

HOUSE BILL NO. 727

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH (155).

1687H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to the Missouri angel investment incentive act.

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

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

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

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

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

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

(3) "Investor":

(a) One of the following persons or entities:

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

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

c. A natural person or permitted entity investor making an investment who qualifies under the federal Jumpstart Our Business Startups (JOBS) Act, Pub. L. 112-106, as in effect on August 28, 2013;

(b) 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

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

20 (4) "MTC", the Missouri technology corporation established under section
21 348.251;

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

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

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

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

36 (a) Any business owned by an individual;

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

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

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

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

46 a. A general or limited partnership interest;

47 b. Common stock;

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

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

52 (b) A debt instrument, such as a note or debenture that is secured or unsecured,
53 subordinated to the general creditors of the debtor and requiring no payments of
54 principal, other than principal payments required to be made out of any future profits

55 of the debtor, for at least a seven-year period after the commencement of such debt
56 instrument's term;

57 (10) "Tax credit", a credit against the tax otherwise due under chapter 143,
58 excluding withholding tax imposed by sections 143.191 to 143.265, chapter 147, 148, or
59 153.

60 3. (1) For all tax years beginning on or after January 1, 2023, a tax credit shall
61 be allowed for an investor's cash investment in the qualified securities of a qualified
62 Missouri business. The credit shall be in a total amount equal to fifty percent of such
63 investor's cash investment in any qualified Missouri business, subject to the limitations
64 set forth in this subsection. If the amount by which that portion of the credit allowed by
65 this section exceeds the investor's tax liability in any one tax year, the remaining portion
66 of the credit may be carried forward five years or until the total amount of the credit is
67 used, whichever occurs first. If the investor is a permitted entity investor, the credit
68 provided by this section shall be claimed by the owners of the permitted entity investor
69 in proportion to such owners' equity investment in the permitted entity investor.

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

73 (3) The department and the MTC shall not allow tax credits of more than fifty
74 thousand dollars for a single qualified Missouri business per investor who is a natural
75 person or a permitted entity investor and shall not allow a total of two hundred fifty
76 thousand dollars in tax credits for a single year per investor who is a natural person or a
77 permitted entity investor. No tax credit authorized by this section or section 348.274
78 shall be allowed for any cash investments in qualified securities made in any year
79 beginning after December 31, 2032. The total amount of tax credits that may be allowed
80 under this section shall not exceed six million dollars during either tax years 2023 or
81 2024. For each tax year thereafter, the total amount of tax credits allowed under this
82 section shall be increased by twenty percent of the total amount of tax credits allowed in
83 the immediately preceding tax year, so long as the total amount of tax credits allowed in
84 the immediately preceding tax year was issued during the immediately preceding tax
85 year. The balance of unissued tax credits may be carried over for issuance in future
86 years until December 31, 2032. The balance of unissued tax credits carried over, if any,
87 shall not be used in the calculation of the total amount of tax credits allowed in a given
88 tax year.

89 (4) At the beginning of each calendar year, the MTC shall equally designate the
90 total tax credits available during that calendar year to each geographic region
91 comprised of the boundaries of each congressional district, as such boundaries may be

92 amended from time to time. At the beginning of each calendar quarter, the MTC shall
93 make available one-fourth of the total annual tax credits for each region for investments
94 made in qualified Missouri businesses located in each such region. As soon as
95 practicable at the end of each calendar quarter, the MTC shall prepare and issue a
96 report to the director of the department designating all tax credit awards for that
97 quarter, so that the department may issue such tax credits in accordance with the
98 provisions of this section and section 348.274. The report shall aggregate any unissued
99 tax credits allocated to any region for any calendar quarter and divide such unissued tax
100 credits equally over each other region and make such credits available for the following
101 calendar quarter, which shall be in addition to the new allocation of tax credits available
102 to that region for the calendar quarter.

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

107 4. (1) Before an investor may be entitled to receive tax credits under this section
108 and section 348.274, such investor shall have made a cash investment in a qualified
109 security of a qualified Missouri business. The business shall have been approved as a
110 qualified Missouri business before the date on which the cash investment was made. To
111 be designated as a qualified Missouri business, a business shall apply to the MTC.

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

115 (a) The name of the business and certified copies of the organizational
116 documents of the business;

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

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

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

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

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

126 (3) The designation of a business as a qualified Missouri business shall be made
127 by the MTC, and such designation shall be renewed annually. A business shall be so
128 designated if the MTC determines, based upon the application submitted by the

129 **business and any additional information provided in connection with such application,**
130 **that such business meets established criteria, including at least the following:**

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

133 **(b) Businesses that are not bioscience businesses shall have been in operation for**
134 **less than five years, and bioscience businesses shall have been in operation for less than**
135 **ten years;**

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

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

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

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

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

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

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

151 **e. Insurance;**

152 **f. Construction, construction management, or contracting;**

153 **g. Business consulting or brokerage;**

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

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

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

162 **k. Any gambling-related business;**

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

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

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

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

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

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

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

181 (m) The business shall satisfy all other requirements of this section and section
182 348.274.

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

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

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

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

348.274. 1. (1) The MTC is authorized to allocate tax credits to qualified
2 Missouri businesses, and the department is authorized to issue tax credits to qualified
3 investors in such qualified Missouri businesses. Such tax credits shall be allocated to
4 those qualified Missouri businesses that, as determined by the MTC, are most likely to
5 provide the greatest economic benefit to the region or the state, or both. The MTC may
6 allocate, and the department may issue, whole or partial tax credits in accordance with
7 the report issued to the director of the department based on the MTC's assessment of
8 the qualified Missouri businesses. The MTC may consider numerous factors in such

9 assessment including, but not limited to, the quality and experience of the management
10 team, the size of the estimated market opportunity, the risk from current or future
11 competition, the ability to defend intellectual property, the quality and utility of the
12 business model, and the quality and reasonableness of financial projections for the
13 business.

14 (2) Each qualified Missouri business, for which the MTC has allocated tax
15 credits such that the department can issue tax credits to the qualified investors of such
16 qualified Missouri business, shall submit to the MTC a report before such tax credits
17 are issued. Such report shall include the following:

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

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

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

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

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

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

43 (4) If the MTC determines that a business is not in substantial compliance with
44 the requirements under this section and section 348.273 to maintain its designation, the
45 department or MTC, by written notice, may inform the business that such business will

46 lose its designation as a qualified Missouri business one hundred twenty days from the
47 date of mailing of the notice unless such business corrects the deficiencies and is once
48 again in compliance with the requirements for designation.

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

53 (6) A business may lose its designation as a qualified Missouri business under
54 this section and section 348.273 by moving either its headquarters outside of Missouri or
55 a substantial number of the jobs created in Missouri to a location outside Missouri
56 within ten years after receiving financial assistance under this section and section
57 348.273.

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

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

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

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

79 3. Any qualified investor who makes a cash investment in a qualified security of
80 a qualified Missouri business may transfer the tax credits such qualified investor may
81 receive under subsection 3 of section 348.273 to any natural person. Such transferee
82 may claim the tax credit against the transferee's Missouri income tax liability as

83 provided in subdivision (1) of subsection 3 of section 348.273, subject to all restrictions
84 and limitations set forth in this section and section 348.273. Documentation of any tax
85 credit transfer under this section shall be provided by the qualified investor in the
86 manner established by the MTC and the department, by and through its service on the
87 MTC board of directors.

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

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

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

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

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

103 (a) The number of applications received;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 **5. Section 348.273 and this section shall expire on December 31, 2032.**

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