

**CHAPTER 1207****ECONOMIC DEVELOPMENT FINANCE CORPORATION***H.F. 2396*

**AN ACT** relating to the establishment of the economic development finance corporation to assist in providing financing for small business development by providing loan guarantees, letters of credit, equity financing, underwriting for public offerings, and creating a state assistance fund.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. **NEW SECTION. 28.131 TITLE OF ACT.**

This division shall be known and may be cited as the "Iowa Business Development Finance Act".

Sec. 2. **NEW SECTION. 28.132 DEFINITIONS.**

As used in this division, unless the context otherwise requires, the term:

1. "Corporation" means the business development finance corporation organized pursuant to this division and for the purpose of assisting businesses in any phase of business or product development in the state of Iowa by the loaning of money to and investing money in the business, and otherwise organizing for the purposes in section 28.133.

2. "Financial institution" means a bank, trust company, savings and loan association, insurance company or related corporation, partnership, foundation or other institution licensed to do business in the state of Iowa and engaged primarily in lending or investing funds or any private or public retirement fund.

3. "Member" means a financial institution which has been accepted for membership in the corporation in accordance with section 28.137.

4. "Board" means the board of directors of the corporation constituted under section 28.143 in office from time to time.

5. "Public director" means a member of the board representing the state of Iowa.

6. "Private director" means a member of the board representing the shareholders of the corporation.

7. "Department" means the Iowa department of economic development or any agency which succeeds to the functions of the Iowa department of economic development.

8. "Business" means a business which meets the United States small business administration's definition of small business for that type of business, except a business whose primary activity is retail sales.

Sec. 3. **NEW SECTION. 28.133 PURPOSES.**

The purposes of the corporation shall be limited to those provided in this section and shall be to promote, stimulate, develop and advance business prosperity of the state of Iowa and its citizens; to encourage and assist through loans, investments, or other business transactions, the location of new businesses in the state; to rehabilitate and assist existing businesses in this state; to stimulate and assist in the expansion of any kind of business activity which would tend to promote business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of business development in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state, in situations in which assistance would not otherwise be reasonably available from commercial sources.

This division being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purposes.

Sec. 4. NEW SECTION. 28.134 POWERS.

The corporation shall, subject to the restrictions and limits contained in this division, have the following powers:

1. To provide letters of credit or guarantees to businesses for any phase of product or business development, not to exceed thirty percent of the total loan amount.
2. To provide equity financing to businesses for any phase of business or product development.
3. To provide loans for businesses in any phase of product or business development when serviced by an Iowa financial institution.
4. To underwrite the public offering of shares by businesses.
5. To request, as a condition of participation or assistance, royalty, equity ownership, or fees, as it determines appropriate, for its assistance.
6. To make contracts and incur liabilities for any of the purposes of the corporation.
7. To borrow money and to issue its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and when necessary to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature, or any part thereof or interest therein, without securing shareholder approval.
8. To do all acts and things necessary or convenient to carry out the powers expressly granted in this division and such other powers not in conflict with this division granted under chapter 496A.
9. To enter into lending arrangements with state and federal agencies or instrumentalities whereby the corporation may participate in lending operations or secure guarantees or qualify under applicable laws to further state or federal lending programs by becoming a participant therein.
10. To accept broker deposits from financial institutions.
11. To use not more than five percent of its funds for management assistance.

Sec. 5. NEW SECTION. 28.135 STOCK — LIMITATIONS.

Capital stock shall be issued only on receipt by the corporation of cash in an amount not less than the par value as may be determined by the board. A shareholder of the corporation shall not be entitled as of right to purchase or subscribe for any unissued or treasury shares of the corporation, and the shareholder shall not be entitled as of right to purchase or subscribe for any bonds, notes, certificates of indebtedness, debentures, or other obligations convertible into shares of the corporation.

Sec. 6. NEW SECTION. 28.136 STOCKHOLDERS PRIVILEGES.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective articles of incorporation, agreements of association, or trust indentures; a person is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bond, security or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said shares to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state.

Sec. 7. NEW SECTION. 28.137 CORPORATION MEMBERSHIP.

1. A financial institution is authorized to become a member of the corporation and to make loans to the corporation.
2. A financial institution may request membership in the corporation by making application to the board on forms and in the manner as the board may require and membership shall become effective upon acceptance of the application by the board.

3. Each financial institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of, bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, of which it is a member and while owners of such shares to exercise all rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory agency of this state. The amount of capital stock of the corporation which a member is authorized to acquire is in addition to the amount of capital stock in other corporations which the member may otherwise be authorized to acquire.

Sec. 8. NEW SECTION. 28.138 ELIGIBILITY TO PARTICIPATE.

A financial institution is not eligible to receive benefits from the corporation unless it becomes a shareholder, a member, or both. If, as determined by the president of the corporation, there is an insufficient number of eligible financial institutions to ensure reasonable access by businesses to assistance by the corporation, the board may designate additional eligible financial institutions.

Sec. 9. NEW SECTION. 28.139 LOAN TO THE CORPORATION BY MEMBERS.

Each member of the corporation may make loans to the corporation as and when called upon by the corporation to do so on terms and conditions as shall be approved from time to time by the board subject to the following:

1. All loan limits shall be established at the thousand dollar amount nearest the amount computed in accordance with this section.

2. A loan to the corporation shall not be made if immediately thereafter the total amount of the obligations of the corporation calling for the loan would exceed ten times the amount then paid in on the outstanding capital stock of the corporation.

3. The total amount outstanding at any one time on loans to the corporation made by a member of the corporation when added to the amount of the investment in the capital stock of the corporation and held by the member, shall not exceed the lesser of:

a. Twenty percent of the total amount then outstanding on loans to the corporation by all members, including in that total amount outstanding amounts validly called for loan but not yet loaned.

b. The limit, to be determined as of the time the member becomes a member, on the basis of the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership, as follows:

(1) Banks and trust companies — five percent of the paid-in capital, surplus, and undivided profits.

(2) Savings and loan associations — two percent of the general reserve account, surplus and undivided profits.

(3) Stock life insurance companies — one percent of capital and unassigned surplus.

(4) Mutual life insurance companies — one percent of the unassigned surplus.

(5) All other insurance companies — one-tenth of one percent of the assets.

(6) Other financial institutions — such limits as may be approved by the board of the business development finance corporation.

4. Each call for loan shall be prorated among the members in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of the member's loan limit, reduced by the balance of outstanding obligations of the corporation to the member and the investment in capital stock of the corporation held by the member at the time of the call.

5. All loans to the corporation by a member shall be evidenced by registered bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable by the registered holder thereof on the books of the corporation.

Sec. 10. NEW SECTION. 28.140 DURATION OF MEMBERSHIP.

Membership in the corporation shall be for the duration of the corporation. However, upon written notice given to the corporation five years in advance a member may withdraw from membership in the corporation at the expiration date of the notice. A financial institution may at any time withdraw from membership without such notice in the event of its merger with another financial institution, after commencement of proceedings for voluntary or involuntary dissolution, receivership, or reorganization pursuant to or by operation of federal or state law or in the event of conversion from a state financial institution to a federal financial institution or the reverse. If there shall be a legislative amendment of this division affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation of the corporation which shall not have been approved by the public and private directors within the time set forth and in the manner provided in this division, a member may immediately withdraw from membership upon giving written notice to the corporation not later than ninety days from the effective date of the amendment. A member shall not be obligated to make loans to the corporation pursuant to calls made subsequent to the withdrawal of the member from the corporation.

Sec. 11. NEW SECTION. 28.141 POWERS OF SHAREHOLDERS.

The shareholders of the corporation shall have the following powers of the corporation:

1. Those powers granted in chapter 496A which are not inconsistent with this division.
2. To elect the private directors as provided in this division.
3. To exercise other powers of the corporation as may be conferred on the shareholders by the bylaws.

As to all matters requiring action by the shareholders of the corporation, except as may be otherwise provided in this division, approval of the matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting are entitled. Each shareholder shall have one vote, in person or by proxy, for each share of capital stock held by the shareholder.

Sec. 12. NEW SECTION. 28.142 ARTICLES AMENDED.

The articles of incorporation of the corporation may be amended by a majority vote of both the public and private directors. An amendment shall not be made which is inconsistent with this division, authorizes an additional class or classes of shares of capital stock, or eliminates or curtails the authority of the department with respect to the corporation. Without the consent of each of the members affected, an amendment shall not be made which increases the obligation of a member to make loans to the corporation; makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation; affects a member's right to withdraw from membership, as provided in this division; or affects a member's voting rights, if the member is a shareholder, in the corporation. Within thirty days after a meeting at which amendment of the articles has been adopted, articles of amendment signed and sworn to by the president, secretary, and majority of the directors, setting forth the amendment and the due adoption of them, shall be submitted to the director of the department who shall examine them, and if the director finds that they conform to the requirements of this division, shall certify and endorse the director's approval of them. Thereupon, the articles of amendment shall be filed in the office of the secretary of state in the manner set forth and as provided in chapter 496A and the amendment shall not take effect until the articles of amendment shall have been approved and filed

as provided in this section. Within sixty days after the effective date of a legislative amendment affecting the rights and obligations of the members and shareholders or otherwise affecting the articles of incorporation, the approval of the legislative amendment shall be voted on by the public and private directors of the corporation at a meeting duly called for that purpose. Within thirty days after any meeting at which a legislative amendment affecting the articles of incorporation of the corporation has been voted on, a certificate filed and sworn to by the secretary or other recording officer of the corporation setting forth the action taken at the meeting with respect to the amendment shall be submitted to the director of the department and upon receipt of the approval shall be filed in the office of the secretary of state.

Sec. 13. NEW SECTION. 28.143 BOARD OF DIRECTORS.

1. The board shall consist of twelve directors, seven of which represent the public and five of which represent the shareholders. The seven public directors consist of:

- a. The director of the department.
- b. The director of the Iowa finance authority.
- c. The president of the Iowa product development corporation.
- d. The superintendent of banking.
- e. The superintendent of savings and loans.
- f. The commissioner of insurance.
- g. The treasurer of state.
- h. Or the designees of the officials named in paragraphs "a" through "g".

2. The director of the department, or the director's designee, shall serve as chairperson of the board and the president of the Iowa product development corporation, or the president's designee, shall serve as vice chairperson of the board.

3. Within sixty days of the effective date of this division, the chairperson shall convene the public directors for the purpose of organizing the corporation under chapter 496A.

4. Within sixty days of the completion of the initial stock offering, the chairperson shall convene a meeting of the shareholders for the purpose of the initial election of the private directors. The private directors hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election, and until their successors are elected and qualify unless sooner removed in accordance with the bylaws. A vacancy in the office of a director elected by the shareholders shall be filled by the other directors elected by the shareholders.

5. If stock is not issued and private directors are not elected, all powers of the board shall be exercised by the public directors.

Notwithstanding any provisions of law to the contrary, officers and directors of insurance companies and other financial institutions may be members of the board of the corporation organized for the purposes of this division to which the insurance company or other financial institution may make a loan or may make an investment.

Sec. 14. NEW SECTION. 28.144 PRESIDENT OF THE CORPORATION.

The president of the corporation shall be the director of the division of finance of the department. Administrative and staff support shall be furnished by the division of finance of the department.

Sec. 15. NEW SECTION. 28.145 APPLICATIONS FOR FINANCIAL ASSISTANCE.

1. Applications for financial assistance shall be forwarded by a business in conjunction with an eligible financial institution or by a city, county, or local community economic development corporation on behalf of a business, together with an application fee prescribed by the corporation, to the president of the corporation. The president, after preparing the necessary records for the corporation, shall forward each application to the staff of the corporation for an investigation and report concerning the advisability of approving the financial assistance for the

business and concerning any other factors found relevant by the corporation. The investigation and report shall include information as deemed necessary by the president.

2. Criteria for assistance shall be developed by the president with approval of the board and consistent with the strategic plan for state economic growth prepared by the Iowa economic development board.

3. The president shall award assistance in consultation with the board upon review and rating of each application by the staff of the corporation.

4. Appeals of the president's decisions concerning awards of assistance shall be heard by the board. However, the president's decision cannot be reversed except by a majority vote of the directors.

**Sec. 16. NEW SECTION. 28.146 EARNED SURPLUS SET ASIDE.**

Net earnings and surplus shall be determined by the board, after providing for the reserves as the directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

**Sec. 17. NEW SECTION. 28.147 REPORTS TO GOVERNOR AND GENERAL ASSEMBLY.**

The corporation shall submit annually a record of its operations and condition to the governor and general assembly. The department may request the superintendent of banking to examine the condition of the corporation and submit a report to the department, copies of which shall also be sent to the governor and general assembly.

**Sec. 18. NEW SECTION. 28.148 STATE ASSISTANCE FUND.**

There is created in the treasurer of state's office a "business development finance corporation assistance fund". The fund shall consist of all appropriations, grants, or gifts received by the treasurer specifically for assistance under this division. Moneys in this fund are appropriated to the corporation for the purposes stated in this division.

Sec. 19. The Code editor shall codify new sections 28.131 through 28.148 as a separate division of chapter 28.

Approved May 11, 1988