

SECOND REGULAR SESSION

# SENATE BILL NO. 1188

94TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS SHIELDS, BRAY, LOUDON, ENGLER, KENNEDY AND DEMPSEY.

Read 1st time February 26, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5309S.011

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## AN ACT

To repeal section 620.1039, RSMo, and to enact in lieu thereof one new section relating to tax credits for qualified research expenses relating to agricultural biotechnology, plant genomics products, and prescription pharmaceuticals consumed by humans and animals.

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

Section A. Section 620.1039, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 620.1039, to read as follows:

620.1039. 1. As used in this section, the term "taxpayer" means an  
2 individual, a partnership, or any charitable organization which is exempt from  
3 federal income tax and whose Missouri unrelated business taxable income, if any,  
4 would be subject to the state income tax imposed under chapter 143, RSMo, or a  
5 corporation as described in section 143.441 or 143.471, RSMo, or section 148.370,  
6 RSMo, and the term "qualified research expenses" has the same meaning as  
7 prescribed in 26 U.S.C. 41, **except that such qualified research expenses**  
8 **shall be limited to those incurred in the research and development of**  
9 **agricultural biotechnology, plant genomics products, and prescription**  
10 **pharmaceuticals consumed by humans and animals.**

11 2. For tax years beginning on or after January 1, 2001, the director of the  
12 department of economic development [may] **shall** authorize a taxpayer to receive  
13 a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, or  
14 chapter 148, RSMo, other than the taxes withheld pursuant to sections 143.191  
15 to 143.265, RSMo, in an amount up to six and one-half percent of the excess of  
16 the taxpayer's qualified research expenses, as certified by the director of the  
17 department of economic development, within this state during the taxable year

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

18 over the average of the taxpayer's qualified research expenses within this state  
19 over the immediately preceding three taxable years; except that, no tax credit  
20 shall be allowed on that portion of the taxpayer's qualified research expenses  
21 incurred within this state during the taxable year in which the credit is being  
22 claimed, to the extent such expenses exceed two hundred percent of the taxpayer's  
23 average qualified research expenses incurred during the immediately preceding  
24 three taxable years.

25           3. The director of economic development shall prescribe the manner in  
26 which the tax credit may be applied for. The tax credit authorized by this section  
27 may be claimed by the taxpayer to offset the tax liability imposed by chapter 143,  
28 RSMo, or chapter 148, RSMo, that becomes due in the tax year during which such  
29 qualified research expenses were incurred. Where the amount of the credit  
30 exceeds the tax liability, the difference between the credit and the tax liability  
31 may only be carried forward for the next five succeeding taxable years or until the  
32 full credit has been claimed, whichever first occurs. The application for tax  
33 credits authorized by the director pursuant to subsection 2 of this section shall  
34 be made **no earlier than January first and no later than [the end of] July**  
35 **first of the calendar year immediately following the calendar year in**  
36 **which the taxpayer's tax period [immediately following the tax period] for which**  
37 **the credits are being claimed ended. The director shall act on any such**  
38 **application for tax credits no sooner than August first but no later than**  
39 **August fifteenth of each year for applications filed in that calendar**  
40 **year.**

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

54 the state university. Failure to expend such funds in the manner prescribed  
55 pursuant to this section shall cause the applicant to be subject to the provisions  
56 of section 620.017.

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

69         6. The aggregate of all tax credits authorized pursuant to this section  
70 shall not exceed [nine] **ten** million [seven hundred thousand] dollars in any  
71 **calendar year. In the event that total eligible claims for credits**  
72 **received in a calendar year exceed the annual cap, each eligible**  
73 **claimant shall be issued credits based upon the following formula: the**  
74 **eligible credits if the annual cap had not been exceeded multiplied by**  
75 **the ratio of the annual cap divided by the total of all eligible claims for**  
76 **credits filed in that calendar year.**

77         7. [For all tax years beginning on or after January 1, 2005, no tax credits  
78 shall be approved, awarded, or issued to any person or entity claiming any tax  
79 credit under this section] **No one tax payer shall be issued more than**  
80 **thirty percent of the aggregate of all tax credits authorized under this**  
81 **section in any calendar year.**

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