

FIRST REGULAR SESSION

# SENATE BILL NO. 373

## 91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS GIBBONS AND YECKEL.

Read 1st time January 29, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1292S.021

### AN ACT

To repeal sections 135.400, 135.403, 135.408, 135.411, 135.423, 348.300, 348.302, 620.1039 and 620.1450, RSMo 2000, relating to tax relief in distressed communities, and to enact in lieu thereof nine new sections relating to the same subject, with an emergency clause.

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

Section A. Sections 135.400, 135.403, 135.408, 135.411, 135.423, 348.300, 348.302, 620.1039 and 620.1450, RSMo 2000, are repealed and nine new sections enacted in lieu thereof, to be known as sections 135.400, 135.403, 135.408, 135.411, 135.423, 348.300, 348.302, 620.1039 and 620.1450, to read as follows:

135.400. As used in sections 135.400 to 135.430, the following terms mean:

(1) "Certificate", a tax credit certificate issued by the department of economic development in accordance with sections 135.400 to 135.430;

(2) "Community bank", either a bank community development corporation or development bank, which are financial organizations which receive investments from commercial financial institutions regulated by the federal reserve, the office of the comptroller of the currency, the office of thrift supervision, or the Missouri division of finance. Community banks, in addition to their other privileges, shall be allowed to make loans to businesses or equity investments in businesses or in real estate provided that such transactions have associated public benefits;

(3) "Community development corporation", a not for profit corporation and a recipient of Community Development Block Grant (CDBG) funds pursuant to the Housing Community Development Act of 1974. Such corporations design specific, comprehensive programs to stimulate economic development, housing or other public benefits leading to the development of economically

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

sustainable neighborhoods or communities;

(4) "Department", the Missouri department of economic development;

(5) "Director", the director of the department of economic development, or a person acting under the supervision of the director;

(6) "Investment", a transaction in which a Missouri small business or a community bank receives a monetary benefit from an investor pursuant to the provisions of sections 135.403 to 135.414;

(7) "Investor", an individual, partnership, financial institution, trust or corporation meeting the eligibility requirements of sections 135.403 to 135.414. In the case of partnerships and nontaxable trusts, the individual partners or beneficiaries shall be treated as the investors;

(8) "Missouri small business", an independently owned and operated business as defined in Title 15 U.S.C. Section 632(a) and as described by Title 13 C.F.R. Part 121, which is headquartered in Missouri and which employs at least eighty percent of its employees in Missouri, except that no such small business shall employ more than one hundred employees. Such businesses must be involved in interstate or intrastate commerce for the purpose of manufacturing, processing or assembling products, conducting research and development, or providing services in interstate commerce, but excluding retail, real estate, insurance or professional services. For the purpose of qualifying for the tax credit pursuant to sections 135.400 to 135.430, "Missouri small business" shall include cooperative marketing associations organized pursuant to chapter 274, RSMo, which are engaged in the business of producing and marketing fuels derived from agriculture commodities, without regard for whether a cooperative marketing association has more than one hundred employees. Cooperative marketing associations organized pursuant to chapter 274, RSMo, shall not be required to comply with the requirements of section 135.414;

(9) "Primary employment", work which pays at least the minimum wage and which is not seasonal or part-time;

(10) "Principal owners", one or more persons who own an aggregate of **[fifty] twenty** percent or more of the Missouri small business and who are involved in the operation of the business as a full-time professional activity;

(11) "Project", any commercial or industrial business or other economic development activity undertaken in a target area, designed to reduce conditions of blight, unemployment or widespread reliance on public assistance which creates permanent primary employment opportunities;

(12) "State tax liability", any liability incurred by a taxpayer pursuant to the provisions of chapter 143, RSMo, chapter 147, RSMo, chapter 148, RSMo, section 375.916, RSMo, and chapter 153, RSMo, exclusive of the provisions relating to the withholding of tax as provided for in sections 143.191 to 143.265, RSMo, and related provisions;

(13) "Target area", a group of blocks or a self-defined neighborhood where the rate of poverty in the area is greater than twice the national poverty rate and as defined by the

department of social services in conjunction with the department of economic development. Areas of the state satisfying the criteria of this subdivision may be designated as a "target area" following appropriate findings made and certified by the departments of economic development and social services. In making such findings, the departments of economic development and social services may use any commonly recognized records and statistical indices published or made available by any agency or instrumentality of the federal or state government. No area of the state shall be a target area until so certified by the department of social services and the revitalization plan submitted pursuant to section 208.335, RSMo, has received approval.

135.403. 1. Any investor who makes a qualified investment in a Missouri small business shall be entitled to receive a tax credit equal to forty percent of the amount of the investment or, in the case of a qualified investment in a Missouri small business in a distressed community as defined by section 135.530, a credit equal to sixty percent of the amount of the investment, and any investor who makes a qualified investment in a community bank or a community development corporation shall be entitled to receive a tax credit equal to fifty percent of the amount of the investment if the investment is made in a community bank or community development corporation for direct investment. **Beginning January 1, 2002**, the total amount of tax credits available for qualified investments in Missouri small businesses shall not exceed ~~[thirteen]~~**six** million dollars **per year** and at least ~~[four]~~ **three** million dollars **per year** of the amount authorized by this section and certified by the department of economic development shall be for investment in Missouri small businesses in distressed communities. Authorization for all or any part of this ~~[four-million-dollar amount]~~ **three million dollars per year** shall in no way restrict the eligibility of Missouri small businesses in distressed communities, as defined in section 135.530, for the remaining amounts authorized within this section. No more than twenty percent of the tax credits available each year for investments in community banks or community development corporations for direct investment shall be certified for any one project, as defined in section 135.400. The tax credit shall be evidenced by a tax credit certificate in accordance with the provisions of sections 135.400 to 135.430 and may be used to satisfy the state tax liability of the owner of the certificate that becomes due in the tax year in which the qualified investment is made, or in any of the ten tax years thereafter. When the qualified small business is in a distressed community, as defined in section 135.530, the tax credit may also be used to satisfy the state tax liability of the owner of the certificate that was due during each of the previous three years in addition to the year in which the investment is made and any of the ten years thereafter. No investor may receive a tax credit pursuant to sections 135.400 to 135.430 unless that person presents a tax credit certificate to the department of revenue for payment of such state tax liability. The department of revenue shall grant tax credits in the same order as established by subsection 1 of section 32.115, RSMo. Subject to the provisions of sections 135.400 to 135.430, certificates of tax credit issued in accordance with these sections may be transferred, sold or assigned by notarized endorsement thereof which names

the transferee.

2. Five hundred thousand dollars in tax credits shall be available annually from the total amount of tax credits authorized by section 32.110, RSMo, and subdivision (4) of subsection 2 of section 32.115, RSMo, as a result of investments in community banks or community development corporations. Aggregate investments eligible for tax credits in any one Missouri small business shall not be more than one million dollars. Aggregate investments eligible for tax credits in any one Missouri small business shall not be less than five thousand dollars as of the date of issuance of the first tax credit certificate for investment in that business.

[3. This section and section 620.1039, RSMo, shall become effective January 1, 2001.]

135.408. A qualified investment in a Missouri small business may be made either through an unsecured loan or the purchase of equity or unsecured debt securities of such business. Investors in a small business qualifying for tax credits **[under] pursuant to** the provisions of sections 135.400 to 135.430, however, must collectively own less than **[fifty] eighty** percent of a business after their investments are made. Qualified investments in a Missouri small business must be expended for capital improvements, plant, equipment, research and development, or working capital for the business or such business activity as may be approved by the department.

135.411. The amount of the qualified investment made in a Missouri small business must remain in that business for a minimum of **[five] two** years. Withdrawal of the investment prior to **expiration of** the minimum **[five-year]** period shall result in revocation of the tax credit, and repayment of any amounts of the tax credit already applied against the investor's state tax liability. **The sale, change in control or going public of a business shall not trigger such a revocation if the business continues to operate.**

135.423. The department may revoke a tax credit certificate **issued pursuant to sections 135.400 to 135.430** if any representation to the department in connection with the application proves to have been false when made or if the application violates any conditions established by the department and stated in the tax credit certificate. The revocation may be in full or in part as the department may determine. The department shall specify the amount of credit being revoked and shall send notice of the revocation to the investor and to the state department of revenue. **Any revocation of a tax credit issued pursuant to sections 135.400 to 135.430 shall apply only to the original applicant for the tax credit and not to a good faith subsequent purchaser or transferee thereof.**

348.300. As used in sections 348.300 to 348.318, the following terms mean:

(1) "Commercial activity located in Missouri", any research, development, prototype fabrication, and subsequent precommercialization activity, or any activity related thereto, conducted in Missouri for the purpose of producing a service or a product or process for manufacture, assembly or sale or developing a service based on such a product or process by any person, corporation, partnership, joint venture, unincorporated association, trust or other

organization doing business in Missouri. Subsequent to January 1, 1999, a commercial activity located in Missouri shall mean only such activity that is located within a distressed community, as defined in section 135.530, RSMo;

(2) "Follow-up capital", capital provided to a commercial activity located in Missouri **or any other Missouri business** in which a qualified fund has previously invested seed capital or start-up capital **within the previous three years** and which does not exceed ten times the amount of such seed and start-up capital;

(3) "Qualified contribution", cash contribution to a qualified fund;

(4) "Qualified economic development organization", any corporation organized under the provisions of chapter 355, RSMo, which has as of January 1, 1991, obtained a contract with the department of economic development to operate an innovation center to promote, assist and coordinate the research and development of new services, products or processes in the state of Missouri; and the Missouri technology corporation organized pursuant to the provisions of sections 348.253 to 348.266;

(5) "Qualified fund", any corporation, partnership, joint venture, unincorporated association, trust or other organization which is established under the laws of Missouri after December 31, 1985, which meets all of the following requirements established by this subdivision. The fund shall have as its sole purpose and business the making of investments, of which at least ninety percent of the dollars invested shall be qualified investments. The fund shall enter into a contract with one or more qualified economic development organizations which shall entitle the qualified economic development organizations to receive not less than ten percent of all distributions of equity and dividends or other earnings of the fund. Such contracts shall require the qualified fund to transfer to the Missouri technology corporation organized pursuant to the provisions of sections 348.253 to 348.266, this interest and make corresponding distributions thereto in the event the qualified economic development organization holding such interest is dissolved or ceases to do business for a period of one year or more;

(6) "Qualified investment", any investment of seed capital, start-up capital, or follow-up capital in any commercial activity located in Missouri;

(7) "Person", any individual, corporation, partnership or other entity;

(8) "Seed capital", capital provided to a commercial activity located in Missouri for research, development and precommercialization activities to prove a concept for a new product or process or service, and for activities related thereto;

(9) "Start-up capital", capital provided to a commercial activity located in Missouri for use in preproduction product development or service development or initial marketing thereof, and for activities related thereto;

(10) "State tax liability", any state tax liability incurred by a taxpayer under the provisions of chapters 143, 147 and 148, RSMo, exclusive of the provisions relating to the withholding of tax

as provided for in sections 143.191 to 143.265, RSMo, and related provisions;

(11) "Uninvested capital", the amount of any distribution, other than of earnings, by a qualified fund made within five years of the issuance of a certificate of tax credit as provided by sections 348.300 to 348.318; or the portion of all qualified contributions to a qualified fund which are not invested as qualified investments within five years of the issuance of a certificate of tax credit as provided by sections 348.300 to 348.318 to the extent that the amount not so invested exceeds ten percent of all such qualified contributions.

348.302. 1. Any person who makes a qualified contribution to a qualified fund shall be entitled to receive a tax credit equal to ~~[fifty]~~ **seventy-five** percent of the amount of the qualified contribution. The tax credit shall be evidenced by a tax credit certificate in accordance with the provisions of sections 348.300 to 348.318 and may be used to satisfy the state tax liability of the owner of such certificate that becomes due in the tax year in which the qualified contribution is made, or in any of the ten tax years thereafter. No person may receive a tax credit pursuant to sections 348.300 to 348.318 unless that person presents a tax credit certificate to the department of revenue for payment of such state tax liability.

2. The amount of such qualified contributions which can be made is limited so that the aggregate of all tax credits authorized ~~[under]~~ **pursuant to** the provisions of sections 348.300 to 348.318 shall not exceed ~~[nine]~~ **five** million dollars **per year plus any unused amounts from the previous year pursuant to section 620.1450, RSMo.** All tax credits authorized ~~[under]~~ **pursuant to** the provisions of this section may be transferred, sold or assigned **by notarized endorsement which names the transferee.**

620.1039. 1. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441 or 143.471, RSMo, or section 148.370, RSMo, and the term "qualified research expenses" has the same meaning as prescribed in 26 U.S.C. 41.

2. For tax years beginning on or after January 1, 2001, the director of the department of economic development may authorize a taxpayer to receive a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, or chapter 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in an amount up to six and one-half percent of the excess of the taxpayer's qualified research expenses, as certified by the director of the department of economic development, within this state during the taxable year over the average of the taxpayer's qualified research expenses within this state over the immediately preceding three taxable years; except that, no tax credit shall be allowed on that portion of the taxpayer's qualified research expenses incurred within this state during the taxable year in which the credit is being claimed, to the extent such expenses exceed two hundred percent of the taxpayer's average qualified research expenses incurred during the immediately preceding three taxable years.

3. The director of economic development shall prescribe the manner in which the tax credit

may be applied for. The tax credit authorized by this section may be claimed by the taxpayer to offset the tax liability imposed by chapter 143, RSMo, or chapter 148, RSMo, that becomes due in the tax year during which such qualified research expenses were incurred. Where the amount of the credit exceeds the tax liability, the difference between the credit and the tax liability may only be carried forward for the next five succeeding taxable years or until the full credit has been claimed, whichever first occurs. The application for tax credits authorized by the director pursuant to subsection 2 of this section shall be made no later than the end of the taxpayer's tax period immediately following the tax period for which the credits are being claimed.

4. Certificates of tax credit issued pursuant to this section may be transferred, sold or assigned by filing a notarized endorsement thereof with the department which names the transferee and the amount of tax credit transferred. The director of economic development may allow a taxpayer to transfer, sell or assign up to forty percent of the amount of the certificates of tax credit issued to and not claimed by such taxpayer pursuant to this section during any tax year commencing on or after January 1, 1996, and ending not later than December 31, 1999. Such taxpayer shall file, by December 31, 2001, an application with the department which names the transferee, the amount of tax credit desired to be transferred, and a certification that the funds received by the applicant as a result of the transfer, sale or assignment of the tax credit shall be expended within three years at the state university for the sole purpose of conducting research activities agreed upon by the department, the taxpayer and the state university. Failure to expend such funds in the manner prescribed pursuant to this section shall cause the applicant to be subject to the provisions of section 620.017.

5. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to June 27, 1997, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to June 27, 1997, if such rule complied with the provisions of chapter 536, RSMo. The provisions of this section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, including the ability to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule, are subsequently held unconstitutional, then the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void.

6. The aggregate of all tax credits authorized pursuant to this section shall not exceed **[nine] fourteen** million seven hundred thousand dollars in any year~~], and at least five million dollars per year of the amount authorized pursuant to this section shall be available for use by small life science companies. For purposes of this section, a "small life science company" is any company headquartered in the state of Missouri which is engaged in life sciences research and has fewer than one hundred fifty employees.~~

620.1450. The maximum amount of tax credits allowable pursuant to the provisions of the individual training account program shall not annually exceed six million dollars. **If the total amount of tax credits authorized pursuant to this section is not used in a given year, then such excess portion shall be added to the maximum amount of tax credits available pursuant to subsection 2 of section 348.302, RSMo, for the following year.**

Section B. Because of the need to reallocate and extend the tax credits contained in this act, the repeal and reenactment of sections 135.400, 135.403, 135.408, 135.411, 135.423, 348.300, 348.302, 620.1039 and 620.1450 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 135.400, 135.403, 135.408, 135.411, 135.423, 348.300, 348.302, 620.1039 and 620.1450 of this act shall be in full force and effect upon its passage and approval.

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