

By: Senator(s) Harkins, Seymour, Parker,
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To: Finance

COMMITTEE SUBSTITUTE
FOR
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; and

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 * * *.

91 (* * *d) (i) Any participating partner or individual
92 in a 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 * * * paragraph (c) (iii) and (iv)
99 of this subsection waived as having been completed through the
100 previous allocation.

101 (ii) 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 paragraph (c) (iii) and (iv) of this subsection waived as having
109 been completed through the previous allocation.

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

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

133 (* * * h) The MDA must begin accepting applications to
134 become a Mississippi small business investment company not later
135 than August 1, 2012, for credits allocated in subsection (4) (a) of
136 this 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 (* * * i) Certification by the MDA and operation of a
141 primary Mississippi small business investment company is not
142 subject to completion of any relationship or agreement with a



143 secondary Mississippi small business investment company, and it is
144 not the 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: * * * For * * * each taxable year from
190 2015 through 2019, an amount equal to twenty percent (20%) of the
191 participating investor's investment of designated capital * * *.



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

195 (i) For * * * each taxable year from 2021 through
196 2025, an amount equal to sixteen and sixty-six one-hundredths
197 percent (16.66%) of the participating investor's investment of
198 designated capital; and

199 * * *

200 (* * * ii) For the 2026 taxable year, an amount
201 equal to sixteen and seven-tenths percent (16.7%) of the
202 participating investor's investment of designated capital.

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

206 (i) For each taxable year from 2027 through 2031,
207 an amount equal to sixteen and sixty-six one-hundredths percent
208 (16.66%) of the participating investor's investment of designated
209 capital; and

210 (ii) For the 2032 taxable year, an amount equal to
211 sixteen and seven-tenths percent (16.7%) of the participating
212 investor's investment of designated capital.

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



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

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

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

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

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



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

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

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

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



266 file credit allocation claims that exceed Fifty Million Dollars
267 (\$50,000,000.00).

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

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



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

304 (b) (i) From and after July 1, 2018, through January
305 1, 2023, an additional aggregate amount of investment tax credits
306 may be allocated to all participating investors of Mississippi
307 small business investment companies under this section. The
308 amount so allocated shall not exceed Forty-five Million Dollars
309 (\$45,000,000.00), and no Mississippi small business investment
310 company, on an aggregate basis with its affiliates, may file
311 credit allocation claims on the additional aggregate amount of tax
312 credits that exceed Forty-five Million Dollars (\$45,000,000.00).

313 (ii) The Forty-five Million Dollars
314 (\$45,000,000.00) aggregate amount of investment tax credits
315 allocated in this paragraph (b) shall be divided into a primary



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

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



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

349 (c) (i) From and after July 1, 2023, an additional
350 aggregate amount of investment tax credits may be allocated to all
351 participating investors of Mississippi small business investment
352 companies under this section. The amount so allocated shall not
353 exceed Forty-five Million Dollars (\$45,000,000.00), and no
354 Mississippi small business investment company, on an aggregate
355 basis with its affiliates, may file credit allocation claims on
356 the additional aggregate amount of tax credits that exceed
357 Forty-five Million Dollars (\$45,000,000.00).

358 (ii) The Forty-five Million Dollars
359 (\$45,000,000.00) aggregate amount of investment tax credits
360 allocated in this paragraph (c) shall be divided into a primary
361 tax credit pool which may be applied for by certified primary
362 Mississippi small business investment companies and a secondary
363 tax credit pool which may be applied for by certified secondary
364 Mississippi small business investment companies. The secondary
365 tax credit pool shall be Three Million Five Hundred Thousand



366 Dollars (\$3,500,000.00) of the total Forty-five Million Dollars
367 (\$45,000,000.00) aggregate amount of investment tax credits.
368 Secondary Mississippi small business investment companies may not
369 apply for more than One Million Seven Hundred Fifty Thousand
370 Dollars (\$1,750,000.00) worth of credits on a single application.
371 A certified secondary Mississippi small business investment
372 company may apply for additional tax credit allocation from the
373 secondary tax credit pool, if the credits are available, after
374 fifty percent (50%) of its previously allocated credits are used
375 in qualified investments.

376 (iii) If there are any tax credits remaining
377 available for allocation in the secondary tax credit pool on
378 August 1, 2024, those available tax credits shall revert to the
379 primary tax credit pool and be made available to primary
380 Mississippi small business investment companies according to rules
381 and regulations promulgated by the MDA. Prior to August 1, 2027,
382 primary Mississippi small business investment companies, including
383 any wholly owned subsidiary company, shall be prohibited from
384 making application to the MDA to be additionally certified as a
385 secondary Mississippi small business investment company for
386 purposes of the tax credits allocated in this paragraph (c) and
387 prohibited from applying for any tax credit allocation from the
388 secondary tax credit pool. A certified primary Mississippi small
389 business investment company may have ownership equity in a
390 certified secondary Mississippi small business investment company,



391 but the equity interest owned by the certified primary Mississippi
392 small business investment company shall not exceed forty percent
393 (40%).

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

396 (* * *e) Any credit allocation claims filed with the
397 MDA before the initial credit allocation claim filing date will be
398 deemed to have been filed on the initial credit allocation claim
399 filing date. The MDA will set the initial credit allocation claim
400 filing date to be not less than one hundred twenty (120) days and
401 not more than one hundred fifty (150) days after the date the MDA
402 begins accepting applications for certification. Credit
403 allocation claims filed on the same day with the MDA must be
404 treated as having been filed contemporaneously.

405 (* * *f) If two (2) or more Mississippi small business
406 investment companies file credit allocation claims with the MDA on
407 behalf of their respective participating investors on the same day
408 and the aggregate amount of credit allocation claims exceeds the
409 aggregate limit of credits authorized under this subsection (4) or
410 the lesser amount of credits that remain unallocated on that day,
411 then the credits shall be allocated among the participating
412 investors who filed on that day on a pro rata basis with respect
413 to the amounts claimed. The pro rata allocation for any one (1)
414 participating investor is the product obtained by multiplying a
415 fraction, the numerator of which is the amount of the credit



416 allocation claim filed on behalf of a participating investor and
417 the denominator of which is the total of all credit allocation
418 claims filed on behalf of all participating investors on that day,
419 by the aggregate limit of credits authorized under this subsection
420 (4) or the lesser amount of credits that remain unallocated on
421 that day.

422 (* * *g) Within ten (10) business days after the MDA
423 receives a credit allocation claim filed by a Mississippi small
424 business investment company on behalf of one or more of its
425 participating investors, the MDA may notify the Mississippi small
426 business investment company of the amount of credits allocated to
427 each of the participating investors of that Mississippi small
428 business investment company. In the event a Mississippi small
429 business investment company does not receive an investment of
430 designated capital from each participating investor required to
431 earn the amount of credits allocated to the participating investor
432 within ten (10) business days of the Mississippi small business
433 investment company's receipt of notice of allocation, then it
434 shall notify the MDA on or before the next business day, and the
435 credits allocated to the participating investor of the Mississippi
436 small business investment company will be forfeited. The MDA may
437 then reallocate those forfeited credits among the participating
438 investors of the other Mississippi small business investment
439 companies on a pro rata basis with respect to the credit
440 allocation claims filed on behalf of the participating investors.



441 The MDA may levy a fine of not more than Fifty Thousand Dollars
442 (\$50,000.00) on any participating investor that does not invest
443 the full amount of designated capital required to fund the credits
444 allocated to it by the MDA in accordance with the credit
445 allocation claim filed on its behalf.

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

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

