

FIRST REGULAR SESSION

# SENATE BILL NO. 252

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SMITH, GRIESHEIMER AND PEARCE.

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TERRY L. SPIELER, Secretary.

0865S.011

## AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to tax credits to encourage equity investments in technology-based early stage 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 two new sections, to be known as sections 348.273 and 348.274, to read as follows:

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

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

(2) "Equity investment", money or money equivalent in consideration for qualified securities. An equity investment shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the Internal Revenue Code;

(3) "Investor":

(a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a) as in effect on August 28, 2009; or

(b) Any partnership, corporation, trust, limited liability company, or not-for-profit entity that was established and is operated for the purpose of making preseed and seed stage investments in start-up companies, and is approved by the department;

(4) "Qualified Missouri business", an independently owned and operated business which is headquartered and located in this state and which is in need of venture capital. Such business shall have no more

20 than two hundred employees, eighty percent of which are employed in  
21 this state. Such business shall be involved in commerce for the purpose  
22 of manufacturing, processing, or assembling products, conducting  
23 research and development, or providing services in interstate  
24 commerce but excluding retail, real estate, real estate development,  
25 insurance, and professional services provided by accountants, lawyers,  
26 or physicians. At the time approval is sought, such business shall be a  
27 small business concern that meets the requirements of the United  
28 States Small Business Administration's qualification size standards for  
29 its venture capital program, as defined in the Small Business  
30 Investment Act of 1958, as amended, and rules promulgated in 13 CFR  
31 121.301(c), as amended;

32 (5) "Qualified securities", securities that are not redeemable or  
33 repayable within seven years of issuance and that have been approved  
34 in form and substance by the department. Forms of such equity  
35 securities include:

36 (a) A general or limited partnership interest;

37 (b) Common stock;

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

41 (d) Convertible debt.

348.274. 1. The department may authorize tax credits to  
2 encourage equity investment into technology-based early stage  
3 Missouri companies.

4 2. If a qualified Missouri business is approved by the  
5 department, the investors who contribute the first five hundred  
6 thousand dollars in equity investment in the qualified Missouri  
7 business may be issued a tax credit not less than twelve months from  
8 the date the equity investment is made. The tax credit shall be in a  
9 total amount equal to forty percent of such investors' equity investment  
10 in any qualified Missouri business, subject to the limitations set forth  
11 in subsection 5 of this section.

12 3. (1) Before an investor may be entitled to receive tax credits,  
13 as authorized by this section, such investor shall have made an equity  
14 investment in a qualified security of a qualified Missouri

15 **business. This business shall have been approved by the department**  
16 **as a qualified Missouri business prior to the date on which the cash**  
17 **investment was made. To be designated as a qualified Missouri**  
18 **business, a business shall make application to the department in**  
19 **accordance with the provisions of this section. Such application shall**  
20 **be in form and substance as required by the department, but shall**  
21 **include at least the following:**

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

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

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

28 **(d) A statement of the potential economic impact of the business**  
29 **including the number, location, and types of jobs expected to be**  
30 **created;**

31 **(e) A description of the qualified securities to be issued, the**  
32 **consideration to be paid for the qualified securities, the amount of any**  
33 **tax credits requested, and the earliest year in which the tax credits**  
34 **may be redeemed;**

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

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

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

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

48 **(b) The business shall not have ownership interests including,**  
49 **but not limited to, common or preferred shares of stock that can be**  
50 **traded by the public via a stock exchange, electronic exchange, bulletin**

51 board, or other public market place on or before the date that a  
52 qualifying investment is made;

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

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

57 b. Professional services, such as legal, accounting or engineering  
58 services;

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

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

62 e. Insurance;

63 f. Construction or construction management or contracting;

64 g. Business consulting or brokerage;

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

71 i. Any Missouri certified capital formation company;

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

73 k. Any business raising money primarily to purchase real estate,  
74 land, or fixtures;

75 (d) The business shall satisfy all other requirements of this  
76 section.

77 (3) The portions of documents and other materials submitted to  
78 the department that contain trade secrets shall be kept confidential  
79 and shall be maintained in a secured environment by the director of  
80 the department. For the purposes of this section, such portions of  
81 documents and other materials shall mean any customer list, any  
82 formula, compound, production data, or compilation of information  
83 certain individuals within a commercial concern using such portions  
84 of documents and other material means to fabricate, produce, or  
85 compound an article of trade, or, any service having commercial value,  
86 which gives the user an opportunity to obtain a business advantage

87 over competitors who do not know or use such service.

88 (4) A qualified Missouri business shall have the burden of proof  
89 to demonstrate to the department the qualifications of the business  
90 under this section and shall have the obligation to notify the  
91 department in a timely manner of any changes in the qualifications of  
92 the business or in the eligibility of investors to claim a tax credit for  
93 cash investment in a qualified security.

94 4. The designation of a business as a qualified Missouri business  
95 shall be made by the department, and such designation shall be  
96 renewed annually. A business shall be so designated if the department  
97 determines, based upon the application submitted by the business and  
98 any additional investigation the department shall make, that the  
99 following criteria have been or shall be satisfied:

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

101 (2) The ability of investors in the business to receive tax credits  
102 for cash investments in qualified securities of the business is necessary  
103 because funding otherwise available for the business is not available  
104 on commercially reasonable terms;

105 (3) The business has the reasonable potential to create  
106 measurable employment within the state;

107 (4) The business has an innovative and proprietary technology,  
108 product, and service;

109 (5) The existing owners of the business and other founders have  
110 made or are committed to make a substantial financial and time  
111 commitment to the business;

112 (6) The securities to be issued and purchased are qualified  
113 securities; and

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

122 5. The total amount of tax credits that may be issued under this

123 section shall not exceed five million dollars per tax year. The  
124 department shall not issue more than one hundred thousand dollars in  
125 tax credits per investor per year.

126           6. No tax credit authorized under this section shall be issued  
127 earlier than twelve months following approval and authorization by the  
128 department. The tax credit may be used in its entirety in the taxable  
129 year of issuance. To the extent the credit exceeds a taxpayer's state tax  
130 liability, such excess shall constitute an overpayment of tax and shall  
131 be refunded to such taxpayer.

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

134           8. A qualified Missouri business for which credits have been  
135 issued that, within seven years of receiving tax credits under this  
136 section, relocates its headquarters out of Missouri, ceases to employ  
137 eighty percent of its employees in Missouri, alters the principal nature  
138 of its operations, or divests itself of key assets shall upon demand by  
139 the department pay the state of Missouri an amount equal to the  
140 amount of credits issued to its contributors.

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

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

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

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

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

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

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