

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NOS. 191 & 182

97TH GENERAL ASSEMBLY

0417H.07P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 348, RSMo, by adding thereto two new sections relating to the Missouri Angel Investment Incentive Act.

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

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

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

**(2) "Coordinator", the SBTDC home office;**

**(3) "Investor":**

**(a) A natural person who is an accredited investor as defined in 17 CFR 230.501(a)(5) or 230.501(a)(6), as in effect on August 28, 2013; or**

**(b) A permitted entity investor who is an accredited investor as defined in 17 CFR 230.501(a)(8), as in effect on August 28, 2013; or**

**(c) A natural person or permitted entity investor making an investment who qualifies under the Jumpstart Our Business Startups (JOBS) Act, Pub.L.No. 112-106, as in effect on August 23, 2013.**

**A person who serves as an executive, officer, or employee of the business in which an otherwise qualified cash investment is made is not an investor, and such person shall not qualify for the issuance of tax credits for such investment;**

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.

18 (4) "Owner", any natural person who is, directly or indirectly, a partner,  
19 stockholder, or member in a permitted entity investor;

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

26 (6) "Qualified knowledge-based company", a company based on the use of ideas  
27 and information to provide innovative technologies, products, and services;

28 (7) "Qualified Missouri business", a Missouri business that is approved and  
29 certified as qualified knowledge-based company by the regional SBTDC that meet at least  
30 one of the following criteria:

31 (a) Any business owned by an individual;

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

33 (c) Any corporation, even if a wholly owned subsidiary of a foreign corporation,  
34 that does business primarily in Missouri or does substantially all of such business's  
35 production in Missouri;

36 (8) "Qualified securities", a cash investment through any one or more forms of  
37 financial assistance as provided in this subdivision and that have been approved in form  
38 and substance by the coordinator. Forms of such financial assistance include:

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

40 a. A general or limited partnership interest;

41 b. Common stock;

42 c. Preferred stock, with or without voting rights, without regard to seniority  
43 position, and whether or not convertible into common stock; or

44 d. Any form of subordinate or convertible debt, or both, with warrants or other  
45 means of equity conversion attached; or

46 (b) A debt instrument, such as a note or debenture that is secured or unsecured,  
47 subordinated to the general creditors of the debtor and requiring no payments of principal,  
48 other than principal payments required to be made out of any future profits of the debtor,  
49 for at least a seven-year period after commencement of such debt instrument's term;

50 (9) "SBTDC", the Missouri small business and technology development center; and

51 (10) "Tax credit", a credit against the tax otherwise due under chapter 143,  
52 excluding withholding tax imposed by sections 143.191 to 143.265, or otherwise due under  
53 chapter 147, 148, or 153.

54           **3. The Missouri angel investment incentive act shall be administered by the**  
55 **regional SBTDCs and the coordinator, with the primary goal of encouraging individuals**  
56 **to provide seed-capital financing for emerging Missouri businesses engaged in the**  
57 **development, implementation, and commercialization of innovative technologies, products,**  
58 **and services. Each regional SBTDC shall establish a regional committee consisting of no**  
59 **fewer than three but no more than five persons for the purpose of reviewing applications**  
60 **from businesses requesting designation as a qualified Missouri business and allocating the**  
61 **amount of available tax credits among the qualified investors that make cash investments**  
62 **in such qualified Missouri businesses. The coordinator shall establish its own rules of**  
63 **procedure, including the form and substance of applications to be used by each regional**  
64 **SBTDC and the criteria to be considered by each regional SBTDC when evaluating a**  
65 **qualified Missouri business. Such applications and criteria are to be not less than the**  
66 **minimum requirements set forth in subsection 5 of this section. The coordinator shall issue**  
67 **tax credits to qualified investors who make cash investments in qualified Missouri**  
68 **businesses that have been allocated available tax credits by a regional SBTDC.**

69           **4. (1) A tax credit shall be allowed for an investor's cash investment in the qualified**  
70 **securities of a qualified Missouri business. The credit shall be in a total amount equal to**  
71 **fifty percent of such investor's cash investment in any qualified Missouri business, subject**  
72 **to the limitations set forth in this subsection. This tax credit may be used in its entirety in**  
73 **the taxable year in which the cash investment is made, but no tax credit shall be allowed**  
74 **prior to the year beginning August 28, 2013. If the amount by which that portion of the**  
75 **credit allowed by this section exceeds the investor's tax liability in any one taxable year,**  
76 **beginning in the calendar year 2013, the remaining portion of the credit may be carried**  
77 **forward five years or until the total amount of the credit is used, whichever occurs first.**  
78 **If the investor is a permitted entity investor, the credit provided by this section shall be**  
79 **claimed by the owners of the permitted entity investor in proportion to their equity**  
80 **investment in the permitted entity investor.**

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

84           **(3) The SBTDC shall not allow tax credits of more than fifty thousand dollars for**  
85 **a single qualified Missouri business per investor who is a natural person or permitted**  
86 **entity investor or a total of two hundred fifty thousand dollars in tax credits for a single**  
87 **year per investor who is a natural person or owner of a permitted entity investor. No tax**  
88 **credits authorized by this section and section 348.274 shall be allowed for any cash**  
89 **investments in qualified securities for any year beginning after December 31, 2023. The**

90 total amount of tax credits allowed under this section shall not exceed six million dollars  
91 during tax years 2014 and 2015. For each tax year thereafter, the total amount of tax  
92 credits allowed under this section shall be increased by twenty percent of the total amount  
93 of tax credits allowed in the immediately preceding tax year, so long as the total amount  
94 of tax credits allowed in the immediately preceding tax year was issued during the  
95 immediately preceding tax year. In the event that unissued tax credits remain from the  
96 immediately preceding tax year, the total amount of tax credits which may be allowed  
97 under this section shall not exceed the total amount of tax credits allowed in the  
98 immediately preceding tax year. The balance of unissued tax credits may be carried over  
99 for issuance in future years until December 31, 2023. The balance of unissued tax credits  
100 carried over, if any, shall not be used in the calculation of the total amount of tax credits  
101 allowed in a given tax year.

102 (4) The tax credits shall be administered by the regional SBTDCs. At the beginning  
103 of each calendar year, the coordinator shall equally designate the tax credits available  
104 during that year to each regional SBTDC. At the beginning of each calendar quarter, the  
105 coordinator shall allocate to each regional SBTDC one-fourth of the total tax credits  
106 designated to such regional SBTDC for the calendar year such that the regional SBTDC  
107 can allocate tax credits among the qualified Missouri businesses. The coordinator shall  
108 then issue tax credits to qualified investors for cash investments in such qualified Missouri  
109 businesses during that calendar quarter.

110 (5) At the end of each calendar quarter, each regional SBTDC shall report to the  
111 coordinator any unallocated tax credits for the preceding quarter. Such report shall meet  
112 the requirements set forth in section 348.274. The coordinator shall aggregate all such tax  
113 credits and reallocate them equally among the regional SBTDCs as soon as possible during  
114 the next consecutive calendar quarter. Each regional SBTDC shall receive such  
115 reallocation in addition to the new allocation of designated tax credits for such quarter.

116 (6) During the fourth calendar quarter, a regional SBTDC in need of additional tax  
117 credits for transactions closing in the fourth calendar quarter may request that another  
118 regional SBTDC with unallocated tax credits permit such unallocated tax credits to be  
119 allocated by the requesting SBTDC. No regional SBTDC shall be required to grant such  
120 request. When a granting SBTDC transfers the allocation of the unallocated tax credits  
121 to a requesting SBTDC under this subdivision, the granting SBTDC shall provide to the  
122 requesting SBTDC a written confirmation authorizing such transfer, the granting SBTDC  
123 shall include a copy of such written confirmation in its reports provided under section  
124 348.274, and the requesting SBTDC shall include a copy of such written confirmation in  
125 its reports provided under section 348.274.

126           **5. (1) Before an investor may be entitled to receive tax credits under this section**  
127 **and section 348.274, such investor shall have made a cash investment in a qualified security**  
128 **of a qualified Missouri business. The business shall have been approved by a regional**  
129 **SBTDC as a qualified Missouri business before the date on which the cash investment was**  
130 **made. To be designated as a qualified Missouri business, a business shall apply to a**  
131 **regional SBTDC in accordance with the provisions of this section.**

132           **(2) The application by a business to a regional SBTDC shall be in the form and**  
133 **substance as required by the coordinator, but shall include at least the following:**

134           **(a) The name of the business and certified copies of the organizational documents**  
135 **of the business;**

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

138           **(c) A statement of the potential economic impact of the enterprise, including the**  
139 **number, location, and types of jobs expected to be created;**

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

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

144           **(f) Such other information as the regional SBTDC or the coordinator may**  
145 **reasonably request.**

146           **(3) The designation of a business as a qualified Missouri business shall be made by**  
147 **the regional SBTDC, and such designation shall be renewed annually. A business shall be**  
148 **so designated if the regional SBTDC determines, based upon the application submitted by**  
149 **the business and any additional investigation the regional SBTDC shall undertake, that**  
150 **such business meets the criteria established by the coordinator. Such criteria shall include**  
151 **at least the following:**

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

154           **(b) Businesses that are not bioscience businesses shall have been in operation for**  
155 **less than five years, and bioscience businesses shall have been in operation for less than ten**  
156 **years;**

157           **(c) The ability of investors in the business to receive tax credits for cash investments**  
158 **in qualified securities of the business is beneficial, because funding otherwise available for**  
159 **the business is not available on commercially reasonable terms;**

- 160           **(d) The business shall not have ownership interests including, but not limited to,**  
161 **common or preferred shares of stock that can be traded via a public stock exchange before**  
162 **the date that a qualifying investment is made;**
- 163           **(e) The business shall not be engaged primarily in any one or more of the following**  
164 **enterprises:**
- 165           **a. The business of banking, savings and loan or lending institutions, credit or**  
166 **finance, or financial brokerage or investments;**
- 167           **b. The provision of professional services, such as legal, accounting, or engineering**  
168 **services;**
- 169           **c. Governmental, charitable, religious, or trade organizations;**
- 170           **d. The ownership, development brokerage, sales, or leasing of real estate;**
- 171           **e. Insurance;**
- 172           **f. Construction or construction management or contracting;**
- 173           **g. Business consulting or brokerage;**
- 174           **h. Any business engaged primarily as a passive business, having irregular or**  
175 **noncontiguous operations, or deriving substantially all of the income of the business from**  
176 **passive investments that generate interest, dividends, royalties, or capital gains, or any**  
177 **business arrangements the effect of which is to immunize an investor from risk of loss;**
- 178           **i. Any activity that is in violation of the law;**
- 179           **j. Any business raising money primarily to purchase real estate, land, or fixtures;**  
180 **and**
- 181           **k. Any gambling-related business;**
- 182           **(f) The business has a reasonable chance of success;**
- 183           **(g) The business has the reasonable potential to create measurable employment**  
184 **within the region, this state, or both;**
- 185           **(h) The business has an innovative and proprietary technology, product, or service;**
- 186           **(i) The existing owners of the business and other founders have made or are**  
187 **committed to make a substantial financial and time commitment to the business;**
- 188           **(j) The securities to be issued and purchased are qualified securities;**
- 189           **(k) The business has the reasonable potential to address the needs and**  
190 **opportunities specific to the region, this state, or both;**
- 191           **(l) The business has made binding commitments to the regional SBTDC for**  
192 **adequate reporting of financial data, including a requirement for an annual report, or, if**  
193 **required by the regional SBTDC, an annual audit of the financial and operational records**  
194 **of the business, the right of access to the financial records of the business, and the right of**  
195 **the regional SBTDC to record and publish normal and customary data and information**

196 related to the issuance of tax credits that are not otherwise determined to be trade or  
197 business secrets; and

198 (m) The business shall satisfy all other requirements of this section and section  
199 348.274.

200 (4) Notwithstanding the requirements of subdivision (3) of this subsection, a  
201 business may be considered as a qualified Missouri business under the provisions of this  
202 section and section 348.274 if such business falls within a standard industrial classification  
203 code established by the coordinator.

204 (5) A qualified Missouri business shall have the burden of proof to demonstrate to  
205 the regional SBTDC the qualifications of the business under this section.

206 (6) Before accepting a qualified security a qualified Missouri business shall convey  
207 to the department of economic development a two percent equity interest in the business.  
208 The department shall refrain from exercising any voting rights in the business while it  
209 holds the equity interest.

210 (7) The department may sell the equity interest at a time it believes is in the  
211 economic best interest of the state, but shall not hold the equity interest for more than one  
212 year after this section expires.

213 (8) Any proceeds from the sale of the equity interest shall be used by the department  
214 to further the goals of this program.

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

13 (2) Each qualified Missouri business for which a regional SBTDC has allocated tax  
14 credits such that the coordinator can issue tax credits to the qualified investors of such  
15 qualified Missouri business shall submit to the regional SBTDC a report before such tax  
16 credits are issued. The regional SBTDC shall provide copies of this report to the  
17 coordinator. Such report shall include the following:

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

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

22           **(c) Any additional information as the regional SBTDC may reasonably require**  
23 **under this section and section 348.273.**

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

29           **(2) Each qualified Missouri business shall have the obligation to notify the regional**  
30 **SBTDC that allocated the tax credits to the qualified Missouri business and the**  
31 **coordinator in a timely manner of any changes in the qualifications of the business or in**  
32 **the eligibility of investors to claim a tax credit for cash investment in a qualified security.**

33           **(3) The coordinator shall provide the information specified in subdivision (3) of**  
34 **subsection 4 of this section to the department of revenue on an annual basis. The**  
35 **coordinator shall conduct an annual review of the activities undertaken under this section**  
36 **and section 348.273 to ensure that tax credits issued under this section and section 348.273**  
37 **are issued in compliance with the provisions of this section and section 348.273 or rules and**  
38 **regulations promulgated by each regional SBTDC or the coordinator with respect to this**  
39 **section and section 348.273. The reasonable costs of the annual review shall be paid by the**  
40 **coordinator according to a reasonable fee schedule adopted by the coordinator.**

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

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

51           **(6) A business may lose its designation as a qualified Missouri business under this**  
52 **section and section 348.273 by moving its operations outside Missouri within ten years after**  
53 **receiving financial assistance under this section and section 348.273.**

54           **(7) In the event that a business loses its designation as a qualified Missouri business,**  
55 **such business shall be precluded from being issued any additional tax credits with respect**  
56 **to the business, shall be precluded from being approved as a qualified Missouri business,**  
57 **and shall repay any financial assistance to the regional SBTDC, in an amount to be**  
58 **determined by the regional SBTDC. Each qualified Missouri business that loses its**  
59 **designation as a qualified Missouri business shall enter into a repayment agreement, with**  
60 **the regional SBTDC specifying the terms of such repayment obligation.**

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

63           **(9) The portions of documents and other materials submitted to any regional**  
64 **SBTDC or the coordinator that contain trade secrets shall be kept confidential and shall**  
65 **be maintained in a secured environment by the regional SBTDC and the coordinator, as**  
66 **applicable. For the purposes of this section and section 348.273, such portions of trade**  
67 **secrets, documents, and other materials means any customer lists; any formula, compound,**  
68 **production data, or compilation of information that will allow certain individuals within**  
69 **a commercial concern using such portions of documents and other material the means to**  
70 **fabricate, produce, or compound an article of trade; or any service having commercial**  
71 **value which gives the user an opportunity to obtain a business advantage over competitors**  
72 **who do not know or use such service.**

73           **(10) Each regional SBTDC and the coordinator may prepare and adopt procedures**  
74 **concerning the performance of the duties placed upon each respective entity by this section**  
75 **and section 348.273.**

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

85           **4. (1) Each qualified Missouri business for which tax credits have been issued**  
86 **under this section and section 348.273 shall report to the applicable regional SBTDC on**  
87 **an annual basis, on or before February first. The regional SBTDC shall provide copies of**  
88 **the reports to the coordinator. Such reports shall include the following:**

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

92           **(b) The amounts of these cash investments by each investor and a description of the**  
93 **qualified securities issued in consideration of such cash investments; and**

94           **(c) Any additional information as the regional SBTDC or the coordinator may**  
95 **reasonably require under this section and section 348.273.**

96           **(2) Each regional SBTDC shall report quarterly to the coordinator on the allocation**  
97 **of the tax credits in the preceding calendar quarter. Such reports shall include:**

98           **(a) The amount of applications the regional SBTDC received;**

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

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

103           **(d) The amount of tax credits issued in the previous quarter, including what**  
104 **percentage was issued to individuals and what percentage was issued to investment firms;**

105           **(e) The amount of unallocated tax credits; and**

106           **(f) Such other information as reasonably agreed upon by each regional SBTDC and**  
107 **the coordinator.**

108           **(3) Each regional SBTDC and the coordinator, as applicable, shall also report**  
109 **annually to the governor; the director of the department of economic development; the**  
110 **senate committee on commerce, consumer protection, energy and the environment; the**  
111 **house committee on economic development; and any successor committees thereto, and to**  
112 **the coordinator, on or before April first, on the allocation and issuance of the tax credits.**  
113 **Such reports shall include:**

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

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

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

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

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

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

127           **(g) An estimate of jobs created and jobs preserved by cash investments made in**  
128 **qualified Missouri businesses within the region;**

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

131           **(i) Information regarding what businesses derived benefit from the tax credits**  
132 **remained in the region, what businesses ceased business, what businesses were purchased,**  
133 **and what businesses may have moved out of the region or state and why.**

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

139           **5. Sections 348.273 and 348.274 shall expire on December 31, 2023.**

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