

FIRST REGULAR SESSION

SENATE BILL NO. 78

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

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ADRIANE D. CROUSE, Secretary.

0595S.01I

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to tax credits for investments in certain Missouri businesses.

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 shall 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 under 17 CFR 230.501(a)(5) or 230.501(a)(6), as in effect on August 28, 2014;

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

22 (4) "Missouri innovation center", a Missouri center established
23 under section 348.271 that provides assistance to technology-based
24 business ventures;

25 (5) "MTC", the Missouri technology corporation, established
26 under section 348.251;

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

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

37 (8) "Qualified knowledge-based company", a company engaged in
38 the research, development, implementation, and commercialization of
39 innovative technologies, products, and services for use in the
40 commercial marketplace;

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

44 (a) Any business owned by an individual;

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

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

51 (10) "Qualified securities", a cash investment through any one or
52 more forms of financial assistance as provided under this subdivision
53 that has been approved in form and substance by the MTC, in
54 coordination with the department by and through its service on the
55 MTC board of directors. Forms of such financial assistance include any
56 form of equity, which may include but shall not be limited to:

57 (a) A general or limited partnership interest;

58 (b) Common stock;

59 (c) Preferred stock, with or without voting rights, without regard
60 to seniority position, and whether or not convertible into common
61 stock; or

62 (d) Any form of subordinate or convertible debt, or both, with
63 warrants or other means of equity conversion attached;

64 (11) "Tax credit", a credit against the tax otherwise due under
65 chapter 143, excluding withholding tax imposed by sections 143.191 to
66 143.265.

67 3. (1) For all tax years beginning on or after January 1, 2018, a
68 tax credit shall be allowed for an investor's cash investment in the
69 qualified securities of a qualified Missouri business occurring on or
70 after August 28, 2017. The credit shall be in a total amount equal to
71 fifty percent of such investor's cash investment in any qualified
72 Missouri business, subject to the limitations set forth in this subsection.
73 If the amount by which that portion of the credit allowed by this
74 section exceeds the investor's tax liability in any one tax year, the
75 remaining portion of the credit may be carried forward to any of the
76 five subsequent tax years or until the total amount of the credit is used,
77 whichever occurs first. If the investor is a permitted entity investor,
78 the credit provided by this section shall be claimed by the owners of
79 the permitted entity investor in proportion to their equity investment
80 in the permitted entity investor.

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

85 (3) The department and the MTC shall not issue more than a
86 total of fifty thousand dollars in tax credits in a single year per
87 investor for each qualified Missouri business or a total of two hundred
88 fifty thousand dollars in tax credits for a single year per investor. No
89 tax credits authorized by this section and section 348.274 shall be
90 issued for any cash investments in qualified securities made in any
91 year beginning after December 31, 2023. The total amount of tax
92 credits that may be issued under this section shall not exceed five
93 million dollars during the 2018 tax year and each tax year
94 thereafter. The balance of unissued tax credits may be carried over for
95 issuance in future years until December 31, 2023.

96 (4) At the beginning of each calendar year, the MTC shall equally
97 designate the total tax credits available during that calendar year to
98 each region. At the beginning of each calendar quarter, the MTC shall
99 make available one-fourth of the total annual tax credits for each
100 region for investments made in qualified Missouri businesses located
101 in each such region. As soon as practicable at the end of each calendar
102 quarter, the MTC shall prepare and issue a report to the director of the
103 department designating all tax credit awards for that quarter, so that
104 the department may issue such tax credits in accordance with the
105 provisions of sections 348.273 and 348.274.

106 (5) The provisions of subdivision (4) of this subsection
107 notwithstanding, any unissued tax credits allocated to any region for
108 any quarter may be reallocated and awarded in any other region in a
109 following quarter; however, in the fourth quarter any unissued tax
110 credits may be reallocated and awarded in that quarter in accordance
111 with this section.

112 4. (1) Before an investor may be entitled to receive tax credits
113 under this section and section 348.274, such investor shall have made
114 a cash investment in a qualified security of a qualified Missouri
115 business. The business shall have been approved as a qualified
116 Missouri business before the date on which the cash investment was
117 made. To be designated as a qualified Missouri business, a business
118 shall apply to MTC.

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

123 (a) The name of the business and certified copies of the
124 organizational documents of the business;

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

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

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

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

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

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

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

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

151 (c) The ability of investors in the business to receive tax credits
152 for cash investments in qualified securities of the business is beneficial
153 to advancing the goals of sections 348.273 and 348.274;

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

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

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

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

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

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

169 e. Insurance;

- 170 **f. Construction, construction management, or contracting;**
171 **g. Business consulting or brokerage;**
172 **h. Any business engaged primarily as a passive business, having**
173 **irregular or noncontiguous operations, or deriving substantially all of**
174 **the income of the business from passive investments that generate**
175 **interest, dividends, royalties, or capital gains, or any business**
176 **arrangements the effect of which is to immunize an investor from risk**
177 **of loss;**
178 **i. Any activity that is in violation of the law;**
179 **j. Any business raising money primarily to purchase real estate,**
180 **land, or fixtures; and**
181 **k. Any gambling-related business;**
182 **(f) The business has a reasonable chance of success;**
183 **(g) The business has the reasonable potential to create**
184 **measurable employment within the region, this state, or both;**
185 **(h) The business is based on an innovative technology, product,**
186 **or service designed to be used in the commercial marketplace;**
187 **(i) The existing owners of the business and other founders have**
188 **made or are committed to make a substantial financial or time**
189 **commitment to the business;**
190 **(j) The securities to be issued and purchased are qualified**
191 **securities;**
192 **(k) The business has the reasonable potential to address the**
193 **needs and opportunities specific to the region, this state, or both;**
194 **(l) The business has made binding commitments to MTC for**
195 **adequate reporting of financial data, including a requirement for an**
196 **annual report, or, if required, an annual audit of the financial and**
197 **operational records of the business, the right of access to the financial**
198 **records of the business, the right of the department and MTC to record**
199 **and publish normal and customary data and information related to the**
200 **issuance of tax credits that are not otherwise determined to be trade**
201 **or business secrets, and other such protections as may be in the best**
202 **interest of Missouri taxpayers to achieve the goals of sections 348.273**
203 **and 348.274; and**
204 **(m) The business shall satisfy all other requirements of sections**
205 **348.273 and 348.274.**
206 **(4) A qualified Missouri business shall have the burden of proof**

207 to demonstrate the qualifications of the business under this section.

348.274. 1. (1) The MTC is authorized to allocate tax credits to
2 qualified Missouri businesses, and the department is authorized to
3 issue tax credits to qualified investors in such qualified Missouri
4 businesses. Such tax credits shall be allocated to those qualified
5 Missouri businesses that, as determined by MTC, are most likely to
6 provide the greatest economic benefit to the region or the state, or
7 both. The MTC may allocate, and the department may issue, whole or
8 partial tax credits in accordance with the report issued to the director
9 of the department based on MTC's assessment of the qualified Missouri
10 businesses. The MTC may consider numerous factors in such
11 assessment including, but not limited to, the quality and experience of
12 the management team, the size of the estimated market opportunity,
13 the risk from current or future competition, the ability to defend
14 intellectual property, the quality and utility of the business model, and
15 the quality and reasonableness of financial projections for the business.

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

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

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

27 (c) Such other information as may be reasonably required under
28 sections 348.273 and 348.274.

29 2. (1) The state of Missouri shall not be held liable for any
30 damages to any investor that makes an investment in any qualified
31 security of a qualified Missouri business, any business that applies to
32 be designated as a qualified Missouri business and is turned down, or
33 any investor that makes an investment in a business that applies to be
34 designated as a qualified Missouri business and is turned down.

35 (2) Each qualified Missouri business shall have the obligation to
36 notify the MTC, which shall notify the director of the department, of

37 any changes in the qualifications of the business or in the eligibility of
38 investors to claim a tax credit for cash investment in a qualified
39 security.

40 (3) The director of the department, in cooperation with MTC,
41 shall provide the information specified under subdivision (3) of
42 subsection 4 of this section to the director of the department of revenue
43 on an annual basis. The MTC shall conduct an annual review of the
44 activities undertaken under this section and section 348.273 to ensure
45 that tax credits issued under this section and section 348.273 are issued
46 in compliance with the provisions of this section and section 348.273 or
47 rules and regulations promulgated by the MTC or the department with
48 respect to this section and section 348.273. The reasonable costs of the
49 annual review and other administrative work necessary or convenient
50 to carry out the provisions of sections 348.273 and 348.274 shall be
51 recovered by the MTC according to a reasonable fee schedule adopted
52 by the MTC in cooperation with the department by and through its
53 service on the MTC board of directors.

54 (4) If the MTC determines that a business is not in substantial
55 compliance with the requirements under this section and section
56 348.273 to maintain its designation, the department or MTC, by written
57 notice, may inform the business that such business will lose its
58 designation as a qualified Missouri business one hundred twenty days
59 from the date of mailing of the notice unless such business corrects the
60 deficiencies and is once again in compliance with the requirements for
61 designation.

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

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

72 (7) In the event that a business loses its designation as a
73 qualified Missouri business, such business shall be precluded from

74 being issued any additional tax credits with respect to the business,
75 shall be precluded from being approved as a qualified Missouri
76 business, and shall be subject to an appropriate clawback provision
77 that MTC, in cooperation with the department by and through its
78 service on the MTC board of directors, provides for in connection with
79 the administration of sections 348.273 and 348.274.

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

83 (9) The portions of documents and other materials submitted to
84 the department or MTC that contain confidential information shall be
85 kept confidential and shall be maintained in a secured
86 environment. For the purposes of this section and section 348.273,
87 confidential information may include, but not be limited to, such
88 portions of trade secrets, documents, any customer lists, and other
89 materials; any formula, compound, production data, or compilation of
90 information that will allow certain individuals within a commercial
91 concern using such portions of documents and other material the
92 means to fabricate, produce, or compound an article of trade; or any
93 service having commercial value which gives the user an opportunity
94 to obtain a business advantage over competitors who do not know or
95 use such service.

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

100 3. Any qualified investor who makes a cash investment in a
101 qualified security of a qualified Missouri business may transfer the tax
102 credits such qualified investor may receive under subsection 4 of
103 section 348.273 to any natural person. Such transferee may claim the
104 tax credit against the transferee's Missouri income tax liability as
105 provided in subdivision (1) of subsection 4 of section 348.273, subject to
106 all restrictions and limitations set forth in this section and section
107 348.273. Only the full credit for any one investment shall be transferred
108 and this interest shall only be transferred one time. Documentation of
109 any tax credit transfer under this section shall be provided by the
110 qualified investor in the manner established by MTC and the

111 department, by and through its service on the MTC board of directors.

112 4. (1) Each qualified Missouri business for which tax credits
113 were issued under this section and section 348.273 shall report to MTC
114 on an annual basis, on or before February first. MTC shall provide
115 copies of the reports to the department under appropriate
116 confidentiality agreements as may be necessary under the
117 circumstances. Such reports shall include the following:

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

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

125 (c) Such other information as may be reasonably required under
126 sections 348.273 and 348.274.

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

130 (a) The amount of applications received;

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

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

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

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

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

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

147 (c) The amount of allocated but unissued tax credits and the

148 information about the unissued tax credits set forth in subdivision (2)
149 of this subsection;

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

153 (e) The manner in which the purpose of this section and section
154 348.273 has been carried out with regard to a region;

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

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

161 (h) An estimate of the multiplier effect on the economy of each
162 region of the cash investments made under this section and section
163 348.273; and

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

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

174 5. Under section 23.253 of the Missouri sunset act:

175 (1) The provisions of the new program authorized under sections
176 348.273 and 348.274 shall automatically sunset six years after the
177 effective date of sections 348.273 and 348.274 unless reauthorized by an
178 act of the general assembly;

179 (2) If such program is reauthorized, the program authorized
180 under sections 348.273 and 348.274 shall automatically sunset twelve
181 years after the effective date of the reauthorization of sections 348.273
182 and 348.274; and

183 (3) Sections 348.273 and 348.274 shall terminate on September
184 first of the calendar year immediately following the calendar year in

185 **which the program authorized under sections 348.273 and 348.274 are**
186 **sunset.**

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