

CHAPTER 134  
HOUSE BILL No. 2448

AN ACT concerning commerce; relating to the angel investor tax credit act; IMPACT act; amending K.S.A. 2004 Supp. 74-8131, 74-8132, 74-8133, 74-8134, 74-8135, 74-8136, 74-50,104, 74-50,105, 74-50,106 and 74-50,107 and repealing the existing sections.

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

Section 1. K.S.A. 2004 Supp. 74-8131 is hereby amended to read as follows: 74-8131. (a) The purpose of the Kansas angel investor tax credit act is to facilitate the availability of equity investment in businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas businesses, which are job and wealth creating enterprises, by granting tax credits against the Kansas income tax liability of investors investing in these businesses. The Kansas angel investor tax credit act shall be administered by the Kansas technology enterprise corporation (*KTEC*) with the primary goal of encouraging individuals to provide seed-capital financing for emerging, Kansas businesses engaged in the development, implementation and commercialization of innovative technologies, products and services.

(b) This act shall be known and may be cited as the Kansas angel investor tax credit act.

Sec. 2. K.S.A. 2004 Supp. 74-8132 is hereby amended to read as follows: 74-8132. As used in this act:

(a) “Angel investor” and “investor” mean an accredited individual investor of high net worth, as defined in 17 C.F.R. 230.501(a) as in effect on the effective date of this act, who seeks high returns through private investments in start-up companies and may seek active involvement in business, such as consulting and mentoring the entrepreneur. *For the purposes of this act, a person who serves as an executive, officer, employee, vendor or independent contractor of the business in which an otherwise qualified cash investment is made is not an angel investor and such person shall not qualify for the issuance of tax credits for such investment;*

(b) “cash investment” means money or money equivalent in consideration for qualified securities;

(c) “~~corporation~~ *KTEC*” means the Kansas technology enterprise corporation, a public instrumentality created pursuant to K.S.A. 74-8101, and amendments thereto;

(d) “Kansas business” means any business owned by an individual, any partnership, association or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that does business primarily in Kansas or does substantially all of such businesses’ production in Kansas;

(e) “qualified Kansas business” means the Kansas businesses that are approved and certified as qualified Kansas businesses as provided in K.S.A. 2004 Supp. 74-8134, and amendments thereto; *and*

(f) “qualified securities” means a cash investment through any one or more forms of financial assistance as provided in this subsection that have been approved in form and substance by ~~the Kansas technology enterprise corporation~~ *KTEC*. Such forms of financial assistance are: (1) Any form of equity, such as: (A) A general or limited, partnership interest; (B) common stock; (C) preferred stock, with or without voting rights, without regard to seniority position, and whether or not convertible into common stock; or (D) any form of subordinate or convertible debt, or both, with warrants or other means of equity conversion attached; or

(2) a debt instrument, such as a note or debenture that is secured or unsecured, subordinated to the general creditors of the debtor and requires no payments of principal, other than principal payments required to be made out of any future profits of the debtor, for at least a seven-year period after commencement of such debt instrument’s term; ~~and~~

~~(g) “secretary means the secretary of the department of commerce.~~

Sec. 3. K.S.A. 2004 Supp. 74-8133 is hereby amended to read as follows: 74-8133. (a) A credit against the tax imposed by article 32 of chapter 79 of the Kansas Statutes Annotated on the Kansas taxable income of an angel investor and against the tax imposed by K.S.A. 40-252, and amendments thereto, shall be allowed for a cash investment in the qualified securities of a qualified Kansas business. The credit shall be in a total amount equal to 50% of such investors’ cash investment in any

qualified Kansas business, subject to the limitations set forth in subsection (b). This tax credit may be used in its entirety in the taxable year in which the cash investment is made except that no tax credit shall be allowed in a year prior to January 1, 2005. If the amount by which that portion of the credit allowed by this section exceeds the investors' liability in any one taxable year, beginning in the year 2005, the remaining portion of the credit may be carried forward until the total amount of the credit is used. ~~If the investor is a corporation having an election in effect under subchapter S or limited liability corporation of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of corporations or the partners of a partnership in the same manner as shareholders or partners account for such shareholder's or partner's proportionate shares of the income or loss of these corporations or partnership.~~

(b) The secretary of revenue shall not allow tax credits that are attributable to an individual investor of more than \$50,000 of cash investments in the qualified securities of a single Kansas business or for cash investments in the qualified securities of more than five Kansas businesses each year. No tax credits authorized by this act shall be allowed for any cash investments in qualified securities for any year after the year 2016. The cumulative aggregate amount of the tax credits allowed by the secretary of revenue, pursuant to this act, shall not exceed \$20,000,000. The total amount of tax credits which may be allowed under this section shall not exceed \$2,000,000 per tax year. *The balance of unissued tax credits may be carried over for issuance in future years until 2016.*

(c) A cash investment in a qualified security shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the internal revenue code.

(d) No investor shall claim a credit under this section for cash investments in Kansas venture capital, inc. No Kansas venture capital company shall qualify for the tax credit for an investment in a fund created by articles 81, 82, 83 or 84 of chapter 74 of the Kansas Statutes Annotated.

(e) Any investor that is not subject to taxation under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated and that makes a cash investment in a qualified security of a qualified Kansas business shall be deemed to acquire an interest in the nature of a transferable credit limited to an amount equal to 50% of this cash investment. This interest may be transferred to an investor and be claimed by this investor as a credit against the investor's Kansas income tax liability beginning in the year provided in subsection (a). No person shall be entitled to a refund for the interest created under this section. Only the full credit for any one investment may be transferred and this interest may only be transferred one time. A credit acquired by transfer shall be subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer shall be provided by the investor in the manner required by the director of taxation.

(f) The reasonable costs of the administration of this act, the review of applications for certification as qualified Kansas businesses and the issuance of tax credits authorized by this act shall be reimbursed through fees paid by the qualified Kansas businesses and the investors or the transferees of investors, according to a reasonable fee schedule adopted by the corporation.

Sec. 4. K.S.A. 2004 Supp. 74-8134 is hereby amended to read as follows: 74-8134. (a) Before an angel investor may be entitled to receive tax credits, as authorized by this act, such investor must have made a cash investment in a qualified security of a qualified Kansas business. This business must have been approved by ~~the corporation~~ KTEC as a qualified Kansas business prior to the date on which the cash investment was made. To be designated as a qualified Kansas business, a business must make application to ~~the corporation~~ KTEC in accordance with the provisions of this section.

(b) Such application to ~~the corporation~~ KTEC shall be in form and substance as required by ~~the corporation~~ KTEC, but shall include at least the following:

- (1) The name of the business and certified copies of the organizational documents of the business;
- (2) a business plan, including a description of the business and the management, product, market and financial plan of business;

(3) a statement of the business innovative and proprietary technology, product or service;

(4) a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created;

(5) a description of the qualified securities to be issued, the consideration to be paid for the qualified securities, the amount of any tax credits requested and the earliest year in which the tax credits may be redeemed;

(6) a statement of the amount, timing and projected use of the proceeds to be raised from the proposed sale of qualified securities; and

(7) such other information as ~~the corporation~~ KTEC may request, such as the names, addresses and taxpayer identification numbers of all investors who may qualify for the tax credit. Such list of investors who may qualify for the tax credits shall be amended as new qualified securities are sold or as any information on the list shall change.

(c) No business shall be designated as a qualified Kansas business unless such business meets all of the following criteria:

(1) The business must not have had annual gross revenues of more than \$5,000,000 in the most recent tax year of the business;

(2) the business must have been in operation for less than five years;

(3) *the business must not have ownership interests including, but not limited to, common or preferred shares of stock that can be traded by the public via a stock exchange, electronic exchange, bulletin board or other public market place on or before the date that a qualifying investment is made;*

(4) the business must not be engaged primarily in any one or more of the following enterprises: (A) Any service provider set forth in K.S.A. 17-2707, and amendments thereto; (B) the business of banking, savings and loan or lending institutions, credit or finance, or financial brokerage or investments; (C) the provision of professional services, such as legal, accounting or engineering services; (D) governmental, charitable, religious or trade organizations; (E) the ownership, development, brokerage, sales or leasing of real estate; (F) insurance; (G) construction or construction management or contracting; (H) business consulting or brokerage; (I) any business engaged primarily as a passive business, having irregular or noncontinuous operations, or deriving substantially all of the income of the business from passive investments that generate interest, dividends, royalties, or capital gains, or any business arrangements the effect of which is to immunize an investor from risk of loss; (J) any Kansas certified capital formation company; and (K) any activity that is in violation of the law; and

~~(4)~~ (5) the business must satisfy all other requirements of this act.

(d) Notwithstanding the requirements of subsection (c), a business may be considered as a qualified Kansas business under the provisions of this act if such business falls within a standard industrial classification code.

(e) The portions of documents and other materials submitted to ~~the corporation~~ KTEC that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the president of ~~the corporation~~ KTEC. For the purposes of this act, such portions of documents and other materials means any customer lists, any formula, compound, production data or compilation of information certain individuals within a commercial concern using such portions of documents and other material means to fabricate, produce or compound an article of trade, or, any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service.

(f) A qualified Kansas business shall have the burden of proof to demonstrate to ~~the corporation~~ KTEC the qualifications of the business under this section and shall have the obligation to notify ~~the corporation~~ KTEC in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit for cash investment in a qualified security.

Sec. 5. K.S.A. 2004 Supp. 74-8135 is hereby amended to read as follows: 74-8135. The designation of a business as a qualified Kansas business shall be made by ~~the corporation~~ KTEC, *and such designation must be renewed annually.* A business shall be so designated if ~~the corporation~~ KTEC determines, based upon the application submitted by the business and any additional investigation the staff of ~~the corporation~~ KTEC shall make, that the following criteria have been or shall be satisfied:

- (1) The business has a reasonable chance of success;
- (2) the ability of investors in the business to receive tax credits for cash investments in qualified securities of the business is necessary, because funding otherwise available for the business is not available on commercially reasonable terms;
- (3) the business has the reasonable potential to create measurable employment within the state;
- (4) the business has an innovative and proprietary technology, product and service;
- (5) the existing owners of the business and other founders have made or are committed to make a substantial financial and time commitment to the business;
- (6) the securities to be issued and purchased are qualified securities; and
- (7) binding commitments have been made by the business to ~~the corporation~~ KTEC for adequate reporting of financial data, including a requirement for an annual report, or, if required by the board of directors of ~~the corporation~~ KTEC, an annual audit of the financial and operational records of the business, the right of access to the financial records of the business and the right of ~~the corporation~~ KTEC to record and publish normal and customary data and information related to the issuance of tax credits that are not otherwise determined to be trade or business secrets.

Sec. 6. K.S.A. 2004 Supp. 74-8136 is hereby amended to read as follows: 74-8136. (a) *Tax credits for qualified Kansas businesses are a limited resource of the state for which KTEC is designated as the administrator. The purpose of such tax credits is to facilitate the availability of equity investment in businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas businesses which are job and wealth creating enterprises. To achieve this purpose and to optimize the use of the limited resources of the state, KTEC is authorized to issue tax credits to qualified investors in qualified Kansas businesses. Such tax credits shall be awarded to those qualified Kansas businesses which, as determined by KTEC, are most likely to provide the greatest economic benefit to the state. KTEC may issue whole or partial tax credits based on an assessment of the qualified businesses. KTEC may consider numerous factors in such assessment, including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model and the quality and reasonableness of financial projections for the business.*

(b) Each qualified Kansas business for which tax credits have been issued pursuant to this act shall report to ~~the corporation~~ KTEC on an annual basis, the following: (1) The name, address and taxpayer identification number of each angel investor who has made cash investment in the qualified securities of a qualified Kansas business and has received tax credits for this investment during the preceding year and all other preceding years; (2) the amounts of these cash investments by each angel investor and a description of the qualified securities issued in consideration of such cash investments; (3) the name, address and taxpayer identification number of each investor to which tax credits issued pursuant to this act have been transferred by the original angel investor; and (4) any additional information as ~~the corporation~~ KTEC may require pursuant to this act.

~~(b)~~(c) ~~The corporation~~ KTEC shall transmit annually to the governor, the secretary of commerce, the standing committee on commerce of the senate, the standing committee on economic development of the house of representatives, the joint committee on economic development, and Kansas, Inc. a report, based upon information received from each qualified Kansas business for which tax credits have been issued during the preceding year, describing the following: (1) The manner in which the purpose, as described in this act, has been carried out; (2) the total cash investments made for the purchase of qualified securities of qualified Kansas businesses during the preceding year and cumulatively since the inception of this act; (3) an estimate of jobs created and jobs preserved by cash investments made in qualified securities of qualified Kansas businesses; and (4) an estimate of the multiplier effect on the Kansas economy of the cash investments made pursuant to this act.

~~(c)~~(d) The secretary of commerce shall provide the information spec-

ified in subsection ~~(b)~~ (c) to the department of revenue on an annual basis. The secretary of *commerce* shall conduct an annual review of the activities undertaken pursuant to this act to ensure that tax credits issued pursuant to this act are issued in compliance with the provisions of this act or rules and regulations promulgated by the department of *commerce* or ~~the corporation KTEC~~ with respect to this act. The reasonable costs of the annual review shall be paid by ~~the corporation KTEC~~ according to a reasonable fee schedule adopted by the secretary of *commerce*.

~~(d)~~ (e) Any violation of the reporting requirements set forth in this section shall be grounds for undesignation of a qualified Kansas business under this section.

~~(e)~~ (f) If the secretary of *commerce* determines that a business is not in substantial compliance with the requirements of this act to maintain its designation, the secretary, by written notice, shall inform the officers of the qualified Kansas business and the business that such business will lose designation as a qualified Kansas business in 120 days from the date of mailing of the notice unless such business corrects the deficiencies and is once again in compliance with the requirements for designation.

~~(f)~~ (g) At the end of the 120-day period, if the qualified Kansas business is still not in substantial compliance, the secretary of *commerce* shall send a notice of loss of designation to the business, ~~the corporation KTEC~~, the secretary of the department of revenue and to all known investors in the business. Loss of designation of a qualified Kansas business shall preclude the issuance of any additional tax credits with respect to this business and ~~the corporation KTEC~~ shall not approve the application of such business as a qualified Kansas business. Upon loss of the designation as a qualified Kansas business or if a business loses its designation as a qualified Kansas business under this act by moving its operations outside Kansas within 10 years after receiving financial assistance under this act, such business shall repay such financial assistance to ~~the corporation KTEC~~, in an amount determined by ~~the corporation KTEC~~. Each qualified Kansas business that loses such designation shall enter into a repayment agreement with ~~the corporation KTEC~~ specifying the terms of such repayment obligation.

~~(g)~~ (h) Angel investors in a qualified Kansas business shall be entitled to keep all of the tax credits claimed under this act.

~~(h)~~ (i) The department of *commerce* and ~~the corporation KTEC~~ may prepare and adopt procedures concerning the performance of the duties placed upon each respective entity by this act.

Sec. 7. K.S.A. 2004 Supp. 74-50,104 is hereby amended to read as follows: 74-50,104. (a) The secretary shall administer the provisions of this act and the IMPACT program established thereunder. The secretary shall encourage Kansas basic enterprises with similar training needs to cooperate in establishing SKILL projects. The secretary shall coordinate the SKILL program with other job training programs administered by the department of commerce. The secretary shall provide opportunities for coordination and cooperation of SKILL projects with other job training activities in Kansas. Subject to the limitation in K.S.A. 74-50,103, the secretary shall be authorized to make direct investments in educational and related workforce development institutions, for the purpose of promoting improvements in workforce development, human capital, training expertise ~~and~~, infrastructure ~~and~~ job retention.

(b) The secretary shall adopt rules and regulations as follows: (1) Prescribing review standards and priorities for approval of proposed agreements under this act, including appropriate incentives for cooperation among projects, in order to maximize the number of new jobs created *or retained* with respect to individual Kansas basic enterprises, which will remain in Kansas, and (2) prescribing limits on program costs and on project and program size in relation to the number of new jobs created ~~or the wages of new jobs created~~ *and wages of new or retained jobs*. No agreement shall be approved which provides for program costs of a project under the agreement of more than ~~90%~~ 95% of the amount equal to the estimated rate of withholding tax applied to the estimated amount of gross wages of all the new *or retained* jobs under the project over a ten-year period.

(c) Notice of the approval of a project or program *and an annual report of the number of jobs created or retained* under the IMPACT act shall be provided to the chairpersons of the senate committee on commerce and the committee on economic development of the house of

representatives.

(d) The secretary may adopt such other rules and regulations as may be required for the implementation and administration of this act.

Sec. 8. K.S.A. 2004 Supp. 74-50,105 is hereby amended to read as follows: 74-50,105. (a) Subject to the approval of the secretary of commerce, an educational institution may enter into an agreement to establish a project and provide program services to an employer. As soon as possible after initial contact between an educational institution and an employer regarding the possibility of entering into an agreement, the educational institution shall inform the secretary of commerce about the potential project. *The secretary is also authorized to enter directly into agreements with employers for benefits under this act.* If an agreement is entered into, the *secretary, the educational institution and or the employer* shall notify the secretary of revenue within 15 calendar days.

(b) Among other provisions, an agreement shall include:

(1) Provisions regarding payment of program costs, including deferred costs, which may be paid from one or a combination of the following sources:

(A) The IMPACT program services fund;

(B) tuition, student fees, or special charges fixed by the educational institution to defray program costs in whole or in part; and

(C) grants or donations available from federal agencies or other public or private sources;

(2) a provision requiring each Kansas basic enterprise under the agreement to submit information to the secretary of commerce regarding the numbers of new *or retained* jobs and the wages and withholding taxes paid therefor;

(3) a provision which fixes any tuition and fee payments which shall be paid for program costs; and

(4) a provision which fixes an amount that shall be paid by an employer if an agreement is terminated or any provision of the agreement is breached by the employer prior to satisfaction of all of the employer's obligations under the agreement and which prescribes that any such payment shall be deposited in the state treasury to the credit of the IMPACT program services fund.

(c) Any payment required to be made by an employer shall be a lien upon the employer's business property until paid and has equal precedence with ordinary taxes and shall not be divested by a judicial sale. Property subject to the lien may be sold for sums due and delinquent at a tax sale, with the same forfeitures, penalties and consequences as for the nonpayment of ordinary taxes. The purchasers at tax sale obtain the property subject to the remaining payments.

(d) The payment of program costs incurred under any agreement shall not be deferred for a period longer than 10 years from the date of the commencement of the project.

Sec. 9. K.S.A. 2004 Supp. 74-50,106 is hereby amended to read as follows: 74-50,106. (a) The secretary of commerce shall review applications for proposed agreements submitted by employers in accordance with the standards and guidelines prescribed by this act and by rules and regulations adopted under K.S.A. 74-50,104, and amendments thereto. Each application for approval of a proposed agreement shall be accompanied by information about the number and wages of the new or retained jobs created by the employer, documentation of existing training activities of the employer and such other information as may be required by the secretary of commerce.

(b) The secretary of commerce may pool the funding requirements of projects which are the subject of proposed agreements to determine the funding requirements of the ~~SKILL~~ IMPACT projects under consideration to facilitate the issuance of bonds by the Kansas development finance authority.

(c) The secretary of commerce is hereby authorized to expend funds raised pursuant to this act on major project investments. The secretary shall adopt guidelines consistent with this act concerning firm eligibility for major project investments and shall otherwise administer the major project investment portion of the IMPACT act.

(d) In order for an employer to be eligible for a major project investment, the employer must:

(1) Annually make an investment in training and education of the employer's employees that exceeds 2% of the employer's total annual

payroll costs; or

(2) agree that a portion of any funds available under the agreement be spent directly on employee education and training.

(e) An employer not creating new jobs shall ~~not~~ be eligible for ~~participation in an~~ to participate in the IMPACT program ~~unless if~~ the employer meets the following criteria: (1) Maintains a minimum of 250 retained jobs *if located in a metropolitan statistical area or a minimum of 100 retained jobs if located in a nonmetropolitan statistical area*; and (2) makes a capital investment of at least \$50,000,000, and (3) the secretary of commerce finds that the program or project will be a major factor in the Kansas basic enterprise remaining in Kansas.

~~(f) Prior to obtaining financing from the Kansas development finance authority for any project, group of projects or major project investment for one or more employers, the secretary of commerce shall present each such project to the governor's council on work force training and investment for review and approval. No agreement shall be approved by the secretary of commerce unless each project under the agreement has been reviewed and finally approved by the governor's council on work force training and investment.~~

Sec. 10. K.S.A. 2004 Supp. 74-50,107 is hereby amended to read as follows: 74-50,107. (a) The secretary shall determine and from time to time shall redetermine the rate at which moneys shall be credited to the IMPACT program repayment fund in order to satisfy all bond repayment obligations which have been incurred to finance program costs for IMPACT programs (which shall be referred to as the debt service rate) and the rate at which moneys shall be credited to the IMPACT program services fund in order to finance program costs that are not financed by bonds (which shall be referred to as the direct funding rate). The total of the debt service rate and the direct funding rate shall be the combined rate. Each rate so determined shall be certified to the secretary of revenue. The combined rate determined under this subsection shall not exceed 1.5%. ~~On and after July 1, 2005, the combined rate determined under this subsection shall not exceed 2%.~~

(b) Upon receipt of the rates determined and certified under subsection (a), the secretary of revenue shall apply daily the combined rate to that portion of the moneys withheld from the wages of individuals and collected under the Kansas withholding and declaration of estimated tax act K.S.A. 79-3294 *et seq.*, and amendments thereto. The amount so determined shall be credited as follows: (1) The portion attributable to the debt service rate shall be credited to the IMPACT program repayment fund, and (2) the remaining portion shall be credited to the IMPACT program services fund.

~~The aggregate of all amounts credited to the IMPACT program repayment fund under this section during any fiscal year to pay bond repayment obligations on bonds to finance major project investments shall not exceed 20% of the amount which results when the rate of 1.5% is applied to all moneys withheld from the wages of individuals and received under the Kansas withholding and declaration of estimated tax act.~~

On and after July 1, ~~2005~~ 2006, the aggregate of all amounts credited to the IMPACT program repayment fund under this section during any fiscal year to pay bond repayment obligations on bonds to finance major project investments shall not exceed 20% of the amount which results when the rate of 2% is applied to all money withheld from the wages of individuals and received under the Kansas withholding and declaration of estimated tax act.

Sec. 11. K.S.A. 2004 Supp. 74-8131, 74-8132, 74-8133, 74-8134, 74-8135, 74-8136, 74-50,104, 74-50,105, 74-50,106 and 74-50,107 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 13, 2005.

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