum, the information shall include aggregate statistics on each of the following:

- (1) The number and dollar amount of provisions of financing assistance made by licensees to business firms in Louisiana.
- (2) The number and dollar amount of provisions of financing assistance made by licensees to business firms in Louisiana classified in broad categories of industry, such as divisions of the standard industrial classification manual.
- (3) The number and dollar amount of provisions of financing assistance made by licensees to minority-owned business firms and to women-owned business firms in Louisiana.
- (4) Estimates of the number of jobs created or retained in Louisiana.
- (5) The total number of employees and total payroll for Louisiana employees of BIDCOs.

B.(1) The commissioner shall examine each licensee not less than once each calendar year.

(2) The commissioner may at any time examine a licensee or subsidiary of a licensee.

(3) A director, officer, manager, or employee of a licensee or of a subsidiary of a licensee being examined by the commissioner, or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary, shall exhibit to the commissioner, on request, any of the books, accounts, and other records of the licensee or of the subsidiary and shall otherwise facilitate the examination so far as it is in their power to do so.

## **§2392. Licensing**

A. A Louisiana corporation or Louisiana limited liability company may apply to the commissioner for licensure as a BIDCO. A person other than a Louisiana corporation or Louisiana limited liability company shall not apply for a license.

B.(1) After a review of information regarding the directors, officers, managers, and controlling persons of the applicant, a review of the applicant's business plan, including at least three years of detailed financial projections and other relevant information, and a review of additional information considered relevant by the commissioner, the commissioner may approve an application for a license if, and only if, the commissioner determines all of the following:

- (a) The applicant has a net worth, or firm financing commitments from private sources 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 Paragraph (2) of this Subsection.
  - (b) Each director, officer, manager, and controlling person of the applicant is of good character and sound financial standing, each director or manager of the applicant is competent to perform his or her functions with respect to the applicant, and the directors, managers, and officers of the applicant are collectively adequate to manage the business of the applicant as a BIDCO.
  - (c) It is reasonable to believe that the applicant, if licensed, will comply with the provisions of this Chapter.
  - (d) The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.
  - (e) The applicant's headquarters are in Louisiana and the applicant agrees to maintain its headquarters in Louisiana and conduct substantially all of its accounting, payment, underwriting, and other back-office operations in one or more offices located in this state if the licensee intends to provide financing assistance outside of this state.
- (2) In determining if the applicant has net worth or firm financing commitments adequate to transact business as a BIDCO, the commissioner shall consider the types and variety of financing assistance that the applicant plans to provide, the experience that the directors, officers, managers, and controlling persons of the applicant have in providing financing and managerial assistance to business firms, the financial projections and other relevant information from the applicant's business plan, and whether the applicant intends to operate as a profit or nonprofit corporation or a limited liability company. Except as otherwise provided in this Chapter, the commissioner shall require a minimum net worth of not less than one million dollars in cash or cash equivalents. The commissioner may allow less than one million dollars in minimum net worth, but in no case less than two hundred fifty thousand dollars, if in the context of the applicant's business plan, the initial capitalization amount is adequate for the applicant to transact business as a BIDCO because of special circumstances including but not limited to funded overhead, low overhead, or specialized opportunities.
- (3) For the purposes of Paragraph (1) of this Subsection, the commissioner may disapprove an application upon the finding of any of the following:

(a) That a director, officer, manager, or controlling person of an applicant is not of good character if the director, officer, manager, or controlling person, or a director, manager, or officer of a controlling person, has been convicted of or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(b) That it is not reasonable to believe that an applicant, if licensed, will comply with the provisions of this Chapter, if the applicant has been convicted of or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(4) For purposes of Paragraph (1), of this Subsection, Paragraph (3) of this Subsection shall not be considered to be the only grounds upon which the commissioner may find that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with the provisions of this Chapter.

C.(1) A person may apply to the commissioner for preliminary approval of an application for a license. Notwithstanding that commitments to invest in the equity of the applicant have not been obtained and that all directors, managers, and officers of the applicant have not been identified, the commissioner may grant preliminary approval. In issuing an order granting preliminary approval, the commissioner shall indicate that, for the commissioner to determine that the requirements of Subsection B of this Section are satisfied, final approval is conditioned on review by the commissioner of the completion of the roster of directors, managers, and officers and satisfaction of the minimum net worth requirements. If an application for preliminary approval has been granted, before granting final approval of the application for a license, the commissioner may request an updated balance sheet and such other information considered relevant by the commissioner.

(2) If a person files an application under this Subsection, the fee required by R.S. 51:2389(E)(1)(a) is payable at the time the application is filed with the commissioner.

D. If the commissioner denies an application under Subsections A through C of this Section, the commissioner shall provide the applicant with a written statement explaining the basis for the denial.

E. If an application for license is approved and all conditions precedent to the issuance of that license are fulfilled, the commissioner shall issue a license to the applicant. A licensee shall post the license in a conspicuous place in the licensee's principal office. A license is not transferable or assignable.

F.(1) Except as otherwise provided in Paragraph (2) of this Subsection, 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 Chapter, a Louisiana corporation or Louisiana limited liability company that proposes to apply for a license or that applies for a license may

perform, under a name that indicates that the corporation or company is a business and industrial development company, the acts necessary to apply for and obtain a license and to otherwise prepare to commence transacting business as a licensee. Such a corporation or company shall not represent that it is a licensee until after the license has been obtained.

### **§2393. Misrepresenting the meaning or effect of license; prohibited**

A.(1) A Louisiana corporation or limited liability company that is licensed under another law of this state or under any law of the United States may apply for and be issued a license under this Chapter unless the transaction of business by the corporation or company as a licensee under another law of this state or a law of the United States violates this Chapter or is contrary to the purposes of this Chapter.

(2) A Louisiana corporation or Louisiana limited liability company that is licensed under this Chapter may apply for and be issued a license under another law of this state or of another state or a law of the United States unless the transaction of business by that corporation or company as a licensee under another law of this state or another state or a law of the United States would violate this Chapter or would be contrary to the purposes of this Chapter.

B.(1) Upon approval of a two-thirds vote of its board of directors, managers, or members and after complying with Paragraph (2) of this Subsection, a licensee may apply to the commissioner to have the commissioner accept the surrender of the licensee's license. If the commissioner determines that the requirements of this Section have been satisfied, the commissioner shall approve the application.

(2) Not less than sixty days before filing an application with the commissioner under Paragraph (1) of this Subsection, a licensee shall notify all of its shareholders or members and all of its creditors of its intention to file the application. Each creditor shall be notified of the right to comment to the commissioner. Each shareholder or member shall be notified of the right to file with the licensee an objection to the proposed surrender of the license within the sixty-day period and shall be advised that, if the shareholder files an objection, the shareholder or member should send a copy of the objection to the commissioner. If shareholders or members representing twenty percent of the outstanding voting securities of the licensee file an objection, the licensee shall not proceed with the application under Paragraph (1) of this Subsection unless the application is approved by a vote of shareholders or members representing two-thirds of the outstanding voting securities of the licensee.

### **§2394. Corporate or company matters**

A. The corporate or limited liability company name of each licensee shall include the word "BIDCO". A licensee shall not transact business under a name other than its corporate name or limited liability company name.

B.(1) The board of directors of each licensee shall consist of not less than five directors. If the licensee is a limited liability company, it shall have at least five managers who are natural persons.

(2) The board of directors or managers of each licensee shall hold a meeting not less than once each month.

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

### **§2395. Transaction of business**

A. (1) A licensee providing financing assistance outside of this state shall maintain its headquarters in this state. A licensee that provides financing assistance in this state only shall maintain not less than one office in this state.

(2) Each office of a licensee shall be located in a place which is reasonably accessible to the public.

(3) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate or limited liability company name of the licensee.

(4) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.

(5) Upon thirty days' prior written notice to the commissioner, a licensee may establish, relocate, or close an office.

(6) If the licensee elects to provide financing assistance outside of this state, then regardless of the states in which a licensee provides financing assistance, the licensee shall conduct substantially all of its accounting, payment, underwriting, and other back-office operations in one or more offices located in this state. With approval of the commissioner, the requirement of this Subsection shall not apply to licensees that have provided financing assistance outside this state prior to January 1, 2003.

(7) Unless approved by the commissioner, the total amount of financing assistance provided by a licensee outside of this state shall not exceed fifty percent of the total financing assistance provided by such licensee on a cumulative basis.

B.(1) The business of a licensee shall be the business of 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 Chapter, a licensee has all powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this Chapter. 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 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.

(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.

C.(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 for the purchase of debt instruments, straight equity investments such as purchase of common stock or preferred stock, debt with equity features such as warrants to purchase stock, 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 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 Part 7(a) of the Small Business Act of 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 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 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.

D.(1) With the approval of the commissioner, a licensee may form, or acquire and hold control of, a corporation or other entity which is licensed as a small business investment company under the Small Business Investment Act of 1958, Public Law 85-699, 15 U.S.C. 689.

(2) With the approval of the commissioner, a licensee may form, or acquire and hold control of, a company or other entity which is a local development company in accordance with the Small Business Investment Act of 1958, whether or not such a development company is or may become certified by the Small Business Administration under Section 504 of the Small Business Act of 1958, 15 U.S.C. 697.

E.(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) Paragraph (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 Paragraph (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 shareholders' 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 which prevent the licensee from exercising needed flexibility in evaluating and structuring financing assistance to business firms on a deal by deal basis.

F.(1) For purposes of this Section:

(a) "Associate" means that term as defined in R.S. 51:2397(A)(1)(b).

(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 purpose of Paragraph (2) of this Subsection, transactions engaged in by a licensee which involve a potential conflict of interest include but are not limited to the following:

(a) Providing financing assistance to a principal shareholder or member of the licensee, to a person controlled by a principal shareholder or member of the licensee, or to a director, officer, manager, partner, relative, controlling person, or affiliate of a principal shareholder or member of the licensee.

(b) Providing financing assistance to a business firm to which a principal shareholder or member of the licensee is a director, officer, manager, partner, relative, controlling person, or affiliate of a principal shareholder or member of a licensee, or a person controlled by a principal shareholder or member of the licensee provides or plans to provide contemporaneous financing assistance.

(c) Providing financing assistance to a business firm which has or is expected to have a substantial business relationship with another business firm which 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 shareholder or member of the licensee.

(f) Selling or otherwise transferring any of its assets to an associate or principal shareholder or member of the licensee.

G. If the commissioner fails to issue an order approving or denying an application for a license under this Chapter, within forty-five days from receipt by the commissioner of an application which complies with R.S. 51:2389(B), the application shall be considered approved by the commissioner.

## **§2396. Enforcement**

A. If in the opinion of the commissioner, a person violates or there is reasonable cause to believe that a person is about to violate any provision of this Chapter, the commissioner may bring an action in the name of the people of this state in a district court in the parish of domicile of the violator to enjoin the violation or to enforce compliance with this Chapter. Upon a proper

showing, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner to post a bond in an action brought under the provisions of this Chapter.

B.(1) If the commissioner finds that a person has violated or that there is reasonable cause to believe that a person is about to violate any provision of this Chapter, the commissioner may order the person to cease and desist from the violation.

(2) Within thirty days after an order is issued under Paragraph (1), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within fifteen business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a person to whom an order is issued under Paragraph (1) to petition for judicial review of the order is not affected by the failure of the person to apply to the commissioner for a hearing on the order issued under this Paragraph.

C.(1) If, after notice and a hearing, the commissioner determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate, in an unsafe or unsound act with respect to the business of that licensee, the commissioner may order that licensee or subject person to cease and desist from the action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(2) If the commissioner determines that any of the factors set forth in Paragraph (1) are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee is likely to seriously weaken the condition of the licensee, or is likely to otherwise seriously prejudice the interests of the licensee before the completion of the proceedings conducted under Paragraph (1), the commissioner may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(3) Within thirty days after an order is issued under Paragraph (2), the licensee or subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within fifteen business days after the application is filed or within a longer period to which the licensee or subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a licensee or subject person to whom an order is issued under Paragraph (2) to petition for judicial review of the order is not affected by the failure of the licensee or subject person to apply to the commissioner for a hearing on the order issued under this Subsection.

D.(1) The commissioner may issue an order removing a subject person of a licensee from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, if, after notice and a hearing, the commissioner determines all of the following are true:

- (a) The subject person has violated a provision of this Chapter or another applicable law, the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee, or the subject person has engaged or participated in an act with respect to the business of the licensee, or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.
- (b) The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.
- (c) The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

(2) The commissioner may issue an order removing the subject person from his or her office with the licensee, if any, and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if after notice and a hearing, the commissioner determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of the licensee has demonstrated both of the following:

- (a) Dishonesty or willful or continuing disregard of the safety and soundness of the financial or other business institutions.
- (b) Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) If the commissioner determines that the factors set forth in Paragraph (1) or (2) are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of the licensee, the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in conducting the business of the licensee, except with the consent of the commissioner.

(4) Within thirty days after an order is issued under Paragraph (3), the subject person of a licensee to whom the order is directed may file with the commissioner an application for a

hearing on the order. If the commissioner fails to begin a hearing within fifteen business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a subject person of a licensee to whom an order is issued under Paragraph (3) to petition for judicial review of an order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order issued under this Paragraph.

(5) A person to whom an order is issued under this Section may apply to the commissioner to modify or rescind the order. The commissioner shall not modify or rescind the order unless the commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this Chapter.

(6) As used in this Subsection, “office”, if used with respect to a licensee, means the position of director, officer, manager, or employee of the licensee or of a subsidiary of the licensee.

E.(1) If the commissioner determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

(2) If the commissioner determines that a subject person or former subject person of a licensee to whom an order was issued under Paragraph (1), or another subject person of a licensee, has been convicted of a crime which is punishable by imprisonment for a term of not less than one year and which involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the commissioner may issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(3) Within thirty days after an order is issued under Paragraph (1) or (2), the subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within fifteen business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a subject person or former subject person of a licensee to whom an order is issued under Paragraph (1) or (2) to petition for judicial review of the order is not affected by the failure of the person to apply to the commissioner for a hearing on the order issued under this Paragraph.

(4) The fact that a subject person of a licensee charged with a crime involving dishonesty or breach of trust is not convicted of the crime shall not preclude the commissioner from issuing an order to the subject person under any other provision of this Chapter.

(5) A person to whom an order is issued under this Section may apply to the commissioner to modify or rescind the order. The commissioner shall not modify or rescind the order unless the commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with the provisions of this Chapter.

F.(1) If the commissioner considers it expedient, he may call a meeting of the board of directors or managers of a licensee by giving notice of the time, place, and purpose of the meeting not less than five days before the meeting to each director or manager either by personal service or by registered or certified mail sent to the director's or manager's last known address as shown in the records of the commissioner.

(2) If the commissioner considers it expedient, the commissioner may call a meeting of the shareholders or members of a licensee by giving notice of the time, place, and purpose of the meeting not less than five days before the meeting to each shareholder or member either by personal service or by registered or certified mail sent to the shareholder's or member's last known address as shown by the books of the licensee. The licensee shall pay the expenses of the notice and of a meeting called under this Paragraph.

G.(1) The commissioner may issue an order directing a licensee to refrain from providing any additional financing assistance to business firms if, in the opinion of the commissioner, the order is necessary to protect the interests of the licensee or the public interest, and if, after notice and a hearing, the commissioner determines that any of the following are true:

(a) The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated any provision of this Chapter or another applicable law.

(b) The licensee is conducting its business in an unsafe and unsound manner.

(c) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(d) The licensee has ceased to transact business as a business and industrial development company.

(e) The licensee is insolvent.

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved of or consented to the action or such relief has been granted.

(h) A fact or condition exists which would have been grounds for denying the application if the fact or condition had existed at the time the licensee applied for its license.

(2) If the commissioner determines that any of the factors set forth in Paragraph (1) are true with respect to a licensee and that it is necessary for the protection of the interest of the licensee or the public interest that the commissioner immediately issue an order directing the licensee to refrain from providing any additional financing assistance to business firms, the commissioner may issue such an order without a hearing. Within thirty days after an order is issued under this Subsection, the licensee to whom the order is directed may file with the commissioner a request for a hearing on the order. If the commissioner fails to commence a hearing within fifteen business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order.

(3) With the consent of the commissioner, a licensee which has been the subject of an order under Paragraph (1) or (2) may resume providing financing assistance to business firms under such conditions as the commissioner may prescribe.

(4) A person to whom an order is issued under Paragraph (1) or (2) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when the order is modified or rescinded, will comply with this Chapter.

H.(1) If the commissioner finds that any of the factors set forth in Paragraph (G)(1) of this Section are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may appoint a conservator for the licensee. The commissioner may appoint as conservator one of the employees of the office of financial institutions or some other competent and disinterested person. The office of financial institutions shall be reimbursed out of the assets of the conservatorship for all sums expended in connection with the conservatorship as expenses. Upon the approval of the commissioner, the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

(2) Under the direction of the commissioner, the conservator shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the commissioner may terminate the

conservatorship and permit the licensee to resume the transaction of its business subject to the terms, conditions, restrictions, and limitations the commissioner may prescribe.

(3) If in the opinion of the commissioner it is appropriate that the licensee be liquidated, the commissioner may apply to the district court for the parish in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the commissioner determines that any of the following are true:

(a) The licensee is insolvent.

(b) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(c) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law.

(d) A person has applied for the relief described under Subparagraph (c) against any licensee and that licensee has by an affirmative act approved or consented to the action or the relief has been granted.

(e) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(4) If a receiver is appointed under Paragraph (3), the receiver shall liquidate the property and business of the licensee in the manner provided for in R.S. 12:143 et seq.

I.(1) If, after notice and a hearing, the commissioner finds that a person has violated this Chapter, the commissioner may order that person to pay to the commissioner a civil penalty in the amount the commissioner specifies. However, the amount of the civil penalty shall not exceed one thousand dollars for each violation, or in the case of a continuing violation, one thousand dollars for each day for which the violation continues.

(2) This Section does not apply to any 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) The provisions of Paragraph (1) are additional to, and not alternative to, other provisions of this Chapter which authorize the commissioner to issue orders or to take other action on account of a violation of this Chapter.

A person who is convicted under R.S. 51:2397(J) on account of a violation of R.S. 51:2397 shall not be liable to pay a civil penalty under Paragraph (1) on account of that violation. A person

who pays a civil penalty under Paragraph (1) on account of a R.S. 51:2397(J) on account of that violation.

## **§2397. Certain unlawful activities**

A.(1) As used in this Chapter, 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, manager, officer, agent, or advisor of that licensee.

(ii) A director, officer, manager, or partner of a person referred to in Item (i) of this Subparagraph.

(iii) A person who controls, is controlled by, or is under common control with a person referred to in Item (i) of this Subparagraph, directly or indirectly through one or more intermediaries.

(iv) Any close relative of any person referred to in Item (i) of this Subparagraph.

(v) A person of which a person referred to in Items (i) to (iv) of this Subparagraph is a director, manager, or officer.

(vi) A person in which a person referred to in Items (i) to (iv) of this Subparagraph, or any combination of those persons acting in concert, owns or controls, directly or indirectly, at least twenty percent 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, sister-in-law, grandparent, grandchild, nephew, niece, uncle, or aunt.

(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 five years.

(2) For the purposes of Subparagraph (1)(b) of this Subsection:

(a) A person who is in a relationship referred to in that Subparagraph within six 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 of, manager of, officer of, 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 Subparagraph 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 of, manager of, officer of, or in any other capacity in the management of the business firm for a period of thirty days or more.

B. A person shall not willfully make an untrue statement of a material fact in an application or report filed with the commissioner under this Chapter, or willfully omit to state in such an application or report a material fact required to be stated in the application or report.

C. 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.

D. A person shall not, with intent to deceive a director, manager, officer, 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.

E. A licensee shall not provide, directly or indirectly, financing assistance to an associate of the licensee, except with respect to guarantees and other forms of credit support provided by the licensee in connection with securing funds to be used by the licensee in providing financing assistance to business firms.

F. 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 Subsection 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.

G.(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 one 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 provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, and 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 Subsection does not apply to any of the following:

- (a) If the associate is a controlling person of the licensee and is also the only shareholder or member 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.

H. 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 Subsection does not apply to the receipt of fees by an associate of 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.

I.(1) By such orders or rules the commissioner considers necessary and appropriate, the commissioner may exempt from Subsections E through H of this Section, 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 Chapter.

(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 regulations that may be applicable to that person or transaction governing participants in federal financing programs.

J.(1) A person who knowingly commits an act which act violates this Section shall be fined not more than ten thousand dollars or shall be imprisoned for not more than one year, or both.

(2) This Subsection 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 Chapter limits the power of the state to punish a person for an act which constitutes a crime under any statute.

### **§2398. General provisions**

A. This Chapter shall be liberally construed to accomplish its purposes.

B. A proceeding to promulgate rules or regulations regarding civil penalties under R.S. 51:2396(I) shall be subject to the Administrative Procedure Act.

C. Except as otherwise provided in this Subsection, the provisions of a licensee's incorporating statute apply to the licensee. If a provision of the licensee's incorporating statute conflicts with any provision of this Chapter, this Chapter controls.