

74-8134. Qualified Kansas business; application for qualification, contents, trade secrets to be accorded confidentiality; burden of proof to demonstrate qualification; notice upon change therein.

(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 secretary 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 secretary in accordance with the provisions of this section.

(b) Such application shall be in form and substance as required by the secretary, 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 secretary 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) businesses that are not bioscience businesses must have been in operation for less than five years; bioscience businesses must have been in operation for less than 10 years;
- (3) all else equal, first consideration will be given to animal health companies;
- (4) 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;
- (5) 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; (K) any activity that is in violation of the law; and (L) any business raising money primarily to purchase real estate, land or fixtures; and
- (6) 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 secretary that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the secretary. 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 secretary the qualifications of the business under this section and shall have the obligation to notify the secretary 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.

History: L. 2004, ch. 112, § 77; L. 2005, ch. 134, § 4; L. 2007, ch. 184, § 9; L. 2011, ch. 104, § 29; July 1.