

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 2290

(SENATE AUTHORS: LILLIE, Michel, Dziedzic and Metzen)

DATE	D-PG	OFFICIAL STATUS
03/08/2012	4236	Introduction and first reading Referred to Jobs and Economic Growth
03/19/2012	4513	Comm report: To pass and re-referred to Taxes
03/20/2012	4654	Authors added Dziedzic; Metzen See HF2337, Art. 2, Sec. 5 (vetoed) See HF247, Art. 8, Sec. 2, 5 (vetoed)

A bill for an act
relating to economic development; making changes to the angel investment tax
credit; adding a data practices exemption; amending Minnesota Statutes 2010,
section 116J.8737, subdivision 8; Minnesota Statutes 2011 Supplement, section
116J.8737, subdivisions 1, 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2011 Supplement, section 116J.8737, subdivision 1,
is amended to read:

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms
have the meanings given.

(b) "Qualified small business" means a business that has been certified by the
commissioner under subdivision 2.

(c) "Qualified investor" means an investor who has been certified by the
commissioner under subdivision 3.

(d) "Qualified fund" means a pooled angel investment network fund that has been
certified by the commissioner under subdivision 4.

(e) "Qualified investment" means a cash investment in a qualified small business
of a minimum of:

- (1) \$10,000 in a calendar year by a qualified investor; or
- (2) \$30,000 in a calendar year by a qualified fund.

A qualified investment must be made in exchange for common stock, a partnership
or membership interest, preferred stock, debt with mandatory conversion to equity, or an
equivalent ownership interest as determined by the commissioner.

(f) "Family" means a family member within the meaning of the Internal Revenue
Code, section 267(c)(4).

(g) "Pass-through entity" means a corporation that for the applicable taxable year is treated as an S corporation or a general partnership, limited partnership, limited liability partnership, trust, or limited liability company and which for the applicable taxable year is not taxed as a corporation under chapter 290.

(h) "Intern" means a student of an accredited institution of higher education, or a former student who has graduated in the past six months from an accredited institution of higher education, who is employed by a qualified small business in a nonpermanent position for a duration of nine months or less that provides training and experience in the primary business activity of the business.

(i) "Liquidation event" means a conversion of qualified investment for cash, cash and other consideration, or any other form of equity or debt interest.

Sec. 2. Minnesota Statutes 2011 Supplement, section 116J.8737, subdivision 2, is amended to read:

Subd. 2. **Certification of qualified small businesses.** (a) Businesses may apply to the commissioner for certification as a qualified small business for a calendar year. The application must be in the form and be made under the procedures specified by the commissioner, accompanied by an application fee of \$150. Application fees are deposited in the small business investment tax credit administration account in the special revenue fund. The application for certification for 2010 must be made available on the department's Web site by August 1, 2010. Applications for subsequent years' certification must be made available on the department's Web site by November 1 of the preceding year.

(b) Within 30 days of receiving an application for certification under this subdivision, the commissioner must either certify the business as satisfying the conditions required of a qualified small business, request additional information from the business, or reject the application for certification. If the commissioner requests additional information from the business, the commissioner must either certify the business or reject the application within 30 days of receiving the additional information. If the commissioner neither certifies the business nor rejects the application within 30 days of receiving the original application or within 30 days of receiving the additional information requested, whichever is later, then the application is deemed rejected, and the commissioner must refund the \$150 application fee. A business that applies for certification and is rejected may reapply.

(c) To receive certification, a business must satisfy all of the following conditions:

- (1) the business has its headquarters in Minnesota;
- (2) at least 51 percent of the business's employees are employed in Minnesota, and 51 percent of the business's total payroll is paid or incurred in the state;

(3) the business is engaged in, or is committed to engage in, innovation in Minnesota in one of the following as its primary business activity:

(i) using proprietary technology to add value to a product, process, or service in a qualified high-technology field;

(ii) researching or developing a proprietary product, process, or service in a qualified high-technology field; or

(iii) researching, developing, or producing a new proprietary technology for use in the fields of agriculture, tourism, forestry, mining, manufacturing, or transportation;

(4) other than the activities specifically listed in clause (3), the business is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, information technology consulting, wholesale or retail trade, leisure, hospitality, transportation, construction, ethanol production from corn, or professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants;

(5) the business has fewer than 25 employees;

(6) the business must pay its employees annual wages of at least 175 percent of the federal poverty guideline for the year for a family of four and must pay its interns annual wages of at least 175 percent of the federal minimum wage used for federally covered employers, except that this requirement must be reduced proportionately for employees and interns who work less than full-time, and does not apply to an executive, officer, or member of the board of the business, or to any employee who owns, controls, or holds power to vote more than 20 percent of the outstanding securities of the business;

(7) the business has not been in operation for more than ten years, except as provided in clause (8);

(8) the business has not been in operation for more than 20 years if the business is engaged in the research, development, or production of medical devices or pharmaceuticals for which U.S. Food and Drug Administration approval is required for use in the treatment or diagnosis of a disease or condition;

~~(8)~~ (9) the business has not previously received private equity investments of more than \$4,000,000; ~~and~~

~~(9)~~ (10) the business is not an entity disqualified under section 80A.50, paragraph (b), clause (3); and

(11) the business has not issued securities that are traded on a public exchange.

(d) In applying the limit under paragraph (c), clause (5), the employees in all members of the unitary business, as defined in section 290.17, subdivision 4, must be included.

(e) In order for a qualified investment in a business to be eligible for tax credits;
(1) the business must have applied for and received certification for the calendar year in which the investment was made prior to the date on which the qualified investment was made;

(2) the business must not have issued securities that are traded on a public exchange;
(3) the business must not issue securities that are traded on a public exchange within 180 days subsequent to the date on which the qualified investment was made; and
(4) the business must not have a liquidation event within 180 days subsequent to the date on which the qualified investment was made.

(f) The commissioner must maintain a list of businesses certified under this subdivision for the calendar year and make the list accessible to the public on the department's Web site.

(g) For purposes of this subdivision, the following terms have the meanings given:

(1) "qualified high-technology field" includes aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biotechnology, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields; and

(2) "proprietary technology" means the technical innovations that are unique and legally owned or licensed by a business and includes, without limitation, those innovations that are patented, patent pending, a subject of trade secrets, or copyrighted.

Sec. 3. Minnesota Statutes 2010, section 116J.8737, subdivision 8, is amended to read:

Subd. 8. **Data privacy.** (a) Data contained in an application submitted to the commissioner under subdivision 2, 3, or 4 are nonpublic data, or private data on individuals, as defined in section 13.02, subdivision 9 or 12, except that the following data items are public:

(1) the name, mailing address, phone number, contact person's name, and industry type of a qualified small business upon approval of the application and certification by the commissioner under subdivision 2;

(2) the name of a qualified investor upon approval of the application and certification by the commissioner under subdivision 3;

(3) the name of a qualified fund upon approval of the application and certification by the commissioner under subdivision 4;

(4) for credit certificates issued under subdivision 5, the amount of the credit certificate issued, amount of the qualifying investment, the name of the qualifying investor or qualifying fund that received the certificate, and the name of the qualifying small business in which the qualifying investment was made;

(5) for credits revoked under subdivision 7, paragraph (a), the amount revoked and the name of the qualified investor or qualified fund; and

(6) for credits revoked under subdivision 7, paragraphs (b) and (c), the amount revoked and the name of the qualified small business.

(b) The following data, including data classified as nonpublic or private, must be provided to the consultant for use in conducting the program evaluation under subdivision 10:

(1) the commissioner of employment and economic development shall provide data contained in an application for certification received from a qualified small business, qualified investor, or qualified fund, and any annual reporting information received on a qualified small business, qualified investor, or qualified fund; and

(2) the commissioner of revenue shall provide data contained in any applicable tax returns of a qualified small business, qualified investor, or qualified fund.