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Chapter No. 570

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***SENATE BILL NO. 2659***

Originated in Senate

Liz Welch

Secretary

SENATE BILL NO. 2659

AN ACT TO AMEND SECTIONS 57-115-3, 57-115-5, 57-115-7 AND 57-115-9, MISSISSIPPI CODE OF 1972, OF THE MISSISSIPPI SMALL BUSINESS INVESTMENT ACT TO REVISE THE DEFINITION OF "QUALIFIED DISTRIBUTION" UNDER THE ACT TO INCLUDE PAYMENTS OF PRINCIPAL AND INTEREST TO HOLDERS OF A QUALIFIED DEBT INSTRUMENT WHICH MAY BE MADE WITHOUT RESTRICTION; TO PROVIDE THAT REASONABLE COSTS AND EXPENSES OF FORMING, SYNDICATING AND ORGANIZING A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY THAT ARE PAID TO NOT MORE THAN ONE PARTICIPATING INVESTOR ARE INCLUDED IN THE DEFINITION OF "QUALIFIED DISTRIBUTION"; TO REVISE THE AMOUNT OF REDUCTION IN A QUALIFIED INVESTMENT THAT RESULTS FROM THE EARLY REPAYMENT OF SUCH INVESTMENT; TO PROVIDE THAT THE APPLICATION WITH THE MISSISSIPPI DEVELOPMENT AUTHORITY FOR CERTIFICATION AS A PRIMARY AND SECONDARY MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY SHALL INCLUDE A BUSINESS PLAN DETAILING CERTAIN INFORMATION; TO PROVIDE THAT A JOB SHALL BE CREATED OR RETAINED IF THE JOB PAYS 125% OF THE STATE AVERAGE ANNUAL WAGE AND IS MAINTAINED FOR THREE YEARS FOR EACH \$150,000.00, OR PORTION THEREOF, OF THE CREDITS AWARDED TO THE SMALL BUSINESS INVESTMENT COMPANY; TO INCREASE FROM 80% TO 100% THE AMOUNT OF A PARTICIPATING INVESTOR'S INVESTMENT THAT MAY BE EARNED AS A CREDIT AGAINST THE INVESTOR'S PREMIUM TAX LIABILITY; TO MOVE THE DATE UPON WHICH THE MISSISSIPPI DEVELOPMENT AUTHORITY (MDA) MUST BEGIN ACCEPTING APPLICATIONS TO BECOME A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY FROM NOT LATER THAN AUGUST 1, 2011, TO NOT LATER THAN AUGUST 1, 2012; TO REVISE THE TAXABLE YEARS IN WHICH A PARTICIPATING INVESTOR MAY CLAIM THE CREDIT AGAINST HIS PREMIUM TAX LIABILITY THAT IS AUTHORIZED BY THE ACT; TO PROVIDE THAT FINAL DECERTIFICATION OF A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY SHALL RESULT IN THE DISALLOWANCE AND RECAPTURE OF ALL THE CREDITS ALLOCATED TO ITS PARTICIPATING INVESTORS IF WITHIN FOUR YEARS AFTER THE ALLOCATION DATE THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY HAS NOT INVESTED AN AMOUNT EQUAL TO AT LEAST 85% OF ITS DESIGNATED CAPITAL IN QUALIFIED INVESTMENTS AND TO PROVIDE THAT SUBSEQUENT DECERTIFICATION AFTER SUCH REQUIREMENT IS MET SHALL NOT CAUSE THE DISALLOWANCE OR RECAPTURE OF SUCH CREDITS; TO PROVIDE THAT THE TAX CREDIT AUTHORIZED UNDER THE ACT MAY BE TRANSFERRED TO AN AFFILIATED INSURANCE COMPANY IF PRIOR WRITTEN NOTICE IS GIVEN TO MDA AND THE DEPARTMENT OF REVENUE; TO REMOVE THE REQUIREMENT THAT CREDITS MAY ONLY BE TRANSFERRED TO INVESTORS NAMED IN THE REPORT THAT IS REQUIRED AFTER THE RECEIPT OF DESIGNATED CAPITAL; TO REQUIRE THAT THE PREMIUM TAX CREDITS AUTHORIZED BY THE ACT SHALL BE ALLOCATED IN THE ORDER THAT THE CREDIT APPLICATION CLAIMS ARE FILED WITH THE MDA AND TO PROVIDE THAT CREDIT ALLOCATION CLAIMS FILED ON THE SAME DAY SHALL BE TREATED AS HAVING BEEN FILED CONTEMPORANEOUSLY; TO PROVIDE THE MANNER IN WHICH CREDITS ARE

ALLOCATED IF THEY ARE FILED ON THE SAME DAY AND THE AGGREGATE AMOUNT OF THE CREDIT ALLOCATION CLAIMS EXCEEDS THE AGGREGATE AMOUNT OF CREDITS AUTHORIZED TO BE ISSUED; TO REDUCE THE AMOUNT OF DESIGNATED CAPITAL THAT A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY MUST INVEST IN QUALIFIED INVESTMENTS BY THE SECOND AND FOURTH YEAR AFTER THE ALLOCATION DATE; TO PROVIDE THAT IF THE MDA DETERMINES THAT A PROPOSED INVESTMENT DOES NOT MEET THE DEFINITION OF A QUALIFIED INVESTMENT, QUALIFIED BUSINESS OR COMPLY WITH THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY'S BUSINESS PLAN, THE MDA MAY NEVERTHELESS CONSIDER THE PROPOSED INVESTMENT A QUALIFIED INVESTMENT OR A QUALIFIED BUSINESS IF THE MDA DETERMINES THAT THE PROPOSED INVESTMENT WILL FURTHER ECONOMIC DEVELOPMENT; TO PROVIDE THAT A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY MAY AT ANY TIME APPLY TO THE MDA TO AMEND ITS BUSINESS PLAN, WHICH THE MDA MAY APPROVE IF IT DETERMINES THAT THE PROPOSED AMENDMENT WILL FURTHER ECONOMIC DEVELOPMENT IN THE STATE; TO PROVIDE THAT DESIGNATED CAPITAL AND PROCEEDS OF DESIGNATED CAPITAL RETURNED TO A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY AFTER BEING ORIGINALLY INVESTED IN QUALIFIED INVESTMENTS MAY BE INVESTED IN ADDITIONAL QUALIFIED INVESTMENTS AND THE INVESTMENT SHALL COUNT TOWARD THE REQUIRED AMOUNT INVESTMENTS OF DESIGNATED CAPITAL IN QUALIFIED INVESTMENTS IF THE QUALIFIED BUSINESS RETURNING THE INITIAL QUALIFIED INVESTMENT OF THE DESIGNATED CAPITAL HAS RETURNS THE CAPITAL PURSUANT TO REGULARLY SCHEDULED AMORTIZATION PAYMENTS, RETURNS THE CAPITAL AFTER A CHANGE IN CONTROL OR SALE OF THE COMPANY OR SUBSTANTIALLY ALL OF ITS ASSETS, RETURNS THE CAPITAL TO THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY AFTER DEFAULTING ON THE TERMS OF THE INVESTMENT, OR ATTRACTED FOLLOW-ON INVESTMENT EQUAL TO THE AMOUNT RETURNED TO THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY FROM A SOURCE OTHER THAN A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY; TO PROVIDE THAT, IN ADDITION TO OTHER REQUIREMENTS, IN ORDER FOR A MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY TO MAKE A DISTRIBUTION OTHER THAN A QUALIFIED DISTRIBUTION TO ITS EQUITY HOLDERS, THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY MUST ATTRACT FOLLOW-ON INVESTMENT FROM SOURCES OTHER THAN ITSELF OR ANOTHER MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY IN THE QUALIFIED BUSINESSES IN WHICH IT MADE QUALIFIED INVESTMENTS EQUAL TO 100% OF ITS DESIGNATED CAPITAL; TO AUTHORIZE THE MDA TO WAIVE THIS JOB CREATION AND RETENTION GOALS UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE THAT FOR ALL DISTRIBUTIONS OTHER THAN QUALIFIED DISTRIBUTIONS, IF THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY HAS NOT MET OR EXCEEDED THE JOBS CREATION GOAL AGREED TO BY THE MDA AND THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY IN ITS APPLICATION, THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY SHALL PAY ALL SUCH DISTRIBUTIONS TO THE STATE AS A FEE UNTIL THE MISSISSIPPI SMALL BUSINESS INVESTMENT COMPANY HAS PAID TO THE STATE AN AMOUNT EQUAL TO THE PENALTY AMOUNT; TO PROVIDE THE DATE UPON WHICH A REPORT MDA CONTAINING CERTAIN INFORMATION MUST BE FILED; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 57-115-3, Mississippi Code of 1972, is amended as follows:

57-115-3. As used in this chapter, the following terms and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Affiliate" means:

(i) Any person who, directly or indirectly, beneficially owns, controls, or holds power to vote fifteen percent (15%) or more of the outstanding voting securities or other voting ownership interest of a Mississippi small business investment company or insurance company; and

(ii) Any person, fifteen percent (15%) or more of whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned, controlled, or held, with power to vote by a Mississippi small business investment company or insurance company. Notwithstanding this paragraph (a), an investment by a participating investor in a Mississippi small business investment company pursuant to an allocation of tax credits under this chapter does not cause that Mississippi small business investment company to become an affiliate of that participating investor.

(b) "Allocation date" means the date on which credits are allocated to the participating investors of a Mississippi small business investment company under this chapter.

(c) "MDA" means the Mississippi Development Authority.

(d) "Department" means the Mississippi Department of Banking and Consumer Finance.

(e) "Designated capital" means an amount of money that:

(i) Is invested by a participating investor in a Mississippi small business investment company; and

(ii) Fully funds the purchase price of a participating investor's equity interest in a Mississippi small business investment company or a qualified debt instrument issued by a Mississippi small business investment company, or both.

(f) "Mississippi small business investment company" means a partnership, corporation, trust, or limited liability company, organized on a for-profit basis, that:

(i) Has its principal office located in Mississippi or is headquartered in Mississippi;

(ii) Has as its primary business activity the investment of cash in qualified businesses; and

(iii) Is certified by the MDA as meeting the criteria described in this section to qualify as either a primary or secondary Mississippi small business investment company.

(g) "Participating investor" means any insurer that contributes designated capital pursuant to this chapter.

(h) "Person" means any natural person or entity, including, but not limited to, a corporation, general or limited partnership, trust, or limited liability company.

(i) "Qualified business" means a business that is independently owned and operated and meets all of the following requirements:

(i) It is headquartered in Mississippi, its principal business operations are located in Mississippi and at least eighty percent (80%) of its employees are located in Mississippi;

(ii) It has not more than one hundred (100) employees at the time of the first qualified investment in the business;

(iii) It is not more than ten percent (10%) engaged in:

1. Professional services provided by accountants, doctors, or lawyers;
2. Banking or lending;
3. Real estate development;
4. Retail;
5. Insurance; or

6. Making loans to or investments in a Mississippi small business investment company or an affiliate; and

(iv) It is not a franchise of and has no financial relationship with a Mississippi small business investment company or any affiliate of a Mississippi small business investment company prior to a Mississippi small business investment company's first qualified investment in the business.

A business classified as a qualified business at the time of the first qualified investment in the business will remain classified as a qualified business and may receive continuing qualified investments from any Mississippi small business investment company. Continuing investments will constitute qualified investments even though the business may not meet the definition of a qualified business at the time of such continuing investments; however, the business cannot fail to satisfy subparagraph (iii) and (iv) of this paragraph (i).

(j) "Qualified debt instrument" means a debt instrument issued by a Mississippi small business investment company that meets all of the following criteria:

(i) It is issued at par value or a premium;

(ii) It has an original maturity date of at least four (4) years from the date of issuance and a repayment schedule that is not faster than a level principal amortization over four (4) years; and

(iii) Has no interest or payment features that allow for the prepayment of interest or are tied to the profitability of the Mississippi small business investment company or the success of its investments.

(k) "Qualified distribution" means any distribution or payment by a Mississippi small business investment company in connection with the following:

(i) Reasonable costs and expenses of forming, syndicating and organizing the Mississippi small business

investment company, including fees paid for professional services and the costs of financing and insuring the obligations of a Mississippi small business investment company, provided no such payment is made to more than one (1) participating investor or an affiliate or related party of a participating investor;

(ii) An annual management fee not to exceed two percent (2%) of designated capital on an annual basis to offset the costs and expenses of managing and operating a Mississippi small business investment company;

(iii) Any projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, or to the equity owners of the company resulting from the earnings or other tax liability of the company to the extent that the increase is related to the ownership, management, or operation of the company; \* \* \*

(iv) Reasonable and necessary fees in accordance with industry custom for ongoing professional services, including, but not limited to, legal and accounting services related to the operation of a Mississippi small business investment company, not including lobbying or governmental relations; and

(v) Payments of principal and interest to holders of qualified debt instruments issued by a Mississippi small business investment company which may be made without restriction.

(1) "Qualified investment" means the investment of money by a Mississippi small business investment company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature and description, including a debt instrument or security that has the characteristics of debt but which provides for conversion into equity or equity participation instruments such as options or warrants; provided that any debt, debt participation or other debt instrument or security shall have a maturity of at least three (3) years. Any repayment of a qualified investment prior to one (1)

year from the date of issuance shall result in the amount of the qualified investment being reduced by fifty percent (50%) for purposes of the cumulative investment requirement set forth in Section 57-115-9(1)(c).

\* \* \*

(m) "State premium tax liability" means any liability incurred by an insurance company under the provisions of Section 27-15-103, 27-15-109 or 27-15-123 or in the case of a repeal or a reduction by the state of the liability imposed by Section 27-15-103, 27-15-109 or 27-15-123.

**SECTION 2.** Section 57-115-5, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

3. The number of jobs that will be created or retained as a result of the applicant's investments once all designated capital has been invested. A job shall be considered created or retained if the job pays one hundred twenty-five percent (125%) of the state average annual wage and is maintained for at least three (3) years. The application shall project, at a minimum, that one (1) job shall be created or maintained for each

One-Hundred and Fifty Thousand Dollars (\$150,000.00) in credits awarded to the participating investors of the Mississippi small business investment company;

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

(iii) Submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than thirty-five (35) days before the application date that states that the applicant has an equity capitalization of Five Hundred Thousand Dollars (\$500,000.00) or more in the form of unencumbered cash, marketable securities or other liquid assets; and

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

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

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

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

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

3. The number of jobs that will be crested or retained as a result of the applicant's investments once all designated capital has been invested. A job shall be considered created or retained if the job pays one hundred twenty-five percent (125%) of the state average annual wage and is maintained

for at least three (3) years. The application shall project, at a minimum, that one (1) job shall be created or maintained for each One-Hundred and Fifty Thousand Dollars (\$150,000.00) in credits awarded to the participating investors of the Mississippi small business investment company;

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

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

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

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

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

(e) The MDA must:

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

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

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

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

(g) The MDA must begin accepting applications to become a Mississippi small business investment company not later than August 1, 2012.

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

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

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

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

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

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

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

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

(3) (a) At the time of its investment of designated capital a participating investor shall earn a vested credit against the participating investor's state premium tax liability in an amount equal to one hundred percent (100%) of the participating investor's investment of designated capital in a Mississippi small business investment company, subject to the limits imposed by this section. From and after January 1, 2015, a participating investor may claim the credit as follows:

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

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

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

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

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

(b) The credit for any taxable year cannot exceed the state premium tax liability of the participating investor for the taxable year. If the amount of the credit exceeds the state premium tax liability of the participating investor for the taxable year, the excess is an investment tax credit carryover for five (5) years from the date the credit is first able to be utilized in accordance with Section 57-115-5(3)(a).

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

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

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

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

(g) Final decertification of a Mississippi small business investment company under this chapter prior to such Mississippi small business investment company meeting the requirements of Section 57-115-7(1)(a)(ii), shall result in the disallowance and the recapture of all of the credits allocated to its participating investors under this chapter. Once a Mississippi small business investment company has satisfied the requirements of Section 57-115-7(1)(a)(ii), any subsequent decertification shall not cause the disallowance or recapture of any credits allocated to its participating investors under this chapter.

\* \* \*

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

(4) (a) (i) \* \* \* The aggregate amount of investment tax credits that may be allocated to all participating investors of Mississippi small business investment companies under this section shall not exceed Fifty Million Dollars (\$50,000,000.00), and no

Mississippi small business investment company, on an aggregate basis with its affiliates, may file credit allocation claims that exceed Fifty Million Dollars (\$50,000,000.00).

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

(iii) If there are any tax credits remaining available for allocation in the secondary tax credit pool on August 1, 2013, those available tax credits shall revert to the primary tax credit pool and be made available to primary Mississippi small business investment companies according to rules and regulations promulgated by the MDA. Prior to August 1, 2013, primary Mississippi small business investment companies, including any wholly owned subsidiary company, shall be prohibited from making application to the MDA to be additionally certified as a secondary Mississippi small business investment company and prohibited from applying for any tax credit allocation from the secondary tax credit pool. A certified primary Mississippi small business investment company may have ownership equity in a

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

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

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

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

(e) Within ten (10) business days after the MDA receives a credit allocation claim filed by a Mississippi small business investment company on behalf of one or more of its participating investors, the MDA may notify the Mississippi small business investment company of the amount of credits allocated to each of the participating investors of that Mississippi small business investment company. In the event a Mississippi small business investment company does not receive an investment of designated capital from each participating investor required to earn the amount of credits allocated to the participating investor within ten (10) business days of the Mississippi small business investment company's receipt of notice of allocation, then it shall notify the MDA on or before the next business day, and the credits allocated to the participating investor of the Mississippi small business investment company will be forfeited. The MDA may then reallocate those forfeited credits among the participating investors of the other Mississippi small business investment companies on a pro rata basis with respect to the credit allocation claims filed on behalf of the participating investors. The MDA may levy a fine of not more than Fifty Thousand Dollars (\$50,000.00) on any participating investor that does not invest the full amount of designated capital required to fund the credits allocated to it by the MDA in accordance with the credit allocation claim filed on its behalf.

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

**SECTION 3.** Section 57-115-7, Mississippi Code of 1972, is amended as follows:

57-115-7. (1) (a) To maintain its certification, a Mississippi small business investment company must make qualified investments as follows:

(i) Within two (2) years after the allocation date, a Mississippi small business investment company must invest an amount equal to at least thirty-five percent (35%) of its designated capital in qualified investments; and

(ii) Within four (4) years after the allocation date, a Mississippi small business investment company must invest an amount equal to at least fifty percent (50%) of its designated capital in qualified investments.

(b) Before making a proposed qualified investment in a specific business, a Mississippi small business investment company must request from the MDA a written determination that the proposed investment will qualify as a qualified investment in a qualified business and comply with the Mississippi small business investment company's business plan previously approved by the MDA. The MDA must notify a Mississippi small business investment company within ten (10) business days from the receipt of a request of its determination and an explanation thereof. If the MDA determines that the proposed investment does not meet the definition of a qualified investment, qualified business or comply with the Mississippi small business investment company's business plan, the MDA may nevertheless consider the proposed investment a qualified investment or a qualified business if the MDA determines that the proposed investment will further economic development. A Mississippi small business investment company may at any time apply to the MDA to amend its business plan, which the MDA may approve if it determines that the proposed amendment will further economic development in the state.

(c) All designated capital not invested in qualified investments by a Mississippi small business investment company shall be held or invested in the manner the Mississippi small

business investment company deems appropriate within the limits of this chapter. Designated capital and proceeds of designated capital returned to a Mississippi small business investment company after being originally invested in qualified investments may be invested \* \* \* in additional qualified investments and the investment shall \* \* \* count toward the requirements of paragraph (a) of this subsection (1) and of Section 57-115-9(1)(c) with respect to making investments of designated capital in qualified investments, provided that the qualified business returning the initial qualified investment of the designated capital:

(i) Returns the capital pursuant to regularly scheduled amortization payments;

(ii) Returns the capital after a change in control or sale of the company or substantially all of its assets;

(iii) Returns the capital to the Mississippi small business investment company after defaulting on the terms of the qualified investment; or

(iv) Has attracted follow-on investment equal to the amount returned to the Mississippi small business investment company from a source other than a Mississippi small business investment company.

(d) (i) If, within five (5) years after its allocation date, a Mississippi small business investment company has not invested at least eighty-five percent (85%) of its designated capital in qualified investments, the Mississippi small business investment company shall not be permitted to pay management fees until it has invested such amount of designated capital in qualified investments.

(ii) If within seven (7) years after its allocation date, a Mississippi small business investment company has no longer invested at least one hundred percent (100%) of its designated capital in qualified investments, the Mississippi small

business investment company shall not be permitted to pay management fees.

(2) (a) Each Mississippi small business investment company must report the following to the MDA and the Department of Revenue:

(i) As soon as practicable after the receipt of designated capital:

1. The name of each participating investor from which the designated capital was received, and each participating investor's affiliates that may claim credits, including the insurance tax identification number of the participating investor and its affiliates, if any;

2. The amount of each participating investor's investment of designated capital; and

3. The date on which the designated capital was received;

(ii) On an annual basis, on or before January 31 of each year:

1. The amount of the Mississippi small business investment company's designated capital that remains to be invested in qualified investments at the end of the immediately preceding taxable year;

2. Whether or not the Mississippi small business investment company has invested more than fifteen percent (15%) of its total designated capital in any one (1) qualified business;

3. All qualified investments that the Mississippi small business investment company has made in the previous taxable year, including the number of employees of each qualified business in which it has made investments at the time of the investment and as of December 1 of the preceding taxable year;

4. For any qualified business where the Mississippi small business investment company no longer has an

investment, the Mississippi small business investment company must provide employment figures for that business as of the last day before the investment was terminated;

(iii) Other information that the MDA and/or the Department of Revenue may reasonably request that will help the MDA ascertain the impact of the Mississippi small business investment company program both directly and indirectly on the economy of the State of Mississippi including, but not limited to, the number of jobs created by qualified businesses that have received qualified investments; and

(iv) Within ninety (90) days after the close of its fiscal year, annual audited financial statements of the Mississippi small business investment company, which must include the opinion of an independent certified public accountant.

(b) A Mississippi small business investment company must pay to the MDA an annual, nonrefundable certification fee of Two Thousand Five Hundred Dollars (\$2,500.00) on or before April 1, or Five Thousand Dollars (\$5,000.00) if later. However, no annual certification fee is required if the payment date for the fee is within six (6) months of the date a Mississippi small business investment company is first certified by the MDA.

(c) Upon satisfying the requirements of subsection (1) (a) (ii) of this section, a Mississippi small business investment company shall provide notice of the satisfaction to the MDA, and the MDA shall, within sixty (60) days of receipt of the notice, either confirm that the Mississippi small business investment company has satisfied the requirements of subsection (1) (a) (ii) of this section as of that date or provide notice of noncompliance and an explanation of any existing deficiencies.

(3) (a) A Mississippi small business investment company may make qualified distributions at any time. In order for a Mississippi small business investment company to make a

distribution other than a qualified distribution to its equity holders:

(i) The qualified investments of the Mississippi small business investment company must equal or exceed one hundred percent (100%) of its designated capital; and

(ii) The Mississippi small business investment company must attract follow-on investment from sources other than itself or another Mississippi small business investment company in the qualified businesses in which it made qualified investments equal to one hundred percent (100%) of its designated capital.

(b) For all distributions other than qualified distributions, if the Mississippi small business investment company has not met or exceeded the jobs creation and retention goal agreed to by the MDA and the Mississippi small business investment company in its application and the MDA has not waived this requirement as a result of project location and business sector, the Mississippi small business investment company shall pay all such distributions to the state as a fee until the Mississippi small business investment company has paid to the state an amount equal to the penalty amount. For purposes of this section, the penalty amount shall equal one percent (1%) of the cumulative management fees previously paid by the Mississippi small business investment company for every one percent (1%) by which a Mississippi small business investment company fails to meet the jobs creation goal agreed to by the MDA and the Mississippi small business investment company in its application.

**SECTION 4.** Section 57-115-9, Mississippi Code of 1972, is amended as follows:

57-115-9. (1) (a) The MDA, or at its discretion the department, shall conduct an annual review of each Mississippi small business investment company to determine if a Mississippi small business investment company is abiding by the requirements of certification and to ensure that no investment has been made in

violation this chapter. The cost of the annual review must be paid by each Mississippi small business investment company according to a reasonable fee schedule adopted by the MDA and/or the department. In the event the department conducts the annual review, the department shall provide copies of the review to the MDA. The MDA shall provide copies of each Mississippi small business investment company's annual review to the Mississippi small business investment company reviewed.

(b) Any material violation of this chapter, including any material misrepresentation made to the MDA in connection with the application process, may be grounds for decertification of a Mississippi small business investment company and the disallowance of credits under this chapter, provided that in all instances the MDA shall provide notice to the Mississippi small business investment company of the grounds of the proposed decertification. The Mississippi small business investment company shall have at least one hundred twenty (120) days from receipt of notice from the MDA to remedy any violation before the decertification becomes effective.

(c) After a Mississippi small business investment company has invested an amount cumulatively equal to one hundred percent (100%) of its designated capital in qualified investments, provided that the Mississippi small business investment company has met all other requirements under this chapter as of that date, the Mississippi small business investment company shall no longer be subject to regulation by the MDA or the department or the reporting requirements under Section 57-115-7(2). Upon receiving certification by a Mississippi small business investment company that it has invested an amount equal to one hundred percent (100%) of its designated capital, the MDA must notify a Mississippi small business investment company within sixty (60) days that it has or has not met the requirements, with a reason for the determination if it has not met the requirements.

(d) The MDA must send written notice of any decertification proceedings to the Department of Revenue, the department, and to the address of each participating investor whose tax credit may be subject to recapture or forfeiture, using the address shown on the last filing submitted to the MDA.

(2) All investments by participating investors for which tax credits are awarded under this chapter must be registered or specifically exempt from registration.

(3) After January 1, 2015, the MDA must make an annual report to the Governor, the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee. The report must include:

(a) The number of Mississippi small business investment companies holding designated capital;

(b) The amount of designated capital invested in each Mississippi small business investment company;

(c) The cumulative amount that each Mississippi small business investment company has invested as of January 1, 2015, and the cumulative total each year thereafter;

(d) The cumulative amount of follow-on capital that the investments of each Mississippi small business investment company have created in terms of capital invested in qualified businesses at the same time or subsequent to investments made by a Mississippi small business investment company in the businesses by sources other than a Mississippi small business investment company;

(e) The total amount of investment tax credits applied for and allocated under this chapter for each year;

(f) The performance of each Mississippi small business investment company with regard to the requirements for continued certification;

(g) The classification of the companies in which each Mississippi small business investment company has invested according to industrial sector and size of company;

(h) The gross number of jobs created by investments made by each Mississippi small business investment company and the number of jobs retained;

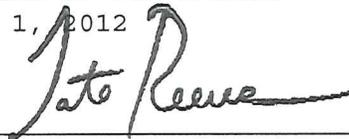
(i) The location of the companies in which each Mississippi small business investment company has invested;

(j) Those Mississippi small business investment companies that have been decertified, including the reasons for decertification; and

(k) Other related information necessary to evaluate the effect of this chapter on economic development.

**SECTION 5.** This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE SENATE  
May 1, 2012



\_\_\_\_\_  
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
April 30, 2012



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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



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GOVERNOR

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