

By: Representative Smith

To: Ways and Means

HOUSE BILL NO. 1557
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 57-115-5, MISSISSIPPI CODE OF 1972,
2 TO INCREASE BY \$45,000,000.00 THE AGGREGATE AMOUNT OF INVESTMENT
3 TAX CREDITS THAT MAY BE ALLOCATED TO PARTICIPATING INVESTORS OF
4 MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANIES UNDER THE
5 MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY ACT; TO PROVIDE THE
6 TAXABLE YEARS IN WHICH A PARTICIPATING INVESTOR MAY CLAIM THE
7 ADDITIONAL CREDITS SO ALLOCATED AGAINST HIS PREMIUM TAX LIABILITY;
8 AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** Section 57-115-5, Mississippi Code of 1972, is
11 amended as follows:

12 57-115-5. (1) (a) The MDA must provide a standardized
13 format for applying for the Mississippi small business investment
14 credit authorized under this chapter, and for certification as a
15 Mississippi small business investment company.

16 (b) An applicant for certification as a primary
17 Mississippi small business investment company must:

18 (i) File an application with the MDA which shall
19 include a business plan detailing:



20 1. The approximate percentage of designated
21 capital the applicant will invest in qualified businesses by the
22 second, fourth and sixth anniversaries of its allocation date;

23 2. The industry segments listed by the North
24 American Industrial Classification System code and percentage of
25 designated capital in which the applicant will invest; and

26 3. The number of jobs that will be created or
27 retained as a result of the applicant's investments once all
28 designated capital has been invested. A job shall be considered
29 created or retained if the job pays one hundred twenty-five
30 percent (125%) of the state average annual wage and is maintained
31 for at least three (3) years. The application shall project, at a
32 minimum, that one (1) job shall be created or maintained for each
33 One Hundred * * * Fifty Thousand Dollars (\$150,000.00) in credits
34 awarded to the participating investors of the Mississippi small
35 business investment company;

36 (ii) Pay a nonrefundable application fee of Seven
37 Thousand Five Hundred Dollars (\$7,500.00) at the time of filing
38 the application;

39 (iii) Submit as part of its application an audited
40 balance sheet that contains an unqualified opinion of an
41 independent certified public accountant issued not more than
42 thirty-five (35) days before the application date that states that
43 the applicant has an equity capitalization of Five Hundred



44 Thousand Dollars (\$500,000.00) or more in the form of unencumbered
45 cash, marketable securities or other liquid assets; and

46 (iv) Have at least two (2) principals or persons,
47 at least one (1) of which is primarily located in Mississippi,
48 employed or engaged to manage the funds who each have a minimum of
49 five (5) years of money management experience in the venture
50 capital or private equity or lending industry.

51 (c) An applicant for certification as a secondary
52 Mississippi small business investment company must:

53 (i) File an application with the MDA which shall
54 include a business plan detailing:

55 1. The approximate percentage of designate
56 capital the applicant will invest in qualified businesses by the
57 second, fourth and sixth anniversaries of its allocation date;

58 2. The industry segments listed by the North
59 American Industrial Classification System code and percentage of
60 designated capital in which the applicant will invest; and

61 3. The number of jobs that will be crested or
62 retained as a result of the applicant's investments once all
63 designated capital has been invested. A job shall be considered
64 created or retained if the job pays one hundred twenty-five
65 percent (125%) of the state average annual wage and is maintained
66 for at least three (3) years. The application shall project, at a
67 minimum, that one (1) job shall be created or maintained for each
68 One Hundred * * * Fifty Thousand Dollars (\$150,000.00) in credits



69 awarded to the participating investors of the Mississippi small
70 business investment company;

71 (ii) Pay a nonrefundable application fee of Three
72 Thousand Seven Hundred Fifty Dollars (\$3,750.00) at the time of
73 filing the application;

74 (iii) Submit as part of its application an audited
75 balance sheet that contains an unqualified opinion of an
76 independent certified public accountant issued not more than
77 thirty-five (35) days before the application date that states that
78 the applicant has an equity capitalization of One Hundred Fifty
79 Thousand Dollars (\$150,000.00) or more in the form of unencumbered
80 cash, marketable securities or other liquid assets;

81 (iv) Demonstrate that fifty percent (50%) of all
82 secondary investment company investments have been in Mississippi,
83 and all of the applicant's employees have lived in Mississippi for
84 at least two (2) years prior to the application being filed, and
85 that those who are employed or engaged to manage the funds have a
86 minimum of three (3) years of money management experience in the
87 venture capital or private equity or lending industry; * * *

88 (v) Submit as part of its application a signed and
89 notarized partnership agreement letter with a certified primary
90 Mississippi small business investment company * * *; and

91 (vi) Any participating partner or individual in a
92 certified secondary small business investment company that
93 successfully participated in the initial authorization and



94 allocation of credits in 2012, and which is a partner in a
95 submitted application for credits allocated in subsection (4)(b)
96 of this section, while partnered with the same primary small
97 business investment company from the previous 2012 allocation,
98 shall have the requirements in subparagraphs (iii) and (iv) of
99 this paragraph (c) waived as having been completed through the
100 previous allocation.

101 (d) The MDA may certify partnerships, corporations,
102 trusts, or limited liability companies, organized on a for-profit
103 basis, which submit an application to be designated as a
104 Mississippi small business investment company if the applicant is
105 located, headquartered, and licensed or registered to conduct
106 business in Mississippi, has as its primary business activity the
107 investment of cash in qualified businesses, and meets all of the
108 criteria of this section.

109 (e) The MDA must:

110 (i) Review the organizational documents of each
111 applicant for certification and the business history of each
112 applicant;

113 (ii) Determine whether the applicant has satisfied
114 all of the requirements of this section; and

115 (iii) Determine whether the officers and the board
116 of directors, general partners, trustees, managers or members are
117 trustworthy and are thoroughly acquainted with the requirements of
118 this chapter.



119 (f) Within forty-five (45) days after the receipt of an
120 application, the MDA may issue the certification or refuse the
121 certification and may communicate in detail to the applicant the
122 grounds for refusal, including suggestions for the removal of the
123 grounds.

124 (g) The MDA must begin accepting applications to become
125 a Mississippi small business investment company not later than
126 August 1, 2012, for credits allocated in subsection (4) (a) of this
127 section, and not later than August 1, 2018, for credits allocated
128 in subsection (4) (b) of this section.

129 (h) Certification by the MDA and operation of a primary
130 Mississippi small business investment company is not subject to
131 completion of any relationship or agreement with a secondary
132 Mississippi small business investment company, and it is not the
133 intent of this chapter to compel any such agreement.

134 (2) (a) An insurance company or affiliate of an insurance
135 company must not, directly or indirectly:

136 (i) Beneficially own, whether through rights,
137 options, convertible interest, or otherwise, fifteen percent (15%)
138 or more of the voting securities or other voting ownership
139 interest of a Mississippi small business investment company;

140 (ii) Manage a Mississippi small business
141 investment company; or

142 (iii) Control the direction of investments for a
143 Mississippi small business investment company.



144 (b) A Mississippi small business investment company may
145 obtain one * * * or more guaranties, indemnities, bonds, insurance
146 policies, or other payment undertakings for the benefit of its
147 participating investors from any entity, except that in no case
148 can more than one (1) participating investor of a Mississippi
149 small business investment company on an aggregate basis with all
150 affiliates of the participating investor, be entitled to provide
151 guaranties, indemnities, bonds, insurance policies, or other
152 payment undertakings in favor of the participating investors of a
153 Mississippi small business investment company and its affiliates
154 in this state.

155 (c) This subsection (2) does not preclude a
156 participating investor, insurance company or other party from
157 exercising its legal rights and remedies, including, without
158 limitation, interim management of a Mississippi small business
159 investment company, in the event that a Mississippi small business
160 investment company is in default of its statutory obligations or
161 its contractual obligations to a participating investor, insurance
162 company, or other party, or from monitoring a Mississippi small
163 business investment company to ensure its compliance with this
164 chapter or disallowing any investments that have not been approved
165 by the MDA.

166 (d) The MDA may contract with an independent third
167 party to review, investigate, and certify that the applications
168 comply with the provisions of this chapter.



169 (3) (a) At the time of its investment of designated capital
170 a participating investor shall earn a vested credit against the
171 participating investor's state premium tax liability in an amount
172 equal to one hundred percent (100%) of the participating
173 investor's investment of designated capital in a Mississippi small
174 business investment company, subject to the limits imposed by this
175 section.

176 (b) From and after January 1, 2015, a participating
177 investor may claim the credit allocated in subsection (4)(a) of
178 this section as follows:

179 (i) For the 2015 taxable year, an amount equal to
180 twenty percent (20%) of the participating investor's investment of
181 designated capital;

182 (ii) For the 2016 taxable year, an amount equal to
183 twenty percent (20%) of the participating investor's investment of
184 designated capital;

185 (iii) For the 2017 taxable year, an amount equal
186 to twenty percent (20%) of the participating investor's investment
187 of designated capital;

188 (iv) For the 2018 taxable year, an amount equal to
189 twenty percent (20%) of the participating investor's investment of
190 designated capital; and

191 (v) For the 2019 taxable year, an amount equal to
192 twenty percent (20%) of the participating investor's investment of
193 designated capital.



194 (c) From and after January 1, 2021, a participating
195 investor may claim the credit allocated in subsection (4)(b) of
196 this section as follows:

197 (i) For the 2021 taxable year, an amount equal to
198 sixteen and sixty-six one-hundredths percent (16.66%) of the
199 participating investor's investment of designated capital;

200 (ii) For the 2022 taxable year, an amount equal to
201 sixteen and sixty-six one-hundredths percent (16.66%) of the
202 participating investor's investment of designated capital;

203 (iii) For the 2023 taxable year, an amount equal
204 to sixteen and sixty-six one-hundredths percent (16.66%) of the
205 participating investor's investment of designated capital;

206 (iv) For the 2024 taxable year, an amount equal to
207 sixteen and sixty-six one-hundredths percent (16.66%) of the
208 participating investor's investment of designated capital;

209 (v) For the 2025 taxable year, an amount equal to
210 sixteen and sixty-six one-hundredths percent (16.66%) of the
211 participating investor's investment of designated capital; and

212 (vi) For the 2026 taxable year, an amount equal to
213 sixteen and seven-tenths percent (16.7%) of the participating
214 investor's investment of designated capital.

215 (* * *d) The credit for any taxable year cannot exceed
216 the state premium tax liability of the participating investor for
217 the taxable year. If the amount of the credit exceeds the state
218 premium tax liability of the participating investor for the



219 taxable year, the excess is an investment tax credit carryover for
220 five (5) years from the date the credit is first able to be
221 utilized in accordance with paragraph (a) of this subsection (3).

222 (* * *e) Notwithstanding any provision of this chapter
223 to the contrary, the granting of any credits against the insurance
224 premium tax shall not affect the insurance premium tax receipts
225 distributed pursuant to Sections 83-1-37, 83-1-39, 83-34-39,
226 45-11-5 and 21-29-233, which shall take priority over all other
227 distributions of premium tax receipts and shall be calculated
228 based upon gross insurance premium tax liability before the
229 application of the tax credits.

230 (* * *f) A participating investor claiming a credit
231 under this chapter is not required to pay any additional
232 retaliatory tax under Section 27-15-123 levied as a result of
233 claiming the credit.

234 (* * *g) A participating investor is not required to
235 reduce the amount of tax pursuant to the state premium tax
236 liability included by the participating investor in connection
237 with ratemaking for any insurance contract written in this state
238 because of a reduction in the participating investor's tax
239 liability based on the tax credit allowed under this chapter.

240 (* * *h) If the taxes paid by a participating investor
241 with respect to its state premium tax liability constitute a
242 credit against any other tax that is imposed by this state, the
243 participating investor's credit against the other tax shall not be



244 reduced by virtue of the reduction in the participating investor's
245 tax liability based on the tax credit allowed under this chapter.

246 (* * *i) Final decertification of a Mississippi small
247 business investment company under this chapter prior to such
248 Mississippi small business investment company meeting the
249 requirements of Section 57-115-7(1)(a)(ii), shall result in the
250 disallowance and the recapture of all of the credits allocated to
251 its participating investors under this chapter. Once a
252 Mississippi small business investment company has satisfied the
253 requirements of Section 57-115-7(1)(a)(ii), any subsequent
254 decertification shall not cause the disallowance or recapture of
255 any credits allocated to its participating investors under this
256 chapter.

257 (* * *j) The credits allowed under this chapter are
258 not transferable; however, a participating investor may transfer
259 credits to an affiliated insurance company provided it gives prior
260 written notice of such transfer to the MDA and the Department of
261 Revenue.

262 (4) (a) (i) Through January 1, 2018, the aggregate amount
263 of investment tax credits that may be allocated to all
264 participating investors of Mississippi small business investment
265 companies under this section shall not exceed Fifty Million
266 Dollars (\$50,000,000.00), and no Mississippi small business
267 investment company, on an aggregate basis with its affiliates, may



268 file credit allocation claims that exceed Fifty Million Dollars
269 (\$50,000,000.00).

270 (ii) The Fifty Million Dollars (\$50,000,000.00)
271 aggregate amount of investment tax credits allocated in this
272 paragraph (a) shall be divided into a primary tax credit pool
273 which may be applied for by certified primary Mississippi small
274 business investment companies and a secondary tax credit pool
275 which may be applied for by certified secondary Mississippi small
276 business investment companies. The secondary tax credit pool
277 shall be Three Million Five Hundred Thousand Dollars
278 (\$3,500,000.00) of the total Fifty Million Dollars
279 (\$50,000,000.00) aggregate amount of investment tax credits.
280 Secondary Mississippi small business investment companies may not
281 apply for more than One Million Seven Hundred Fifty Thousand
282 Dollars (\$1,750,000.00) worth of credits on a single application.
283 A certified secondary Mississippi small business investment
284 company may apply for additional tax credit allocation from the
285 secondary tax credit pool, if the credits are available, after
286 fifty percent (50%) of its previously allocated credits are used
287 in qualified investments.

288 (iii) If there are any tax credits remaining
289 available for allocation in the secondary tax credit pool on
290 August 1, 2013, those available tax credits shall revert to the
291 primary tax credit pool and be made available to primary
292 Mississippi small business investment companies according to rules



293 and regulations promulgated by the MDA. Prior to August 1, 2013,
294 primary Mississippi small business investment companies, including
295 any wholly owned subsidiary company, shall be prohibited from
296 making application to the MDA to be additionally certified as a
297 secondary Mississippi small business investment company for
298 purposes of the tax credits allocated in this paragraph (a) and
299 prohibited from applying for any tax credit allocation from the
300 secondary tax credit pool. A certified primary Mississippi small
301 business investment company may have ownership equity in a
302 certified secondary Mississippi small business investment company,
303 but the equity interest owned by the certified primary Mississippi
304 small business investment company shall not exceed forty percent
305 (40%).

306 (b) (i) From and after July 1, 2018, an additional
307 aggregate amount of investment tax credits may be allocated to all
308 participating investors of Mississippi small business investment
309 companies under this section. The amount so allocated shall not
310 exceed Forty-five Million Dollars (\$45,000,000.00), and no
311 Mississippi small business investment company, on an aggregate
312 basis with its affiliates, may file credit allocation claims on
313 the additional aggregate amount of tax credits that exceed
314 Forty-five Million Dollars (\$45,000,000.00).

315 (ii) The Forty-five Million Dollars
316 (\$45,000,000.00) aggregate amount of investment tax credits
317 allocated in this paragraph (b) shall be divided into a primary



318 tax credit pool which may be applied for by certified primary
319 Mississippi small business investment companies and a secondary
320 tax credit pool which may be applied for by certified secondary
321 Mississippi small business investment companies. The secondary
322 tax credit pool shall be Three Million Five Hundred Thousand
323 Dollars (\$3,500,000.00) of the total Forty-five Million Dollars
324 (\$45,000,000.00) aggregate amount of investment tax credits.
325 Secondary Mississippi small business investment companies may not
326 apply for more than One Million Seven Hundred Fifty Thousand
327 Dollars (\$1,750,000.00) worth of credits on a single application.
328 A certified secondary Mississippi small business investment
329 company may apply for additional tax credit allocation from the
330 secondary tax credit pool, if the credits are available, after
331 fifty percent (50%) of its previously allocated credits are used
332 in qualified investments.

333 (iii) If there are any tax credits remaining
334 available for allocation in the secondary tax credit pool on
335 August 1, 2019, those available tax credits shall revert to the
336 primary tax credit pool and be made available to primary
337 Mississippi small business investment companies according to rules
338 and regulations promulgated by the MDA. Prior to August 1, 2022,
339 primary Mississippi small business investment companies, including
340 any wholly owned subsidiary company, shall be prohibited from
341 making application to the MDA to be additionally certified as a
342 secondary Mississippi small business investment company for



343 purposes of the tax credits allocated in this paragraph (b) and
344 prohibited from applying for any tax credit allocation from the
345 secondary tax credit pool. A certified primary Mississippi small
346 business investment company may have ownership equity in a
347 certified secondary Mississippi small business investment company,
348 but the equity interest owned by the certified primary Mississippi
349 small business investment company shall not exceed forty percent
350 (40%).

351 (* * *c) Credits must be allocated to investors in the
352 order that the credit allocation claims are filed with the MDA.

353 (* * *d) Any credit allocation claims filed with the
354 MDA before the initial credit allocation claim filing date will be
355 deemed to have been filed on the initial credit allocation claim
356 filing date. The MDA will set the initial credit allocation claim
357 filing date to be not less than one hundred twenty (120) days and
358 not more than one hundred fifty (150) days after the date the MDA
359 begins accepting applications for certification. Credit
360 allocation claims filed on the same day with the MDA must be
361 treated as having been filed contemporaneously.

362 (* * *e) If two (2) or more Mississippi small business
363 investment companies file credit allocation claims with the MDA on
364 behalf of their respective participating investors on the same day
365 and the aggregate amount of credit allocation claims exceeds the
366 aggregate limit of credits authorized under this subsection (4) or
367 the lesser amount of credits that remain unallocated on that day,



368 then the credits shall be allocated among the participating
369 investors who filed on that day on a pro rata basis with respect
370 to the amounts claimed. The pro rata allocation for any one (1)
371 participating investor is the product obtained by multiplying a
372 fraction, the numerator of which is the amount of the credit
373 allocation claim filed on behalf of a participating investor and
374 the denominator of which is the total of all credit allocation
375 claims filed on behalf of all participating investors on that day,
376 by the aggregate limit of credits authorized under this subsection
377 (4) or the lesser amount of credits that remain unallocated on
378 that day.

379 (* * *f) Within ten (10) business days after the MDA
380 receives a credit allocation claim filed by a Mississippi small
381 business investment company on behalf of one or more of its
382 participating investors, the MDA may notify the Mississippi small
383 business investment company of the amount of credits allocated to
384 each of the participating investors of that Mississippi small
385 business investment company. In the event a Mississippi small
386 business investment company does not receive an investment of
387 designated capital from each participating investor required to
388 earn the amount of credits allocated to the participating investor
389 within ten (10) business days of the Mississippi small business
390 investment company's receipt of notice of allocation, then it
391 shall notify the MDA on or before the next business day, and the
392 credits allocated to the participating investor of the Mississippi



393 small business investment company will be forfeited. The MDA may
394 then reallocate those forfeited credits among the participating
395 investors of the other Mississippi small business investment
396 companies on a pro rata basis with respect to the credit
397 allocation claims filed on behalf of the participating investors.
398 The MDA may levy a fine of not more than Fifty Thousand Dollars
399 (\$50,000.00) on any participating investor that does not invest
400 the full amount of designated capital required to fund the credits
401 allocated to it by the MDA in accordance with the credit
402 allocation claim filed on its behalf.

403 (* * *g) No participating investor, on an aggregate
404 basis with its affiliates, may file an allocation claim for more
405 than twenty-five percent (25%) of the maximum amount of investment
406 tax credits authorized under this subsection (4), regardless of
407 whether the claim is made in connection with one or more
408 Mississippi small business investment companies.

409 **SECTION 2.** This act shall take effect and be in force from
410 and after July 1, 2018.

