

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 23, Page 29, Section
2 144.070, Line 121, by inserting after said section and line the following:

3
4 "348.273. 1. This section and section 348.274 shall be known and may be cited as the
5 "Missouri Angel Investment Incentive Act".

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

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

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

9 (3) "Investor":

10 (a) One of the following persons or entities:

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

13 b. A permitted entity investor who is an accredited investor as defined under 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 federal Jumpstart Our Business Startups (JOBS) Act, Pub. L. 112-106, as in effect on August 28,
17 2013;

18 (b) The term "investor" shall not include any person who serves as an executive, officer, or
19 employee of the business in which an otherwise qualified cash investment is made, and such person
20 shall not qualify for the issuance of tax credits for such investment. However, an investor who
21 serves solely as a director may qualify for the issuance of tax credits;

22 (4) "MTC", the Missouri technology corporation established under section 348.251;

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

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

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

4 (8) "Qualified Missouri business", a Missouri business that is approved and certified as a
 5 qualified knowledge-based company by the MTC that meets at least one of the following criteria:

6 (a) Any business owned by an individual;

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

8 (c) Any corporation, even if a wholly owned subsidiary of a foreign corporation, that has its
 9 business operations located primarily in Missouri or does substantially all of such business's
 10 production in Missouri;

11 (9) "Qualified securities", a cash investment through any one or more forms of financial
 12 assistance as provided under this subdivision that has been approved in form and substance by the
 13 MTC. Forms of such financial assistance include, but are not limited to:

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

15 a. A general or limited partnership interest;

16 b. Common stock;

17 c. Preferred stock, with or without voting rights, without regard to seniority position, and
 18 whether convertible into common stock; or

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

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

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

27 3. (1) For all tax years beginning on or after January 1, 2023, a tax credit shall be allowed
 28 for an investor's cash investment in the qualified securities of a qualified Missouri business. The
 29 credit shall be in a total amount equal to fifty percent of such investor's cash investment in any
 30 qualified Missouri business, subject to the limitations set forth in this subsection. If the amount by
 31 which that portion of the credit allowed by this section exceeds the investor's tax liability in any one
 32 tax year, the remaining portion of the credit may be carried forward five years or until the total
 33 amount of the credit is used, whichever occurs first. If the investor is a permitted entity investor, the
 34 credit provided by this section shall be claimed by the owners of the permitted entity investor in
 35 proportion to such owners' equity investment in the permitted entity investor.

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

1 (3) The department and the MTC shall not allow tax credits of more than fifty thousand
2 dollars for a single qualified Missouri business per investor who is a natural person or a permitted
3 entity investor and shall not allow a total of two hundred fifty thousand dollars in tax credits for a
4 single year per investor who is a natural person or a permitted entity investor. No tax credit
5 authorized by this section or section 348.274 shall be allowed for any cash investments in qualified
6 securities made in any year beginning after December 31, 2032. The total amount of tax credits that
7 may be allowed under this section shall not exceed six million dollars during either tax years 2023
8 or 2024. For each tax year thereafter, the total amount of tax credits allowed under this section shall
9 be increased by twenty percent of the total amount of tax credits allowed in the immediately
10 preceding tax year, so long as the total amount of tax credits allowed in the immediately preceding
11 tax year was issued during the immediately preceding tax year. The balance of unissued tax credits
12 may be carried over for issuance in future years until December 31, 2032. The balance of unissued
13 tax credits carried over, if any, shall not be used in the calculation of the total amount of tax credits
14 allowed in a given tax year.

15 (4) At the beginning of each calendar year, the MTC shall equally designate the total tax
16 credits available during that calendar year to each geographic region comprised of the boundaries of
17 each congressional district, as such boundaries may be amended from time to time. At the
18 beginning of each calendar quarter, the MTC shall make available one-fourth of the total annual tax
19 credits for each region for investments made in qualified Missouri businesses located in each such
20 region. As soon as practicable at the end of each calendar quarter, the MTC shall prepare and issue
21 a report to the director of the department designating all tax credit awards for that quarter, so that the
22 department may issue such tax credits in accordance with the provisions of this section and section
23 348.274. The report shall aggregate any unissued tax credits allocated to any region for any
24 calendar quarter and divide such unissued tax credits equally over each other region and make such
25 credits available for the following calendar quarter, which shall be in addition to the new allocation
26 of tax credits available to that region for the calendar quarter.

27 (5) During the fourth calendar quarter, any unissued tax credits allocated to any region,
28 which shall include the aggregate tax credits that have been reallocated under this section and
29 section 348.274 and any unissued tax credits allocated for the fourth quarter, may be awarded in any
30 region.

31 4. (1) Before an investor may be entitled to receive tax credits under this section and
32 section 348.274, such investor shall have made a cash investment in a qualified security of a
33 qualified Missouri business. The business shall have been approved as a qualified Missouri
34 business before the date on which the cash investment was made. To be designated as a qualified
35 Missouri business, a business shall apply to the MTC.

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

1 (a) The name of the business and certified copies of the organizational documents of the
2 business;

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

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

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

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

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

12 (3) The designation of a business as a qualified Missouri business shall be made by the
13 MTC, and such designation shall be renewed annually. A business shall be so designated if the
14 MTC determines, based upon the application submitted by the business and any additional
15 information provided in connection with such application, that such business meets established
16 criteria, including at least the following:

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

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

21 (c) The ability of investors in the business to receive tax credits for cash investments in
22 qualified securities of the business is beneficial to advancing the goals of this section and section
23 348.274;

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

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

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

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

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

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

36 e. Insurance;

37 f. Construction, construction management, or contracting;

38 g. Business consulting or brokerage;

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

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

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

7 k. Any gambling-related business;

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

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

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

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

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

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

18 (l) The business has made binding commitments to the MTC for adequate reporting of
 19 financial data, including a requirement for an annual report or, if required, an annual audit of the
 20 financial and operational records of the business; the right of access to the financial records of the
 21 business; the right of the department and the MTC to record and publish normal and customary data
 22 and information related to the issuance of tax credits that are not otherwise determined to be trade or
 23 business secrets; and other such protections as may be in the best interest of Missouri taxpayers to
 24 achieve the goals of this section and section 348.274; and

25 (m) The business shall satisfy all other requirements of this section and section 348.274.

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

28 (5) Before accepting a qualified security, a qualified Missouri business shall convey to the
 29 MTC a two-percent-equity interest in the business, which, if the interest is convertible debt or a
 30 similar instrument, may be achieved upon the conversion of such debt to equity. The MTC shall
 31 refrain from exercising any voting rights in the business while it holds an equity interest.

32 (6) The MTC may sell the equity interest at a time the MTC believes is in the economic best
 33 interest of the state and goals of this section and section 348.274 but shall consider any requests
 34 submitted by the business in writing.

35 (7) Any proceeds from the sale of the equity interest shall be used by the MTC to promote
 36 the goals of this section and section 348.274.

37 348.274. 1. (1) The MTC is authorized to allocate tax credits to qualified Missouri
 38 businesses, and the department is authorized to issue tax credits to qualified investors in such
 39 qualified Missouri businesses. Such tax credits shall be allocated to those qualified Missouri

businesses that, as determined by the 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 the 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 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 MTC, which shall notify the director of the department, 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 director of the department, in cooperation with the MTC, shall provide the information specified under subdivision (3) of subsection 4 of this section to the director of the department of revenue on an annual basis. The MTC 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 the MTC or the department with respect to this section and section 348.273. The reasonable costs of the annual review shall be paid by the MTC according to a reasonable fee schedule adopted by the MTC in cooperation with the department by and through its service on the MTC board of directors.

(4) If the MTC determines that a business is not in substantial compliance with the requirements under this section and section 348.273 to maintain its designation, the department or MTC, 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

1 such business corrects the deficiencies and is once again in compliance with the requirements for
2 designation.

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

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

10 (7) In the event that a business loses its designation as a qualified Missouri business, such
11 business shall be precluded from being issued any additional tax credits with respect to the business,
12 shall be precluded from being approved as a qualified Missouri business, and shall be subject to an
13 appropriate clawback provision that the MTC, in cooperation with the department by and through its
14 service on the MTC board of directors, may institute.

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

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

26 (10) The department and the MTC may prepare and adopt procedures, rules, and published
27 guidance concerning the performance of the duties placed upon each respective entity by this
28 section and section 348.273.

29 3. Any qualified investor who makes a cash investment in a qualified security of a qualified
30 Missouri business may transfer the tax credits such qualified investor may receive under subsection
31 3 of section 348.273 to any natural person. Such transferee may claim the tax credit against the
32 transferee's Missouri income tax liability as provided in subdivision (1) of subsection 3 of section
33 348.273, subject to all restrictions and limitations set forth in this section and section 348.273.
34 Documentation of any tax credit transfer under this section shall be provided by the qualified
35 investor in the manner established by the MTC and the department, by and through its service on the
36 MTC board of directors.

37 4. (1) Each qualified Missouri business for which tax credits were issued under this section
38 and section 348.273 shall report to MTC annually on or before February first. The MTC shall

1 provide copies of the reports to the department under appropriate confidentiality agreements as may
2 be necessary under the circumstances. Such reports shall include the following:

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

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

8 (c) Such other information as may be reasonably required under this section and section
9 348.273.

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

12 (a) The number of applications received;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 5. Section 348.273 and this section shall expire on December 31, 2032."; and
9

10 Further amend said bill by amending the title, enacting clause, and intersectional references
11 accordingly.