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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1823

01/24/2012 Authored by Downey; Anderson, S.; Loon; Sanders; Davids and others
The bill was read for the first time and referred to the Committee on Taxes
01/26/2012 By motion, recalled and re-referred to the Committee on Jobs and Economic Development Finance
02/13/2012 Adoption of Report: Pass and re-referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; modifying the small business investment credit; providing
1.3 a credit for start-up and emerging Minnesota businesses; amending Minnesota
1.4 Statutes 2010, section 116J.8737, subdivisions 5, 8; Minnesota Statutes 2011
1.5 Supplement, section 116J.8737, subdivisions 1, 2; proposing coding for new law
1.6 in Minnesota Statutes, chapters 116J; 297I.

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

1.8 Section 1. 116J.665 MINNESOTA BUSINESS INVESTMENT COMPANY
1.9 CREDIT.

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

1.12 (b) "Affiliate" means:

1.13 (1) any person who, directly or indirectly, beneficially owns, controls, or holds
1.14 power to vote 15 percent or more of the outstanding voting securities or other voting
1.15 ownership interest of a Minnesota business investment company or insurance company; or

1.16 (2) any person, 15 percent or more of whose outstanding voting securities or other
1.17 voting ownership interests are directly or indirectly beneficially owned, controlled, or held
1.18 with power to vote by a Minnesota business investment company or insurance company.

1.19 Notwithstanding this subdivision, an investment by a participating investor in a
1.20 Minnesota business investment company pursuant to an allocation of premium tax credits
1.21 under this section does not cause that Minnesota business investment company to become
1.22 an affiliate of that participating investor.

1.23 (c) "Allocation date" means the date on which credits under section 297I.23 are
1.24 allocated to the participating investors of a Minnesota business investment company
1.25 under this section.

2.1 (d) "Designated capital" means an amount of money that:

2.2 (1) is invested by a participating investor in a Minnesota business investment
2.3 company; and

2.4 (2) fully funds the purchase price of either or both participating investor's equity
2.5 interest in a Minnesota business investment company or a qualified debt instrument issued
2.6 by a Minnesota business investment company.

2.7 (e) "Minnesota business investment company" means a partnership, corporation,
2.8 trust, or limited liability company, organized on a for-profit basis, that:

2.9 (1) has its principal office located or is headquartered in Minnesota;

2.10 (2) has as its primary business activity the investment of cash in qualified businesses;
2.11 and

2.12 (3) is certified by the commissioner as meeting the criteria in this section.

2.13 (f) "Participating investor" means any insurance company as defined in section
2.14 60A.02, subdivision 4, excluding health maintenance organizations, that contributes
2.15 designated capital pursuant to this section.

2.16 (g) "Person" means any natural person or entity including, but not limited to, a
2.17 corporation, general or limited partnership, trust, or limited liability company.

2.18 (h)(1) "Qualified business" means a business that is independently owned and
2.19 operated and meets all of the following requirements:

2.20 (i) it is headquartered in Minnesota, its principal business operations are located in
2.21 this state, and at least 80 percent of its employees are located in Minnesota;

2.22 (ii) it has no more than 100 employees;

2.23 (iii) it is not engaged in:

2.24 (A) professional services provided by accountants, doctors, or lawyers;

2.25 (B) banking or lending;

2.26 (C) real estate development;

2.27 (D) insurance;

2.28 (E) oil and gas exploration;

2.29 (F) direct gambling activities;

2.30 (G) retail sales; or

2.31 (H) making loans to or investments in a Minnesota business investment company
2.32 or an affiliate; and

2.33 (iv) it is not a franchise of and has no financial relationship with a Minnesota business
2.34 investment company or any affiliate of a Minnesota business investment company prior to
2.35 a Minnesota business investment company's first qualified investment in the business;

3.1 (2) a business classified as a qualified business at the time of the first qualified
3.2 investment in the business remains classified as a qualified business and may receive
3.3 continuing qualified investments from any Minnesota business investment company.
3.4 Continuing investments constitute qualified investments even though the business may not
3.5 meet the definition of a qualified business at the time of the continuing investments.

3.6 (i) "Qualified debt instrument" means a debt instrument issued by a Minnesota
3.7 business investment company which meets all of the following criteria:

3.8 (1) it is issued at par value or a premium; and

3.9 (2) it has an original maturity date of at least four years from the date of issuance,
3.10 and a repayment schedule which is not faster than a level principal amortization over
3.11 four years.

3.12 (j) "Qualified distribution" means any distribution or payment made by a Minnesota
3.13 business investment company in connection with any of the following:

3.14 (1) costs and expenses of forming, syndicating, and organizing the Minnesota
3.15 business investment company, including fees paid for professional services, and the costs
3.16 of financing and insuring the obligations of a Minnesota business investment company,
3.17 provided no payment is made to a participating investor;

3.18 (2) an annual management fee not to exceed one percent of designated capital on
3.19 an annual basis to offset the costs and expenses of managing and operating a Minnesota
3.20 business investment company;

3.21 (3) reasonable and necessary fees in accordance with industry custom for ongoing
3.22 professional services, including, but not limited to, legal and accounting services related
3.23 to the operation of a Minnesota business investment company, not including lobbying or
3.24 governmental relations;

3.25 (4) any increase or projected increase in federal or state taxes, including penalties
3.26 and related interest of the equity owners of a Minnesota business investment company
3.27 resulting from the earnings or other tax liability of a Minnesota business investment
3.28 company to the extent that the increase is related to the ownership, management, or
3.29 operation of a Minnesota business investment company.

3.30 Notwithstanding the provisions of paragraph (j), payments of principal and interest to
3.31 holders of qualified debt instruments issued by a Minnesota business investment company
3.32 may be made without restriction.

3.33 (k) "Qualified investment" means the investment of money by a Minnesota
3.34 business investment company in a qualified business for the purchase of any debt,
3.35 debt participation, equity, or hybrid security of any nature and description whatsoever,
3.36 including a debt instrument or security that has the characteristics of debt but that

4.1 provides for conversion into equity or equity participation instruments such as options
4.2 or warrants. Any repayment of a qualified investment prior to one year from the date of
4.3 issuance reduces the amount of the qualified investment by 50 percent for purposes of the
4.4 cumulative investment requirement in subdivision 8, paragraph (d).

4.5 (1) "State premium tax liability" means any liability incurred by an insurance
4.6 company under chapter 297I or any other tax liability imposed upon an insurance company
4.7 by the state if the tax rate imposed by chapter 297I is reduced or repealed, other than the
4.8 tax imposed under section 275.025 or 290.05.

4.9 Subd. 2. **Certification.** (a) The commissioner must provide a standardized format
4.10 for applying for the business investment credit under section 297I.23, and for certification
4.11 as a Minnesota business investment company.

4.12 (b) An applicant for certification as a Minnesota business investment company must:

4.13 (1) file an application with the department that includes, without limitation, a
4.14 statement that the applicant has read and understands the requirements of this chapter;

4.15 (2) pay a nonrefundable application fee of \$7,500 at the time of filing the application;

4.16 (3) submit as part of its application an audited balance sheet that contains an
4.17 unqualified opinion of an independent certified public accountant issued not more than 35
4.18 days before the application date that states that the applicant has an equity capitalization
4.19 of \$500,000 or more in the form of unencumbered cash, marketable securities, or other
4.20 liquid assets; and

4.21 (4) have at least two principals or persons employed or engaged to manage the
4.22 funds; each principal or person must have a minimum of five years of money management
4.23 experience in the venture capital or business industry and at least one must be primarily
4.24 located in Minnesota.

4.25 (c) The commissioner may certify partnerships, corporations, trusts, or limited
4.26 liability companies, organized on a for-profit basis, which submit an application to be
4.27 designated as a Minnesota business investment company if the applicant is located,
4.28 headquartered, and licensed or registered to conduct business in Minnesota, has as its
4.29 primary business activity the investment of cash in qualified businesses, and meets the
4.30 other criteria in this section.

4.31 (d) The commissioner must review the organizational documents of each applicant
4.32 for certification and the business history of each applicant and determine whether the
4.33 applicant has satisfied the requirements of this section.

4.34 (e) Within 45 days after the receipt of an application, the commissioner must issue
4.35 the certification or refuse the certification and communicate in detail to the applicant the
4.36 grounds for refusal, including suggestions for the removal of such grounds.

5.1 (f) The commissioner must begin accepting applications to become a Minnesota
5.2 business investment company as defined under section 297I.23 by August 1, 2012.

5.3 (g) Application fees collected by the commissioner under this subdivision must be
5.4 deposited in the state treasury and are appropriated to the commissioner for the purposes
5.5 of this section.

5.6 Subd. 3. **Requirements.** (a) A participating investor or affiliate of a participating
5.7 investor must not, directly or indirectly:

5.8 (1) beneficially own, whether through rights, options, convertible interest, or
5.9 otherwise, 15 percent or more of the voting securities or other voting ownership interest of
5.10 a Minnesota business investment company;

5.11 (2) manage a Minnesota business investment company; or

5.12 (3) control the direction of investments for a Minnesota business investment
5.13 company.

5.14 (b) A Minnesota business investment company may obtain one or more guaranties,
5.15 indemnities, bonds, insurance policies, or other payment undertakings for the benefit
5.16 of its participating investors from any entity, except that in no case can more than one
5.17 participating investor of a Minnesota business investment company, on an aggregate
5.18 basis with all affiliates of the participating investor, be entitled to provide the guaranties,
5.19 indemnities, bonds, insurance policies, or other payment undertakings in favor of the
5.20 participating investors of a Minnesota business investment company and its affiliates in
5.21 this state.

5.22 (c) This subdivision does not preclude a participating investor, insurance company,
5.23 or other party from exercising its legal rights and remedies, including, without limitation,
5.24 interim management of a Minnesota business investment company, if a Minnesota
5.25 business investment company is in default of its statutory obligations or its contractual
5.26 obligations to the participating investor, insurance company, or other party, or from
5.27 monitoring a Minnesota business investment company to ensure its compliance with this
5.28 section or disallowing any investments that have not been approved by the commissioner.

5.29 (d) The commissioner may contract with an independent third party to review,
5.30 investigate, and certify that the applications comply with this section.

5.31 Subd. 4. **Aggregate limitations on investment tax credits; allocation.** (a)
5.32 The aggregate amount of investment tax credits to be allocated to all participating
5.33 investors of Minnesota business investment companies under this section must not exceed
5.34 \$100,000,000. No Minnesota business investment company, on an aggregate basis with its
5.35 affiliates, may file credit allocation claims that exceed \$100,000,000.

6.1 (b) The commissioner shall allocate credits to participating investors in the order
6.2 that the credit allocation claims are filed, provided that all credit allocation claims filed
6.3 on the same day must be treated as having been filed contemporaneously. Any credit
6.4 allocation claims filed with the commissioner prior to the initial credit allocation claim
6.5 filing date are deemed to have been filed on the initial credit allocation claim filing date.
6.6 The commissioner must set the initial credit allocation claim filing date not less than 120
6.7 days and not greater than 150 days after the commissioner begins accepting applications
6.8 for certification.

6.9 (c) If two or more Minnesota business investment companies file credit allocation
6.10 claims with the commissioner on behalf of their respective participating investors on the
6.11 same day, and the aggregate amount of credit allocation claims exceeds the aggregate
6.12 limit of investment tax credits under this section or the lesser amount of credits that
6.13 remain unallocated on that day, then the commissioner must allocate the credits among
6.14 the participating investors who filed on that day on a pro rata basis with respect to the
6.15 amounts claimed. The pro rata allocation for any one participating investor is the product
6.16 obtained by multiplying a fraction, the numerator of which is the amount of the credit
6.17 allocation claim filed on behalf of a participating investor and the denominator of which
6.18 is the total of all credit allocation claims filed on behalf of all participating investors
6.19 on that day, by the aggregate limit of credits under this section or the lesser amount of
6.20 credits that remain unallocated on that day.

6.21 (d) Within ten business days after the commissioner receives a credit allocation
6.22 claim filed by a Minnesota business investment company on behalf of one or more of its
6.23 participating investors, the commissioner must notify the Minnesota business investment
6.24 company of the amount of credits allocated to each of the participating investors of that
6.25 Minnesota business investment company. If a Minnesota business investment company
6.26 does not receive an investment of designated capital from each participating investor
6.27 required to earn the amount of credits allocated to the participating investor within ten
6.28 business days of the Minnesota business investment company's receipt of notice of
6.29 allocation, then it shall notify the commissioner on or before the next business day, and
6.30 the credits allocated to the participating investor of the Minnesota business investment
6.31 company are forfeited. The commissioner must then reallocate those forfeited credits
6.32 among the participating investors of the other Minnesota business investment companies
6.33 on a pro rata basis with respect to the credit allocation claims filed on behalf of the
6.34 participating investors. The commissioner may, but is not required to, levy a fine of not
6.35 more than \$50,000 on any participating investor that does not invest the full amount of
6.36 designated capital required to fund the credits allocated to it by the commissioner in

7.1 accordance with the credit allocation claim filed on its behalf. Fine receipts must be
7.2 deposited in the state treasury and credited to the general fund.

7.3 (e) No participating investor, on an aggregate basis with its affiliates, may file an
7.4 allocation claim for more than 25 percent of the maximum amount of investment tax
7.5 credits authorized under this subdivision, regardless of whether the claim is made in
7.6 connection with one or more Minnesota business investment companies.

7.7 Subd. 5. **Requirements for continuance of certification.** (a) To maintain its
7.8 certification, a Minnesota business investment company must make qualified investments
7.9 as follows:

7.10 (1) within two years after the allocation date, a Minnesota business investment
7.11 company must invest an amount equal to at least 35 percent of its designated capital in
7.12 qualified investments; and

7.13 (2) within three years after the allocation date, a Minnesota business investment
7.14 company must invest an amount equal to at least 50 percent of its designated capital
7.15 in qualified investments.

7.16 (b) Prior to making a proposed qualified investment in a specific business, a
7.17 Minnesota business investment company must request from the commissioner a written
7.18 determination that the proposed investment qualifies as a qualified investment in a
7.19 qualified business. The commissioner must notify a Minnesota business investment
7.20 company within ten business days from the receipt of a request of its determination and
7.21 an explanation of its determination. If the commissioner fails to notify the Minnesota
7.22 business investment company of its determination within the ten-business-day period, the
7.23 proposed investment is deemed a qualified investment in a qualified business. If the
7.24 commissioner determines that the proposed investment does not meet the definition of a
7.25 qualified investment or qualified business, or both, the commissioner may nevertheless
7.26 consider the proposed investment a qualified investment and, if necessary, the business a
7.27 qualified business, if the commissioner determines that the proposed investment furthers
7.28 state economic development.

7.29 (c) All designated capital not invested in qualified investments by a Minnesota
7.30 business investment company must be held or invested in such manner as the Minnesota
7.31 business investment company, in its discretion, deems appropriate. Designated capital
7.32 and proceeds of designated capital returned to a Minnesota business investment company
7.33 after being originally invested in qualified investments may be invested again in qualified
7.34 investments and the investment counts toward the requirements of paragraph (a) with
7.35 respect to making investments of designated capital in qualified investments.

8.1 (d) If, within four years after its allocation date, a Minnesota business investment
8.2 company has not invested at least 60 percent of its designated capital in qualified
8.3 investments, the Minnesota business investment company must not be permitted to pay
8.4 management fees.

8.5 (e) If, within six years after its allocation date, a Minnesota business investment
8.6 company has not invested at least 100 percent of its designated capital in qualified
8.7 investments, the Minnesota business investment company must not be permitted to pay
8.8 management fees.

8.9 (f) A Minnesota business investment company may not invest more than 15 percent
8.10 of its designated capital in any one qualified business without the specific approval of
8.11 the commissioner.

8.12 (g) For purposes of calculating the investment percentage thresholds of paragraph
8.13 (a), the cumulative amount of all qualified investments made by a Minnesota business
8.14 investment company from the allocation date must be considered.

8.15 **Subd. 6. Minnesota business investment company reporting requirements.**

8.16 (a) Each Minnesota business investment company must report the following to the
8.17 commissioner in the form designated by the commissioner:

8.18 (1) as soon as practicable after the receipt of designated capital:

8.19 (i) the name of each participating investor from which the designated capital was
8.20 received, including such participating investor's insurance tax identification number;

8.21 (ii) the amount of each participating investor's investment of designated capital; and

8.22 (iii) the date on which the designated capital was received;

8.23 (2) on an annual basis, on or before January 31 of each year:

8.24 (i) the amount of the Minnesota business investment company's designated capital
8.25 that remains to be invested in qualified investments at the end of the immediately
8.26 preceding taxable year;

8.27 (ii) whether or not the Minnesota business investment company has invested more
8.28 than 15 percent of its total designated capital in any one business;

8.29 (iii) all qualified investments that the Minnesota business investment company has
8.30 made in the previous taxable year, including the number of employees of each qualified
8.31 business in which it has made investments at the time of such investment, and as of
8.32 December 1 of the preceding taxable year; and

8.33 (iv) for any qualified business where the Minnesota business investment company
8.34 no longer has an investment, the Minnesota business investment company must provide
8.35 employment figures for that company as of the last day before the investment was
8.36 terminated;

9.1 (3) other information that the commissioner may reasonably request that helps
9.2 the commissioner ascertain the impact of the Minnesota business investment company
9.3 program both directly and indirectly on the economy of the state including, but not
9.4 limited to, the number of jobs created by qualified businesses that have received qualified
9.5 investments;

9.6 (4) within 90 days of the close of its fiscal year, annual audited financial statements
9.7 of the Minnesota business investment company, which must include the opinion of an
9.8 independent certified public accountant; and

9.9 (5) an agreed-upon procedures report or equivalent regarding the operations of the
9.10 Minnesota business investment company.

9.11 (b) A Minnesota business investment company must pay to the commissioner an
9.12 annual, nonrefundable certification fee of \$5,000 on or before April 1, or \$10,000 if later.
9.13 The certification fee must be deposited in the state treasury and is appropriated to the
9.14 commissioner for the purposes of this section. No annual certification fee is required if the
9.15 payment date for the fee is within six months of the date a Minnesota business investment
9.16 company is first certified by the commissioner.

9.17 (c) Upon satisfying the requirements of subdivision 5, paragraph (a), clause (2), a
9.18 Minnesota business investment company must provide the notice to the commissioner
9.19 and the commissioner shall, within 60 days of receipt of the notice, either confirm that the
9.20 Minnesota business investment company has satisfied the requirements of subdivision
9.21 5, paragraph (a), clause (2), as of that date or provide notice of noncompliance and an
9.22 explanation of any existing deficiencies. If the commissioner does not provide notification
9.23 within 60 days, the Minnesota business investment company is deemed to have met the
9.24 requirements of subdivision 5, paragraph (a), clause (2).

9.25 Subd. 7. **Distributions.** (a) A Minnesota business investment company may
9.26 make qualified distributions at any time. In order for a Minnesota business investment
9.27 company to make a distribution other than a qualified distribution to its equity holders,
9.28 the cumulative amount of all qualified investments of the Minnesota business investment
9.29 company must equal or exceed 100 percent of its designated capital.

9.30 (b) The state shall receive ten percent of the net profits on qualified investments.
9.31 For purposes of this paragraph, "net profits on qualified investments" means the amount
9.32 of money returned to the Minnesota business investment company in exchange for or
9.33 repayment of its qualified investments in qualified businesses in excess of the amount
9.34 invested by the Minnesota business investment company in qualified investments. The
9.35 net profits on qualified investments are the aggregate of all of the Minnesota business

10.1 investment company's qualified investments where gains on qualified investments are
10.2 netted against losses on qualified investments.

10.3 Subd. 8. **Decertification.** (a) The commissioner shall conduct an annual review
10.4 of each Minnesota business investment company to determine if a Minnesota business
10.5 investment company is abiding by the requirements of certification and to ensure that no
10.6 investment has been made in violation of this section. The cost of the annual review
10.7 must be paid by each Minnesota business investment company according to a reasonable
10.8 fee schedule adopted by the commissioner. Fee receipts must be deposited in the state
10.9 treasury and credited to the general fund.

10.10 (b) Any material violation of this section, including any material misrepresentation
10.11 made to the commissioner in connection with the application process, is grounds for
10.12 decertification of a Minnesota business investment company and the disallowance of
10.13 credits under section 297I.23, provided that in all instances the commissioner shall provide
10.14 notice to the Minnesota business investment company of the grounds of the proposed
10.15 decertification and the opportunity to cure the violation before any decertification becomes
10.16 effective.

10.17 (c) The commissioner shall send written notice of decertification to the commissioner
10.18 of revenue and to the address of each participating investor whose tax credit may be
10.19 subject to recapture or forfeiture, using the address shown on the last filing submitted to
10.20 the commissioner.

10.21 (d) Once a Minnesota business investment company has invested an amount
10.22 cumulatively equal to 100 percent of its designated capital in qualified investments,
10.23 provided that the Minnesota business investment company has met all other requirements
10.24 under this section as of such date, the Minnesota business investment company is
10.25 no longer subject to regulation by the commissioner or the reporting requirements
10.26 under subdivision 6. Upon receiving certification by a Minnesota business investment
10.27 company that it has invested an amount equal to 100 percent of its designated capital, the
10.28 commissioner shall notify a Minnesota business investment company within 60 days that
10.29 it has or has not met the requirements, with a reason for the determination if it has not.
10.30 If the commissioner does not provide notification of deregulation within 60 days, the
10.31 Minnesota business investment company is deemed to have met the requirements and is
10.32 deemed to no longer be subject to regulation by the commissioner.

10.33 Subd. 9. **Registration requirements.** All investments by participating investors
10.34 for which tax credits are awarded under this section must be registered or specifically
10.35 exempt from registration.

11.1 Subd. 10. **Rulemaking.** The commissioner's actions in establishing procedures and
 11.2 requirements and in making determinations and certifications to administer this section are
 11.3 not a rule for purposes of chapter 14, are not subject to the Administrative Procedure Act
 11.4 contained in chapter 14, and are not subject to section 14.386.

11.5 Subd. 11. **Reports to governor and legislature.** The commissioner shall make
 11.6 an annual report by March 15 of each year to the governor and the chairs and ranking
 11.7 minority members of the legislative committees and divisions having jurisdiction over
 11.8 taxes and economic development. The report must include:

11.9 (1) the number of Minnesota business investment companies holding designated
 11.10 capital;

11.11 (2) the amount of designated capital invested in each Minnesota business investment
 11.12 company;

11.13 (3) the cumulative amount that each Minnesota business investment company has
 11.14 invested as of January 1, 2012, and the cumulative total each year thereafter;

11.15 (4) the cumulative amount of follow-on capital that the investments of each
 11.16 Minnesota business investment company have created in terms of capital invested in
 11.17 qualified businesses at the same time or subsequent to investments made by a Minnesota
 11.18 business investment company in such businesses by sources other than Minnesota
 11.19 business investment companies;

11.20 (5) the total amount of investment tax credits applied under this section for each year;

11.21 (6) the performance of each Minnesota business investment company with regard to
 11.22 the requirements for continued certification;

11.23 (7) the classification of the companies in which each Minnesota business investment
 11.24 company has invested according to industrial sector and size of company;

11.25 (8) the gross number of jobs created by investments made by each Minnesota
 11.26 business investment company and the number of jobs retained;

11.27 (9) the location of the companies in which each Minnesota business investment
 11.28 company has invested;

11.29 (10) those Minnesota business investment companies that have been decertified,
 11.30 including the reasons for decertification; and

11.31 (11) other related information as necessary to evaluate the effect of this section on
 11.32 economic development.

11.33 **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.34 Sec. 2. Minnesota Statutes 2011 Supplement, section 116J.8737, subdivision 1, is
 11.35 amended to read:

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

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

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

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

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

12.11 (1) \$10,000 in a calendar year by a qualified investor; or

12.12 (2) \$30,000 in a calendar year by a qualified fund.

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

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

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

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

12.27 **EFFECTIVE DATE.** This section is effective for qualified small businesses
12.28 certified after June 30, 2012, except that the provision striking paragraph (h) is effective
12.29 the day following final enactment.

12.30 Sec. 3. Minnesota Statutes 2011 Supplement, section 116J.8737, subdivision 2, is
12.31 amended to read:

12.32 Subd. 2. **Certification of qualified small businesses.** (a) Businesses may apply
12.33 to the commissioner for certification as a qualified small business for a calendar year.
12.34 The application must be in the form and be made under the procedures specified by the
12.35 commissioner, accompanied by an application fee of \$150. Application fees are deposited

13.1 in the small business investment tax credit administration account in the special revenue
13.2 fund. The application for certification for 2010 must be made available on the department's
13.3 Web site by August 1, 2010. Applications for subsequent years' certification must be made
13.4 available on the department's Web site by November 1 of the preceding year.

13.5 (b) Within 30 days of receiving an application for certification under this subdivision,
13.6 the commissioner must either certify the business as satisfying the conditions required of a
13.7 qualified small business, request additional information from the business, or reject the
13.8 application for certification. If the commissioner requests additional information from the
13.9 business, the commissioner must either certify the business or reject the application within
13.10 30 days of receiving the additional information. If the commissioner neither certifies the
13.11 business nor rejects the application within 30 days of receiving the original application or
13.12 within 30 days of receiving the additional information requested, whichever is later, then
13.13 the application is deemed rejected, and the commissioner must refund the \$150 application
13.14 fee. A business that applies for certification and is rejected may reapply.

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

13.16 (1) the business has its headquarters in Minnesota;

13.17 (2) at least 51 percent of the business's employees are employed in Minnesota, and
13.18 51 percent of the business's total payroll is paid or incurred in the state;

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

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

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

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

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

13.33 (5) the business has fewer than 25 employees;

13.34 (6) the business ~~must pay its employees annual wages of at least 175 percent of the~~
13.35 ~~federal poverty guideline for the year for a family of four and must pay its interns annual~~
13.36 ~~wages of at least 175 percent of the federal minimum wage used for federally covered~~

14.1 ~~employers, except that this requirement must be reduced proportionately for employees~~
 14.2 ~~and interns who work less than full-time, and does not apply to an executive, officer, or~~
 14.3 ~~member of the board of the business, or to any employee who owns, controls, or holds~~
 14.4 ~~power to vote more than 20 percent of the outstanding securities of the business~~ has not
 14.5 issued securities that are traded on a public exchange;

14.6 (7) the business has not been in operation for more than ten years;

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

14.9 (9) the business is not an entity disqualified under section 80A.50, paragraph (b),
 14.10 clause (3).

14.11 (d) ~~In applying the limit determining whether a business satisfies the conditions~~
 14.12 ~~under paragraph (c), clause (5), the employees in all members clauses (1) to (9), for a~~
 14.13 ~~business that is or was a member or part, during the current or prior three taxable years, of~~
 14.14 ~~the a unitary business, as defined in section 290.17, subdivision 4, must be included the~~
 14.15 entire unitary business must satisfy each of the conditions.

14.16 (e) In order for a qualified investment in a business to be eligible for tax credits;

14.17 (1) the business must have applied for and received certification for the calendar
 14.18 year in which the investment was made prior to the date on which the qualified investment
 14.19 was made;

14.20 (2) the business must not have issued securities that are traded on a public exchange;

14.21 (3) the business must not have issued securities that are traded on a public exchange
 14.22 within 180 days after the date on which the qualified investment was made; and

14.23 (4) the business must not have converted the qualified investment for cash, cash and
 14.24 other consideration, or any other form of equity or a debt interest within 180 days after the
 14.25 date on which the qualified investment was made.

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

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

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

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

15.4 **EFFECTIVE DATE.** This section is effective the day following final enactment,
15.5 except the amendment to paragraph (e) is effective for qualified small businesses certified
15.6 after June 30, 2012.

15.7 Sec. 4. Minnesota Statutes 2010, section 116J.8737, subdivision 5, is amended to read:

15.8 Subd. 5. **Credit allowed.** (a) A qualified investor or qualified fund is eligible for
15.9 a credit equal to 25 percent of the qualified investment in a qualified small business.
15.10 Investments made by a pass-through entity qualify for a credit only if the entity is a
15.11 qualified fund. The commissioner must not allocate more than \$11,000,000 in credits to
15.12 qualified investors or qualified funds for taxable years beginning after December 31, 2009,
15.13 and before January 1, 2011, ~~and~~ must not allocate more than \$12,000,000 in credits per
15.14 year for taxable years beginning after December 31, 2010, and before January 1, ~~2015~~
15.15 2012, and must not allocate more than \$20,000,000 in credits per year for taxable years
15.16 beginning after December 31, 2011, and before January 1, 2015. Any portion of a taxable
15.17 year's credits that is not allocated by the commissioner does not cancel and may be carried
15.18 forward to subsequent taxable years until all credits have been allocated.

15.19 (b) The commissioner may not allocate more than a total maximum amount in credits
15.20 for a taxable year to a qualified investor for the investor's cumulative qualified investments
15.21 as an individual qualified investor and as an investor in a qualified fund; for married
15.22 couples filing joint returns the maximum is \$250,000, and for all other filers the maximum
15.23 is \$125,000. The commissioner may not allocate more than a total of \$1,000,000 in credits
15.24 over all taxable years for qualified investments in any one qualified small business.

15.25 (c) The commissioner may not allocate a credit to a qualified investor either as an
15.26 individual qualified investor or as an investor in a qualified fund if the investor receives
15.27 more than 50 percent of the investor's gross annual income from the qualified small
15.28 business in which the qualified investment is proposed. A member of the family of an
15.29 individual disqualified by this paragraph is not eligible for a credit under this section. For
15.30 a married couple filing a joint return, the limitations in this paragraph apply collectively
15.31 to the investor and spouse. For purposes of determining the ownership interest of an
15.32 investor under this paragraph, the rules under section 267(c) and 267(e) of the Internal
15.33 Revenue Code apply.

15.34 (d) Applications for tax credits for 2010 must be made available on the department's
15.35 Web site by September 1, 2010, and the department must begin accepting applications

16.1 by September 1, 2010. Applications for subsequent years must be made available by
16.2 November 1 of the preceding year.

16.3 (e) Qualified investors and qualified funds must apply to the commissioner for tax
16.4 credits. Tax credits must be allocated to qualified investors or qualified funds in the order
16.5 that the tax credit request applications are filed with the department. The commissioner
16.6 must approve or reject tax credit request applications within 15 days of receiving the
16.7 application. The investment specified in the application must be made within 60 days of
16.8 the allocation of the credits. If the investment is not made within 60 days, the credit
16.9 allocation is canceled and available for reallocation. A qualified investor or qualified fund
16.10 that fails to invest as specified in the application, within 60 days of allocation of the
16.11 credits, must notify the commissioner of the failure to invest within five business days of
16.12 the expiration of the 60-day investment period.

16.13 (f) All tax credit request applications filed with the department on the same day must
16.14 be treated as having been filed contemporaneously. If two or more qualified investors or
16.15 qualified funds file tax credit request applications on the same day, and the aggregate
16.16 amount of credit allocation claims exceeds the aggregate limit of credits under this section
16.17 or the lesser amount of credits that remain unallocated on that day, then the credits must
16.18 be allocated among the qualified investors or qualified funds who filed on that day on a
16.19 pro rata basis with respect to the amounts claimed. The pro rata allocation for any one
16.20 qualified investor or qualified fund is the product obtained by multiplying a fraction,
16.21 the numerator of which is the amount of the credit allocation claim filed on behalf of
16.22 a qualified investor and the denominator of which is the total of all credit allocation
16.23 claims filed on behalf of all applicants on that day, by the amount of credits that remain
16.24 unallocated on that day for the taxable year.

16.25 (g) A qualified investor or qualified fund, or a qualified small business acting on their
16.26 behalf, must notify the commissioner when an investment for which credits were allocated
16.27 has been made, and the taxable year in which the investment was made. A qualified fund
16.28 must also provide the commissioner with a statement indicating the amount invested by
16.29 each investor in the qualified fund based on each investor's share of the assets of the
16.30 qualified fund at the time of the qualified investment. After receiving notification that the
16.31 investment was made, the commissioner must issue credit certificates for the taxable year
16.32 in which the investment was made to the qualified investor or, for an investment made by
16.33 a qualified fund, to each qualified investor who is an investor in the fund. The certificate
16.34 must state that the credit is subject to revocation if the qualified investor or qualified
16.35 fund does not hold the investment in the qualified small business for at least three years,

17.1 consisting of the calendar year in which the investment was made and the two following
17.2 years. The three-year holding period does not apply if:

17.3 (1) the investment by the qualified investor or qualified fund becomes worthless
17.4 before the end of the three-year period;

17.5 (2) 80 percent or more of the assets of the qualified small business is sold before
17.6 the end of the three-year period;

17.7 (3) the qualified small business is sold before the end of the three-year period; or

17.8 (4) the qualified small business's common stock begins trading on a public exchange
17.9 before the end of the three-year period.

17.10 (h) The commissioner must notify the commissioner of revenue of credit certificates
17.11 issued under this section.

17.12 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
17.13 December 31, 2011.

17.14 Sec. 5. Minnesota Statutes 2010, section 116J.8737, subdivision 8, is amended to read:

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

17.19 (1) the name, mailing address, telephone number, e-mail address, contact person's
17.20 name, and industry type of a qualified small business upon approval of the application
17.21 and certification by the commissioner under subdivision 2;

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

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

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

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

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

18.1 (b) The following data, including data classified as nonpublic or private, must be
18.2 provided to the consultant for use in conducting the program evaluation under subdivision
18.3 10:

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

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

18.10 **EFFECTIVE DATE.** This section is effective for businesses requesting certification
18.11 starting on the day following final enactment.

18.12 Sec. 6. **[2971.23] MINNESOTA BUSINESS INVESTMENT COMPANY CREDIT.**

18.13 **Subdivision 1. Credit allowed.** (a) A participating investor as defined under section
18.14 116J.665, subdivision 1, is allowed a credit against the tax imposed in this chapter equal to
18.15 85 percent of the participating investor's investment of designated capital in a Minnesota
18.16 business investment company. For taxable years 2016 to 2020, a participating investor
18.17 may claim an amount equal to the following percentages of the participating investor's
18.18 investment of designated capital:

18.19 (1) for taxable year 2016, ten percent;

18.20 (2) for taxable year 2017, 15 percent; and

18.21 (3) for taxable years 2018, 2019, and 2020, 20 percent for each year.

18.22 (b) The credit for any taxable year must not exceed the liability for tax. If the
18.23 amount of the credit determined under this section for any taxable year exceeds the
18.24 liability for tax, the excess is an investment tax credit carryover to each of the succeeding
18.25 taxable years and must be carried forward to each succeeding taxable year until the entire
18.26 carryforward has been credited against the participating investor's liability for tax under
18.27 this chapter. Credits may be used in connection with both estimated and return payments
18.28 of a participating investor's state premium tax liability.

18.29 (c) A participating investor claiming a credit under this section is not required to pay
18.30 any additional retaliatory tax levied by Minnesota as a result of claiming the credit.

18.31 (d) A participating investor is not required to reduce the amount of tax pursuant to
18.32 the state premium tax liability included by the participating investor in connection with
18.33 ratemaking for any insurance contract written in this state because of a reduction in the
18.34 participating investor's tax liability based on the tax credit allowed under this section.

19.1 (e) Decertification of a Minnesota business investment company under section
19.2 116J.665 may result in the disallowance and the recapture of the credit allowed under this
19.3 section. The amount disallowed and recaptured must be assessed as follows:

19.4 (1) decertification of a Minnesota business investment company within two years
19.5 of the allocation date of tax credits and prior to meeting the requirements of section
19.6 116J.665, subdivision 5, paragraph (a), clause (1), shall result in the disallowance of all
19.7 of the credits allowed under this section;

19.8 (2) decertification of a Minnesota business investment company after two years
19.9 of the allocation date of tax credits, but prior to meeting the requirements of section
19.10 116J.665, subdivision 5, paragraph (a), clause (1), results in the disallowance of one-half
19.11 of all the credits allowed under this section; and

19.12 (3) decertification of a Minnesota business investment company that has already met
19.13 the requirements of section 116J.665, subdivision 5, paragraph (a), clause (1), does not
19.14 cause the disallowance of any credits allowed under this section nor the recapture of any
19.15 portion of the credits that was previously taken.

19.16 Subd. 2. **Transfers.** A participating investor must not transfer, agree to transfer,
19.17 sell, or agree to sell the credit under this section until 180 days from the date on which
19.18 the participating investor invested designated capital. After 180 days from the date
19.19 of investment, a participating investor, or subsequent transferee, may transfer credits
19.20 to another person who is subject to tax and must notify the commissioner in the form
19.21 prescribed by the commissioner within 30 days of the transfer. A person must not transfer
19.22 a credit more than once in a 12-month period. No person is entitled to a refund for the
19.23 interest created under this subdivision. A credit acquired by transfer is subject to the
19.24 limitations prescribed in this section. Any transfer or sale of the credits does not affect the
19.25 time schedule for claiming the credit. Any tax credits recaptured under this section remain
19.26 the liability of the participating investor that applied the credit towards its tax liability.

19.27 Subd. 3. **Repayment of tax benefits received.** (a) Decertification of a Minnesota
19.28 business investment company or revocation of credits under section 116J.665 results in
19.29 the disallowance to certified investors of any credits for that tax year or future tax years
19.30 and the participating investor is required to repay any credits claimed for the previous
19.31 year. Repayment must be made within 60 days of the decertification or the revocation
19.32 of the certification.

19.33 (b) The provisions of chapters 270C and 297I relating to audit, assessment, refund,
19.34 collection, and appeals are applicable to the credits claimed and repayment required under
19.35 this section. The commissioner may impose civil penalties as provided in section 297I.85,

20.1 and additional tax and penalties are subject to interest at the rate provided in section
20.2 270C.40, from the date payment was due.

20.3 **EFFECTIVE DATE.** This section is effective for taxable years beginning after
20.4 December 31, 2012.