

SENATE BILL No. 525

May 19, 2005, Introduced by Senator BISHOP and referred to the Committee on Commerce and Labor.

A bill to amend 2003 PA 296, entitled
"Michigan early stage venture investment act of 2003,"
by amending sections 5, 15, 17, and 23 (MCL 125.2235, 125.2245,
125.2247, and 125.2253).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) A Michigan early stage venture investment
2 corporation is a nonprofit corporation incorporated under the
3 nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192,
4 that meets the registration requirements of this act.

5 (2) A Michigan early stage venture investment corporation
6 shall be incorporated as a nonprofit corporation that has received
7 ~~, on or before September 1, 2004,~~ a favorable determination from
8 the internal revenue service that the corporation is exempt from

1 taxation under section 501(c)(3) or 501(c)(4) of the internal
2 revenue code. The department of treasury may allow up to 3, 30-day
3 extensions of the date under this section for purposes of reviewing
4 and approving an application for registration under section 11.

5 (3) Except as otherwise provided in this act to the contrary,
6 a Michigan early stage venture investment corporation is subject to
7 the laws of this state that are applicable to nonprofit
8 corporations.

9 (4) A Michigan early stage venture investment corporation is a
10 charitable and benevolent institution, and its funds, income, and
11 property are exempt from taxation by this state or any political
12 subdivision of this state.

13 (5) A corporation shall not act as a Michigan early stage
14 venture investment corporation except as authorized under this act.

15 Sec. 15. (1) Except as otherwise provided in this act, in the
16 nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192,
17 by law, or in its articles of incorporation, a Michigan early stage
18 venture investment corporation may do or delegate any act
19 consistent with this act and the purposes of the nonprofit
20 corporation, including, but not limited to, the following:

21 (a) Enter into contracts and all necessary activities in the
22 regular course of business of the Michigan early stage venture
23 investment corporation.

24 (b) Charge reasonable fees for the implementation of this act
25 and the ongoing operation of the Michigan early stage venture
26 investment corporation.

27 (c) Perform acts or enter into financial or other transactions

1 necessary to carry out its powers and duties under this act.

2 (d) Invest in venture capital funds through equity securities.

3 (e) Employ ~~a fund manager~~ **FUND MANAGERS** and other persons it
4 considers necessary to implement this act. The Michigan early stage
5 venture investment corporation shall employ only 1 fund manager at
6 any 1 time.

7 (2) The fund manager shall exercise the duties of a fiduciary
8 toward the corporation and shall discharge his or her duties with
9 the degree of diligence, care, and skill that an ordinarily prudent
10 person would exercise under the same or similar circumstances in a
11 like position.

12 (3) The fund manager shall solicit investors pursuant to
13 section 17.

14 (4) The Michigan early stage venture investment corporation
15 shall require the fund manager to develop procedures to evaluate
16 types of business and industry for investment purposes and to set
17 priorities as to which businesses are most likely to meet the
18 desired outcomes of the investment plan established under section
19 19 and which businesses conduct activities that are consistent with
20 the purposes of this act and of the fund. This evaluation shall
21 include, but not be limited to, the location of the firm and the
22 direct and indirect impact of the business on the economic
23 development of this state.

24 Sec. 17. (1) To secure investment in the fund, the Michigan
25 early stage venture investment corporation shall enter into
26 agreements with investors.

27 (2) Each agreement shall contain all of the following:

1 (a) An established and agreed-upon investment amount and
2 repayment schedule.

3 (b) A guaranteed negotiated amount or negotiated return on
4 qualified investment by the certified investor over the term of the
5 agreement.

6 (c) A maximum amount of credit that the investor may claim
7 under section 37e of the single business tax act, 1975 PA 228, MCL
8 208.37e, a successor tax to the single business tax act, 1975 PA
9 228, MCL 208.1 to 208.145, or under section 270 of the income tax
10 act of 1967, 1967 PA 281, MCL 206.270, and the first year in which
11 that credit can be claimed.

12 (3) The Michigan early stage venture investment corporation
13 shall notify the department of treasury when agreements are entered
14 into under this section and send a copy of each agreement to the
15 department of treasury. The department of treasury shall issue an
16 approval letter to the investor that states that the investor is
17 entitled to a tax credit under section 37e of the single business
18 tax act, 1975 PA 228, MCL 208.37e, that is equal to the difference
19 between the amount actually repaid and the amount set as the
20 repayment due in the agreement entered into by the investor and the
21 fund manager.

22 (4) The fund shall repay any amounts due from proceeds from
23 the funds raised based on the agreements made under this section.

24 (5) For tax years that begin after December 31, 2008,
25 investors that have certificates issued pursuant to section 23 may
26 claim a credit under section 37e of the single business tax act,
27 1975 PA 228, MCL 208.37e, or section 270 of the income tax act of

1 1967, 1967 PA 281, MCL 206.270, as otherwise provided in this act,
2 equal to the difference between the amount actually repaid and the
3 amount set as the repayment due in the agreement entered into by
4 the taxpayer and the fund manager. ~~The Michigan early stage~~
5 ~~venture investment corporation shall notify the department of~~
6 ~~treasury when credit certificates are issued under section 23, and~~
7 ~~upon notification and approval by the department of treasury under~~
8 ~~section 23, the amount of credit allowed pursuant to the credit~~
9 ~~certificate becomes a debt of the fund to the state subject to~~
10 ~~repayment pursuant to the agreement between the Michigan early~~
11 ~~stage venture investment corporation and the department of~~
12 ~~treasury. A debt under this section shall accrue interest at the~~
13 ~~same rate as the interest paid to the investor.~~

14 (6) Repayment of a debt under this section may be restricted
15 to specific funds or assets of the Michigan early stage venture
16 investment corporation.

17 (7) The Michigan early stage venture investment corporation
18 may purchase securities and may manage, transfer, or dispose of
19 those securities.

20 (8) The Michigan early stage venture investment corporation
21 and its directors are not broker-dealers, agents, investment
22 advisors, or investment advisor representatives when carrying out
23 their duties and responsibilities under this act.

24 Sec. 23. (1) The Michigan early stage venture investment
25 corporation shall determine which investors are eligible for tax
26 credits under section 37e of the single business tax act, 1975 PA
27 228, MCL 208.37e, and section 270 of the income tax act of 1967,

1 1967 PA 281, MCL 206.270, and the amount of the tax credit under
2 those sections allowed to each investor.

3 (2) The Michigan early stage venture investment corporation
4 shall determine which investors are eligible for tax credits under
5 this section and submit proposed certificates that meet the
6 criteria under subsection (3) to the department of treasury for
7 approval. The department of treasury shall approve or deny proposed
8 certificates within 30 days after receipt of the certificates. If
9 the department of treasury denies a proposed certificate, the
10 department of treasury shall notify the Michigan early stage
11 venture investment corporation and the investor of the denial and
12 the reason for the denial. If a proposed certificate is denied
13 under this subsection, the Michigan early stage venture investment
14 corporation is not prohibited from subsequently submitting a
15 proposed certificate on behalf of that same investor. If the
16 department of treasury does not approve or deny the certificates
17 within 30 days, the certificates are considered approved.

18 (3) The Michigan early stage venture investment corporation
19 shall issue a certificate approved under subsection (2) to each
20 investor that states all of the following:

21 (a) The taxpayer is an investor.

22 (b) The taxpayer's federal employer identification number or
23 the number assigned to the taxpayer by the department of treasury
24 for filing purposes under the single business tax act, 1975 PA 228,
25 MCL 208.1 to 208.145.

26 (c) The amount of the tax credit that the taxpayer may claim
27 against its tax liability under section 37e of the single business

1 tax act, 1975 PA 228, MCL 208.37e, or section 270 of the income tax
2 act of 1967, 1967 PA 281, MCL 206.270.

3 (d) The tax years for which the credit under subdivision (c)
4 may be claimed and the maximum annual amount that may be claimed
5 each tax year.

6 (e) The tax credit is **NOT** refundable.

7 **(F) THE TAX CREDIT IS TRANSFERABLE.**

8 (4) The fund manager shall invest, budget, and plan scheduled
9 payments and repayments so that no credits are claimed under
10 section 37e of the single business tax act, 1975 PA 228, MCL
11 208.37e, in any tax year before tax years that begin after December
12 31, 2008.

13 (5) Certificates under this section shall be issued to an
14 investor at the time that the Michigan early stage venture
15 investment corporation determines that, for that investor, capital
16 is not sufficient to meet the guaranteed negotiated amount or the
17 negotiated return on qualified investment of that investor. The
18 total of all certificates issued under this section shall not
19 exceed the maximum amount allowed under section 37e(2) of the
20 single business tax act, 1975 PA 228, MCL 208.37e.

21 (6) Certificates under this section shall not be issued until
22 December 31, 2008 or 5 years after all the requirements under
23 section 29 have been met, whichever occurs later.