

# HOUSE BILL No. 4195

February 12, 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 and referred to the Committee on Commerce and Trade.

A bill to amend 2003 PA 296, entitled "Michigan early stage venture investment act of 2003," by amending sections 15, 17, and 19 (MCL 125.2245, 125.2247, and 125.2249), section 15 as amended by 2005 PA 102 and sections 17 and 19 as amended by 2007 PA 173.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

7           (a) Enter into contracts and all necessary activities in the

1 regular course of business of the Michigan early stage venture  
2 investment corporation.

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

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

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

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

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

16 (3) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 19(4), THE**  
17 fund manager shall solicit investors pursuant to section 17.

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

1           Sec. 17. (1) ~~To~~ **SUBJECT TO SUBSECTION (9), TO** secure  
2 investment in the fund, the Michigan early stage venture investment  
3 corporation shall enter into agreements with investors.

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

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

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

9           (c) A maximum amount of tax vouchers that the investor may use  
10 to pay a liability under ~~the single business tax act, FORMER~~ 1975  
11 PA 228, ~~MCL 208.1 to 208.145,~~ the Michigan business tax act, 2007  
12 PA 36, MCL 208.1101 to 208.1601, or ~~under~~ the income tax act of  
13 1967, 1967 PA 281, MCL 206.1 to ~~206.532,~~ **206.713**, and the first  
14 year in which that tax voucher may be used to pay a liability under  
15 ~~the single business tax act, FORMER~~ 1975 PA 228, ~~MCL 208.1 to~~  
16 ~~208.145,~~ the Michigan business tax act, 2007 PA 36, MCL 208.1101 to  
17 208.1601, or the income tax act of 1967, 1967 PA 281, MCL 206.1 to  
18 ~~206.532,~~ **206.713**, including any withholding tax imposed on the  
19 investor under the income tax act of 1967, 1967 PA 281, MCL 206.1  
20 to ~~206.532-~~ **206.713**.

21           (3) The Michigan early stage venture investment corporation  
22 shall notify the department of treasury when agreements are entered  
23 into under this section and send a copy of each agreement to the  
24 department of treasury. After making the determination required  
25 under section 23(2), the department of treasury shall issue an  
26 approval letter to the investor that states that the investor is  
27 entitled to a tax voucher that is equal to the difference between

1 the amount actually repaid and the amount set as the repayment due  
2 in the agreement entered into by the investor and the Michigan  
3 early stage venture investment corporation.

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

7 (5) For tax years that begin after December 31, 2008,  
8 investors that have tax voucher certificates issued pursuant to  
9 section 23 may use the tax voucher to pay a liability owed by the  
10 investor under the Michigan business tax act, 2007 PA 36, MCL  
11 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA 281,  
12 MCL 206.1 to ~~206.532~~, **206.713**, as provided in this act, up to an  
13 amount equal to the difference between the amount actually repaid  
14 and the amount set as the repayment due in the agreement entered  
15 into by the taxpayer and the Michigan early stage venture  
16 investment corporation. The Michigan early stage venture investment  
17 corporation shall notify the department of treasury when tax  
18 voucher certificates are issued under section 23(5).

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

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

25 (8) The Michigan early stage venture investment corporation  
26 and its directors are not broker-dealers, agents, investment  
27 advisors, or investment advisor representatives when carrying out

1 their duties and responsibilities under this act.

2 (9) THE MICHIGAN EARLY STAGE VENTURE INVESTMENT CORPORATION  
3 SHALL NOT ENTER INTO ANY NEW AGREEMENTS WITH INVESTORS AFTER  
4 DECEMBER 31, 2014.

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

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

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

14 (b) The fund manager with the approval of the board shall  
15 undertake to invest the fund in such a way as to promote that at  
16 least \$2.00 will be invested in qualified businesses for every  
17 \$1.00 of principal for which tax vouchers may be used to pay a  
18 liability under ~~the single business tax act, FORMER~~ 1975 PA 228,  
19 ~~MCL 208.1 to 208.145,~~ the Michigan business tax act, 2007 PA 36,  
20 MCL 208.1101 to 208.1601, or the income tax act of 1967, 1967 PA  
21 281, MCL 206.1 to ~~206.532-206.713~~.

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

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

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

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

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

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

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

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

14           (b) The venture capital company's probability of success in  
15 soliciting investments. The level of investment from the fund  
16 committed to each venture capital company shall not be more than  
17 25% of the venture capital company's total capital under  
18 management.

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

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

24           (e) The venture capital company will undertake to invest in  
25 qualified businesses, as determined at the point of initial  
26 investment, a percentage of invested capital equal to or greater  
27 than the percentage of invested capital that the venture capital

1 company received from the fund.

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

4 (4) A MICHIGAN EARLY STAGE VENTURE INVESTMENT CORPORATION  
5 SHALL NOT CREATE A MICHIGAN EARLY STAGE VENTURE INVESTMENT FUND OR  
6 MAKE ANY NEW INVESTMENTS IN A VENTURE CAPITAL COMPANY OR A  
7 QUALIFIED BUSINESS AFTER DECEMBER 31, 2014.