

1 AN ACT relating to economic development.

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

3 ➔Section 1. KRS 154.12-300 is amended to read as follows:

4 As used in KRS 154.12-300 to 154.12-310, unless the context indicates otherwise:

5 (1) *"Early-stage company" means a company that is:*

6 *(a) A small or medium-size company in its initial stages of operation;*

7 *(b) Characterized by new or evolving product or service development; and*

8 *(c) Establishing initial customer or market validation with potential material*
growth in employment or revenue;

9

10 (2) *"Entrepreneur-led economic development" means a strategy in which successful*
entrepreneurs contribute to regional growth by mentoring new founders,
strengthening local support networks, and helping guide collaborative efforts that
foster the development and scaling of innovative early-stage and high-growth
companies;

11

12 (3) *"Executive director" means the executive director of the Office of*
Entrepreneurship and Innovation;

13

14 (4) *"High-growth company" means a company that is:*

15 *(a) A small or medium-size company; and*

16

17 *(b) Demonstrating or has demonstrated potential for rapid and sustained*
expansion in employment, revenue, or market share with potential for
continued material growth;

18

19 (5) *"Hub" means a location identified as the headquarters for program activity in a*
region or subregion;

20

21 (6) *"Medium-size company" means a business with fifty-one (51) to one hundred*
fifty (150) employees;

22

23 (7) *"Program" means the Kentucky Entrepreneurship and Innovation Hub*
Program~~*["Affiliate"]*~~ means an ICC identified as the headquarters for program

1 activity in a region or subregion;

2 (2) "Commissioner" means the commissioner of the Department of Commercialization

3 and Innovation established in KRS 154.12-278;

4 (3) "ICC" means the Kentucky Innovation and Commercialization Center];

5 (8)[(4)] "Region" means a geographic area of Kentucky designated as having a unique

6 innovation strategic plan by the Office of Entrepreneurship[Department of

7 Commercialization] and Innovation; and[

8 (5) "Satellite" means an office of an affiliate in a region]

9 (9) **"Small company"** means a business with fifty (50) or fewer employees.

10 ➔ Section 2. KRS 154.12-305 is amended to read as follows:

11 (1) There is established the **Kentucky Entrepreneurship and Innovation Hub**

12 **Program**[Kentucky Innovation and Commercialization Center Program] within the

13 **Office of Entrepreneurship and Innovation**[Department of Commercialization and

14 Innovation]. The goal of the [ICC]program is to create products, new companies,

15 and value-added jobs in communities throughout the Commonwealth. Strategies to

16 achieve this goal include:

17 (a) Increasing quality deal flow of **knowledge-based, technology-intensive**

18 **companies**[technology based firms] in Kentucky;

19 (b) Increasing understanding of start-up process and investment practices;[and]

20 (c) Providing value-added services to the start-up and investment community;

21 (d) **Supporting entrepreneur-led economic development; and**

22 (e) **Attracting workforce talent, investors, and start-up companies to Kentucky.**

23 (2) The duties of the **hubs**[ICC program] shall include but not be limited to:

24 (a) Identifying and linking entrepreneurs, faculty, **subject-matter experts**,

25 scientists, venture capitalists, and other key individuals from the business

26 sector, universities, community and technical colleges, local leaders, and

27 government for the creation and expansion of knowledge-based, **technology-**

1 **intensive** companies;

2 (b) Establishing a uniform protocol for assembling and communicating project

3 concepts and opportunities;

4 (c) Supporting high-quality projects through the concept and development phases

5 including services such as market research, prototype development, business

6 plan and strategies development, grant and contract capabilities, and capital

7 and management resource identification; and

8 (d) Identifying, in the area of technology development, potential partners,

9 strategic opportunities, training and educational needs, and issues that inhibit

10 the growth of technology sectors and business clusters in the state.

11 ➔ Section 3. KRS 154.12-310 is amended to read as follows:

12 (1) The **program hubs**~~Kentucky Innovation and Commercialization Centers~~ are

13 private-public partnerships, operating as a cohesive statewide infrastructure to

14 support the implementation of key Kentucky Innovation Act initiatives.

15 (2) The organization of the **hubs**~~HCCs~~ shall be a statewide network~~of Kentucky~~

16 ~~innovative hubs~~, with the location and services provided for each hub determined

17 by the executive director **in accordance with the following:**~~of the Office of~~

18 ~~Entrepreneurship and Innovation~~.)

19 (a) The Office of Entrepreneurship and Innovation shall be the central

20 headquarters for the **program**~~Kentucky innovative~~ hubs and has primary

21 responsibility for the following:

22 1. Managing and administering the~~HCC~~ program;

23 2. Establishing uniform program application, protocol, and operating

24 guidelines when appropriate;

25 3. Supporting the protocol by creating and funding centralized services to

26 be distributed throughout the network; and

27 4. Identifying those issues, opportunities, and challenges that have

1 statewide implications; [+]

2 (b) The hubs[regional affiliates] are responsible for fulfilling the duties as set
3 forth in KRS 154.12-305 relating to the implementation of the region's
4 innovation strategic plan and supporting the implementation of the Kentucky
5 Innovation Act initiatives in the region or subregion; and
6 (c) The hubs[satellites] are responsible for generating technology business
7 development in their assigned geographic area, acting as a bridge between
8 individuals and companies[businesses] needing critical early state concept
9 and development work and the hubs[affiliate centers] that can provide this
10 support.

11 The hubs[affiliates and satellites] provide a valuable assurance for equal access to
12 the Kentucky Innovation Act initiatives and funding, and provide an opportunity for
13 full participation in rural and remote, as well as metropolitan, areas of the state.

14 (3) The executive director[of the Office of Entrepreneurship and Innovation] shall
15 have all the powers and authority, not explicitly prohibited by statute, necessary and
16 convenient to carry out and effectuate the purposes of KRS 154.12-300 to 154.12-
17 310.

18 (4) The executive director[of the Office of Entrepreneurship and Innovation] may, in
19 effectuating the provisions of KRS 154.12-300 to 154.12-310, contract with a
20 science and technology organization as defined in KRS 164.6011 to administer and
21 manage the[ICC] program.

22 ➔ Section 4. KRS 164.6011 is amended to read as follows:

23 As used in KRS 164.6011 to 164.6029, unless the context indicates otherwise:

24 (1) "Applied research" means those research activities occurring at universities and in
25 private enterprises that have potential commercial application;

26 (2) "Cabinet" means the Cabinet for Economic Development;

27 (3) "Closely related family members" means any of the following in relation to an

1 employee or their spouse:

2 (a) Parents or grandparents;

3 (b) Children or their spouses; or

4 (c) Siblings or their spouses;

5 (4) "Cluster" means a geographically bound concentration of similar, related, or
6 complementary companies[businesses] with active channels for business
7 transactions, communications, and dialogue, that share specialized infrastructure,
8 labor markets, and services, and that are faced with common opportunities and
9 threats;

10 (5) "Commonwealth" means the Commonwealth of Kentucky;

11 (6) **"Early-stage company"** means a company that is:
12 (a) A small or medium-size company in its initial stages of operation;
13 (b) Characterized by new or evolving product or service development; and
14 (c) Establishing initial customer or market validation with potential material
15 growth in employment or revenue;

16 (7) "Eligible company" means any corporation, limited liability company, partnership,
17 limited partnership, sole proprietorship, business trust, person, group, or other
18 entity;

19 (8) **"High-growth company"** means a company that is:
20 (a) A small or medium-size company; and
21 (b) Demonstrating or has demonstrated potential for rapid and sustained
22 expansion in employment, revenue, or market share with potential for
23 continued material growth;

24 (9)[(7)] "Kentucky-based company" means a company[business] with its principal
25 place of business in Kentucky or no less than fifty percent (50%) of its property and
26 payroll located in Kentucky;

27 (10)[(8)] "Knowledge-based" means technology-intensive or driven by knowledge,

1 innovation, and speed;

2 (11) "Medium-size company" means a business with fifty-one (51) to one hundred

3 fifty (150) employees;

4 (12) "Qualified company" means an eligible company that may be granted a

5 funding voucher or award pending certification;

6 (13) "Science and technology organization" means an independent, nonprofit or

7 quasi-governmental organization, with a statewide mission, that has a demonstrated

8 history of managing complicated programs in the areas of entrepreneurial

9 innovation, science, and technology advancement;

10 (14) "Seed funding" means financing that is provided for early-stage development,

11 refinement, and commercialization of a product, process, or innovation through

12 continuing applied research, advancing the patent process, determining commercial

13 and market potential, or moving research toward development of a prototype; and

14 (15) "Small company" means a **company**~~firm~~ with fifty (50) or fewer employees.

15 ➔Section 5. KRS 164.6019 is amended to read as follows:

16 (1) There is established and created a trust and agency account entitled the ["]Kentucky
17 enterprise fund["] for the purpose of enabling *early-stage or high-growth*[small or
18 *medium size*], Kentucky-based companies to undertake feasibility, concept
19 development, research and development, ~~for~~ commercialization, *or expansion*
20 work.

21 (2) The Kentucky enterprise fund may receive moneys from any public or private
22 source, including but not limited to general fund appropriations of the
23 Commonwealth, grants, or contributions of money, property, labor, or other things
24 of value to be used to carry out the fund's operations, functions, and responsibilities,
25 and to otherwise make investments, *Moneys received by the fund from a public or*
26 *private source may be subject to use restrictions, sector or cluster limitations,*
27 *investment criteria, or other conditions imposed by the contributing entity and are*

1 *subject to approval by the cabinet, provided such conditions are consistent with*
2 *the purposes of the fund.*

3 (3) The Kentucky enterprise fund shall also receive moneys transferred from the
4 Kentucky rural innovation fund under KRS 164.6027, the Kentucky
5 commercialization fund under KRS 164.6035, and the Kentucky alternative fuel
6 and renewable energy fund under KRS 154.20-410.

7 (4) Any unallocated or unencumbered balances in the fund shall be invested as
8 provided in KRS 42.500(9), and any income earned from the investments along
9 with the unallotted or unencumbered balances in the fund shall not lapse, and shall
10 be made available solely for the purposes and benefits of the Kentucky enterprise
11 fund.

12 ➔Section 6. KRS 164.6021 is amended to read as follows:

13 (1) The Cabinet for Economic Development shall manage the Kentucky enterprise fund
14 to provide capital to *early-stage and high-growth*~~*[small and medium size]*~~,
15 Kentucky-based companies to undertake feasibility, concept development, research
16 and development, ~~*[for]*~~commercialization, *or expansion* work.

17 (2) The purpose of the Kentucky enterprise fund is to:

18 (a) Accelerate knowledge transfer and technological innovation, improve
19 economic competitiveness, and spur economic growth in Kentucky-based
20 companies;

21 (b) Support feasibility, concept development, research and development, or
22 commercialization activities that have clear potential to lead to commercially
23 successful products, processes, or services within a reasonable period of time;

24 (c) Stimulate growth-oriented enterprises within the Commonwealth;

25 (d) Encourage partnerships and collaborative projects between private enterprises,
26 Kentucky's colleges and universities, and research organizations, *including*
27 *collaborations involving one (1) or more such entities;*

1 Office of Entrepreneurship and Innovation shall receive an equity interest in the
2 qualified company, such as a general or limited partnership interest, limited liability
3 company interest, common or preferred stock with or without voting rights and
4 without regard to seniority position, forms of subordinate or convertible unsecured
5 debt, or both, with warrants, rights, or other means of equity conversion attached, a
6 near equity interest such as a simple agreement for future equity or "SAFE
7 agreement", or other convertible debt instruments that are determined to qualify as
8 an adequate investment interest by the executive director of the Office of
9 Entrepreneurship and Innovation.

10 ➔ Section 7. KRS 164.6023 is amended to read as follows:

11 (1) The science and technology organization shall have the authority, upon approval by
12 the cabinet, to review applications, qualify companies, and certify qualified
13 companies to receive funding from the Kentucky enterprise fund.

14 (2) The science and technology organization shall develop application criteria and an
15 application process subject to the following limitations. The proposed project shall
16 be likely to:

17 (a) Produce a measurable result and be technically sound;
18 (b) Lead to innovative technology or new knowledge;
19 (c) Lead to commercially successful products, processes, or services within a
20 reasonable period of time; or
21 (d) Show significant potential for stimulating economic growth and a reasonable
22 probability to enhance employment opportunities within the Commonwealth.

23 (3) The applicant shall provide to the science and technology organization an
24 application that shall include but not be limited to the following information:

25 (a) Verification that the applicant is an eligible company that:

26 I. Meets the definition of a Kentucky-based company, or has
27 demonstrated potential to become a Kentucky-based company within

one hundred eighty (180) days after certification authorizing funding under subsection (5) of this section, or within a timeframe determined by the executive director of the Office of Entrepreneurship and Innovation; and

2. Is an early-stage or high-growth [and medium-size company or small company];

- (b) A technology description and plan that is sufficient for outside expert review;
- (c) A detailed financial analysis that includes the commitment of resources by the applicant and others;
- (d) Sufficient detail concerning proposed project partners, type and amount of work to be performed and financing to be contributed by each partner, and expected product or service with estimated costs to be reflected in the negotiated contract or agreement; and
- (e) A statement of the economic development potential of the project.

15 (4) The science and technology organization shall conduct an independent review with
16 the use of outside experts to evaluate each application. Following the application
17 review, the science and technology organization shall make a determination of the
18 application and may determine that the applicant is a qualified company as defined
19 in KRS 164.6011.

20 (5) Upon a qualified company's presentation of a legal agreement or contract meeting
21 the conditions under subsection (6) of this section, the science and technology
22 organization shall present the qualified company, the project partners, if any, and
23 the college or university in the Commonwealth, if any, with a certification
24 authorizing funding.

25 (6) Prior to receiving certification authorizing funding from the science and technology
26 organization, the qualified company shall:

(a) Negotiate an agreement and funding contract with a college or university in

1 the Commonwealth, if any, and with a project partner, if any, that is
2 satisfactory to the science and technology organization, to undertake the
3 commercialization work; and

4 (b) Provide assurance to the science and technology organization that the college
5 or university and the qualified company have negotiated the ownership and
6 disposition of patents, royalties, all other intellectual property rights, and
7 equity or related position relating to the contract between the qualifying
8 company and the college or university;

9 unless the requirement to partner with a college or university is recommended to be
10 waived by the science and technology organization.

11 (7) Prior to certifying a qualified company, the science and technology organization
12 may negotiate with the qualified company the ownership and disposition of patents,
13 royalties, all other intellectual property rights, and an equity, near equity such as a
14 simple agreement for future equity or "SAFE agreement", convertible debt, or
15 similar investment format that is approved by the executive director of the Office of
16 Entrepreneurship and Innovation on behalf of the Kentucky enterprise fund for the
17 sole purpose of reinvesting and sustaining a revolving fund to carry out the
18 provisions of KRS 164.6021 and 164.6023.

19 (8) The science and technology organization, upon approval by the cabinet, shall set
20 forth guidelines as to when and how all areas of the state will be notified about the
21 program's availability and a program schedule, including but not limited to the
22 following:

23 (a) A review cycle including:

24 1. A deadline for submission of applications at least biannually; and

25 2. A deadline for reviewing applications of no more than one hundred

26 twenty (120) days after the application submission deadline; and

27 (b) A deadline, from the date an applicant is determined to be a qualified

1 company, by which certification shall be made. If certification is not made by
2 that deadline the funding voucher award is made void.

3 ➔Section 8. KRS 154.20-234 is amended to read as follows:

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

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

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

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

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

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

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

24 1. Is an individual natural person who may utilize a single-member limited
25 liability company to make the investment as long as the individual
26 natural person is the owner and the limited liability company is a
27 disregarded entity;

- 1 2. Qualifies as an accredited investor pursuant to Regulation D of the
- 2 United States Securities and Exchange Commission, 17 C.F.R. sec.
- 3 230.501, in effect as of the date the individual investor requests
- 4 certification;
- 5 3. Does not hold in excess of twenty percent (20%) ownership interest in,
- 6 and is not employed by, the qualified small business prior to making the
- 7 qualified investment in that qualified small business;
- 8 4. Is not closely related to an individual who holds in excess of twenty
- 9 percent (20%) ownership interest in, or who is employed by, the
- 10 qualified small business prior to making the qualified investment in that
- 11 qualified small business. For purposes of this subparagraph, "closely
- 12 related" means any of the following in relation to the owner or owners
- 13 or spouse of the owner or owners:
 - 14 a. Parents or grandparents;
 - 15 b. Children or their spouses; or
 - 16 c. Siblings or their spouses; and
- 17 5. Seeks a financial return from the investment made in the qualified small
- 18 business; ~~and~~
- 19 (c) To be certified as a qualified investment, the investment shall:
 - 20 1. Be a cash investment of at least ten thousand dollars (\$10,000), in a
 - 21 qualified small business made:
 - 22 a. Directly by a qualified investor; or
 - 23 b. Indirectly through a pass-through entity formed for the sole
purpose of making one (1) or more investments in a single,
qualified small business and treated as a pass-through entity for
federal income tax purposes;
 - 27 2. If made through a pass-through entity, the amount eligible for the tax

credit shall be limited to that individual's pro rata share of the capital contributed to the entity that is ultimately invested in the qualified small business; and

4 3.[2.] Be offered and executed in compliance with applicable state and federal
5 securities laws and regulations; *and*

(d) A pass-through entity utilized under paragraph (c) of this subsection shall not make qualified investments in more than one (1) company.

8 (2) In consideration for the qualified investment, the qualified investor shall receive an
9 equity interest, or a near equity interest, such as a simple agreement for future
10 equity, or "SAFE agreement", or a convertible debt instrument in the qualified
11 small business.

12 (3) The authority may establish additional requirements and guidelines for the efficient
13 implementation and administration of the Kentucky Angel Investment Act and to
14 carry out its purposes.

15 ➔Section 9. KRS 154.20-254 is amended to read as follows:

16 As used in KRS 154.20-250 to 154.20-284, unless the context clearly requires otherwise:

17 (1) "Affiliate" means any person or entity who directly or indirectly, through one (1) or
18 more intermediaries, controls or is controlled by or is under common control with
19 another person or entity;

20 (2) "Agreement" means an investment fund agreement entered into pursuant to KRS
21 154.20-255(5) by the authority and an investment fund manager on behalf of the
22 investment fund, the investment fund manager, and any investor in the investment
23 fund;

24 (3) "Amended application" means a document submitted by an investment fund
25 manager, in a form acceptable to the authority and on behalf of an investment fund,
26 for the purpose of increasing the aggregate amount of available tax credits;

27 (4) "Applicant" means any person or entity who has not received approval from the

1 authority as an investment fund manager, but who has submitted or will submit an
2 application to the authority for approval as an investment fund manager;

3 (5) "Authority" means the Kentucky Economic Development Finance Authority or its
4 designee;

5 (6) "Cash contribution" means an investment of money by an investor in an investment
6 fund under the terms of KRS 154.20-250 to 154.20-284;

7 (7) "Committed cash contribution" means a legally binding agreement by an investor to
8 make a cash contribution in an amount set forth in a written agreement between an
9 investor and an investment fund;

10 (8) "Commonwealth" means the Commonwealth of Kentucky;

11 (9) "Credit" means a nonrefundable credit for investors against state tax liability
12 allocated and granted by the authority pursuant to KRS 154.20-258 for qualified
13 investments made by approved investment funds;

14 (10) "Entity" means any corporation, limited liability company, business development
15 corporation, partnership, limited partnership, sole proprietorship, association, joint
16 stock company, receivership, trust, professional service organization, or other legal
17 entity through which business is conducted;

18 (11) "Financial institution" means "financial institution" as defined in KRS 136.500(10)
19 and includes savings and loan associations, savings banks, and similar institutions
20 subject to the taxes imposed by KRS 136.290, 136.300, or 136.310;

21 (12) "Insurance company" means any insurance company subject to the taxes imposed
22 by KRS 136.320, 136.330, or 304.3-270;

23 (13) "Investment fund" means any entity that is organized by an investment fund
24 manager in compliance with applicable state and federal securities laws and
25 regulations, and is approved by the authority to make qualified investments
26 pursuant to KRS 154.20-256;

27 (14) "Investment fund manager" means any person or entity that has been approved by

1 the authority to manage one (1) or more investment funds authorized under the
2 provisions of KRS 154.20-250 to 154.20-284 and is in compliance with all
3 applicable federal and state regulations;

4 (15) "Investor" means any person or entity, including financial institutions and insurance
5 companies, that is subject to state tax liability and that makes a cash contribution or
6 a committed cash contribution to an investment fund in accordance with the
7 provisions of KRS 154.20-250 to 154.20-284 and has not been convicted of
8 violating any of Kentucky's tax laws within the past ten (10) years;

9 (16) "Knowledge-based" has the same meaning as in KRS 164.6011;

10 (17) "Nonprofit entity" means an investor that is exempt from federal income tax under
11 Section 501(c) of the Internal Revenue Code of 1986, as amended;

12 (18) "Qualified activity" has the same meaning as in KRS 154.20-230;

13 (19) "Qualified investment" means an investment of at least ten thousand dollars
14 (\$10,000) in a small business by an investment fund, in compliance with applicable
15 state and federal securities laws and regulations, seeking a financial return based
16 upon that consideration. In consideration for the qualified investment, the
17 investment fund shall receive an equity interest in the small business, such as a
18 general or limited partnership interest, common or preferred stock with or without
19 voting rights and without regard to seniority position, forms of subordinate or
20 convertible unsecured debt, or both, with warrants, rights, or other means of equity
21 conversion attached; and

22 (20) "Small business" means any entity which at the time a qualified investment is made
23 by an investment fund:

24 (a) 1. Has a net worth of five million dollars (\$5,000,000) or less or net
25 income after federal income taxes for each of the two (2) preceding
26 fiscal years of three million dollars (\$3,000,000) or less; or
27 2. Is a knowledge-based business, as shall be prescribed by the executive

5 (b) Is actively and principally engaged in a qualified activity within the
6 Commonwealth, or will be actively and principally engaged in a qualified
7 activity within the Commonwealth after the receipt of a qualified investment
8 by an investment fund;

9 (c) Has no more than one hundred (100) employees; and

10 (d) Has more than fifty percent (50%) of its assets, operations, and employees
11 located in Kentucky.