

Introduced by

1 A BILL for an Act to amend and reenact sections 57-38-01.26 and 57-38.5-02 of the North  
2 Dakota Century Code, relating to investments in qualified businesses for purposes of the angel  
3 fund investment tax credit and publication of a list of qualified businesses; and to provide an  
4 effective date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **57-38-01.26. Angel fund investment tax credit.**

- 9 1. A taxpayer is entitled to a credit against state income tax liability under section  
10 57-38-30 or 57-38-30.3 for an investment made after December 31, 2017, in an angel  
11 fund that is a domestic organization created under the laws of this state: which is  
12 invested by the angel fund in a "qualified business." The amount of the credit to which  
13 a taxpayer is entitled is ~~forty-five~~thirty-five percent of the amount remitted by the  
14 taxpayer to an angel fund and invested by the angel fund in a qualified business  
15 during the taxable year. For purposes of this section, "qualified business" has the  
16 meaning provided in section 57-38.5-01. The aggregate annual credit for which a  
17 taxpayer may obtain a tax credit is not more than forty-five thousand dollars. The  
18 aggregate lifetime credits under this section that may be obtained by an individual,  
19 married couple, passthrough entity and its affiliates, or other taxpayer is five hundred  
20 thousand dollars. The investment used to calculate the credit under this section may  
21 not be used to calculate any other income tax deduction or credit allowed by law.
- 22 2. To be eligible for the credit, the investment must be ~~at risk in the angel fund for at least~~  
23 ~~three years~~invested by the angel fund in a qualified business. An investment made in a  
24 qualified business from the assets of a retirement plan is deemed to be the retirement

1 plan participant's investment for the purpose of this section if a separate account is  
2 maintained for the plan participant and the participant directly controls where the  
3 account assets are invested. Investments placed in escrow do not qualify for the  
4 credit. The credit must be claimed in the taxable year in which the investment in the  
5 angel fund was received by ~~the angel fund~~ a qualified business. The credit allowed  
6 may not exceed the liability for tax under this chapter. If the amount of credit  
7 determined under this section exceeds the liability for tax under this chapter, the  
8 excess may be carried forward to each of the seven succeeding taxable years. A  
9 taxpayer claiming a credit under this section may not claim any credit available to the  
10 taxpayer as a result of an investment made by the angel fund in a qualified business  
11 under chapter 57-38.5 or 57-38.6. A taxpayer that invests in an angel fund before  
12 January 1, 2018, is subject to the credit provisions and reporting requirements in place  
13 at the time the investment was remitted by the taxpayer to the angel fund.

14 3. An angel fund must:

- 15 a. Be a partnership, limited partnership, corporation, limited liability company, limited  
16 liability partnership, limited liability limited partnership, trust, or estate organized  
17 on a for-profit basis which is headquartered in this state.
- 18 b. Be organized for the purpose of investing in a portfolio of at least three ~~primary-~~  
19 ~~sector companies that are early-stage and mid-stage private, nonpublicly traded~~  
20 ~~enterprises with strong growth potential. For purposes of this section, an~~  
21 ~~early-stage entity means an entity with annual revenues of up to two million-~~  
22 ~~dollars and a mid-stage entity means an entity with annual revenues over two-~~  
23 ~~million dollars not to exceed ten million dollars~~ qualified businesses. Investments  
24 in real estate or real estate holding companies are not eligible investments by  
25 certified angel funds. Any angel fund certified before January 1, 2013, which has  
26 invested in real estate or a real estate holding company is not eligible for  
27 recertification.
- 28 c. Consist of at least six accredited investors as defined by securities and exchange  
29 commission regulation D, rule 501.
- 30 d. Not have more than twenty-five percent of its capitalized investment assets  
31 owned by an individual investor.

- 1 e. Have at least five hundred thousand dollars in commitments from accredited  
2 investors and that capital must be subject to call to be invested over an  
3 unspecified number of years to build a portfolio of investments in enterprises that  
4 include at least three qualified businesses.
- 5 f. Be member-managed or a manager-managed limited liability company and the  
6 investor members or a designated board that includes investor members must  
7 make decisions as a group on which enterprises are worthy of investments.
- 8 g. Be certified as an angel fund that meets the requirements of this section by the  
9 department of commerce. The director may revoke an angel fund's certification if  
10 any angel fund representative knowingly makes or causes to be made, any  
11 material false statement or representation in any application, report, or other  
12 document required to be filed under this section, or omits any material statement  
13 or fact in any application, report, or other document required to be filed under this  
14 section, which is necessary to make the statement made, in light of the  
15 circumstances under which the statement is made, not misleading.
- 16 h. Be in compliance with ~~the securities laws of this state~~ state and federal securities  
17 laws. Failure to remain in compliance with state and federal securities laws is  
18 grounds for revocation of an angel fund's certification and loss of the tax credit.
- 19 i. Within thirty days after the date on which an investment in an angel fund is ~~made~~  
20 invested by the angel fund in a qualified business, the angel fund shall file with  
21 the tax commissioner and provide to the investor completed forms prescribed by  
22 the tax commissioner which show as to each investment made by the investor in  
23 the angel fund the following:
- 24 (1) The name, address, and social security number or federal employer  
25 identification number of the taxpayer or passthrough entity that made the  
26 investment;
- 27 (2) The dollar amount remitted to the angel fund by the taxpayer or passthrough  
28 entity; ~~and~~
- 29 (3) The date ~~the payment was received by the angel fund for the investment~~ all  
30 or a portion of the investment remitted by the taxpayer or passthrough entity  
31 to the angel fund was invested by the angel fund in a qualified business;

- 1           (4) The name and principal place of business of the qualified business that  
2                     received the investment from the angel fund; and
- 3           (5) The amount of the investment received by the qualified business.
- 4           j. ~~Within thirty days after the end of a calendar year, the angel fund shall file with~~  
5                     ~~the tax commissioner a report showing the name and principal place of business~~  
6                     ~~of each enterprise in which the angel fund has an investment.~~
- 7           4. The tax commissioner may, upon request of the legislative management, shall  
8                     disclose to the legislative management the reported information described under  
9                     paragraphs 2 ~~and 3~~through 5 of subdivision i of subsection 3 ~~and the reported~~  
10                    ~~information described under subdivision j of subsection 3.~~
- 11           5. Angel fund investors may be actively involved in the enterprises in which the angel  
12                     fund invests but the angel fund may not invest in any enterprise if any one angel fund  
13                     investor owns directly or indirectly more than forty-nine percent of the ownership  
14                     interests in the enterprise. The angel fund may not invest in an enterprise if any one  
15                     partner, shareholder, or member of a passthrough entity ~~that~~ directly or indirectly owns  
16                     more than forty-nine percent of the ownership interests in the enterprise.
- 17           6. Investors in one angel fund may not receive more than five million dollars in aggregate  
18                     credits under this section during the life of the angel fund but this provision may not be  
19                     interpreted to limit additional investments in that angel fund.
- 20           7. a. A passthrough entity entitled to the credit under this section must be considered  
21                     to be the taxpayer for purposes of this section, and the amount of the credit  
22                     allowed must be determined at the passthrough entity level and must be passed  
23                     through to the partners, shareholders, or members in proportion to their  
24                     respective interests in the passthrough entity.
- 25           b. ~~For the first two taxable years beginning after December 31, 2010, if a~~  
26                     ~~passthrough entity does not elect to sell, transfer, or assign the credit as provided~~  
27                     ~~under this subsection and subsection 8, the amount of the total credit determined~~  
28                     ~~at the entity level must be passed through to the partners, shareholders, or~~  
29                     ~~members in proportion to their respective interests in the passthrough entity.~~
- 30           c. ~~For the first two taxable years beginning after December 31, 2010, if a~~  
31                     ~~passthrough entity elects to sell, transfer, or assign a credit as provided under~~

1           ~~this subsection and subsection 8, the passthrough entity shall make an~~  
2           ~~irrevocable election to sell, transfer, or assign the credit on the return filed by the~~  
3           ~~entity for the taxable year in which the credit was earned. A passthrough entity~~  
4           ~~that makes a valid election to sell, transfer, or assign a credit shall sell one~~  
5           ~~hundred percent of the credit earned, may sell the credit to only one purchaser,~~  
6           ~~and shall comply with the requirements of this subsection and subsection 8.~~

7       8. ~~For the first two taxable years beginning after December 31, 2010, a taxpayer may~~  
8       ~~elect to sell, transfer, or assign all of the earned or excess tax credit earned under this~~  
9       ~~section for investment in an angel fund established after July 31, 2011, subject to the~~  
10       ~~following:~~

- 11       a. ~~A taxpayer's total credit sale, transfer, or assignment under this section may not~~  
12       ~~exceed one hundred thousand dollars over any combination of taxable years.~~  
13       ~~The cumulative credits transferred by all investors in an angel fund may not~~  
14       ~~exceed fifty percent of the aggregate credits under this section during the life of~~  
15       ~~the angel fund under subsection 6.~~
- 16       b. ~~If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the~~  
17       ~~tax credit transferor and the tax credit purchaser jointly shall file with the tax~~  
18       ~~commissioner a copy of the purchase agreement and a statement containing the~~  
19       ~~names, addresses, and taxpayer identification numbers of the parties to the~~  
20       ~~transfer, the amount of the credit being transferred, the gross proceeds received~~  
21       ~~by the transferor, and the taxable year or years for which the credit may be~~  
22       ~~claimed. The taxpayer and the purchaser also shall file a document allowing the~~  
23       ~~tax commissioner to disclose tax information to either party for the purpose of~~  
24       ~~verifying the correctness of the transferred tax credit. The purchase agreement,~~  
25       ~~supporting statement, and waiver must be filed within thirty days after the date~~  
26       ~~the purchase agreement is fully executed.~~
- 27       c. ~~The purchaser of the tax credit shall claim the credit beginning with the taxable~~  
28       ~~year in which the credit purchase agreement was fully executed by the parties. A~~  
29       ~~purchaser of a tax credit under this section has only such rights to claim and use~~  
30       ~~the credit under the terms that would have applied to the tax credit transferor.~~  
31       ~~This subsection does not limit the ability of the tax credit purchaser to reduce the~~

- 1 tax liability of the purchaser, regardless of the actual tax liability of the tax credit  
2 transferor.
- 3 d. ~~A sale, assignment, or transfer of a tax credit under this section is irrevocable and~~  
4 ~~the purchaser of the tax credit may not sell, assign, or otherwise transfer the~~  
5 ~~credit.~~
- 6 e. ~~If the amount of the credit available under this section is changed as a result of~~  
7 ~~an amended return filed by the transferor, or as the result of an audit conducted~~  
8 ~~by the internal revenue service or the tax commissioner, the transferor shall~~  
9 ~~report to the purchaser the adjusted credit amount within thirty days of the~~  
10 ~~amended return or within thirty days of the final determination made by the~~  
11 ~~internal revenue service or the tax commissioner. The tax credit purchaser shall~~  
12 ~~file amended returns reporting the additional tax due or claiming a refund as~~  
13 ~~provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit~~  
14 ~~these returns and assess or issue refunds, even though other time periods~~  
15 ~~prescribed in these sections may have expired for the purchaser.~~
- 16 f. ~~Gross proceeds received by the tax credit transferor must be assigned to North~~  
17 ~~Dakota. The amount assigned under this subsection cannot be reduced by the~~  
18 ~~taxpayer's income apportioned to North Dakota or any North Dakota net~~  
19 ~~operating loss of the taxpayer.~~
- 20 g. ~~The tax commissioner has four years after the date of the credit assignment to~~  
21 ~~audit the returns of the credit transferor and the purchaser to verify the~~  
22 ~~correctness of the amount of the transferred credit and if necessary assess the~~  
23 ~~credit purchaser if additional tax is found due. This subdivision does not limit or~~  
24 ~~restrict any other time period prescribed in this chapter for the assessment of tax.~~
- 25 h. ~~The tax commissioner may adopt rules to establish necessary administrative~~  
26 ~~provisions for the credit under this section, including provisions to permit~~  
27 ~~verification of the validity and timeliness of the transferred tax credit.~~
- 28 9. The tax commissioner may disallow any credit otherwise allowed under this section if  
29 any representation by a business in the application for certification as a qualified  
30 business proves to be false or if the taxpayer fails to satisfy any conditions under this  
31 section or any conditions consistent with this section otherwise determined by the tax

1           commissioner. The commissioner has four years after the due date of the return or  
2           after the return was filed, whichever period expires later, to audit the credit and assess  
3           additional tax that may be found due to failure to comply with this section. The amount  
4           of any credit disallowed by the tax commissioner which reduced the taxpayer's income  
5           tax liability for any or all applicable tax years, plus penalty and interest as provided  
6           under section 57-38-45, must be paid by the taxpayer.

7           **SECTION 2. AMENDMENT.** Section 57-38.5-02 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **57-38.5-02. Certification - Investment reporting by qualified businesses - Maximum**  
10 **investments in qualified businesses.**

- 11           1. The director shall certify whether a business that has requested to become a qualified  
12 business meets the requirements of subsection 5 of section 57-38.5-01. The director  
13 shall make publicly available a list of all businesses certified or recertified as a  
14 qualified business and shall update the list on a monthly basis. The director shall  
15 establish the necessary forms and procedures for certifying qualified businesses.
- 16           2. A qualified business may apply to the director for a recertification. Only one  
17 recertification is available to a qualified business. The application for recertification  
18 must be filed with the director within ninety days before the original certification expiry  
19 date. The recertification issued by the director must comply with the provisions of  
20 subsection 3.
- 21           3. A certification letter must be issued by the director to the qualified business. The  
22 certification letter must include:
- 23           a. The certification effective date.
- 24           b. The certification expiry date. The expiry date may not be more than four years  
25 from the certification effective date.
- 26           4. The maximum aggregate amount of qualified investments a qualified business may  
27 receive for all tax years is limited to five hundred thousand dollars under this chapter.  
28 The tax credit allowed on qualified investments in a qualified business must be  
29 allowed to taxpayers in the chronological order of the taxpayer's qualified investments  
30 as determined from the forms filed under section 57-38.5-07. The limitation on

1 investments under this subsection may not be interpreted to limit additional investment  
2 by a taxpayer for which that taxpayer is not applying for a credit.

3 5. By February first in each of the five years following a year in which a qualified  
4 business receives a qualified investment, the qualified business shall file with the  
5 director completed forms prescribed by the director which show the qualified business  
6 meets the requirements under section 57-38.5-01.

7 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years after December 31,  
8 2017.