

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 35

*An Act to amend and reenact § 2.2-1616 of the Code of Virginia, relating to the Small Business Investment Grant Fund; recapture of awards.*

[H 2347]

Approved February 19, 2019

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

**1. That § 2.2-1616 of the Code of Virginia is amended and reenacted as follows:**

**§ 2.2-1616. Creation, administration, and management of the Small Business Investment Grant Fund.**

A. As used in this section:

"Authority" means the Virginia Small Business Financing Authority.

"Eligible investor" means an individual subject to the tax imposed by § 58.1-320 or a special purpose entity established for the purpose of making investments for an individual. "Eligible investor" does not include an individual who engages in the business of making debt or equity investments in private businesses, or any person that would be allocated a portion of the grant under this section as a partner, shareholder, member, or owner of an entity that engages in such business.

"Fund" means the Small Business Investment Grant Fund.

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

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt.

"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross revenues of no more than \$5 million in its most recent fiscal year; (ii) has its principal office or facility in the Commonwealth; (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth; (iv) has not obtained during its existence more than \$5 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from national or state-chartered banking or savings and loan institutions; (v) has no more than 50 employees who are employed within the Commonwealth; and (vi) has been designated as such by the Authority pursuant to the provisions of this section.

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

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

C. An eligible investor that makes a qualified investment in a small business on or after July 1, ~~2016~~ 2019, but prior to January 1, ~~2019~~ 2022, that has been certified by the Authority pursuant to subsection D shall be eligible for a grant in an amount equal to the lesser of 50 percent of the qualified investment or \$50,000. An eligible investor may apply for a grant for each qualified investment that is made to one or more small businesses not to exceed a total grant allocation from the Fund of \$250,000 per eligible investor.

D. A small business shall apply with the Authority to receive qualified investments eligible for the grant pursuant to this section and shall provide to the Authority such information as the Authority deems necessary to demonstrate that it meets the qualifications set forth in subsection A.

E. Any eligible investor applying for a grant pursuant to this section shall submit an application to the Authority. The Authority shall determine the amount of the grant allowable to the eligible investor for the year.

F. *If an eligible investor is awarded a grant pursuant to this section and the small business in which the investment was made (i) relocates outside of the Commonwealth within two years of the award of the grant or (ii) closes within two years of the award of the grant as a result of a criminal conviction*

*on the part of any officer, director, manager, or general partner of such business relating to his involvement with the business, such investor shall forfeit the grant and refund such moneys to the Authority.*

~~Unless~~ *Additionally, unless* the eligible investor transfers the equity received in connection with a qualified investment as a result of (a) the liquidation of the small business issuing such equity; (b) the merger, consolidation, or other acquisition of such business with or by a party not affiliated with such business; or (c) the death of the eligible investor, any eligible investor that fails to hold such equity for at least two years shall forfeit the grant and shall pay the Authority interest on the total allowed grant at the rate of one percent per month, compounded monthly, from the date the grant was awarded to the taxpayer.

The Authority shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

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

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

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