

As Amended by House Committee

Session of 2020

HOUSE BILL No. 2689

By Committee on Commerce, Labor and Economic Development

2-13

1 AN ACT concerning economic development; relating to angel investor tax
2 credits; qualified securities; credit limitations and amounts; investor
3 requirements; amending K.S.A. 74-8132 ~~and~~, 74-8133 **and 74-8136**
4 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 74-8132 is hereby amended to read as follows: 74-
8 8132. As used in this act:

9 (a) "Angel investor" and "investor" mean an accredited investor who
10 is a natural person or an owner of a permitted entity investor, who is of
11 high net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the
12 effective date of this act, and who seeks high returns through private
13 investments in start-up companies and may seek active involvement in
14 business, such as consulting and mentoring the entrepreneur. For the
15 purposes of this act, a person who serves as an executive, officer,
16 employee, vendor or independent contractor of the business in which an
17 otherwise qualified cash investment is made is not an "angel investor" and
18 such person shall not qualify for the issuance of tax credits for such
19 investment;

20 (b) "bioscience business" means ~~what is reflected~~ *a business engaged*
21 *in "bioscience" as defined in K.S.A. 74-99b83, and amendments thereto;*

22 (c) "cash investment" means money or money equivalent in
23 consideration for qualified securities;

24 (d) "department" means the department of commerce;

25 (e) "Kansas business" means any business owned by an individual,
26 any partnership, association or corporation domiciled in Kansas, or any
27 corporation, even if a wholly owned subsidiary of a foreign corporation,
28 that does business primarily in Kansas or does substantially all of such
29 businesses' production in Kansas;

30 (f) "owner" means any natural person who is, directly or indirectly, a
31 partner, stockholder or member in a permitted entity investor;

32 (g) "permitted entity investor" means: (A) Any general partnership,
33 limited partnership, corporation that has in effect a valid election to be
34 taxed as an S corporation under the United States internal revenue code, or
35 a limited liability company that has elected to be taxed as a partnership
36 under the United States internal revenue code; and (B) that was established

1 and is operated for the sole purpose of making investments in other
2 entities;

3 (h) "qualified Kansas business" means the Kansas businesses that are
4 approved and certified as qualified Kansas businesses as provided in
5 K.S.A. 74-8134, and amendments thereto;

6 (i) "qualified securities" means a cash investment through any ~~one or~~
7 ~~more forms~~ *form or combination of forms of* financial assistance as
8 provided in this subsection that have been approved in form and substance
9 by the secretary. Such forms of financial assistance are: (1) Any form of
10 equity, such as: (A) A general or limited; partnership interest; (B) common
11 stock; *or* (C) preferred stock, ~~with or without~~ *regard to* voting rights,
12 ~~without regard to~~ *or* seniority position, and whether or not convertible into
13 common stock; ~~or~~ (D) ~~any form of subordinate or convertible debt, or~~
14 ~~both, with warrants or other means of equity conversion attached; or~~

15 (2) ~~a any debt instrument, such as a note or debenture that is secured~~
16 ~~or unsecured, subordinated~~ *subordinate* to the general creditors of the
17 *qualified Kansas business* debtor ~~and that requires no payments of~~
18 ~~principal, other than principal payments required to be made out of any~~
19 ~~future profits of payment from the qualified Kansas business debtor, for at~~
20 ~~least a seven-year period after commencement of such debt instrument's~~
21 ~~term and that shall convert to some form of equity prior to the qualified~~
22 *Kansas business debtor raising its next series of funding; and*

23 (j) "secretary" means the secretary of commerce.

24 Sec. 2. K.S.A. 74-8133 is hereby amended to read as follows: 74-
25 8133. (a) A credit against the tax imposed by article 32 of chapter 79 of the
26 Kansas Statutes Annotated, and amendments thereto, on the Kansas
27 taxable income of an angel investor and against the tax imposed by K.S.A.
28 40-252, and amendments thereto, shall be allowed for a cash investment in
29 the qualified securities of a qualified Kansas business. *For tax year 2020*
30 *and all tax years thereafter*, the credit shall be in a total amount ~~equal of~~
31 *up to* 50% of such investors' cash investment in any qualified Kansas
32 business, subject to the limitations set forth in subsection (b). This tax
33 credit may be used in its entirety in the taxable year in which the cash
34 investment is made except that no tax credit shall be allowed in a year
35 prior to January 1, 2005. If the amount by which that portion of the credit
36 allowed by this section exceeds the investors' liability in any one taxable
37 year, beginning in the year 2005, the remaining portion of the credit may
38 be carried forward until the total amount of the credit is used. If the
39 investor is a permitted entity investor, the credit provided by this section
40 shall be claimed by the owners of the permitted entity investor in
41 proportion to their ownership share of the permitted entity investor.

42 (b) *For tax year 2020 and all tax years thereafter*, the secretary of
43 revenue shall not allow tax credits of more than ~~\$50,000~~ *\$100,000* for a

1 single Kansas business or a total of ~~\$250,000~~ \$350,000 in tax credits for a
2 single year per investor who is a natural person or owner of a permitted
3 entity investor. No tax credits authorized by this act shall be allowed for
4 any cash investments in qualified securities for any year after the year
5 ~~2021~~ 2026. The total amount of tax credits ~~which that~~ may be allowed
6 under this section shall not exceed:

7 (1) \$4,000,000 during the tax year 2007 ~~and~~;

8 (2) \$6,000,000 for tax ~~year years~~ 2008 ~~and each tax year thereafter,~~
9 ~~except that~~ through 2010 and 2012 through 2021;

10 (3) for tax year 2011, the total amount of tax credits ~~which that~~ may
11 be allowed under this section shall not exceed \$5,000,000;

12 (4) \$6,500,000 for tax year 2022;

13 (5) \$7,000,000 for tax year 2023;

14 (6) \$7,500,000 for tax year 2024; and

15 (7) \$8,000,000 for tax year 2025. The balance of unissued tax credits
16 may be carried over for issuance in future years until ~~2021~~ 2026.

17 (c) A cash investment in a qualified security shall be deemed to have
18 been made on the date of acquisition of the qualified security, as such date
19 is determined in accordance with the provisions of the internal revenue
20 code.

21 ~~No investor shall claim a credit under this section for cash~~
22 ~~investments in Kansas venture capital, inc. No Kansas venture capital~~
23 ~~company shall qualify for the tax credit for an investment in a fund created~~
24 ~~by articles 81, 82, 83 or 84 of chapter 74 of the Kansas Statutes Annotated,~~
25 ~~and amendments thereto.~~

26 (e) Any investor ~~who has not owed any Kansas income tax under the~~
27 ~~provisions of article 32, chapter 79 of the Kansas Statutes Annotated, and~~
28 ~~amendments thereto, for the immediate past three taxable years without a~~
29 ~~current tax liability~~, who does not reasonably believe that it will owe any
30 such tax for the current taxable year and who makes a cash investment in a
31 qualified security of a qualified Kansas business shall be deemed to
32 acquire an interest in the nature of a transferable credit limited, *for tax*
33 *year 2020 and all tax years thereafter*, to an amount ~~equal~~ up to 50% of
34 this cash investment. This interest may be transferred to any natural person
35 ~~of net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the~~
36 ~~effective date of this act~~, whether or not such person is then an investor
37 and be claimed by the transferee as a credit against the transferee's Kansas
38 income tax liability beginning in the year provided in subsection (a). No
39 person shall be entitled to a refund for the interest created under this
40 section. Only the full credit for any one investment may be transferred and
41 this interest may only be transferred one time. A credit acquired by transfer
42 shall be subject to the limitations prescribed in this section. Documentation
43 of any credit acquired by transfer shall be provided by the investor in the

1 manner required by the director of taxation.

2 (f)(e) The reasonable costs of the administration of this act, the
3 review of applications for certification as qualified Kansas businesses and
4 the issuance of tax credits authorized by this act shall be reimbursed
5 through fees paid by the qualified Kansas businesses and the investors or
6 the transferees of investors, according to a reasonable fee schedule adopted
7 by the secretary by rules and regulations in accordance with the rules and
8 regulations filing act.

9 **Sec. 3. K.S.A. 74-8136 is hereby amended to read as follows: 74-**
10 **8136. (a) Tax credits for qualified Kansas businesses are a limited**
11 **resource of the state for which the secretary is designated as the**
12 **administrator. The purpose of such tax credits is to facilitate the**
13 **availability of equity investment in businesses in the early stages of**
14 **commercial development and to assist in the creation and expansion of**
15 **Kansas businesses—~~which~~ *that* are job and wealth creating enterprises.**
16 **To achieve this purpose and to optimize the use of the limited**
17 **resources of the state, the secretary is authorized to issue tax credits to**
18 **qualified investors in qualified Kansas businesses. Such tax credits**
19 **shall be awarded to those qualified Kansas businesses—~~which~~ *that*, as**
20 **determined by the secretary, are most likely to provide the greatest**
21 **economic benefit to the state. The secretary may issue whole or partial**
22 **tax credits based on an assessment of the qualified businesses. The**
23 **secretary may consider numerous factors in such assessment,**
24 **including, but not limited to, the quality and experience of the**
25 **management team, the size of the estimated market opportunity, the**
26 **risk from current or future competition, the ability to defend**
27 **intellectual property, the quality and utility of the business model and**
28 **the quality and reasonableness of financial projections for the**
29 **business.**

30 (b) Each qualified Kansas business for which tax credits have
31 been issued pursuant to this act shall report to the department on an
32 annual basis, the following: (1) The name, address and taxpayer
33 identification number of each angel investor who has made cash
34 investment in the qualified securities of a qualified Kansas business
35 and has received tax credits for this investment during the preceding
36 year and all other preceding years; (2) the amounts of these cash
37 investments by each angel investor and a description of the qualified
38 securities issued in consideration of such cash investments; (3) the
39 name, address and taxpayer identification number of each investor to
40 which tax credits issued pursuant to this act have been transferred by
41 the original angel investor; and (4) any additional information as the
42 secretary may require pursuant to this act.

43 (c) The secretary shall transmit annually to the governor, the

1 standing committee on commerce of the senate and the standing
2 committee on commerce, labor and economic development of the
3 house of representatives a report, based upon information received
4 from each qualified Kansas business for which tax credits have been
5 issued during the preceding year, describing the following: (1) The
6 manner in which the purpose, as described in this act, has been
7 carried out; (2) the total cash investments made for the purchase of
8 qualified securities of qualified Kansas businesses during the
9 preceding year and cumulatively since the inception of this act; (3) an
10 estimate of jobs created and jobs preserved by cash investments made
11 in qualified securities of qualified Kansas businesses; and (4) an
12 estimate of the multiplier effect on the Kansas economy of the cash
13 investments made pursuant to this act.

14 (d) The secretary shall provide the information specified in
15 subsection (c) to the department of revenue on an annual basis. The
16 secretary shall conduct an annual review of the activities undertaken
17 pursuant to this act to ensure that tax credits issued pursuant to this
18 act are issued in compliance with the provisions of this act or rules and
19 regulations promulgated by the department with respect to this act.

20 (e) Any violation of the reporting requirements set forth in this
21 section shall be grounds for undesignation of a qualified Kansas
22 business under this section.

23 (f) If the secretary determines that a business is not in substantial
24 compliance with the requirements of this act to maintain its
25 designation, the secretary, by written notice, shall inform the officers
26 of the qualified Kansas business and the business that such business
27 will lose designation as a qualified Kansas business in 120 days from
28 the date of mailing of the notice unless such business corrects the
29 deficiencies and is once again in compliance with the requirements for
30 designation.

31 (g) At the end of the 120-day period, if the qualified Kansas
32 business is still not in substantial compliance, the secretary shall send
33 a notice of loss of designation to the business, the secretary of the
34 department of revenue and to all known investors in the business.
35 Loss of designation of a qualified Kansas business shall preclude the
36 issuance of any additional tax credits with respect to this business and
37 the secretary shall not approve the application of such business as a
38 qualified Kansas business. Upon loss of the designation as a qualified
39 Kansas business or if a *bioscience* business loses its designation as a
40 qualified Kansas business under this act by moving its operations
41 outside Kansas within 10 years after receiving financial assistance
42 under this act or a qualified Kansas business that is not a bioscience
43 business loses its designation as a qualified Kansas business under this

1 *act by moving its operations outside Kansas within 5 years after receiving*
2 *financial assistance under this act, such business shall repay such*
3 **financial assistance to the department, in an amount determined by**
4 **the secretary. Each qualified Kansas business that loses such**
5 **designation shall enter into a repayment agreement with the secretary**
6 **specifying the terms of such repayment obligation.**

7 **(h) Angel investors in a qualified Kansas business shall be**
8 **entitled to keep all of the tax credits claimed under this act.**

9 **(i) The secretary shall adopt rules and regulations in accordance**
10 **with the rules and regulations filing act necessary to implement the**
11 **provisions of K.S.A. 74-8131 through 74-8136, and amendments**
12 **thereto.**

13 ~~Sec.-3:~~ **4. K.S.A. 74-8132**~~and, 74-8133~~ **and 74-8136** are hereby
14 repealed.

15 ~~Sec.-4:~~ **5.** This act shall take effect and be in force from and after its
16 publication in the statute book.