

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 365, 804 & 805
94TH GENERAL ASSEMBLY

Reported from the Special Committee on Small Business February 26, 2007 with recommendation that House Committee Substitute for House Bill Nos. 365, 804 & 805 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

1225L.04C

AN ACT

To repeal sections 135.400 and 135.403, RSMo, and to enact in lieu thereof five new sections relating to small businesses expansion and retention.

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

Section A. Sections 135.400 and 135.403, RSMo, are repealed and five new sections
2 enacted in lieu thereof, to be known as sections 135.400, 135.403, 348.273, 348.274, and
3 620.1892, to read as follows:

135.400. As used in sections 135.400 to 135.430, the following terms mean:

- 2 (1) "Certificate", a tax credit certificate issued by the department of economic
3 development in accordance with sections 135.400 to 135.430;
- 4 (2) ["Community bank", either a bank community development corporation or
5 development bank, which are financial organizations which receive investments from
6 commercial financial institutions regulated by the federal reserve, the office of the comptroller
7 of the currency, the office of thrift supervision, or the Missouri division of finance. Community
8 banks, in addition to their other privileges, shall be allowed to make loans to businesses or equity
9 investments in businesses or in real estate provided that such transactions have associated public
10 benefits;
- 11 (3) "Community development corporation", a not-for-profit corporation whose board of
12 directors is composed of businesses, civic and community leaders, and whose primary purpose
13 is to encourage and promote the industrial, economic, entrepreneurial, commercial, and civic

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 development or redevelopment of a community or area, including the provision of housing and
15 community development projects that benefit low-income individuals and communities;

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

17 [(5)] (3) "Director", the director of the department of economic development, or a person
18 acting under the supervision of the director;

19 [(6)] (4) "Investment", a transaction in which a Missouri small business [or a community
20 bank] receives a monetary benefit from an investor pursuant to the provisions of sections
21 135.403 to 135.414;

22 [(7)] (5) "Investor", an individual, partnership, financial institution, trust or corporation
23 meeting the eligibility requirements of sections 135.403 to 135.414. In the case of partnerships
24 and nontaxable trusts, the individual partners or beneficiaries shall be treated as the investors;

25 (6) **"Missouri innovation center", an innovation center created under section**
26 **348.271, RSMo;**

27 [(8)] (7) "Missouri small business", an independently owned and operated business as
28 defined in Title 15 U.S.C. Section 632(a) and as described by Title 13 CFR Part 121, which is
29 headquartered in Missouri and which employs at least eighty percent of its employees in
30 Missouri, except that no such small business shall employ more than one hundred employees.
31 Such businesses must be involved in interstate or intrastate commerce for the purpose of
32 manufacturing, processing or assembling products, conducting research and development, or
33 providing services in interstate commerce, but excluding retail, real estate, insurance or
34 professional services[. For the purpose of qualifying for the tax credit pursuant to sections
35 135.400 to 135.430, "Missouri small business" shall include cooperative marketing associations
36 organized pursuant to chapter 274, RSMo, which are engaged in the business of producing and
37 marketing fuels derived from agriculture commodities, without regard for whether a cooperative
38 marketing association has more than one hundred employees. Cooperative marketing
39 associations organized pursuant to chapter 274, RSMo, shall not be required to comply with the
40 requirements of section 135.414];

41 [(9)] (8) "Primary employment", work which pays at least the [minimum] **county**
42 **average** wage and which is not seasonal or part-time;

43 [(10)] (9) "Principal owners", one or more persons who own an aggregate of fifty percent
44 or more of the Missouri small business and who are involved in the operation of the business as
45 a full-time professional activity;

46 [(11)] (10) "Project", any commercial or industrial business or other economic
47 development activity undertaken in a target area, designed to reduce conditions of blight,
48 unemployment or widespread reliance on public assistance which creates permanent primary
49 employment opportunities;

50 **(11) "Rural area", a county with a population of less than seventy-five thousand**
51 **inhabitants or that does not contain an individual city with a population greater than fifty**
52 **thousand inhabitants according to the most recent federal consensus;**

53 **(12) "Small business development center", a center as referenced in section**
54 **620.1003, RSMo;**

55 [(12)] **(13) "State tax liability", any liability incurred by a taxpayer pursuant to the**
56 **provisions of chapter 143, RSMo, chapter 147, RSMo, chapter 148, RSMo, section 375.916,**
57 **RSMo, and chapter 153, RSMo, exclusive of the provisions relating to the withholding of tax**
58 **as provided for in sections 143.191 to 143.265, RSMo, and related provisions;**

59 [(13)] **"Target area", a group of blocks or a self-defined neighborhood where the rate of**
60 **poverty in the area is greater than twice the national poverty rate and as defined by the**
61 **department of social services in conjunction with the department of economic development.**
62 **Areas of the state satisfying the criteria of this subdivision may be designated as a "target area"**
63 **following appropriate findings made and certified by the departments of economic development**
64 **and social services. In making such findings, the departments of economic development and**
65 **social services may use any commonly recognized records and statistical indices published or**
66 **made available by any agency or instrumentality of the federal or state government. No area of**
67 **the state shall be a target area until so certified by the department of social services and the**
68 **revitalization plan submitted pursuant to section 208.335, RSMo, has received approval.] **(14)****
69 **"Small business tax credit review committee", a committee consisting of two**
70 **representatives from the department of economic development, two representatives from**
71 **the Missouri small business development centers, and one representative from a Missouri**
72 **innovation center. This committee shall review all applications for the Missouri small**
73 **business investment tax credit and make recommendations to the department of economic**
74 **development on the authorization of such tax credits.**

 135.403. 1. Any investor who makes a qualified investment **up to one hundred**
2 **thousand dollars** in a Missouri small business [shall be entitled to receive] **may be issued** a tax
3 credit equal to [forty] **thirty** percent of the amount of the investment [or, in the case of a
4 qualified investment in a Missouri small business in a distressed community as defined by
5 section 135.530, a credit equal to sixty percent of the amount of the investment, and any investor
6 who makes a qualified investment in a community bank or a community development
7 corporation shall be entitled to receive a tax credit equal to fifty percent of the amount of the
8 investment if the investment is made in a community bank or community development
9 corporation for direct investment. The total amount of tax credits available for qualified
10 investments in Missouri small businesses shall not exceed thirteen million dollars and at least
11 four million dollars of the amount authorized by this section and certified by the department of

12 economic development shall be for investment in Missouri small businesses in distressed
13 communities. Authorization for all or any part of this four-million-dollar amount shall in no way
14 restrict the eligibility of Missouri small businesses in distressed communities, as defined in
15 section 135.530, for the remaining amounts authorized within this section. No more than twenty
16 percent of the tax credits available each year for investments in community banks or community
17 development corporations for direct investment shall be certified for any one project, as defined
18 in section 135.400]. **If the investment is in small businesses located in a distressed**
19 **community as defined in section 135.530 or in a rural area, the investor may be issued tax**
20 **credits equal to forty percent of the amount of the investment. Effective August 28, 2007,**
21 **ten million dollars of tax credits each fiscal year shall be available for qualified investments**
22 **in Missouri small businesses.** The tax credit shall be evidenced by a tax credit certificate in
23 accordance with the provisions of sections 135.400 to 135.430 and may be used to satisfy the
24 state tax liability of the owner of the certificate that becomes due in the tax year in which the
25 qualified investment is made, or in any of the ten tax years thereafter. [When the qualified small
26 business is in a distressed community, as defined in section 135.530, the tax credit may also be
27 used to satisfy the state tax liability of the owner of the certificate that was due during each of
28 the previous three years in addition to the year in which the investment is made and any of the
29 ten years thereafter.] No investor may receive a tax credit pursuant to sections 135.400 to
30 135.430 unless that person presents a tax credit certificate to the department of revenue for
31 payment of such state tax liability. The department of revenue shall grant tax credits in the same
32 order as established by subsection 1 of section 32.115, RSMo. Subject to the provisions of
33 sections 135.400 to 135.430, certificates of tax credit issued in accordance with these sections
34 may be transferred, sold or assigned by notarized endorsement thereof which names the
35 transferee.

36 2. [Five hundred thousand dollars in tax credits shall be available annually from the total
37 amount of tax credits authorized by section 32.110, RSMo, and subdivision (4) of subsection 2
38 of section 32.115, RSMo, as a result of investments in community banks or community
39 development corporations. Aggregate investments eligible for tax credits in any one Missouri
40 small business shall not be more than one million dollars. Aggregate investments eligible for
41 tax credits in any one Missouri small business shall not be less than five thousand dollars as of
42 the date of issuance of the first tax credit certificate for investment in that business.] **All**
43 **applications for the Missouri small business investment tax credit shall be submitted to the**
44 **department of economic development. The small business tax credit review committee**
45 **shall review and qualify all applications for the small business investment tax credit. The**
46 **department of economic development shall not issue any certificates without the approval**
47 **of the committee.**

48 3. [This section and section 620.1039, RSMo, shall become effective January 1, 2001.]
49 **If the investor is an individual, partnership, trust, or corporation meeting the eligibility**
50 **requirements of sections 135.403 to 135.414, a tax credit shall be issued if approved. In the**
51 **case of partnerships and nontaxable trusts, the individual partners or beneficiaries shall**
52 **be treated as the investors. If the investor is a financial institution that has made a loan not**
53 **to exceed one million dollars to the qualified Missouri small business, the tax credit shall**
54 **be held as a guarantee on the loan and shall only be issued and redeemed by the financial**
55 **institution if the small business defaults on the loan within the first five years of the loan.**

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

2 (1) **"Collaborative research project", a research project conducted by a public**
3 **research institution or private not-for-profit research institution on behalf of and funded**
4 **by a private company;**

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

6 (3) **"Qualifying company", an independently owned and operated business which**
7 **is headquartered and located in this state and which is in need of venture capital and**
8 **cannot obtain conventional financing. Such business shall have no more than two hundred**
9 **employees, eighty percent of which are employed in this state. Such business shall be**
10 **involved in commerce for the purpose of manufacturing, processing, or assembling**
11 **products, conducting research and development, or providing services in interstate**
12 **commerce but excluding retail, real estate, real estate development, insurance, and**
13 **professional services provided by accountants, lawyers, or physicians. At the time**
14 **approval is sought, such business shall be a small business concern that meets the**
15 **requirements of the United States Small Business Administration's qualification size**
16 **standards for its venture capital program, as defined in the Small Business Investment Act**
17 **of 1958, as amended, and rules promulgated in 13 CFR 121.301(c), as amended;**

18 (4) **"Rural area", any city, town, or village with fewer than fifteen thousand**
19 **inhabitants and located in any county that is not part of a standard metropolitan statistical**
20 **area as defined by the United States Department of Commerce or its successor agency.**
21 **However, any such city, town, or village located in any county so defined as a standard**
22 **metropolitan statistical area may be designated a rural area by the office of rural**
23 **development if:**

24 (a) **A substantial number of persons in such county derive their income from**
25 **agriculture;**

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

28 (c) All other cities, towns, and villages in that county have a population of less than
29 fifteen thousand;

30 (5) "Taxpayer", any person, partnership, corporation, trust, or limited liability
31 company;

32 (6) "Technology commercialization infrastructure project", the construction of or
33 improvements to an incubator, accelerator, or instrument center;

34 (7) "Venture capital", risk capital provided to a qualified Missouri company for
35 research, development, operating capital, commercialization activities, or marketing
36 thereof in exchange for some level of ownership and control of the business.

348.274. 1. The Missouri technology corporation may authorize up to ten million
2 dollars in tax credits per fiscal year. The tax credits may be allotted to one or more of the
3 categories listed in this section.

4 2. If a qualifying company is approved by the Missouri technology corporation, the
5 investors who contribute the first five hundred thousand dollars in venture capital to the
6 qualifying company may be issued a tax credit for thirty percent of such investment in the
7 year the investment is made. However, if the company invested in is located in a rural area
8 or a distressed community, the taxpayer may be issued a tax credit for forty percent of
9 such investment. A qualifying company that relocates its headquarters out of Missouri,
10 ceases to employ eighty percent of its employees in Missouri, alters the principal nature of
11 its operations, or divests itself of key assets shall upon demand by the Missouri technology
12 corporation pay the state of Missouri an amount equal to the amount of credits issued to
13 its contributors.

14 3. If a qualifying company is approved by the Missouri technology corporation, the
15 corporation may reserve tax credits for investors who contributed the initial five million
16 dollars in venture capital to the company. The credit shall be thirty percent of the amount
17 invested, unless the company is located in a rural or distressed community, in which case
18 the credit shall be forty percent. No credits shall be reserved with respect to investors who
19 received a credit under subsection 2 of this section. The reserved credits shall be issued
20 only for net loss of investment within five years of investing in the qualified company. No
21 credits shall be issued if the company has within the five years relocated its headquarters
22 out of Missouri, ceased to employ eighty percent of its employees in Missouri, altered the
23 principal nature of its operations, or divested itself of key assets.

24 4. If a technology commercialization infrastructure project is approved by the
25 Missouri technology corporation, a taxpayer may be issued a tax credit in the amount of
26 fifty percent of any amount contributed to the project.

27 **5. If a collaborative research project is approved by the Missouri technology**
28 **corporation, a business firm may receive a tax credit of up to fifty percent of expenditures**
29 **for industrial research conducted at a public research institution or private not-for-profit**
30 **research institution.**

31 **6. The credit may be used against the tax otherwise due under chapter 143, RSMo,**
32 **not including sections 143.191 to 143.265, RSMo. The tax credit may be used in the tax**
33 **year issued or any of the next three consecutive tax years.**

34 **7. Any tax credits issued under this section may be sold, assigned, exchanged, or**
35 **otherwise transferred.**

620.1892. 1. This section shall be known and may be cited as the "Small Business
2 **and Entrepreneurial Growth Act".**

3 **2. Unless otherwise modified in this section, the definitions provided in section**
4 **620.1878 shall apply to this section. For purposes of this section, the following terms shall**
5 **mean:**

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

7 **(2) "Eligible small business project", a project approved by the department of**
8 **economic development through which a small business employer meets all of the following**
9 **qualifications:**

10 **(a) The small business employer's total payroll increases by at least twenty percent**
11 **due to the addition of new jobs or a business with less than five employees adds employees**
12 **so that the total number of employees is five or greater;**

13 **(b) The number of jobs added through the project by the small business employer**
14 **does not exceed the minimum number of jobs required to be eligible for benefits under any**
15 **program of the Missouri quality job act;**

16 **(c) Wages for the new jobs created through the project by the small business**
17 **employer are at least eighty-five percent of the average county wage as determined by the**
18 **department of economic development; and**

19 **(d) The project is not eligible for any benefits under the Missouri quality jobs act;**

20 **(3) "Small business employer", a firm, partnership, joint venture, association, or**
21 **a private or public corporation, whether organized for profit or not, provided that the term**
22 **shall not include:**

23 **(a) Gambling establishments (NAICS industry group 7132);**

24 **(b) Any company that is delinquent in the payment of any nonprotested taxes or**
25 **any other amounts due to the state or federal government or any other political subdivision**
26 **of this state; or**

27 (c) Any company that has filed for or has publicly announced its intention to file
28 for bankruptcy protection.

29 3. For all taxable years beginning on or after January 1, 2008, a small business
30 employer shall be allowed to receive benefits for an eligible small business project as
31 follows:

32 (1) Retention of all tax withheld under sections 143.191 to 143.265, RSMo, from the
33 newly created jobs for a period of one year; or

34 (2) If the employer also provides health insurance and pays more than fifty percent
35 of the premiums for all employees, the tax withheld under sections 143.191 to 143.265,
36 RSMo, from newly created jobs may be retained for a period of two years.

37 4. The department may promulgate rules to implement the provisions of this
38 section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
39 that is created under the authority delegated in this section shall become effective only if
40 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
41 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
42 and if any of the powers vested with the general assembly under chapter 536, RSMo, to
43 review, to delay the effective date, or to disapprove and annul a rule are subsequently held
44 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
45 after August 28, 2007, shall be invalid and void.

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