

FIRST REGULAR SESSION

SENATE BILL NO. 246

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS LAMPING AND SCHMITT.

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TERRY L. SPIELER, Secretary.

1248S.02I

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;

(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, 2011; 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.

348.274. 1. Subject to appropriation, the department may
2 authorize tax credits to encourage equity investment into technology-
3 based early stage 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 qualified Missouri
8 business ceases to do business due to liquidation, winding up,
9 cancellation, or dissolution, if such liquidation, winding up,
10 cancellation, or dissolution occurs within six years of the date the
11 equity investment is made. No tax credit shall be issued where the
12 qualified Missouri business ceases to do business due to merger,
13 acquisition, or sale. The tax credit shall be in a total amount equal to
14 thirty percent of such investors' equity investment in any qualified
15 Missouri business, subject to the limitations set forth in subsection 5 of

16 this section.

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

27 **(a) The name of the business and certified copies of the**
28 **organizational documents of the business;**

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

31 **(c) A statement of the business' innovative and proprietary**
32 **technology, product, or service;**

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

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

40 **(f) A statement of the amount, timing, and projected use of the**
41 **proceeds to be raised from the proposed sale of qualified securities;**
42 **and**

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

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

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

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

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

60 **a. The business of banking, savings and loan or lending**
61 **institutions, credit or finance, or financial brokerage or investments;**

62 **b. Professional services, such as legal, accounting, or engineering**
63 **services;**

64 **c. Governmental, charitable, religious, or trade organizations;**

65 **d. The ownership, development, brokerage, sales, or leasing of**
66 **real estate;**

67 **e. Insurance;**

68 **f. Construction or construction management or contracting;**

69 **g. Business consulting or brokerage;**

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

76 **i. Any Missouri certified capital formation company;**

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

78 **k. Any business raising money primarily to purchase real estate,**
79 **land, or fixtures;**

80 **(d) The business shall satisfy all other requirements of this**
81 **section.**

82 **(3) The portions of documents and other materials submitted to**
83 **the department that contain trade secrets shall be kept confidential**
84 **and shall be maintained in a secured environment by the director of**
85 **the department. For the purposes of this section, such portions of**
86 **documents and other materials shall mean any customer list, any**
87 **formula, compound, production data, or compilation of information**
88 **certain individuals within a commercial concern using such portions**
89 **of documents and other material means to fabricate, produce, or**

90 **compound an article of trade, or, any service having commercial value,**
91 **which gives the user an opportunity to obtain a business advantage**
92 **over competitors who do not know or use such service.**

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

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

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

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

110 **(3) The business has the reasonable potential to create**
111 **measurable employment within the state;**

112 **(4) The business has an innovative and proprietary technology,**
113 **product, or service;**

114 **(5) The existing owners of the business and other founders have**
115 **made or are committed to make a substantial financial and time**
116 **commitment to the business;**

117 **(6) The securities to be issued and purchased are qualified**
118 **securities; and**

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

127 5. The department shall not issue tax credits of more than fifty
128 thousand dollars to an investor per investment into a single, qualified
129 Missouri company, or for tax credits totaling more than one hundred
130 thousand dollars in a single year per investor. The total amount of tax
131 credits that may be allowed under this section shall not exceed the
132 lesser of five million dollars per tax year or the amount appropriated
133 as provided under subsection 1 of this section.

134 6. This tax credit may be used in its entirety in the taxable year
135 in which it is issued or the credit may be carried forward for use in any
136 of the next three consecutive tax years until the total amount of the
137 credit is used. The tax credits may be sold, assigned, exchanged, or
138 otherwise transferred.

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

141 8. The reasonable costs of the administration of this section, the
142 review of applications for certification as qualified Missouri businesses,
143 and the issuance of tax credits authorized by this section shall be
144 reimbursed through fees paid by the qualified Missouri businesses and
145 the investors or the transferees of investors, according to a reasonable
146 fee schedule adopted by the department.

147 9. In addition to reports by the businesses to the department, the
148 department shall also provide in its annual report information on the
149 marketing and use of the investor tax credits. This report shall include
150 the following:

151 (1) The amount of tax credits used in the previous fiscal year
152 including what percentage was claimed by individuals and what
153 percentage was claimed by firms and other entities;

154 (2) The types of businesses that benefited from the tax credits;
155 and

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

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

164 **10. Any rule or portion of a rule, as that term is defined in**
165 **section 536.010 that is created under the authority delegated in this**
166 **section and section 348.273 shall become effective only if it complies**
167 **with and is subject to all of the provisions of chapter 536, and, if**
168 **applicable, section 536.028. This section and chapter 536 are**
169 **nonseverable and if any of the powers vested with the general assembly**
170 **pursuant to chapter 536, to review, to delay the effective date, or to**
171 **disapprove and annul a rule are subsequently held unconstitutional,**
172 **then the grant of rulemaking authority and any rule proposed or**
173 **adopted after August 28, 2011, shall be invalid and void.**

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Bill

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