

SECOND REGULAR SESSION

HOUSE BILL NO. 1593

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JONES (89) (Sponsor), TALBOY, TORPEY, BERRY, LAUER, ZERR, JONES (117), LONG, MCGHEE, FRAKER, RIDDLE, HOUGH, HINSON, BERNSKOETTER, SCHARNHORST, JONES (63), TAYLOR, HOLSMAN, CONWAY (27), HUMMEL, McCANN BEATTY, LAMPE, BROWN (50), CARTER, SCHUPP, CARLSON, SWEARINGEN, ANDERS, MORGAN, RIZZO, ELLINGTON AND McMANUS (Co-sponsors).

5419L.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to the Missouri Angel Investment Incentive Act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 348, RSMo, is amended by adding thereto two new sections, to be known as sections 348.273 and 348.274, to read as follows:

348.273. 1. This section and section 348.274 shall be known and may be cited as the "Missouri Angel Investment Incentive Act".

2. As used in this section and section 348.274, the following terms mean:

(1) "Cash investment", money or money equivalent in consideration for qualified securities;

(2) "Coordinator", the SBTDC home office;

(3) "Investor":

(a) A natural person who is an accredited investor or an owner of a permitted entity investor, who is of high worth, as defined in 17 CFR 230.501(a) as in effect on August 28, 2012; or

(b) An investor making an investment under any proposed amendment to the Securities Act of 1933, as amended. For the purposes of this section and section 348.274, a person who serves as an executive, officer, or employee of the business in which an

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 otherwise qualified cash investment is made is not an investor and such person shall not
15 qualify for the issuance of tax credits for such investment;

16 (4) "Owner", any natural person who is, directly or indirectly, a partner,
17 stockholder, or member in a permitted entity investor;

18 (5) "Permitted entity investor", any general partnership, limited partnership,
19 corporation that has in effect a valid election to be taxed as an S corporation under the
20 Internal Revenue Code of 1986, as amended, revocable living trust, or limited liability
21 company that has elected to be taxed as a partnership under the United States internal
22 revenue code, and that was established and is operated for the purpose of making
23 investments in other entities;

24 (6) "Qualified Missouri business", the Missouri businesses that are approved and
25 certified as qualified knowledge-based companies by the coordinator that meet at least one
26 of the following criteria:

27 (a) Any business owned by an individual;

28 (b) Any partnership, association, or corporation domiciled in Missouri; or

29 (c) Any corporation, even if a wholly owned subsidiary of a foreign corporation,
30 that does business primarily in Missouri or does substantially all of such business's
31 production in Missouri;

32 (7) "Qualified securities", a cash investment through any one or more forms of
33 financial assistance as provided in this subdivision and that have been approved in form
34 and substance by the coordinator. Forms of such financial assistance include:

35 (a) Any form of equity, such as:

36 a. A general or limited partnership interest;

37 b. Common stock;

38 c. Preferred stock, with or without voting rights, without regard to seniority
39 position, and whether or not convertible into common stock; or

40 d. Any form of subordinate or convertible debt, or both, with warrants or other
41 means of equity conversion attached; or

42 (b) A debt instrument, such as a note or debenture that is secured or unsecured,
43 subordinated to the general creditors of the debtor and requires no payments of principal,
44 other than principal payments required to be made out of any future profits of the debtor,
45 for at least a seven-year period after commencement of such debt instrument's term;

46 (8) "SBTDC", the Missouri small business and technology development center; and

47 (9) "Tax credit", a credit against the tax otherwise due under chapter 143,
48 excluding withholding tax imposed by sections 143.191 to 143.265, or otherwise due under
49 chapter 147, 148, or 153.

50 **3. The Missouri angel investment incentive act shall be administered by the**
51 **regional SBTDCs and the coordinator, with the primary goal of encouraging individuals**
52 **to provide seed-capital financing for emerging Missouri businesses engaged in the**
53 **development, implementation, and commercialization of innovative technologies, products,**
54 **and services. Each regional SBTDC shall establish a regional committee consisting of no**
55 **fewer than three but no more than five persons for the purpose of reviewing applications**
56 **from businesses requesting designation as a qualified Missouri business and allocating and**
57 **issuing tax credits to qualified investors that make cash investments in such qualified**
58 **Missouri businesses. The coordinator shall establish its own rules of procedure, including**
59 **the form and substance of applications to be used by each regional SBTDC and the criteria**
60 **to be considered by each regional SBTDC when evaluating a qualified Missouri business,**
61 **such applications and criteria to be not less than the minimum requirements set forth in**
62 **subsection 5 of this section.**

63 **4. (1) A tax credit shall be allowed for an investor's cash investment in the qualified**
64 **securities of a qualified Missouri business. The credit shall be in a total amount equal to**
65 **fifty percent of such investor's cash investment in any qualified Missouri business, subject**
66 **to the limitations set forth in this subsection. This tax credit may be used in its entirety in**
67 **the taxable year in which the cash investment is made except that no tax credit shall be**
68 **allowed in a year prior to the year beginning January 1, 2012. If the amount by which that**
69 **portion of the credit allowed by this section exceeds the investor's liability in any one**
70 **taxable year, beginning in the calendar year 2012, the remaining portion of the credit may**
71 **be carried forward until the total amount of the credit is used. If the investor is a**
72 **permitted entity investor, the credit provided by this section shall be claimed by the owners**
73 **of the permitted entity investor in proportion to their cash investment in the permitted**
74 **entity investor.**

75 **(2) A cash investment in a qualified security shall be deemed to have been made on**
76 **the date of acquisition of the qualified security, as such date is determined in accordance**
77 **with the provisions of the Internal Revenue Code of 1986, as amended.**

78 **(3) The director of the department of revenue shall not allow tax credits of more**
79 **than fifty thousand dollars for a single qualified Missouri business or a total of two**
80 **hundred fifty thousand dollars in tax credits for a single year per investor who is a natural**
81 **person or owner of a permitted entity investor. No tax credits authorized by this section**
82 **and section 348.274 shall be allowed for any cash investments in qualified securities for any**
83 **year beginning after December 31, 2022. The total amount of tax credits which may be**
84 **allowed under this section shall not exceed six million dollars during the tax year 2012 and**

85 each tax year thereafter. The balance of unissued tax credits may be carried over for
86 issuance in future years until December 31, 2022.

87 (4) The tax credits shall be administered by the regional SBTDCs. At the beginning
88 of each calendar year, the coordinator shall equally designate the tax credits available
89 during that year to each regional SBTDC. At the beginning of each calendar quarter, the
90 coordinator shall allocate to each regional SBTDC one-fourth of the total tax credits
91 designated to such regional SBTDC for the calendar year such that the regional SBTDC
92 can allocate tax credits to qualified Missouri businesses and issue tax credits to qualified
93 investors for cash investments in such qualified Missouri businesses during that calendar
94 quarter.

95 (5) At the end of each calendar quarter, each regional SBTDC shall report to the
96 coordinator any unallocated tax credits for the preceding quarter. Such report shall meet
97 the requirements set forth in section 348.274. The coordinator shall aggregate all such tax
98 credits and reallocate them equally among the regional SBTDCs as soon as possible during
99 the next consecutive calendar quarter. Each regional SBTDC shall receive such
100 reallocation in addition to the new allocation of designated tax credits for such quarter.

101 (6) During the fourth calendar quarter, a regional SBTDC in need of additional tax
102 credits for transactions closing in the fourth calendar quarter may request that another
103 regional SBTDC with unallocated tax credits permit such unallocated tax credits to be
104 allocated by the requesting SBTDC. No regional SBTDC shall be required to grant such
105 request. When a granting SBTDC transfers the allocation of the unallocated tax credits
106 to a requesting SBTDC under this subdivision, the granting SBTDC shall provide to the
107 requesting SBTDC a written confirmation authorizing such transfer, the granting SBTDC
108 shall include a copy of such written confirmation in its reports provided under section
109 348.274, and the requesting SBTDC shall include a copy of such written confirmation in
110 its reports provided under section 348.274.

111 5. (1) Before an investor may be entitled to receive tax credits under this section
112 and section 348.274, such investor shall have made a cash investment in a qualified security
113 of a qualified Missouri business. The business shall have been approved by a regional
114 SBTDC as a qualified Missouri business before the date on which the cash investment was
115 made. To be designated as a qualified Missouri business, a business shall make application
116 to a regional SBTDC in accordance with the provisions of this section.

117 (2) The application by a business to a regional SBTDC shall be in the form and
118 substance as required by the coordinator, but shall include at least the following:

119 (a) The name of the business and certified copies of the organizational documents
120 of the business;

121 (b) A business plan, including a description of the business and the management,
122 product, market, and financial plan of the business;

123 (c) A statement of the potential economic impact of the enterprise, including the
124 number, location, and types of jobs expected to be created;

125 (d) A description of the qualified securities to be issued, the consideration to be
126 paid for the qualified securities, and the amount of any tax credits requested;

127 (e) A statement of the amount, timing, and projected use of the proceeds to be
128 raised from the proposed sale of qualified securities; and

129 (f) Such other information as the regional SBTDC or the coordinator may
130 reasonably request.

131 (3) The designation of a business as a qualified Missouri business shall be made by
132 the regional SBTDC, and such designation shall be renewed annually. A business shall be
133 so designated if the regional SBTDC determines, based upon the application submitted by
134 the business and any additional investigation the regional SBTDC shall make, that such
135 business meets the criteria established by the coordinator. Such criteria shall include at
136 least the following:

137 (a) The business shall not have had annual gross revenues of more than five million
138 dollars in the most recent tax year of the business;

139 (b) Businesses that are not bioscience businesses shall have been in operation for
140 less than five years, and bioscience businesses shall have been in operation for less than ten
141 years;

142 (c) The ability of investors in the business to receive tax credits for cash investments
143 in qualified securities of the business is beneficial, because funding otherwise available for
144 the business is not available on commercially reasonable terms;

145 (d) The business shall not have ownership interests including, but not limited to,
146 common or preferred shares of stock that can be traded via a public stock exchange before
147 the date that a qualifying investment is made;

148 (e) The business shall not be engaged primarily in any one or more of the following
149 enterprises:

150 a. The business of banking, savings and loan or lending institutions, credit or
151 finance, or financial brokerage or investments;

152 b. The provision of professional services, such as legal, accounting, or engineering
153 services;

154 c. Governmental, charitable, religious, or trade organizations;

155 d. The ownership, development brokerage, sales, or leasing of real estate;

156 e. Insurance;

- 157 **f. Construction or construction management or contracting;**
158 **g. Business consulting or brokerage;**
159 **h. Any business engaged primarily as a passive business, having irregular or**
160 **noncontiguous operations, or deriving substantially all of the income of the business from**
161 **passive investments that generate interest, dividends, royalties, or capital gains, or any**
162 **business arrangements the effect of which is to immunize an investor from risk of loss;**
163 **i. Any activity that is in violation of the law;**
164 **j. Any business raising money primarily to purchase real estate, land, or fixtures;**
165 **and**
166 **k. Any gambling related business;**
167 **(f) The business has a reasonable chance of success;**
168 **(g) The business has the reasonable potential to create measurable employment**
169 **within the region or this state, or both;**
170 **(h) The business has an innovative and proprietary technology, product, or service;**
171 **(i) The existing owners of the business and other founders have made or are**
172 **committed to make a substantial financial and time commitment to the business;**
173 **(j) The securities to be issued and purchased are qualified securities;**
174 **(k) The business has the reasonable potential to address the needs and**
175 **opportunities specific to the region or this state, or both;**
176 **(l) The business has made binding commitments to the regional SBTDC for**
177 **adequate reporting of financial data, including a requirement for an annual report, or, if**
178 **required by the regional SBTDC, an annual audit of the financial and operational records**
179 **of the business, the right of access to the financial records of the business, and the right of**
180 **the regional SBTDC to record and publish normal and customary data and information**
181 **related to the issuance of tax credits that are not otherwise determined to be trade or**
182 **business secrets; and**
183 **(m) The business shall satisfy all other requirements of this section and section**
184 **348.274.**
185 **(4) Notwithstanding the requirements of subdivision (3) of this subsection, a**
186 **business may be considered as a qualified Missouri business under the provisions of this**
187 **section and section 348.274 if such business falls within a standard industrial classification**
188 **code established by the coordinator.**
189 **(5) A qualified Missouri business shall have the burden of proof to demonstrate to**
190 **the regional SBTDC the qualifications of the business under this section.**

348.274. 1. (1) Each regional SBTDC is authorized to allocate tax credits to
2 **qualified Missouri businesses and then to issue tax credits to qualified investors in such**

3 qualified Missouri businesses. Such tax credits shall be awarded to those qualified
4 Missouri businesses which, as determined by the regional SBTDC, are most likely to
5 provide the greatest economic benefit to the region or the state, or both. The regional
6 SBTDC may allocate and issue whole or partial tax credits based on an assessment of the
7 qualified Missouri businesses. The regional SBTDC may consider numerous factors in
8 such assessment, including but not limited to, the quality and experience of the
9 management team, the size of the estimated market opportunity, the risk from current or
10 future competition, the ability to defend intellectual property, the quality and utility of the
11 business model, and the quality and reasonableness of financial projections for the
12 business.

13 (2) Each qualified Missouri business for which a regional SBTDC has authorized
14 the issuance of tax credits to the qualified investors of such qualified Missouri business
15 shall submit to the regional SBTDC a report before such tax credits are issued. Such
16 report shall include the following:

17 (a) The name, address, and tax payer identification number of each investor who
18 has made cash investment in the qualified securities of the qualified Missouri business;

19 (b) Proof of such investment, including copies of the securities purchase agreements
20 and cancelled checks or wire transfer receipts; and

21 (c) Any additional information as the regional SBTDC may reasonably require
22 under this section and section 348.273.

23 2. (1) The state of Missouri shall not be held liable for any damages to any investor
24 that makes an investment in any qualified security of a qualified Missouri business, any
25 business that applies to be designated as a qualified Missouri business and is turned down,
26 or any investor that makes an investment in a business that applies to be designated as a
27 qualified Missouri business and is turned down.

28 (2) Each qualified Missouri business shall have the obligation to notify the regional
29 SBTDC that issued the tax credits in a timely manner of any changes in the qualifications
30 of the business or in the eligibility of investors to claim a tax credit for cash investment in
31 a qualified security.

32 (3) The coordinator shall provide the information specified in subdivision (3) of
33 subsection 4 of this section to the department of revenue on an annual basis. The
34 coordinator shall conduct an annual review of the activities undertaken under this section
35 and section 348.273 to ensure that tax credits issued under this section and section 348.273
36 are issued in compliance with the provisions of this section and section 348.273 or rules and
37 regulations promulgated by each regional SBTDC or the coordinator with respect to this

38 section and section 348.273. The reasonable costs of the annual review shall be paid by the
39 coordinator according to a reasonable fee schedule adopted by the coordinator.

40 (4) If the coordinator determines that a business is not in substantial compliance
41 with the requirements of this section and section 348.273 to maintain its designation, the
42 coordinator, by written notice, may inform the business that such business will lose its
43 designation as a qualified Missouri business one hundred twenty days from the date of
44 mailing of the notice unless such business corrects the deficiencies and is once again in
45 compliance with the requirements for designation.

46 (5) At the end of the one hundred twenty-day period, if the qualified Missouri
47 business is still not in substantial compliance, the coordinator may send a notice of loss of
48 designation to the business, each regional SBTDC, the secretary of the department of
49 revenue and to all known investors in the business.

50 (6) A business may lose its designation as a qualified Missouri business under this
51 section and section 348.273 by moving its operations outside Missouri within ten years after
52 receiving financial assistance under this section and section 348.273.

53 (7) In the event that a business loses its designation as a qualified Missouri business,
54 such business shall be precluded from being issued any additional tax credits with respect
55 to the business, shall be precluded from being approved as a qualified Missouri business
56 and shall repay any financial assistance to the regional SBTDC, in an amount to be
57 determined by the regional SBTDC. Each qualified Missouri business that loses its
58 designation as a qualified Missouri business shall enter into a repayment agreement with
59 the regional SBTDC specifying the terms of such repayment obligation.

60 (8) Investors in a qualified Missouri business shall be entitled to keep all of the tax
61 credits properly issued to such investors under this section and section 348.273.

62 (9) The portions of documents and other materials submitted to any regional
63 SBTDC or the coordinator that contain trade secrets shall be kept confidential and shall
64 be maintained in a secured environment by the regional SBTDC and the coordinator, as
65 applicable. For the purposes of this section and section 348.273, such portions of
66 documents and other materials means any customer lists, any formula, compound,
67 production data, or compilation of information certain individuals within a commercial
68 concern using such portions of documents and other material means to fabricate, produce,
69 or compound an article of trade, or, any service having commercial value, which gives the
70 user an opportunity to obtain a business advantage over competitors who do not know or
71 use such service.

72 **(10) Each regional SBTDC and the coordinator may prepare and adopt procedures**
73 **concerning the performance of the duties placed upon each respective entity by this section**
74 **and section 348.273.**

75 **3. Any qualified investor who makes a cash investment in a qualified security of a**
76 **qualified Missouri business may transfer the tax credits such qualified investor may receive**
77 **under subsection 4 of section 348.273 to any natural person. Such transferee may claim**
78 **the tax credit against the transferee's Missouri income tax liability as provided in**
79 **subdivision (1) of subsection 4 of section 348.273, subject to all restrictions and limitations**
80 **set forth in this section and section 348.273. Only the full credit for any one investment**
81 **shall be transferred and this interest shall only be transferred one time. Documentation**
82 **of any tax credit transfer under this section shall be provided by the qualified investor in**
83 **the manner required by the coordinator.**

84 **4. (1) Each qualified Missouri business for which tax credits have been issued**
85 **under this section and section 348.273 shall report to the applicable regional SBTDC on**
86 **an annual basis, on or before February first. Such reports shall include the following:**

87 **(a) The name, address, and taxpayer identification number of each investor who**
88 **has made cash investment in the qualified securities of the qualified Missouri business and**
89 **has received tax credits for this investment during the preceding year;**

90 **(b) The amounts of these cash investments by each investor and a description of the**
91 **qualified securities issued in consideration of such cash investments; and**

92 **(c) Any additional information as the regional SBTDC or the coordinator may**
93 **reasonably require under this section and section 348.273.**

94 **(2) Each regional SBTDC shall report quarterly to the coordinator on the allocation**
95 **and issuance of the tax credits in the preceding calendar quarter. Such reports shall**
96 **include:**

97 **(a) The amount of applications the regional SBTDC received;**

98 **(b) The number and ratio of successful applications to unsuccessful applications;**

99 **(c) The amount of tax credits allocated but not issued in the previous quarter,**
100 **including what percentage was allocated to individuals and what percentage was allocated**
101 **to investment firms;**

102 **(d) The amount of tax credits issued in the previous quarter, including what**
103 **percentage was issued to individuals and what percentage was issued to investment firms;**

104 **(e) The amount of unallocated tax credits; and**

105 **(f) Such other information as reasonably agreed upon by each regional SBTDC and**
106 **the coordinator.**

107 **(3) Each regional SBTDC shall also report annually to the governor, the director**
108 **of the department of economic development, the senate committee on commerce, consumer**
109 **protection, energy and the environment, the house committee on economic development,**
110 **and any successor committees thereto, and to the coordinator, on or before April first, on**
111 **the allocation and issuance of the tax credits. Such reports shall include:**

112 **(a) The amount of tax credits issued in the previous fiscal year, including what**
113 **percentage was issued to individuals and what percentage was issued to investment firms;**

114 **(b) The types of businesses that benefitted from the tax credits;**

115 **(c) The amount of allocated but unissued tax credits and the information about the**
116 **unissued tax credits set forth in subdivision (2) of this subsection;**

117 **(d) Any aggregate job creation or capital investment in the region that resulted**
118 **from the use of the tax credits for a period of five years beginning from the date on which**
119 **the tax credits were awarded;**

120 **(e) The manner in which the purpose of this section and section 348.273 has been**
121 **carried out with regard to the region;**

122 **(f) The total cash investments made for the purchase of qualified securities of**
123 **qualified Missouri businesses within the region during the preceding year and cumulatively**
124 **since the effective date of this section and section 348.273;**

125 **(g) An estimate of jobs created and jobs preserved by cash investments made in**
126 **qualified Missouri businesses within the region;**

127 **(h) An estimate of the multiplier effect on the economy of the region of the cash**
128 **investments made under this section and section 348.273;**

129 **(i) Information regarding what businesses or which derived benefit from the tax**
130 **credits remained in the region, what businesses ceased business, what businesses were**
131 **purchased, and what businesses may have moved out-of-region or out-of-state and why.**

132 **(4) Any violation of the reporting requirements of this subsection by a qualified**
133 **Missouri business may be grounds for the loss of designation of such qualified Missouri**
134 **business, and such business that loses its designation as a qualified Missouri business shall**
135 **be subject to the restrictions upon loss of designation set forth in subsection 2 of this**
136 **section.**

137 **5. Sections 348.273 and 348.274 shall expire on December 31, 2022.**

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