

SB 137

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



ENROLLED

SENATE BILL NO. 137

(By Senators Craig, Walker and Pymale)



PASSED March 11, 2000

In Effect ninety days from Passage

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FILED IN THE OFFICE
OF THE CLERK OF THE SENATE

ENROLLED

Senate Bill No. 137

(BY SENATORS CRAIGO, WALKER AND PLYMALE)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact sections six and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the capital company act; requiring venture capital funds to be held in escrow until an applicant business provides proof of the creation of jobs to otherwise qualify for the provision of funding; providing for four million dollars in authorized credits for the fiscal year beginning on the first day of July, two thousand; and requiring two million dollars of that amount be allocated to small business investment companies.

Be it enacted by the Legislature of West Virginia:

That sections six and eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

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

1 (a) The authority 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 shall make written application
5 to the authority on forms provided by the authority. The
6 application shall contain the information required by
7 section ten of this article. Further, the application shall
8 specify the level of capitalization of the company.

9 (b) The application shall set forth the applicant's pur-
10 pose.

11 (c) The authority may certify West Virginia capital
12 companies in existence after the first day of July, one
13 thousand nine hundred eighty-six.

14 (d) An applicant shall establish an escrow account
15 located in West Virginia, into which funds invested in the
16 applicant shall be deposited and held for the period of
17 time between their receipt by the applicant and the
18 designation of the applicant as a qualified company. The
19 funds shall not be invested by the applicant until it is
20 designated by the authority as a qualified company;
21 *Provided, That*, in addition to the minimum standards set
22 forth in section seven of this article, no applicant may be
23 designated a qualified company without providing suffi-
24 cient proof to the authority that the proposed project will
25 sufficiently promote the purpose of providing employment
26 in accordance with the provisions of section three, article
27 fifteen, chapter thirty-one of this code. In the event the
28 authority does not designate the applicant a qualified
29 company, such funds shall be returned to the investors, if
30 requested by the investors.

31 (e) A West Virginia capital company may not qualify or
32 be issued a certification under this article unless the
33 company holds a valid business registration certificate

34 issued pursuant to article twelve, chapter eleven of this
35 code. A company exempt from registration under article
36 twelve may qualify and be certified under this article upon
37 proof of its exemption.

§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 rule of the authority.

5 (b) (1) The total credits authorized by the authority for
6 all companies may not exceed a total of ten million dollars
7 each fiscal year: *Provided*, That for the fiscal year begin-
8 ning on the first day of July, one thousand nine hundred
9 ninety-nine, the total credits authorized for all companies
10 may not exceed a total of six million dollars: *Provided*,
11 *however*, That for the fiscal year beginning on the first day
12 of July, two thousand, the total credits authorized for all
13 companies may not exceed a total of four million dollars:
14 *Provided further*, That the capital base of any such
15 qualified company shall be invested in accordance with
16 the provisions of this article. The authority shall allocate
17 these credits to qualified companies in the order that the
18 companies are qualified.

19 (2) Not more than one million seven hundred fifty
20 thousand dollars of the credits allowed under subdivision
21 (1) of this subsection may be allocated by the authority
22 during each fiscal year to one or more small business
23 investment companies described in this subdivision:
24 *Provided*, That for the fiscal year beginning on the first
25 day of July, two thousand, two million dollars of the
26 credits allowed under subdivision (1) of this subsection
27 shall be allocated by the authority during that fiscal year
28 to one or more small business investment companies
29 described in this subdivision. The remainder of the tax

30 credits allowed during the fiscal year shall be allocated to
31 qualified companies other than those small business
32 investment companies. The portion of the tax credits
33 allowed for small business investment companies de-
34 scribed in this subdivision shall be allowed only if allo-
35 cated by the authority during the first ninety days of the
36 fiscal year, and may only be allocated to companies that:
37 (A) Were organized on or after the first day of January, one
38 thousand nine hundred ninety-nine; (B) have registered for
39 licensure by the small business administration as a small
40 business investment company under the small business
41 investment act; and (C) have certified in writing to the
42 authority on the application for credits under this act that
43 the company will diligently seek to obtain and thereafter
44 diligently seek to invest leverage available to such small
45 business investment companies under the small business
46 investment act. These credits shall be allocated by the
47 authority in the order that the companies are qualified.
48 Any credits which have not been allocated to qualified
49 companies meeting the requirements of this subdivision
50 relating to small business investment companies during
51 the first ninety days of the fiscal year shall be made
52 available and allocated to other qualified companies in the
53 manner prescribed in this section for qualified companies
54 generally.

55 (c) Any investor, including an individual, partnership or
56 corporation who makes a capital investment in a qualified
57 West Virginia capital company, is entitled to a tax credit
58 equal to fifty percent of the investment, except as other-
59 wise provided in this section or in this article. The credit
60 allowed by this article shall be taken after all other credits
61 allowed by chapter eleven of this code. It shall be taken
62 against the same taxes and in the same order as set forth
63 in subsections (c) through (i), inclusive, section five, article
64 thirteen-c, chapter eleven of this code. The credit for
65 investments by a partnership or by a corporation electing

66 to be treated as a Subchapter S corporation may be
67 divided pursuant to election of partners or shareholders.

68 (d) The tax credit allowed under this section is to be
69 credited against the taxpayer's tax liability for the taxable
70 year in which the investment in a qualified West Virginia
71 capital company is made. If the amount of the tax credit
72 exceeds the taxpayer's tax liability for the taxable year,
73 the amount of the credit which exceeds the tax liability for
74 the taxable year may be carried to succeeding taxable
75 years until used in full, or until forfeited: *Provided, That:*
76 (i) Tax credits may not be carried forward beyond fifteen
77 years; and (ii) tax credits may not be carried back to prior
78 taxable years. Any tax credit remaining after the fifteenth
79 taxable year is forfeited.

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

84 (f) The tax credit allowed under this section may not be
85 used against any liability the taxpayer may have for
86 interest, penalties or additions to tax.

87 (g) Notwithstanding any provision in this code to the
88 contrary, the tax commissioner shall publish in the state
89 register the name and address of every taxpayer, and the
90 amount, by category, of any credit asserted under this
91 article. The categories by dollar amount of credit received
92 are as follows:

93 (1) More than \$1.00, but not more than \$50,000;

94 (2) More than \$50,000, but not more than \$100,000;

95 (3) More than \$100,000, but not more than \$250,000;

96 (4) More than \$250,000, but not more than \$500,000;

97 (5) More than \$500,000, but not more than \$1,000,000;

98 (6) More than \$1,000,000.

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

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....
Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within..... *approved* this the *3rd*
April , 2000

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/00

Time 2:45pm