

MICHIGAN EARLY STAGE VENTURE INVESTMENT ACT OF 2003 (EXCERPT)
Act 296 of 2003

125.2243 Board of directors.

Sec. 13. (1) A Michigan early stage venture investment corporation shall be governed by a board of directors consisting of 7 directors. The directors of the board shall be appointed by the governor and, except for the state treasurer or the chief executive officer of the Michigan economic development corporation, with the advice and consent of the senate as follows:

- (a) The state treasurer or his or her designee from within the department of treasury.
- (b) The chief executive officer of the Michigan economic development corporation or his or her designee from within the Michigan economic development corporation.
- (c) One individual appointed from a list of not fewer than 3 names recommended by the speaker of the house of representatives.
- (d) One individual appointed from a list of not fewer than 3 names recommended by the majority leader of the senate.
- (e) One individual appointed from a list of 1 or more names recommended by a statewide organization exempt from taxation under section 501(c)(3) or 501(c)(4) of the internal revenue code, the members of which represent more than 50% of the venture capital companies in this state and that has a common interest in stimulating an entrepreneurial environment in this state, encouraging investments in new and emerging companies in this state, and promoting venture capital investing.
- (f) Two people representing the general public with the requisite knowledge and experience in finance and business investment.

(2) Each director appointed under subsection (1)(c) through (f) shall serve for a term of 3 years, except that of those directors first appointed, the director first appointed under subsection (1)(c) and 1 of the directors first appointed under subsection (1)(f) shall each be appointed for a term of 1 year, the director first appointed under subsection (1)(d) and 1 of the directors first appointed under subsection (1)(f) shall each be appointed for a term of 2 years, and the director first appointed under subsection (1)(e) shall be appointed for a term of 3 years. A vacancy on the board at the end of or during a director's term shall be filled in the same manner as the original appointment for the remainder of the unexpired term or for the new term and until a successor is appointed.

(3) A majority of all 7 directors constitute a quorum for the transaction of business at a meeting of the board. A majority vote of a quorum of the directors is required for official action of the board.

(4) Each director shall prepare and file with the board annually on or before October 1 a disclosure form in which the director discloses any potential conflict of interest under this act.

(5) A director, employee, or agent of the board shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the board in writing of the details of any incident or circumstances that may present the existence of a conflict of interest with respect to the performance of the board-related work or duty of the director, employee, or agent of the board.

(6) A director who has a conflict of interest related to any matter before the board shall disclose the conflict of interest before the board takes any action with respect to the matter, which disclosure shall become a part of the record of the board's official proceedings. The director with the conflict of interest shall refrain from doing all of the following with respect to the matter that is the basis of the conflict of interest:

- (a) Voting in the board's proceedings related to the matter.
- (b) Participating in the board's discussion of and deliberation on the matter.
- (c) Being present at the meeting when the discussion, deliberation, and voting on the matter take place.
- (d) Discussing the matter with any other board member.

(7) Failure of a director to comply with subsection (6) constitutes misconduct in office. A director may be removed from the board for misconduct by a vote of a majority of the directors not subject to the vote under this subsection appointed and serving on the board.

(8) With respect to management of the affairs and property of the corporation, each director 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. In discharging his or her duties, a director, when acting in good faith, may rely upon the opinion of counsel and the advice of the fund manager. A director may be removed from the board for a breach of fiduciary duty by a vote of a majority of the directors not subject to the vote under this subsection appointed and serving on the board.

(9) A director of the board or an officer or employee of the board or Michigan early stage venture investment corporation is not subject to personal liability when acting in good faith within the scope of his or

her authority or on account of liability of the Michigan early stage venture investment corporation, and the board may defend and indemnify a director of the board or an officer or employee of the board or Michigan early stage venture investment corporation against liability arising out of the discharge of his or her official duties. The Michigan early stage venture investment corporation may indemnify and procure insurance indemnifying directors of the board and other officers and employees of the board or Michigan early stage venture investment corporation from personal loss or accountability for liability asserted by a person with regard to actions of the board or the failure to act by the board or Michigan early stage venture investment corporation. The Michigan early stage venture investment corporation may also purchase and maintain insurance on behalf of any person against any liability asserted against the person and incurred by the person in any capacity or arising out of the status of the person as a director of the board or an officer or employee of the board or Michigan early stage venture investment corporation, whether or not the Michigan early stage venture investment corporation would have the power to indemnify the person against that liability under this subsection. The board or the Michigan early stage venture investment corporation may by a majority vote of the board obligate itself in advance to defend and indemnify persons.

History: 2003, Act 296, Imd. Eff. Jan. 8, 2004.