

SECOND REGULAR SESSION

HOUSE BILL NO. 1310

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES TORPEY (Sponsor) AND ZERR (Co-sponsor).

5187H.011

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" and referred to herein as the "act."

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

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

(2) "Department", the department of economic development;

(3) "Investor":

(a) A natural person who is an accredited investor as defined in 17 CFR 230.501(a)(5) or 230.501(a)(6), as in effect on August 28, 2014; or

(b) A permitted entity investor who is an accredited investor as defined in 17 CFR 230.501(a)(8), as in effect on August 28, 2014; or

(c) A natural person or permitted entity investor making an investment who qualifies under the Jumpstart Our Business Startups (JOBS) Act, Pub.L.No. 112-106, as in effect on August 28, 2014.

The term "investor" shall not include any person who serves as an executive, officer, or employee of the business in which an otherwise qualified cash investment is made, and such person shall not qualify for the issuance of tax credits for such investment; provided,

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.

18 however, an investor who serves solely as a director may qualify for the issuance of tax
19 credits;

20 (4) "MTC" the Missouri technology corporation, established under section 348.250;

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

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

29 (7) "Qualified knowledge-based company", a company engaged in the research,
30 development, implementation, and commercialization of innovative technologies, products,
31 and services for use in the commercial marketplace;

32 (8) "Qualified Missouri business", a Missouri business that is approved and
33 certified as qualified knowledge-based company by the MTC that meets at least one of the
34 following 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,
38 that has its business operations located primarily in Missouri or does substantially all of
39 such business's production in Missouri;

40 (9) "Qualified securities", a cash investment through any one or more forms of
41 financial assistance as provided in this subdivision and that have been approved in form
42 and substance by the MTC, in coordination with the department by and through its service
43 on the MTC board of directors. Forms of such financial assistance include:

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

45 a. A general or limited partnership interest;

46 b. Common stock;

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

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

51 (b) A debt instrument, such as a note or debenture that is secured or unsecured,
52 subordinated to the general creditors of the debtor and requiring no payments of principal,

53 other than principal payments required to be made out of any future profits of the debtor,
54 for at least a seven-year period after commencement of such debt instrument's term;

55 (10) "Tax credit", a credit against the tax otherwise due under chapter 143,
56 excluding withholding tax imposed by sections 143.191 to 143.265, or otherwise due under
57 chapter 147, 148, or 153.

58 3. The primary goal of the act shall be to encourage individuals to provide
59 early-stage financing for emerging qualified knowledge-based companies in Missouri
60 through the issuance of tax credits to qualified investors who make cash investments for
61 such early-stage financing.

62 4. (1) For all taxable years beginning on or after January 1, 2014, a tax credit shall
63 be allowed for an investor's cash investment in the qualified securities of a qualified
64 Missouri business occurring on or after August 28, 2014. The credit shall be in a total
65 amount equal to fifty percent of such investor's cash investment in any qualified Missouri
66 business, subject to the limitations set forth in this subsection. If the amount by which that
67 portion of the credit allowed by this section exceeds the investor's tax liability in any one
68 taxable year, the remaining portion of the credit may be carried forward five years or until
69 the total amount of the credit is used, whichever occurs first. If the investor is a permitted
70 entity investor, the credit provided by this section shall be claimed by the owners of the
71 permitted entity investor in proportion to their equity investment in the permitted entity
72 investor.

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

76 (3) The department and MTC shall not issue tax credits of more than fifty thousand
77 dollars in a single year to an investor per investment into a single, qualified Missouri
78 business, or for tax credits totaling more than two hundred fifty thousand dollars in a
79 single year per investor. No tax credits authorized by this section and section 348.274 shall
80 be allowed for any cash investments in qualified securities made in any year beginning
81 after December 31, 2024. The total amount of tax credits allowed under this section shall
82 not exceed six million dollars in any fiscal year. The balance of unissued tax credits may
83 be carried over for issuance in future years until December 31, 2024.

84 (4) At the beginning of each calendar year, the MTC shall equally designate the
85 total tax credits available during that calendar year to each geographic region comprised
86 of the boundaries of each congressional district, as such boundaries may be amended from
87 time to time, within Missouri. At the beginning of each calendar quarter, the MTC shall
88 make available one-fourth of the total annual tax credits for each region for investments

89 made in qualified Missouri businesses located in each such region. As soon as practicable
90 at the end of each calendar quarter, the MTC shall prepare and issue a report to the
91 director of the department designating all tax credit awards for that quarter, so that the
92 department may issue such tax credits in accordance with the provisions of this act.

93 (5) Notwithstanding subsection (4) above, any unissued tax credits allocated to any
94 region for any quarter may be reallocated and awarded in any other region in a following
95 quarter, provided however, in the fourth quarter any unissued tax credits may be
96 reallocated and awarded in that quarter in accordance with section 348.274.

97 5. (1) Before an investor may be entitled to receive tax credits under this section and
98 section 348.274, such investor shall have made a cash investment in a qualified security of
99 a qualified Missouri business. The business shall have been approved as a qualified
100 Missouri business before the date on which the cash investment was made. To be
101 designated as a qualified Missouri business, a business shall apply to MTC in accordance
102 with the provisions of this section.

103 (2) The application by a business shall be in the form and substance as required by
104 the MTC, in coordination with the department by and through its service on the MTC
105 board of directors, but shall include at least the following:

106 (a) The name of the business and certified copies of the organizational documents
107 of the business;

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

110 (c) A statement of the potential economic impact of the business, including the
111 number, location, and types of jobs expected to be created;

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

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

116 (f) Such other information as may be reasonably requested.

117 (3) The designation of a business as a qualified Missouri business shall be made by
118 the MTC, and such designation shall be renewed annually. A business shall be so
119 designated if the MTC determines, based upon the application submitted by the business
120 and any additional information provided in connection with such application, that such
121 business meets the established criteria, which shall include at least the following:

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

(b) Businesses that are not deemed to be bioscience businesses shall have been in operation for less than five years, and businesses determined to be bioscience businesses shall have been in operation for less than ten years;

(c) The ability of investors in the business to receive tax credits for cash investments in qualified securities of the business is beneficial to advancing the goals of this act;

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

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

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

b. The provision of professional services, such as legal, accounting, or engineering services, provided, however, that contract research organizations, sometimes referred to as CROs, shall not be subject to this exclusion;

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

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

e. Insurance;

f. Construction, construction management, or contracting;

g. Business consulting or brokerage;

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

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

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

and

k. Any gambling-related business;

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

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

(h) The business is based on an innovative technology, product, or service designed to be used in the commercial marketplace;

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

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

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

(l) The business has made binding commitments to MTC for adequate reporting of financial data, including a requirement for an annual report, or, if required, an annual audit of the financial and operational records of the business, the right of access to the financial records of the business, the right of the department and MTC to record and publish normal and customary data and information related to the issuance of tax credits that are not otherwise determined to be trade or business secrets, and other such protections as may be in the best interest of Missouri taxpayers to achieve the goals of this act; and

(m) The business shall satisfy all other requirements of this act.

(4) A qualified Missouri business shall have the burden of proof to demonstrate the qualifications of the business under this section.

348.274. 1. (1) The MTC is authorized to allocate tax credits to qualified Missouri businesses, and the department 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 MTC, are most likely to provide the greatest economic benefit to the region or the state, or both. The MTC may allocate, and the department may issue, whole or partial tax credits in accordance with the report issued to the director of the department based on MTC's assessment of the qualified Missouri businesses. The MTC 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 the MTC has allocated tax credits such that the department can issue tax credits to the qualified investors of such qualified Missouri business, shall submit to the MTC a report before such tax credits are issued. 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) Such other information as may be reasonably required under this act.

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

24 business that applies to be designated as a qualified Missouri business and is turned down,
25 or any investor that makes an investment in a business that applies to be designated as a
26 qualified Missouri business and is turned down.

27 (2) Each qualified Missouri business shall have the obligation to notify the MTC,
28 which shall notify the director of the department, of any changes in the qualifications of
29 the business or in the eligibility of investors to claim a tax credit for cash investment in a
30 qualified security.

31 (3) The director of the department, in cooperation with MTC, shall provide the
32 information specified in subdivision (3) of subsection 4 of this section to the director of the
33 department of revenue on an annual basis. The MTC shall conduct an annual review of the
34 activities undertaken under this section and section 348.273 to ensure that tax credits
35 issued under this section and section 348.273 are issued in compliance with the provisions
36 of this section and section 348.273 or rules and regulations promulgated by the MTC or the
37 department with respect to this section and section 348.273. The reasonable costs of the
38 annual review and other administrative work necessary or convenient to carry out the
39 provisions of this act shall be recovered by the MTC according to a reasonable fee schedule
40 adopted by the MTC in cooperation with the department by and through its service on the
41 MTC board of directors.

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

48 (5) At the end of the one-hundred-twenty-day period, if the qualified Missouri
49 business is still not in substantial compliance, the department or MTC may send a notice
50 of loss of designation to the business, the director of the department of revenue, and to all
51 known investors in the business.

52 (6) A business may lose its designation as a qualified Missouri business under this
53 section and section 348.273 by moving either its headquarters outside of Missouri or a
54 substantial number of the jobs created in Missouri to a location outside Missouri, within
55 ten years after receiving financial assistance under this section and section 348.273.

56 (7) In the event that a business loses its designation as a qualified Missouri business,
57 such business shall be precluded from being issued any additional tax credits with respect
58 to the business, shall be precluded from being approved as a qualified Missouri business,
59 and shall be subject to an appropriate clawback provision that MTC, in cooperation with

60 department by and through its service on the MTC board of directors, provides for in
61 connection with the administration of this act.

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

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

74 (10) The department and MTC may prepare and adopt procedures, rules, and
75 publish guidelines concerning the performance of the duties placed upon each respective
76 entity by this section and section 348.273.

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

87 4. (1) Each qualified Missouri business for which tax credits have been issued under
88 this section and section 348.273 shall report to MTC on an annual basis, on or before
89 February first. MTC shall provide copies of the reports to the department under
90 appropriate confidentiality agreements as may be necessary under the circumstances. Such
91 reports shall include the following:

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

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

(c) Such other information as may be reasonably required under this act.

(2) The MTC shall report quarterly to the director of the department on the allocation of the tax credits in the preceding calendar quarter. Such reports shall include:

(a) The amount of applications received;

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

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

(d) Such other information as reasonably agreed upon from time to time.

(3) The MTC and the department, as applicable, shall also report annually to the governor; the director of the department of economic development; the president pro tem of the senate; and the speaker of the house of representatives, on or before April first, on the allocation and issuance of the tax credits. Such reports shall include:

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

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

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

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

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

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

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

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

(i) Information regarding what businesses deriving benefits from the tax credits remained in the region, what businesses ceased business, what businesses were purchased, and what businesses may have moved out of a region or the state.

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

135 **5. Sections 348.273 and 348.274 shall expire on December 31, 2024.**

✓