

1 AN ACT relating to economic development incentives.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 154.20-234 is amended to read as follows:

4 The requirements for small businesses, investors, and investments to be qualified for
5 participation in the Angel Investor Program are as follows:

6 (1) To be certified as a qualified small business, the business shall demonstrate to the
7 authority that it is an entity which, at the time the small business requests
8 certification:

9 (a) Has a net worth of ten million dollars (\$10,000,000) or less or net income
10 after federal income taxes for each of the two (2) preceding fiscal years of
11 three million dollars (\$3,000,000) or less;

12 (b) Is actively and principally engaged in a qualified activity within the
13 Commonwealth, or will be actively and principally engaged in a qualified
14 activity within the Commonwealth after the receipt of a qualified investment
15 by a qualified investor;

16 (c) Has no more than one hundred (100) full-time employees;

17 (d) Has more than fifty percent (50%) of its assets, operations, and employees
18 located in the Commonwealth; and

19 (e) Has at no time received an aggregate amount of qualified investments that has
20 allowed qualified investors to receive more than one million dollars
21 (\$1,000,000) in angel investor credits;

22 (2) To be certified as a qualified investor, an individual investor shall demonstrate to
23 the authority that he or she:

24 (a) Is an individual natural person;

25 (b) Qualifies as an accredited investor pursuant to Regulation D of the United
26 States Securities and Exchange Commission, 17 C.F.R. sec. 230.501, in effect
27 as of the date the individual investor requests certification;

1 (c) Does not hold in excess of twenty percent (20%) ownership interest in, and is
2 not employed by, the qualified small business prior to making the qualified
3 investment in that qualified small business;

4 (d) Is not closely related to an individual who holds in excess of twenty percent
5 (20%) ownership interest in, or who is employed by, the qualified small
6 business prior to making the qualified investment in that qualified small
7 business. For purposes of this paragraph, "closely related" means **any of the**
8 **following in relation to the owner or owners or spouse of the owner or**
9 **owners:**

10 **1. Parents or grandparents;**

11 **2. Children or their spouses; or**

12 **3. Siblings or their spouses**~~[the parent, spouse, or child of an individual];~~

13 and

14 (e) Seeks a financial return from the investment made in the qualified small
15 business;

16 (3) To be certified as a qualified investment, the investment shall:

17 (a) Be a cash investment of at least ten thousand dollars (\$10,000), in a qualified
18 small business by a qualified investor; and

19 (b) Be offered and executed in compliance with applicable state and federal
20 securities laws and regulations; and

21 (4) The authority may establish additional requirements and guidelines for the efficient
22 implementation and administration of the Kentucky Angel Investment Act and to
23 carry out its purposes.

24 ➔Section 2. KRS 154.20-236 is amended to read as follows:

25 (1) The total amount of credit that may be awarded by the authority in each calendar
26 year, pursuant to KRS 154.20-230 to 154.20-240, to:

27 (a) All qualified investors shall be no more than three million dollars

- 1 (\$3,000,000); and
- 2 (b) Any individual qualified investor shall be no more than two hundred thousand
- 3 dollars (\$200,000).
- 4 (2) (a) The total amount of credit that may be awarded by the authority to:
- 5 1. All qualified investors pursuant to KRS 154.20-230 to 154.20-240; and
- 6 2. All investors in all investment funds pursuant to KRS 154.20-250 to
- 7 154.20-284;
- 8 shall be no more than forty million dollars (\$40,000,000) in total for all years
- 9 prior to December 31, 2020.
- 10 (b) Beginning on or after January 1, 2021, the amount of credit that may be
- 11 awarded by the authority in each calendar year shall be equal to the amount
- 12 provided in subsection (1) of this section.
- 13 (c) The authority shall not grant preliminary or final approval for applications
- 14 received for the Kentucky Angel Investment Act on or after January 1, 2019,
- 15 but may resume approving applications received on or after January 1, 2021.
- 16 (3) The authority shall, by promulgation of an administrative regulation, develop a
- 17 standard procedure for:
- 18 (a) Small businesses and investors to request certification for participation in the
- 19 program;
- 20 (b) Qualified investors to request certification of a planned investment as being a
- 21 qualified investment, and to apply for a credit; and
- 22 (c) The award of credits to qualified investors making qualified investments.
- 23 (4) At a minimum, the procedure shall:
- 24 (a) Require small businesses and investors to demonstrate to the authority that
- 25 they, and any planned investment, satisfy all requirements provided in KRS
- 26 154.20-234;
- 27 (b) Provide small businesses and investors with a standard written application

1 form to request certification and apply for a credit;

2 (c) Require the payment of a fee; and

3 (d) Mandate a time period for the duration of certifications granted to small
4 businesses and investors, and the procedures for recertification thereof.

5 (5) The amount of credit awarded shall **not exceed**~~[be equal to]~~:

6 (a) **Twenty-five percent (25%)**~~[Forty percent (40%)]~~ of the amount of the
7 qualified investment, if the principal place of business of the qualified small
8 business is outside an enhanced incentive county; or

9 (b) **Forty percent (40%)**~~[Fifty percent (50%)]~~ of the amount of the qualified
10 investment, if the principal place of business of the qualified small business is
11 in an enhanced incentive county.

12 (6) Upon approval of a credit, the authority shall reduce the amount of available credit
13 by the amount of credit approved to the qualified investor.

14 (7) The authority may, in effectuating this section, contract with a science and
15 technology organization as defined in KRS 164.6011 to administer and manage the
16 certification and application procedure established by the authority. However, the
17 final approval of all credits shall be made solely by the authority.

18 ➔Section 3. KRS 154.20-240 is amended to read as follows:

19 (1) On or before February 1 of the calendar year succeeding the year in which a credit
20 was awarded, and continuing for four (4) years thereafter, a qualified small business
21 that has received a qualified investment shall file an annual report with the
22 authority.

23 (2) (a) This report shall demonstrate that the small business:

24 1. Continues to have more than fifty percent (50%) of its assets, operations,
25 and employees in the Commonwealth;

26 2. Has at no time received an aggregate amount of qualified investments
27 that has allowed qualified investors to receive more than one million

1 dollars (\$1,000,000) in credits; and

2 3. Continues to be actively and principally engaged in a qualified activity.

3 (b) The report shall also provide additional information related to the success of
4 the small business attributable to the investment, including but not limited to:

5 1. New jobs created;

6 2. Increased sales or other economic activity conducted;

7 3. The degree of other private investment attracted; and

8 4. Any other information requested by the authority.

9 (3) If a qualified small business either:

10 (a) Fails to submit the report mandated by this section in any year; or

11 (b) Fails to meet any of the criteria listed in subsection (2)(a) of this section at any
12 time during any year of the reporting period;

13 the authority shall notify the department, which shall recapture any portion, or the
14 full amount, of the credit awarded for qualified investments in that qualified small
15 business from the qualified investor that received the credit award or any taxpayer
16 receiving the credit through a valid transfer. Any amounts collected from the
17 recapture shall be deposited in the general fund.

18 (4) If a qualified small business becomes insolvent and ceases operations at any time
19 before the final required annual report is due, it shall file a written report with the
20 authority attesting to that fact and shall thereafter be exempt from the annual report
21 required by this section, and credits awarded **and already claimed** for qualified
22 investments in that qualified small business shall not be subject to any recapture.
23 **Any credits not claimed as of the date the company became insolvent and ceased**
24 **operations shall be considered expired and shall not be claimed.**

25 ➔Section 4. KRS 154.60-010 is amended to read as follows:

26 As used in this subchapter:

27 (1) "Authority" means the Kentucky Economic Development Finance Authority;

- 1 (2) (a) "Average hourly wage" means the per-hour wage earned by a full-time
2 employee, including wages, tips, overtime, bonuses, and commissions, as
3 reflected on the employee's federal form W-2 wage and tax statement.
- 4 (b) "Average hourly wage" does not include employee benefits as defined in KRS
5 154.32-010, including health insurance and reimbursements;
- 6 (3) "Base employment" means:
- 7 (a) For the first application for which credits are approved, the number of full-
8 time employees employed on the day prior to the work start~~hire~~ date of the
9 new employee filling the earliest eligible position identified on the
10 application; and
- 11 (b) For subsequent applications, the number of full-time employees employed on
12 the day prior to the work start~~hire~~ date of the new employee filling the
13 earliest eligible position identified on the initial approved application plus
14 each eligible position for which a credit has been approved; and
- 15 (c) For applications from businesses involved in mergers, acquisitions, or
16 federal tax identification number changes, base employment may be
17 adjusted by the Cabinet for Economic Development;
- 18 (4) "Eligible position" means each position that:
- 19 (a) Is filled by a full-time employee and that increases the total employment of the
20 small business above its base employment; and
- 21 (b) Carries an average hourly wage of no less than one hundred fifty percent
22 (150%) of the federal minimum wage;
- 23 (5) "Full-time employee" means a person employed by a small business for at least an
24 average of thirty-five (35) hours per week and subject to the state tax imposed by
25 KRS 141.020;
- 26 (6) "Qualifying equipment or technology" means equipment or technology that has
27 been approved by the Office of Entrepreneurship; and

1 (7) "Small business" means any business entity organized for profit that has been
2 approved by the Office of Entrepreneurship, including a sole proprietorship,
3 partnership, limited partnership, corporation, limited liability company, joint
4 venture, association, or cooperative, that has fifty (50) or fewer ~~full-time~~
5 employees **working more than thirty-five (35) hours per week, whether within or**
6 **outside the Commonwealth,** at the time it applies.

7 ➔Section 5. KRS 154.60-040 is amended to read as follows:

- 8 (1) In order to be eligible to receive approval for a tax credit, a selling farmer shall
9 have, at a minimum:
- 10 (a) 1. Demonstrated the active use, management, and operation of real and
11 personal property for the production of a farm product;
12 2. Executed and effectuated a purchase contract to sell agricultural land
13 with a beginning farmer for an amount evidenced by an appraisal; and
14 (b) Sold, conveyed, and transferred ownership of related agricultural land and
15 assets to a beginning farmer.
- 16 (2) The selling farmer shall submit an application after consummation of the sale,
17 transfer of title, and conveyance of a farm and farming assets together with all
18 information necessary for the authority to determine eligibility for the tax credit.
- 19 (3) An application for the farmer small business tax credit shall contain, at a minimum,
20 information about the:
- 21 (a) Selling farmer and purchasing beginning farmer eligibility;
22 (b) Purchase contract and closing statement;
23 (c) Documentation, such as a deed, title conveyance for the transfer of assets,
24 including verification of Kentucky residency; and
25 (d) Any other information the authority may require to determine eligibility for
26 the credit.
- 27 (4) (a) The maximum amount of the farmer small business tax credit for an approved

1 selling farmer in each calendar year shall not exceed twenty-five thousand
2 dollars (\$25,000) and shall be prorated based on factors determined by the
3 authority.

4 (b) The maximum amount of credit a selling farmer may be awarded~~an~~
5 ~~individual may claim~~ over a lifetime shall not exceed one hundred thousand
6 dollars (\$100,000).

7 (c) The credit shall be claimed on the tax return for the year during which the
8 credit was approved. Unused credits may be carried forward for up to five (5)
9 years.

10 (5) Beginning January 1, 2020, the authority may approve farmer small business tax
11 credits for selling farmers.