

1 HB368
2 166407-1
3 By Representative Black
4 RFD: Economic Development and Tourism
5 First Read: 31-MAR-15

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8 SYNOPSIS: Under existing law, premium tax credits are
9 authorized under the Certified Capital Company
10 program to investors who contribute capital to
11 certified capital companies.

12 This bill would create the Alabama Small
13 Business Investment Act to replace references to
14 certified capital companies with Alabama small
15 business investment companies and would further
16 define the term community outreach as it relates to
17 these companies.

18 This bill would further provide for
19 application procedures for the Alabama small
20 business investment companies and would further
21 provide for the decertification of an Alabama small
22 business investment company.

23 This bill would also establish additional
24 requirements for the allocation of a tax credit for
25 these companies, provide for a third allocation of
26 tax credits, and would require the Department of

1 Commerce to post certain related information on its
2 public website.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To amend Sections 40-14B-1, 40-14B-3, 40-14B-12,
9 40-14B-17, and 40-14B-21 of the Code of Alabama 1975, relating
10 to tax credits; to define the term community outreach as it
11 relates to Alabama small business investment companies; to
12 provide for application procedures for an Alabama small
13 business investment company; to provide for the
14 decertification of a company; to establish additional
15 requirements for the allocation of a tax credit for a company;
16 to require the Department of Commerce to post certain
17 information on its website; and to add a new Section 40-14B-23
18 to the Code of Alabama 1975, to provide for a third allocation
19 of tax credits under the program.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. This act shall be known and may be cited
22 as the Alabama Small Business Investment Act of 2015.

23 Section 2. Sections 40-14B-1, 40-14B-3, 40-14B-12,
24 40-14B-17, and 40-14B-21 of the Code of Alabama 1975, are
25 amended to read as follows:

26 "§40-14B-1.

1 "As used in this chapter, the following terms shall
2 have the following meanings:

3 "(1) AFFILIATE. An affiliate of another person shall
4 include any of the following:

5 "a. A person who directly or indirectly either:

6 "1. Beneficially owns 15 percent or more of the
7 outstanding voting securities or other voting ownership
8 interests of the other person, whether through rights,
9 options, convertible interests, or otherwise; or

10 "2. Controls or holds power to vote 15 percent or
11 more of the outstanding voting securities or other voting
12 ownership interests of the other person.

13 "b. A person owning 15 percent or more of the
14 outstanding voting securities or other voting ownership
15 interests of which are directly or indirectly either:

16 "1. Beneficially owned by the other person, whether
17 through rights, options, convertible interests, or otherwise;
18 or

19 "2. Controlled or held with power to vote by the
20 other person.

21 "c. A partnership or limited liability company in
22 which the other person is a general partner, managing member
23 or manager, as the case may be.

24 "d. An officer, director, employee, or agent of the
25 other person, or an immediate family member of the officer,
26 director, employee, or agent.

1 "~~(4)~~ (2) CERTIFIED CAPITAL ALABAMA SMALL BUSINESS
2 INVESTMENT COMPANY. A partnership, corporation, or trust or
3 limited liability company, whether organized on a profit or
4 not-for-profit basis, that has as its primary business
5 activity the investment of cash in qualified technology
6 businesses and that is certified as meeting the criteria of
7 this chapter.

8 "~~(2)~~ (3) ALLOCATION DATE. The date on which the
9 certified investors of ~~a certified capital~~ an Alabama small
10 business investment company are allocated certified capital by
11 the Alabama Development Office under this chapter.

12 "~~(3)~~ (4) CERTIFIED CAPITAL. An investment of cash by
13 a certified investor in ~~a certified capital~~ an Alabama small
14 business investment company that fully funds the purchase
15 price of an equity interest in the company or a qualified debt
16 instrument issued by the ~~certified capital~~ company.

17 "(5) CERTIFIED INVESTOR. An insurance company or
18 other person that has state premium tax liability, that
19 contributes certified capital pursuant to an allocation of
20 premium tax credits under this chapter.

21 "(6) COMMUNITY OUTREACH. An Alabama small business
22 investment company's involvement in the entrepreneurial
23 communities of the state, including mentoring in technology
24 transfer offices at the various universities of the state,
25 hosting business plan and networking events for incubators,
26 and other activities that act to engage the entrepreneurs of
27 this state to promote their growth and success.

1 "~~(6)~~ (7) PERSON. A natural person or entity,
2 including a corporation, general or limited partnership, or
3 trust or limited liability company.

4 "~~(7)~~ (8) PREMIUM TAX CREDIT ALLOCATION CLAIM. A
5 claim for allocation of premium tax credits.

6 "~~(8)~~ (9) QUALIFIED DEBT INSTRUMENT. A debt
7 instrument issued by ~~a certified capital~~ an Alabama small
8 business investment company, at par value or a premium, that:

9 "a. Has an original maturity date of at least five
10 years after the date of issuance.

11 "b. Has a repayment schedule that is not faster than
12 a level principal amortization over five years.

13 "c. Has no interest, distribution, or payment
14 features that are related to the profitability of the
15 ~~certified capital~~ Alabama small business investment company or
16 the performance of the ~~certified capital~~ Alabama small
17 business investment company's investment portfolio.

18 "~~(9)~~ (10) QUALIFIED DISTRIBUTION. Any distribution
19 or payment from certified capital by ~~a certified capital~~ an
20 Alabama small business investment company in connection with
21 the following:

22 "a. The reasonable costs and expenses of forming,
23 syndicating, managing, and operating the company, including
24 reasonable and necessary fees paid for professional services,
25 including legal and accounting services, related to the
26 formation and operation of the company, and an annual
27 management fee in an amount that does not exceed two and

1 one-half percent of the certified capital of the company;
2 provided that no distribution or payment authorized by this
3 paragraph a. be made directly or indirectly to a certified
4 investor, except for distributions or payments made in
5 consideration for a guaranty, indemnity, bond, insurance
6 policy, or other payment undertaking described by subsection
7 (b) of Section 40-14B-4.

8 "b. Any projected increase in federal or state
9 taxes, including penalties and interest related to state and
10 federal income taxes, of the equity owners of the company
11 resulting from the earnings or other tax liability of the
12 company to the extent that the increase is related to the
13 ownership, management, or operation of the company.

14 "~~(10)~~ (11) QUALIFIED INVESTMENT. The investment of
15 cash by ~~a certified capital~~ an Alabama small business
16 investment company in a qualified technology business for the
17 purchase of any debt, debt participation, equity, or hybrid
18 security of any nature or description, including a debt
19 instrument or security that has the characteristics of debt
20 but that provides for conversion into equity or equity
21 participation instruments such as options or warrants.

22 "~~(11)~~ (12) QUALIFIED TECHNOLOGY BUSINESS. A business
23 that, at the time of ~~a certified capital~~ an Alabama small
24 business investment company's first investment in the
25 business:

26 "a. Is headquartered in this state and intends to
27 remain in this state after receipt of the investment by the

1 ~~certified capital~~ Alabama small business investment company,
2 or is headquartered in another state and intends to relocate
3 its headquarters to this state after receipt of the investment
4 by the ~~certified capital~~ company.

5 "b. Has its principal business operations located in
6 this state and intends to maintain business operations in this
7 state after receipt of the investment by the ~~certified capital~~
8 Alabama small business investment company, or has its
9 principal business operations located in another state, and
10 intends to relocate business operations to this state within
11 90 days after receipt of investment by the ~~certified capital~~
12 Alabama small business investment company.

13 "c. Has agreed to use the qualified investment
14 primarily to either support business operations in this state,
15 or in the case of a start-up company, establish and support
16 business operations in this state, except in each case,
17 advertising, sales and promotional operations which may be
18 conducted outside of this state.

19 "d. Has not more than 100 employees and either
20 employs at least 80 percent of its employees in this state, or
21 pays at least 80 percent of its payroll to employees in this
22 state.

23 "e. Is primarily engaged in any of the following:

24 "1. Manufacturing, processing, or assembling
25 products.

26 "2. Conducting research and development.

27 "3. Providing services.

1 "f. Is not primarily engaged in any of the
2 following:

3 "1. Retail sales.

4 "2. Real estate development.

5 "3. The business of insurance, banking, or lending.

6 "4. The provision of professional services provided
7 by accountants, attorneys, or physicians.

8 "~~(12)~~ (13) STATE PREMIUM TAX LIABILITY. Includes:

9 "a. Any liability incurred by any person under
10 Chapter 4A of Title 27, the Alabama Insurance Code.

11 "b. If the tax liability imposed under Chapter 4A of
12 Title 27, the Alabama Insurance Code, on January 1, 2002, is
13 eliminated or reduced, any tax liability imposed on an
14 insurance company or other person that had premium tax
15 liability under Chapter 4A of Title 27, the Alabama Insurance
16 Code, on that date.

17 "§40-14B-3.

18 "(a) ~~The Director of the Alabama Development Office~~
19 Secretary of the Department of Commerce by rule shall
20 establish the application procedures for ~~certified capital~~
21 Alabama small business investment companies.

22 "(b) An applicant must file an application in the
23 form prescribed by the ~~Alabama Development Office~~ Department
24 of Commerce accompanied by a nonrefundable application fee of
25 seven thousand five hundred dollars (\$7,500). The application
26 must include an audited balance sheet of the applicant, with
27 an unqualified opinion from an independent certified public

1 accountant, as of a date not more than 35 days before the date
2 of the application.

3 "(c) To qualify as ~~a certified capital~~ an Alabama
4 small business investment company, all of the following must
5 apply:

6 "(1) The applicant must have, at the time of
7 application for certification, an equity capitalization of at
8 least five hundred thousand dollars (\$500,000) in the form of
9 cash or cash equivalents. The applicant must maintain this
10 equity capitalization until it receives an allocation of
11 certified capital pursuant to Section 40-14B-17.

12 "(2) At least two principals or persons employed or
13 engaged to manage the funds of the applicant must have at
14 least four years of experience making venture capital
15 investments in small businesses on behalf of or as an
16 institutional or accredited investor.

17 "(3) The applicant must satisfy any additional
18 reasonable informational requirement imposed by the Alabama
19 Development Office by rule.

20 "(4) The applicant must have incorporated or
21 organized within the State of Alabama no later than 15 days
22 before applying for certification.

23 "(5) The applicant must have established an office
24 within the State of Alabama before or within 60 days of
25 certification.

26 "(6) For the third allocation of the program, the
27 applicant must provide a portfolio business plan that includes

1 a. the industry segments listed by the North American
2 Industrial Classification System code and percentage of
3 certified capital in which the applicant will invest; b. the
4 number of jobs that will be created or retained as a result of
5 the applicant's qualified investments; and c. a revenue impact
6 assessment prepared by a nationally recognized third-party
7 independent economic forecasting firm utilizing the Regional
8 Economics Model, Inc., or MIG, Inc., model that demonstrates
9 that the applicant's portfolio business plan will have a
10 revenue positive impact on the state over 10 years against the
11 aggregate tax credit utilization over the same period.

12 ~~"(d) The Director of the Alabama Development Office~~
13 ~~Secretary of the Department of Commerce~~ shall review the
14 application, organizational documents, and business history of
15 each applicant and shall ensure that the applicant satisfies
16 the requirements of this chapter.

17 "(e) Not later than the 30th day after the date an
18 application is filed, the ~~Director of the Alabama Development~~
19 ~~Office~~ ~~Secretary of the Department of Commerce~~ shall either
20 issue the certification or refuse to issue the certification
21 and communicate in detail to the applicant the grounds for the
22 refusal, including suggestions for the removal of these
23 grounds. If an applicant submits an amended application within
24 15 days of receipt of refusal from the office, the office
25 shall have 15 days from the receipt of such amended
26 application by which to communicate its approval or refusal of
27 such amended application to the applicant. The office shall

1 review and approve or reject applications in the order
2 submitted, and in the event more than one application is
3 received by the office on any date, all such applications
4 shall be reviewed and approved simultaneously, except in the
5 case of incomplete applications or applications for which
6 additional information is requested by the office and is not
7 supplied by the applicant within the allowable time limits
8 established by the office.

9 "§40-14B-12.

10 "(a) Decertification of ~~a certified capital~~ an
11 Alabama small business investment company may cause the
12 recapture of premium tax credits previously claimed and the
13 forfeiture of future premium tax credits to be claimed by
14 certified investors with respect to the company, as follows:

15 "(1) Except as set forth in subdivision (2),
16 decertification of a company on or before the third
17 anniversary of its allocation date causes the recapture of any
18 premium tax credit previously claimed and the forfeiture of
19 any future premium tax credit to be claimed by a certified
20 investor with respect to the company.

21 "(2) For a company that meets the requirements for
22 continued certification under subdivision (1) of subsection
23 (a) of Section 40-14B-6 and subsequently fails to meet the
24 requirements for continued certification under subdivision (2)
25 of subsection (a) of Section 40-14B-6, any premium tax credit
26 that has been or will be taken by a certified investor on or
27 before the third anniversary of the allocation date is not

1 subject to recapture or forfeiture, but any premium tax credit
2 that has been or will be taken by a certified investor after
3 the third anniversary of the allocation date of the company is
4 subject to recapture or forfeiture.

5 "(3) For a company that has met the requirements for
6 continued certification under subdivisions (1) and (2) of
7 subsection (a) of Section 40-14B-6 and is subsequently
8 decertified, any premium tax credit that has been or will be
9 taken by a certified investor on or before the fifth
10 anniversary of the allocation date is not subject to recapture
11 or forfeiture, but any premium tax credit to be taken after
12 the fifth anniversary of the allocation date is subject to
13 forfeiture only if the company is decertified on or before the
14 fifth anniversary of its allocation date.

15 "(4) For a company that has invested an amount
16 cumulatively equal to 100 percent of its certified capital in
17 qualified investments, any premium tax credit claimed or to be
18 claimed by a certified investor is not subject to recapture or
19 forfeiture under this chapter.

20 "(5) To be decertified from the third allocation of
21 the program, an Alabama small business investment company
22 shall have made qualified investments equal to at least 25
23 percent of its total certified capital in equity or
24 equity-like instruments. For the purposes of this requirement,
25 an investment in a qualified technology business located in
26 the Black Belt counties of Alabama or if such business'
27 majority ownership is held by a veteran or veterans, shall

1 satisfy this requirement regardless of the type of qualified
2 investment.

3 "(b) The ~~Alabama Development Office~~ Department of
4 Commerce shall send written notice to the address of each
5 certified investor whose premium tax credit is subject to
6 recapture or forfeiture, using the address shown on the last
7 premium tax filing.

8 "§40-14B-17.

9 "(a) If the total premium tax credits claimed by all
10 certified investors exceeds the total limits on premium tax
11 credits established by subsection (a) of Section 40-14B-16,
12 the ~~Alabama Development Office~~ Department of Commerce shall
13 allocate the total amount of premium tax credits allowed under
14 this chapter to certified investors in certified capital
15 companies on a pro rata basis in accordance with this chapter.

16 "(b) The pro rata allocation for each certified
17 investor shall be the product of:

18 "(1) A fraction, the numerator of which is the
19 amount of the premium tax credit allocation claim filed on
20 behalf of the investor and the denominator of which is the
21 total amount of all premium tax credit allocation claims filed
22 on behalf of all certified investors.

23 "(2) The total amount of certified capital for which
24 premium tax credits may be allowed under this chapter.

25 "(c) On October 15, 2002, the ~~Alabama Development~~
26 ~~Office~~ Department of Commerce shall notify each ~~certified~~
27 ~~capital~~ Alabama small business investment company of the

1 amount of tax credits allocated to each certified investor.
2 Each ~~certified capital~~ company shall notify each certified
3 investor of their premium tax credit allocation.

4 "(d) If a ~~certified capital~~ an Alabama small
5 business investment company does not receive an investment of
6 certified capital equaling the amount of premium tax credits
7 allocated to a certified investor for which it filed a premium
8 tax credit allocation claim before the end of the 10th
9 business day after the date of receipt of notice of
10 allocation, the company shall notify the ~~Alabama Development~~
11 ~~Office~~ Department of Commerce by overnight common carrier
12 delivery service and that portion of capital allocated to the
13 certified investor shall be forfeited. The ~~Alabama Development~~
14 ~~Office~~ Department of Commerce shall reallocate the forfeited
15 capital among the certified investors in the other ~~certified~~
16 ~~capital~~ companies that originally received an allocation so
17 that the result after reallocation is the same as if the
18 initial allocation under this chapter had been performed
19 without considering the premium tax credit allocation claims
20 that were subsequently forfeited.

21 "(e) For the third allocation of the program, the
22 Alabama small business investment company shall have received
23 an equity investment of capital other than certified capital
24 equal to at least 10 percent of the certified capital set
25 forth in the notice provided pursuant to subsection (c)
26 inclusive of the capitalization required by Section

1 40-14B-3(c)(1). Such equity investment must be received within
2 the 10-business-day period set forth in subsection (d).

3 "§40-14B-21.

4 "(a) The ~~Alabama Development Office~~ Department of
5 Commerce shall prepare a biennial report with respect to
6 results of the implementation of this chapter. The report must
7 include all of the following:

8 "(1) The number of ~~certified capital~~ Alabama small
9 business investment companies holding certified capital.

10 "(2) The amount of certified capital invested in
11 each ~~certified capital~~ Alabama small business investment
12 company.

13 "(3) The amount of certified capital the ~~certified~~
14 ~~capital~~ Alabama small business investment company has invested
15 in qualified technology businesses as of January 1, 2004, and
16 the cumulative total for each subsequent year.

17 "(4) The total amount of tax credits granted under
18 this chapter for each year that credits have been granted.

19 "(5) The performance of each ~~certified capital~~
20 Alabama small business investment company with respect to
21 renewal and reporting requirements imposed under this chapter.

22 "(6) With respect to the qualified technology
23 businesses in which ~~capital~~ Alabama small business investment
24 companies have invested all of the following:

25 "a. The classification of the qualified businesses
26 according to the industrial sector and the size of the
27 business.

1 "b. The total number of jobs created by the
2 investment and the average wages paid for the jobs.

3 "c. The total number of jobs retained as a result of
4 the investment and the average wages paid for the jobs.

5 "(7) The ~~certified capital~~ Alabama small business
6 investment companies that have been decertified or that have
7 failed to renew the certification and the reason for any
8 decertification.

9 "(b) The ~~Alabama Development Office~~ Department of
10 Commerce shall file the report with the Governor, the
11 Lieutenant Governor, and the Speaker of the House of
12 Representatives not later than December 15 of each
13 even-numbered year. The office shall post information on a
14 website maintained by the Department of Commerce that will
15 list the following information for each qualified investment:
16 Date, amount, and the name and location of each qualified
17 technology business in which Alabama small business investment
18 companies invest.

19 "(c) For the third allocation of the program, the
20 report in subsection (b) shall be submitted every six months
21 and shall also include a listing of community outreach
22 activity of each Alabama small business investment company for
23 the prior six-month period."

24 Section 3. Section 40-14B-23 is added to the Code of
25 Alabama 1975, to read as follows:

26 §40-14B-23.

1 (a) Subject to, and in accordance with, the
2 provisions of this chapter, there shall be a third allocation
3 of premium tax credits to investors who contribute certified
4 capital after June 14, 2015, to Alabama small business
5 investment companies in an amount equal to one-half of the
6 total pool of tax credits allocated pursuant to this chapter
7 prior to June 14, 2015. Any limitations on the amount of
8 certified capital that may be requested by a certified
9 investor contained in this chapter shall be calculated with
10 respect to this allocation without regard to any certified
11 capital requested or invested by such investor prior to June
12 14, 2015. The Department of Commerce shall promulgate rules to
13 insure the Alabama small business investment program shall be
14 inclusive and reflect the racial, gender, geographic,
15 urban/rural, and economic diversity of the state.

16 (b) A certified investor who contributes certified
17 capital in connection with the third allocation may take up to
18 12.5 percent of the vested premium tax credit against its tax
19 liability for any tax year of the certified investor,
20 beginning in the second tax year after the investment until
21 the tax credits taken by such investor equal 100 percent of
22 the certified investor's certified capital.

23 (c) The Alabama Department of Commerce shall
24 administer this chapter and shall adopt such rules as
25 necessary to implement this chapter, including the third
26 allocation provided in subsection (a), no later than the 90th
27 day after June 14, 2015, and shall begin accepting

1 applications with respect to the additional allocation of
2 certified capital no later than 90 days thereafter. The
3 requirements of Section 40-14B-3(c)(5) shall not apply to
4 applicants whose affiliates have invested at least thirty
5 million dollars (\$30,000,000) in Alabama businesses since
6 January 1, 2004.

7 (d) Notwithstanding any provision of this section to
8 the contrary, to the extent any credits are used against
9 insurance premium tax liability, the Department of Finance
10 shall promulgate rules to ensure that the credit would reduce
11 the distribution for the Education Trust Fund in an amount
12 equal to the credits used in any fiscal year.

13 Section 4. (a) Any reference to "capital investment
14 company" in Chapter 14B, Title 40, Code of Alabama 1975, shall
15 be deemed a reference to an "Alabama small business investment
16 company."

17 (b) The Code Commissioner shall conform references
18 to a "capital investment company" in Chapter 14B, Title 40,
19 Code of Alabama 1975, as provided in this act. Code changes
20 shall be made at a time determined to be appropriate by the
21 Code Commissioner.

22 Section 5. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.