

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5921

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
(MCL 206.1 to 206.532) by adding section 278.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 278. (1) SUBJECT TO THE LIMITATIONS PROVIDED UNDER THIS
2 SECTION, A TAXPAYER THAT MAKES A QUALIFIED INVESTMENT AFTER
3 DECEMBER 31, 2010 AND BEFORE JANUARY 1, 2013 IN A QUALIFIED
4 BUSINESS MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT
5 EQUAL TO 25% OF THE QUALIFIED INVESTMENT MADE DURING THE TAX YEAR.

6 (2) TO QUALIFY FOR THE CREDIT UNDER THIS SECTION, THE TAXPAYER
7 SHALL REQUEST CERTIFICATION FROM THE MICHIGAN STRATEGIC FUND WITHIN
8 60 DAYS OF MAKING THE INVESTMENT. A TAXPAYER SHALL NOT CLAIM A
9 CREDIT UNDER THIS SECTION UNLESS THE MICHIGAN STRATEGIC FUND HAS

1 ISSUED A CERTIFICATE TO THE TAXPAYER. THE BOARD SHALL NOT APPROVE A
2 CREDIT UNDER THIS SECTION FOR A TAXPAYER WHO HAS BEEN CONVICTED OF
3 A FELONY INVOLVING A FIDUCIARY OBLIGATION OR THE CONVERSION OR
4 MISAPPROPRIATION OF FUNDS OR INSURANCE ACCOUNTS, THEFT, DECEIT,
5 FRAUD, MISREPRESENTATION, OR CORRUPTION. THE MICHIGAN STRATEGIC
6 FUND SHALL FORWARD A COPY OF EACH CERTIFICATE RECEIVED PURSUANT TO
7 THIS SUBSECTION TO THE GOVERNOR, THE PRESIDENT OF THE MICHIGAN
8 STRATEGIC FUND, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE,
9 THE CHAIRPERSON OF THE HOUSE TAX POLICY COMMITTEE, THE DIRECTOR OF
10 THE SENATE FISCAL AGENCY, AND THE DIRECTOR OF THE HOUSE FISCAL
11 AGENCY. THE REQUIREMENTS OF SECTION 28(1)(F) OF 1941 PA 122, MCL
12 205.28, DO NOT APPLY TO THE DISCLOSURE REQUIRED BY THIS SUBSECTION.
13 THE MICHIGAN STRATEGIC FUND SHALL NOT CERTIFY MORE THAN
14 \$1,000,000.00 IN QUALIFIED INVESTMENTS IN ANY 1 QUALIFIED BUSINESS.
15 THE TAXPAYER SHALL ATTACH THE CERTIFICATE TO THE ANNUAL RETURN
16 FILED UNDER THIS ACT ON WHICH A CREDIT UNDER THIS SECTION IS
17 CLAIMED. THE CERTIFICATE REQUIRED UNDER THIS SUBSECTION SHALL
18 SPECIFY ALL OF THE FOLLOWING:

19 (A) THE TOTAL AMOUNT OF INVESTMENT MADE DURING THE TAX YEAR BY
20 THE TAXPAYER IN EACH QUALIFIED BUSINESS.

21 (B) THE TOTAL AMOUNT OF QUALIFIED INVESTMENTS MADE IN EACH
22 QUALIFIED BUSINESS IF DIFFERENT FROM THE PREVIOUS AMOUNT.

23 (C) THE TOTAL AMOUNT OF THE CREDIT UNDER THIS SECTION THAT THE
24 TAXPAYER IS ALLOWED TO CLAIM FOR THE DESIGNATED TAX YEAR.

25 (3) A TAXPAYER SHALL NOT CLAIM A CREDIT OF MORE THAN
26 \$250,000.00 BASED ON AN INVESTMENT IN ANY 1 QUALIFIED BUSINESS AND
27 SHALL NOT CLAIM A CREDIT OF MORE THAN \$250,000.00 FOR QUALIFIED

1 INVESTMENTS IN ALL QUALIFIED BUSINESSES IN ANY 1 YEAR. THE CREDIT
2 ALLOWED UNDER THIS SECTION SHALL BE TAKEN BY THE TAXPAYER IN EQUAL
3 INSTALLMENTS OVER 2 YEARS BEGINNING WITH THE TAX YEAR IN WHICH THE
4 CERTIFICATION WAS ISSUED.

5 (4) THE TOTAL AMOUNT OF CREDITS THAT THE MICHIGAN STRATEGIC
6 FUND MAY CERTIFY UNDER THIS SECTION PER CALENDAR YEAR SHALL NOT
7 EXCEED \$9,000,000.00.

8 (5) IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SECTION
9 EXCEEDS THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX YEAR, THAT
10 PORTION OF THE CREDIT THAT EXCEEDS THE TAX LIABILITY OF THE
11 TAXPAYER FOR THE TAX YEAR SHALL NOT BE REFUNDED BUT MAY BE CARRIED
12 FORWARD TO OFFSET TAX LIABILITY UNDER THIS ACT IN SUBSEQUENT TAX
13 YEARS FOR A PERIOD NOT TO EXCEED 5 TAX YEARS OR UNTIL USED UP,
14 WHICHEVER OCCURS FIRST.

15 (6) THE BOARD SHALL DEVELOP AN APPLICATION AND APPROVAL
16 PROCESS IN ORDER TO CERTIFY INVESTMENTS UNDER THIS SECTION AND
17 ADOPT A PROGRAM DESCRIBING PARAMETERS AND CRITERIA TO BE USED FOR
18 APPROVING INVESTMENTS. AS PART OF THAT PROGRAM ADOPTION, THE BOARD
19 MAY DETERMINE AND DESCRIBE THE CONDITIONS TO BE MET TO BE
20 CONSIDERED AN INVESTMENT ALONGSIDE OR THROUGH AN APPROVED ANGEL
21 GROUP, SEED CAPITAL FIRM, OR VENTURE CAPITAL FIRM.

22 (7) A TAXPAYER WHO HAS NOT PAID OR ENTERED INTO AN INSTALLMENT
23 AGREEMENT REGARDING A FINAL ASSESSMENT OF AN UNPAID LIABILITY FOR A
24 STATE TAX FOR WHICH ALL RIGHTS OF APPEAL HAVE BEEN EXHAUSTED OR WHO
25 IS CURRENTLY IN A BANKRUPTCY PROCEEDING IS NOT ELIGIBLE TO CLAIM A
26 CREDIT UNDER THIS SECTION.

27 (8) AS USED IN THIS SECTION:

1 (A) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE MICHIGAN
2 STRATEGIC FUND.

3 (B) "MICHIGAN STRATEGIC FUND" MEANS THE MICHIGAN STRATEGIC
4 FUND AS DESCRIBED IN THE MICHIGAN STRATEGIC FUND ACT, 1984 PA 270,
5 MCL 125.2001 TO 125.2093.

6 (C) "QUALIFIED BUSINESS" MEANS A BUSINESS THAT THE BOARD
7 CERTIFIES AS IN COMPLIANCE WITH ALL OF THE FOLLOWING AT THE TIME OF
8 THE INVESTMENT:

9 (i) THE BUSINESS IS A SEED OR EARLY STAGE BUSINESS AS DEFINED
10 IN SECTION 3 OF THE MICHIGAN EARLY STAGE VENTURE INVESTMENT ACT OF
11 2003, 2003 PA 296, MCL 125.2233.

12 (ii) THE BUSINESS HAS ITS HEADQUARTERS IN THIS STATE, IS
13 DOMICILED IN THIS STATE, AND HAS A MAJORITY OF ITS EMPLOYEES
14 WORKING IN THIS STATE.

15 (iii) THE BUSINESS HAS A PREINVESTMENT VALUATION OF LESS THAN
16 \$10,000,000.00 AND HAS FEWER THAN 100 FULL-TIME EQUIVALENT
17 EMPLOYEES.

18 (iv) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBPARAGRAPH, THE
19 BUSINESS HAS BEEN IN EXISTENCE LESS THAN 5 YEARS; OR, FOR A
20 BUSINESS IN WHICH THE BUSINESS ACTIVITY IS DERIVED FROM RESEARCH AT
21 AN INSTITUTION OF HIGHER EDUCATION LOCATED WITHIN THIS STATE OR AN
22 ORGANIZATION EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501(C)(3)
23 OF THE INTERNAL REVENUE CODE AND THAT IS LOCATED WITHIN THIS STATE,
24 THE BUSINESS HAS BEEN IN EXISTENCE LESS THAN 10 YEARS. AS USED IN
25 THIS SUBPARAGRAPH, A PUBLIC OR PRIVATE COLLEGE OR UNIVERSITY THAT
26 AWARDS A BACHELOR'S DEGREE OR OTHER DEGREES IS AN INSTITUTION OF
27 HIGHER EDUCATION.

1 (v) THE BUSINESS IS NOT A RETAIL ESTABLISHMENT AS DESCRIBED IN
2 SECTION 44-45 - RETAIL TRADE, OF THE NORTH AMERICAN INDUSTRY
3 CLASSIFICATION SYSTEM, UNITED STATES, 1997, PUBLISHED BY THE OFFICE
4 OF MANAGEMENT AND BUDGET.

5 (vi) THE BUSINESS HAS NOT CLAIMED A CREDIT UNDER SECTION 431,
6 455, 457, OR 459 OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL
7 208.1431, 208.1455, 208.1457, AND 208.1459.

8 (D) "QUALIFIED INVESTMENT" MEANS, EXCEPT AS OTHERWISE PROVIDED
9 UNDER THIS SUBDIVISION, AN INVESTMENT OF AT LEAST \$20,000.00
10 CERTIFIED BY THE MICHIGAN STRATEGIC FUND THAT IS MADE ALONGSIDE OF,
11 OR THROUGH, A SEED VENTURE CAPITAL OR ANGEL INVESTOR GROUP THAT IS
12 REGISTERED WITH THE MICHIGAN STRATEGIC FUND AND IS NOT IN A
13 BUSINESS IN WHICH ANY MEMBER OF THE INVESTOR'S FAMILY IS AN
14 EMPLOYEE OR OWNER OF THE BUSINESS OR IN WHICH THE INVESTOR OR ANY
15 MEMBER OF THE INVESTOR'S FAMILY HAS A PREEXISTING FIDUCIARY
16 RELATIONSHIP WITH THE BUSINESS. QUALIFIED INVESTMENT DOES NOT
17 INCLUDE AN INVESTMENT IN A BUSINESS THAT ENGAGES IN LIFE SCIENCES
18 TECHNOLOGY UNLESS THOSE ACTIVITIES ARE INCLUDED IN THE DEFINITION
19 OF LIFE SCIENCES AS THAT TERM IS DEFINED UNDER SECTION 88A OF THE
20 MICHIGAN STRATEGIC FUND ACT, 1984 PA 270, MCL 125.2088A.

21 Enacting section 1. This amendatory act shall be known as the
22 "venture investment credit".