HOUSE BILL No. 2689

By Committee on Commerce, Labor and Economic Development

2-13

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

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

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

(a) "Angel investor" and "investor" mean an accredited investor who is a natural person or an owner of a permitted entity investor, who is of high net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the effective date of this act, and 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) "bioscience business" means a business engaged in "bioscience" as defined in K.S.A. 74-99b83, and amendments thereto;

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

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

(e) "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;

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

(g) "permitted entity investor" means: (A) Any general partnership, limited partnership, corporation that has in effect a valid election to be taxed as an S corporation under the United States internal revenue code, or a limited liability company that has elected to be taxed as a partnership under the United States internal revenue code; and (B) that was established
and is operated for the sole purpose of making investments in other entities;

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

(i) "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 secretary. Such forms of financial assistance are: (1) Any form of equity, such as: (A) a general or limited partnership interest; (B) common stock; or (C) preferred stock, with or without regard to voting rights, without regard to or 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) any debt instrument, such as a note or debenture that is secured or unsecured, subordinate to the general creditors of the qualified Kansas business debtor and that requires no payments of principal, other than principal payments required to be made out of any future profits of payment from the qualified Kansas business debtor, for at least a seven-year period after commencement of such debt instrument's term and that shall convert to some form of equity prior to the qualified Kansas business debtor raising its next series of funding; and

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

Sec. 2. K.S.A. 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, and amendments thereto, 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 of up 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 permitted entity investor, the credit provided by this section shall be claimed by the owners of the permitted entity investor in proportion to their ownership share of the permitted entity investor.

(b) The secretary of revenue shall not allow tax credits of more than $50,000 for a single Kansas business or a total of $250,000 in tax credits for a single year per investor who is a natural
person or owner of a permitted entity investor. No tax credits authorized by this act shall be allowed for any cash investments in qualified securities for any year after the year 2021. The total amount of tax credits which that may be allowed under this section shall not exceed:

1. $4,000,000 during the tax year 2007 and;
2. $6,000,000 for tax years 2008 and each tax year thereafter, except that through 2010 and 2012 through 2021;
3. for tax year 2011, the total amount of tax credits which that may be allowed under this section shall not exceed $5,000,000;
4. $6,500,000 for tax year 2022;
5. $7,000,000 for tax year 2023;
6. $7,500,000 for tax year 2024; and
7. $8,000,000 for tax year 2025. The balance of unissued tax credits may be carried over for issuance in future years until 2026.

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, and amendments thereto.

e) Any investor who has not owed any Kansas income tax under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for the immediate past three taxable years without a current tax liability, who does not reasonably believe that it will owe any such tax for the current taxable year and who 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 up to 50% of this cash investment. This interest may be transferred to any natural person of net worth, as defined in 17 C.F.R. § 230.501(a), as in effect on the effective date of this act, whether or not such person is then an investor and be claimed by the transferee as a credit against the transferee'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)(e) 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 secretary by rules and regulations in accordance with the rules and
regulations filing act.

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

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