

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, FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 AND END
3 BEFORE JANUARY 1, 2014, A TAXPAYER THAT MAKES A QUALIFIED
4 INVESTMENT IN A QUALIFIED BUSINESS DURING THE TAX YEAR MAY CLAIM A
5 CREDIT AGAINST THE TAX IMPOSED BY THIS ACT EQUAL TO 25% OF THAT
6 QUALIFIED INVESTMENT.

7 (2) TO QUALIFY FOR THE CREDIT UNDER THIS SECTION, THE TAXPAYER
8 SHALL REQUEST CERTIFICATION FROM THE MICHIGAN STRATEGIC FUND WITHIN

60 DAYS OF MAKING THE INVESTMENT. A TAXPAYER SHALL NOT CLAIM A CREDIT UNDER THIS SECTION UNLESS THE MICHIGAN STRATEGIC FUND HAS ISSUED A CERTIFICATE TO THE TAXPAYER. THE BOARD SHALL NOT APPROVE A CREDIT UNDER THIS SECTION FOR A TAXPAYER WHO HAS BEEN CONVICTED OF A FELONY IF THE BOARD DETERMINES THAT THE CONVICTION WILL HAVE A MATERIAL IMPACT ON THE ABILITY OF THE TAXPAYER TO PARTICIPATE IN A QUALIFIED INVESTMENT. THE MICHIGAN STRATEGIC FUND SHALL NOT CERTIFY MORE THAN \$1,000,000.00 IN QUALIFIED INVESTMENTS IN ANY 1 QUALIFIED BUSINESS. THE TAXPAYER SHALL ATTACH THE CERTIFICATE TO THE ANNUAL RETURN FILED UNDER THIS ACT ON WHICH A CREDIT UNDER THIS SECTION IS CLAIMED. THE CERTIFICATE REQUIRED UNDER THIS SUBSECTION SHALL SPECIFY ALL OF THE FOLLOWING:

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

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

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

(3) A TAXPAYER SHALL NOT CLAIM A CREDIT OF MORE THAN \$500,000.00 BASED ON AN INVESTMENT IN ANY 1 QUALIFIED BUSINESS AND SHALL NOT CLAIM A CREDIT OF MORE THAN \$500,000.00 FOR QUALIFIED INVESTMENTS IN ALL QUALIFIED BUSINESSES IN ANY 1 YEAR. THE CREDIT ALLOWED UNDER THIS SECTION SHALL BE TAKEN BY THE TAXPAYER IN EQUAL INSTALLMENTS OVER 2 YEARS BEGINNING WITH THE TAX YEAR IN WHICH THE CERTIFICATION WAS ISSUED.

(4) THE TOTAL AMOUNT OF CREDITS THAT THE MICHIGAN STRATEGIC FUND MAY CERTIFY UNDER THIS SECTION PER CALENDAR YEAR SHALL NOT

1 EXCEED \$10,000,000.00. IF THE MICHIGAN STRATEGIC FUND APPROVES A
2 TOTAL OF ALL CREDITS FOR INVESTMENTS UNDER THIS SECTION OF LESS
3 THAN \$10,000,000.00 IN A CALENDAR YEAR, THE MICHIGAN STRATEGIC FUND
4 MAY CARRY FORWARD THE DIFFERENCE BETWEEN THE \$10,000,000.00 AND THE
5 TOTAL OF ALL CREDITS FOR ALL INVESTMENTS APPROVED IN THE
6 IMMEDIATELY PRECEDING CALENDAR YEAR AND CERTIFY ADDITIONAL CREDITS
7 IN THE IMMEDIATELY SUCCEEDING CALENDAR YEAR.

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 15 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 DO ANY OF THE FOLLOWING:

20 (A) APPORTION THE ANNUAL AGGREGATE CREDIT DESCRIBED IN THIS
21 SECTION TO INCLUDE SET-ASIDES BY CREDIT SIZE AND EARLY STAGE AND
22 OTHER BUSINESS CATEGORIES.

23 (B) DEVELOP A METHOD TO DEFINE, REGISTER, AND APPROVE ANGEL
24 INVESTOR GROUPS, SEED CAPITAL FIRMS, AND VENTURE CAPITAL FIRMS.

25 (C) DETERMINE AND DESCRIBE THE CONDITIONS TO BE MET TO BE
26 CONSIDERED AN INVESTMENT ALONGSIDE OR THROUGH AN APPROVED ANGEL
27 GROUP, SEED CAPITAL FIRM, OR VENTURE CAPITAL FIRM.

(7) AS USED IN THIS SECTION:

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

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

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

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

(ii) THE BUSINESS HAS, OR WILL HAVE AS DETERMINED BY THE BOARD, ITS HEADQUARTERS IN THIS STATE, IS DOMICILED IN THIS STATE, AND HAS A MAJORITY OF ITS EMPLOYEES WORKING IN THIS STATE.

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

(iv) THE BUSINESS HAS BEEN IN EXISTENCE LESS THAN 5 YEARS. THIS SUBPARAGRAPH DOES NOT APPLY TO A BUSINESS IN WHICH THE BUSINESS ACTIVITY IS DERIVED FROM RESEARCH AT AN INSTITUTION OF HIGHER EDUCATION LOCATED WITHIN THIS STATE OR AN ORGANIZATION EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE AND THAT IS LOCATED WITHIN THIS STATE. AS USED IN THIS SUBPARAGRAPH, A PUBLIC OR PRIVATE COLLEGE OR UNIVERSITY THAT AWARDS A BACHELOR'S DEGREE OR OTHER DEGREES IS AN INSTITUTION OF HIGHER EDUCATION.

1 (v) THE BUSINESS IS AN ECONOMIC BASE EMPLOYER AS DETERMINED BY
2 THE BOARD.

3 (D) "QUALIFIED INVESTMENT" MEANS AN INVESTMENT OF AT LEAST
4 \$15,000.00 CERTIFIED BY THE MICHIGAN STRATEGIC FUND THAT IS MADE
5 ALONGSIDE OF, OR THROUGH, A SEED VENTURE CAPITAL OR ANGEL INVESTOR
6 GROUP THAT IS REGISTERED WITH AND APPROVED BY THE MICHIGAN
7 STRATEGIC FUND AND IS NOT IN A BUSINESS IN WHICH ANY MEMBER OF THE
8 INVESTOR'S FAMILY IS AN EMPLOYEE OR OWNER OF THE BUSINESS OR IN
9 WHICH THE INVESTOR OR ANY MEMBER OF THE INVESTOR'S FAMILY HAS A
10 PREEXISTING FIDUCIARY RELATIONSHIP WITH THE BUSINESS.

11 Enacting section 1. This amendatory act shall be known as the
12 "small business investment credit".