

SENATE BILL NO. 1563

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROBERTS.

6767S.011

KRISTINA MARTIN, Secretary

AN ACT

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

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

Section A. Chapter 348, RSMo, is amended by adding thereto
2 two new sections, to be known as sections 348.273 and 348.274,
3 to read as follows:

348.273. 1. This section and section 348.274 shall be
2 known and may be cited as the "Missouri Angel Investment
3 Incentive Act".

4 2. As used in this section and section 348.274, the
5 following terms mean:

6 (1) "Cash investment", any moneys or money-equivalent
7 contribution in consideration of qualified securities;

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

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

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

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

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

(d) Region 4: Counties geographically south of the Missouri River, 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 July 24, 2013;

(b) A permitted entity investor who is an accredited investor as defined under 17 CFR 230.501(a)(8) as in effect on July 24, 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 April 5, 2012.

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;

48 (7) "Permitted entity investor", any general
49 partnership; limited partnership; corporation that has in
50 effect a valid election to be taxed as an S corporation
51 under the Internal Revenue Code of 1986, as amended;
52 revocable living trust; nonprofit corporation; or limited
53 liability company that has elected to be taxed as a
54 partnership under the Internal Revenue Code of 1986, as
55 amended, and that was established and is operated for the
56 purpose of making investments in other entities;

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

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

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

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

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

74 (a) Any form of equity, such as:

75 a. A general or limited partnership interest;

76 b. Common stock;

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

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

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

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

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

97 3. (1) For all tax years beginning on or after
98 January 1, 2027, a tax credit shall be allowed for an
99 investor's cash investment in the qualified securities of a
100 qualified Missouri business. The credit shall be in a total
101 amount equal to forty percent of such investor's cash
102 investment in any qualified Missouri business, subject to
103 the limitations set forth in this subsection. The credit
104 shall be in a total amount equal to fifty percent where the
105 investor's cash investment in the qualified securities of a
106 qualified Missouri business are in a rural county. If the
107 amount by which that portion of the credit allowed by this
108 section exceeds the investor's tax liability in any one tax
109 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, 2033. The total amount of tax credits that may be allowed under this section shall not exceed six million dollars during either calendar year 2027 or 2028. Beginning in calendar year 2029, 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 such 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, 2034. 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

173 be designated as a qualified Missouri business, a business
174 shall apply to the MTC.

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

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

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

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

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

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

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

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

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

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

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

215 (d) The business shall not have ownership interests
216 including, but not limited to, common or preferred shares of
217 stock that can be traded via a public stock exchange before
218 the date that a qualifying investment is made;

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

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

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

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

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

233 e. Insurance;

234 f. Construction, construction management, or
235 contracting;

236 g. Business consulting or brokerage;

237 h. Any business engaged primarily as a passive

238 business, having irregular or noncontiguous operations, or

239 deriving substantially all of the income of the business

240 from passive investments that generate interest, dividends,

241 royalties, or capital gains or any business arrangements the

242 effect of which is to immunize an investor from risk of loss;

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

244 j. Any business raising moneys primarily to purchase

245 real estate, land, or fixtures; and

246 k. Any gambling-related business;

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

248 (g) The business has the reasonable potential to

249 create measurable employment within the region, this state,

250 or both;

251 (h) The business is based on an innovative technology,

252 product, or service designed to be used in the commercial

253 marketplace;

254 (i) The existing owners of the business and other

255 founders have made or are committed to making a substantial

256 financial or time commitment to the business;

257 (j) The securities to be issued and purchased are

258 qualified securities;

259 (k) The business has the reasonable potential to

260 address needs and opportunities specific to the region, this

261 state, or both;

262 (l) The business has made binding commitments to the

263 MTC for adequate reporting of financial data, including a

264 requirement for an annual report or, if required, an annual

265 audit of the financial and operational records of the

266 business; the right of access to the financial records of

267 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

17 utility of the business model, and the quality and
18 reasonableness of financial projections for the business.

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

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

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

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

33 2. (1) The state of Missouri, the department, or the
34 MTC shall not be held liable for any damages to any investor
35 that makes an investment in any qualified security of a
36 qualified Missouri business, any business that applies to be
37 designated as a qualified Missouri business and is denied,
38 or any investor that makes an investment in a business that
39 applies to be designated as a qualified Missouri business
40 and is denied.

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

47 (3) The director of the department, in cooperation
48 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

81 moving either its headquarters outside of Missouri or a
82 substantial number of the jobs created in Missouri to a
83 location outside Missouri within ten years after receiving
84 financial assistance under this section and section 348.273,
85 provided that no business may lose its designation as a
86 qualified Missouri business under this section and section
87 348.273 if such move is in connection with the acquisition
88 of the business by sale of all or substantially all of its
89 business, whether by merger, sale of stock, sale of assets,
90 or otherwise.

91 (7) In the event that a business loses its designation
92 as a qualified Missouri business, such business shall be
93 precluded from being issued any additional tax credits
94 available under this section and section 348.273 with
95 respect to the business, shall be precluded from being
96 approved as a qualified Missouri business, and shall be
97 subject to an appropriate clawback provision that the MTC,
98 in cooperation with the department by and through its
99 service on the MTC board of directors, may institute.

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

110 (9) The portions of documents and other materials
111 submitted to the department or MTC that contain confidential
112 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

145 shall report to the MTC annually on or before February
146 first. The MTC shall provide copies of the reports to the
147 department under appropriate confidentiality agreements as
148 may be necessary under the circumstances. Such reports
149 shall include the following:

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

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

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

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

163 (a) The number of applications received;

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

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

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

172 (3) The MTC and the department, as applicable, shall
173 also report annually to the governor, the director of the
174 department of economic development, the president pro
175 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

207 businesses were purchased, and what businesses may have
208 moved out of a designated geographic region or the state.

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

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

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

226 7. Section 348.273 and this section shall expire on
227 December 31, 2033.

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