

FIRST REGULAR SESSION

SENATE BILL NO. 285

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEMBKE.

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TERRY L. SPIELER, Secretary.

1656S.011

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to a tax credit for equity investments in technology-based early stage Missouri companies.

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. As used in sections 348.273 and 348.274, the following terms shall mean:

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

(2) "Distressed community", as defined in section 135.530, RSMo;

(3) "Equity investment", money or money equivalent in consideration for qualified securities. An equity investment shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the Internal Revenue Code;

(4) "Investor":

(a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a) as in effect on August 28, 2009; or

(b) Any partnership, corporation, trust, limited liability company, or not-for-profit entity that was established and is operated for the purpose of making preseed and seed stage investments in start-up companies, and is approved by the department;

(5) "Qualified Missouri business", an independently owned and operated business which is headquartered and located in this state and which is in need of venture capital. Such business shall have no more

21 than two hundred employees, eighty percent of which are employed in
22 this state. Such business shall be involved in commerce for the purpose
23 of manufacturing, processing, or assembling products, conducting
24 research and development, or providing services in interstate
25 commerce but excluding retail, real estate, real estate development,
26 insurance, and professional services provided by accountants, lawyers,
27 or physicians. At the time approval is sought, such business shall be a
28 small business concern that meets the requirements of the United
29 States Small Business Administration's qualification size standards for
30 its venture capital program, as defined in the Small Business
31 Investment Act of 1958, as amended, and rules promulgated in 13 CFR
32 121.301(c), as amended;

33 (6) "Qualified securities", securities that are not redeemable or
34 repayable within seven years of issuance and that have been approved
35 in form and substance by the department. Forms of such equity
36 securities include:

37 (a) A general or limited partnership interest;

38 (b) Common stock;

39 (c) Preferred stock, with or without voting rights, without regard
40 to seniority position, and whether or not convertible into common
41 stock; or

42 (d) Convertible debt;

43 (7) "Rural area", any city, town, or village with fewer than fifteen
44 thousand inhabitants and located in any county that is not part of a
45 standard metropolitan statistical area as defined by the United States
46 Department of Commerce or its successor agency. However, any such
47 city, town, or village located in any county so defined as a standard
48 metropolitan statistical area may be designated a rural area by the
49 office of rural development if:

50 (a) A substantial number of persons in such county derive their
51 income from agriculture;

52 (b) The county has only one city within the county having a
53 population of more than fifteen thousand and is classified as a standard
54 metropolitan statistical area; and

55 (c) All other cities, towns, and villages in that county have a
56 population of less than fifteen thousand.

348.274. 1. The department may authorize tax credits to

2 encourage equity investment into technology-based early stage
3 Missouri companies.

4 2. If a qualified Missouri business is approved by the
5 department, the investors who contribute the first five hundred
6 thousand dollars in equity investment in the qualified Missouri
7 business may be issued a tax credit in the year the equity investment
8 is made. The tax credit shall be in a total amount equal to thirty
9 percent of such investors' equity investment in any qualified Missouri
10 business, subject to the limitations set forth in subsection 5 of this
11 section. However, if the qualified Missouri business invested in is
12 located in a rural area or a distressed community, the investors may be
13 issued a tax credit for forty percent of such investment, subject to the
14 limitations set forth in subsection 5 of this section.

15 3. (1) Before an investor may be entitled to receive tax credits,
16 as authorized by this section, such investor shall have made an equity
17 investment in a qualified security of a qualified Missouri
18 business. This business shall have been approved by the department
19 as a qualified Missouri business prior to the date on which the cash
20 investment was made. To be designated as a qualified Missouri
21 business, a business shall make application to the department in
22 accordance with the provisions of this section. Such application shall
23 be in form and substance as required by the department but shall
24 include at least the following:

25 (a) The name of the business and certified copies of the
26 organizational documents of the business;

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

29 (c) A statement of the business innovative and proprietary
30 technology, product, or service;

31 (d) A statement of the potential economic impact of the
32 enterprise including the number, location, and types of jobs expected
33 to be created;

34 (e) A description of the qualified securities to be issued, the
35 consideration to be paid for the qualified securities, the amount of any
36 tax credits requested, and the earliest year in which the tax credits
37 may be redeemed;

38 (f) A statement of the amount, timing, and projected use of the

39 proceeds to be raised from the proposed sale of qualified securities;
40 and

41 (g) Other information as the department may request, such as
42 the names, addresses, and taxpayer identification numbers of all
43 investors who may qualify for the tax credit. Such list of investors who
44 may qualify for the tax credits shall be amended as new qualified
45 securities are sold or as any information on the list changes.

46 (2) No business shall be designated as a qualified Missouri
47 business unless such business meets all of the following criteria:

48 (a) The business shall not have had annual gross revenues of
49 more than three million dollars in the most recent tax year of the
50 business;

51 (b) The business shall not have ownership interests including,
52 but not limited to, common or preferred shares of stock that can be
53 traded by the public via a stock exchange, electronic exchange, bulletin
54 board, or other public market place on or before the date that a
55 qualifying investment is made;

56 (c) The business shall not be engaged primarily in any one or
57 more of the following enterprises:

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

60 b. Professional services, such as legal, accounting, or engineering
61 services;

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

63 d. The ownership, development, brokerage, sales, or leasing of
64 real estate;

65 e. Insurance;

66 f. Construction or construction management or contracting;

67 g. Business consulting or brokerage;

68 h. Any business engaged primarily as a passive business, having
69 irregular or noncontinuous operations, or deriving substantially all of
70 the income of the business from passive investments that generate
71 interest, dividends, royalties, or capital gains, or any business
72 arrangements the effect of which is to immunize an investor from risk
73 of loss;

74 i. Any Missouri certified capital formation company;

75 j. Any activity that is in violation of the law; and

76 k. Any business raising money primarily to purchase real estate,
77 land, or fixtures;

78 (d) The business shall satisfy all other requirements of this
79 section.

80 (3) The portions of documents and other materials submitted to
81 the department that contain trade secrets shall be kept confidential
82 and shall be maintained in a secured environment by the director of
83 the department. For the purposes of this section, such portions of
84 documents and other materials shall mean any customer list, any
85 formula, compound, production data, or compilation of information
86 certain individuals within a commercial concern using such portions
87 of documents and other material means to fabricate, produce, or
88 compound an article of trade, or, any service having commercial value,
89 which gives the user an opportunity to obtain a business advantage
90 over competitors who do not know or use such service.

91 (4) A qualified Missouri business shall have the burden of proof
92 to demonstrate to the department the qualifications of the business
93 under this section and shall have the obligation to notify the
94 department in a timely manner of any changes in the qualifications of
95 the business or in the eligibility of investors to claim a tax credit for
96 cash investment in a qualified security.

97 4. The designation of a business as a qualified Missouri business
98 shall be made by the department, and such designation shall be
99 renewed annually. A business shall be so designated if the department
100 determines, based upon the application submitted by the business and
101 any additional investigation the staff of the department shall make,
102 that the following criteria have been or shall be satisfied:

103 (1) The business has a reasonable chance of success;

104 (2) The ability of investors in the business to receive tax credits
105 for cash investments in qualified securities of the business is necessary
106 because funding otherwise available for the business is not available
107 on commercially reasonable terms;

108 (3) The business has the reasonable potential to create
109 measurable employment within the state;

110 (4) The business has an innovative and proprietary technology,
111 product, and service;

112 (5) The existing owners of the business and other founders have

113 made or are committed to make a substantial financial and time
114 commitment to the business;

115 (6) The securities to be issued and purchased are qualified
116 securities; and

117 (7) Binding commitments have been made by the business to the
118 department for adequate reporting of financial data, including a
119 requirement for an annual report, or, if required by the department, an
120 annual audit of the financial and operational records of the business,
121 the right of access to the financial records of the business, and the
122 right of the department to record and publish normal and customary
123 data and information related to the issuance of tax credits that are not
124 otherwise determined to be trade or business secrets;

125 5. The department shall not issue tax credits of more than fifty
126 thousand dollars to an investor per investment into a single, qualified
127 Missouri company, or for tax credits totaling more than one hundred
128 thousand dollars in a single year per investor. The total amount of tax
129 credits that may be allowed under this section shall not exceed five
130 million dollars per tax year.

131 6. This tax credit may be used in its entirety in the taxable year
132 in which the equity investment is made or the credit may be carried
133 forward for use in any of the next three consecutive tax years until the
134 total amount of the credit is used. The tax credits may be sold,
135 assigned, exchanged, or otherwise transferred.

136 7. Tax credits may be used against the tax otherwise due under
137 chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo.

138 8. A qualified Missouri business for which credits have been
139 issued that, within seven years of receiving tax credits under this
140 section relocates its headquarters out of Missouri, ceases to employ
141 eighty percent of its employees in Missouri, alters the principal nature
142 of its operations, or divests itself of key assets shall upon demand by
143 the department pay the state of Missouri an amount equal to the
144 amount of credits issued to its contributors.

145 9. The reasonable costs of the administration of this section, the
146 review of applications for certification as qualified Missouri businesses,
147 and the issuance of tax credits authorized by this section shall be
148 reimbursed through fees paid by the qualified Missouri businesses and
149 the investors or the transferees of investors, according to a reasonable

150 fee schedule adopted by the department.

151 **10. In addition to reports by the businesses to the department,**
152 **the department shall also provide in its annual report information on**
153 **the marketing and use of the investor tax credits. This report shall**
154 **include the following:**

155 **(1) The amount of tax credits used in the previous fiscal year**
156 **including what percentage was claimed by individuals and what**
157 **percentage was claimed by firms and other entities;**

158 **(2) The types of businesses that benefited from the tax credits;**
159 **and**

160 **(3) Any aggregate job creation or capital investment in Missouri**
161 **that resulted from the use of the tax credits for a period of five years**
162 **beginning from the date on which the tax credits were awarded.**

163 **In addition, the annual report shall provide information regarding**
164 **what businesses deriving a benefit from the tax credits remained in**
165 **Missouri, what businesses ceased doing business, what businesses were**
166 **purchased, and what businesses may have moved out-of-state and the**
167 **reason for such move.**

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