

No: 3040

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



ENROLLED

HOUSE BILL No. *3040*

(By Delegate *Williams*)



Passed *March 14,* 1987

In Effect *from* Passage

ENROLLED
H. B. 3040

(By DELEGATE WILLIAMS)

[Passed March 14, 1987; in effect from passage.]

AN ACT to amend and reenact sections four, six, seven, eight, ten, twelve, and sixteen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; all relating to the West Virginia Capital Company Act.

Be it enacted by the Legislature of West Virginia:

That sections four, six, seven, eight, ten, twelve and sixteen, article one, chapter 5E of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-4. Definitions.

1 As used in this article, the following terms shall have
2 the meanings ascribed to them in this section, unless the
3 context in which the term is used clearly requires
4 another meaning or a specific different definition is
5 provided.

6 (a) "Board" means the board of directors of the West
7 Virginia industrial and trade jobs development corpo-
8 ration, provided for in article two, chapter five-c of this
9 code.

10 (b) "Capital base" means equity capital or net worth.

11 (c) "Certified West Virginia capital company" means:

12 (1) A West Virginia business development corporation
13 created pursuant to article fourteen, chapter thirty-one
14 of this code; or

15 (2) A profit or nonprofit entity organized and existing
16 under the laws of this state, created for the purpose of
17 making venture or risk capital available to qualified
18 investments, that has been certified by the board.

19 (d) "Qualified investment" means a debt or equity
20 financing of a West Virginia business but only if the
21 business is engaged in one or more of the following
22 activities: Manufacturing; agricultural production or
23 processing; forestry production or processing; mineral
24 production or processing, except for conventional oil and
25 gas exploration; service industry; transportation;
26 research and development of products or processes
27 associated with any of the activities previously enumer-
28 ated above; tourism; and wholesale or retail distribution
29 activities within the state.

30 (e) "Qualified West Virginia capital company" means
31 a West Virginia capital company that has been desig-
32 nated by the board as a qualified capital company under
33 the provisions of section six of this article.

34 (f) "State" means the state of West Virginia.

§5E-1-6. Qualification of West Virginia capital companies.

1 (a) The board shall qualify West Virginia capital
2 companies commencing after the effective date of this
3 article. A company seeking to be qualified as a West
4 Virginia capital company must make written applica-
5 tion to the board on forms provided by the board. The
6 application must contain the information required by
7 section ten of this article. Further, the application must
8 specify the level of capitalization of the company.

9 (b) The application shall set forth the applicant's
10 purpose.

11 (c) The board may certify West Virginia capital
12 companies in existence after the first day of July, 1986.

§5E-1-7. Minimum standards of qualified West Virginia

capital companies.

1 The board shall qualify West Virginia capital
2 companies that have been capitalized at a minimum
3 level of one million dollars. Capitalization of the
4 company may be increased pursuant to regulation of the
5 board.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to regulation of the board.

5 (b) The total credits authorized by the board for all
6 companies may not exceed a total of ten million dollars
7 each fiscal year. The board shall allocate these credits
8 to qualified companies in the order that said companies
9 are qualified.

10 (c) Any investor, including an individual, partnership
11 or corporation who makes a capital investment in a
12 qualified West Virginia capital company is entitled to
13 a tax credit equal to fifty percent of the investment. The
14 credit allowed by this article shall be taken after all
15 other credits allowed by chapter eleven of this code. It
16 shall be taken against the same taxes and in the same
17 order as set forth in subsections (c) through (i), section
18 five, article thirteen-c, chapter eleven of this code. The
19 credit for investments by a partnership or by a
20 corporation electing to be treated as a Subchapter S
21 corporation may be divided pursuant to election of
22 partners or shareholders.

23 (d) The tax credit allowed under this section is to be
24 credited against the taxpayer's tax liability for the
25 taxable year in which the investment in a qualified West
26 Virginia capital company is made. If the amount of the
27 tax credit exceeds the taxpayer's tax liability for the
28 taxable year, the amount of the credit which exceeds the
29 tax liability may be carried back or may be carried
30 forward in accordance with the provisions of section
31 forty-six (b) of the Internal Revenue Code of 1954, as
32 amended.

33 (e) The tax credit provided for in this section is
34 available only to those taxpayers whose investment in a
35 qualified West Virginia capital company occurs after
36 the first day of July, one thousand nine hundred eighty-
37 six.

§5E-1-10. Application requirements.

1 Each company shall make application to the board on
2 forms provided therefor, which shall set forth:

3 (1) Capitalization level of capital company;

4 (2) Purpose of the company;

5 (3) Names of investors;

6 (4) A process for disclosing to investors the tax credit
7 available pursuant to this article. Such disclosure shall
8 clearly set forth that no tax credit will be available until
9 the qualification of said company shall be granted by the
10 board and the disclosure of immunity of the state for
11 damages is provided to said investors; and

12 (5) The location of the escrow account which has been
13 established for investors for the period of time between
14 the investment and the qualification of the capital
15 company by the board.

§5E-1-12. Qualified investments.

1 (a) A qualified West Virginia capital company must
2 use its capital base to make qualified investments
3 according to the following schedule:

4 (1) At least twenty percent of its capital base within
5 the first year of the date on which the capital company
6 was designated as qualified by the board;

7 (2) At least forty percent of its capital base within two
8 years of the date on which the capital company was
9 designated as qualified by the board; and

10 (3) At least sixty percent of its capital base within
11 three years of the date on which the capital company
12 was designated as a qualified by the board.

13 (b) The board shall annually audit the certified audit
14 of each qualified company, as required by section

15 sixteen of this article, and the results of said audit shall
16 be used to notify the tax commissioner of any companies
17 that are not in compliance with this section.

18 (c) A qualified West Virginia capital company that
19 fails to make qualified investments pursuant to subsec-
20 tion (a) of this section shall pay to the tax commissioner
21 a penalty equal to all of the tax credits allowed to the
22 taxpayers investing in said company with interest at the
23 rate of one and one-half percent per month, compounded
24 monthly, from the date the tax credits were certified as
25 allocated to the qualified West Virginia capital com-
26 pany. The tax commissioner shall give notice to the
27 company of any penalties under this section. The tax
28 commissioner may abate said penalty upon written
29 request if the capital company establishes reasonable
30 cause for the failure to make qualified investments. The
31 tax commissioner shall deposit any amounts received
32 under this subsection in the state general fund.

§5E-1-16. Examination.

1 (a) Annually each qualified capital company shall
2 cause its books and records to be audited by an
3 independent certified public accountant in accordance
4 with generally accepted auditing and accounting
5 principles. In addition to the performance of a financial
6 audit, the audit shall address the methods of operation
7 and conduct of the business of the West Virginia capital
8 company to determine compliance with this article and
9 that the funds received by the company have been
10 invested within the time limits required by this article.
11 Upon completion, a copy of the audit report shall be
12 certified and sent to the board.

13 The board may examine, under oath, any of the
14 officers, directors, agents, employees or investors of a
15 West Virginia capital company regarding the affairs
16 and business of the company. The board may issue
17 subpoenas and subpoenas duces tecum and administer
18 oaths. Refusal to obey such a subpoena or subpoena
19 duces tecum may at once be reported to the circuit court
20 of the county in which the company is located or the
21 persons subpoenaed reside and the circuit court shall

22 enforce obedience to the subpoena or subpoena duces
23 tecum in the manner provided by law for compliance
24 with a subpoena or subpoena duces tecum issued by a
25 circuit court of this state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Gene O. Whelan
Chairman Senate Committee

Lyle Satter
Chairman House Committee

Originating in the House.

Takes effect from passage.

John C. Willis
Clerk of the Senate

Donald J. Kopp
Clerk of the House of Delegates

Don Toussaint
President of the Senate

Robert C. Bell
Speaker of the House of Delegates

The within *approved* this the *2nd*
day of *April*, 1987.

Arthur R. Parry
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/57

Time 2:47 p.m.