

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4259**

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

[Originating in the Committee on Finance, February

10, 2022]



1 A BILL to amend the Code of West Virginia 1931, as amended, by adding thereto a new article,  
2 designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, §31-  
3 15D-7, §31-15D-8, §31-15D-9, §31-15D-10, §31-15D-11, §31-15D-12, §31-15D-13, §31-  
4 15D-14, §31-15D-15, §31-15D-16, §31-15D-17, §31-15D-18, §31-15D-19, §31-15D-20,  
5 and §31-15D-21, all relating to promoting investment and future growth in small  
6 businesses in West Virginia; creating the Small Business Jumpstart Act; defining terms;  
7 establishing the transferability of tax credits; establishing the application requirements for  
8 small business growth funds; establishing process for approval of the application;  
9 providing grounds for the denial of an application; allowing submission of additional  
10 information to complete an application following denial; establishing process for  
11 Department of Economic Development to notify applicant of approval; creating duties of  
12 the fund following approval of application; establishing how an approval may lapse;  
13 providing for a tax credit against an entity's state insurance premium tax liability; limiting  
14 amount of tax credit; providing for the carryforward of tax credits; prohibiting assignments  
15 of tax credit; providing notice to Insurance Commissioner; establishing that entity  
16 participating in program not required to pay retaliatory tax; establishing when revocation  
17 of tax credit occurs; requiring reporting by small business growth funds; requiring small  
18 business growth fund pay fee to Department; establishing process for exiting the program;  
19 clarifying that Department cannot revoke tax credit following the fund's exit; and allowing  
20 for Department to provide opinions to small business growth fund regarding investment of  
21 a small business concern.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 15D. WEST VIRGINIA SMALL BUSINESS JUMPSTART ACT.**

**§31-15D-1. Title.**

1 The provisions of this article shall be known as, and may be cited as, the "West Virginia  
2 Small Business Jumpstart Act".

**§31-15D-2. Definitions.**

1           (a) Any term used in this article has the meaning ascribed by this section unless a different  
2 meaning is clearly required by the context of its use or by definition in this article.

3           (b) For purposes of this article, the term:

4           (1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries,  
5 controls, is controlled by, or is under common control with another person. For the purposes of  
6 this division, a person is "controlled by" another person if the controlling person holds, directly or  
7 indirectly, the majority voting or ownership interest in the controlled person or has control over the  
8 day-to-day operations of the controlled person by contract or by law.

9           (2) "Border county" means a county in this state that borders another state.

10           (3) "Closing date" means the date on which a small business growth fund has collected all  
11 of the amounts specified by §31-15D-9 of this code.

12           (4) "Credit-eligible capital contribution" means an investment of cash by a person subject  
13 to the tax imposed by §33-3-14, §33-3-14a, §33-3-15, §33-3-16, or §33-3-17 of this code in a  
14 small business growth fund that equals the amount specified on a notice of tax credit allocation  
15 issued by the Department under §31-15D-5 of this code. For the investment to be deemed a  
16 "credit-eligible capital contribution," it must purchase an equity interest in the fund or purchase, at  
17 par value or premium, a debt instrument issued by the fund that meets all of the following criteria:

18           (A) The debt instrument must have an original maturity date of at least five years after the  
19 date of issuance;

20           (B) The debt instrument must have a repayment schedule and amortization period no less  
21 than five years; and

22           (C) The debt instrument must have no interest, distribution, or payment features  
23 dependent on the fund's profitability or the success of the fund's growth investments.

24           (5) "Department" means the West Virginia Department of Economic Development as  
25 provided in §5B-2-1 of this code;

26 (6) “Full-time equivalent employee” means the quotient obtained by dividing the total  
27 number of hours for which employees were compensated for employment over the preceding 12  
28 month period by 2,080;

29 (7) “Growth investment” means any capital or equity investment in a small business  
30 concern or any loan to a small business concern with a stated maturity of at least one year;

31 (8) “Insurance Commissioner” or “Commissioner” means the Insurance Commissioner of  
32 West Virginia or his or her designee as provided in §33-2-1 of this code;

33 (9) “Investment authority” means the amount stated on the notice issued under §31-15D-  
34 8 of this code approving the small business growth fund. At least 64 percent of a small business  
35 growth fund’s investment authority must consist of credit-eligible capital contributions;

36 (10) “Investor allocation” means the allocation of tax credits to insurance companies  
37 pursuant to §31-15D-8 of this code;

38 (11) “Small Business Concern” means any business that has its principal business  
39 operations in this state and fewer than 200 employees. A business’s “principal business  
40 operations” are in this state if at least 80 percent of the business’s employees reside in this state,  
41 the individuals who receive 80 percent of the business’s payroll reside in this state, or the business  
42 has agreed to use the proceeds of a growth investment to relocate at least 80 percent of its  
43 employees to this state or pay at least 80 percent of its payroll to individuals residing in this state.  
44 For the purpose of growth investments a business’s “principal business operations” are also in  
45 this state if it is headquartered in a border county and at least twenty-five per cent of the business’s  
46 employees reside in this state, the individuals who receive twenty-five per cent of the business’s  
47 payroll reside in this state, or the business has agreed to use the proceeds of a growth investment  
48 to relocate at least twenty-five per cent of its employees to this state or pay at least twenty-five  
49 per cent of its payroll to individuals residing in this state. An out-of-state business that agrees to  
50 relocate or hire new employees using the proceeds of a growth investment to establish principal  
51 business operations in this state qualifies as a small business concern provided it satisfies this

52 definition within 180 days after receiving the growth investment, unless the Department agrees to  
53 a later date. The amount of growth investments that a small business recovery fund may count  
54 with respect to a small business concern, including any amount invested in an affiliate of the small  
55 business concern, may not exceed \$5 million;

56 (12) “Small Business Growth Fund” means an entity approved by the Department as a  
57 small business growth fund;

58 (13) “State premium tax liability” means any liability incurred by any entity under §33-3-  
59 14, §33-3-14a, §33-3-15, §33-3-16, or §33-3-17 of this code: *Provided*, That if the tax liability  
60 imposed under these sections is eliminated or reduced, the term “state premium tax liability” shall  
61 also include any tax liability imposed by this state on an insurance company or other person that  
62 had premium tax liability under the laws of this state for the purpose of making up tax revenue  
63 lost by the state as a result of the elimination or reduction of the taxes imposed under these  
64 sections: *Provided, however*, That the issuance of tax credits pursuant to §33-3-14e of this code  
65 shall in no way affect the funding of any fire department or volunteer fire department that receives  
66 any moneys from revenues generated by any of the taxes for which credits are issued pursuant  
67 to §33-3-14e of this code.

**§31-15D-3. Transferability.**

1 No tax credit earned under this article is transferrable to any entity other than an affiliate  
2 of the entity who originally earned the tax credit, which is also subject to state premium tax liability,  
3 nor are tax credits earned under this article saleable on the open market.

**§31-15D-4. Small business growth fund application.**

1 The Department shall begin accepting applications on July 1, 2022, from entities seeking  
2 approval as small business growth funds. An application must include:

3 (1) The total investment authority sought by the applicant under the applicant’s business  
4 plan;

5           (2) Evidence sufficient to prove to the Department's satisfaction that, as of the date the  
6 applicant submits the application:

7           (A) The applicant or affiliates of the applicant have invested, in the aggregate, at least  
8 \$125 million in nonmetropolitan (rural) counties as defined by the U.S. Office of Management and  
9 Budget; and

10           (B) At least one principal in a rural business investment company licensed under 7 U.S.C.  
11 Section 2009cc et seq. or a small business investment company licensed under 15 U.S.C. Section  
12 681 is, or who has been, an officer or employee of the applicant or of an affiliate of the applicant  
13 for at least four years prior to the date the application is submitted;

14           (3) A copy of the rural business investment company license or small business investment  
15 company license described by paragraph (B), subdivision (2) of this subsection;

16           (4) A business plan that includes a revenue impact assessment that:

17           (A) Projects state and local tax revenue to be generated by the applicant's proposed  
18 growth investments; and

19           (B) Is prepared by a nationally recognized third party independent economic forecasting  
20 firm using a REMI® or IMPLAN® dynamic economic forecasting model that analyzes the  
21 applicant's business plan for the 10-year period following the date the applicant submits the  
22 application and demonstrates a minimum 1:1 return on investment to the state over the life of the  
23 fund;

24           (5) A signed certificate from an authorized officer of each committed investor stating the  
25 amount of credit-eligible capital contributions the investor commits to making; and

26           (6) A nonrefundable application fee of \$5,000.

**§31-15D-5. Small business growth fund determination.**

1           (a) Within 30 days of receipt of a completed application containing the information set forth  
2 in §31-15D-4 of this code the Department shall grant or deny the application in full or in part. The

3 Department shall make application determinations in the order in which applications are received  
4 and shall consider applications received on the same day to be received simultaneously.

5 (b) The Department may approve not more than \$125 million of investment authority and  
6 \$80 million of credit-eligible capital contributions under this code.

7 (c) If a request for investment authority exceeds the limit under subsection (b) of this  
8 section, the Department shall reduce the investment authority and the credit-eligible capital  
9 contributions for that application as necessary to avoid exceeding the limit. If multiple applications  
10 received on the same day request a combined investment authority that exceeds the limit under  
11 subsection (b) of this section, the Department shall proportionally reduce the investment authority  
12 and the credit-eligible capital contributions for those applications as necessary to avoid exceeding  
13 the limit. The Department may not reduce an applicant's investment authority for any reason other  
14 than as authorized by this subsection.

**§31-15D-6. Grounds for denial.**

1 If the Department denies any part of the application, the Department shall inform the  
2 applicant of the grounds for the denial. The Department may deny an application under this  
3 section only if:

4 (1) The application is incomplete, or the application fee is not paid in full;

5 (2) The applicant fails to satisfy the requirements of §31-15D-4 of this code;

6 (3) The revenue impact assessment submitted under §31-15D-4 of this code does not  
7 demonstrate that the applicant's business plan will result in a positive economic impact on  
8 combined state and local revenue during the 10-year period covered by the assessment that  
9 exceeds the cumulative amount of tax credits that would be issued to the applicant's investors  
10 under §31-15D-8 of this code if the application were approved;

11 (4) The credit-eligible capital contributions described in affidavits submitted under §31-  
12 15D-4 of this code do not equal at least 64 percent of the total amount of investment authority  
13 sought under the applicant's business plan; or



14           (5) The Department has already approved the maximum amount of investment authority  
15 allowed §31-15D-5 of this code.

**§31-15D-7. Submission of additional information following denial.**

1           (a) If the Department denies an application the applicant may, not later than the 15th day  
2 after the date the Department provides notice of denial, provide additional information to the  
3 Department to complete, clarify, or cure defects in the application identified by the Department.

4           (b) If the applicant completes, clarifies, or cures the defects in its application during the  
5 period prescribed by subsection (a) of this section, the application is considered complete as of  
6 the original submission date.

7           (c) If the applicant fails to complete, clarify, or cure the defects in its application during the  
8 period prescribed by subsection (a) of this section, the application is finally denied. An applicant  
9 who wishes to reapply must resubmit an application in full, which shall be assigned a new  
10 submission date.

11           (d) The Department shall review and reconsider an application described by subsection  
12 (a) of this section for which the applicant provides additional information not later than the 30th  
13 day after the date the applicant provides the information. The Department shall consider that  
14 application before any pending applications submitted after the date that application was originally  
15 submitted.

**§31-15D-8. Certification.**

1           On approval of an application, the Department shall provide:

2           (1) Written notice to the applicant of the applicant's approval as a small business growth  
3 fund, including the amount of the fund's investment authority; and

4           (2) A tax credit certificate to each investor whose certificate was included in the application  
5 and include on the certificate the amount of the investor's credit-eligible capital contribution and  
6 utilization schedule of the tax credits allocated to that investor as a result of its credit-eligible  
7 capital contribution.

**§31-15D-9. Duties of small business growth fund following approval.**

1           (a) A small business growth fund shall perform the following duties not later than the 60th  
2 day after the date the fund receives the approval notice under §31-15D-8 of this code:

3           (1) (A) Collect the credit-eligible capital contribution from each investor issued a tax credit  
4 certificate under §31-15D-8 of this code; and

5           (B) Collect one or more investments of cash that, when added to the contributions  
6 collected under paragraph (A) of this subdivision, equal the fund's investment authority; and

7           (2) Not later than the 65th day after the date the fund receives the approval notice under  
8 §31-15D-8 of this code, send to the Department documentation sufficient to prove that the fund  
9 has collected the amounts described in subdivision (1) of this subsection.

10           (b) At least 10 percent of the small business recovery fund's investment authority must  
11 consist of equity investments contributed directly or indirectly by affiliates of the fund, including  
12 employees, officers, and directors of those affiliates.

**§31-15D-10. Lapse of approval.**

1           (a) If a small business growth fund fails to comply with the requirements of §31-15D-9 of  
2 this code, the fund's approval lapses and the corresponding investment authority described by  
3 §31-15D-5 of this code does not count toward the limit prescribed by §31-15D-5 of this code.

4           (b) The Department shall first award lapsed investment authority pro rata to each small  
5 business growth fund whose requested investment authority was reduced under §31-15D-5 of  
6 this code. The small business growth fund may allocate the investment authority awarded under  
7 this subsection to the fund's investors in the fund's discretion. The Department may award any  
8 remaining investment authority to new applicants.

9           (c) The Department must notify the Commissioner of the names of the entities that are  
10 eligible to use tax credits provided under §31-15D-8 of this code, pursuant to an allocation of tax  
11 credits or change in allocation of tax credits.

**§31-15D-11. Eligibility for credit.**

1        An entity is eligible for a credit against the entity's state insurance premium tax liability in  
2 the amount and under the conditions and limitations provided by this article.

**§31-15D-12. Qualification.**

1        An entity is eligible for a credit for a tax year if:

2        (1) The entity holds a tax credit certificate issued under §31-15D-8 of this code and the  
3 fourth, fifth, sixth, or seventh anniversary of the closing date in connection with which the  
4 certificate was issued occurs during the tax year; or

5        (2) The entity holds a tax credit certificate issued under §31-15D-8 of this code in  
6 connection with which a credit under this code has not previously been claimed.

**§31-15D-13. Amount of credit; limitation.**

1        (a) The total amount of tax credits that can be utilized is capped at \$20 million per annum  
2 during years four, five, six, and seven of the program. The Department shall not authorize more  
3 than \$80 million in tax credits for the life of the program.

4        (b) The total credit claimed for a tax year, including the amount of any carryforward under  
5 §31-15D-14 of this code may not exceed the amount of state insurance premium tax liability due  
6 for the entity for the tax year after applying all other applicable tax credits.

**§31-15D-14. Carryforward.**

1        If an entity is eligible for a credit that exceeds the limitation under §31-15D-13 of this code,  
2 the entity may carry the unused credit forward and apply the credit to a subsequent tax report.

**§31-15D-15. Assignment prohibited.**

1        (a) Except as provided by subsection (b) of this section, an entity may not convey, assign,  
2 or transfer the credit allowed under this article to another entity.

3        (b) An entity may convey, assign, or transfer the credit allowed under this article to an  
4 affiliate of the entity that is subject to state insurance premium tax liability.

**§31-15D-16. Retaliatory tax.**

1           An entity claiming a credit under this article is not required to pay any additional retaliatory  
2 tax levied under §33-3-16 of this code as a result of claiming that credit.

**§31-15D-17. Revocation of tax credit certification.**

1           (a) The Department shall revoke a tax credit certificate issued under §31-15D-8 of this  
2 code in connection with an investment in a small business growth fund if, before the fund exits  
3 the program under §31-15D-19 of this code, the fund:

4           (1) Fails to invest 100 percent of the fund's investment authority in growth investments in  
5 this state on or before the third anniversary of the closing date;

6           (2) Subject to subdivision (1) of this subsection, fails to maintain growth investments equal  
7 to 100 percent of the fund's investment authority until the seventh anniversary of the closing date.

8           For the purposes of this subdivision, an investment is maintained even if the investment is sold  
9 or repaid so long as the fund reinvests an amount equal to the capital returned or recovered by  
10 the fund from the original investment, exclusive of any profits realized, in other growth investments  
11 in this state within one year of the receipt of such capital;

12           (3) Makes a distribution or payment that results in the fund having less than 100 percent  
13 of its investment authority;

14           (A) Invested in growth investments in this state; or

15           (B) Available for investment in growth investments and held in:

16           (i) Cash;

17           (ii) United States Treasury securities;

18           (iii) Bonds or notes issued by this state or an agency or political subdivision of this state;

19           or

20           (iv) A deposit account with a depository institution headquartered or chartered in this state;

21 (4) Makes a growth investment in a small business concern that directly or indirectly  
22 through an affiliate owns, has the right to acquire an ownership interest in, makes a loan to, or  
23 makes an investment in the fund, an affiliate of the fund, or an investor in the fund; or

24 (5) Makes a growth investment in a noneligible small business concern.

25 (b) Subdivision (4), subsection (a) of this section does not apply to investments in publicly  
26 traded securities by a small business concern or an owner or affiliate of the small business  
27 concern. For purposes of subdivision (4), subsection (a) of this section, a small business growth  
28 fund is not considered an affiliate of an eligible small business concern solely as a result of the  
29 fund's growth investment in the small business concern.

30 (c) The Department shall:

31 (1) Notify the Commissioner when the Department revokes a tax credit certificate; and

32 (2) Provide the Commissioner with lists of valid and revoked tax credit certificates.

33 (d) Before revoking a tax credit certificate under this section, the Department shall notify  
34 the small business growth fund of the reasons for the pending revocation.

35 (e) The small business growth fund may, not later than the 90th day after the date the  
36 notice is received, correct any violation outlined in the notice to the satisfaction of the authority  
37 and avoid revocation of the tax credit certificate.

38 (f) If a tax credit certificate is revoked under this section, the associated investment  
39 authority does not count toward the limit on total investment authority described in §31-15D-5 of  
40 this code.

41 (g) The Department shall first award revoked investment authority pro rata to each small  
42 business growth fund whose requested investment authority was reduced under §31-15D-5 of  
43 this code. The Department may award any remaining investment authority to new applicants.

**§31-15D-18. Annual Reporting and Fees.**

1 Small business growth funds shall submit a report to the Department on or before the fifth  
2 business day after each anniversary of the closing date until the fund has exited the program

3 under §31-15D-19 of this code. The report must document the small business growth fund's  
4 investments and include:

5 (1) A bank statement showing each growth investment;

6 (2) The name, location, and industry of each business receiving a growth investment,  
7 including either the determination notice described by §31-15D-21 of this code or evidence that  
8 the business qualified as a small business concern at the time the investment was made;

9 (3) The number of employment positions that existed at each small business concern  
10 business on the date the business received the growth investment;

11 (4) The number of new full-time equivalent employees resulting from each of the fund's  
12 growth investments made or maintained in the preceding calendar year;

13 (5) Any other information required by the Department; and

14 (6) Each growth fund shall pay the Department an annual fee equal to 0.05 percent of its  
15 investment authority with each annual report submission and concluding upon program exit.

**§31-15D-19. Application to Exit Program.**

1 (a) On or after the seventh anniversary of the closing date, a small business growth fund  
2 may apply to the Department to exit the program and no longer be subject to regulation under this  
3 code. A small business growth fund shall include with its application to exit, a revenue impact  
4 assessment of the small business growth fund.

5 (b) The Department shall respond to the application not later than the 30th day after  
6 receipt.

7 (c) A small business growth fund is eligible to exit the program under this section if no tax  
8 credit certificates related to investments in the fund have been revoked, and the fund has not  
9 received any revocation notice that has not been corrected under §31-15D-17 of this code.

10 (d) The Department may not unreasonably deny an application under this section. The  
11 Department shall give the small business growth fund notice of a denial and include in the notice  
12 the reasons for the denial.

**§31-15D-20. No Revocation Following Exit.**

1           The Department may not revoke a tax credit certificate related to an investment in a small  
2 business growth fund after the fund's exit from the program.

**§31-15D-21. Evaluation of Proposed Small Business Investment.**

1           (a) A small business growth fund, before making a growth investment, may request from  
2 the Department a written opinion as to whether the business in which the fund proposes to invest  
3 qualifies as a small business concern.

4           (b) Not later than the 15th business day after receiving the request, the Department shall  
5 notify the small business growth fund of its determination.

6           (c) If the Department fails to notify the small business growth fund of its determination on  
7 or before the 15th business day after receiving the request, the business in which the fund  
8 proposes to invest is considered to be a small business concern for purposes of this article.