

HOUSE BILL No. 2689

By Committee on Commerce, Labor and Economic Development

2-13

1 AN ACT concerning economic development; relating to angel investor tax
2 credits; qualified securities; credit limitations and amounts; investor
3 requirements; amending K.S.A. 74-8132 and 74-8133 and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 74-8132 is hereby amended to read as follows: 74-
8 8132. As used in this act:

9 (a) "Angel investor" and "investor" mean an accredited investor who
10 is a natural person or an owner of a permitted entity investor, who is of
11 high net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the
12 effective date of this act, and who seeks high returns through private
13 investments in start-up companies and may seek active involvement in
14 business, such as consulting and mentoring the entrepreneur. For the
15 purposes of this act, a person who serves as an executive, officer,
16 employee, vendor or independent contractor of the business in which an
17 otherwise qualified cash investment is made is not an "angel investor" and
18 such person shall not qualify for the issuance of tax credits for such
19 investment;

20 (b) "bioscience business" means ~~what is reflected~~ a business engaged
21 in "bioscience" as defined in K.S.A. 74-99b83, and amendments thereto;

22 (c) "cash investment" means money or money equivalent in
23 consideration for qualified securities;

24 (d) "department" means the department of commerce;

25 (e) "Kansas business" means any business owned by an individual,
26 any partnership, association or corporation domiciled in Kansas, or any
27 corporation, even if a wholly owned subsidiary of a foreign corporation,
28 that does business primarily in Kansas or does substantially all of such
29 businesses' production in Kansas;

30 (f) "owner" means any natural person who is, directly or indirectly, a
31 partner, stockholder or member in a permitted entity investor;

32 (g) "permitted entity investor" means: (A) Any general partnership,
33 limited partnership, corporation that has in effect a valid election to be
34 taxed as an S corporation under the United States internal revenue code, or
35 a limited liability company that has elected to be taxed as a partnership
36 under the United States internal revenue code; and (B) that was established

1 and is operated for the sole purpose of making investments in other
2 entities;

3 (h) "qualified Kansas business" means the Kansas businesses that are
4 approved and certified as qualified Kansas businesses as provided in
5 K.S.A. 74-8134, and amendments thereto;

6 (i) "qualified securities" means a cash investment through any ~~one or~~
7 ~~more forms~~ *form or combination of forms of* financial assistance as
8 provided in this subsection that have been approved in form and substance
9 by the secretary. Such forms of financial assistance are: (1) Any form of
10 equity, such as: (A) A general or limited; partnership interest; (B) common
11 stock; *or* (C) preferred stock, ~~with or~~ without *regard to* voting rights,
12 ~~without regard to~~ *or* seniority position, and whether or not convertible into
13 common stock; ~~or~~ (D) ~~any form of subordinate or convertible debt, or~~
14 ~~both, with warrants or other means of equity conversion attached; or~~

15 (2) ~~a any debt instrument, such as a note or debenture that is secured~~
16 ~~or unsecured, subordinated~~ *subordinate* to the general creditors of the
17 *qualified Kansas business* debtor ~~and that requires no payments of~~
18 ~~principal, other than principal payments required to be made out of any~~
19 ~~future profits of payment from the qualified Kansas business debtor, for at~~
20 ~~least a seven-year period after commencement of such debt instrument's~~
21 ~~term and that shall convert to some form of equity prior to the qualified~~
22 *Kansas business debtor raising its next series of funding; and*

23 (j) "secretary" means the secretary of commerce.

24 Sec. 2. K.S.A. 74-8133 is hereby amended to read as follows: 74-
25 8133. (a) A credit against the tax imposed by article 32 of chapter 79 of the
26 Kansas Statutes Annotated, and amendments thereto, on the Kansas
27 taxable income of an angel investor and against the tax imposed by K.S.A.
28 40-252, and amendments thereto, shall be allowed for a cash investment in
29 the qualified securities of a qualified Kansas business. The credit shall be
30 in a total amount ~~equal~~ *of up to* 50% of such investors' cash investment in
31 any qualified Kansas business, subject to the limitations set forth in
32 subsection (b). This tax credit may be used in its entirety in the taxable
33 year in which the cash investment is made except that no tax credit shall
34 be allowed in a year prior to January 1, 2005. If the amount by which that
35 portion of the credit allowed by this section exceeds the investors' liability
36 in any one taxable year, beginning in the year 2005, the remaining portion
37 of the credit may be carried forward until the total amount of the credit is
38 used. If the investor is a permitted entity investor, the credit provided by
39 this section shall be claimed by the owners of the permitted entity investor
40 in proportion to their ownership share of the permitted entity investor.

41 (b) The secretary of revenue shall not allow tax credits of more than
42 ~~\$50,000~~ *\$100,000* for a single Kansas business or a total of ~~\$250,000~~
43 *\$350,000* in tax credits for a single year per investor who is a natural

1 person or owner of a permitted entity investor. No tax credits authorized
2 by this act shall be allowed for any cash investments in qualified securities
3 for any year after the year ~~2021~~ 2026. The total amount of tax credits
4 ~~which that~~ may be allowed under this section shall not exceed:

- 5 (1) \$4,000,000 during the tax year 2007 ~~and~~;
- 6 (2) \$6,000,000 for tax ~~year~~ years 2008 ~~and each tax year thereafter,~~
7 ~~except that~~ through 2010 and 2012 through 2021;
- 8 (3) for tax year 2011, the total amount of tax credits ~~which that~~ may
9 be allowed under this section shall not exceed \$5,000,000;
- 10 (4) \$6,500,000 for tax year 2022;
- 11 (5) \$7,000,000 for tax year 2023;
- 12 (6) \$7,500,000 for tax year 2024; and
- 13 (7) \$8,000,000 for tax year 2025. The balance of unissued tax credits

14 may be carried over for issuance in future years until ~~2021~~ 2026.

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

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

24 (e) Any investor ~~who has not owed any Kansas income tax under the~~
25 ~~provisions of article 32, chapter 79 of the Kansas Statutes Annotated, and~~
26 ~~amendments thereto, for the immediate past three taxable years without a~~
27 ~~current tax liability~~, who does not reasonably believe that it will owe any
28 such tax for the current taxable year and who makes a cash investment in a
29 qualified security of a qualified Kansas business shall be deemed to
30 acquire an interest in the nature of a transferable credit limited to an
31 amount ~~equal~~ up to 50% of this cash investment. This interest may be
32 transferred to any natural person of net worth, as defined in 17 C.F.R. §
33 230.501(a), as in effect on the effective date of this act, whether or not
34 such person is then an investor and be claimed by the transferee as a credit
35 against the transferee's Kansas income tax liability beginning in the year
36 provided in subsection (a). No person shall be entitled to a refund for the
37 interest created under this section. Only the full credit for any one
38 investment may be transferred and this interest may only be transferred
39 one time. A credit acquired by transfer shall be subject to the limitations
40 prescribed in this section. Documentation of any credit acquired by
41 transfer shall be provided by the investor in the manner required by the
42 director of taxation.

43 (f)(e) The reasonable costs of the administration of this act, the

1 review of applications for certification as qualified Kansas businesses and
2 the issuance of tax credits authorized by this act shall be reimbursed
3 through fees paid by the qualified Kansas businesses and the investors or
4 the transferees of investors, according to a reasonable fee schedule adopted
5 by the secretary by rules and regulations in accordance with the rules and
6 regulations filing act.

7 Sec. 3. K.S.A. 74-8132 and 74-8133 are hereby repealed.

8 Sec. 4. This act shall take effect and be in force from and after its
9 publication in the statute book.