

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for
2 Senate Bill No. 83, Pages 113-123, Sections 348.273 and 348.274, by deleting all of said sections
3 from the bill and inserting in lieu thereof, the following:
4

5 "348.273. 1. This section and section 348.274 shall be known and may be cited as the
6 "Missouri Angel Investment Incentive Act".

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

8 (1) "Cash investment", money or money equivalent contribution;

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

10 (3) "Investor":

11 (a) A natural person who is an accredited investor as defined in 17 CFR 230.501(a)(5) or
12 230.501(a)(6), as in effect on August 28, 2013; or

13 (b) A permitted entity investor who is an accredited investor as defined in 17 CFR
14 230.501(a)(8), as in effect on August 28, 2013; or

15 (c) A natural person or permitted entity investor making an investment who qualifies under
16 the Jumpstart Our Business Startups (JOBS) Act, Pub.L.No. 112-106, as in effect on August 23,
17 2013.

18
19 A person who serves as an executive, officer, or employee of the business in which an otherwise
20 qualified cash investment is made is not an investor, and such person shall not qualify for the
21 issuance of tax credits for such investment;

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

24 (5) "Permitted entity investor", any general partnership, limited partnership, corporation that
25 has in effect a valid election to be taxed as an S corporation under the Internal Revenue Code of
26 1986, as amended, revocable living trust, nonprofit corporation, or limited liability company that has
27 elected to be taxed as a partnership under the United States Internal Revenue Code of 1986, as
28 amended, and that was established and is operated for the purpose of making investments in other
29 entities;

30 (6) "Qualified knowledge-based company", a company based on the use of ideas and
31 information to provide innovative technologies, products, and services;

32 (7) "Qualified Missouri business", a Missouri business that is approved and certified as
33 qualified knowledge-based company by the regional SBTDC that meet at least one of the following
34 criteria:

35 (a) Any business owned by an individual;

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

37 (c) Any corporation, even if a wholly owned subsidiary of a foreign corporation, that does

Action Taken _____ Date _____

business primarily in Missouri or does substantially all of such business's production in Missouri;
 (8) "Qualified securities", a cash investment through any one or more forms of financial assistance as provided in this subdivision and that have been approved in form and substance by the coordinator. Forms of such financial assistance include:

- (a) Any form of equity, such as:
 - a. A general or limited partnership interest;
 - b. Common stock;
 - c. Preferred stock, with or without voting rights, without regard to seniority position, and whether or not convertible into common stock; or
 - d. Any form of subordinate or convertible debt, or both, with warrants or other means of equity conversion attached; or
- (b) A debt instrument, such as a note or debenture that is secured or unsecured, subordinated to the general creditors of the debtor and requiring no payments of principal, other than principal payments required to be made out of any future profits of the debtor, for at least a seven-year period after commencement of such debt instrument's term;
- (9) "SBTDC", the Missouri small business and technology development center; and
- (10) "Tax credit", a credit against the tax otherwise due under chapter 143, excluding withholding tax imposed by sections 143.191 to 143.265, or otherwise due under chapter 147, 148, or 153.

3. The Missouri angel investment incentive act shall be administered by the regional SBTDCs and the coordinator, with the primary goal of encouraging individuals to provide seed-capital financing for emerging Missouri businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services. Each regional SBTDC shall establish a regional committee consisting of no fewer than three but no more than five persons for the purpose of reviewing applications from businesses requesting designation as a qualified Missouri business and allocating the amount of available tax credits among the qualified investors that make cash investments in such qualified Missouri businesses. The coordinator shall establish its own rules of procedure, including the form and substance of applications to be used by each regional SBTDC and the criteria to be considered by each regional SBTDC when evaluating a qualified Missouri business. Such applications and criteria are to be not less than the minimum requirements set forth in subsection 5 of this section. The coordinator shall issue tax credits to qualified investors who make cash investments in qualified Missouri businesses that have been allocated available tax credits by a regional SBTDC.

4. (1) A tax credit shall be allowed for an investor's cash investment in the qualified securities of a qualified Missouri business. The credit shall be in a total amount equal to fifty percent of such investor's cash investment in any qualified Missouri business, subject to the limitations set forth in this subsection. This tax credit may be used in its entirety in the taxable year in which the cash investment is made, but no tax credit shall be allowed prior to the year beginning August 28, 2013. If the amount by which that portion of the credit allowed by this section exceeds the investor's tax liability in any one taxable year, beginning in the calendar year 2013, the remaining portion of the credit may be carried forward five years or until the total amount of the credit is used, whichever occurs first. If the investor is a permitted entity investor, the credit provided by this section shall be claimed by the owners of the permitted entity investor in proportion to their equity investment in the permitted entity investor.

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

(3) The SBTDC shall not allow tax credits of more than fifty thousand dollars for a single

1 qualified Missouri business per investor who is a natural person or permitted entity investor or a total
 2 of two hundred fifty thousand dollars in tax credits for a single year per investor who is a natural
 3 person or owner of a permitted entity investor. No tax credits authorized by this section and section
 4 348.274 shall be allowed for any cash investments in qualified securities for any year beginning after
 5 December 31, 2023. The total amount of tax credits allowed under this section shall not exceed six
 6 million dollars.

7 (4) The tax credits shall be administered by the regional SBTDCs. At the beginning of each
 8 calendar year, the coordinator shall equally designate the tax credits available during that year to
 9 each regional SBTDC. At the beginning of each calendar quarter, the coordinator shall allocate to
 10 each regional SBTDC one-fourth of the total tax credits designated to such regional SBTDC for the
 11 calendar year such that the regional SBTDC can allocate tax credits among the qualified Missouri
 12 businesses. The coordinator shall then issue tax credits to qualified investors for cash investments in
 13 such qualified Missouri businesses during that calendar quarter.

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

20 (6) During the fourth calendar quarter, a regional SBTDC in need of additional tax credits
 21 for transactions closing in the fourth calendar quarter may request that another regional SBTDC with
 22 unallocated tax credits permit such unallocated tax credits to be allocated by the requesting SBTDC.
 23 No regional SBTDC shall be required to grant such request. When a granting SBTDC transfers the
 24 allocation of the unallocated tax credits to a requesting SBTDC under this subdivision, the granting
 25 SBTDC shall provide to the requesting SBTDC a written confirmation authorizing such transfer, the
 26 granting SBTDC shall include a copy of such written confirmation in its reports provided under
 27 section 348.274, and the requesting SBTDC shall include a copy of such written confirmation in its
 28 reports provided under section 348.274.

29 5. (1) Before an investor may be entitled to receive tax credits under this section and section
 30 348.274, such investor shall have made a cash investment in a qualified security of a qualified
 31 Missouri business. The business shall have been approved by a regional SBTDC as a qualified
 32 Missouri business before the date on which the cash investment was made. To be designated as a
 33 qualified Missouri business, a business shall apply to a regional SBTDC in accordance with the
 34 provisions of this section.

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

37 (a) The name of the business and certified copies of the organizational documents of the
 38 business;

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

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

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

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

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

1 (3) The designation of a business as a qualified Missouri business shall be made by the
2 regional SBTDC, and such designation shall be renewed annually. A business shall be so designated
3 if the regional SBTDC determines, based upon the application submitted by the business and any
4 additional investigation the regional SBTDC shall undertake, that such business meets the criteria
5 established by the coordinator. Such criteria shall include at least the following:

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

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

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

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

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

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

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

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

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

23 e. Insurance;

24 f. Construction or construction management or contracting;

25 g. Business consulting or brokerage;

26 h. Any business engaged primarily as a passive business, having irregular or noncontiguous
27 operations, or deriving substantially all of the income of the business from passive investments that
28 generate interest, dividends, royalties, or capital gains, or any business arrangements the effect of
29 which is to immunize an investor from risk of loss;

30 i. Any activity that is in violation of the law;

31 j. Any business raising money primarily to purchase real estate, land, or fixtures; and

32 k. Any gambling-related business;

33 (f) The business has a reasonable chance of success;

34 (g) The business has the reasonable potential to create measurable employment within the
35 region, this state, or both;

36 (h) The business has an innovative and proprietary technology, product, or service;

37 (i) The existing owners of the business and other founders have made or are committed to
38 making a substantial financial and time commitment to the business;

39 (j) The securities to be issued and purchased are qualified securities;

40 (k) The business has the reasonable potential to address the needs and opportunities specific
41 to the region, this state, or both;

42 (l) The business has made binding commitments to the regional SBTDC for adequate
43 reporting of financial data, including a requirement for an annual report, or, if required by the
44 regional SBTDC, an annual audit of the financial and operational records of the business, the right of
45 access to the financial records of the business, and the right of the regional SBTDC to record and
46 publish normal and customary data and information related to the issuance of tax credits that are not
47 otherwise determined to be trade or business secrets; and

48 (m) The business shall satisfy all other requirements of this section and section 348.274;

(n) This section and all referenced sections herein are subject to the provisions of section 196.1127.

(4) Notwithstanding the requirements of subdivision (3) of this subsection, a business may be considered as a qualified Missouri business under the provisions of this section and section 348.274 if such business falls within a standard industrial classification code established by the coordinator.

(5) A qualified Missouri business shall have the burden of proof to demonstrate to 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 qualified Missouri businesses. The coordinator is authorized to issue tax credits to qualified investors in such qualified Missouri businesses. Such tax credits shall be allocated to those qualified Missouri businesses which, as determined by the regional SBTDC, are most likely to provide the greatest economic benefit to the region or the state, or both. The regional SBTDC may allocate, and the coordinator may issue, whole or partial tax credits based on the regional SBTDC's assessment of the qualified Missouri businesses. The regional SBTDC may consider numerous factors in such assessment including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model, and the quality and reasonableness of financial projections for the business.

(2) Each qualified Missouri business for which a regional SBTDC has allocated tax credits such that the coordinator can issue tax credits to the qualified investors of such qualified Missouri business shall submit to the regional SBTDC a report before such tax credits are issued. The regional SBTDC shall provide copies of this report to the coordinator. Such report shall include the following:

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

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

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

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

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

(3) The coordinator shall provide the information specified in subdivision (3) of subsection 4 of this section to the department of revenue on an annual basis. The coordinator shall conduct an annual review of the activities undertaken under this section and section 348.273 to ensure that tax credits issued under this section and section 348.273 are issued in compliance with the provisions of this section and section 348.273 or rules and regulations promulgated by each regional SBTDC or the coordinator with respect to this section and section 348.273. The reasonable costs of the annual review shall be paid by the coordinator according to a reasonable fee schedule adopted by the coordinator.

(4) If the coordinator determines that a business is not in substantial compliance with the

requirements of this section and section 348.273 to maintain its designation, the coordinator, by written notice, may inform the business that such business will lose its designation as a qualified Missouri business one hundred twenty days from the date of mailing of the notice unless such business corrects the deficiencies and is once again in compliance with the requirements for designation.

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

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

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

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

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

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

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

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

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

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

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

5 (2) Each regional SBTDC shall report quarterly to the coordinator on the allocation of the
 6 tax credits in the preceding calendar quarter. Such reports shall include:

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

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

9 (c) The amount of tax credits allocated but not issued in the previous quarter, including the
 10 percentage that was allocated to individuals and the percentage that was allocated to investment
 11 firms;

12 (d) The amount of tax credits issued in the previous quarter, including the percentage that
 13 was issued to individuals and the percentage that was issued to investment firms;

14 (e) The amount of unallocated tax credits; and

15 (f) Such other information as reasonably agreed upon by each regional SBTDC and the
 16 coordinator.

17 (3) Each regional SBTDC and the coordinator, as applicable, shall also report annually to the
 18 governor; the director of the department of economic development; the senate committee on
 19 commerce, consumer protection, energy and the environment; the house committee on economic
 20 development; and any successor committees thereto, and to the coordinator, on or before April first,
 21 on the allocation and issuance of the tax credits. Such reports shall include:

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

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

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

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

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

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

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

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

39 (i) Information regarding which businesses derived benefit from the tax credits remained in
 40 the region, which businesses ceased business, which businesses were purchased, and which
 41 businesses may have moved out of the region or state and why.

42 (4) Any violation of the reporting requirements of this subsection by a qualified Missouri
 43 business may be grounds for the loss of designation of such qualified Missouri business, and any
 44 business that loses its designation as a qualified Missouri business shall be subject to the restrictions
 45 upon loss of designation set forth in subsection 2 of this section.

46 5. Sections 348.273 and 348.274 shall expire on December 31, 2023."; and

47
 48 Further amend said bill by amending the title, enacting clause, and intersectional references

1 accordingly.