

By: Senator(s) Harkins

To: Finance

SENATE BILL NO. 2858

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 PARTICIPATING INVESTORS MAY CLAIM THE
7 ADDITIONAL CREDITS SO ALLOCATED AGAINST THEIR PREMIUM TAX
8 LIABILITY; 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 designated
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 created 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 (vii) Any participating partner or individual in a
102 certified secondary small business investment company that
103 successfully participated in the authorization and allocation of
104 credits in 2018, and which is a partner in a submitted application
105 for credits allocated in subsection (4) (c) of this section, while
106 partnered with the same primary small business investment company
107 from the previous 2018 allocation, shall have the requirements in
108 subparagraphs (iii) and (iv) of this paragraph (c) waived as
109 having been completed through the previous allocation.

110 (d) The MDA may certify partnerships, corporations,
111 trusts, or limited liability companies, organized on a for-profit
112 basis, which submit an application to be designated as a
113 Mississippi small business investment company if the applicant is
114 located, headquartered, and licensed or registered to conduct
115 business in Mississippi, has as its primary business activity the
116 investment of cash in qualified businesses, and meets all of the
117 criteria of this section.

118 (e) The MDA must:



119 (i) Review the organizational documents of each
120 applicant for certification and the business history of each
121 applicant;

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

124 (iii) Determine whether the officers and the board
125 of directors, general partners, trustees, managers or members are
126 trustworthy and are thoroughly acquainted with the requirements of
127 this chapter.

128 (f) Within forty-five (45) days after the receipt of an
129 application, the MDA may issue the certification or refuse the
130 certification and may communicate in detail to the applicant the
131 grounds for refusal, including suggestions for the removal of the
132 grounds.

133 (g) The MDA must begin accepting applications to become
134 a Mississippi small business investment company not later than
135 August 1, 2012, for credits allocated in subsection (4) (a) of this
136 section, * * * not later than August 1, 2018, for credits
137 allocated in subsection (4) (b) of this section, and not later than
138 August 1, 2023, for credits allocated in subsection (4) (c) of this
139 section.

140 (h) Certification by the MDA and operation of a primary
141 Mississippi small business investment company is not subject to
142 completion of any relationship or agreement with a secondary



143 Mississippi small business investment company, and it is not the
144 intent of this chapter to compel any such agreement.

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

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

151 (ii) Manage a Mississippi small business
152 investment company; or

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

155 (b) A Mississippi small business investment company may
156 obtain one or more guaranties, indemnities, bonds, insurance
157 policies, or other payment undertakings for the benefit of its
158 participating investors from any entity, except that in no case
159 can more than one (1) participating investor of a Mississippi
160 small business investment company on an aggregate basis with all
161 affiliates of the participating investor, be entitled to provide
162 guaranties, indemnities, bonds, insurance policies, or other
163 payment undertakings in favor of the participating investors of a
164 Mississippi small business investment company and its affiliates
165 in this state.

166 (c) This subsection (2) does not preclude a
167 participating investor, insurance company or other party from



168 exercising its legal rights and remedies, including, without
169 limitation, interim management of a Mississippi small business
170 investment company, in the event that a Mississippi small business
171 investment company is in default of its statutory obligations or
172 its contractual obligations to a participating investor, insurance
173 company, or other party, or from monitoring a Mississippi small
174 business investment company to ensure its compliance with this
175 chapter or disallowing any investments that have not been approved
176 by the MDA.

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

180 (3) (a) At the time of its investment of designated capital
181 a participating investor shall earn a vested credit against the
182 participating investor's state premium tax liability in an amount
183 equal to one hundred percent (100%) of the participating
184 investor's investment of designated capital in a Mississippi small
185 business investment company, subject to the limits imposed by this
186 section.

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

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



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

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

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

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

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

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

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

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



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

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

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

226 (d) From and after January 1, 2027, a participating
227 investor may claim the credit allocated in subsection (4)(c) of
228 this section as follows:

229 (i) For the 2027 taxable year, an amount equal to
230 sixteen and sixty-six one-hundredths percent (16.66%) of the
231 participating investor's investment of designated capital;

232 (ii) For the 2028 taxable year, an amount equal to
233 sixteen and sixty-six one-hundredths percent (16.66%) of the
234 participating investor's investment of designated capital;

235 (iii) For the 2029 taxable year, an amount equal
236 to sixteen and sixty-six one-hundredths percent (16.66%) of the
237 participating investor's investment of designated capital;

238 (iv) For the 2030 taxable year, an amount equal to
239 sixteen and sixty-six one-hundredths percent (16.66%) of the
240 participating investor's investment of designated capital;



241 (v) For the 2031 taxable year, an amount equal to
242 sixteen and sixty-six one-hundredths percent (16.66%) of the
243 participating investor's investment of designated capital; and

244 (vi) For the 2032 taxable year, an amount equal to
245 sixteen and seven-tenths percent (16.7%) of the participating
246 investor's investment of designated capital.

247 (* * *e) The credit for any taxable year cannot exceed
248 the state premium tax liability of the participating investor for
249 the taxable year. If the amount of the credit exceeds the state
250 premium tax liability of the participating investor for the
251 taxable year, the excess is an investment tax credit carryover for
252 five (5) years from the date the credit is first able to be
253 utilized in accordance with paragraph (a) of this subsection (3).

254 (* * *f) Notwithstanding any provision of this chapter
255 to the contrary, the granting of any credits against the insurance
256 premium tax shall not affect the insurance premium tax receipts
257 distributed pursuant to Sections 83-1-37, 83-1-39, 83-34-39,
258 45-11-5 and 21-29-233, which shall take priority over all other
259 distributions of premium tax receipts and shall be calculated
260 based upon gross insurance premium tax liability before the
261 application of the tax credits.

262 (* * *g) A participating investor claiming a credit
263 under this chapter is not required to pay any additional
264 retaliatory tax under Section 27-15-123 levied as a result of
265 claiming the credit.



266 (* * *h) A participating investor is not required to
267 reduce the amount of tax pursuant to the state premium tax
268 liability included by the participating investor in connection
269 with ratemaking for any insurance contract written in this state
270 because of a reduction in the participating investor's tax
271 liability based on the tax credit allowed under this chapter.

272 (* * *i) If the taxes paid by a participating investor
273 with respect to its state premium tax liability constitute a
274 credit against any other tax that is imposed by this state, the
275 participating investor's credit against the other tax shall not be
276 reduced by virtue of the reduction in the participating investor's
277 tax liability based on the tax credit allowed under this chapter.

278 (* * *j) Final decertification of a Mississippi small
279 business investment company under this chapter prior to such
280 Mississippi small business investment company meeting the
281 requirements of Section 57-115-7(1)(a)(ii), shall result in the
282 disallowance and the recapture of all of the credits allocated to
283 its participating investors under this chapter. Once a
284 Mississippi small business investment company has satisfied the
285 requirements of Section 57-115-7(1)(a)(ii), any subsequent
286 decertification shall not cause the disallowance or recapture of
287 any credits allocated to its participating investors under this
288 chapter.

289 (* * *k) The credits allowed under this chapter are
290 not transferable; however, a participating investor may transfer



291 credits to an affiliated insurance company provided it gives prior
292 written notice of such transfer to the MDA and the Department of
293 Revenue.

294 (4) (a) (i) Through January 1, 2018, the aggregate amount
295 of investment tax credits that may be allocated to all
296 participating investors of Mississippi small business investment
297 companies under this section shall not exceed Fifty Million
298 Dollars (\$50,000,000.00), and no Mississippi small business
299 investment company, on an aggregate basis with its affiliates, may
300 file credit allocation claims that exceed Fifty Million Dollars
301 (\$50,000,000.00).

302 (ii) The Fifty Million Dollars (\$50,000,000.00)
303 aggregate amount of investment tax credits allocated in this
304 paragraph (a) shall be divided into a primary tax credit pool
305 which may be applied for by certified primary Mississippi small
306 business investment companies and a secondary tax credit pool
307 which may be applied for by certified secondary Mississippi small
308 business investment companies. The secondary tax credit pool
309 shall be Three Million Five Hundred Thousand Dollars
310 (\$3,500,000.00) of the total Fifty Million Dollars
311 (\$50,000,000.00) aggregate amount of investment tax credits.
312 Secondary Mississippi small business investment companies may not
313 apply for more than One Million Seven Hundred Fifty Thousand
314 Dollars (\$1,750,000.00) worth of credits on a single application.
315 A certified secondary Mississippi small business investment



316 company may apply for additional tax credit allocation from the
317 secondary tax credit pool, if the credits are available, after
318 fifty percent (50%) of its previously allocated credits are used
319 in qualified investments.

320 (iii) If there are any tax credits remaining
321 available for allocation in the secondary tax credit pool on
322 August 1, 2013, those available tax credits shall revert to the
323 primary tax credit pool and be made available to primary
324 Mississippi small business investment companies according to rules
325 and regulations promulgated by the MDA. Prior to August 1, 2013,
326 primary Mississippi small business investment companies, including
327 any wholly owned subsidiary company, shall be prohibited from
328 making application to the MDA to be additionally certified as a
329 secondary Mississippi small business investment company for
330 purposes of the tax credits allocated in this paragraph (a) and
331 prohibited from applying for any tax credit allocation from the
332 secondary tax credit pool. A certified primary Mississippi small
333 business investment company may have ownership equity in a
334 certified secondary Mississippi small business investment company,
335 but the equity interest owned by the certified primary Mississippi
336 small business investment company shall not exceed forty percent
337 (40%).

338 (b) (i) From and after July 1, 2018, through January
339 1, 2023, an additional aggregate amount of investment tax credits
340 may be allocated to all participating investors of Mississippi



341 small business investment companies under this section. The
342 amount so allocated shall not exceed Forty-five Million Dollars
343 (\$45,000,000.00), and no Mississippi small business investment
344 company, on an aggregate basis with its affiliates, may file
345 credit allocation claims on the additional aggregate amount of tax
346 credits that exceed Forty-five Million Dollars (\$45,000,000.00).

347 (ii) The Forty-five Million Dollars
348 (\$45,000,000.00) aggregate amount of investment tax credits
349 allocated in this paragraph (b) shall be divided into a primary
350 tax credit pool which may be applied for by certified primary
351 Mississippi small business investment companies and a secondary
352 tax credit pool which may be applied for by certified secondary
353 Mississippi small business investment companies. The secondary
354 tax credit pool shall be Three Million Five Hundred Thousand
355 Dollars (\$3,500,000.00) of the total Forty-five Million Dollars
356 (\$45,000,000.00) aggregate amount of investment tax credits.
357 Secondary Mississippi small business investment companies may not
358 apply for more than One Million Seven Hundred Fifty Thousand
359 Dollars (\$1,750,000.00) worth of credits on a single application.
360 A certified secondary Mississippi small business investment
361 company may apply for additional tax credit allocation from the
362 secondary tax credit pool, if the credits are available, after
363 fifty percent (50%) of its previously allocated credits are used
364 in qualified investments.



365 (iii) If there are any tax credits remaining
366 available for allocation in the secondary tax credit pool on
367 August 1, 2019, those available tax credits shall revert to the
368 primary tax credit pool and be made available to primary
369 Mississippi small business investment companies according to rules
370 and regulations promulgated by the MDA. Prior to August 1, 2022,
371 primary Mississippi small business investment companies, including
372 any wholly owned subsidiary company, shall be prohibited from
373 making application to the MDA to be additionally certified as a
374 secondary Mississippi small business investment company for
375 purposes of the tax credits allocated in this paragraph (b) and
376 prohibited from applying for any tax credit allocation from the
377 secondary tax credit pool. A certified primary Mississippi small
378 business investment company may have ownership equity in a
379 certified secondary Mississippi small business investment company,
380 but the equity interest owned by the certified primary Mississippi
381 small business investment company shall not exceed forty percent
382 (40%).

383 (c) (i) From and after July 1, 2023, an additional
384 aggregate amount of investment tax credits may be allocated to all
385 participating investors of Mississippi small business investment
386 companies under this section. The amount so allocated shall not
387 exceed Forty-five Million Dollars (\$45,000,000.00), and no
388 Mississippi small business investment company, on an aggregate
389 basis with its affiliates, may file credit allocation claims on



390 the additional aggregate amount of tax credits that exceed
391 Forty-five Million Dollars (\$45,000,000.00).

392 (ii) The Forty-five Million Dollars
393 (\$45,000,000.00) aggregate amount of investment tax credits
394 allocated in this paragraph (c) shall be divided into a primary
395 tax credit pool which may be applied for by certified primary
396 Mississippi small business investment companies and a secondary
397 tax credit pool which may be applied for by certified secondary
398 Mississippi small business investment companies. The secondary
399 tax credit pool shall be Three Million Five Hundred Thousand
400 Dollars (\$3,500,000.00) of the total Forty-five Million Dollars
401 (\$45,000,000.00) aggregate amount of investment tax credits.
402 Secondary Mississippi small business investment companies may not
403 apply for more than One Million Seven Hundred Fifty Thousand
404 Dollars (\$1,750,000.00) worth of credits on a single application.
405 A certified secondary Mississippi small business investment
406 company may apply for additional tax credit allocation from the
407 secondary tax credit pool, if the credits are available, after
408 fifty percent (50%) of its previously allocated credits are used
409 in qualified investments.

410 (iii) If there are any tax credits remaining
411 available for allocation in the secondary tax credit pool on
412 August 1, 2024, those available tax credits shall revert to the
413 primary tax credit pool and be made available to primary
414 Mississippi small business investment companies according to rules



415 and regulations promulgated by the MDA. Prior to August 1, 2027,
416 primary Mississippi small business investment companies, including
417 any wholly owned subsidiary company, shall be prohibited from
418 making application to the MDA to be additionally certified as a
419 secondary Mississippi small business investment company for
420 purposes of the tax credits allocated in this paragraph (c) and
421 prohibited from applying for any tax credit allocation from the
422 secondary tax credit pool. A certified primary Mississippi small
423 business investment company may have ownership equity in a
424 certified secondary Mississippi small business investment company,
425 but the equity interest owned by the certified primary Mississippi
426 small business investment company shall not exceed forty percent
427 (40%).

428 (* * *d) Credits must be allocated to investors in the
429 order that the credit allocation claims are filed with the MDA.

430 (* * *e) Any credit allocation claims filed with the
431 MDA before the initial credit allocation claim filing date will be
432 deemed to have been filed on the initial credit allocation claim
433 filing date. The MDA will set the initial credit allocation claim
434 filing date to be not less than one hundred twenty (120) days and
435 not more than one hundred fifty (150) days after the date the MDA
436 begins accepting applications for certification. Credit
437 allocation claims filed on the same day with the MDA must be
438 treated as having been filed contemporaneously.



439 (* * *f) If two (2) or more Mississippi small business
440 investment companies file credit allocation claims with the MDA on
441 behalf of their respective participating investors on the same day
442 and the aggregate amount of credit allocation claims exceeds the
443 aggregate limit of credits authorized under this subsection (4) or
444 the lesser amount of credits that remain unallocated on that day,
445 then the credits shall be allocated among the participating
446 investors who filed on that day on a pro rata basis with respect
447 to the amounts claimed. The pro rata allocation for any one (1)
448 participating investor is the product obtained by multiplying a
449 fraction, the numerator of which is the amount of the credit
450 allocation claim filed on behalf of a participating investor and
451 the denominator of which is the total of all credit allocation
452 claims filed on behalf of all participating investors on that day,
453 by the aggregate limit of credits authorized under this subsection
454 (4) or the lesser amount of credits that remain unallocated on
455 that day.

456 (* * *g) Within ten (10) business days after the MDA
457 receives a credit allocation claim filed by a Mississippi small
458 business investment company on behalf of one or more of its
459 participating investors, the MDA may notify the Mississippi small
460 business investment company of the amount of credits allocated to
461 each of the participating investors of that Mississippi small
462 business investment company. In the event a Mississippi small
463 business investment company does not receive an investment of



464 designated capital from each participating investor required to
465 earn the amount of credits allocated to the participating investor
466 within ten (10) business days of the Mississippi small business
467 investment company's receipt of notice of allocation, then it
468 shall notify the MDA on or before the next business day, and the
469 credits allocated to the participating investor of the Mississippi
470 small business investment company will be forfeited. The MDA may
471 then reallocate those forfeited credits among the participating
472 investors of the other Mississippi small business investment
473 companies on a pro rata basis with respect to the credit
474 allocation claims filed on behalf of the participating investors.
475 The MDA may levy a fine of not more than Fifty Thousand Dollars
476 (\$50,000.00) on any participating investor that does not invest
477 the full amount of designated capital required to fund the credits
478 allocated to it by the MDA in accordance with the credit
479 allocation claim filed on its behalf.

480 (* * *h) No participating investor, on an aggregate
481 basis with its affiliates, may file an allocation claim for more
482 than twenty-five percent (25%) of the maximum amount of investment
483 tax credits authorized under this subsection (4), regardless of
484 whether the claim is made in connection with one or more
485 Mississippi small business investment companies.

486 **SECTION 2.** This act shall take effect and be in force from
487 and after July 1, 2023.

