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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 170

AN ACT TO AMEND TITLES 29 AND 30 OF THE DELAWARE CODE RELATING TO ANGEL INVESTOR JOB
CREATION AND INNOVATION ACT .

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Strike Subchapter VIII, Chapter 50 of Title 29 of the Delaware Code in its entirety.

Section 2. Amend § 1116, Title 30 of the Delaware Code by making deletions as shown by strikethrough and
insertions as shown by underline as follows:

§ 1116 ~~Delaware investment credit~~ Angel Investor Job Creation and Innovation Act

A resident and nonresident individual shall be allowed a credit against that individual's tax ~~otherwise due~~ under this chapter
in an amount equal to ~~15% of the individual's investment that is qualified under subchapter VIII of Chapter 50 of Title 29~~
~~("The Delaware Investment Tax Credit Program") and certified as such by the Director of the Delaware Economic~~
~~Development Office to the Director of Revenue~~ the credit which has been calculated by the Director of the Delaware
Economic Development Office under Subchapter III, Chapter 20A of Title 30 of the Delaware Code. As provided by §20A-
124(h) of this title, the Director of the Delaware Economic Development Office shall notify the Director of Revenue of any
and all credit certifications. Notwithstanding § 329 of this title to the contrary, determinations by the Director of the
Delaware Economic Development Office ~~Authority~~ as to the qualification of any investment with respect to ~~under~~ the
Angel Investor ~~Delaware Investment~~ Tax Credit Program shall not be appealable to the Tax Appeal Board. In ~~no~~ the event
~~shall~~ the credit allowable under this section exceeds the tax otherwise due under this chapter, ~~such Unused credits credit~~
amounts in excess of the tax otherwise due under this chapter shall be returned to the taxpayer in the form of a tax refund.
~~may be carried forward 4 years from the tax year in which they are certified under the Delaware Investment Tax Credit~~
~~Program~~

Section 3. Amend Chapter 20A, Title 30 of the Delaware Code by making deletions as shown by strikethrough
and insertions as shown by underline as follows:

Subchapter III. Angel Investor Job Creation and Innovation Act

§ 20A-120 Definitions

As used in this subchapter:

(1) "Affiliated group" has the meaning provided by § 1504 of the Internal Revenue Code (26 U.S.C. § 1504), but including for this purpose pass-through entities, as defined in § 1601 of this title that would be includible if they were classified as corporations, the equity interests in which would be treated as stock, and the ownership of such interests would satisfy the stock ownership requirements of the said 26 U.S.C. § 1504.

(2) "Compensation" means that part of the sum reported on Form W-2, or equivalent form of the United States Department of Treasury, Internal Revenue Service as "Medicare wages and tips".

(3) "Director" means the Director of the Delaware Economic Development Office, as defined by § 5002(c) of Title 29.

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

(5) "Intern" means a student of an accredited institution of higher education, or a former student who has graduated in the past 6 months from an accredited institution of higher education, who is employed by a qualified small business in a nonpermanent position for a duration of 9 months or less that provides training and experience in the primary business activity of the business.

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

(7) "Officer" means a person elected or appointed by the board of directors to manage the daily operations of the qualified small business;

(8) "Pass-through entity" shall have the meaning set forth in § 1601 of this title.

(9) "Principal" means a person having authority to act on behalf of the qualified small business.

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

(11) "Qualified fund" means a pooled angel investment network fund that has been certified by the director under § 20A-123.

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

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

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

53 (b) \$30,000 in a calendar year by a qualified fund. A qualified investment must be made in exchange for
54 common stock, a partnership or membership interest, preferred stock, debt with mandatory conversion to equity, or
55 an equivalent ownership interest as determined by the director.

56 (14) "Qualified investor" means an investor who has been certified by the director under § 20A-122.

57 (15) "Qualified small business" means a business that has been certified by the director under § 20A-121.

58 § 20A-121 Certification of qualified small businesses.

59 (a) Businesses may apply to the director for certification as a qualified small business for a calendar year. The
60 application must be in the form and be made under the procedures specified by the director, accompanied by an application
61 fee established by the Director, not to exceed \$500. Application fees shall be deposited in the Angel Investor Job Creation
62 and Innovation Act Administration Fund. The application for certification for 2018 must be made available on the
63 department's Web site by November 1, 2017. Applications for subsequent years' certification must be made available on
64 the department's Web site by November 1 of the preceding year.

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

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

73 (1) the business has its headquarters in Delaware and the business shall be a legal entity qualified to do
74 business in the State of Delaware;

75 (2) at least 51 percent of the business's common-law employees are employed in Delaware, and 51
76 percent of the business's total compensation is attributable to Delaware sources;

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

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

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

83 (iii) researching, developing, or producing a proprietary product, process, or service in the fields
84 of agriculture, manufacturing, wildlife preservation, environmental science, financial technology, or
85 transportation; or

86 (iv) researching, developing, or producing a new proprietary technology for use in the fields of
87 agriculture, manufacturing, financial technology, or transportation;

88 (4) other than the activities specifically listed in paragraph (3), the business is not engaged in real estate
89 development, insurance, lobbying, political consulting, information technology consulting, wholesale or retail
90 trade, leisure, hospitality, construction, or professional services provided by attorneys, accountants, business
91 consultants, physicians, or health care consultants;

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

93 (6) the business must pay its employees annual wages of at least 175 percent of the federal poverty
94 guideline for the year for a family of 4 and must pay its interns annual wages of at least 175 percent of the federal
95 minimum wage used for federally covered employers, except that this requirement must be reduced
96 proportionately for employees and interns who work less than full-time, and does not apply to an executive,
97 officer, or member of the board of the business, or to any employee who owns, controls, or holds power to vote
98 more than 20% of the outstanding securities of the business;

99 (7) the business has (i) not been in operation for more than ten years, or (ii) the business has not been in
100 operation for more than 20 years if the business is engaged in the research, development, or production of medical
101 devices or pharmaceuticals for which United States Food and Drug Administration approval is required for use in
102 the treatment or diagnosis of a disease or condition;

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

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

105 (d) In applying the limit under subsection (c), paragraph (5), the employees in all members of the affiliated group,
106 must be included.

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

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

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

111 (3) the business must not issue securities that are traded on a public exchange within 180 days after the
112 date on which the qualified investment was made; and

113 (4) the business must not have a liquidation event within 180 days after the date on which the qualified
114 investment was made.

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

117 § 20A-122 Certification of qualified investors.

118 (a) Investors may apply to the Director for certification as a qualified investor for a taxable year. The application
119 must be in the form and be made under the procedures specified by the director, accompanied by an application fee
120 established by the Director not to exceed \$500. Application fees shall be deposited in Angel Investor Job Creation and
121 Innovation Act Administration Fund. The application for certification for 2018 must be made available on the department's
122 Web site by September 1, 2017 Applications for subsequent years' certification must be made available on the department's
123 Web site by November 1 of the preceding year.

124 (b) Within 30 days of receiving an application for certification under this subdivision, the director must either
125 certify the investor as satisfying the conditions required of a qualified investor, request additional information from the
126 investor, or reject the application for certification. If the director requests additional information from the investor, the
127 director must either certify the investor or reject the application within 30 days of receiving the additional information. If
128 the director neither certifies the investor nor rejects the application within 30 days of receiving the original application or
129 within 30 days of receiving the additional information requested, whichever is later, then the application is deemed rejected,
130 and the director must refund the application fee. An investor who applies for certification and is rejected may reapply.

131 (c) To receive certification, an investor must be a natural person.

132 (d) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified
133 investor who makes the investment must have applied for and received certification for the calendar year prior to making
134 the qualified investment, except in the case of an investor who is not an accredited investor, within the meaning of
135 Regulation D of the Securities and Exchange Commission, Code of Federal Regulations, Title 17, Section 230.501,
136 paragraph (a), application for certification may be made within 30 days after making the qualified investment.

137 § 20A-123 Certification of qualified funds.

138 (a) A pass-through entity may apply to the director for certification as a qualified fund for a calendar year. The
139 application must be in the form and be made under the procedures specified by the director, accompanied by an application
140 fee set by the Director, not to exceed \$1,500. Application fees shall be deposited in the Angel Investor Job Creation and

141 Innovation Act Administration Fund. The application for certification for 2018 of qualified funds must be made available
142 on the department's Web site September 1, 2017. Applications for subsequent years' certification must be made available by
143 November 1 of the preceding year.

144 (b) Within 30 days of receiving an application for certification under this subdivision, the director must either
145 certify the fund as satisfying the conditions required of a qualified fund, request additional information from the fund, or
146 reject the application for certification. If the director requests additional information from the fund, the director must either
147 certify the fund or reject the application within 30 days of receiving the additional information. If the director neither
148 certifies the fund nor rejects the application within 30 days of receiving the original application or within 30 days of
149 receiving the additional information requested, whichever is later, then the application is deemed rejected, and the director
150 must refund the \$1,000 application fee. A fund that applies for certification and is rejected may reapply.

151 (c) To receive certification, a fund must:

152 (1) invest or intend to invest in qualified small businesses;

153 (2) be organized as a pass-through entity; and

154 (3) have at least three separate investors, of whom at least three whose investment is made in the
155 certified business and who seek a tax credit allocation satisfy the conditions in § 20A-122 (c).

156 (d) Investments in the fund may consist of equity investments or notes that pay interest or other fixed amounts, or
157 any combination of both.

158 (e) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified fund
159 that makes the investment must have applied for and received certification for the calendar year prior to making the
160 qualified investment.

161 § 20A-124 Credit allowed.

162 (a) A qualified investor or qualified fund is eligible for a credit equal to 25 percent of the qualified investment in a
163 qualified small business. Investments made by a pass-through entity qualify for a credit only if the entity is a qualified fund.
164 The director must not allocate more than \$5,000,000 in credits for each taxable year beginning after December 31, 2017,
165 and before January 1, 2023.

166 (b) The director may not allocate more than a total maximum amount in credits for a taxable year to a qualified
167 investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a
168 qualified fund; for married couples filing joint returns the maximum is \$250,000, and for all other filers the maximum is
169 \$125,000. The director may not allocate more than a total of \$500,000 in credits over all taxable years for qualified
170 investments in any one qualified small business.

171 (c) The director may not allocate a credit to a qualified investor either as an individual qualified investor or as an
172 investor in a qualified fund if, at the time the investment is proposed:

173 (1) the investor is an officer or principal of the qualified small business; or

174 (2) the investor, either individually or in combination with one or more members of the investor's family,
175 owns, controls, or holds the power to vote 20 percent or more of the outstanding securities of the qualified small
176 business.

177 A member of the family of an individual disqualified by this paragraph is not eligible for a credit under this
178 subchapter. For a married couple filing a joint return, the limitations in this paragraph apply collectively to the investor and
179 spouse. For purposes of determining the ownership interest of an investor under this paragraph, the rules under section
180 267(c) and 267(e) of the Internal Revenue Code apply.

181 (d) Applications for tax credits for 2018 must be made available on the department's Web site by January 1, 2018,
182 and the department must begin accepting applications by January 1, 2018. Applications for subsequent years must be made
183 available by November 1 of the preceding year.

184 (e) Qualified investors and qualified funds must apply to the director for tax credits. Tax credits must be allocated
185 to qualified investors or qualified funds in the order that the tax credit request applications are filed with the department.
186 The director must approve or reject tax credit request applications within 15 days of receiving the application. The
187 investment specified in the application must be made within 60 days of the allocation of the credits. If the investment is not
188 made within 60 days, the credit allocation is canceled and available for reallocation. A qualified investor or qualified fund
189 that fails to invest as specified in the application, within 60 days of allocation of the credits, must notify the director of the
190 failure to invest within five business days of the expiration of the 60-day investment period.

191 (f) All tax credit request applications filed with the department on the same day must be treated as having been
192 filed contemporaneously. If two or more qualified investors or qualified funds file tax credit request applications on the
193 same day, and the aggregate amount of credit allocation claims exceeds the aggregate limit of credits under this subchapter
194 or the lesser amount of credits that remain unallocated on that day, then the credits must be allocated among the qualified
195 investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts claimed. The pro rata
196 allocation for any one qualified investor or qualified fund is the product obtained by multiplying a fraction, the numerator
197 of which is the amount of the credit allocation claim filed on behalf of a qualified investor and the denominator of which is
198 the total of all credit allocation claims filed on behalf of all applicants on that day, by the amount of credits that remain
199 unallocated on that day for the taxable year.

(g) A qualified investor or qualified fund, or a qualified small business acting on their behalf, must notify the director when an investment for which credits were allocated has been made, and the taxable year in which the investment was made. A qualified fund must also provide the director with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment. After receiving notification that the investment was made, the director must issue credit certificates for the taxable year in which the investment was made to the qualified investor or, for an investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate must state that the credit is subject to revocation if the qualified investor or qualified fund does not hold the investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following years. The three-year holding period does not apply if:

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

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

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

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

(5) the qualified investor dies before the end of the three-year period.

(h) The director must notify the director of revenue of credit certificates issued under this subchapter by April 1 of each year.

§ 20A-125 Annual reports.

(a) By February 1 of each year each qualified small business that received an investment that qualified for a credit, and each qualified investor and qualified fund that made an investment that qualified for a credit, must submit an annual report to the director and pay a filing fee of \$100 as required under this subdivision. Each qualified investor and qualified fund must submit reports for three years following each year in which it made an investment that qualified for a credit, and each qualified small business must submit reports for five years following the year in which it received an investment qualifying for a credit. Reports must be made in the form required by the director. All filing fees collected are deposited in the Angel Investor Job Creation and Innovation Act Administration Fund.

(b) A report from a qualified small business must certify that the business satisfies the following requirements:

(1) the business has its headquarters in Delaware and the business shall be a legal entity qualified to do business in the State of Delaware;

(2) at least 51 percent of the business's common law employees are employed in Delaware, and 51 percent of the business's total compensation is attributable to Delaware sources;

(3) that the business is engaged in, or is committed to engage in, innovation in Delaware as defined under § 20A-121; and

(4) that the business meets the compensation requirements for its employees as set forth in § 20A-121(c)(6).

(c) Reports from qualified investors must certify that the investor remains invested in the qualified small business as required by § 20A-124(g).

(d) Reports from qualified funds must certify that the fund remains invested in the qualified small business as required by § 20A-124(g).

(e) A qualified small business that ceases all operations and becomes insolvent must file a final annual report in the form required by the director documenting its insolvency. In following years, the business is exempt from the annual reporting requirement, the report filing fee, and the fine for failure to file a report.

(f) A qualified small business, qualified investor, or qualified fund that fails to file an annual report as required under this subdivision is subject to a \$500 fine.

§ 20A-126. Revocation of credits.

(a) If the director determines that a qualified investor or qualified fund did not meet the three-year holding period required § 20A-124(g), any credit allocated and certified to the investor or fund is revoked and must be repaid by the investor.

(b) If the director determines that a business did not meet the employment and payroll requirements in § 20A-121(c)(2) and § 20A-121(c)(6), as applicable, in any of the 5 calendar years following the year in which an investment in the business that qualified for a tax credit under this subchapter was made, the business must repay the following percentage of the credits allowed for qualified investments in the business:

<u>Year following the year</u>	<u>Percentage of credit required</u>
<u>in which the investment</u>	<u>to be repaid:</u>
<u>was made:</u>	
<u>First</u>	<u>100%</u>
<u>Second</u>	<u>80%</u>

259	<u>Third</u>	<u>60%</u>
260	<u>Fourth</u>	<u>40%</u>
261	<u>Fifth</u>	<u>20%</u>
262	<u>Sixth and later</u>	<u>0</u>

263 (c) The director must notify the director of revenue of every credit revoked and subject to full or partial repayment
 264 under this subchapter.

265 (d) For the repayment of credits allowed under this subchapter and § 1116, Title 30 of the Delaware Code, a
 266 qualified small business, qualified investor, or investor in a qualified fund must file an amended return with the director of
 267 revenue and pay any amounts required to be repaid within 30 days after becoming subject to repayment under this
 268 subchapter.

269 § 20A-126. Data privacy.

270 (a) General Rule -- This subchapter is subject to the nondisclosure requirements provided by §368, Title 30 of the
 271 Delaware Code. Any and all data received, processed or transmitted by the director shall be deemed as information from
 272 tax returns for the purposes of § 368, Title 30 of the Delaware Code.

273 (b) Exception – In order to facilitate investment in qualified small businesses, upon approval of the application
 274 and certification by the director under § 20A-121, the director may publish each qualified small businesses' name, mailing
 275 address, telephone number, e-mail address, contact person's name, and industry type.

276 § 20A-127. Angel Investor Job Creation and Innovation Act Administration Fund.

277 This Act authorizes the Delaware Economic Development Office to maintain an Appropriated Special Fund
 278 account with the State Treasurer. Such account shall be known as the Angel Investor Job Creation and Innovation Act
 279 Administration Fund. All fees as provided by § 20A-122, § 20A-123 and § 20A-125 shall be deposited into this fund and
 280 shall be used by the director for personnel and administrative expenses related to administering this incentive.

281 Section 4. This Act shall take effect for qualified investments made in tax years beginning after December 31,
 282 2017 and claimed on returns filed after December 31, 2018.

SYNOPSIS

This legislation, the Angel Investor Job Creation and Innovation Act for Small Technology Companies, creates an incentive for qualified angel investors to invest capital in qualified Delaware small technology companies..