

## SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1178

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to tax credits for investments in certain Missouri businesses.

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*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", any moneys or money-equivalent contribution in consideration of qualified securities;

(2) "Department", the department of economic development;

(3) "Designated geographic regions", the following four regions:

(a) Region 1: Counties of Andrew, Bates, Benton, Buchanan, Cass, Clay, Clinton, DeKalb, Gentry, Henry, Holt, Jackson, Johnson, Lafayette, Platte, Ray, and Worth;

(b) Region 2: Counties of Franklin, Jefferson, Lincoln, St. Charles, Warren, and St. Louis, and the City of St. Louis;

(c) Region 3: Counties geographically north of the Missouri River, but excluding any counties in region 1 or region 2; and

(d) Region 4: Counties geographically south of the Missouri River, but excluding any counties in region 1 or region 2;

(4) "Investor", one of the following persons or entities:

(a) A natural person who is an accredited investor as defined under 17 CFR 230.501(a)(5) or 230.501(a)(6), as in effect on August 28, 2013;

(b) A permitted entity investor who is an accredited investor as defined under 17 CFR 230.501(a)(8), as in effect on August 28, 2013; or

(c) A natural person or permitted entity investor making an investment who qualifies under the federal Jumpstart Our Business Startups (JOBS) Act, Pub. L. 112-106, as in effect on August 28, 2013; and

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 credits;

(5) "MTC", the Missouri technology corporation established under section 348.251;

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

(7) "Permitted entity investor", any general partnership; limited partnership; corporation that has in effect a valid election to be taxed as an S corporation under the Internal Revenue Code of 1986, as amended; revocable living trust; nonprofit corporation; or limited liability company that has elected to be taxed as a

partnership under the Internal Revenue Code of 1986, as amended, and that was established and is operated for the purpose of making investments in other entities;

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

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

(a) Any partnership, association, limited liability company, or corporation domiciled in Missouri; or

(b) Any limited liability company or corporation that is domiciled outside the state of Missouri but has its business operations located primarily in Missouri or does substantially all of such business's production in Missouri;

(10) "Qualified securities", a cash investment through any form or combination of forms of financial assistance as provided under this subdivision. Such forms of financial assistance include, but are not limited to:

(a) Any form of equity, such as:

a. A general or limited partnership interest;

b. Common stock;

c. Simple agreement for future equity (SAFE); or

d. Preferred stock, without regard to voting rights or seniority position, and regardless of whether convertible into common stock; and

(b) Any debt instrument subordinate to the general creditors of the qualified Missouri company debtor that requires no payment from the qualified Missouri company debtor and that shall convert to some form of equity prior to, or in conjunction with, the qualified Missouri company raising any additional funds;

(11) "Rural county", any county in the state of Missouri with fewer than twenty-five thousand inhabitants, and such term shall be deemed to include both the farm and nonfarm population thereof. The number of inhabitants specified in this subdivision shall be increased by six percent every ten years after each decennial census beginning in 2030; and

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

3. (1) For all tax years beginning on or after January 1, 2025, a tax credit shall be allowed for an investor's cash investment in the qualified securities of a qualified Missouri business. The credit shall be in a total amount equal to forty percent of such investor's cash investment in any qualified Missouri business, subject to the limitations set forth in this subsection. The credit shall be in a total amount equal to fifty percent where the investor's cash investment in the qualified securities of a qualified Missouri business are in a rural county. If the amount by which that portion of the credit allowed by this section exceeds the investor's tax liability in any one tax year, the remaining portion of the credit may be carried forward five years or until the total amount of the credit is used, whichever occurs first. If the investor is a permitted entity investor, the credit provided by this section shall be claimed by the permitted entity investor in proportion to such owner's equity investment in the permitted entity investor.

(2) A cash investment in a qualified security 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 of 1986, as amended.

(3) The department and the MTC shall not allow tax credits of more than seventy-five thousand dollars for a single qualified Missouri business per investor who is a natural person or a permitted entity investor and shall not allow a total of three hundred thousand dollars in tax credits for a single tax year per investor who is a natural person or a permitted entity investor. No tax credit authorized by this section or section 348.274 shall be allowed for any cash investments in qualified securities made in any year after December 31, 2031. The total amount of tax credits that may be allowed under this section shall not exceed six million dollars during either calendar year 2025 or 2026. Beginning in calendar year 2027, the total amount of tax credits allowed under this section shall be annually increased by twenty percent of the total amount of tax credits allowed in the immediately preceding calendar year, so long as the total amount of tax credits allowed in the immediately preceding calendar year was issued during the immediately preceding calendar year. For each successive year thereafter, if the total amount of tax credits allowed in the immediately preceding calendar year under this section is issued, the total amount of tax credits shall be increased by an additional twenty percent. Such increase of twenty percent of tax credits allowed shall continue, so long as the total amount of tax credits allowed in the immediately preceding calendar year was completely issued. The balance of unissued tax credits may be carried over for issuance in future years before December 31, 2033. The balance of unissued tax credits carried over, if any, shall not be used in the calculation of the total amount of tax credits allowed in a given calendar year.

(4) At the beginning of each calendar year, the MTC shall equally designate the total amount of tax credits available during the first six months of that calendar year to each designated geographic region. As soon as practicable at the end of the first six months of that calendar year, the MTC shall prepare and issue a report to the director of the department designating all tax credit awards for that year to date, so that the department may issue such tax credits in accordance with the provisions of this section and section 348.274.

(5) During the last six months of the calendar year, any unissued tax credits previously allocated to any designated geographic region may be awarded at the discretion of the MTC to a qualified Missouri company in any designated geographic region throughout the state.

4. (1) Before an investor is entitled to receive tax credits under this section and section 348.274, such investor shall have made a cash investment in a qualified security of a qualified Missouri business. The business shall have been approved as a qualified Missouri business before the date on which the cash investment was made. To be designated as a qualified Missouri business, a business shall apply to the MTC.

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

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

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

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

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

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

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

(3) The designation of a business as a qualified Missouri business shall be made by the MTC, and each qualified Missouri business shall annually apply to renew such designation, to be approved by the MTC. A business shall be so designated if the MTC determines, based upon the application submitted by the business and any additional information provided in connection with such application or as reasonably requested by the MTC, that such business meets established criteria, including at least the following:

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

(b) Businesses that are not bioscience businesses shall have been in operation for less than five years, and bioscience businesses shall have been in operation for less than ten years;

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

(d) The business shall not have ownership interests including, but not limited to, common or preferred shares of

stock that can be traded via a public stock exchange before the date that a qualifying investment is made;

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

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

b. The provision of professional services, such as legal, accounting, or engineering services; however, contract research or manufacturing organizations, sometimes referred to as CROs or CMOs, shall not be subject to this exclusion;

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

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

e. Insurance;

f. Construction, construction management, or contracting;

g. Business consulting or brokerage;

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

i. Any activity that is in violation of the law;

j. Any business raising moneys primarily to purchase real estate, land, or fixtures; and

k. Any gambling-related business;

(f) The business has a reasonable chance of success;

(g) The business has the reasonable potential to create measurable employment within the region, this state, or both;

(h) The business is based on an innovative technology, product, or service designed to be used in the commercial marketplace;

(i) The existing owners of the business and other founders have made or are committed to making a substantial financial or time commitment to the business;

(j) The securities to be issued and purchased are qualified securities;

(k) The business has the reasonable potential to address needs and opportunities specific to the region, this state, or both;

(l) The business has made binding commitments to the MTC for adequate reporting of financial data, including a requirement for an annual report or, if required, an annual audit of the financial and operational records of the business; the right of access to the financial records of the business; the right of the department and the MTC to record and publish normal and customary data and information related to the issuance of tax credits that are not otherwise determined to be trade or business secrets; and other such protections as may be in the best interest of Missouri taxpayers to achieve the goals of this section and section 348.274; and

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

(4) A qualified Missouri business shall have the burden of proof to demonstrate the qualifications of the business under this section.

(5) The MTC shall establish an application fee for qualified Missouri businesses and investors or transferees.

This fee shall be utilized by MTC to administer this act, issue the tax credits, and review the applications.

348.274. 1. (1) The MTC is authorized to allocate tax credits to qualified Missouri businesses, and the department is authorized to issue tax credits to investors in such qualified Missouri businesses. Such tax credits shall be allocated to those qualified Missouri businesses that, as determined by the MTC, are most likely to provide the greatest economic benefit to the region or the state, or both. The MTC may allocate, and the department may issue, whole or partial tax credits in accordance with the report issued to the director of the department based on the MTC's assessment of the qualified Missouri businesses. The MTC may consider numerous factors in such assessment including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model, and the quality and reasonableness of financial projections for the business.

(2) Each qualified Missouri business for which the MTC has allocated tax credits such that the department can issue tax credits to the investors of such qualified Missouri business shall submit to the MTC a report before such tax credits are issued. Such report shall include the following:

(a) The name, address, and taxpayer identification number of each investor who has made cash investment in the qualified securities of the qualified Missouri business;

(b) Proof of such investment, including copies of the securities' purchase agreements and cancelled checks or wire-transfer receipts; and

(c) Such other information as may be reasonably required under this section and section 348.273 or reasonably requested by the department or the MTC.

2. (1) The state of Missouri, the department, or the MTC shall not be held liable for any damages to any investor that makes an investment in any qualified security of a qualified Missouri business, any business that applies to be designated as a qualified Missouri business and is denied, or any investor that makes an investment in a business that applies to be designated as a qualified Missouri business and is denied.

(2) Each qualified Missouri business shall have the obligation to notify the MTC, which shall notify the director of the department, of any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit for cash investment in a qualified security.

(3) The director of the department, in cooperation with the MTC, shall provide the information specified under subdivision (3) of subsection 4 of this section to the director of the department of revenue on an annual basis. The MTC shall conduct an annual review of the activities undertaken under this section and section 348.273 to ensure that tax credits issued under this section and section 348.273 are issued in compliance with the provisions of this section and section 348.273 or rules and regulations promulgated by the MTC or the department with respect to this section and section 348.273. The reasonable costs of the annual review shall be paid by the MTC according to a reasonable fee schedule adopted by the MTC in cooperation with the department by and through its service on the MTC board of directors.

(4) If the MTC determines that a business is not in substantial compliance with the requirements under this section and section 348.273 to maintain its designation, the department or MTC, by written notice, may inform the business that such business will lose its designation as a qualified Missouri business one hundred twenty days from the date of mailing of the notice unless such business corrects the deficiencies and is once again in compliance with the requirements for designation and provides the MTC with evidence of correcting the deficiencies as the MTC reasonably requests.

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

(6) A business may lose its designation as a qualified Missouri business under this section and section 348.273 by moving either its headquarters outside of Missouri or a substantial number of the jobs created in Missouri to a location outside Missouri within ten years after receiving financial assistance under this section and section 348.273, provided that no business may lose its designation as a qualified Missouri business under this section and section 348.273 if such move is in connection with the acquisition of the business by sale of all or substantially all of its business, whether by merger, sale of stock, sale of assets, or otherwise.

(7) In the event that a business loses its designation as a qualified Missouri business, such business shall be precluded from being issued any additional tax credits available under this section and section 348.273 with

respect to the business, shall be precluded from being approved as a qualified Missouri business, and shall be subject to an appropriate clawback provision that the MTC, in cooperation with the department by and through its service on the MTC board of directors, may institute.

(8) Investors who lawfully make an investment in a qualified Missouri business shall not have issued tax credits disallowed solely due to the business subsequently losing its designation as a qualified Missouri business. In the event such qualified business loses its designation as a qualified Missouri business, the amount of tax credits issued under this section and section 348.273 shall be subject to clawback provisions from the qualified Missouri business, to be determined by the department and the MTC board of directors.

(9) The portions of documents and other materials submitted to the department or MTC that contain confidential information shall be kept confidential and shall be maintained in a secured environment. For the purposes of this section and section 348.273, confidential information shall include, but not be limited to, such portions of trade secrets, documents, any customer lists, and other materials; any formula, compound, production data, or compilation of information that will allow certain individuals within a commercial concern using such portions of documents and other material the means to fabricate, produce, or compound an article of trade; or any service having commercial value that gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service.

(10) The department and the MTC may prepare and adopt procedures, rules, and published guidance concerning the

performance of the duties placed upon each respective entity by this section and section 348.273.

3. Any investor who makes a cash investment in a qualified security of a qualified Missouri business may transfer the tax credits such investor may receive under subsection 3 of section 348.273 to any natural person. So long as the investor has not claimed the tax credit against the investor's Missouri income tax liability, such transferee may claim the tax credit against the transferee's Missouri income tax liability as provided in subdivision (1) of subsection 3 of section 348.273, subject to all restrictions and limitations set forth in this section and section 348.273. Documentation of any tax credit transfer under this section shall be provided by the investor in the manner established by the MTC and the department, by and through its service on the MTC board of directors.

4. (1) Each qualified Missouri business for which tax credits were issued under this section and section 348.273 shall report to the MTC annually on or before February first. The MTC shall provide copies of the reports to the department under appropriate confidentiality agreements as may be necessary under the circumstances. Such reports shall include the following:

(a) The name, address, and taxpayer identification number of each investor who has made a cash investment in the qualified securities of the qualified Missouri business and has received tax credits for this investment during the preceding year;

(b) The amounts of cash investments by each investor and a description of the qualified securities issued in consideration of such cash investments; and

(c) Such other information as may be reasonably required under this section and section 348.273.

(2) The MTC shall report quarterly to the director of the department on the allocation of the tax credits in the preceding calendar quarter. Such reports shall include:

(a) The number of applications received;

(b) The number and ratio of successful applications to unsuccessful applications;

(c) The amount of tax credits allocated but not issued in the previous quarter, including what percentage was allocated to individuals and what percentage was allocated to investment firms; and

(d) Such other information as reasonably agreed upon from time to time.

(3) The MTC and the department, as applicable, shall also report annually to the governor, the director of the department of economic development, the president pro tempore of the senate, and the speaker of the house of representatives, on or before April first, on the allocation and issuance of the tax credits. Such reports shall include:

(a) The amount of tax credits issued in the previous fiscal year, including what percentage was issued to individuals and what percentage was issued to investment firms;

(b) The types of businesses that benefitted from the tax credits;

(c) The amount of allocated but unissued tax credits and the information about the unissued tax credits set forth in subdivision (2) of this subsection;

(d) Any aggregate job creation or capital investment in the region that resulted from the use of the tax credits for a period of five years beginning from the date on which the tax credits were awarded;

(e) The manner in which the purpose of this section and section 348.273 has been carried out with regard to a designated geographic region;

(f) The total cash investments made for the purchase of qualified securities of qualified Missouri businesses within the state during the preceding year and cumulatively since the effective date of this section and section 348.273;

(g) An estimate of jobs created and jobs preserved by cash investments made in qualified Missouri businesses within the state;

(h) An estimate of the multiplier effect on the economy of the cash investments made under this section and section 348.273; and

(i) Information regarding what businesses deriving benefits from the tax credits remained in the designated geographic region, what businesses ceased business, what businesses were purchased, and what businesses may have moved out of a designated geographic region or the state.

(4) Any violation of the reporting requirements of this subsection by a qualified Missouri business may be grounds for the loss of designation as a qualified Missouri business, and any such business that loses its designation as a qualified Missouri business shall be subject to the restrictions upon loss of designation set forth in subsection 2 of this section.

5. Notwithstanding any provision of section 105.1500 to the contrary, any requirement to provide information, documents, or records under section 348.273 or 348.274, and any requirement established by the MTC or any state agency to provide information, documents, or records for the purpose of administering these sections, shall be exempt from section 105.1500 of the personal privacy protection act.

6. Tax credits issued under section 348.273 or 348.274 shall be classified as "entrepreneurial tax credits" under section 135.800 of the tax credit accountability act.

7. Section 348.273 and this section shall expire on December 31, 2031.