

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1202

101ST GENERAL ASSEMBLY

2454H.03P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 143.022, 143.071, and 620.2005, RSMo, and section 620.2005 as enacted by senate bill no. 2, one hundred first general assembly, first regular session, and to enact in lieu thereof six new sections relating to incentives for new businesses.

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

Section A. Sections 143.022, 143.071, and 620.2005, RSMo, and section 620.2005 as enacted by senate bill no. 2, one hundred first general assembly, first regular session, are repealed and six new sections enacted in lieu thereof, to be known as sections 34.195, 143.022, 143.071, 431.203, 620.2005, and 620.3800, to read as follows:

34.195. 1. This section shall be known and may be cited as the "Right-to-Start Act".

2. Beginning July 1, 2023, five percent of all state contracts shall be awarded to businesses that have been in operation for less than five years.

143.022. 1. As used in this section, "business income" means the income greater than zero arising from transactions in the regular course of all of a taxpayer's trade or business and shall be limited to the Missouri source net profit from the combination of the following:

(1) The total combined profit as properly reported to the Internal Revenue Service on each Schedule C, or its successor form, filed; and

(2) The total partnership and S corporation income or loss properly reported to the Internal Revenue Service on Part II of Schedule E, or its successor form.

2. In addition to all other modifications allowed by law, there shall be subtracted from the federal adjusted gross income of an individual taxpayer a percentage of such individual's

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.

10 business income, to the extent that such amounts are included in federal adjusted gross income
11 when determining such individual's Missouri adjusted gross income.

12 3. In the case of an S corporation described in section 143.471 or a partnership
13 computing the deduction allowed under subsection 2 of this section, taxpayers described in
14 subdivision (1) or (2) of this subsection shall be allowed such deduction apportioned in
15 proportion to their share of ownership of the business as reported on the taxpayer's Schedule K-1,
16 or its successor form, for the tax period for which such deduction is being claimed when
17 determining the Missouri adjusted gross income of:

18 (1) The shareholders of an S corporation as described in section 143.471;

19 (2) The partners in a partnership.

20 4. The percentage to be subtracted under subsection 2 of this section shall be increased
21 over a period of years. Each increase in the percentage shall be by five percent and no more than
22 one increase shall occur in a calendar year. The maximum percentage that may be subtracted is
23 twenty percent of business income. Any increase in the percentage that may be subtracted shall
24 take effect on January first of a calendar year and such percentage shall continue in effect until
25 the next percentage increase occurs. An increase shall only apply to tax years that begin on or
26 after the increase takes effect.

27 5. An increase in the percentage that may be subtracted under subsection 2 of this section
28 shall only occur if the amount of net general revenue collected in the previous fiscal year exceeds
29 the highest amount of net general revenue collected in any of the three fiscal years prior to such
30 fiscal year by at least one hundred fifty million dollars.

31 6. The first year that a taxpayer may make the subtraction under subsection 2 of this
32 section is 2017, provided that the provisions of subsection 5 of this section are met. If the
33 provisions of subsection 5 of this section are met, the percentage that may be subtracted in 2017
34 is five percent.

35 **7. For purposes of this section, the term "new business income" means any business**
36 **income from a taxpayer that begins business operations in this state on or after January**
37 **1, 2022.**

38 **8. Any remaining amount of new business income included in a taxpayer's Missouri**
39 **adjusted gross income after the subtraction provided under subsection 2 of this section**
40 **shall be reduced, as follows:**

41 **(1) For the first tax year in which the taxpayer's business is in operation, the first**
42 **two hundred fifty thousand dollars of such amount shall be reduced by fifty percent;**

43 **(2) For the second tax year in which the taxpayer's business is in operation, the first**
44 **five hundred thousand dollars of such amount shall be reduced by thirty-seven and one-**
45 **half percent;**

46 **(3) For the third tax year in which the taxpayer's business is in operation, the first**
47 **seven hundred fifty thousand dollars of such amount shall be reduced by twenty-five**
48 **percent;**

49 **(4) For the fourth tax year in which the taxpayer's business is in operation, the first**
50 **one million dollars of such amount shall be reduced by twelve and one-half percent.**

143.071. 1. For all tax years beginning before September 1, 1993, a tax is hereby
2 imposed upon the Missouri taxable income of corporations in an amount equal to five percent
3 of Missouri taxable income.

4 2. For all tax years beginning on or after September 1, 1993, and ending on or before
5 December 31, 2019, a tax is hereby imposed upon the Missouri taxable income of corporations
6 in an amount equal to six and one-fourth percent of Missouri taxable income.

7 3. For all tax years beginning on or after January 1, 2020, a tax is hereby imposed upon
8 the Missouri taxable income of corporations in an amount equal to four percent of Missouri
9 taxable income.

10 4. **For purposes of this section, the term "eligible new corporation" means a**
11 **corporation validly licensed under the applicable laws of this state that begins operations**
12 **in this state on or after January 1, 2022.**

13 5. **For all tax years beginning on or after January 1, 2022, a tax is hereby imposed**
14 **upon the Missouri taxable income of eligible new corporation, as follows:**

15 **(1) For the first tax year of an eligible new corporation, the first two hundred fifty**
16 **thousand dollars of income shall be exempt from taxation and any remaining portion of**
17 **income shall be taxed at a rate of four percent;**

18 **(2) For the second tax year of an eligible new corporation, the first five hundred**
19 **thousand dollars of income shall be taxed at a rate of one percent and any remaining**
20 **portion of income shall be taxed at a rate of four percent;**

21 **(3) For the third tax year of an eligible new corporation, the first seven hundred**
22 **fifty thousand dollars of income shall be taxed at a rate of two percent and any remaining**
23 **portion of income shall be taxed at a rate of four percent;**

24 **(4) For the fourth tax year of an eligible new corporation, the first one million**
25 **dollars of income shall be taxed at a rate of three percent and any remaining portion of**
26 **income shall be taxed at a rate of four percent;**

27 **(5) For the fifth tax year of an eligible new corporation and for all tax years**
28 **thereafter, all income shall be taxed at a rate of four percent.**

29 6. The provisions of this section shall not apply to out-of-state businesses operating
30 under sections 190.270 to 190.285.

431.203. 1. For purposes of this section, the term "covenant not to compete" means an agreement, understanding, contract, or contractual term in which an employee or prospective employee agrees not to compete against an employer or prospective employer or agrees not to accept any positions with a competitor of an employer or prospective employer following the termination of a business or employment relationship between the employee or prospective employee and the employer or prospective employer. A covenant not to compete may, but need not, contain time-based or geographic limitations.

2. Notwithstanding any provision of section 431.202 or any other provision of law to the contrary, beginning the effective date of this section, a covenant not to compete created after the effective date of this section shall be void and unenforceable if an employee or prospective employee receives seventy-five thousand dollars or less in income from such employer or prospective employer, or the employee is employed by an employer working on a contract with the United States Department of Defense.

620.2005. 1. As used in sections 620.2000 to 620.2020, the following terms mean:

(1) "Average wage", the new payroll divided by the number of new jobs, or the payroll of the retained jobs divided by the number of retained jobs;

(2) "Commencement of operations", the starting date for the qualified company's first new employee, which shall be no later than twelve months from the date of the approval;

(3) "Contractor", a person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity;

(4) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any qualified company that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

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

(6) "Director", the director of the department of economic development;

- 24 (7) "Employee", a person employed by a qualified company, excluding:
25 (a) Owners of the qualified company unless the qualified company is participating in an
26 employee stock ownership plan; or
27 (b) Owners of a noncontrolling interest in stock of a qualified company that is publicly
28 traded;
- 29 (8) "Existing Missouri business", a qualified company that, for the ten-year period
30 preceding submission of a notice of intent to the department, had a physical location in Missouri
31 and full-time employees who routinely performed job duties within Missouri;
- 32 (9) "Full-time employee", an employee of the qualified company that is scheduled to
33 work an average of at least thirty-five hours per week for a twelve-month period, and one for
34 which the qualified company offers health insurance and pays at least fifty percent of such
35 insurance premiums. An employee that spends less than fifty percent of the employee's work
36 time at the facility shall be considered to be located at a facility if the employee receives his or
37 her directions and control from that facility, is on the facility's payroll, one hundred percent of
38 the employee's income from such employment is Missouri income, and the employee is paid at
39 or above the applicable percentage of the county average wage;
- 40 (10) "Industrial development authority", an industrial development authority organized
41 under chapter 349 that has entered into a formal written memorandum of understanding with an
42 entity of the United States Department of Defense regarding a qualified military project;
- 43 (11) "Infrastructure projects", highways, roads, streets, bridges, sewers, traffic control
44 systems and devices, water distribution and supply systems, curbing, sidewalks, storm water and
45 drainage systems, broadband internet infrastructure, and any other similar public improvements,
46 but in no case shall infrastructure projects include private structures;
- 47 (12) "Local incentives", the present value of the dollar amount of direct benefit received
48 by a qualified company for a project facility from one or more local political subdivisions, but
49 this term shall not include loans or other funds provided to the qualified company that shall be
50 repaid by the qualified company to the political subdivision;
- 51 (13) "Manufacturing capital investment", expenditures made by a qualified
52 manufacturing company to retool or reconfigure a manufacturing project facility directly related
53 to the manufacturing of a new product or the expansion or modification of the manufacture of
54 an existing product;
- 55 (14) "Memorandum of understanding", an agreement executed by an industrial
56 development authority and an entity of the United States Department of Defense, a copy of which
57 is provided to the department of economic development, that states, but is not limited to:
58 (a) A requirement for the military to provide the total number of existing jobs, jobs
59 directly created by a qualified military project, and average salaries of such jobs to the industrial

60 development authority and the department of economic development annually for the term of the
61 benefit;

62 (b) A requirement for the military to provide an accounting of the expenditures of capital
63 investment made by the military directly related to the qualified military project to the industrial
64 development authority and the department of economic development annually for the term of the
65 benefit;

66 (c) The process by which the industrial development authority shall monetize the tax
67 credits annually and any transaction cost or administrative fee charged by the industrial
68 development authority to the military on an annual basis;

69 (d) A requirement for the industrial development authority to provide proof to the
70 department of economic development of the payment made to the qualified military project
71 annually, including the amount of such payment;

72 (e) The schedule of the maximum amount of tax credits which may be authorized in each
73 year for the project and the specified term of the benefit, as provided by the department of
74 economic development; and

75 (f) A requirement that the annual benefit paid shall be the lesser of:

76 a. The maximum amount of tax credits authorized; or

77 b. The actual calculated benefit derived from the number of new jobs and average
78 salaries;

79 (15) "NAICS" or "NAICS industry classification", the classification provided by the
80 most recent edition of the North American Industry Classification System as prepared by the
81 Executive Office of the President, Office of Management and Budget;

82 (16) "New capital investment", shall include costs incurred by the qualified company at
83 the project facility after acceptance by the qualified company of the proposal for benefits from
84 the department or the approval notice of intent, whichever occurs first, for real or personal
85 property, and may include the value of finance or capital leases for real or personal property for
86 the term of such lease at the project facility executed after acceptance by the qualified company
87 of the proposal for benefits from the department or the approval of the notice of intent;

88 (17) "New direct local revenue", the present value of the dollar amount of direct net new
89 tax revenues of the local political subdivisions likely to be produced by the project over a ten-
90 year period as calculated by the department, excluding local earnings tax, and net new utility
91 revenues, provided the local incentives include a discount or other direct incentives from utilities
92 owned or operated by the political subdivision;

93 (18) "New job", the number of full-time employees located at the project facility that
94 exceeds the project facility base employment less any decrease in the number of full-time

95 employees at related facilities below the related facility base employment. No job that was
96 created prior to the date of the notice of intent shall be deemed a new job;

97 (19) "New payroll", the amount of wages paid for all new jobs, located at the project
98 facility during the qualified company's tax year that exceeds the project facility base payroll;

99 (20) "New product", a new model or line of a manufactured good that has not been
100 manufactured in Missouri by a qualified manufacturing company at any time prior to the date of
101 the notice of intent, or an existing brand, model, or line of a manufactured good that is
102 redesigned;

103 (21) "Notice of intent", a form developed by the department and available online,
104 completed by the qualified company, and submitted to the department stating the qualified
105 company's intent to request benefits under this program. The notice of intent shall be
106 accompanied with a detailed plan by the qualifying company to make good faith efforts to
107 employ, at a minimum, commensurate with the percentage of minority populations in the state
108 of Missouri, as reported in the previous decennial census, the following: racial minorities,
109 contractors who are racial minorities, and contractors that, in turn, employ at a minimum racial
110 minorities commensurate with the percentage of minority populations in the state of Missouri,
111 as reported in the previous decennial census. At a minimum, such plan shall include monitoring
112 the effectiveness of outreach and recruitment strategies in attracting diverse applicants and
113 linking with different or additional referral sources in the event that recruitment efforts fail to
114 produce a diverse pipeline of applicants;

115 (22) "Percent of local incentives", the amount of local incentives divided by the amount
116 of new direct local revenue;

117 (23) "Program", the Missouri works program established in sections 620.2000 to
118 620.2020;

119 (24) "Project facility", the building or buildings used by a qualified company at which
120 new or retained jobs and any new capital investment are or will be located or by a qualified
121 manufacturing company at which a manufacturing capital investment is or will be located. A
122 project facility may include separate buildings located within sixty miles of each other such that
123 their purpose and operations are interrelated; provided that where the buildings making up the
124 project facility are not located within the same county, the average wage of the new payroll shall
125 exceed the applicable percentage of the highest county average wage among the counties in
126 which the buildings are located. Upon approval by the department, a subsequent project facility
127 may be designated if the qualified company demonstrates a need to relocate to the subsequent
128 project facility at any time during the project period. For qualified military projects, the term
129 "project facility" means the military base or installation at which such qualified military project
130 is or shall be located;

131 (25) "Project facility base employment", the greater of the number of full-time
132 employees located at the project facility on the date of the notice of intent or, for the twelve-
133 month period prior to the date of the notice of intent, the average number of full-time employees
134 located at the project facility. In the event the project facility has not been in operation for a full
135 twelve-month period, the average number of full-time employees for the number of months the
136 project facility has been in operation prior to the date of the notice of intent;

137 (26) "Project facility base payroll", the annualized payroll for the project facility base
138 employment or the total amount of taxable wages paid by the qualified company to full-time
139 employees of the qualified company located at the project facility in the twelve months prior to
140 the notice of intent. For purposes of calculating the benefits under this program, the amount of
141 base payroll shall increase each year based on an appropriate measure, as determined by the
142 department;

143 (27) "Project period", the time period within which benefits are awarded to a qualified
144 company or within which the qualified company is obligated to perform under an agreement with
145 the department, whichever is greater;

146 (28) "Projected net fiscal benefit", the total fiscal benefit to the state less any state
147 benefits offered to the qualified company, as determined by the department;

148 (29) "Qualified company", a firm, partnership, joint venture, association, private or
149 public corporation whether organized for profit or not, or headquarters of such entity registered
150 to do business in Missouri that is the owner or operator of a project facility, certifies that it offers
151 health insurance to all full-time employees of all facilities located in this state, and certifies that
152 it pays at least fifty percent of such insurance premiums. For the purposes of sections 620.2000
153 to 620.2020, the term "qualified company" shall not include:

154 (a) Gambling establishments (NAICS industry group 7132);

155 (b) Store front consumer-based retail trade establishments (under NAICS sectors 44 and
156 45), except with respect to any company headquartered in this state with a majority of its full-
157 time employees engaged in operations not within the NAICS codes specified in this subdivision
158 **and except for any such establishments located in a county of the third or fourth**
159 **classification;**

160 (c) Food and drinking places (NAICS subsector 722);

161 (d) Public utilities (NAICS 221 including water and sewer services);

162 (e) Any company that is delinquent in the payment of any nonprotested taxes or any
163 other amounts due the state or federal government or any other political subdivision of this state;

164 (f) Any company requesting benefits for retained jobs that has filed for or has publicly
165 announced its intention to file for bankruptcy protection. However, a company that has filed for

166 or has publicly announced its intention to file for bankruptcy may be a qualified company
167 provided that such company:

- 168 a. Certifies to the department that it plans to reorganize and not to liquidate; and
- 169 b. After its bankruptcy petition has been filed, it produces proof, in a form and at times
170 satisfactory to the department, that it is not delinquent in filing any tax returns or making any
171 payment due to the state of Missouri, including but not limited to all tax payments due after the
172 filing of the bankruptcy petition and under the terms of the plan of reorganization. Any taxpayer
173 who is awarded benefits under this subsection and who files for bankruptcy under Chapter 7 of
174 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the department and
175 shall forfeit such benefits and shall repay the state an amount equal to any state tax credits
176 already redeemed and any withholding taxes already retained;
- 177 (g) Educational services (NAICS sector 61);
- 178 (h) Religious organizations (NAICS industry group 8131);
- 179 (i) Public administration (NAICS sector 92);
- 180 (j) Ethanol distillation or production;
- 181 (k) Biodiesel production; or
- 182 (l) Health care and social services (NAICS sector 62).

183

184 Notwithstanding any provision of this section to the contrary, the headquarters, administrative
185 offices, or research and development facilities of an otherwise excluded business may qualify
186 for benefits if the offices or facilities serve a multistate territory. In the event a national, state,
187 or regional headquarters operation is not the predominant activity of a project facility, the jobs
188 and investment of such operation shall be considered eligible for benefits under this section if
189 the other requirements are satisfied;

190 (30) "Qualified manufacturing company", a company that:

191 (a) Is a qualified company that manufactures motor vehicles (NAICS group 3361);

192 (b) Manufactures goods at a facility in Missouri;

193 (c) Manufactures a new product or has commenced making a manufacturing capital
194 investment to the project facility necessary for the manufacturing of such new product, or
195 modifies or expands the manufacture of an existing product or has commenced making a
196 manufacturing capital investment for the project facility necessary for the modification or
197 expansion of the manufacture of such existing product; and

198 (d) Continues to meet the requirements of paragraphs (a) to (c) of this subdivision for
199 the project period;

200 (31) "Qualified military project", the expansion or improvement of a military base or
201 installation within this state that causes:

202 (a) An increase of ten or more part-time or full-time military or civilian support
203 personnel:

204 a. Whose average salaries equal or exceed ninety percent of the county average wage;
205 and

206 b. Who are offered health insurance, with an entity of the United States Department of
207 Defense paying at least fifty percent of such insurance premiums; and

208 (b) Investment in real or personal property at the base or installation expressly for the
209 purposes of serving a new or expanded military activity or unit.

210

211 For the purposes of this subdivision, part-time military or civilian support personnel shall be
212 converted to full-time new jobs by, in hire date order, counting one full-time new job for every
213 thirty-five averaged hours worked per week by part-time military or civilian support personnel
214 in jobs directly created by the qualified military project. For each such full-time new job, the
215 sum of the wages of the part-time military or civilian support personnel combined and converted
216 to form the new job shall be the wage for the one full-time new job. Each part-time military or
217 civilian support personnel whose job is combined and converted for such a full-time new job
218 shall be offered health insurance as described in subparagraph b of paragraph (a) of this
219 subdivision;

220 (32) "Related company", shall mean:

221 (a) A corporation, partnership, trust, or association controlled by the qualified company;

222 (b) An individual, corporation, partnership, trust, or association in control of the
223 qualified company; or

224 (c) Corporations, partnerships, trusts or associations controlled by an individual,
225 corporation, partnership, trust, or association in control of the qualified company. As used in this
226 paragraph, "control of a qualified company" shall mean:

227 a. Ownership, directly or indirectly, of stock possessing at least fifty percent of the total
228 combined voting power of all classes of stock entitled to vote in the case of a qualified company
229 that is a corporation;

230 b. Ownership of at least fifty percent of the capital or profit interest in such qualified
231 company if it is a partnership or association;

232 c. Ownership, directly or indirectly, of at least fifty percent of the beneficial interest in
233 the principal or income of such qualified company if it is a trust, and ownership shall be
234 determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

235 (33) "Related facility", a facility operated by the qualified company or a related company
236 located in this state that is directly related to the operations of the project facility or in which
237 operations substantially similar to the operations of the project facility are performed;

238 (34) "Related facility base employment", the greater of the number of full-time
239 employees located at all related facilities on the date of the notice of intent or, for the twelve-
240 month period prior to the date of the notice of intent, the average number of full-time employees
241 located at all related facilities of the qualified company or a related company located in this state;

242 (35) "Related facility base payroll", the annualized payroll of the related facility base
243 payroll or the total amount of taxable wages paid by the qualified company to full-time
244 employees of the qualified company located at a related facility in the twelve months prior to the
245 filing of the notice of intent. For purposes of calculating the benefits under this program, the
246 amount of related facility base payroll shall increase each year based on an appropriate measure,
247 as determined by the department;

248 (36) "Rural area", a county in Missouri with a population less than seventy-five thousand
249 or that does not contain an individual city with a population greater than fifty thousand according
250 to the most recent federal decennial census;

251 (37) "Tax credits", tax credits issued by the department to offset the state taxes imposed
252 by chapters 143 and 148, or which may be sold or refunded as provided for in this program;

253 (38) "Withholding tax", the state tax imposed by sections 143.191 to 143.265. For
254 purposes of this program, the withholding tax shall be computed using a schedule as determined
255 by the department based on average wages.

256 2. This section is subject to the provisions of section 196.1127.

**620.3800. There is hereby created within the department of economic development
2 the "Office of Entrepreneurship". The office shall employ an individual to promote
3 policies and initiatives to support the growth of entrepreneurship in the state. The office
4 shall work with stakeholders and communities to provide information and technical
5 support to entrepreneurs.**

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