

SECOND REGULAR SESSION

SENATE BILL NO. 698

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time January 13, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

4717S.03I

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to an angel investor tax credit.

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

(b) A permitted entity investor who is an accredited investor as defined in 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 Act, Pub. L. No. 112-106, Sections 301-305, 126 Stat. 315-323, 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

22 credits;

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

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

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

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

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

42 (a) Any business owned by an individual;

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

45 (c) Any corporation, even if a wholly owned subsidiary of a
46 foreign corporation, that has its business operations located primarily
47 in Missouri or does substantially all its production in Missouri;

48 (9) "Qualified securities", a cash investment through any one or
49 more forms of financial assistance as provided in this subdivision and
50 that have been approved in form and substance by the MTC, in
51 coordination with the department by and through its service on the
52 MTC board of directors. Forms of such financial assistance include:

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

54 a. A general or limited partnership interest;

55 b. Common stock;

56 c. Preferred stock, with or without voting rights, without regard
57 to seniority position, and whether or not convertible into common
58 stock; or

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

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

67 (10) "Tax credit", a credit against the tax otherwise due under
68 chapter 143, excluding withholding tax imposed by sections 143.191 to
69 143.265, or otherwise due under chapter 147, 148, or 153.

70 3. The primary goal of the Missouri angel investment incentive
71 act shall be to encourage individuals to provide early-stage financing
72 for emerging qualified knowledge-based companies in Missouri through
73 the issuance of tax credits to qualified investors who make cash
74 investments for such early-stage financing.

75 4. (1) For all taxable years beginning on or after January 1, 2014,
76 a tax credit shall be allowed for an investor's cash investment in the
77 qualified securities of a qualified Missouri business occurring on or
78 after August 28, 2014. The credit shall be in a total amount equal to
79 fifty percent of such investor's cash investment in any qualified
80 Missouri business, subject to the limitations set forth in this subsection.
81 If the amount by which that portion of the credit allowed by this
82 section exceeds the investor's tax liability in any one taxable year, the
83 remaining portion of the credit may be carried forward five years or
84 until the total amount of the credit is used, whichever occurs first. If
85 the investor is a permitted entity investor, the credit provided by this
86 section shall be claimed by the owners of the permitted entity investor
87 in proportion to their equity investment in the permitted entity
88 investor.

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

93 (3) The department and MTC shall not issue tax credits of more
94 than fifty thousand dollars in a single year to an investor per
95 investment into a single, qualified Missouri business. The department

96 and MTC shall not issue tax credits totaling more than two hundred
97 fifty thousand dollars in a single year per investor. No tax credits
98 authorized by this section and section 348.274 shall be allowed for any
99 cash investments in qualified securities made in any year beginning
100 after December 31, 2024. The total amount of tax credits allowed under
101 this section shall not exceed six million dollars in any fiscal year. The
102 balance of unissued tax credits may be carried over for issuance in
103 future years until December 31, 2024.

104 (4) At the beginning of each calendar year, the MTC shall equally
105 allocate the total tax credits available during that calendar year to
106 each geographic region comprised of the boundaries of each
107 congressional district, as such boundaries may be amended from time
108 to time, within Missouri. At the beginning of each calendar quarter, the
109 MTC shall make available one-fourth of the total annual tax credits for
110 each region for investments made in qualified Missouri businesses
111 located in each such region. As soon as practicable after the end of
112 each calendar quarter, the MTC shall prepare and issue a report to the
113 director of the department designating all tax credit awards for that
114 quarter, so that the department may issue such tax credits in
115 accordance with the provisions of this section and section 348.274.

116 (5) Any unissued tax credits allocated to a region for a quarter
117 may be reallocated and awarded in any other region in a following
118 quarter, provided however, in the fourth quarter any unissued tax
119 credits may be reallocated and awarded in that quarter in accordance
120 with this section.

121 5. (1) Before an investor may be entitled to receive tax credits
122 under this section and section 348.274, such investor shall have made
123 a cash investment in a qualified security of a qualified Missouri
124 business. The business shall have been approved as a qualified
125 Missouri business before the date on which the cash investment was
126 made. To be designated as a qualified Missouri business, a business
127 shall apply to MTC in accordance with the provisions of this section.

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

132 (a) The name of the business and certified copies of the

133 **organizational documents of the business;**

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

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

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

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

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

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

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

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

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

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

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

169 **a. The business of banking, savings and loan or lending**

170 institutions, credit or finance, or financial brokerage or investments;
171 **b. The provision of professional services, such as legal,**
172 **accounting, or engineering services, provided, however, that contract**
173 **research organizations, sometimes referred to as CROs, shall not be**
174 **subject to this exclusion;**
175 **c. Governmental, charitable, religious, or trade organizations;**
176 **d. The ownership, development, brokerage, sales, or leasing of**
177 **real estate;**
178 **e. Insurance;**
179 **f. Construction, construction management, or contracting;**
180 **g. Business consulting or brokerage;**
181 **h. Any business engaged primarily as a passive business, having**
182 **irregular or non-continuous operations, or deriving substantially all of**
183 **the income of the business from passive investments that generate**
184 **interest, dividends, royalties, or capital gains, or any business**
185 **arrangements the effect of which is to immunize an investor from risk**
186 **of loss;**
187 **i. Any activity that is in violation of the law;**
188 **j. Any business raising money primarily to purchase real estate,**
189 **land, or fixtures; and**
190 **k. Any gambling-related business;**
191 **(f) The business has a reasonable chance of success;**
192 **(g) The business has the reasonable potential to create**
193 **measurable employment within the region, this state, or both;**
194 **(h) The business is based on an innovative technology, product,**
195 **or service designed to be used in the commercial marketplace;**
196 **(i) The existing owners of the business and other founders have**
197 **made or are committed to make a substantial financial or time**
198 **commitment to the business;**
199 **(j) The securities to be issued and purchased are qualified**
200 **securities;**
201 **(k) The business has the reasonable potential to address the**
202 **needs and opportunities specific to the region, this state, or both;**
203 **(l) The business has made binding commitments to the MTC for**
204 **adequate reporting of financial data, including a requirement for an**
205 **annual report, or, if required, an annual audit of the financial and**
206 **operational records of the business, the right of access to the financial**

207 records of the business, the right of the department and the MTC to
208 record and publish normal and customary data and information related
209 to the issuance of tax credits that are not otherwise determined to be
210 trade or business secrets, and other such protections as may be in the
211 best interest of taxpayers to achieve the goals of this section and
212 section 348.274; and

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

215 (4) A qualified Missouri business shall have the burden of proof
216 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 which, as determined by the MTC, are most likely
6 to provide the greatest economic benefit to the region, 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 the MTC's assessment of the qualified
10 Missouri 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) Any additional information as may reasonably be required

28 under this section and section 348.273.

29 2. (1) The state of Missouri shall not be held liable for any
30 damages to any investor that makes an investment in a 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 investments in a qualified
39 security.

40 (3) The director of the department, in cooperation with the MTC,
41 shall provide the information specified in subdivision (3) of subsection
42 4 of this section to the director of the department of revenue on an
43 annual basis. The MTC shall conduct an annual review of the activities
44 undertaken under this section and section 348.273 to ensure that tax
45 credits issued under this section and section 348.273 are issued in
46 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 this section and section 348.273 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 of this section and section 348.273 to
56 maintain its designation, the department or the MTC, by written notice,
57 shall inform the business that such business will lose its designation as
58 a qualified Missouri business one hundred twenty days from the date
59 of mailing of the notice unless such business corrects the deficiencies
60 and is once again in compliance with the requirements for designation.

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

65 investors in the business.

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

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 the MTC, in cooperation with department by and through its
78 service on the MTC board of directors, provides for in connection with
79 the administration of this section and section 348.273.

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 the MTC that contain confidential information shall
85 be 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, any
88 document or other material containing a formula, compound,
89 production data, or compilation of information that will allow certain
90 individuals within a commercial concern using such portions of
91 documents and other material the means to fabricate, produce, or
92 compound an article of trade, or perform any service having
93 commercial value which gives the user an opportunity to obtain a
94 business advantage over competitors who do not know or use such
95 service.

96 (10) The department and the MTC may prepare and adopt
97 procedures, rules, and published guidance 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 the 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 have been issued under this section and section 348.273 shall report to
114 the MTC on an annual basis, on or before February first. The MTC
115 shall provide 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) Any additional information reasonably required under this
126 section and section 378.273.

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 president pro tempore of the senate, and
140 the speaker of the house of representatives, on or before April first, on
141 the allocation and issuance of the tax credits. Such reports shall
142 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;

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. Any rule or portion of a rule, as that term is defined in section
175 536.010 that is created under the authority delegated in this section

176 and section 348.273 shall become effective only if it complies with and
177 is subject to all of the provisions of chapter 536, and, if applicable,
178 section 536.028. This section and chapter 536 are nonseverable and if
179 any of the powers vested with the general assembly pursuant to chapter
180 536, to review, to delay the effective date, or to disapprove and annul
181 a rule are subsequently held unconstitutional, then the grant of
182 rulemaking authority and any rule proposed or adopted after August
183 28, 2014, shall be invalid and void.

184 6. Notwithstanding the provisions of section 23.253, this section
185 and 348.273 shall expire on December 31, 2024.

Unofficial ✓

Bill

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