

SENATE BILL NO. 321

INTRODUCED BY J. BRUEGGEMAN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE CREATION AND FUNCTIONS OF BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 64 56] may be cited as the "Business and Industrial Development Corporation Act".

NEW SECTION. **Section 2. Definitions.** In [sections 1 through 64 56], unless the context requires otherwise, the following definitions apply:

(1) "Affiliate", if used with respect to a nonnatural person, means a person who controls the nonnatural person, who is controlled by the nonnatural person, or who is controlled by a person who also controls the nonnatural person.

(2) "Associate", if used with respect to a licensee, means:

- (a) a controlling person, director, or officer of the licensee;
- (b) a director, officer, or partner of a person referred to in subsection (2)(a);
- (c) a person who controls, is controlled by, or is under common control with a person referred to in subsection (2)(a), directly or indirectly through an intermediary;
- (d) a close relative of a person referred to in subsection (2)(a);
- (e) a person of which a person referred to in subsections (2)(a) through (2)(d) is a director or officer; or
- (f) a person in which a person referred to in subsections (2)(a) through (2)(d) or a combination of the persons acting in concert owns or controls, directly or indirectly, a 20% or greater equity interest.

(3) "BIDCO" means a corporation that is licensed under [sections 1 through 64 56] to provide financial and management assistance to businesses.

(4) "Business" means a person who transacts or proposes to transact business on a regular and continual basis.

(5) "Close relative" means a parent, child, sibling, or spouse or a relative of the same degree through

1 marriage.

2 (6) (a) "Control", if used with respect to a specific person, means the power to direct or cause the
3 direction of, directly or indirectly through an intermediary, the management and policies of the person, through
4 the ownership of voting interests, by contract other than a commercial contract for goods or nonmanagement
5 services or by other means.

6 (b) A natural person is not considered to control another person solely because the natural person is a
7 director, officer, or employee of the other person;

8 (c) A person is rebuttably presumed to control a corporation if the person directly or indirectly owns of
9 record, holds beneficially with power to vote, or holds proxies with discretionary authority to vote 20% or more
10 of the then-outstanding voting securities issued by a corporation.

11 (7) "Controlling person", if used with respect to a specific person, means a person who controls the
12 specific person, directly or indirectly, through an intermediary.

13 (8) "Corporate name" means the name of a corporation in its articles of incorporation.

14 (9) "Department" means the department of ~~commerce~~ ADMINISTRATION, provided for in ~~2-15-1801~~
15 2-15-1001.

16 (10) "Hold control" means to directly or indirectly own, of record or beneficially, 50% or more of a
17 business's outstanding voting equity interests.

18 (11) "Insolvent" means not paying debts in the ordinary course of business, not paying debts as they
19 become due, or liabilities exceeding assets.

20 (12) "Interests of the licensee" includes the interests of the shareholders of the licensee.

21 (13) "License" means a license issued under [sections 1 through ~~64~~ 56].

22 (14) "Licensee" means a corporation that is licensed under [sections 1 through ~~64~~ 56].

23 (15) "Officer" means:

24 (a) with respect to a corporation:

25 (i) a person appointed or designated as an officer of the corporation by or under applicable law or the
26 corporation's articles of incorporation or bylaws; or

27 (ii) a person who performs with respect to the corporation the functions usually performed by an officer
28 of a corporation; or

29 (b) with respect to a specific person other than a natural person or a corporation, a person who performs
30 for the specific person the functions usually performed by an officer of a corporation for a corporation.

1 (16) "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement
 2 applicable to a specific case and issued by the department, including a license condition and an agreement made
 3 by a person with the department under [sections 1 through 64 56].

4 (17) (a) "Person" means an individual, partnership, corporation, association, limited partnership, limited
 5 liability company, governmental subdivision, agency, or public or private organization of any character.

6 (b) When used with respect to acquiring control of or controlling a specific person, the term includes a
 7 combination of two or more persons acting in concert.

8 (18) "Principal shareholder" means a person who owns, directly or indirectly, of record or beneficially,
 9 securities representing 10% or more of the outstanding voting securities of a corporation.

10 (19) "Subject person" means:

11 (a) a controlling person, subsidiary, or affiliate of a licensee;

12 (b) a director, officer, or employee of a licensee or of a controlling person, subsidiary, or affiliate of a
 13 licensee;

14 (c) another person who participates in the conduct of the business of a licensee; or

15 (d) if used with respect to a licensee, a company or business of which the licensee holds control under
 16 [sections 23 through 25].

17

18 **NEW SECTION. Section 3. Purposes.** The purposes of [sections 1 through 64 56] are to:

19 (1) promote economic development by encouraging the formation of one or more BIDCOs to help meet
 20 the financing assistance and management assistance needs of businesses in the state;

21 (2) establish a system of licensing, regulation, and enforcement to enable a BIDCO to satisfy the
 22 eligibility requirements for participating in programs that further the purposes of the BIDCO;

23 (3) encourage capital sources to invest in and lend money to BIDCOs by providing for BIDCOs a system
 24 of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement and
 25 to promote competent management, accurate recordkeeping, and appropriate communication with shareholders;
 26 and

27 (4) safeguard the general reputation of BIDCOs in order to increase the confidence of prospective equity
 28 investors in and prospective debt sources for BIDCOs.

29

30 **NEW SECTION. Section 4. Administration -- rules -- orders -- declaratory rulings -- judicial review.**

1 (1) The department shall administer [sections 1 through ~~64~~ 56]. The department may issue orders and may adopt
 2 rules that, in the opinion of the department, are necessary to execute, enforce, and achieve the purposes of
 3 [sections 1 through ~~64~~ 56].

4 (2) When the department issues an order or license under [sections 1 through ~~64~~ 56], the department
 5 may impose conditions that the department determines are necessary to carry out the purposes of [sections 1
 6 through ~~64~~ 56].

7 (3) The department may provide to an interested person a declaratory ruling on a provision of [sections
 8 1 through ~~64~~ 56].

9 (4) A final order, decision, license, or other official act of the department under [sections 1 through ~~64~~
 10 56] is subject to judicial review by a district court.

11
 12 **NEW SECTION. Section 5. Application procedure.** When applying for a license, an applicant shall
 13 provide the information required by the department in the form required by the department. The information must
 14 include:

- 15 (1) information on the directors, officers, and controlling persons of the applicant;
 16 (2) the applicant's business plan, including at least 10 years of detailed financial projections, and other
 17 relevant information; and
 18 (3) any additional information considered relevant by the department.

19
 20 **NEW SECTION. Section 6. Requisite net worth.** (1) In order to receive a license, an applicant shall
 21 demonstrate to the satisfaction of the department that the applicant has raised sufficient capital so that:

- 22 (a) the net worth of the BIDCO is expected to be adequate, in the context of its business plan, to support
 23 the BIDCO's management team and to achieve an appropriate spreading of the risk involved in the BIDCO's
 24 provisions of financing assistance; and
 25 (b) the BIDCO has a reasonable promise of being a viable, ongoing BIDCO, satisfying the basic
 26 objectives of its business plan and achieving long-term financial success.

27 (2) The department may not establish a minimum net worth for a BIDCO under this section of less than
 28 \$1.5 million.

29
 30 **NEW SECTION. Section 7. Criteria for directors, officers, and controlling persons.** (1) A license

1 may be issued only if the department determines that each director, officer, and controlling person of the applicant
2 is:

3 (a) of good character and sound financial standing;

4 (b) competent to perform the director's, officer's, or controlling person's functions for the applicant; and

5 (c) when considered collectively with the other directors, officers, and controlling persons, adequate to
6 manage the business of the applicant as a BIDCO.

7 (2) The department may determine that a director, officer, or controlling person of an applicant is not of
8 good character. Bases that the department may use to make that determination include proof that the director,
9 officer, or controlling person or a director or officer of a controlling person has:

10 (a) had an administrative sanction imposed under the Program Fraud Civil Remedies Act of 1986, 31
11 U.S.C. 3801 through 3812, for an offense under 15 U.S.C. 645; or

12 (b) been convicted of or plead guilty or nolo contendere to a crime involving fraud or dishonesty,
13 including a conviction for an offense under 15 U.S.C. 645.

14
15 **NEW SECTION. Section 8. Determination of likelihood of future noncompliance.** The department
16 may determine that it is not reasonable to believe that an applicant would comply with [sections 1 through 64 56]
17 if licensed. Bases that the department may use to make that determination include proof that the applicant has
18 been convicted of ~~a crime~~ ANY FELONY OR A MISDEMEANOR involving fraud or dishonesty, including a conviction
19 based on a guilty plea or plea of nolo contendere.

20
21 **NEW SECTION. Section 9. Denial of application.** If the department denies a license, the department
22 shall provide the applicant with a written statement explaining the reasons for the denial.

23
24 **NEW SECTION. Section 10. License -- display -- transfer or assignment -- surrender.** (1) A licensee
25 shall post the license in a conspicuous place in the licensee's principal office.

26 (2) A licensee may not transfer or assign its license.

27 (3) Upon approval by a two-thirds vote of its board of directors and after complying with subsections (4)
28 and (5), a licensee may apply to the department to have the department accept the surrender of the licensee's
29 license. If the department determines that the requirements of subsections (4) and (5) have been satisfied, the
30 department shall approve the application unless the department determines that the purpose of the application

1 is to evade a current or prospective action by the department under [sections 41 through ~~53~~ 50].

2 (4) Not less than 60 days before filing an application under subsection (3), a licensee shall notify all of
3 its shareholders and creditors of its intention to file the application. Each creditor must be notified of the right to
4 comment to the department. Each shareholder must be notified of the right to file with the licensee an objection
5 to the proposed surrender of the license within the 60-day period and must be advised that, if the shareholder
6 files an objection, the shareholder may also send a copy of the objection to the department.

7 (5) If shareholders representing 20% of the outstanding voting securities of the licensee file an objection
8 with the licensee, the licensee may not proceed with the application unless the application is approved by a vote
9 of shareholders representing two-thirds of the outstanding voting securities of the licensee.

10
11 **NEW SECTION. Section 11. Corporate name and representation of status.** (1) The corporate name
12 of a licensee must include the word "BIDCO" or "Bidco" and must be distinguishable on the records of the
13 department from the name of any other organized entity and from a reserved or registered name. A licensee may
14 not transact business under a name other than its corporate name.

15 (2) Before being issued a license, a corporation that proposes to apply for a license or that applies for
16 a license may perform, under a name that indicates that the corporation is a corporation licensed under [sections
17 1 through ~~64~~ 56], the acts necessary to apply for and obtain a license and otherwise prepare to begin business
18 as a licensee. The corporation may not represent that it is a licensee until after the license has been obtained.

19
20 **NEW SECTION. Section 12. Misrepresentation.** (1) Except as otherwise provided in [section 11], a
21 person transacting business in the state who is not a licensee may not knowingly use a name or title that indicates
22 that the person is a BIDCO or otherwise represent that the person is a BIDCO or a licensee.

23 (2) A licensee may not knowingly misrepresent the meaning or effect of its license.

24
25 **NEW SECTION. Section 13. Board of directors.** (1) The board of directors of a licensee must have
26 at least seven directors.

27 (2) The board of directors shall hold at least one meeting each calendar quarter.

28
29 **NEW SECTION. Section 14. Notice of officer and director changes.** Within 30 days after each of
30 the following events, the licensee shall notify the department in writing of the event and provide any additional

1 information that the department requires:

2 (1) the death, resignation, or removal of a director or officer;

3 (2) the election of a director; or

4 (3) the appointment of an officer.

5

6 **NEW SECTION. Section 15. Dividends.** (1) A licensee may not pay or obligate itself to pay a cash
7 dividend or dividend in kind to the licensee's shareholders unless the payment is consistent with a dividend policy
8 that has been adopted by the licensee and approved by the department.

9 (2) When approving dividend policies under this section, the department shall consider the special
10 characteristics of BIDCOs and the diverse range of dividend policies that are potentially appropriate for a BIDCO,
11 without allowing the licensee to engage in unsafe or unsound acts that could threaten the viability of the licensee
12 as an ongoing BIDCO by eroding its capital base.

13 (3) The department may at any time withdraw a previous approval of a dividend policy if the department
14 determines that the withdrawal is necessary to prevent unsafe or unsound acts.

15

16 **NEW SECTION. Section 16. Stock buyback.** A licensee may not buy back or obligate itself to buy back
17 a share of equity interest from a shareholder without the prior approval of the department.

18

19 **NEW SECTION. Section 17. Offices.** (1) A licensee shall maintain at least one office in this state.

20 ~~———— (2) A licensee may not maintain an office outside this state.~~

21 ~~(3)~~(2) The location of each office of a licensee must be reasonably accessible to the public.

22 ~~(4)~~(3) A licensee shall post in a conspicuous place at each of the licensee's offices a sign that bears the
23 corporate name of the licensee.

24 ~~(5)~~(4) If a licensee establishes, relocates, or closes an office, the licensee shall give the department
25 written notice within 30 days of the event.

26

27 **NEW SECTION. Section 18. Business of licensee -- general powers.** (1) A licensee may not engage
28 in a business other than providing financing assistance and management assistance to businesses.

29 (2) In addition to the other powers provided by [sections 1 through ~~64~~ 56] and the powers conferred on
30 the licensee by the laws under which it is incorporated that are not inconsistent with [sections 1 through ~~64~~ 56],

1 a licensee may:

2 (a) borrow money and otherwise incur indebtedness for the licensee's purposes, including the issuing
3 of corporate bonds, debentures, notes, and other evidence of indebtedness. A licensee's indebtedness may be
4 secured or unsecured and may involve equity features, including provisions for conversion to stock and warrants
5 to purchase stock.

6 (b) make contracts;

7 (c) incur and pay necessary and incidental operating expenses;

8 (d) purchase, receive, hold, lease, acquire, sell, convey, mortgage, pledge, or otherwise acquire or
9 dispose of real or personal property and the rights and privileges that are incidental and appurtenant to the
10 transactions if the real or personal property is for the licensee's use in operating the licensee's business or if the
11 real or personal property is acquired by the licensee from time to time in satisfaction of debts or the enforcement
12 of obligations;

13 (e) make donations for charitable, educational, research, or similar purposes;

14 (f) provide financing assistance and management assistance to businesses and establish the terms and
15 conditions of the assistance;

16 (g) implement a reasonable and prudent policy for conserving and investing the licensee's money before
17 the money is used to provide financing assistance to businesses or to pay the expenses of the licensee; and

18 (h) exercise the incidental powers that are necessary, convenient, or reasonably related to providing
19 financing assistance and management assistance to businesses.

20

21 NEW SECTION. **Section 19. Financing assistance allowed -- forms, terms, conditions.** (1) The
22 financing assistance that a licensee may provide includes:

23 (a) loans;

24 (b) purchase of debt instruments;

25 (c) straight equity investments including the purchase of common stock or preferred stock;

26 (d) debt with equity features, including warrants to purchase stock, convertible debentures, or receipt
27 of a percentage of net income or sales;

28 (e) royalty-based financing;

29 (f) debt guarantees; and

30 (g) property leasing.

1 (2) A licensee may determine the form, terms, and conditions for the financing assistance that it will
2 provide.

3
4 NEW SECTION. Section 20. Participation in government programs. (1) A licensee may participate
5 in a federal, state, or local government program for which the licensee is eligible and that has as the program's
6 function the provision or facilitation of financing assistance or management assistance to businesses.

7 (2) If a licensee participates in a program referred to in subsection (1), the licensee shall comply with
8 the requirements of the program.

9
10 NEW SECTION. Section 21. Scope of management assistance. When providing management
11 assistance, a licensee may provide management advice, management services, technical advice, and technical
12 services.

13
14 NEW SECTION. Section 22. Limitation to purposes of business. Financing assistance and
15 management assistance provided by a licensee to a business may be only for the business purposes of the
16 business.

17
18 NEW SECTION. Section 23. Control of other businesses. (1) A licensee may not hold control of
19 another business except as provided under [sections 24 and 25].

20 (2) In this section, "licensee" includes the licensee in concert with a director, officer, controlling person,
21 or affiliate of the licensee.

22
23 NEW SECTION. Section 24. Control of assisted business. (1) A licensee that has provided financing
24 assistance to a business may acquire and hold control of the business to the extent that it becomes necessary
25 to protect the licensee's interest as a creditor of or investor in the business.

26 (2) Unless the department approves a longer period, a licensee holding control of a business under this
27 section shall divest itself of the control as soon as practicable or within 5 years after acquiring the interest,
28 whichever is sooner.

29 (3) Within 30 days after a licensee exercises its authority to acquire and hold control of a business under
30 this section, the licensee shall notify the department of the action. The notification must include the reasons why

1 it is necessary for the licensee to acquire and hold control of the business and the length of time the licensee
2 anticipates that it may be necessary to hold control of the business.

3
4 **NEW SECTION. Section 25. Control of business providing financing assistance and management**
5 **assistance or other businesses.** (1) With the approval of the department, a licensee may acquire and hold
6 control of another business that is engaged only in the business of providing financing assistance and
7 management assistance to businesses.

8 (2) With the approval of the department, a licensee may acquire and hold control of a business not
9 otherwise allowed under [sections 23 and 24] and this section.

10 (3) The department may not approve an application under subsection (2) unless the department
11 determines that:

12 (a) the acquisition and control will not cause the amount of the licensee's investments in businesses
13 covered by this section to exceed 15% of the assets of the licensee; and

14 (b) in the department's judgment the approval will promote the purposes of [sections 1 through 64 56].

15 (4) An approval under subsection (2) may not be for a period of more than 3 years unless the department
16 determines that a longer period is necessary and consistent with the purposes of [sections 1 through 64 56].

17
18 **NEW SECTION. Section 26. Business practice standards and reserve.** (1) A licensee shall transact
19 its business in a safe and sound manner and shall maintain itself in a safe and sound condition.

20 (2) Subject to subsection (3), in determining whether a licensee is transacting business in a safe and
21 sound manner, the department may not consider the risk of providing financing assistance to a business, unless
22 the department determines that the risk is great enough to demonstrate gross mismanagement when compared
23 with the return that can be realistically expected.

24 (3) The department may:

25 (a) if the amount of the financing assistance is unduly large in relation to the total assets or the total
26 shareholder equity of the licensee, determine that a licensee's financing assistance to a single business or group
27 of affiliated businesses violates subsection (1) or constitutes an unsafe or unsound act;

28 (b) require that a licensee maintain a reserve in the amount of anticipated losses;

29 (c) require that a licensee have in effect a written financing assistance policy approved by the licensee's
30 board of directors, including credit evaluation and other matters. The department may not require that a licensee

1 adopt a financing assistance policy that contains standards that prevent the licensee from exercising needed
2 flexibility in evaluating and structuring financing assistance to businesses on an individual basis.

3

4 **NEW SECTION. Section 27. Disclosure of potential conflict of interest -- terms and conditions**

5 **-- examples.** (1) A person shall disclose a potential conflict of interest that occurs in a transaction in the
6 financing documents of the transaction or, if the transaction does not involve financing assistance, in another
7 appropriate document if the person:

8 (a) participates in a decision of a licensee relating to the transaction; and

9 (b) knows of a potential conflict of interest involving the transaction.

10 (2) If a licensee provides financing assistance to a business or engages in another business transaction
11 and if the assistance or transaction involves a potential conflict of interest, the terms and conditions under which
12 the licensee provides the assistance or engages in the transaction may not be less favorable to the licensee than
13 the terms and conditions that would be required by the licensee in the ordinary course of business if the
14 assistance or transaction did not involve a potential conflict of interest.

15 (3) Licensee transactions that involve a potential conflict of interest include:

16 (a) providing financing assistance to a principal shareholder of the licensee, to a person controlled by
17 a principal shareholder of the licensee, or to a director, officer, partner, relative, controlling person, or affiliate of
18 a principal shareholder of the licensee;

19 (b) providing financing assistance to a business to which one or more of the following provides or plans
20 to provide contemporaneous financing assistance:

21 (i) a principal shareholder of the licensee;

22 (ii) a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of a
23 licensee;

24 (iii) an affiliate of a principal shareholder of a licensee; or

25 (iv) a person controlled by a principal shareholder of the licensee;

26 (c) providing financing assistance to a business that has or is expected to have a substantial business
27 relationship with another business that has a director, officer, or controlling person who is also:

28 (i) a director, officer, or controlling person of the licensee; or

29 (ii) the spouse of a director, officer, or controlling person of the licensee;

30 (d) providing financing assistance to a business if the business or a director, officer, or controlling person

1 of the business contemporaneously has lent or will lend money to an associate of the licensee;

2 (e) providing financing assistance for the purchase of property of an associate or principal shareholder
3 of the licensee;

4 (f) selling or otherwise transferring an asset of the licensee to an associate or principal shareholder of
5 the licensee.

6 (4) In this section, "relative" means a parent, child, sibling, spouse, grandparent, grandchild, nephew,
7 niece, aunt, or uncle or a relative of the same degree through marriage.

8

9 **NEW SECTION. Section 28. Acquiring control of licensee -- application -- determination.** (1) A
10 person may not acquire control of a licensee without the prior approval of the department.

11 (2) The department shall approve an application to acquire control of a licensee if the department
12 determines that:

13 (a) the applicant and the directors and officers of the applicant are of good character and sound financial
14 standing;

15 (b) it is reasonable to believe that the applicant will comply with [sections 1 through 64 56]; and

16 (c) the plans, if any, of the applicant to make a major change in the business, corporate structure, or
17 management of the licensee are not detrimental to the safety and soundness of the licensee.

18 (3) If, after notice and a hearing, the department determines that the criteria for approval in subsection
19 (2) have not been satisfied, the department shall deny the application.

20 (4) When the department is reviewing an application under this section, the department may determine
21 that:

22 (a) an applicant or a director or officer of an applicant is not of good character if the person has been
23 convicted of a crime involving fraud or dishonesty, including a conviction based on a guilty plea or plea of nolo
24 contendere;

25 (b) an applicant's plan to make a major change in the management of a licensee is detrimental to the
26 safety and soundness of the licensee if the plan provides for a person to become a director or officer of the
27 licensee and the person has been convicted of a crime involving fraud or dishonesty, including a conviction based
28 on a guilty plea or plea of nolo contendere.

29 (5) The conditions described in subsection (4) are not the only conditions upon which the department
30 may determine that an applicant or a director or an officer of an applicant is not of good character or that an

1 applicant's plan to make a major change in the management of a licensee is detrimental to the safety and
2 soundness of the licensee.

3
4 **NEW SECTION. Section 29. Merger -- purchase -- sale.** (1) A licensee may not merge with another
5 corporation unless the merger is approved by the department, and, if the licensee is not the surviving corporation,
6 the surviving corporation is a licensee.

7 (2) A licensee may not purchase all or substantially all of the business of another person unless the
8 purchase is approved by the department.

9 (3) A licensee may not sell all or substantially all of the licensee's business or of the business of an office
10 of the licensee to another person unless the purchaser is a licensee and the sale is approved by the department.

11 (4) The department may not approve a merger, purchase, or sale under this section unless the
12 department determines that:

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

14 (b) upon consummation of the merger, purchase, or sale, it is reasonable to believe that the acquiring
15 licensee will comply with [sections 1 through 64 ~~56~~];

16 (c) the merger, purchase, or sale will not have a major detrimental effect on competition in the providing
17 of financial assistance or management assistance to businesses or, if there will be a detrimental effect, the
18 merger, purchase, or sale is necessary in the interests of the safety and soundness of a party to the merger,
19 purchase, or sale or is otherwise, on balance, in the public interest.

20
21 ~~NEW SECTION. Section 30. Investigations -- powers -- failure to comply or testify.~~ (1) The
22 department may make public or private investigations inside or outside the state that the department considers
23 necessary to determine whether to approve an application for a license, to determine whether a person has
24 violated or is about to violate [sections 1 through 61], to aid in the enforcement of [sections 1 through 61], or to
25 aid in issuing an order or adopting a rule under [sections 1 through 61].

26 ~~(2) For the purposes of an investigation, examination, or other proceeding under [sections 1 through 61],~~
27 ~~the department may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses,~~
28 ~~take evidence, and require the production of books, papers, correspondence, memoranda, agreements, and other~~
29 ~~documents or records that the department considers relevant or material to the proceeding.~~

30 ~~(3) If a person fails to comply with a subpoena issued by the department under [sections 1 through 61]~~

1 ~~or to testify with respect to a matter covered by [sections 1 through 61], the district court may issue an order~~
 2 ~~requiring the attendance of the person and the giving of testimony or production of evidence.~~

3
 4 NEW SECTION. SECTION 30. INVESTIGATIONS -- POWERS -- FAILURE TO COMPLY OR TESTIFY. (1) THE
 5 DEPARTMENT MAY INVESTIGATE ANY MATTER, UPON COMPLAINT OR OTHERWISE, IF IT APPEARS THAT A PERSON HAS
 6 ENGAGED OR OFFERED TO ENGAGE IN ANY ACT OR PRACTICE THAT IS IN VIOLATION OF ANY PROVISION OF [SECTIONS 1
 7 THROUGH 56] OR ANY RULE ADOPTED OR ORDER ISSUED BY THE DEPARTMENT PURSUANT TO [SECTIONS 1 THROUGH 56].

8 (2) THE DEPARTMENT MAY ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF ANY WITNESSES AND THE
 9 PRODUCTION OF BOOKS, ACCOUNTS, RECORDS, DOCUMENTS, AND OTHER EVIDENCE IN ANY MATTER OVER WHICH THE
 10 DEPARTMENT HAS JURISDICTION, CONTROL, OR SUPERVISION UNDER [SECTIONS 1 THROUGH 56]. THE DEPARTMENT MAY
 11 ADMINISTER AN OATH OR AFFIRMATION TO ANY PERSON WHOSE TESTIMONY IS REQUIRED.

12 (3) IF A PERSON REFUSES TO OBEY A SUBPOENA OR TO GIVE TESTIMONY OR PRODUCE EVIDENCE AS REQUIRED
 13 BY THE SUBPOENA, A JUDGE OF THE DISTRICT COURT OF LEWIS AND CLARK COUNTY OR THE COUNTY IN WHICH THE
 14 LICENSEE'S PREMISES ARE LOCATED MAY, UPON APPLICATION AND PROOF OF THE REFUSAL, ISSUE A SUBPOENA OR
 15 SUBPOENA DUCES TECUM FOR THE WITNESS TO APPEAR BEFORE THE DEPARTMENT TO GIVE TESTIMONY AND PRODUCE
 16 EVIDENCE AS MAY BE REQUIRED. THE CLERK OF COURT SHALL ISSUE THE SUBPOENA REQUIRING THE PERSON TO WHOM
 17 IT IS DIRECTED TO APPEAR AT THE TIME AND PLACE DESIGNATED IN THE SUBPOENA.

18 (4) IF A PERSON SERVED WITH A COURT-ORDERED SUBPOENA REFUSES TO OBEY THE SUBPOENA OR TO GIVE
 19 TESTIMONY OR PRODUCE EVIDENCE AS REQUIRED BY THE SUBPOENA, THE DEPARTMENT MAY PROCEED UNDER THE
 20 CONTEMPT PROVISIONS OF TITLE 3, CHAPTER 1, PART 5.

21 (5) FAILURE TO COMPLY WITH THE REQUIREMENTS OF A COURT-ORDERED SUBPOENA IS PUNISHABLE UNDER
 22 45-7-309.

23
 24 NEW SECTION. Section 31. Fees -- SPECIAL REVENUE ACCOUNT. (1) A fee for filing an application with
 25 the department must be paid at the time the application is filed with the department and is not refundable. A
 26 person shall pay the department:

- 27 (a) ~~\$2,500~~ \$5,000 for filing an application for a license;
 28 (b) \$1,250 for filing an application for approval to acquire control of a licensee;
 29 (c) \$1,250 for filing an application for approval for a merger, purchase, or sale under [section 29]. If two
 30 or more applications relating to the same merger, purchase, or sale are filed, the fee for filing each application

1 is the figure resulting from dividing \$1,250 by the number of the applications.

2 (2) A licensee shall pay \$2,500 each calendar year at a time established by the department.

3 (3) The department shall establish BY RULE a fee for the examination of a licensee or an affiliate or
4 subsidiary of a licensee. The fee must be paid within 30 days after receiving a statement from the department.
5 A fee established under this subsection must include:

6 (a) the proportionate part of the salaries and cost of employee benefits of the examiners while conducting
7 the examination and while preparing the examination report; and

8 (b) the transportation costs and per diem costs of each examiner while away from the examiner's place
9 of employment.

10 (4) FEES COLLECTED UNDER THIS SECTION MUST BE DEPOSITED IN THE SPECIAL REVENUE ACCOUNT ESTABLISHED
11 IN SUBSECTION (5).

12 (5) THERE IS A SPECIAL REVENUE ACCOUNT TO THE CREDIT OF THE DEPARTMENT FOR USE IN ADMINISTERING
13 [SECTIONS 1 THROUGH 56].

14

15 NEW SECTION. Section 32. Records and report requirements. (1) A licensee shall make and keep
16 books, accounts, and other records in the form and manner, at the place, and for the period of time that the
17 department establishes.

18 (2) A licensee, an affiliate of a licensee, and a subsidiary of a licensee shall file with the department the
19 reports that the department requires. A report must be in the form and contain the information that the department
20 requires.

21 (3) The department may require, by order, that a licensee include an asset on the licensee's books and
22 records at a valuation that represents the current value of the asset.

23 (4) Not later than 90 days after the close of the calendar year, or a longer period if established by the
24 department, a licensee shall file with the department an audit report containing:

25 (a) financial statements, including a balance sheet, statement of income or loss, statement of changes
26 in capital accounts, and statement of changes in financial position for or as of the end of the calendar year,
27 prepared with an audit by an independent certified public accountant in accordance with generally accepted
28 accounting principles;

29 (b) a report, certificate, or opinion of the independent certified public accountant who performs the audit,
30 stating that the financial statements were prepared in accordance with generally accepted accounting principles;

1 and

2 (c) other information that the department may require.

3

4 **NEW SECTION. Section 33. Records kept by others.** (1) If a person other than a licensee makes or
5 keeps all or part of the books, accounts, or other records of the licensee, [sections 1 through ~~64~~ 56] apply to the
6 person with respect to the books, accounts, and other records to the same extent as if the person were the
7 licensee.

8 (2) If a person other than an affiliate or subsidiary of a licensee makes or keeps all or part of the books,
9 accounts, or other records of the affiliate or subsidiary, [sections 1 through ~~64~~ 56] apply to the person with respect
10 to the books, accounts, and other records to the same extent as if the person were the affiliate or subsidiary.

11 (3) If the department considers it expedient, the department may require a licensee to obtain the approval
12 of the department before permitting another person to make or keep all or part of the books, accounts, or other
13 records of the licensee.

14

15 **NEW SECTION. Section 34. Information on economic development effect.** Each year, the
16 department shall publish and provide to the legislature information on the effect of [sections 1 through ~~64~~ 56] on
17 promoting economic development in the state. The information must include aggregate statistics on:

18 (1) the number and dollar amount of the financing assistance made by licensees to businesses. The
19 amounts must be organized into broad categories based on the types of industry involved. The North American
20 Industry Classification System Manual may be used for the categories.

21 (2) the number and dollar amount of the financing assistance made by licensees to minority-owned
22 businesses and to businesses owned by women; and

23 (3) estimates of the number of jobs created or retained.

24

25 **NEW SECTION. Section 35. Examination of licensees and subsidiaries.** (1) The department may
26 at any time examine a licensee or an affiliate or subsidiary of a licensee. Licensure under [sections 1 through ~~64~~
27 56] constitutes implied consent to examination by the department.

28 (2) The department shall examine a licensee at least once during each calendar year.

29 (3) At the department's request, the following persons shall provide to the department the books,
30 accounts, and records of a licensee or a licensee's affiliate or subsidiary and shall otherwise facilitate the

1 department's examination of the licensee to the fullest extent possible:

2 (a) a director, officer, or employee of a licensee being examined by the department;

3 (b) a director, officer, or employee of an affiliate or subsidiary of a licensee being examined by the
4 department;

5 (c) a person having custody of the books, accounts, or records of a licensee being examined by the
6 department;

7 (d) a person having custody of the books, accounts, or records of an affiliate or subsidiary of a licensee
8 being examined by the department.

9 (4) The department may retain a certified public accountant, attorney, appraiser, or other person to assist
10 the department in the examination of a licensee or an affiliate or subsidiary of a licensee if the department
11 determines that the assistance is necessary. Within 10 days after receipt of a statement from the department,
12 the licensee being examined shall pay the fees of a person retained by the department under this subsection.

13
14 **NEW SECTION. Section 36. Inspection or copying refusal.** A person having custody of all or part
15 of the books, accounts, or other records of a licensee may not knowingly refuse to allow the department, upon
16 request, to inspect or make copies of the records.

17
18 **NEW SECTION. Section 37. Restrictions on financing assistance.** (1) A licensee may not directly
19 or indirectly provide financing assistance to an associate of the licensee.

20 (2) A licensee may not directly or indirectly provide financing assistance to discharge or to free money
21 for use in discharging part or all of an obligation to an associate of the licensee. This subsection does not apply
22 to a transaction of an associate of a licensee in the normal course of the associate's business involving a line of
23 credit or financing assistance with a term of not more than 5 years.

24
25 **NEW SECTION. Section 38. Contemporaneous financing assistance.** (1) If the terms on which a
26 licensee provides financing assistance to a business are less favorable to the licensee than the terms on which
27 an associate of the licensee provides financing assistance to the business, the licensee may not directly or
28 indirectly provide the assistance to the business within 1 year before or after the associate provides assistance.

29 (2) If the financing assistance provided by the licensee's associate is of a different kind from the financing
30 assistance provided by the licensee, the burden is on the licensee to prove that the terms on which the licensee

1 provided the financing assistance were at least as favorable to the licensee as the terms on which the associate
2 provided the assistance.

3 (3) This section does not apply:

4 (a) if the associate is a controlling person of the licensee and is also the only shareholder of the licensee;

5 (b) if the associate is an affiliate or subsidiary of the licensee; or

6 (c) to a transaction of an associate of a licensee in the normal course of the associate's business
7 involving either a line of credit or financing assistance with a term of not more than 5 years.

8
9 **NEW SECTION. Section 39. Compensation of associate.** (1) An associate of a licensee may not
10 directly or indirectly receive from a person to whom the licensee provides financing assistance:

11 (a) compensation in connection with the providing of the financing assistance; or

12 (b) other things of value for procuring, influencing, or attempting to procure or influence the licensee's
13 action with respect to providing the financing assistance.

14 (2) This section does not apply to the receipt of fees by an associate of a licensee for bona fide services
15 performed by the associate if:

16 (a) the associate, with the consent and knowledge of the person to whom the financing assistance is
17 provided, is designated by the licensee to perform the services;

18 (b) the services are appropriate and necessary under the circumstances;

19 (c) the fees for the services are approved as reasonable by the licensee; and

20 (d) the fees for the services are collected by the licensee, and the licensee pays the associate.

21
22 **NEW SECTION. Section 40. Exemptions.** (1) If the department finds that the exemption is in the public
23 interest and that the regulation of the person or transaction is not necessary for the purposes of [sections 1
24 through 64 56], the department may exempt a person or transaction from [sections 37 through 39] for the
25 purposes of a particular transaction.

26 (2) The exemption may be unconditional or upon specified terms and conditions and for specified
27 periods.

28
29 ~~**NEW SECTION. Section 41. Injunction and enforced compliance -- appointment of receiver or**~~
30 ~~**conservator.**~~ If in the opinion of the department a person has violated [sections 1 through 61] or if there is

1 ~~reasonable cause to believe that a person is about to violate [sections 1 through 61], the department may bring~~
2 ~~an action in district court to enjoin the violation or to enforce compliance with [sections 1 through 61]. Upon a~~
3 ~~proper showing, a restraining order, preliminary or permanent injunction, or writ of mandamus must be granted~~
4 ~~and a receiver or a conservator may be appointed for the defendant or the defendant's assets.~~

5
6 NEW SECTION. SECTION 41. INJUNCTION -- APPOINTMENT OF RECEIVER. (1) IF IN THE OPINION OF THE
7 DEPARTMENT A PERSON IS USING, HAS USED, OR IS ABOUT TO USE ANY METHOD, ACT, OR PRACTICE THAT VIOLATES ANY
8 PROVISION OF [SECTIONS 1 THROUGH 56] OR ANY RULE ADOPTED OR ORDER ISSUED BY THE DEPARTMENT PURSUANT TO
9 [SECTIONS 1 THROUGH 56], THE DEPARTMENT, UPON DETERMINING THAT PROCEEDING WOULD BE IN THE PUBLIC
10 INTEREST, MAY BRING AN ACTION IN THE NAME OF THE STATE TO RESTRAIN BY TEMPORARY OR PERMANENT INJUNCTION
11 OR TEMPORARY RESTRAINING ORDER THE USE OF THE UNLAWFUL METHOD, ACT, OR PRACTICE.

12 (2) THE NOTICE FOR AN ACTION PURSUANT TO SUBSECTION (1) MUST STATE GENERALLY THE RELIEF SOUGHT
13 AND MUST BE SERVED AT LEAST 20 DAYS BEFORE THE HEARING OF THE ACTION IN WHICH THE RELIEF SOUGHT IS A
14 TEMPORARY OR PERMANENT INJUNCTION. THE NOTICE FOR A TEMPORARY RESTRAINING ORDER IS GOVERNED BY
15 27-19-315.

16 (3) AN ACTION UNDER THIS SECTION MAY BE BROUGHT IN THE DISTRICT COURT OF LEWIS AND CLARK COUNTY.

17 (4) (A) A DISTRICT COURT MAY ISSUE A TEMPORARY OR A PERMANENT INJUNCTION OR A TEMPORARY
18 RESTRAINING ORDER TO RESTRAIN AND PREVENT VIOLATIONS OF [SECTIONS 1 THROUGH 56], AND AN INJUNCTION MUST
19 BE ISSUED WITHOUT BOND TO THE DEPARTMENT.

20 (B) IF THE DEPARTMENT IS SUCCESSFUL IN OBTAINING AN INJUNCTION OR A RESTRAINING ORDER UNDER THIS
21 SECTION, THE DEPARTMENT IS ENTITLED TO REASONABLE ATTORNEY FEES AND COSTS.

22 (5) (A) IN ADDITION TO ALL OTHER MEANS PROVIDED BY LAW FOR THE ENFORCEMENT OF A RESTRAINING ORDER
23 OR AN INJUNCTION, THE DISTRICT COURT OF LEWIS AND CLARK COUNTY MAY IMPOUND AND APPOINT A RECEIVER FOR THE
24 PROPERTY AND BUSINESS OF THE DEFENDANT, INCLUDING BOOKS, ACCOUNTS, RECORDS, AND DOCUMENTS PERTAINING
25 TO THE PROPERTY OR BUSINESS, OR AS MUCH OF THE PROPERTY OR BUSINESS AS THE COURT CONSIDERS REASONABLY
26 NECESSARY TO PREVENT VIOLATIONS OF [SECTIONS 1 THROUGH 56].

27 (B) THE RECEIVER, WHEN APPOINTED AND QUALIFIED, HAS THE POWERS AND DUTIES CONFERRED BY THE COURT
28 THAT MAY INCLUDE CUSTODY, COLLECTION, ADMINISTRATION, WINDING UP OF BUSINESS, AND LIQUIDATION OF THE
29 PROPERTY AND BUSINESS.

30

1 ~~NEW SECTION. Section 42. Cease and desist orders for unlicensed persons.~~ If the department
 2 finds that a person has violated or that there is reasonable cause to believe that the person is about to violate
 3 [section 11(2) or 12(1)], the department may order the person to cease and desist from the violation unless and
 4 until the person is issued a license under [sections 1 through 61].

5
 6 NEW SECTION. SECTION 42. CEASE AND DESIST ORDERS. (1) IF IT APPEARS TO THE DEPARTMENT THAT A
 7 PERSON IS ENGAGED IN OR IS ABOUT TO ENGAGE IN ANY ACT OR PRACTICE CONSTITUTING A VIOLATION OF ANY PROVISION
 8 OF [SECTIONS 1 THROUGH 56] OR ANY RULE ADOPTED OR ORDER ISSUED BY THE DEPARTMENT PURSUANT TO [SECTIONS
 9 1 THROUGH 56], THE DEPARTMENT MAY ISSUE AN ORDER DIRECTING THE PERSON TO CEASE AND DESIST FROM
 10 CONTINUING THE ACT OR PRACTICE AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING. THE DEPARTMENT MAY
 11 ISSUE A TEMPORARY ORDER PENDING THE HEARING THAT:

12 (A) REMAINS IN EFFECT UNTIL 10 DAYS AFTER THE HEARINGS EXAMINER ISSUES PROPOSED FINDINGS OF FACT
 13 AND CONCLUSIONS OF LAW; OR

14 (B) BECOMES FINAL IF THE PERSON TO WHOM NOTICE IS ADDRESSED DOES NOT REQUEST A HEARING WITHIN 10
 15 DAYS AFTER RECEIPT OF THE NOTICE.

16 (2) A VIOLATION OF AN ORDER ISSUED PURSUANT TO THIS SECTION IS SUBJECT TO THE PENALTY PROVISIONS
 17 OF [SECTIONS 1 THROUGH 56].

18
 19 ~~NEW SECTION. Section 43. Cease and desist orders for violations by licensees or subject~~
 20 ~~persons.~~ (1) After notice and a hearing, the department may order a licensee or subject person to cease and
 21 desist from an action if the department determines that the licensee or subject person:

22 ~~(a) has violated or is violating or that there is reasonable cause to believe that the licensee or subject~~
 23 ~~person is about to violate [sections 1 through 61]; or~~

24 ~~(b) has engaged in or that there is a reasonable cause to believe that the licensee or subject person is~~
 25 ~~about to engage in an unsafe or unsound act with respect to the business of the licensee.~~

26 ~~(2) An order issued under subsection (1) may require the licensee or subject person to take affirmative~~
 27 ~~action to correct a condition resulting from the action.~~

28
 29 NEW SECTION. SECTION 43. PENALTIES -- LICENSE SUSPENSION AND REVOCATION -- RESTITUTION. (1) IF,
 30 AFTER PROVIDING A 10-DAY WRITTEN NOTICE THAT INCLUDES A STATEMENT OF ALLEGED VIOLATIONS AND A NOTICE OF

1 AN OPPORTUNITY FOR A HEARING AS PROVIDED IN TITLE 2, CHAPTER 4, THE DEPARTMENT FINDS THAT ANY LICENSEE OR
 2 UNLICENSED PERSON OR ANY OFFICER, DIRECTOR, PARTNER, TRUSTEE, EMPLOYEE, OR REPRESENTATIVE OF THE
 3 LICENSEE OR UNLICENSED PERSON HAS VIOLATED ANY OF THE PROVISIONS OF [SECTIONS 1 THROUGH 56], HAS FAILED
 4 TO COMPLY WITH THE RULES OR ORDERS ADOPTED BY THE DEPARTMENT, HAS FAILED OR REFUSED TO MAKE REQUIRED
 5 REPORTS TO THE DEPARTMENT, HAS FURNISHED FALSE INFORMATION TO THE DEPARTMENT, OR HAS OPERATED WITHOUT
 6 A LICENSE, THE DEPARTMENT MAY:

7 (A) IMPOSE A CIVIL PENALTY NOT TO EXCEED \$1,000 FOR EACH VIOLATION OR, IN THE CASE OF A CONTINUING
 8 VIOLATION, \$1,000 A DAY;

9 (B) ISSUE AN ORDER REVOKING OR SUSPENDING THE RIGHT OF THE LICENSEE OR PERSON, DIRECTLY OR
 10 THROUGH AN OFFICER, DIRECTOR, PARTNER, TRUSTEE, EMPLOYEE, OR REPRESENTATIVE, TO DO BUSINESS IN THIS STATE
 11 AS A LICENSEE OR TO ENGAGE IN THE BUSINESS OF A BIDCO; OR

12 (C) ISSUE AN ORDER REQUIRING RESTITUTION TO BORROWERS AND REIMBURSEMENT OF THE DEPARTMENT'S
 13 COST IN BRINGING THE ADMINISTRATIVE ACTION.

14 (2) ALL NOTICES, HEARING SCHEDULES, AND ORDERS MUST BE MAILED TO THE LICENSEE OR PERSON BY
 15 CERTIFIED MAIL TO THE ADDRESS FOR WHICH THE LICENSE WAS ISSUED OR, IN THE CASE OF AN UNLICENSED BUSINESS,
 16 TO THE LAST-KNOWN ADDRESS OF RECORD.

17 (3) A REVOCATION, SUSPENSION, OR SURRENDER OF A LICENSE DOES NOT RELIEVE THE LICENSEE FROM CIVIL
 18 OR CRIMINAL LIABILITY FOR ACTS COMMITTED PRIOR TO THE REVOCATION, SUSPENSION, OR SURRENDER OF THE LICENSE.

19 (4) (A) THE DEPARTMENT MAY REINSTATE ANY SUSPENDED OR REVOKED LICENSE IF THERE IS NOT A FACT OR
 20 CONDITION EXISTING AT THE TIME OF REINSTATEMENT THAT WOULD HAVE JUSTIFIED THE DEPARTMENT REFUSING TO
 21 ORIGINALLY ISSUE THE LICENSE.

22 (B) IF A LICENSE HAS BEEN REVOKED FOR CAUSE, AN APPLICATION MAY NOT BE MADE FOR ISSUANCE OF A NEW
 23 LICENSE OR THE REINSTATEMENT OF A REVOKED LICENSE FOR A PERIOD OF 6 MONTHS FROM THE DATE OF REVOCATION.

24 (5) ALL CIVIL PENALTIES COLLECTED UNDER THIS SECTION MUST BE DEPOSITED IN THE GENERAL FUND.

25
 26 ~~NEW SECTION. Section 44. Other cease and desist orders. If the department determines that a~~
 27 ~~factor set out in [section 43] is true with respect to a licensee or subject person of a licensee and that the action~~
 28 ~~or violation is likely to cause the insolvency or substantial dissipation of the assets or earnings of the licensee,~~
 29 ~~is likely to seriously weaken the condition of the licensee, or is likely to otherwise seriously prejudice the interests~~
 30 ~~of the licensee before the completion of proceedings conducted under [section 43], the department may order~~

1 ~~the licensee or subject person to cease and desist from the action or violation. The order may require the licensee~~
2 ~~or subject person to take affirmative action to correct a condition resulting from the action or violation.~~

3
4 **NEW SECTION. Section 44. Removal and suspension orders for certain acts.** (1) The department
5 may issue an order removing a subject person of a licensee from office with the licensee and prohibiting the
6 subject person from further participation in any manner in the conduct of the business of the licensee if the
7 department determines after notice and AN OPPORTUNITY FOR a hearing that:

8 (a) the person has violated [sections 1 through 64 56] or another applicable law, has engaged in an
9 unsafe or unsound act with respect to the business of the licensee, or has engaged in an act that constitutes a
10 breach of the person's fiduciary duty;

11 (b) the act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss
12 or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interest of the
13 licensee or the person has received financial gain by reason of the act, violation, or breach of fiduciary duty; and

14 (c) the act, violation, or breach of fiduciary duty involves dishonesty on the part of the person,
15 demonstrates the person's gross negligence with respect to the business of the licensee, or demonstrates the
16 person's wilful disregard for the safety and soundness of the licensee.

17 (2) The department may issue an order removing a subject person of the licensee from office with the
18 licensee and prohibiting the subject person from further participation in any manner in the conduct of the business
19 of the licensee except with the prior consent of the department if, after notice and a hearing, the department
20 determines that, by engaging or participating in an act with respect to a financial or other business institution that
21 resulted in substantial financial loss or other damage, the subject person of a licensee demonstrated:

22 (a) dishonesty or a wilful or continuing disregard for the safety and soundness of the financial or other
23 business institution; and

24 (b) unfitness to continue as a subject person of the licensee or to participate in conducting the business
25 of the licensee.

26 (3) The department may immediately issue an order suspending a subject person of a licensee from the
27 person's office with the licensee and prohibiting the subject person from further participation in any manner in the
28 conduct of the business of the licensee except with the consent of the department if the department determines
29 that:

30 (a) the factors in subsection (1) or (2) are true with respect to the person; and

1 (b) an immediate order is necessary to protect the interests of the licensee or the public.

2 (4) In this section, when used with respect to a licensee, "office" means the position of director, officer,
3 or employee of the licensee or of an affiliate or subsidiary of the licensee.

4
5 **NEW SECTION. Section 45. Removal and suspension orders in cases of indictment or conviction.**

6 (1) If the department determines that a subject person of a licensee has been indicted by a grand jury or has been
7 bound over for trial by a court for a crime involving dishonesty or breach of trust and that the continuation of the
8 person as a subject person of the licensee may threaten the interests of the licensee or may threaten to impair
9 public confidence in the licensee, the department may issue an order suspending the person from the person's
10 office with the licensee and prohibiting the person from further participation in any manner in the conduct of the
11 business of the licensee until the person's charge has been disposed of.

12 (2) If the department determines that a subject person or former subject person of a licensee to whom
13 an order was issued under subsection (1) or another subject person of a licensee has been convicted of a crime
14 involving dishonesty or breach of trust and that the continuation or resumption of the person as a subject person
15 of the licensee may threaten the interests of the licensee, the department may issue an order suspending or
16 removing the person from the person's office with the licensee and prohibiting the person from further participation
17 in any manner in the conduct of the business of the licensee except with the prior consent of the department.

18 (3) The failure to convict a subject person who is charged with a crime involving dishonesty or breach
19 of trust does not prevent the department from issuing an order to the person under another provision of [sections
20 1 through 6+ 56].

21 (4) In this section, "office" has the meaning provided in [section ~~45~~ 44].

22
23 **NEW SECTION. Section 46. Hearings on orders -- rescission and modification.** (1) Within 30 days

24 after an order is issued under [section ~~42, 44, 45(3), or 46 44(3) OR 45~~], the licensee or subject person of a
25 licensee to whom the order is directed may file with the department an application for a hearing on the order.

26 ~~———— (2) If the department fails to begin a hearing within 15 business days after the application is filed or within~~
27 ~~a longer period to which the licensee or subject person consents, the order must be considered rescinded.~~

28 ~~(3)~~(2) After the hearing, the department shall affirm, modify, or rescind the order.

29 ~~(4)~~(3) A person to whom an order is issued under this section may apply to the department to modify or
30 rescind the order. The department may not modify or rescind the order unless the department determines that

1 it is in the public interest to do so and that it is reasonable to believe that the person will comply with [sections
2 1 through ~~64~~ 56].

3 ~~(5)~~(4) The right of a licensee or subject person to whom an order is issued under [section ~~42, 44, 45(3),~~
4 ~~or 46~~ 44(3) OR 45] to an interlocutory review of the order is not affected by the failure of the licensee or subject
5 person to apply to the department for a hearing on the order issued under this section.

6
7 **NEW SECTION. Section 47. Disclosure to shareholders.** If the department determines that the results
8 of a department communication or order addressed to the licensee or to a subject person of the licensee should
9 be disclosed to the licensee's shareholders, the department may require the licensee to make the disclosure in
10 the form and manner determined by the department.

11
12 **NEW SECTION. Section 48. Meetings of directors and shareholders called by department.** (1)
13 If the department considers it expedient, the department may call a meeting of the board of directors or of the
14 shareholders of a licensee.

15 (2) The department shall send notification of the time, place, and purpose of the meeting not less than
16 5 days before the meeting to each director for a directors' meeting or to each shareholder for a shareholders'
17 meeting, either by personal service or by certified mail sent to the person's last-known address as shown in the
18 records of the department.

19 (3) The licensee shall pay the notice and meeting expenses for a meeting of directors or shareholders
20 called under this section.

21
22 **NEW SECTION. Section 49. Orders restricting additional financial assistance.** (1) The department
23 may issue an order directing a licensee to refrain from providing additional financing assistance to businesses
24 if, in the opinion of the department, the order is necessary to protect the interests of the licensee or the public and
25 if, after notice and AN OPPORTUNITY FOR a hearing, the department determines that:

- 26 (a) the licensee or a controlling person, subsidiary affiliate of the licensee has violated [sections 1
27 through ~~64~~ 56] or another applicable law;
- 28 (b) the licensee is conducting the licensee's business in an unsafe and unsound manner;
- 29 (c) the licensee is in a condition that makes it unsafe or unsound for the licensee to transact business;
- 30 (d) the licensee has ceased to transact business as a BIDCO;

1 (e) the licensee is insolvent;

2 (f) the licensee has suspended payment of the licensee's obligations, has made an assignment for the
3 benefit of the licensee's creditors, or has admitted in writing the licensee's inability to pay the licensee's debts as
4 the debts become due;

5 (g) the licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other
6 relief under a bankruptcy, reorganization, insolvency, or moratorium law, an involuntary petition in bankruptcy
7 against the person has not been dismissed in 90 days, or a person has applied for the relief under the law against
8 a licensee and the relief has been granted or the licensee has by an affirmative act approved of or consented to
9 the action; or

10 (h) a fact or condition exists that would have been grounds for denying the licensee a license if the fact
11 or condition had existed when the licensee applied for the license.

12 (2) If the department determines that a factor in subsection (1) is true with respect to a licensee and that
13 it is necessary for the protection of the interests of the licensee or the public that the department immediately
14 prevent the licensee from providing additional financing assistance to businesses, the department may issue the
15 order without a hearing.

16 (3) If the department consents, a licensee that has been the subject of an order under subsection (1)
17 or (2) may resume providing financing assistance to businesses under the conditions that the department
18 prescribes.

19 (4) A person to whom an order is issued under subsection (1) or (2) may apply to the department to
20 modify or rescind the order. The department may not grant the application unless the department determines that
21 it is in the interest of the public to do so and that it is reasonable to believe that the person will comply with
22 [sections 1 through 64 56].

23
24 **NEW SECTION. Section 50. Taking possession of licensee.** (1) If the department finds that a factor
25 in [section 50 49] is true with respect to a licensee and that it is necessary for the protection of the interests of
26 the licensee or of the public, the department may take immediate possession of the property and business of the
27 licensee and appoint a conservator for the licensee.

28 (2) The department may appoint as conservator ~~one of the employees of the division of banking and~~
29 ~~financial institutions of the department of administration or another~~ A competent and disinterested person. The
30 ~~division of banking and financial institutions~~ DEPARTMENT must be reimbursed out of the assets of the

1 conservatorship for all money expended by the ~~division~~ DEPARTMENT in connection with the conservatorship. ~~Upon~~
 2 ~~the approval of the department, the~~ THE expenses of the conservatorship paid for by the ~~division~~ DEPARTMENT
 3 must be paid out of the assets of the licensee. Payment of the expenses of the ~~division of banking and financial~~
 4 ~~institutions~~ DEPARTMENT takes priority over other payments from the assets and must be fully paid before a final
 5 distribution is made.

6 (3) Under the direction of the department, the conservator shall take possession of the books, records,
 7 and assets of the licensee and shall take other action that is necessary to conserve the assets of the licensee
 8 or to ensure payment of obligations of the licensee pending further disposition of the licensee's business.

9 (4) At an appropriate time, the department may terminate the conservatorship and permit the licensee
 10 to resume the transaction of the licensee's business subject to the terms, conditions, restrictions, and limitations
 11 that the department prescribes.

12
 13 ~~NEW SECTION. Section 52. Receivership.~~ (1) The department may apply to the district court for the
 14 appointment of a receiver for a licensee if the department determines that the licensee should be liquidated
 15 because:

16 ~~(a) the licensee is insolvent;~~

17 ~~(b) the licensee has suspended payment of the licensee's obligations, has made an assignment for the~~
 18 ~~benefit of the licensee's creditors, or has admitted in writing the licensee's inability to pay the licensee's debts as~~
 19 ~~the debts become due;~~

20 ~~(c) the licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief~~
 21 ~~under a bankruptcy, reorganization, insolvency, or moratorium law;~~

22 ~~(d) a person has applied for the relief described under subsection (1)(c) against a licensee and the~~
 23 ~~licensee has by an affirmative act approved of or consented to the action or the relief has been granted; or~~

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

25 ~~(2) If a receiver is appointed under subsection (1), the receiver shall liquidate the property and business~~
 26 ~~of the licensee.~~

27
 28 ~~NEW SECTION. Section 53. Civil penalty.~~ (1) If after notice and a hearing the department finds that
 29 a person has violated [sections 1 through 61], the department may order the person to pay to the department a
 30 civil penalty in an amount that the department specifies. The civil penalty may not exceed \$1,000 for each

1 violation or, in the case of a continuing violation, \$1,000 for each day that the violation continues.

2 ~~———(2) This section does not apply to an act committed or omitted in good faith in conformity with an order,~~
 3 ~~regulation, declaratory ruling, or written interpretative opinion of the department even if the order, regulation,~~
 4 ~~declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by~~
 5 ~~judicial or other authority to be invalid.~~

6 ~~———(3) The provisions of subsection (1) are in addition to and not alternative to the other provisions of~~
 7 ~~[sections 1 through 61] that authorize the department to issue orders or to take other action because of a violation~~
 8 ~~of [sections 1 through 61].~~

9

10 ~~———**NEW SECTION. Section 54. Application of administrative procedure act to proceedings.** A~~
 11 ~~proceeding under [section 53] is subject to Title 2, chapter 4, part 6. Except as otherwise provided in [sections~~
 12 ~~1 through 61], other proceedings and actions under this chapter are exempt from Title 2, chapter 4, part 6.~~

13

14 **NEW SECTION. Section 51. Appeals.** A final order of an administrative proceeding under [sections
 15 42 through ~~46, 50, 51 or 53~~ 45, 49, OR 50] may be appealed to the district court.

16

17 **NEW SECTION. Section 52. Application of law under which licensee incorporated.** Except as
 18 otherwise provided in this section, the provisions of the law under which a licensee is incorporated apply to the
 19 licensee. If a provision of the licensee's incorporating law conflicts with a provision of [sections 1 through ~~64~~ 56],
 20 [sections 1 through ~~64~~ 56] control.

21

22 **NEW SECTION. Section 53. Associates.** (1) For purposes of [sections 27 and 37 through 39], a person
 23 who is an associate within 6 months before or after a licensee provides financing assistance must be considered
 24 to be an associate as of the date the licensee provides the assistance.

25 (2) If a licensee, in order to protect the licensee's interests, designates a person to serve as a director
 26 of, officer of, or in a management capacity of a business to which the licensee provides financial assistance, the
 27 person may not, on that account, be considered to be an associate under [sections 27 and 37 through 39]. This
 28 subsection does not apply if the person has, directly or indirectly, another financial interest in the business or if
 29 the person, at any time before the licensee provides the financing assistance, served as a director of, officer of,
 30 or in another capacity in the management of the business for a period of 30 days or more.

