

A bill for an act

relating to taxation; insurance; providing a credit for investment in start-up and emerging Minnesota businesses; proposing coding for new law in Minnesota Statutes, chapters 116J; 297I.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [116J.665] MINNESOTA BUSINESS INVESTMENT COMPANY

CREDIT.

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given.

(b) "Affiliate" means:

(1) any person who, directly or indirectly, beneficially owns, controls, or holds power to vote 15 percent or more of the outstanding voting securities or other voting ownership interest of a Minnesota business investment company or insurance company;

(2) any person, 15 percent or more of whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned, controlled, or held with power to vote by a Minnesota business investment company or insurance company.

Notwithstanding this subdivision, an investment by a participating investor in a Minnesota business investment company pursuant to an allocation of premium tax credits under this section does not cause that Minnesota business investment company to become an affiliate of that participating investor.

(c) "Allocation date" means the date on which credits under section 297I.23 are allocated to the participating investors of a Minnesota business investment company under this section.

(d) "Designated capital" means an amount of money that:

(1) is invested by a participating investor in a Minnesota business investment company; and

(2) fully funds the purchase price of either or both participating investor's equity interest in a Minnesota business investment company or a qualified debt instrument issued by a Minnesota business investment company.

(e) "Minnesota business investment company" means a partnership, corporation, trust, or limited liability company, organized on a for-profit basis, that:

(1) has its principal office located or is headquartered in Minnesota;

(2) has as its primary business activity the investment of cash in qualified businesses; and

(3) is certified by the Department of Employment and Economic Development as meeting the criteria in this section.

(f) "Participating investor" means any insurer as defined in section 60A.02, subdivision 4, that contributes designated capital pursuant to this section.

(g) "Person" means any natural person or entity, including, but not limited to, a corporation, general or limited partnership, trust, or limited liability company.

(h)(1) "Qualified business" means a business that is independently owned and operated and meets all of the following requirements:

(i) it is headquartered in Minnesota, its principal business operations are located in this state, and at least 60 percent of its employees are located in Minnesota;

(ii) it has not more than 100 employees;

(iii) it is not predominantly engaged in:

(A) professional services provided by accountants, doctors, or lawyers;

(B) banking or lending;

(C) real estate development;

(D) insurance;

(E) oil and gas exploration;

(F) direct gambling activities; or

(G) making loans to or investments in a Minnesota business investment company or an affiliate; and

(iv) it is not a franchise of and has no financial relationship with a Minnesota business investment company or any affiliate of a Minnesota business investment company prior to a Minnesota business investment company's first qualified investment in the business.

(2) A business classified as a qualified business at the time of the first qualified investment in the business will remain classified as a qualified business and may receive continuing qualified investments from any Minnesota business investment company.

Continuing investments will constitute qualified investments even though the business may not meet the definition of a qualified business at the time of such continuing investments.

(i) "Qualified debt instrument" means a debt instrument issued by a Minnesota business investment company which meets all of the following criteria:

(1) it is issued at par value or a premium;

(2) it has an original maturity date of at least four years from the date of issuance, and a repayment schedule which is not faster than a level principal amortization over four years; and

(3) it satisfies the rating criteria to qualify as "NAIC1," as determined by the Securities Valuation Office of the National Association of Insurance Commissioners.

(j) "Qualified distribution" means any distribution or payment not made to a participating investor or affiliate of a participating investor by a Minnesota business investment company in connection with the following:

(1) costs and expenses of forming, syndicating, and organizing the Minnesota business investment company, including fees paid for professional services, and the costs of financing and insuring the obligations of a Minnesota business investment company;

(2) an annual management fee not to exceed two percent of designated capital on an annual basis to offset the costs and expenses of managing and operating a Minnesota business investment company;

(3) reasonable and necessary fees in accordance with industry custom for ongoing professional services, including, but not limited to, legal and accounting services related to the operation of a Minnesota business investment company, not including any lobbying or governmental relations;

(4) any increase or projected increase in federal or state taxes, including penalties and related interest of the equity owners of a Minnesota business investment company resulting from the earnings or other tax liability of a Minnesota business investment company to the extent that the increase is related to the ownership, management, or operation of a Minnesota business investment company.

(5) Payments of principal and interest to holders of qualified debt instruments issued by a Minnesota business investment company may be made without restriction whatsoever.

(k) "Qualified investment" means the investment of money by a Minnesota business investment company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature and description whatsoever, including a debt instrument or security that has the characteristics of debt but which provides for conversion into equity or equity participation instruments such as options or warrants. Any repayment of a qualified investment prior to one year from the date of issuance shall

result in the amount of such qualified investment being reduced by 50 percent for purposes of the cumulative investment requirement set forth in subdivision 8, paragraph (c).

(l) "State premium tax liability" means any liability incurred by an insurance company under the provisions of chapter 297I or in the case of a repeal or a reduction by the state of the liability imposed by chapter 297I, any other tax liability imposed upon an insurance company by the state.

Subd. 2. **Certification.** (a) The department must provide a standardized format for applying for the business investment credit under section 297I.23.

(b) An applicant is required to:

(1) file an application with the department;

(2) pay a nonrefundable application fee of \$7,500 at the time of filing the application;

(3) submit as part of its application an audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than 35 days before the application date that states that the applicant has an equity capitalization of \$500,000 or more in the form of unencumbered cash, marketable securities, or other liquid assets; and

(4) have at least two principals or persons, at least one of which is primarily located in Minnesota, employed or engaged to manage the funds who each have a minimum of five years of money management experience in the venture capital or business industry.

(c) The department may certify partnerships, corporations, trusts, or limited liability companies, organized on a for-profit basis, which submit an application to be designated as a Minnesota business investment company if such applicant is located, headquartered, and licensed or registered to conduct business in Minnesota, has as its primary business activity the investment of cash in qualified businesses, and meets the other criteria set forth in this section.

(d) The department must review the organizational documents of each applicant for certification and the business history of each applicant, determine whether the applicant has satisfied the requirements of this section, and determine whether the officers and the board of directors, general partners, trustees, managers, or members are trustworthy and are thoroughly acquainted with the requirements of this section.

(e) Within 45 days after the receipt of an application, the department must issue the certification or refuse the certification and communicate in detail to the applicant the grounds for refusal, including suggestions for the removal of such grounds.

(f) The department must begin accepting applications to become a Minnesota business investment company as defined under section 297I.23 by August 1, 2009.

Subd. 3. **Requirements.** (a) An insurance company or affiliate of an insurance company must not, directly or indirectly:

(1) beneficially own, whether through rights, options, convertible interest, or otherwise, 15 percent or more of the voting securities or other voting ownership interest of a Minnesota business investment company;

(2) manage a Minnesota business investment company; or

(3) control the direction of investments for a Minnesota business investment company.

(b) A Minnesota business investment company may obtain one or more guaranties, indemnities, bonds, insurance policies, or other payment undertakings for the benefit of its participating investors from any entity, except that in no case can more than one participating investor of a Minnesota business investment company on an aggregate basis with all affiliates of such participating investor be entitled to provide such guaranties, indemnities, bonds, insurance policies, or other payment undertakings in favor of the participating investors of a Minnesota business investment company and its affiliates in this state.

(c) This subdivision does not preclude a participating investor, insurance company, or other party from exercising its legal rights and remedies, including, without limitation, interim management of a Minnesota business investment company, in the event that a Minnesota business investment company is in default of its statutory obligations or its contractual obligations to such participating investor, insurance company, or other party, or from monitoring a Minnesota business investment company to ensure its compliance with this section or disallowing any investments that have not been approved by the department.

(d) The department may contract with an independent third party to review, investigate, and certify that the applications comply with the provisions of this section.

Subd. 4. **Aggregate limitations on investment tax credits; allocation.** (a) The aggregate amount of investment tax credits to be allocated to all participating investors of Minnesota business investment companies under this section shall not exceed \$160,000,000. No Minnesota business investment company, on an aggregate basis with its affiliates, may file credit allocation claims that exceed \$160,000,000.

(b) Credits must be allocated to participating investors in the order that the credit allocation claims are filed with the department, provided that all credit allocation claims filed with the department on the same day must be treated as having been filed contemporaneously. Any credit allocation claims filed with the department prior to the initial credit allocation claim filing date will be deemed to have been filed on such initial credit allocation claim filing date. The department will set the initial credit allocation

claim filing date to be not less than 120 days and not greater than 150 days after the department begins accepting applications for certification.

(c) In the event that two or more Minnesota business investment companies file credit allocation claims with the department on behalf of their respective participating investors on the same day, and the aggregate amount of credit allocation claims exceeds the aggregate limit of investment tax credits under this section or the lesser amount of credits that remain unallocated on that day, then the credits shall be allocated among the participating investors who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata allocation for any one participating investor is the product obtained by multiplying a fraction, the numerator of which is the amount of the credit allocation claim filed on behalf of a participating investor and the denominator of which is the total of all credit allocation claims filed on behalf of all participating investors on that day, by the aggregate limit of credits under this section or the lesser amount of credits that remain unallocated on that day.

(d) Within ten business days after the department receives a credit allocation claim filed by a Minnesota business investment company on behalf of one or more of its participating investors, the department must notify the Minnesota business investment company of the amount of credits allocated to each of the participating investors of that Minnesota business investment company. In the event a Minnesota business investment company does not receive an investment of designated capital from each participating investor required to earn the amount of credits allocated to such participating investor within ten business days of the Minnesota business investment company's receipt of notice of allocation, then it shall notify the department on or before the next business day, and the credits allocated to such participating investor of the Minnesota business investment company will be forfeited. The department must then reallocate those forfeited credits among the participating investors of the other Minnesota business investment companies on a pro rata basis with respect to the credit allocation claims filed on behalf of the participating investors. The commissioner is authorized, but not required, to levy a fine of not more than \$50,000 on any participating investor that does not invest the full amount of designated capital required to fund the credits allocated to it by the department in accordance with the credit allocation claim filed on its behalf.

(e) No participating investor, on an aggregate basis with its affiliates, may file an allocation claim for more than 25 percent of the maximum amount of investment tax credits authorized hereunder, regardless of whether such claim is made in connection with one or more Minnesota business investment companies.

7.1            Subd. 5. Requirements for continuance of certification. (a) To maintain its  
7.2            certification, a Minnesota business investment company must make qualified investments  
7.3            as follows:

7.4            (1) within two years after the allocation date, a Minnesota business investment  
7.5            company must invest an amount equal to at least 35 percent of its designated capital in  
7.6            qualified investments; and

7.7            (2) within three years after the allocation date, a Minnesota business investment  
7.8            company must invest an amount equal to at least 50 percent of its designated capital  
7.9            in qualified investments.

7.10           (b) Prior to making a proposed qualified investment in a specific business, a  
7.11           Minnesota business investment company must request from the department a written  
7.12           determination that the proposed investment will qualify as a qualified investment in  
7.13           a qualified business. The department must notify a Minnesota business investment  
7.14           company within ten business days from the receipt of a request of its determination and an  
7.15           explanation thereof. If the department fails to notify the Minnesota business investment  
7.16           company of its determination within the ten-business-day period, the proposed investment  
7.17           must be deemed to be a qualified investment in a qualified business. If the department  
7.18           determines that the proposed investment does not meet the definition of a qualified  
7.19           investment or qualified business, or both, the department may nevertheless consider the  
7.20           proposed investment a qualified investment and, if necessary, the business a qualified  
7.21           business, if the department determines that the proposed investment will further state  
7.22           economic development.

7.23           (c) All designated capital not invested in qualified investments by a Minnesota  
7.24           business investment company shall be held or invested in such manner as the Minnesota  
7.25           business investment company, in its discretion, deems appropriate. Designated capital  
7.26           and proceeds of designated capital returned to a Minnesota business investment company  
7.27           after being originally invested in qualified investments may be invested again in qualified  
7.28           investments and such investment shall count toward the requirements of paragraph (a)  
7.29           of this subdivision with respect to making investments of designated capital in qualified  
7.30           investments.

7.31           (d) If, within four years after its allocation date, a Minnesota business investment  
7.32           company has not invested at least 60 percent of its designated capital in qualified  
7.33           investments, neither the Minnesota business investment company nor its affiliates shall  
7.34           be permitted to receive management fees.

7.35           (e) If, within six years after its allocation date, a Minnesota business investment  
7.36           company has not invested at least 100 percent of its designated capital in qualified

investments, neither the Minnesota business investment company nor its affiliates shall be permitted to receive management fees.

(f) A Minnesota business investment company may not invest more than 15 percent of its designated capital in any one qualified business without the specific approval of the department.

(g) For purposes of calculating the above investment percentage thresholds of paragraph (a) of this subdivision, the cumulative amount of all qualified investments made by a Minnesota business investment company from the allocation date must be considered.

**Subd. 6. Minnesota business investment company reporting requirements.**

(a) Each Minnesota business investment company must report the following to the department:

(1) as soon as practicable after the receipt of designated capital:

(i) the name of each participating investor from which the designated capital was received, including such participating investor's insurance tax identification number;

(ii) the amount of each participating investor's investment of designated capital; and

(iii) the date on which the designated capital was received;

(2) on an annual basis, on or before January 31 of each year:

(i) the amount of the Minnesota business investment company's remaining uninvested designated capital at the end of the immediately preceding taxable year;

(ii) whether or not the Minnesota business investment company has invested more than 15 percent of its total designated capital in any one business;

(iii) all qualified investments that the Minnesota business investment company has made in the previous taxable year, including the number of employees of each qualified business in which it has made investments at the time of such investment, and as of December 1 of the preceding taxable year; and

(iv) for any qualified business where the Minnesota business investment company no longer has an investment, the Minnesota business investment company must provide employment figures for that company as of the last day before the investment was terminated;

(3) other information that the department may reasonably request that will help the department ascertain the impact of the Minnesota business investment company program both directly and indirectly on the economy of the state of Minnesota including, but not limited to, the number of jobs created by qualified businesses that have received qualified investments;

(4) within 90 days of the close of its fiscal year, annual audited financial statements of the Minnesota business investment company, which must include the opinion of an independent certified public accountant; and

(5) an "agreed upon procedures report" or equivalent regarding the operations of the Minnesota business investment company.

(b) A Minnesota business investment company must pay to the department an annual, nonrefundable certification fee of \$5,000 on or before April 1, or \$10,000 if later. No annual certification fee is required if the payment date for such fee is within six months of the date a Minnesota business investment company is first certified by the department.

(c) Upon satisfying the requirements of subdivision 5, paragraph (a), clause (2), a Minnesota business investment company shall provide the notice to the department and the department shall, within 60 days of receipt of such notice, either confirm that the Minnesota business investment company has satisfied the requirements of subdivision 5, paragraph (a), clause (2), as of such date or provide notice of noncompliance and an explanation of any existing deficiencies. If the department does not provide such notification within 60 days, the Minnesota business investment company shall be deemed to have met the requirements of subdivision 5, paragraph (a), clause (2).

Subd. 7. **Distributions.** A Minnesota business investment company may make qualified distributions at any time. In order for a Minnesota business investment company to make a distribution other than a qualified distribution to its equity holders, the cumulative amount of all qualified investments of the Minnesota business investment company must equal or exceed 100 percent of its designated capital.

Subd. 8. **Decertification.** (a) The department shall conduct an annual review of each Minnesota business investment company to determine if a Minnesota business investment company is abiding by the requirements of certification and to ensure that no investment has been made in violation of this section. The cost of the annual review must be paid by each Minnesota business investment company according to a reasonable fee schedule adopted by the department.

(b) Any material violation of this section, including any material misrepresentation made to the department in connection with the application process, may be grounds for decertification of a Minnesota business investment company and the disallowance of credits under section 297I.23, provided that in all instances the department shall provide notice to the Minnesota business investment company of the grounds of such proposed decertification and the opportunity to cure such violation before any such decertification shall become effective.

(c) Once a Minnesota business investment company has invested an amount cumulatively equal to 100 percent of its designated capital in qualified investments, provided that the Minnesota business investment company has met all other requirements under this section as of such date, the Minnesota business investment company shall no longer be subject to regulation by the department or the reporting requirements under subdivision 6. Upon receiving certification by a Minnesota business investment company that it has invested an amount equal to 100 percent of its designated capital, the department must notify a Minnesota business investment company within 60 days that it has or has not met the requirements, with a reason for the determination if it has not. If the department does not provide notification of deregulation within 60 days, the Minnesota business investment company shall be deemed to have met the requirements and shall be deemed to no longer be subject to regulation by the department.

(d) The department must send written notice of any decertification proceedings to the commissioner of revenue and to the address of each participating investor whose tax credit may be subject to recapture or forfeiture, using the address shown on the last filing submitted to the department.

Subd. 9. **Registration requirements.** All investments by participating investors for which tax credits are awarded under this section must be registered or specifically exempt from registration.

Subd. 10. **Reports to governor and legislature.** The department must make an annual report to the governor and the chairs and ranking minority members of the committees having jurisdiction over taxes and economic development. The report must include:

(1) the number of Minnesota business investment companies holding designated capital;

(2) the amount of designated capital invested in each Minnesota business investment company;

(3) the cumulative amount that each Minnesota business investment company has invested as of January 1, 2010, and the cumulative total each year thereafter;

(4) the cumulative amount of follow-on capital that the investments of each Minnesota business investment company have created in terms of capital invested in qualified businesses at the same time or subsequent to investments made by a Minnesota business investment company in such businesses by sources other than Minnesota business investment companies;

(5) the total amount of investment tax credits applied under this section for each year;

(6) the performance of each Minnesota business investment company with regard to the requirements for continued certification;

(7) the classification of the companies in which each Minnesota business investment company has invested according to industrial sector and size of company;

(8) the gross number of jobs created by investments made by each Minnesota business investment company and the number of jobs retained;

(9) the location of the companies in which each Minnesota business investment company has invested;

(10) those Minnesota business investment companies that have been decertified, including the reasons for decertification; and

(11) other related information as necessary to evaluate the effect of this section on economic development.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

**Sec. 2. [297L.23] MINNESOTA BUSINESS INVESTMENT COMPANY CREDIT.**

(a) A participating investor as defined under section 116J.665, subdivision 1, shall earn a credit against the tax imposed in this chapter equal to 80 percent of the participating investor's investment of designated capital in a Minnesota business investment company. Beginning January 1, 2013, a participating investor may claim the credit as follows:

(1) in tax year 2013, an amount equal to 20 percent of the participating investor's investment of designated capital;

(2) in tax year 2014, an amount equal to 20 percent of the participating investor's investment of designated capital;

(3) in tax year 2015, an amount equal to 20 percent of the participating investor's investment of designated capital; and

(4) in tax year 2016, an amount equal to 20 percent of the participating investor's investment of designated capital.

(b) The credit for any taxable year must not exceed the liability for tax under this chapter for such year. If the amount of the credit determined under this section for any taxable year exceeds the liability for tax under this chapter, the excess shall be an investment tax credit carryover to future taxable years without limitation. Credits may be used in connection with both final payments and prepayments of a participating investor's state premium tax liability.

(c) A participating investor claiming a credit under this section is not required to pay any additional retaliatory tax levied as a result of claiming the credit.

12.1 (d) A participating investor is not required to reduce the amount of tax pursuant to  
12.2 the state premium tax liability included by the participating investor in connection with  
12.3 ratemaking for any insurance contract written in this state because of a reduction in the  
12.4 participating investor's tax liability based on the tax credit allowed under this section.

12.5 (e) If the taxes paid by a participating investor with respect to its state premium  
12.6 tax liability constitute a credit against any other tax that is imposed by this state, the  
12.7 participating investor's credit against the other tax shall not be reduced by virtue of the  
12.8 reduction in the participating investor's tax liability based on the tax credit allowed  
12.9 under this section.

12.10 (f) Final decertification of Minnesota business investment company under section  
12.11 116J.665 may result in the disallowance and the recapture of the credit allowed under this  
12.12 section. The amount to be disallowed and recaptured must be assessed as follows:

12.13 (1) decertification of a Minnesota business investment company within two years of  
12.14 its allocation date and prior to meeting the requirements of section 116J.665, subdivision  
12.15 5, paragraph (a), clause (1), shall result in the disallowance of all of the credits allowed  
12.16 under this section;

12.17 (2) decertification of Minnesota business investment company that has already met  
12.18 the requirements of section 116J.665, subdivision 5, paragraph (a), clause (1), shall not  
12.19 cause the disallowance of any credits allowed under this section nor the recapture of any  
12.20 portion of the credits that was previously taken.

12.21 (g) A participating investor must not transfer, agree to transfer, sell, or agree to  
12.22 sell the credit under this section until 180 days from the date on which the participating  
12.23 investor invested designated capital. After 180 days from the date of investment, a  
12.24 participating investor, or subsequent transferee, may transfer credits based upon rules  
12.25 adopted by the department to facilitate such transfers. Any transfer or sale of the credits  
12.26 does not affect the time schedule for claiming the credit. Any tax credits recaptured  
12.27 under this section remain the liability of the participating investor that actually applied  
12.28 the credit towards its tax liability.

12.29 **EFFECTIVE DATE.** This section is effective for taxable years beginning after  
12.30 December 31, 2009.