

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Chapter 9 of Title 2.2 a section numbered*
 3 *2.2-904.3, relating to small business investments; grants.*

4 [S 344]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That the Code of Virginia is amended by adding in Chapter 9 of Title 2.2 a section numbered**
 8 **2.2-904.3 as follows:**

9 *§ 2.2-904.3. Creation, administration, and management of the Small Business Investment Grant Fund.*

10 *A. As used in this section, unless the context requires a different meaning:*

11 *"Eligible investor" means an individual subject to the tax imposed by § 58.1-320. The term shall not*
 12 *include an individual who engages in the business of making debt or equity investments in private*
 13 *businesses, or to any person that would be allocated a portion of the grant under this section as a*
 14 *partner, shareholder, member, or owner of an entity that engages in such business.*

15 *"Fund" means the Small Business Investment Grant Fund.*

16 *"Pass-through entity" means the same as that term is defined in § 58.1-390.1.*

17 *"Qualified investment" means a cash investment in a qualified business in the form of equity or*
 18 *subordinated debt. However, an investment shall not be qualified if the taxpayer who holds such*
 19 *investment, or any of the taxpayer's family members, or any entity affiliated with such taxpayer, receives*
 20 *or has received compensation from the qualified business in exchange for services provided to such*
 21 *business as an employee, officer, director, manager, independent contractor, or otherwise in connection*
 22 *with or within one year before or after the date of such investment. For the purposes hereof,*
 23 *reimbursement of reasonable expenses incurred shall not be deemed to be compensation.*

24 *"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross*
 25 *revenues of no more than \$3 million in its most recent fiscal year, (ii) has its principal office or facility*
 26 *in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production*
 27 *in the Commonwealth, (iv) has not obtained during its existence more than \$3 million in aggregate*
 28 *gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans*
 29 *from national or state-chartered banking or savings and loan institutions, (v) has no more than 50*
 30 *employees who are employed within the Commonwealth, and (vi) has been designated as such by the*
 31 *Department pursuant to the provisions of this section.*

32 *"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited*
 33 *liability company that (i) by its terms required no repayment of principal for the first three years after*
 34 *issuance, (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other*
 35 *person, and (iii) is subordinated to all indebtedness and obligations of the issuer to national or*
 36 *state-chartered banking or savings and loan institutions.*

37 *B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or*
 38 *donations from public or private sources, there is hereby created in the state treasury a special*
 39 *nonreverting, permanent fund to be known as the Small Business Investment Grant Fund, to be*
 40 *administered by the Department. The Fund shall be established on the books of the Comptroller. Interest*
 41 *earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in*
 42 *the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund*
 43 *but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the*
 44 *form of grants pursuant to this section, shall be made by the State Treasurer on warrants issued by the*
 45 *Comptroller upon written request bearing the signature of the Director. Grants from the Fund shall only*
 46 *be made to applications pursuant to this section.*

47 *C. An eligible investor that makes a qualified investment in a small business on or after July 1,*
 48 *2012, but prior to January 1, 2015, that has been certified by the Department pursuant to subsection D*
 49 *shall be eligible for a grant in an amount equal to 10 percent of the qualified investment. An eligible*
 50 *investor may apply for a grant for each qualified investment that is made to one or more small*
 51 *businesses.*

52 *D. A small business shall apply with the Department to be certified as a small business in order to*
 53 *receive qualified investments eligible for the grant pursuant to this section and shall provide to the*
 54 *Department such information as the Department deems necessary to demonstrate that it meets the*
 55 *qualifications set forth in subsection A. A small business shall apply each year in order to be certified*
 56 *as a small business. No grant application shall be approved for an otherwise qualified investment in a*

57 *small business not first certified by the Department.*

58 *E. Any eligible investor applying for a grant pursuant to this section shall submit an application to*
59 *the Department. Alternatively, a small business may apply to the Department on behalf of an eligible*
60 *investor. The Department shall determine the amount of the grant allowable to the eligible investor for*
61 *the year.*

62 *F. Unless the eligible investor transfers the equity received in connection with a qualified investment*
63 *as a result of (i) the liquidation of the small business issuing such equity, (ii) the merger, consolidation,*
64 *or other acquisition of such business with or by a party not affiliated with such business, or (iii) the*
65 *death of the eligible investor, any eligible investor that fails to hold such equity for at least two years*
66 *shall forfeit the grant and shall pay the Department interest on the total allowed grant at the rate of*
67 *one percent per month, compounded monthly, from the date the grant was awarded to the taxpayer. The*
68 *Department shall deposit any amounts received under this subsection into the general fund of the*
69 *Commonwealth.*

70 *G. Grants shall be issued in the order that each completed eligible application is received by the*
71 *Department. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds*
72 *available in the Fund, such grants shall be paid in the next fiscal year in which funds are available.*

73 *H. An eligible investor shall not be awarded a grant pursuant to this section for any investment in a*
74 *small business for which the eligible investor has been allowed a tax credit pursuant to § 58.1-339.4.*

75 *I. The Department shall establish policies and procedures relating to (i) the certification of small*
76 *businesses, (ii) the application for grants, and (iii) the recapture of grant awards claimed with interest*
77 *in the event that the qualified investment is not held for the requisite period set forth in subsection F.*
78 *Such policies and procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).*