

HOUSE BILL NO. 2302

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROWDEN.

6053H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to the Missouri angel investment incentive act.

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
2 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
2 **"Missouri Angel Investment Incentive Act" and referred to herein as the "act".**

3 **2. As used in this section and section 348.274, the following terms mean:**

4 **(1) "Cash investment", money or money equivalent contribution;**

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

6 **(3) "Investor":**

7 **(a) A natural person who is an accredited investor as defined under 17 CFR**
8 **230.501(a)(5) or 230.501(a)(6), as in effect on August 28, 2014;**

9 **(b) A permitted entity investor who is an accredited investor as defined under 17**
10 **CFR 230.501(a)(8), as in effect on August 28, 2014; or**

11 **(c) A natural person or permitted entity investor making an investment who**
12 **qualifies under the Jumpstart Our Business Startups (JOBS) Act, Pub.L.No. 112-106, as**
13 **in effect on August 28, 2014.**

14

15 **The term "investor" shall not include any person who serves as an executive, officer, or**
16 **employee of the business in which an otherwise qualified cash investment is made, and such**

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.

17 person shall not qualify for the issuance of tax credits for such investment. However, an
18 investor who serves solely as a director may qualify for the issuance of tax credits;

19 (4) "Missouri innovation center", a Missouri center established under section
20 348.271 that provides assistance to technology-based business ventures;

21 (5) "MTC", the Missouri technology corporation, established under section
22 348.251;

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

25 (7) "Permitted entity investor", any general partnership, limited partnership,
26 corporation that has in effect a valid election to be taxed as an S corporation under the
27 Internal Revenue Code of 1986, as amended, revocable living trust, nonprofit corporation,
28 or limited liability company that has elected to be taxed as a partnership under the United
29 States Internal Revenue Code of 1986, as amended, and that was established and is
30 operated for the purpose of making investments in other entities;

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

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

37 (a) Any business owned by an individual;

38 (b) Any partnership, association, or corporation domiciled in Missouri; or

39 (c) Any corporation, even if a wholly owned subsidiary of a foreign corporation,
40 that has its business operations located primarily in Missouri or does substantially all of
41 such business's production in Missouri;

42 (10) "Qualified securities", a cash investment through any one or more forms of
43 financial assistance as provided under this subdivision that has been approved in form and
44 substance by the MTC, in coordination with the department by and through its service on
45 the MTC board of directors. Forms of such financial assistance include any form of equity,
46 such as:

47 (a) A general or limited partnership interest;

48 (b) Common stock;

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

51 (d) Any form of subordinate or convertible debt, or both, with warrants or other
52 means of equity conversion attached;

53 (11) "Tax credit", a credit against the tax otherwise due under chapter 143,
54 excluding withholding tax imposed by sections 143.191 to 143.265.

55 3. (1) For all tax years beginning on or after January 1, 2017, a tax credit shall be
56 allowed for an investor's cash investment in the qualified securities of a qualified Missouri
57 business occurring on or after August 28, 2016. The credit shall be in a total amount equal
58 to fifty percent of such investor's cash investment in any qualified Missouri business,
59 subject to the limitations set forth in this subsection. If the amount by which that portion
60 of the credit allowed by this section exceeds the investor's tax liability in any one tax year,
61 the remaining portion of the credit may be carried forward five years or until the total
62 amount of the credit is used, whichever occurs first. If the investor is a permitted entity
63 investor, the credit provided by this section shall be claimed by the owners of the permitted
64 entity investor in proportion to their equity investment in the permitted entity investor.

65 (2) A cash investment in a qualified security shall be deemed to have been made on
66 the date of acquisition of the qualified security, as such date is determined in accordance
67 with the provisions of the Internal Revenue Code of 1986, as amended.

68 (3) The department and the MTC shall not allow more than a total of fifty thousand
69 dollars in tax credits in a single year per investor for each qualified Missouri business or
70 a total of two hundred fifty thousand dollars in tax credits for a single year per investor.
71 No tax credits authorized by this section and section 348.274 shall be allowed for any cash
72 investments in qualified securities made in any year beginning after December 31, 2022.
73 The total amount of tax credits that may be allowed under this section shall not exceed six
74 million dollars during the 2017 tax year and each tax year thereafter. The balance of
75 unissued tax credits may be carried over for issuance in future years until December 31,
76 2022.

77 (4) At the beginning of each calendar year, the MTC shall equally designate the
78 total tax credits available during that calendar year to each region. At the beginning of
79 each calendar quarter, the MTC shall make available one-fourth of the total annual tax
80 credits for each region for investments made in qualified Missouri businesses located in
81 each such region. As soon as practicable at the end of each calendar quarter, the MTC
82 shall prepare and issue a report to the director of the department designating all tax credit
83 awards for that quarter, so that the department may issue such tax credits in accordance
84 with the provisions of this act.

85 (5) Notwithstanding subsection (4) above, any unissued tax credits allocated to any
86 region for any quarter may be reallocated and awarded in any other region in a following
87 quarter; however, in the fourth quarter any unissued tax credits may be reallocated and
88 awarded in that quarter in accordance with this section.

89 **4. (1) Before an investor may be entitled to receive tax credits under this section**
90 **and section 348.274, such investor shall have made a cash investment in a qualified security**
91 **of a qualified Missouri business. The business shall have been approved as a qualified**
92 **Missouri business before the date on which the cash investment was made. To be**
93 **designated as a qualified Missouri business, a business shall apply to MTC.**

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

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

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

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

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

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

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

108 **(3) The designation of a business as a qualified Missouri business shall be made by**
109 **the MTC, and such designation shall be renewed annually. A business shall be so**
110 **designated if the MTC determines, based upon the application submitted by the business**
111 **and any additional information provided in connection with such application, that such**
112 **business meets established criteria, including at least the following:**

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

115 **(b) Businesses that are not deemed to be bioscience businesses shall have been in**
116 **operation for less than five years, and businesses deemed to be bioscience businesses shall**
117 **have been in operation for less than ten years;**

118 **(c) The ability of investors in the business to receive tax credits for cash investments**
119 **in qualified securities of the business is beneficial to advancing the goals of this act;**

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

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

- 125 **a. The business of banking, savings and loan or lending institutions, credit or**
126 **finance, or financial brokerage or investments;**
- 127 **b. The provision of professional services, such as legal, accounting, or engineering**
128 **services; however, that contract research organizations, sometimes referred to as CROs,**
129 **shall not be subject to this exclusion;**
- 130 **c. Governmental, charitable, religious, or trade organizations;**
- 131 **d. The ownership, development brokerage, sales, or leasing of real estate;**
- 132 **e. Insurance;**
- 133 **f. Construction, construction management, or contracting;**
- 134 **g. Business consulting or brokerage;**
- 135 **h. Any business engaged primarily as a passive business, having irregular or**
136 **noncontiguous operations, or deriving substantially all of the income of the business from**
137 **passive investments that generate interest, dividends, royalties, or capital gains, or any**
138 **business arrangements the effect of which is to immunize an investor from risk of loss;**
- 139 **i. Any activity that is in violation of the law;**
- 140 **j. Any business raising money primarily to purchase real estate, land, or fixtures;**
- 141 **and**
- 142 **k. Any gambling-related business;**
- 143 **(f) The business has a reasonable chance of success;**
- 144 **(g) The business has the reasonable potential to create measurable employment**
145 **within the region, this state, or both;**
- 146 **(h) The business is based on an innovative technology, product, or service designed**
147 **to be used in the commercial marketplace;**
- 148 **(i) The existing owners of the business and other founders have made or are**
149 **committed to make a substantial financial or time commitment to the business;**
- 150 **(j) The securities to be issued and purchased are qualified securities;**
- 151 **(k) The business has the reasonable potential to address the needs and**
152 **opportunities specific to the region, this state, or both;**
- 153 **(l) The business has made binding commitments to MTC for adequate reporting**
154 **of financial data, including a requirement for an annual report, or, if required, an annual**
155 **audit of the financial and operational records of the business, the right of access to the**
156 **financial records of the business, the right of the department and MTC to record and**
157 **publish normal and customary data and information related to the issuance of tax credits**
158 **that are not otherwise determined to be trade or business secrets, and other such**
159 **protections as may be in the best interest of Missouri taxpayers to achieve the goals of this**
160 **act; and**

161 (m) The business shall satisfy all other requirements of this act.

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

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

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

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

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

21 (c) Such other information as may be reasonably required under this act.

22 2. (1) The state of Missouri shall not be held liable for any damages to any investor
23 that makes an investment in any qualified security of a qualified Missouri business, any
24 business that applies to be designated as a qualified Missouri business and is turned down,
25 or any investor that makes an investment in a business that applies to be designated as a
26 qualified Missouri business and is turned down.

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

31 (3) The director of the department, in cooperation with MTC, shall provide the
32 information specified under subdivision (3) of subsection 4 of this section to the director
33 of the department of revenue on an annual basis. The MTC shall conduct an annual

34 review of the activities undertaken under this section and section 348.273 to ensure that tax
35 credits issued under this section and section 348.273 are issued in compliance with the
36 provisions of this section and section 348.273 or rules and regulations promulgated by the
37 MTC or the department with respect to this section and section 348.273. The reasonable
38 costs of the annual review and other administrative work necessary or convenient to carry
39 out the provisions of this act shall be recovered by the MTC according to a reasonable fee
40 schedule adopted by the MTC in cooperation with the department by and through its
41 service on the MTC board of directors.

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

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

52 (6) A business may lose its designation as a qualified Missouri business under this
53 section and section 348.273 by moving either its headquarters outside of Missouri or a
54 substantial number of the jobs created in Missouri to a location outside Missouri within
55 ten years after receiving financial assistance under this section and section 348.273.

56 (7) In the event that a business loses its designation as a qualified Missouri business,
57 such business shall be precluded from being issued any additional tax credits with respect
58 to the business, shall be precluded from being approved as a qualified Missouri business,
59 and shall be subject to an appropriate clawback provision that MTC, in cooperation with
60 department by and through its service on the MTC board of directors, provides for in
61 connection with the administration of this act.

62 (8) Investors in a qualified Missouri business shall be entitled to keep all of the tax
63 credits properly issued to such investors under this section and section 348.273.

64 (9) The portions of documents and other materials submitted to the department or
65 MTC that contain confidential information shall be kept confidential and shall be
66 maintained in a secured environment. For the purposes of this section and section 348.273,
67 confidential information may include, but not be limited to, such portions of trade secrets,
68 documents, any customer lists, and other materials; any formula, compound, production
69 data, or compilation of information that will allow certain individuals within a commercial

70 concern using such portions of documents and other material the means to fabricate,
71 produce, or compound an article of trade; or any service having commercial value which
72 gives the user an opportunity to obtain a business advantage over competitors who do not
73 know or use such service.

74 (10) The department and MTC may prepare and adopt procedures, rules, and
75 publish guidelines concerning the performance of the duties placed upon each respective
76 entity by this section and section 348.273.

77 3. Any qualified investor who makes a cash investment in a qualified security of a
78 qualified Missouri business may transfer the tax credits such qualified investor may receive
79 under subsection 4 of section 348.273 to any natural person. Such transferee may claim
80 the tax credit against the transferee's Missouri income tax liability as provided in
81 subdivision (1) of subsection 4 of section 348.273, subject to all restrictions and limitations
82 set forth in this section and section 348.273. Only the full credit for any one investment
83 shall be transferred and this interest shall only be transferred one time. Documentation
84 of any tax credit transfer under this section shall be provided by the qualified investor in
85 the manner established by MTC and the department, by and through its service on the
86 MTC board of directors.

87 4. (1) Each qualified Missouri business for which tax credits were issued under this
88 section and section 348.273 shall report to MTC on an annual basis, on or before February
89 first. MTC shall provide copies of the reports to the department under appropriate
90 confidentiality agreements as may be necessary under the circumstances. Such reports
91 shall include the following:

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

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

97 (c) Such other information as may be reasonably required under this act.

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

100 (a) The amount of applications received;

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

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

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

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

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

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

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

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

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

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

123 **(g) An estimate of jobs created and jobs preserved by cash investments made in**
124 **qualified Missouri businesses within each region;**

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

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

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

135 **5. Under section 23.253 of the Missouri sunset act:**

136 **(1) The provisions of the new program authorized under sections 348.273 and**
137 **348.274 shall automatically sunset six years after the effective date of sections 348.273 and**
138 **348.274 unless reauthorized by an act of the general assembly;**

139 **(2) If such program is reauthorized, the program authorized under sections 348.273**
140 **and 348.274 shall automatically sunset twelve years after the effective date of the**
141 **reauthorization of sections 348.273 and 348.274; and**

142 **(3) Sections 348.273 and 348.274 shall terminate on September first of the calendar**
143 **year immediately following the calendar year in which the program authorized under**
144 **sections 348.273 and 348.274 are sunset.**

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