

Act No. 192
Public Acts of 2015
Approved by the Governor
November 16, 2015
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Reps. Pscholka, Kelly, Price, McCready, Poleski, Webber, Heise, Graves, Canfield, Hooker, Forlini, Hughes, Pagel, Bizon, Goike, Brett Roberts, Iden, Outman, Jacobsen, Cole, Johnson, Chatfield, Victory, Garcia, Theis, Bumstead, Sheppard, Singh, Rendon, Cox, Leutheuser, Lauwers, Runestad, McBroom, Kivela, Dillon, Dianda, Zemke, Clemente, Hoadley, Aaron Miller, Pagan, Howrylak, Somerville, Maturen, Vaupel, Schor and Moss

ENROLLED HOUSE BILL No. 4195

AN ACT to amend 2003 PA 296, entitled "An act to promote investment in certain businesses; to promote economic development in this state; to provide for a Michigan early stage venture investment corporation; to prescribe the powers and duties of a Michigan early stage venture investment corporation; to prescribe the powers and duties of certain public officers and departments; to establish the Michigan early stage venture investment fund and other funds; to provide for tax credits and incentives; to authorize certain investments; to provide for the expiration of the fund; to provide or allow for appropriations; and to provide penalties and remedies," by amending sections 7, 9, 11, 15, 17, 19, 21, 23, and 27 (MCL 125.2237, 125.2239, 125.2241, 125.2245, 125.2247, 125.2249, 125.2251, 125.2253, and 125.2257), section 15 as amended by 2005 PA 102 and sections 17, 19, and 23 as amended by 2007 PA 173.

The People of the State of Michigan enact:

Sec. 7. The articles of incorporation of a Michigan early stage venture investment corporation shall contain all of the following:

(a) The purposes of the corporation, which shall include, but are not limited to, all of the following:

(i) To operate and act exclusively for charitable purposes with the intent to lessen the financial burdens of the government of this state.

(ii) To receive and administer funds for the charitable purposes under subparagraph (i).

(iii) To raise capital and invest that capital in venture capital firms with the intent of benefiting Michigan's seed or early stage businesses.

(iv) To promote the economic health of this state by assisting in the creation of new jobs, new businesses, and new industries within this state and through the investment in certain businesses.

(v) To enter into an agreement with this state to promote the economic health of this state.

(b) A provision that the Michigan early stage venture investment corporation shall be governed by a board of directors that complies with the requirements in section 13.

(c) A provision that provides that, upon dissolution of the Michigan early stage venture investment corporation, the property remaining after providing for debts and obligations of the Michigan early stage venture investment corporation shall be distributed with the first \$140,000,000.00 going to the general fund of this state and any remaining going to the 21st century jobs trust fund established in section 7 of the Michigan trust fund act, 2000 PA 489, MCL 12.257. For

purposes of this subdivision, property remaining after providing for debts and obligations does not include grants, appropriations, or other restricted funds that must be distributed as required by the source of those funds.

Sec. 9. (1) Prior to applying for registration as a Michigan early stage venture investment corporation under section 11, a nonprofit corporation shall submit its articles of incorporation and any amendments to those articles of incorporation to the attorney general for review and certification.

(2) The attorney general shall review the information submitted pursuant to subsection (1) and, if that information complies with the requirements of this act, and upon payment of a fee of \$100.00, the attorney general shall issue a certificate of compliance to the Michigan early stage venture investment corporation not later than 60 days after the initial receipt of the information.

(3) Notwithstanding subsections (1) and (2), a Michigan early stage venture investment corporation that amends its articles of incorporation for the sole purpose of complying with section 7(c) is not required to submit that amendment to the attorney general for review or certification or to pay the fee otherwise required by subsection (2). The attorney general is not required to review or certify the amendment, and that amendment shall not affect any previous certification by the attorney general of the Michigan early stage venture investment corporation.

Sec. 11. (1) To apply for registration as a Michigan early stage venture investment corporation, a nonprofit corporation shall file all of the following with the state treasurer:

(a) A copy of the articles of incorporation of the nonprofit corporation and any amendments to those articles of incorporation.

(b) The certificate of compliance issued under section 9. This subdivision does not apply if the attorney general does not issue the certificate within the time provided in section 9(2).

(c) A general plan of the proposed activities of the nonprofit corporation, including, but not limited to, evidence of the establishment by the nonprofit corporation of a restricted fund that shall be known as a Michigan early stage venture investment fund.

(d) A copy of the financial statements of the nonprofit corporation for the first fiscal year of the nonprofit corporation.

(e) A copy of the bylaws of the nonprofit corporation.

(f) Payment of a fee to the state treasurer of \$500.00.

(2) The state treasurer shall examine the documents filed under subsection (1), may conduct any investigation he or she considers necessary, may request additional oral and written information from the nonprofit corporation, and may examine under oath any persons interested in or connected with the nonprofit corporation seeking to be registered as a Michigan early stage venture investment corporation.

(3) The state treasurer shall register a nonprofit corporation as a Michigan early stage venture investment corporation if all of the following conditions are met:

(a) The documents filed under subsection (1) are in proper form.

(b) The articles of incorporation of the nonprofit corporation or any amendments to those articles of incorporation meet the requirements of section 7.

(c) The plan and proposed activities of the nonprofit corporation meet the purposes and requirements of this act. (d)

The Internal Revenue Service has determined that the nonprofit corporation is exempt from taxation under section 501(c)(3) or 501(c)(4) of the internal revenue code.

(4) If the state treasurer registers the nonprofit corporation as a Michigan early stage venture investment corporation under this section, the state treasurer shall return to the nonprofit corporation 1 copy of its articles of incorporation and any amendments to those articles of incorporation, with a notation indicating that the nonprofit corporation is registered as a Michigan early stage venture investment corporation.

(5) Notwithstanding subsections (1) through (4), a Michigan early stage venture investment corporation that amends its articles of incorporation for the sole purpose of complying with section 7(c) is not required to submit that amendment to the state treasurer for examination, investigation, or registration under this section. The state treasurer is not required to examine or conduct any investigation with respect to that amendment, and that amendment shall not affect any previous registration by the state treasurer for that Michigan early stage venture investment corporation.

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

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

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

(c) Perform acts or enter into financial or other transactions necessary to carry out its powers and duties under this act.

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

(e) Employ fund managers and other persons it considers necessary to implement this act.

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

(3) Except as otherwise provided in section 19(4), the fund manager shall solicit investors pursuant to section 17. (4)

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

Sec. 17. (1) Subject to subsection (9), to secure investment in the fund, the Michigan early stage venture investment corporation shall enter into agreements with investors.

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

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

(b) A negotiated amount or negotiated return on qualified investment by the investor over the term of the agreement.

(c) A maximum amount of tax vouchers that the investor may use to pay a liability under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and the first year in which that tax voucher may be used to pay a liability under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, including any withholding tax imposed on the investor under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713.

(3) The Michigan early stage venture investment corporation shall notify the department of treasury when agreements are entered into under this section and send a copy of each agreement to the department of treasury. After making the determination required under section 23(2), the department of treasury shall issue an approval letter to the investor that states that the investor is entitled to a tax voucher that is equal to the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the investor and the Michigan early stage venture investment corporation.

(4) The fund shall repay any amounts due from proceeds from the funds raised based on the agreements made under this section and from the proceeds of investments made by the fund.

(5) For tax years that begin after December 31, 2008, investors that have tax voucher certificates issued pursuant to section 23 may use the tax voucher to pay a liability owed by the investor under the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, as provided in this act, up to an amount equal to the difference between the amount actually repaid and the amount set as the repayment due in the agreement entered into by the taxpayer and the Michigan early stage venture investment corporation. The Michigan early stage venture investment corporation shall notify the department of treasury when tax voucher certificates are issued under section 23(5).

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

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

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

(9) The Michigan early stage venture investment corporation shall not enter into any new agreements with investors after the effective date of the amendatory act that added this subsection. However, the Michigan early stage venture investment corporation may modify an existing agreement with an investor as long as no additional principal is borrowed from that investor and tax vouchers are not increased above the level that have been approved under section 23 on the effective date of the amendatory act that added this subsection. However, the Michigan early stage venture investment corporation may modify an existing agreement with an investor that the Michigan early stage venture investment

corporation has received a loan or line of credit from and may expend money to modify that agreement, as long as that agreement meets all of the following:

(a) The modification does not result in the Michigan early stage venture investment corporation expending greater than \$500,000.00 in costs, fees, legal fees, management fees, or other expenses without the consent of the state budget director.

(b) Notification of the modification is reported to the state budget office and chairpersons of the house and senate appropriations committees within 30 days of the finalization of the modification.

Sec. 19. (1) A Michigan early stage venture investment corporation shall create a Michigan early stage venture investment fund, which shall be a restricted fund.

(2) The fund manager shall establish an investment plan approved by the board for the investment of the money in the fund using the following criteria:

(a) Not more than 15% of the total capital and outstanding commitments of the fund shall be invested in any single venture capital company.

(b) The fund manager with the approval of the board shall undertake to invest the fund in such a way as to promote that at least \$2.00 will be invested in qualified businesses for every \$1.00 of principal for which tax vouchers may be used to pay a liability under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713.

(c) That investments facilitate the transfer of technologies from the state's various universities and research institutions.

(d) Any other professional portfolio management criteria that the fund manager and board consider appropriate.

(e) Priorities for investment in venture capital may be based on an evaluation, which shall consider the following criteria:

(i) The retention of those businesses that would be likely to leave this state absent the investment.

(ii) The revitalization and diversification of the economic base of this state.

(iii) Generating and retaining jobs and investment in this state.

(3) Consistent with the plan established under subsection (2), the fund manager shall select venture capital companies from among those venture capital companies that apply for money from the fund considering the following criteria:

(a) The venture capital company's probability of success in generating above-average returns through investing in qualified businesses.

(b) The venture capital company's probability of success in soliciting investments. The level of investment from the fund committed to each venture capital company shall not be more than 25% of the venture capital company's total capital under management.

(c) The venture capital company's probability of success as it relates to the investment plan criteria under subsection (2)(b).

(d) The venture capital company has a significant presence in this state as determined by the Michigan early stage venture investment corporation.

(e) The venture capital company will undertake to invest in qualified businesses, as determined at the point of initial investment, a percentage of invested capital equal to or greater than the percentage of invested capital that the venture capital company received from the fund.

(f) The venture capital company's consideration of minority owned businesses in its investment activities.

(4) A Michigan early stage venture investment corporation shall not create a Michigan early stage venture investment fund and a Michigan early stage venture investment corporation shall not make any new commitments to contribute capital to a venture capital company after the effective date of the amendatory act that added this subsection. However, a fund may modify an existing agreement or investment with a venture capital company as long as no additional funds are committed to the venture capital company after the effective date of the amendatory act that added this subsection.

Sec. 21. The fund manager shall file an annual report with the Michigan early stage venture investment corporation that includes an annual financial audit conducted by an independent auditor and any other financial information and documentation required by the Michigan early stage venture investment corporation to ensure the proper administration and investment of the fund.

Sec. 23. (1) The Michigan early stage venture investment corporation shall determine which investors are eligible for tax vouchers under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, and the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and the amount of the tax voucher or vouchers allowed to each investor.

(2) The Michigan early stage venture investment corporation shall determine which investors are eligible for tax vouchers under this section and submit proposed tax voucher certificates that meet the criteria under subsection (3) to the department of treasury for approval. The department of treasury shall approve or deny proposed tax voucher certificates within 30 days after receipt of the proposed tax voucher certificates. If the department of treasury denies a proposed tax voucher certificate, the department of treasury shall notify the Michigan early stage venture investment corporation and the investor of the denial and the reason for the denial. If a proposed tax voucher certificate is denied under this subsection, the Michigan early stage venture investment corporation is not prohibited from subsequently submitting a proposed tax voucher certificate on behalf of that same investor. The approval by the department of treasury under this section may be a condition to the effectiveness of the agreement between the investor and the Michigan early stage investment corporation required under section 17(1). The department of treasury shall not approve any new tax voucher certificates after the effective date of the amendatory act that added this sentence.

(3) At the time permitted under subsection (5), the Michigan early stage venture investment corporation shall issue a tax voucher certificate approved under subsection (2) to each investor in the name of the investor that states all of the following:

(a) The taxpayer is an investor.

(b) The taxpayer's federal employer identification number or the number assigned to the taxpayer by the department of treasury for filing purposes under former 1975 PA 228 or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

(c) The amount of the tax voucher that any taxpayer that uses the tax voucher may use to pay its tax liability under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713.

(d) The tax years for which the tax voucher under subdivision (c) may be used and the maximum annual amount that may be used each tax year.

(e) The amount of the tax vouchers that may be used shall not exceed the tax liability under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, of the taxpayer that uses the tax voucher.

(f) The tax voucher may be transferred in whole or in part.

(g) If the amount of any tax voucher certificate exceeds the investor's tax liability under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, the amount that exceeds the investor's tax liability may be retained and used to pay a future liability of the investor under former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713.

(4) The fund manager shall invest, budget, and plan scheduled payments and repayments so that no tax voucher is used in any tax year before tax years that begin after December 31, 2008.

(5) The Michigan early stage investment corporation shall issue tax voucher certificates under this section to an investor at the time that the Michigan early stage venture investment corporation determines that, for that investor, it is unable to pay the negotiated amount or the negotiated return on qualified investment of that investor on or before the date on which payment is due. The total of all tax voucher certificates issued under this section shall not exceed \$450,000,000.00.

(6) Tax voucher certificates under this section shall not be issued until December 31, 2008.

(7) A tax voucher certificate issued under subsection (5), or the right to be issued and receive a tax voucher certificate from the Michigan early stage venture investment corporation, may be transferred in whole or in part by a holder to another person if the holder notifies the department of treasury and the Michigan early stage venture investment corporation in writing of the transfer, the amount of the tax voucher certificate to be transferred, and the name and tax identification information provided for under subsection (3) of the proposed transferee. The tax voucher certificate transferred under this subsection shall be made on a form prescribed by the department of treasury. The holder shall send a copy of the completed transfer form to the department of treasury within 60 days after the date of the transfer.

(8) A transfer under this section is irrevocable. If the holder is transferring less than all of the tax voucher certificate to a transferee, the department of treasury may issue new tax voucher certificates to the holder and transferee representing the allocated values of the tax voucher certificates held by the holder and the transferee after the transfer.

(9) A holder of a tax voucher certificate shall attach a copy of the tax voucher certificate and, if applicable, a completed transfer form to its annual return for the tax toward which the tax voucher certificate is used by the holder. If the amount of any tax voucher certificate eligible to be used by a holder is in excess of the holder's tax liability under either former 1975 PA 228, the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, the excess may be retained and used to pay any future business tax or income tax liability of the holder.

Sec. 27. (1) The Michigan early stage venture investment corporation shall publish and make available on the Internet an annual report not more than 3 months after the close of the Michigan early stage venture investment corporation's fiscal year that includes all of the following:

(a) An enumeration of all investment and related activities for the fiscal year.

(b) Documentation and analysis of the implementation and status of the Michigan early stage venture investment corporation's investment plan and the economic impact of the plan on this state, including, but not limited to, the following:

(i) The number of jobs represented by the investments made in qualified businesses in this state.

(ii) Return on investment generated by investment, the types of activities in which investment was made, and the impact of that investment on the economic base of this state.

(c) Return through the fiscal year from investments made by each Michigan early stage venture investment fund in venture capital companies.

(d) The number of seed or early stage businesses that have been funded by venture capital companies.

(e) The aggregate net distributions made to each fund by the venture capital companies that have entered into agreements with each Michigan early stage venture investment fund through the end of the fiscal year and since the inception of each Michigan early stage venture investment fund.

(f) The total amount invested by each Michigan early stage venture investment fund in venture capital companies.

(g) Any upcoming use of tax vouchers that is certain and the timing of that use.

(h) An estimate of the potential use of tax vouchers over the 5-year period following the end of the fiscal year.

(2) Each year, the Michigan early stage venture investment corporation shall provide a copy of the annual report described in subsection (1) to the chairpersons of the house and senate appropriations committees upon its publication.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 98th Legislature are enacted into law:

(a) House Bill No. 4196.

(b) House Bill No. 4365.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: House Bill No. 4196, referred to in enacting section 1 was filed with the Secretary of State November 16, 2015, and became 2015 PA 193, Imd. Eff. Nov. 16, 2015.

House Bill No. 4365, also referred to in enacting section 1, was filed with the Secretary of State November 16, 2015, and became 2015 PA 194, Imd. Eff. Nov. 16, 2015.