

SENATE BILL No. 65

AN ACT concerning the Kansas certified capital formation company act; relating to certification of capital formation companies; tax credit revisions; amending K.S.A. 74-8222, 74-8223, 74-8225 and 74-8226 and repealing the existing sections.

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

Section 1. K.S.A. 74-8222 is hereby amended to read as follows: 74-8222. (a) Any investor that makes a certified capital investment shall earn a tax credit against state tax liability equal to 50% of the amount of such investor's certified capital investment. The investor, or a person to whom the credits were duly transferred, shall be entitled to claim ~~not more than~~ *a percent of the credit proportional to the amount invested by the CFC in a qualified Kansas business, not to exceed 10% of the credit per taxable year for taxable years commencing on and after January 1, 2005. The investor, or a person to whom the credits were duly transferred, shall be entitled to claim in subsequent taxable years any credit unclaimed in a taxable year, provided the sum total of such credits does not exceed an average of 10% of the credits to which the investor is entitled.* If the amount of the tax credit allowed under subsection (a) exceeds the tax liability of the taxpayer for any taxable year, such excess amount shall be refunded to the taxpayer.

(b) No certified capital investment in a single CFC by any one person shall be less than \$25,000 or more than \$2,000,000; nor shall any one person's combined investment be deemed in excess of \$5,000,000 for the purpose of earning tax credits.

(c) The total amount of tax credits which may be allowed shall not exceed \$20,000,000. The total amount of tax credits which may be allowed under this act shall not exceed \$2,000,000 per fiscal year.

Sec. 2. K.S.A. 74-8225 is hereby amended to read as follows: 74-8225. (a) To continue to be certified, a CFC shall make qualified venture capital investments according to the following ~~schedule~~ *requirements:*

~~(1) Within three years after the date on which a CFC is certified at least 33% of its capital originally certified shall be, or have been, used for making qualified venture capital investments;~~

~~—(2) within four years after the date on which a CFC is certified at least 66% of its capital originally certified shall be, or have been, used for making qualified venture capital investments;~~

~~—(3) within five years after the date on which a CFC is certified at least 100% of its total capital originally certified shall be, or have been, used for making qualified venture capital investments;~~

~~—(4) (1) a CFC shall not make an investment in an affiliate of the CFC or an affiliate of an investor. For the purposes of this subsection, if a company is not an affiliate before a CFC initially invests in the company, it shall not be deemed to be an affiliate if such CFC provides additional qualified venture capital investment to such company subsequent to its initial investment. No corporate officer, employee or shareholder, no limited or general partner or other person personally affiliated with any CFC shall personally invest in any portfolio company regardless of whether the portfolio company is affiliated with the CFC; and~~

~~(5) (2) all certified capital which is not then required to be invested in qualified venture capital investments or which has been previously invested in qualified venture capital investments and returned by the company, may be held or invested in such manner as the CFC, in its discretion, deems appropriate. The proceeds of all certified capital which is returned to a CFC after it was originally invested in qualified venture capital investments, may be invested in other qualified venture capital investments and shall be credited toward any requirement in this act with respect to placing certified capital in qualified venture capital investments.~~

(b) A CFC may make qualified distributions at any time. In order to lawfully make liquidating distributions, a CFC must have invested an aggregate amount equal to 100% of its certified capital in qualified venture capital investments or the fair value of its assets plus any prior qualified and liquidating distributions which equal or exceed 110% of its certified capital. In addition, to the extent that marketable securities have been received in liquidation of a qualified venture capital investment, such securities may be distributed as liquidating distributions. Notwithstanding any other provisions of this act, cash liquidating distributions are permitted solely for the purpose of providing funds to investors to pay income taxes attributable to earnings of the CFC.

(c) Liquidating distributions in excess of the certified capital formation company's original certified capital and any additional capital contributions to the certified capital formation company shall be subject to audit by a certified public accounting firm acceptable to the secretary, at the expense of the certified capital formation company.

(d) If at the time any liquidating distribution is made by a CFC, the aggregate sum of all liquidating distributions of the CFC exceeds the aggregate sum of the CFC's original certified capital and any subsequent qualified venture capital contributions to the CFC, as determined by audit, the CFC, prior to any additional distributions, shall pay to the state treasurer's office 10% of the proportion of the distribution in excess of such amount.

(e) Documents and other materials submitted by CFC's or by businesses for purposes of authorization or original certification or the continuance of certification as a CFC shall not be public records if it is determined by the secretary that disclosure of such information would compromise trade secrets of qualified Kansas businesses unless otherwise specified in this act.

(f) Each CFC shall report the following to the secretary:

(1) Within 90 days of the close of the CFC's fiscal year, annual audited financial statements. The audit shall address the methods of operation and conduct of business of the CFC to determine if the CFC is complying with the statutes and program rules and that the funds received by the CFC have been invested in accordance with the time limits provided by this act.

(2) At the end of each quarter, that no more than 20% of the greater of: (A) The original certified capital investment in the CFC; or (B) the original certified capital investment plus the amount equal to the net gains, losses, income and expenses realized by the CFC at such time shall be invested by a CFC in a single qualified Kansas business at any one time unless the CFC can demonstrate that a greater percentage in a single qualified Kansas business at any one time is the result of losses suffered by the CFC in other qualified venture capital investments.

(g) Any material related to the sale of ownership in a CFC or soliciting investment in a CFC shall include the following statement: "By authorizing or certifying a certified capital formation company, the State of Kansas does not endorse the quality of management or the potential for earnings of a particular company. The use of the word "certified" or "authorized" in an offering does not constitute a recommendation or endorsement of an investment by the Kansas Securities Commission or any other State Official."

(h) The secretary may establish reasonable initial filing fees for applications for authorization and certification pursuant to this act and may also establish an annual nonrefundable fee for CFC's seeking continued certification.

Sec. 3. K.S.A. 74-8226 is hereby amended to read as follows: 74-8226. (a) To ensure that no qualified venture capital investment or investor's certified capital investment has been made in violation of this act, the secretary shall conduct an annual review of each CFC to determine if the CFC is complying with the requirements of certification. The costs of the annual review shall be paid by each CFC according to a reasonable fee schedule adopted by the secretary.

(b) Any material violation of this act by a CFC shall be grounds for decertification under this section. If the secretary determines that a CFC is not in compliance with the requirements for continuing certification, the secretary, by written notice, shall inform the officers of the CFC and the board of directors, managers, trustees or general partners that they shall be decertified within 120 days from the date of mailing of the notice, unless they correct the deficiencies detailed in the notice and demonstrate to the secretary's satisfaction that the CFC is again in compliance with the requirements for certification as determined by the secretary.

(c) At the end of the 120 day grace period, if the CFC is still not in compliance, the secretary may send a notice of decertification to the CFC and to the secretary of revenue including a list of the decertified capital investments by investor and transferee.

~~(d) Decertification of a CFC prior to the CFC meeting all requirements of paragraphs (1) through (4) of subsection (a) of K.S.A. 74-8225;~~

~~and amendments thereto, shall cause the recapture of all tax credits previously allowed to an investor or transferee and the forfeiture of all future tax credits to otherwise be claimed by an investor or transferee with respect to any certified capital investment in the decertified CFC.~~

~~(e) (d) Decertification of a CFC after it has met all requirements of paragraphs paragraph (1) through (4) of subsection (a) of K.S.A. 74-8225, and amendments thereto, shall cause the forfeiture of tax credits commencing with the taxable year of the investor or transferee in which the decertification arose and for all future taxable years with no recapture of tax credits allowed to an investor or transferee with respect to the taxable years which ended before the decertification occurred. Once a CFC has invested 100% of its certified capital in qualified Kansas businesses, all future tax credits to be claimed pursuant to this act by investors or transferees with respect to such CFC shall not be subject to recapture.~~

Sec. 4. K.S.A. 74-8223 is hereby amended to read as follows: 74-8223. (a) The secretary may authorize and subsequently certify profit or not-for-profit entities which meet the requirements of this act. The secretary shall compile a list of every certified CFC, including the address and telephone number of the certified CFC's principal place of business. The secretary shall publicize the list in order to inform Kansas companies of the availability of potential investment capital.

(b) The secretary shall review the organizational documents for each applicant for authorization as a CFC and the business history of the applicant to determine:

(1) That at the time of application, the applicant owns cash, marketable securities and other liquid assets valued at no less than \$500,000; or that prior to January 1, 2000, the applicant was designated as an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the Kansas technology enterprise corporation innovation and commercialization corporation program; and

(2) that the officers and the board of directors, general partners, trustees, managing members or managers, as the case may be, are thoroughly acquainted with the requirements of this act and acknowledge such by a signed certification.

(c) To continue to be certified, the CFC must own and shall periodically demonstrate to the secretary, as the secretary may require, that the liquid asset base for the certified capital formation company is at least \$500,000 at all times during the CFC's participation in the program authorized by this act.

(d) With respect to any person who submits or has submitted an application for authorization as a CFC, the commissioner shall investigate to determine and report to the secretary whether any of the directors, trustees, managers, officers, general partners, beneficial owners of 10% or more of any class of equity securities or any promoters employed or otherwise associated with that person at the time of such application:

(1) Has been affiliated with any company that has filed a registration statement which is subject to a currently effective stop order entered pursuant to any state law;

(2) has been convicted of *or pleaded nolo contendere to* any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including, but not limited to, forgery, embezzlement of money under false pretenses, larceny or conspiracy to defraud;

(3) is currently subject to any state administrative order or judgment entered by a state securities administrator or is subject to any state administrative order or judgment in which fraud or deceit was found and an order or judgment was entered;

(4) is currently subject to any state administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities; *and*

(5) is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining that person from engaging in or continuing any conduct or practice in connection with the pur-

chase or sale of any security, rendering investment advice or involving the making or any false filing with any state, ~~and~~

~~(6) has been convicted of or pleaded nolo contendere to any criminal offense other than a misdemeanor involving motor vehicle violations.~~

(e) The secretary shall not authorize any CFC if the commissioner's report includes any affirmative findings pursuant to subsection (d).

(f) The secretary shall review documentation regarding the qualifications of the persons who will actively manage the CFC and make a determination as to whether such persons possessed sufficient knowledge and professional experience in the areas of investment, venture capital, business management and evaluation, portfolio management, and such other area of expertise to the degree that a reasonable person would be confident in such manager's ability to manage the CFC. No authorization shall be issued when it is the opinion of the secretary that such persons do not possess this requisite degree of knowledge and expertise.

(g) No investor shall individually, or collectively with or through one or more affiliates, by means of ownership, agreement or otherwise, own, control or possess the power or ability to cause or direct the making of any qualified venture capital investments by a CFC.

(h) Within a period of time established by the secretary after receiving an application for authorization as a CFC, the secretary shall either issue or deny the authorization and communicate in detail to the applicant the grounds for the denial, including any suggestions for the removal of those grounds.

Sec. 5. K.S.A. 74-8222, 74-8223, 74-8225 and 74-8226 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.