

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 21, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Secretary

Conferees appearing before the committee:

Others attending: See attached list

HB 2688 - Capital formation company act

Kansas, Inc., distributed amendments to **HB 2688**, (Attachment 1) and a sheet which references the provisions of the bill and their placement in the bill. (Attachment 2)

Senator Barone moved, seconded by Senator Gooch, that substitute for HB 2688 be amended at Page 4, line 42, following the word "a" by inserting the word "single"; line 43 following "\$25,000" by adding the following: "or more than \$2,000,000; nor shall any one person's combined investment for the purpose of earning tax credits exceed \$5,000,000". The voice vote was in favor of the motion.

Senator Barone moved, seconded by Senator Umbarger, that substitute for HB 2688 be amended at Page 1 in the title, by striking the words "concerning venture capital";

"at Page 2, Line 7, by adding a new subsection as follows: "(c) 'Authorized capital formation company and Authorized CFC' means a capital formation company that has been designated by the secretary as having met the requirements of this act necessary to raise capital investments but that has not yet received the designation as a certified formation company."; re-alphabetizing the remaining subsections "(d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n);

"at Page 4, on Line 4 by adding: "This provision shall not however remove the requirements set forth in paragraph (p)(1)(B) of this section which states that at least 50% of the employees of the business shall be resident in Kansas."; on Line 30 following the "(.)" inserting "or"; on Line 38 striking "com-"; on Line 39 striking "mencing after taxable year 2001" and inserting "ending after June 30, 2003.";

"at Page 5, on Line 5 striking "submit an application to be designated as a CFC"; on Line 6 after the word "every" inserting the word "certified"; on Line 7 inserting the word "certified" before "CFC's"; on Line 11, following the word "for" striking "certification" and inserting "authorization as a CFC"; on Line 13, following the word "application" inserting "for authorization as a CFC"; on Line 16, striking the word "of an"; on Line 28, following the word "act" inserting a "(.)" and striking the remainder of Line 28 and all of Line 29; on Line 31 following the word "application" adding "for authorization as" and striking the word "to become";

"at Page 6, on Line 30 inserting the word "certified" before "CFC"; on Line 31, following the word "Within" adding the following: "a period of time established by the secretary, after receipt of application for authorization as a CFC"; striking "75 days of application" and following the word "the" inserting the word "authorization; on Line 32 striking the following: "certification and notify the secretary of the department of revenue of such certification"; on Line 33 striking "refuse the certification" and inserting "deny authorization"; on Line 34 striking the word "refusal" and inserting the word "denial";

"at Pages 6 and 7, striking all of Section 4 in its entirety and inserting a new Section 4 which

CONTINUATION SHEET

reads as follows: 'Sec. 4. (a) An authorized capital formation company having been authorized by the secretary pursuant to Section 3 shall have a period of not more than 365 days from the date of receiving authorization in which to procure certified capital investment.

“(b) In order to receive certification by the secretary, an authorized capital formation company shall raise a minimum aggregate certified capital investment of no less than \$5,000,000. In the case of an authorized capital formation company formed by an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the KTEC innovation and commercialization corporation program, such minimum certified capital investment shall be no less than \$1,000,000.

“(c) Total capital investment deemed certified for the purpose of earning tax credits shall not exceed \$10,000,000 in a single capital formation company. In the case of a capital formation company formed by an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the KTEC innovation and commercialization corporation program, such maximum certified capital investment shall not exceed \$1,500,000.

“(d) If during the fund raising period, an authorized capital formation company demonstrates to the secretary that the maximum cumulative certified capital investment has been met pursuant to this act, the secretary shall either designate the capital formation company as a certified capital formation company and notify the secretary of revenue of such certification; or shall deny the certification and notify the capital formation company of the basis for denial.

“(e) All capital investment deemed certified for the purpose of earning tax credits must be certified by the investor to be new monies in that such monies were not being used for seed or venture capital prior to making the investment in a CFC. Any attempt to transfer funds from an existing venture capital fund to a CFC for the purposes of earning a tax credit shall constitute a violation of this act and may lead to decertification.

“(f) No capital investments shall be certified by the secretary until such time when the minimum cumulative certified capital investments are met.

“(g) Upon the end of the fund raising period as established by the secretary, capital formation companies that have reached the minimum cumulative certified capital investment requirement but have failed to reach the maximum cumulative certified capital investment requirements shall be certified by the secretary in rank order based on the amount of certified capital investment raised by the capital formation company and the amount of tax credits available for allocation upon the secretary’s satisfaction that all such investment was made pursuant to this act.

“(h) The secretary will notify the department of revenue upon certification of a capital formation company.

“(i) Designation as an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the Kansas technology enterprise corporation shall not relieve such entity from compliance with any provisions of this act except where stated otherwise.”

“at Page 7, on Line 38 striking “15” and inserting “30”;

“at Page 8, on Lines 5 and 8, striking “15” and inserting “30”; on Line 39, striking “10%” and inserting “20%”; on Line 42, following the word “of” inserting “authorization of”;

“at Page 9, striking all of Lines 5, 6, 7 and 8 in their entirety; on Line 21 and Line 22, striking “authorizing” and inserting “authorizing or certifying”; on Line 22 striking “the formation of”; on Line 24 adding the word “or authorized”; on Line 29 following the word “for” inserting the words “authorization and”;

“at Page 10, on Line 5 striking the word “capitol” and inserting the word “capital”.

The voice vote was in favor of the motion.

Senator Barone moved, seconded by Senator Umbarger, that new Section 4 of substitute for HB 2688 be further amended by inserting a new subsection (d) which reads as follows: “(d) A CFC is hereby authorized to be formed for the purpose of investing exclusively in non-metropolitan counties as defined in K.S.A. 74-5093 and amendments thereto. In the case of a CFC formed exclusively for the purposes of investing in non-metropolitan counties of the state, the secretary may enter into an agreement with the CFC at the time of application to establish maximum investment, certification may take place pursuant to paragraph subsection (f) of this section.”; and re-alphabetizing the remaining sections. The voice vote was in favor of the motion.

CONTINUATION SHEET

Senator Gooch moved, seconded by Senator Ranson, that substitute for HB 2688 be amended conceptually to provide that a business funded through a CFC must remain in business in Kansas for 10 years. The motion was defeated on a voice vote.

During Committee discussion Senator Steffes questioned the timing of the legislation in **substitute for HB 2688**, and whether it was the correct state policy. It provides for a transfer of \$50 million from the people of Kansas and creates wealth for the wealthy and does not necessarily create jobs. There was a feeling that a strategic plan should be completed prior to enactment of this legislation. There should be consideration of the Secretary's position relating to the spending of \$50 million on a new project when present economic development projects are being cut due to the financial crisis in the state. Senator Ranson also stated her opposition to investment in a new program when the state presently has a program which invests \$36 million with a 25% return to the state.

Senator Barone moved, seconded by Senator Salisbury, that substitute for HB 2688 be recommended favorably for passage as amended. The recorded vote was Yes - 7, No - 4. The motion passed.

Upon motion by Senator Gooch, seconded by Senator Jordan, the Minutes of the March 17 meeting were unanimously approved.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 22, 2000.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 21, 2000

NAME	REPRESENTING
Bud Burke	Venture Capital Coalition
Kevin Carr	KTEC
Stephanie Buchanan	DOB
Roger Franze	KGC
Bernie Koch	Wichita Area Chamber
Christy Caldwell	Topeka Chamber of Com.

Changes from Original set of Kansas, Inc.
amendments are indicated by text blocks.

[As Amended by House Committee of the Whole]

Session of 2000

Substitute for HOUSE BILL No. 2688

By Committee on Economic Development

2-8

10 AN ACT [relating to income taxation;] ~~concerning~~ venture capital;
11 enacting the Kansas certified capital formation company act[; provid-
12 ing a credit therefrom for certain food locker plant expenses].
13

14 Be it enacted by the Legislature of the State of Kansas:

15 Section 1. This act shall be known and may be cited as the Kansas
16 certified capital formation company act. The purpose of this act is to
17 enhance the development of seed and venture capital in Kansas and to
18 support the modernization and expansion of the state's economy. As used
19 in this act, unless the context clearly requires otherwise, the following
20 terms mean:

21 (a) "Affiliate of a certified capital formation company" means:

22 (1) Any person that directly or indirectly, owns, controls or possesses
23 the power or ability to vote ten percent or more of the outstanding voting
24 securities or other beneficial ownership interests of the Kansas certified
25 capital formation company;

26 (2) any person ten percent or more of whose outstanding voting se-
27 curities or other beneficial ownership interests are directly or indirectly
28 owned, controlled or possessed with the power to be voted by the Kansas
29 certified capital formation company;

30 (3) any person directly or indirectly controlling, controlled by, or un-
31 der common control with the Kansas certified capital formation company;

32 (4) any partnership in which the Kansas certified capital formation
33 company is a general partner;

34 (5) any person who is an officer, director, general partner, managing
35 member, managing director or agent of the Kansas certified capital for-
36 mation company or an immediate family member of such person.

37 (b) "Affiliate of an investor" means:

38 (1) Any person that directly or indirectly, owns, controls or possesses
39 the power or ability to vote ten percent or more of the outstanding voting
40 securities or other beneficial ownership interests of the investor;

41 (2) any person ten percent or more of whose outstanding voting se-
42 curities or other beneficial ownership interests are directly or indirectly

Senate Commerce Committee

Date: 3-21-00

Attachment # 1-1 thru 1-13

43 owned, controlled or possessed with the power to be voted by the

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1 investor;

2 (3) any person directly or indirectly controlling, controlled by or un-
3 der common control with the investor;

4 (4) a partnership in which the investor is a general partner;

5 (5) any person who is an officer, director or agent of the investor or
6 an immediate family member of such officer, director or agent.

(c) "Authorized capital formation company and Authorized CFC" mean a capital formation company that has been designated by the secretary as having met the requirements of this act necessary to raise capital investments but that has not yet received the designation as a certified capital formation company.

7 ~~(c)~~ (d) "Applicable percentage" means one hundred percent.

8 ~~(d)~~ (e) "CFC" means any ~~certified~~ capital formation company.

9 ~~(e)~~ (f) "Capital in a qualified Kansas business" means any note, stock,
10 partnership or membership interest or other form of equity investment
11 or hybrid security, of any nature and description whatsoever, including a
12 debt instrument or security which has the characteristics of indebtedness
13 but which provides for conversion into equity or equity participation in-
14 struments such as options or warrants which are acquired by a certified CFC as a
15 result of a transfer of cash to a business. Capital in a qualified Kansas
16 business shall not include secured debt instruments.

17 ~~(f)~~ (g) "Certified capital" means cash, marketable securities and other
18 assets held by a certified capital formation company equal to the amount
19 of certified capital investment made by investors in the certified capital
20 formation company.

21 ~~(g)~~ (h) "Certified capital formation company" means any partnership,
22 corporation, trust or limited liability company, whether organized on a
23 profit or not for profit basis, that is domiciled in and qualified to conduct
24 business in Kansas and that has as its primary business activity, the in-
25 vestment of cash in qualified Kansas businesses, and which is certified by
26 the secretary as satisfying the criteria of this act.

27 ~~(h)~~ (i) "Certified capital investment" means an investment of cash by an
28 investor which is certified by the secretary made in such manner as to
29 acquire a beneficial ownership interest in a Kansas certified capital for-
30 mation company.

31 ~~(i)~~ (j) "Commissioner" means the securities commissioner of Kansas or
32 persons acting under the supervision of the commissioner.

33 ~~(j)~~ (k) "In existence" means the date of the first sale of goods or services
34 by a qualified Kansas business or a business seeking to be so qualified.

35 ~~(k)~~ (l) "Investor" means any person that invests cash. If the investor is
36 a natural person, the investor shall have a net worth of at least \$1,000,000
37 and such net worth shall be not less than 10 times the amount of the

38 investor's certified investment in a CFC. The investor's net worth shall
39 not include the value of any equity in the investor's primary residence.

40 (†) (m) "Liquidating distribution" means any distribution other than a
41 qualified distribution.

42 (m) (n) "Person" means any natural person or any business association,
43 including but not limited to, a corporation, limited liability company, gen-

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1 eral or limited partnership or trust ~~but shall not include entities subject to~~
~~privilege tax imposed pursuant to chapter 79 article 11 of the Kansas~~
~~statutes annotated or entities subject to premium tax or privilege fee~~
~~imposed pursuant to K.S.A. 40-252, and amendments thereto.~~

Banks and Insurance
Companies may be
investors and receive tax
credits.

2 (n)(o) "Qualified distribution" means any distribution or payment made
3 by a certified capital formation company for costs and expenses of form-
4 ing, syndicating, managing or operating the certified capital formation
5 company, including an annual management fee and reasonable and nec-
6 essary fees in accordance with industry custom for professional fees in-
7 cluding, but not limited to, legal and accounting fees, relating to operating
8 the certified capital formation company.

9 (o) (p) "Qualified Kansas business" means:

10 (1) A business that satisfies the requirements of subparagraphs (A)
11 through (F) of this subsection.

12 (A) Such business is independently owned and operated and has its
13 principal business office located in Kansas or, in the case of a company
14 domiciled outside the state of Kansas, which certifies that the company's
15 principal business office will be located in Kansas within six months fol-
16 lowing the date of the initial investment.

17 (B) At least fifty percent of the employees of the business shall be
18 resident in Kansas or, in the case of a company domiciled outside the
19 state of Kansas, certifies that at least fifty percent of its employees will
20 be resident in Kansas within six months following the date of the initial
21 qualified venture capital investment.

22 (C) Such business is in need of venture capital and cannot obtain
23 conventional financing to fund its further development and future
24 operations.

25 (D) Such business shall be engaged in commerce for the purpose of
26 manufacturing, processing or assembling or distributing products, con-
27 ducting research and development or providing services in interstate
28 commerce.

29 (E) For businesses involved in commerce for the purpose of provid-
30 ing services in interstate commerce, that business must demonstrate that
31 more than fifty percent of its gross revenues are derived from sales out-
32 side the state of Kansas or provide reasonable documentation that the

33 company will derive at least fifty percent of its gross sales outside the
34 state within a three-year period.

35 (F) Such business, at the time of the initial qualified venture capital
36 investment, shall have been in existence less than five years and shall not
37 have had gross sales in excess of \$1,000,000 in any single fiscal year.

38 (2) Any business which, subject to paragraph (a)(6) of section 5, is
39 approved as a qualified Kansas business at the time of the first qualified
40 venture capital investment in such business by a Kansas certified capital
41 formation company, for a period of seven years following the date of such
42 first investment, shall continue to be classified as a qualified Kansas busi-
43 ness and may receive follow-on investments from any Kansas certified

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1 CFC, and such follow-on investments shall consti-
2 tute qualified venture capital investments even though such business may
3 not meet other qualifications of this subsection at the time of such follow-
4 on investments. *This provision shall not however remove the requirement
set forth in paragraph (p)(1)(B) of this section which states that at
least 50% of the employees of the business shall be resident in Kansas.*

5 (3) A qualified Kansas business shall not include:

6 (A) Any commercial enterprise primarily engaged in the sale at retail
7 of goods or services taxable under the Kansas retailer's sales tax act; any
8 service provider set forth in K.S.A. 17-2707, and amendments thereto;
9 any bank, savings and loan or lending institution; any real estate, real
10 estate development or insurance company; or any commercial enterprise
11 deriving its revenues directly from noncommercial customers in exchange
12 for personal services;

13 (B) a business engaged primarily as a passive business, in irregular or
14 noncontinuous operations, or which derives substantially all of its income
15 from passive investments that generate interest, dividends, royalties or
16 capital gains;

17 (C) a business engaged in oil and gas exploration and development;

18 (D) a subsidiary of a certified capital formation company;

19 (E) another certified capital formation company;

20 (F) an affiliate of the certified capital formation company;

21 (G) an investor of the certified capital formation company or an af-
22 filiate or subsidiary of an investor of the certified capital formation com-
23 pany unless approved in writing by the secretary.

24 (p) (q) "Qualified venture capital investment" means the investment of
25 cash by a Kansas certified capital formation company in such a manner
26 as to acquire capital in a qualified Kansas business.

27 (q) (r) "Secretary" means the secretary of commerce and housing or per-
28 sons under the secretary's direction.

29 (r) (s) "Tax credit" means a credit against the tax imposed by the Kansas
30 income tax act, or the premium tax or privilege fee imposed pursuant to
31 K.S.A. 40-252, and amendments thereto, or the privilege tax as measured
32 by net income of financial institutions imposed pursuant to chapter 79,
33 article 11 of the Kansas Statutes Annotated.

Amendment per Lt.Gov's
concern.

Banks and Insurance
Companies may again be
investors and receive tax
credits.

34 Sec. 2. (a) Any investor that makes a certified capital investment shall
35 earn a tax credit against state tax liability equal to 100% of the amount of
36 such investor's certified capital investment. The investor, or a person to
37 whom the credits were duly transferred, shall be entitled to claim not
38 more than 10% of the credit per taxable year for taxable years ~~com-~~
39 ~~mencing after taxable year 2001~~ **ending after June 30, 2003.** If the amount of
40 the tax credit allowed under subsection (a) exceeds the tax liability of the
41 taxpayer for any taxable year, such excess amount shall be refunded to the taxpayer.

42 (b) No certified capital investment in a **single CFC** by any one person shall
43 **be less than \$25,000 or more than \$2,000,000; nor shall any one person's combined**
investment for the purpose of earning tax credits exceed \$10,000,000. ✓

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1 (c) The total amount of tax credits which may be allowed shall not
2 exceed \$50,000,000. The total amount of tax credits which may be allowed
3 under this act shall not exceed \$5,000,000 per fiscal year.

4 Sec. 3. (a) The secretary may **authorize and subsequently** certify profit
5 or not-for-profit entities which ~~submit an application to be designated as a CFC~~
meet the requirements of this act. The secretary
6 shall compile a list of every **certified** CFC, including the address and telephone
7 number of the **certified** CFC's principal place of business. The secretary shall
8 publicize the list in order to inform Kansas companies of the availability
9 of potential investment capital.

10 (b) The secretary shall review the organizational documents for each
11 applicant for **certification authorization as a CFC** and the business history
12 of the applicant to determine:

13 (1) That at the time of application **for authorization as a CFC**, the applicant
14 owns cash, marketable securities and other liquid assets valued at no less than \$500,000; **or**
15 that prior to January 1, 2000, the applicant was designated as an inno-
16 vation and commercialization corporation or an affiliate ~~of an~~ innovation
17 and commercialization corporation created under the Kansas technology
18 enterprise corporation innovation and commercialization corporation
19 program;

20 (2) that the officers and the board of directors, general partners, trus-
21 tees, managing members or managers, as the case may be, are thoroughly
22 acquainted with the requirements of this act and acknowledge such by a
23 signed certification.

24 (c) To continue to be certified, the CFC must own and shall peri-
25 odically demonstrate to the secretary, as the secretary may require, that
26 the liquid asset base for the certified capital formation company is at least
27 \$500,000 at all times during the CFC's participation in the program au-
28 thorized by this act. ~~and that such moneys have been used for making~~
29 ~~qualified venture capital investments.~~

30 (d) With respect to any person who submits or has submitted an
31 application **for authorization as to become** a CFC, the commissioner shall investigate to de-
32 termine and report to the secretary whether any of the directors, trustees,
33 managers, officers, general partners, beneficial owners of 10% or more
34 of any class of equity securities or any promoters employed or otherwise

35 associated with that person at the time of such application:
36 (1) Has been affiliated with any company that has filed a registration
37 statement which is subject to a currently effective stop order entered
38 pursuant to any state law;
39 (2) has been convicted of any felony or misdemeanor in connection
40 with the purchase or sale of any security or any felony involving fraud or
41 deceit including, but not limited to, forgery, embezzlement of money
42 under false pretenses, larceny or conspiracy to defraud;
43 (3) is currently subject to any state administrative order or judgment

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1 entered by a state securities administrator or is subject to any state ad-
2 ministrative order or judgment in which fraud or deceit was found and
3 an order or judgment was entered;
4 (4) is currently subject to any state administrative order or judgment
5 which prohibits the use of any exemption from registration in connection
6 with the purchase or sale of securities;
7 (5) is subject to any order, judgment or decree of any court of com-
8 petent jurisdiction temporarily or preliminarily restraining or enjoining,
9 or is subject to any order, judgment or decree of any court of competent
10 jurisdiction permanently restraining or enjoining that person from engag-
11 ing in or continuing any conduct or practice in connection with the pur-
12 chase or sale of any security, rendering investment advice or involving the
13 making or any false filing with any state;
14 (6) has been convicted of or pleaded nolo contendere to any criminal
15 offense other than a misdemeanor involving motor vehicle violations.
16 (e) The secretary shall not **authorize certify** any CFC if the commissioner's
17 report includes any affirmative findings pursuant to subsection (d).
18 (f) The secretary shall review documentation regarding the qualifi-
19 cations of the persons who will actively manage the CFC and make a
20 determination as to whether such persons possessed sufficient knowledge
21 and professional experience in the areas of investment, venture capital,
22 business management and evaluation, portfolio management, and such
23 other area of expertise to the degree that a reasonable person would be
24 confident in such manager's ability to manage the CFC. No **certification authorization**
25 shall be issued when it is the opinion of the secretary that such persons
26 do not possess this requisite degree of knowledge and expertise.
27 (g) No investor shall individually, or collectively with or through one
28 or more affiliates, by means of ownership, agreement or otherwise, own,
29 control or possess the power or ability to cause or direct the making of
30 any qualified venture capital investments by a **certified** CFC.
31 (h) **Within a period of time established by the secretary, after receipt of**
application for authorization as a CFC, 75 days of application, the secretary
shall either issue the **authorization certification** and ~~notify the secretary~~
~~of the department of revenue of such certification~~ or shall ~~refuse the certification~~
deny authorization and communicate in detail to the applicant the grounds
for the ~~refusal denial~~, including any suggestions for the removal of those grounds.

36 Sec. 4. (a) A CFC shall have a period of 365 days from the date of
37 receiving certification from the secretary in which to procure the amount
38 of certified capital investment required by subsection (b). All certified
39 capital investments in the CFC shall be received within such 365-day
40 funding period, notwithstanding the provisions of subsection (c).
41 (b) Before closing its fund of certified capital investment, and pur-
42 suant to subsection (b) of section 3, and amendments thereto, a CFC
43 shall raise a minimum aggregate certified capital investment of no less

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1 than \$5,000,000. In the case of a CFC designated prior to January 1,
2 2000, as an innovation and commercialization corporation or an affiliate
3 of an innovation and commercialization corporation created under the
4 KTEC innovation and commercialization corporation program, such min-
5 imum certified capital investment shall be no less than \$1,000,000. Total
6 capital investment deemed certified for the purpose of earning tax credits
7 shall not exceed \$10,000,000 in a single CFC. No capital investments shall
8 be certified by the secretary until such time when the minimum cumu-
9 lative investments are met. Failure of a CFC to raise the minimum cu-
10 mulative investments may result in the revocation of the certification by
11 the secretary.

12 (c) Once fully capitalized pursuant to the provisions of subsection (b),
13 a CFC may make application to the secretary for authorization to seek
14 additional certified capital investment.

Sec. 4. (a) An authorized capital formation company having been authorized by the secretary pursuant to Section 3 shall have a period of not more than 365 days from the date of receiving authorization in which to procure certified capital investment.

(b) In order to receive certification by the secretary, an authorized capital formation company shall raise a minimum aggregate certified capital investment of no less than \$5,000,000. In the case of an authorized capital formation company formed by an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the KTEC innovation and commercialization corporation program, such minimum certified capital investment shall be no less than \$1,000,000.

(c) Total capital investment deemed certified for the purpose of earning tax credits shall not exceed \$10,000,000 in a single capital formation company. In the case of a capital formation company formed by an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the KTEC innovation and commercialization corporation program, such maximum certified capital investment shall not exceed \$1,500,000.

(d) If during the fund raising period, an authorized capital formation

company demonstrates to the secretary that the maximum cumulative certified capital investment has been met pursuant to this act, the secretary shall either designate the capital formation company as a certified capital formation company and notify the secretary or revenue of such certification; or shall deny the certification and notify the capital formation company of the basis for denial.

(e) All capital investment deemed certified for the purpose of earning tax credits must be certified by the investor to be new monies in that such monies were not being used for seed or venture capital prior to making the investment in a CFC. Any attempt to transfer funds from an existing venture capital fund to a CFC for the purposes of earning a tax credit shall constitute a violation of this act and may lead to decertification.

(f) No capital investments shall be certified by the secretary until such time when the minimum cumulative certified capital investments are met.

(g) Upon the end of the fund raising period as established by the secretary, capital formation companies that have reached the minimum cumulative certified capital investment requirement but have failed to reach the maximum cumulative certified capital investment requirements shall be certified by the secretary in rank order based on the amount of certified capital investment raised by the capital formation company and the amount of tax credits available for allocation upon the secretary's satisfaction that all such investment was made pursuant to this act.

(h) The secretary will notify the department of revenue upon certification of a capital formation company.

(i) Designation as an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the Kansas technology enterprise corporation shall not relieve such entity from compliance with any provisions of this act except where stated otherwise.

- 15 Sec. 5. (a) To continue to be certified, a CFC shall make qualified
16 venture capital investments according to the following schedule:
- 17 (1) Within three years after the date on which a CFC is certified as
18 a CFC at least 25% of its certified capital shall be, or have been, used for
19 making qualified venture capital investments;
- 20 (2) within four years after the date on which a CFC is certified as a
21 CFC at least 40% of its certified capital shall be, or have been, used for
22 making qualified venture capital investments;
- 23 (3) within five years after the date on which a CFC is certified as a
24 CFC at least 50% of its total certified capital shall be, or have been, used
25 for making qualified venture capital investments;
- 26 (4) within seven years after the date on which a CFC is certified as

27 a CFC at least 70% of its total certified capital shall be, or have been,
28 used for making qualified venture capital investments.

29 (5) a CFC shall not make an investment in an affiliate of the CFC or
30 an affiliate of an investor. For the purposes of this subsection, if a com-
31 pany is not an affiliate before a CFC initially invests in the company, it
32 shall not be deemed to be an affiliate if such CFC provides additional
33 qualified venture capital investment to such company subsequent to its
34 initial investment. No corporate officer, employee or shareholder, no lim-
35 ited or general partner or other person personally affiliated with any CFC
36 shall personally invest in any portfolio company regardless of whether the
37 portfolio company is affiliated with the CFC.

38 (6) a CFC, at least ~~15~~ 30 working days prior to making what it deter-
39 mines to be any initial qualified venture capital investment, shall first
40 certify to the secretary that the company in which it proposes to invest
41 meets the definition of a qualified Kansas business pursuant to section 1,
42 and amendments thereto. The CFC shall state the amount of capital it
43 intends to invest and identify the business in which it intends to make

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1 the investment. The CFC shall also provide to the secretary a written
2 explanation of the basis for its determination that the business meets the
3 definition of a qualified Kansas business, if the secretary determines that
4 the business does not meet the definition of a qualified Kansas business,
5 the secretary, within the ~~15~~ 30 working-day period prior to the making of
6 the proposed investment, shall notify the CFC of the determination and
7 provide the CFC an explanation thereof. If the secretary fails to notify
8 the CFC of the determination within the ~~15~~ 30 working-day period pre-
9 scribed herein, the business in which the CFC proposes to invest shall
10 be deemed to be a qualified Kansas business. If a CFC fails to notify the
11 secretary prior to making an initial investment in a business, the business
12 in which the CFC invested shall be deemed not to be a qualified Kansas
13 business even though the business, at the time of the investment, met
14 the requirements of section 1, and amendments thereto;

15 (7) all certified capital which is not then required to be invested in
16 qualified venture capital investments or which has been previously in-
17 vested in qualified venture capital investments and returned by the com-
18 pany, may be held or invested in such manner as the CFC, in its discre-
19 tion, deems appropriate. The proceeds of all certified capital which is
20 returned by to a CFC after it was originally invested in qualified venture
21 capital investments, may be invested in other qualified venture capital
22 investments and shall be credited toward any requirement in this act with
23 respect to placing certified capital in qualified venture capital
24 investments.

25 (b) A CFC may make qualified distributions at any time. In order to
26 lawfully make liquidating distributions, a CFC must have invested an
27 aggregate amount equal to 100% of its certified capital in qualified ven-
28 ture capital investments.

29 (c) Liquidating distributions in excess of the certified capital forma-

30 tion company's original certified capital and any additional capital contri-
31 butions to the certified capital formation company shall be subject to audit
32 by a certified public accounting firm acceptable to the secretary, at the
33 expense of the certified capital formation company.

34 (d) If at the time any liquidating distribution is made by a CFC, the
35 aggregate sum of all liquidating distributions of the CFC exceeds the
36 aggregate sum of the CFC's original certified capital and any subsequent
37 qualified venture capital contributions to the CFC, as determined by au-
38 dit, the CFC, prior to any additional distributions, shall pay to the state
39 treasurer's office ~~10%~~ 20% of the proportion of the distribution in excess of
40 such amount.

41 (e) Documents and other materials submitted by CFC's or by busi-
42 nesses for purposes of **authorization** or original certification or the continuance of certi-
43 fication as a CFC shall not be public records if it is determined by the

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1 secretary that disclosure of such information would compromise trade
2 secrets of qualified Kansas businesses unless otherwise specified in this
3 act.

4 (f) Each CFC shall report the following to the secretary:

5 (1) ~~As soon as practicable, but in any case no later than 15 days after~~
6 ~~the receipt of a certified capital investment, the name of each investor,~~
7 ~~the amount of each investor's certified capital investment and the date~~
8 ~~when the certified capital investment was received;~~

9 (2) within 90 days of the close of the CFC's fiscal year, annual audited
10 financial statements. The audit shall address the methods of operation
11 and conduct of business of the CFC to determine if the CFC is complying
12 with the statutes and program rules and that the funds received by the
13 CFC have been invested in accordance with the time limits provided by
14 this act.

15 (3) at the end of each quarter, that no more than 20% of the assets
16 of a CFC shall be invested in a single qualified Kansas business at any
17 one time unless the CFC can demonstrate that a greater percentage in a
18 single qualified Kansas business at any one time is the result of losses
19 suffered by the CFC in other qualified venture capital investments.

20 (g) Any material related to the sale of ownership in a CFC or soliciting
21 investment in a CFC shall include the following statement: "By ~~author-~~
22 ~~izing authorizing or certifying the formation~~ of a certified capital formation company, the State of
23 Kansas does not endorse the quality of management or the potential for
24 earnings of a particular company. The use of the word "certified" or "**authorized**" in an
25 offering does not constitute a recommendation or endorsement of an
26 investment by the Kansas Securities Commission or any other State
27 Official."

28 (h) The secretary may establish reasonable initial filing fees for ap-
29 plications for **authorization** and certification pursuant to this act and may also establish an
30 annual nonrefundable fee for CFC's seeking continued certification.

31 Sec. 6. (a) To ensure that no qualified venture capital investment or
32 investor's certified capital investment has been made in violation of this

33 act, the secretary shall conduct an annual review of each CFC to deter-
34 mine if the CFC is complying with the requirements of certification. The
35 costs of the annual review shall be paid by each CFC according to a
36 reasonable fee schedule adopted by the secretary.

37 (b) Any material violation of this act by a CFC shall be grounds for
38 decertification under this section. If the secretary determines that a CFC
39 is not in compliance with the requirements for continuing certification,
40 the secretary, by written notice, shall inform the officers of the CFC and
41 the board of directors, managers, trustees or general partners that they
42 shall be decertified within 120 days from the date of mailing of the notice,
43 unless they correct the deficiencies detailed in the notice and demon-

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1 strate to the secretary's satisfaction that the CFC is again in compliance
2 with the requirements for certification as determined by the secretary.

3 (c) At the end of the 120 day grace period, if the CFC is still not in
4 compliance, the secretary may send a notice of decertification to the CFC
5 and to the secretary of revenue including a list of the decertified ~~capital~~ capital
6 investments by investor and transferee.

7 (d) Decertification of a CFC prior to the CFC meeting all require-
8 ments of paragraphs (1) through (4) of subsection (a) of section 5, and
9 amendments thereto, shall cause the recapture of all tax credits previously
10 allowed to an investor or transferee and the forfeiture of all future tax
11 credits to otherwise be claimed by an investor or transferee with respect
12 to any certified capital investment in the decertified CFC.

13 (e) Decertification of a CFC after it has met all requirements of par-
14 agraphs (1) through (4) of subsection (a) of section 5, and amendments
15 thereto, shall cause the forfeiture of tax credits commencing with the
16 taxable year of the investor or transferee in which the decertification arose
17 and for all future taxable years with no recapture of tax credits allowed
18 to an investor or transferee with respect to the taxable years which ended
19 before the decertification occurred. Once a CFC has invested 100% of
20 its certified capital in qualified Kansas businesses, all future tax credits to
21 be claimed pursuant to this act by investors or transferees with respect
22 to such CFC shall not be subject to recapture.

23 Sec. 7. The secretary shall prepare and submit an annual report to
24 the governor and the legislature no later than October 1 of each year.
25 Such report shall be presented to the standing committee on commerce
26 in the senate, standing committee on economic development in the house
27 of representatives and the joint committee on economic development.
28 Such report shall include but not be limited to:

29 (a) The total dollar amount each CFC received from all investors
30 allowed tax credits and any other investors and the identity of all investors
31 allowed tax credits;

32 (b) the total amount invested by each CFC in qualified Kansas busi-
33 nesses, the identity and location of those businesses, the amount invested
34 in each qualified Kansas business and the total number of permanent full-
35 time jobs created or retained by each qualified Kansas business as a result

36 of the investment; and

37 (c) the cumulative amount of any liquidating disbursements received
38 by the state from the CFC's.

39 Sec. 8. The secretary may revoke the certification of a CFC if any
40 material representation to the secretary in connection with the application
41 process proves to have been falsely made or if the application materially
42 violates any requirement established by the secretary.

43 Sec. 9. (a) Any investor that is not subject to taxation under the pro-

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1 visions of the Kansas income tax act , privilege or premium tax that makes a
cer-
2 tified capital investment shall be deemed to acquire an interest in the
3 nature of a transferable tax credit limited to 100% of such investment.
4 The credit established pursuant to this act may be sold or transferred
5 subject to approval by the secretary. An investor as described in this sec-
6 tion shall not be allowed a refund for the interest herein created. Only
7 the full amount of the credit for any one investment may be transferred,
8 and the credit may be transferred only one time. Documentation of any
9 credit transfer shall be provided to the secretary. The secretary shall trans-
10 mit a copy of such documentation to the secretary of revenue.

11 (b) The secretary, after consulting with the secretary of revenue, shall
12 develop such rules and regulations as are necessary to facilitate the op-
13 eration of the transfer program consistent with the interest of the state
14 in tracking the transfer of ownership and the use of tax credits earned by
15 the transferee.

16 (c) Any such sale or transfer shall not affect the time schedule for
17 taking the tax credit, as provided in this act. Any tax credits recaptured
18 pursuant to section 6 shall be the liability of the taxpayer which actually
19 claimed the tax credit. In approving the sale or transfer of the tax credit
20 pursuant to this section, the secretary may require the transferor or the
21 transferee or both to execute guarantees or post bonds with respect to
22 any potential tax credit recapture.

23 (d) Any payment received for tax credits pursuant to this section is
24 taxable income of the transferor of the credit and the amount equal to
25 the difference the dollar value of the tax credit transferred minus the
26 sales price of the tax credit shall be taxable income of the transferee.

27 (e) The secretary shall make and promulgate rules and regulations
28 consistent with the provisions of this act as are necessary or useful to carry
29 out the provisions of this act.

30 (f) Every final order, decision, license or other official act of the sec-
31 retary pursuant to this act is subject to review in accordance with the act
32 for judicial review and civil enforcement of agency actions, K.S.A. 77-601
33 et seq. and amendments thereto.

34 (g) In view of the objectives of these requirements and the underlying
35 policies of the act, the act is not available with respect to any transaction
36 or series of transactions that, although in technical compliance with these
37 rules, is part of a plan or scheme to evade the requirements of this act or

Banks and Insurance Companies may be investors and receive tax

38 to distort the benefits entitled to be realized under the act. In such cases,
39 no investor in any CFC shall be entitled to the benefit of any tax credits
40 provided for hereunder.

41 (h) The offer or sale of a security by a CFC pursuant to this act shall
42 be subject to the registration requirements of K.S.A. 17-1254, 17-1255,
43 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto.

12

1 [Sec. 10. (a) For all taxable years commencing after December
2 31, 1999, there shall be allowed as a credit against the tax liability
3 of a taxpayer who operates a food locker plant imposed under the
4 Kansas income tax act, an amount equal to any expenses paid for
5 improvements in the facilities of such food locker plant. The credit
6 allowed by this section in any taxable year to the taxpayer shall not
7 exceed \$10,000. If the amount of such tax credit exceeds the tax-
8 payer's income tax liability for any such taxable year, such excess
9 amount may be carried over for deduction from the taxpayer's tax
10 liability in the next succeeding taxable year or years until the total
11 amount of the tax credit has been deducted from tax liability.

12 [(b) As used in this section "food locker plant" means a plant
13 which: (1) Is inspected by the Kansas department of agriculture as
14 provided under the Kansas meat and poultry inspection act; and

15 [(2) prepares meat, meat food products, poultry or poultry
16 products which have been inspected and passed and which are
17 being prepared and sold in normal retail quantities; or

18 [(3) prepares such meat, meat products, poultry or poultry
19 products for the owner of such food locker plant.]

20 Sec. 10. [11.] This act shall take effect and be in force from and after
21 its publication in the statute book.

Tax Credits

Percent of Credit (100%) - p4 ln 34-36
 What taxes - p4 ln 29-33
 Refundability - p4 ln 39-41
 Transferability - p11 ln 4-29
 \$50 million limit - p5 ln 1-2
 10% per year - p4 ln 36-41 and p5 ln 1-3
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Provisions against self-dealing

Affiliate defined - p1 ln 21-6
 Can't invest in affiliates - p7 ln 29; p4 ln 21-23
 No personal invest. in portfolio cos - p7 ln 34-37
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Who may invest

Investor defined - p2 ln 35
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 Accredited investor - p2 ln 35-39
 Certified investment (new monies Sec. 4 Par (e))
 Minimum & Maximum investment - p4 ln 42

Qualified Kansas Company

Defined - p3 ln 9
 Principal bus. office in KS - p3 ln 12-16
 50% of employees in Kansas - p3 ln 17-21
 Sectors eligible - p3 ln 25-28
 Sectors not eligible - p4 ln 5-23
 Services - p3 ln 29-34
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 Review by Secretary - p7 ln 38
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Qualified Fund Manager

Securities Comm. role - p5 ln 30-17
 Secretary of Commerce role - p6 ln 18-26

Certification Process

365 day fund raising period - p7 Sec. 4, Para (a)
 Minimum fund size - p7 Sec. 4, Para (b) & (f)
 Maximum fund size - p7 Sec. 4, Para (c)
 Achieving cert when max is reached - p7 Sec. 4, Para (d)
 Others not reaching max - Sec. 4, Para (g)
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Investment Schedule - p7, Sec. 5

Grounds for Decertification - p9 ln 37, p10 ln 39
 Decertification Process - p9 ln 37

Revocation of tax credits

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 after 70% - p10 ln 13-19
 vested at 100% - p10 ln 19-22

Distributions

Qualified Distributions - p8 ln 25-28
 Liquidating Distributions - p8 ln 25-33
 Only after 100% - p8 ln 25-28
 State's Share - p8 ln 34-40

Oversight

Annual Audit - p9 ln 9
 Annual Review by Secretary - p9 ln 31
 Annual Report to Gov. & Leg. - p10 ln 23

Misc.

\$500K required - p5 ln 13; ln 24-28
 Balance invested - p8 ln 15-19
 Filing Fees - p9 ln 28-30
 No more than 20% in one company - p9 ln 15-19
 ICC Compliance - Sec. 4, Para (i)
 Confidentiality - p8 ln 41
 State's disclaimer - p9 ln 20