

FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 413

102ND GENERAL ASSEMBLY

1668S.02C

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" and referred to herein as the "act".**

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

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

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

10 (3) "Investor":

**11 (a) A natural person who is an accredited investor as
12 defined under 17 CFR 230.501(a)(5) or 230.501(a)(6), as in
13 effect on August 28, 2023;**

**14 (b) A permitted entity investor who is an accredited
15 investor as defined under 17 CFR 230.501(a)(8), as in effect
16 on August 28, 2023; or**

17 (c) A natural person or permitted entity investor
18 making an investment who qualifies under the Jumpstart Our
19 Business Startups (JOBS) Act, Pub. L. No. 112-106, as in
20 effect on August 28, 2023. The term "investor" shall not
21 include any person who serves as an executive, officer, or
22 employee of the business in which an otherwise qualified
23 cash investment is made, and such person shall not qualify
24 for the issuance of tax credits for such investment.
25 However, an investor who serves solely as a director may
26 qualify for the issuance of tax credits;

27 (4) "MTC", the Missouri technology corporation,
28 established under section 348.251;

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

32 (6) "Permitted entity investor", any general
33 partnership, limited partnership, corporation that has in
34 effect a valid election to be taxed as an S corporation
35 under the Internal Revenue Code of 1986, as amended,
36 revocable living trust, nonprofit corporation, or limited
37 liability company that has elected to be taxed as a
38 partnership under the United States Internal Revenue Code of
39 1986, as amended, and that was established and is operated
40 for the purpose of making investments in other entities;

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

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

- 49 (a) Any business owned by an individual;
- 50 (b) Any partnership, association, or corporation
51 domiciled in Missouri; or
- 52 (c) Any corporation, even if a wholly owned subsidiary
53 of a foreign corporation, that has its business operations
54 located primarily in Missouri or does substantially all of
55 such business's production in Missouri;
- 56 (9) "Qualified securities", a cash investment through
57 any one or more forms of financial assistance as provided
58 under this subdivision that has been approved in form and
59 substance by MTC. Forms of such financial assistance may
60 include:
- 61 (a) Any form of equity, which may include, but shall
62 not be limited to:
- 63 a. A general or limited partnership interest;
- 64 b. Common stock;
- 65 c. Preferred stock, with or without voting rights,
66 without regard to seniority position, and whether or not
67 convertible into common stock; or
- 68 d. Any form of subordinate or convertible debt, or
69 both, with warrants or other means of equity conversion
70 attached; or
- 71 (b) A debt instrument, such as a note or debenture
72 that is secured or unsecured, subordinated to the general
73 creditors of the debtor and requiring no payments of
74 principal, other than principal payments required to be made
75 out of any future profits of the debtor, for at least a
76 seven-year period after commencement of such debt
77 instrument's term;
- 78 (10) "Tax credit", a credit against the tax otherwise
79 due under chapter 143, excluding withholding tax imposed by

80 sections 143.191 to 143.265, or otherwise due under chapter
81 148 or 153.

82 3. (1) For all tax years beginning on or after
83 January 1, 2023, a tax credit shall be allowed for an
84 investor's cash investment in the qualified securities of a
85 qualified Missouri business. If the qualified Missouri
86 business is located in a community described in subdivision
87 (3) of subsection 2 of section 32.115, the credit shall be
88 in a total amount equal to seventy percent of such
89 investor's cash investment in such qualified Missouri
90 business, subject to the limitations set forth in this
91 subsection. Otherwise, the credit shall be in a total
92 amount equal to fifty percent of such investor's cash
93 investment in any qualified Missouri business, subject to
94 the limitations set forth in this subsection. If the amount
95 by which that portion of the credit allowed by this section
96 exceeds the investor's tax liability in any one tax year,
97 the remaining portion of the credit may be carried forward
98 to any of the five subsequent tax years or until the total
99 amount of the credit is used, whichever occurs first. If
100 the investor is a permitted entity investor, the credit
101 provided by this section shall be claimed by the owners of
102 the permitted entity investor in proportion to their equity
103 investment in the permitted entity investor.

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

109 (3) The department and MTC shall not allow tax credits
110 of more than fifty thousand dollars for a single qualified
111 Missouri business per investor who is a natural person or

112 permitted entity investor, or a total of two hundred fifty
113 thousand dollars in tax credits for a single year per
114 investor who is a natural person or owner of a permitted
115 entity investor. No tax credits authorized by this section
116 and section 348.274 shall be allowed for any cash
117 investments in qualified securities made in any year
118 beginning after December 31, 2032. The total amount of tax
119 credits allowed under this section shall not exceed six
120 million dollars during the tax years beginning on or after
121 January 1, 2023, and ending on or before December 31, 2024.
122 For each tax year thereafter, the total amount of tax
123 credits allowed under this section shall be increased by
124 twenty percent of the total amount of tax credits allowed in
125 the immediately preceding tax year, so long as the total
126 amount of tax credits allowed in the immediately preceding
127 tax year was issued during the immediately preceding tax
128 year. The balance of unissued tax credits may be carried
129 over for issuance in future years until December 31, 2032.
130 The balance of unissued tax credits carried over, if any,
131 shall not be used in the calculation of the total amount of
132 tax credits allowed in a given tax year.

133 (4) At the beginning of each calendar year, MTC shall
134 equally designate the total tax credits available during
135 that calendar year to each geographic region comprised of
136 the boundaries of each congressional district, as such
137 boundaries may be amended from time to time, within Missouri.

138 (a) For any region that does not contain a community
139 described in subdivision (3) of subsection 2 of section
140 32.115, at the beginning of each calendar quarter, MTC shall
141 make available one-fourth of the total annual tax credits
142 for each such region for investments made in qualified
143 Missouri businesses located in each such region.

144 (b) For any region that contains a community described
145 in subdivision (3) of subsection 2 of section 32.115, on
146 January first and July first of each year, MTC shall make
147 available one-half of the total annual tax credits for each
148 such region for investments made in qualified Missouri
149 businesses located in each such region.

150 (c) As soon as practicable at the end of each calendar
151 quarter, MTC shall prepare and issue a report to the
152 director of the department designating all tax credit awards
153 for that quarter, so that the department may issue such tax
154 credits in accordance with the provisions of this section
155 and section 348.274. The report shall aggregate any
156 unissued tax credits allocated to any region for any
157 calendar quarter and divide such unissued tax credits
158 equally over each other region and make such credits
159 available for the following calendar quarter, which shall be
160 in addition to the new allocation of tax credits available
161 to that region for the calendar quarter. Except as set
162 forth in subdivision (5) of this subsection, tax credits
163 described in paragraph (b) of this subdivision shall not be
164 eligible for reallocation until the end of the semi-annual
165 period in which they were made available.

166 (5) During the fourth calendar quarter, any unissued
167 tax credits allocated to any region, which shall include the
168 aggregate tax credits that have been reallocated under the
169 provisions of this subsection and any unissued tax credits
170 allocated for the fourth quarter, may be awarded in any
171 region.

172 4. (1) Before an investor may be entitled to receive
173 tax credits under this section and section 348.274, such
174 investor shall have made a cash investment in a qualified
175 security of a qualified Missouri business. The business

176 shall have been approved as a qualified Missouri business
177 before the date on which the cash investment was made. To
178 be designated as a qualified Missouri business, a business
179 shall apply to MTC in accordance with the provisions of this
180 section.

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

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

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

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

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

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

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

201 (3) The designation of a business as a qualified
202 Missouri business shall be made by MTC, and such designation
203 shall be renewed annually. A business shall be so
204 designated if MTC determines, based upon the application
205 submitted by the business and any additional information
206 provided in connection with such application, that such

207 business meets established criteria, including at least the
208 following:

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

212 (b) Businesses that are not deemed to be bioscience
213 businesses shall have been in operation for less than five
214 years, and businesses deemed to be bioscience businesses
215 shall have been in operation for less than ten years;

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

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

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

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

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

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

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

238 e. Insurance;

- 239 f. Construction, construction management, or
240 contracting;
- 241 g. Business consulting or brokerage;
- 242 h. Any business engaged primarily as a passive
243 business, having irregular or noncontiguous operations, or
244 deriving substantially all of the income of the business
245 from passive investments that generate interest, dividends,
246 royalties, or capital gains, or any business arrangements,
247 the effect of which is to immunize an investor from risk of
248 loss;
- 249 i. Any activity that is in violation of the law;
- 250 j. Any business raising money primarily to purchase
251 real estate, land, or fixtures; and
- 252 k. Any gambling-related business;
- 253 (f) The business has a reasonable chance of success;
- 254 (g) The business has the reasonable potential to
255 create measurable employment within the region, this state,
256 or both;
- 257 (h) The business is based on an innovative technology,
258 product, or service designed to be used in the commercial
259 marketplace;
- 260 (i) The existing owners of the business and other
261 founders have made or are committed to make a substantial
262 financial or time commitment to the business;
- 263 (j) The securities to be issued and purchased are
264 qualified securities;
- 265 (k) The business has the reasonable potential to
266 address the needs and opportunities specific to the region,
267 this state, or both;
- 268 (l) The business has made binding commitments to MTC
269 for adequate reporting of financial data, including a
270 requirement for an annual report, or, if required, an annual

271 audit of the financial and operational records of the
272 business, the right of access to the financial records of
273 the business, the right of the department and MTC to record
274 and publish normal and customary data and information
275 related to the issuance of tax credits that are not
276 otherwise determined to be trade or business secrets, and
277 other such protections as may be in the best interest of
278 Missouri taxpayers to achieve the goals of this section and
279 section 348.274; and

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

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

285 (5) MTC may charge a fee to the recipient of any tax
286 credits issued pursuant to this section in an amount up to
287 four percent of the amount of tax credits issued. Such fee
288 shall be paid by the recipient upon the issuance of the tax
289 credits. MTC shall use the fees collected pursuant to this
290 subdivision to promote the goals of this section and section
291 348.274.

348.274. 1. (1) MTC is authorized to allocate tax
2 credits to qualified Missouri businesses, and the department
3 is authorized to issue tax credits to qualified investors in
4 such qualified Missouri businesses. Such tax credits shall
5 be allocated to those qualified Missouri businesses that, as
6 determined by MTC, are most likely to provide the greatest
7 economic benefit to the region, the state, or both. MTC may
8 allocate, and the department may issue, whole or partial tax
9 credits in accordance with the report issued to the director
10 of the department based on MTC's assessment of the qualified
11 Missouri businesses. MTC may consider numerous factors in

12 such assessment including, but not limited to, the quality
13 and experience of the management team, the size of the
14 estimated market opportunity, the risk from current or
15 future competition, the ability to defend intellectual
16 property, the quality and utility of the business model, and
17 the quality and reasonableness of financial projections for
18 the business.

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

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

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

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

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

41 (2) Each qualified Missouri business shall have the
42 obligation to notify MTC, which shall notify the director of
43 the department, of any changes in the qualifications of the

44 business or in the eligibility of investors to claim a tax
45 credit for cash investment in a qualified security.

46 (3) The director of the department, in cooperation
47 with MTC, shall provide the information specified under
48 subdivision (3) of subsection 4 of this section to the
49 director of the department of revenue on an annual basis.
50 MTC shall conduct an annual review of the activities
51 undertaken under this section and section 348.273 to ensure
52 that tax credits issued under this section and section
53 348.273 are issued in compliance with the provisions of this
54 section and section 348.273 or rules and regulations
55 promulgated by MTC or the department with respect to this
56 section and section 348.273. The reasonable costs of the
57 annual review shall be paid by MTC according to a reasonable
58 fee schedule adopted by MTC in cooperation with the
59 department by and through its service on MTC board of
60 directors.

61 (4) If MTC determines that a business is not in
62 substantial compliance with the requirements under this
63 section and section 348.273 to maintain its designation, the
64 department or MTC, by written notice, may inform the
65 business that such business will lose its designation as a
66 qualified Missouri business one hundred twenty days from the
67 date of mailing of the notice unless such business corrects
68 the deficiencies and is once again in compliance with the
69 requirements for designation.

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

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

82 (7) In the event that a business loses its designation
83 as a qualified Missouri business, such business shall be
84 precluded from being issued any additional tax credits with
85 respect to the business, shall be precluded from being
86 approved as a qualified Missouri business, and shall be
87 subject to an appropriate clawback provision that MTC, in
88 cooperation with the department by and through its service
89 on MTC board of directors, provides for in connection with
90 the administration of section 348.273 and this section.

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

94 (9) The portions of documents and other materials
95 submitted to the department or MTC that contain confidential
96 information shall be kept confidential and shall be
97 maintained in a secured environment. For the purposes of
98 this section and section 348.273, confidential information
99 may include, but not be limited to, such portions of trade
100 secrets, documents, any customer lists, and other materials;
101 any formula, compound, production data, or compilation of
102 information that will allow certain individuals within a
103 commercial concern using such portions of documents and
104 other material the means to fabricate, produce, or compound
105 an article of trade; or any service having commercial value
106 which gives the user an opportunity to obtain a business

107 advantage over competitors who do not know or use such
108 service.

109 (10) The department and MTC may prepare and adopt
110 procedures and rules and publish guidelines concerning the
111 performance of the duties placed upon each respective entity
112 by this section and section 348.273. Any rule or portion of
113 a rule, as that term is defined in section 536.010, that is
114 created under the authority delegated in this section shall
115 become effective only if it complies with and is subject to
116 all of the provisions of chapter 536 and, if applicable,
117 section 536.028. This section and chapter 536 are
118 nonseverable and if any of the powers vested with the
119 general assembly pursuant to chapter 536 to review, to delay
120 the effective date, or to disapprove and annul a rule are
121 subsequently held unconstitutional, then the grant of
122 rulemaking authority and any rule proposed or adopted after
123 August 28, 2023, shall be invalid and void.

124 3. Any qualified investor who makes a cash investment
125 in a qualified security of a qualified Missouri business may
126 transfer the tax credits such qualified investor may receive
127 under subsection 3 of section 348.273 to any natural
128 person. Such transferee may claim the tax credit against
129 the transferee's Missouri income tax liability as provided
130 in subdivision (1) of subsection 3 of section 348.273,
131 subject to all restrictions and limitations set forth in
132 this section and section 348.273. Documentation of any tax
133 credit transfer under this section shall be provided by the
134 qualified investor in the manner established by MTC and the
135 department, by and through its service on MTC board of
136 directors.

137 4. (1) Each qualified Missouri business for which tax
138 credits were issued under this section and section 348.273

139 shall report to MTC on an annual basis, on or before
140 February first. MTC shall provide copies of the reports to
141 the department under appropriate confidentiality agreements
142 as may be necessary under the circumstances. Such reports
143 shall include the following:

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

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

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

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

157 (a) The amount of applications received;

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

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

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

166 (3) MTC and the department, as applicable, shall also
167 report annually to the governor, the director of the
168 department of economic development, the president pro
169 tempore of the senate, and the speaker of the house of

170 representatives, on or before April first, on the allocation
171 and issuance of the tax credits. Such reports shall include:

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

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

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

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

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

188 (f) The total cash investments made for the purchase
189 of qualified securities of qualified Missouri businesses
190 within each region during the preceding year and
191 cumulatively since the effective date of this section and
192 section 348.273;

193 (g) An estimate of jobs created and jobs preserved by
194 cash investments made in qualified Missouri businesses
195 within each region;

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

199 (i) Information regarding what businesses deriving
200 benefits from the tax credits remained in the region, what
201 businesses ceased business, what businesses were purchased,

202 and what businesses may have moved out of a region or the
203 state.

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

211 5. Notwithstanding the provisions of section 23.253 of
212 the Missouri sunset act:

213 (1) The provisions of the new program authorized under
214 section 348.273 and this section shall automatically sunset
215 December 31, 2032, unless reauthorized by an act of the
216 general assembly;

217 (2) If such program is reauthorized, the program
218 authorized under section 348.273 and this section shall
219 automatically sunset twelve years after the effective date
220 of the reauthorization.

221 (3) Section 348.273 and this section shall terminate
222 on September first of the calendar year immediately
223 following the calendar year in which the program authorized
224 under section 348.273 and this section are sunset.

225 (4) The provisions of this subsection shall not be
226 construed to limit or in any way impair the department of
227 revenue's ability to redeem tax credits authorized on or
228 before the date the program authorized pursuant to this
229 section and section 348.273 expires or a taxpayer's ability
230 to redeem such tax credits.

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