

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NOS. 1310 & 1236

97TH GENERAL ASSEMBLY

5187H.02P

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", any person or entity who makes an investment in a qualified Missouri business.

The term "investor" shall not include:

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

b. Any qualified Missouri business; or

c. Any person who serves as an executive, officer, or employee of a qualified Missouri business;

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.

17 (4) "Missouri innovation center", a Missouri center established under section
18 348.271 may provide assistance to technology-based business ventures;

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

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

23 (7) "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 (8) "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 (9) "Qualified Missouri business", a Missouri business that is approved and
33 certified as a qualified knowledge-based company by the MTC that meets at least one of
34 the 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 (10) "Qualified securities", a cash investment through any one or more forms of
41 financial assistance as provided in this subdivision and that has been approved in form and
42 substance by the MTC, in coordination with the department by and through its service on
43 the MTC board of directors. Forms of such financial assistance include any form of equity,
44 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.

51 (11) "Tax credit", a credit against the tax otherwise due under chapter 143,
52 excluding withholding tax imposed by sections 143.191 to 143.265.

53 **3. The primary goal of the Missouri angel investment incentive act shall be to**
54 **encourage individuals to provide early-stage financing for emerging qualified**
55 **knowledge-based companies in Missouri through the issuance of tax credits to qualified**
56 **investors who make cash investments for such early-stage financing.**

57 **4. (1) For all taxable years beginning on or after January 1, 2014, a tax credit shall**
58 **be allowed for an investor's cash investment in the qualified securities of a qualified**
59 **Missouri business occurring on or after August 28, 2014. The credit shall be in a total**
60 **amount equal to fifty percent of such investor's cash investment in any qualified Missouri**
61 **business, subject to the limitations set forth in this subsection. If the amount by which that**
62 **portion of the credit allowed by this section exceeds the investor's tax liability in any one**
63 **taxable year, the remaining portion of the credit may be carried forward five years or until**
64 **the total amount of the credit is used, whichever occurs first. If the investor is a permitted**
65 **entity investor, the credit provided by this section shall be claimed by the owners of the**
66 **permitted entity investor in proportion to their equity investment in the permitted entity**
67 **investor.**

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

71 **(3) The department and the MTC shall not allow more than a total of fifty thousand**
72 **dollars in tax credits in a single year per investor for each qualified Missouri business or**
73 **a total of two hundred fifty thousand dollars in tax credits for a single year per investor.**
74 **No tax credits authorized by this section and section 348.274 shall be allowed for any cash**
75 **investments in qualified securities made in any year beginning after December 31, 2024.**
76 **The total amount of tax credits which may be allowed under this section shall not exceed**
77 **six million dollars during the 2014 tax year and each tax year thereafter. The balance of**
78 **unissued tax credits may be carried over for issuance in future years until December 31,**
79 **2024.**

80 **(4) At the beginning of each calendar year, the MTC shall equally designate the**
81 **total tax credits available during that calendar year to each geographic region comprised**
82 **of the boundaries of each congressional district, as such boundaries may be amended from**
83 **time to time, within Missouri. At the beginning of each calendar quarter, the MTC shall**
84 **make available one-fourth of the total annual tax credits for each region for investments**
85 **made in qualified Missouri businesses located in each such region. As soon as practicable**
86 **at the end of each calendar quarter, the MTC shall prepare and issue a report to the**
87 **director of the department designating all tax credit awards for that quarter, so that the**
88 **department may issue such tax credits in accordance with the provisions of this act.**

89 **(5) Notwithstanding subsection (4) above, any unissued tax credits allocated to any**
90 **region for any quarter may be reallocated and awarded in any other region in a following**
91 **quarter, provided however, in the fourth quarter any unissued tax credits may be**
92 **reallocated and awarded in that quarter in accordance with this section.**

93 **5. (1) Before an investor may be entitled to receive tax credits under this section and**
94 **section 348.274, such investor shall have made a cash investment in a qualified security of**
95 **a qualified Missouri business. The business shall have been approved as a qualified**
96 **Missouri business before the date on which the cash investment was made. To be**
97 **designated as a qualified Missouri business, a business shall apply to MTC.**

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

101 **(a) The name of the business and certified copies of the organizational documents**
102 **of the business;**

103 **(b) A business plan, including a description of the business and the management,**
104 **product, market, and financial plan of the business;**

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

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

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

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

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

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

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

122 **(c) The ability of investors in the business to receive tax credits for cash investments**
123 **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.

(5) A qualified Missouri business shall not receive a tax credit for an investment made in any qualified Missouri business under this section if such other business makes a reciprocal investment.

6. Public funds shall not be expended, paid, or granted to or on behalf of an existing or proposed research project that involves abortion services, human cloning, or prohibited human research as those terms are defined in section 196.1127. Any business that performs or induces abortions, assists in the performing or inducing of abortions, refers for abortions or engages in or performs human cloning as those terms are defined in section 196.1127 or human embryonic stem cell research are not eligible for state monies and incentives.

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;

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

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

22 **2. (1) The state of Missouri shall not be held liable for any damages to any investor**
23 **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;

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

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

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

100 (a) The amount of applications received;

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

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

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

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

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

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

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

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

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

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

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

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

127 **(i) Information regarding what businesses deriving benefits from the tax credits**
128 **remained in the region, what businesses ceased business, what businesses were purchased,**
129 **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. Public funds shall not be expended, paid, or granted to or on behalf of an existing**
136 **or proposed research project that involves abortion services, human cloning, or prohibited**
137 **human research as those terms are defined in section 196.1127. Any business that performs**
138 **or induces abortions, assists in the performing or inducing of abortions, refers for**
139 **abortions or engages in or performs human cloning as those terms are defined in section**
140 **196.1127 or human embryonic stem cell research are not eligible for state monies and**
141 **incentives.**

142 **6. Sections 348.273 and 348.274 shall expire on December 31, 2024.**

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