

Sixty-fifth
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1045

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact section 57-38-01.26, and subsection 7 of section
2 57-38-30.3, ~~subsection 5 of section 57-38.5-01, and sections 57-38.5-02, 57-38.5-03,~~
3 ~~57-38.5-04, 57-38.5-05, and 57-38.5-06~~ of the North Dakota Century Code, relating to the angel
4 fund investment tax credit ~~and the seed capital investment tax credit; to repeal section-~~
5 ~~57-38-01.26 and chapter 57-38.5 of the North Dakota Century Code, relating to the angel fund-~~
6 ~~investment tax credit and the seed capital investment tax credit; to provide a penalty;~~ to provide
7 an effective date; and to provide an expiration date.

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

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

11 **57-38-01.26. (Effective for investments made before July 1, 2017) Angel fund**
12 **investment tax credit.**

13 1. A taxpayer is entitled to a credit against state income tax liability under section
14 57-38-30 or 57-38-30.3 for an investment made ~~prior to April~~ July 1, 2017, in an angel
15 fund that is a domestic organization ~~created~~ organized before July 1, 2017, under the
16 laws of this state. The amount of the credit to which a taxpayer is entitled is forty-five
17 percent of the amount remitted by the taxpayer to an angel fund during the taxable
18 year. The aggregate annual credit for which a taxpayer may obtain a tax credit is not
19 more than forty-five thousand dollars. The aggregate lifetime credits under this section
20 that may be obtained by an individual, married couple, passthrough entity and its
21 affiliates, or other taxpayer is five hundred thousand dollars. The investment used to
22 calculate the credit under this section may not be used to calculate any other income
23 tax deduction or credit allowed by law.

- 1 2. To be eligible for the credit, the investment must be at risk in the angel fund for at least
2 three years. An investment made in a qualified business from the assets of a
3 retirement plan is deemed to be the retirement plan participant's investment for the
4 purpose of this section if a separate account is maintained for the plan participant and
5 the participant directly controls where the account assets are invested. Investments
6 placed in escrow do not qualify for the credit. The credit must be claimed in the taxable
7 year in which the investment in the angel fund was received by the angel fund. The
8 credit allowed may not exceed the liability for tax under this chapter. If the amount of
9 credit determined under this section exceeds the liability for tax under this chapter, the
10 excess may be carried forward to each of the seven succeeding taxable years. A
11 taxpayer claiming a credit under this section may not claim any credit available to the
12 taxpayer as a result of an investment made by the angel fund in a qualified business
13 under chapter 57-38.5 or 57-38.6.
- 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. Investments in real estate or real
24 estate holding companies are not eligible investments by certified angel funds.
25 Any angel fund certified before January 1, 2013, which has invested in real estate
26 or a real estate holding company is not eligible for recertification.
- 27 c. Consist of at least six accredited investors as defined by securities and exchange
28 commission regulation D, rule 501.
- 29 d. Not have more than twenty-five percent of its capitalized investment assets
30 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.
- 4 f. Be member-managed or a manager-managed limited liability company and the
5 investor members or a designated board that includes investor members must
6 make decisions as a group on which enterprises are worthy of investments.
- 7 g. Be certified as an angel fund that meets the requirements of this section by the
8 department of commerce.
- 9 h. Be in compliance with the securities laws of this state.
- 10 i. Within thirty days after the date on which an investment in an angel fund is made,
11 the angel fund shall file with the tax commissioner and provide to the investor
12 completed forms prescribed by the tax commissioner which show as to each
13 investment in the angel fund the following:
- 14 (1) The name, address, and social security number or federal employer
15 identification number of the taxpayer or passthrough entity that made the
16 investment;
- 17 (2) The dollar amount remitted by the taxpayer or passthrough entity; and
18 (3) The date the payment was received by the angel fund for the investment.
- 19 j. Within thirty days after the end of a calendar year, the angel fund shall file with
20 the tax commissioner a report showing the name and principal place of business
21 of each enterprise in which the angel fund has an investment and the amount of
22 the investment.
- 23 4. The tax commissioner may disclose to the legislative management the reported
24 information described under paragraphs 2 and 3 of subdivision i of subsection 3 and
25 the reported information described under subdivision j of subsection 3.
- 26 5. Angel fund investors may be actively involved in the enterprises in which the angel
27 fund invests but the angel fund may not invest in any enterprise if any one angel fund
28 investor owns directly or indirectly more than forty-nine percent of the ownership
29 interests in the enterprise. The angel fund may not invest in an enterprise if any one
30 partner, shareholder, or member of a passthrough entity that directly or indirectly owns
31 more than forty-nine percent of the ownership interests in the enterprise.

- 1 6. Investors in one angel fund may not receive more than five million dollars in aggregate
2 credits under this section during the life of the angel fund but this provision may not be
3 interpreted to limit additional investments in that angel fund.
- 4 7. a. A passthrough entity entitled to the credit under this section must be considered
5 to be the taxpayer for purposes of this section, and the amount of the credit
6 allowed must be determined at the passthrough entity level.
- 7 b. ~~For the first two taxable years beginning after December 31, 2010, if a~~
8 ~~passthrough entity does not elect to sell, transfer, or assign the credit as provided~~
9 ~~under this subsection and subsection 8, the amount of the total credit determined~~
10 ~~at the entity level must be passed through to the partners, shareholders, or~~
11 ~~members in proportion to their respective interests in the passthrough entity.~~
- 12 e. ~~For the first two taxable years beginning after December 31, 2010, if a~~
13 ~~passthrough entity elects to sell, transfer, or assign a credit as provided under~~
14 ~~this subsection and subsection 8, the passthrough entity shall make an~~
15 ~~irrevocable election to sell, transfer, or assign the credit on the return filed by the~~
16 ~~entity for the taxable year in which the credit was earned. A passthrough entity~~
17 ~~that makes a valid election to sell, transfer, or assign a credit shall sell one~~
18 ~~hundred percent of the credit earned, may sell the credit to only one purchaser,~~
19 ~~and shall comply with the requirements of this subsection and subsection 8.~~
- 20 8. ~~For the first two taxable years beginning after December 31, 2010, a taxpayer may~~
21 ~~elect to sell, transfer, or assign all of the earned or excess tax credit earned under this~~
22 ~~section for investment in an angel fund established after July 31, 2011, subject to the~~
23 ~~following:~~
- 24 a. ~~A taxpayer's total credit sale, transfer, or assignment under this section may not~~
25 ~~exceed one hundred thousand dollars over any combination of taxable years.~~
26 ~~The cumulative credits transferred by all investors in an angel fund may not~~
27 ~~exceed fifty percent of the aggregate credits under this section during the life of~~
28 ~~the angel fund under subsection 6.~~
- 29 b. ~~If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the~~
30 ~~tax credit transferor and the tax credit purchaser jointly shall file with the tax~~
31 ~~commissioner a copy of the purchase agreement and a statement containing the~~

1 names, addresses, and taxpayer identification numbers of the parties to the
2 transfer, the amount of the credit being transferred, the gross proceeds received
3 by the transferor, and the taxable year or years for which the credit may be
4 claimed. The taxpayer and the purchaser also shall file a document allowing the
5 tax commissioner to disclose tax information to either party for the purpose of
6 verifying the correctness of the transferred tax credit. The purchase agreement,
7 supporting statement, and waiver must be filed within thirty days after the date
8 the purchase agreement is fully executed.

- 9 e. The purchaser of the tax credit shall claim the credit beginning with the taxable
10 year in which the credit purchase agreement was fully executed by the parties. A
11 purchaser of a tax credit under this section has only such rights to claim and use
12 the credit under the terms that would have applied to the tax credit transferor.
13 This subsection does not limit the ability of the tax credit purchaser to reduce the
14 tax liability of the purchaser, regardless of the actual tax liability of the tax credit
15 transferor.
- 16 d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and
17 the purchaser of the tax credit may not sell, assign, or otherwise transfer the
18 credit.
- 19 e. If the amount of the credit available under this section is changed as a result of
20 an amended return filed by the transferor, or as the result of an audit conducted
21 by the internal revenue service or the tax commissioner, the transferor shall
22 report to the purchaser the adjusted credit amount within thirty days of the
23 amended return or within thirty days of the final determination made by the
24 internal revenue service or the tax commissioner. The tax credit purchaser shall
25 file amended returns reporting the additional tax due or claiming a refund as
26 provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit
27 these returns and assess or issue refunds, even though other time periods
28 prescribed in these sections may have expired for the purchaser.
- 29 f. Gross proceeds received by the tax credit transferor must be assigned to North
30 Dakota. The amount assigned under this subsection cannot be reduced by the

- 1 taxpayer's income apportioned to North Dakota or any North Dakota net
2 operating loss of the taxpayer.
- 3 g. ~~The tax commissioner has four years after the date of the credit assignment to~~
4 ~~audit the returns of the credit transferor and the purchaser to verify the~~
5 ~~correctness of the amount of the transferred credit and if necessary assess the~~
6 ~~credit purchaser if additional tax is found due. This subdivision does not limit or~~
7 ~~restrict any other time period prescribed in this chapter for the assessment of tax.~~
- 8 h. The tax commissioner may adopt rules to establish necessary administrative
9 provisions for the credit under this section, ~~including provisions to permit~~
10 verification of the validity and timeliness of the transferred tax credit.

11 **SECTION 2. AMENDMENT.** Section 57-38-01.26 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **57-38-01.26. (Effective for investments made after June 30, 2017) Angel fund**
14 **investment investor tax credit.**

- 15 ~~1. A taxpayer is entitled to a credit against state income tax liability under section~~
16 ~~57-38-30 or 57-38-30.3 for an investment made in an angel fund that is a domestic~~
17 ~~organization created under the laws of this state. The amount of the credit to which a~~
18 ~~taxpayer is entitled is forty five percent of the amount remitted by the taxpayer to an~~
19 ~~angel fund during the taxable year. The aggregate annual credit for which a taxpayer~~
20 ~~may obtain a tax credit is not more than forty five thousand dollars. The aggregate~~
21 ~~lifetime credits under this section that may be obtained by an individual, married~~
22 ~~couple, passthrough entity and its affiliates, or other taxpayer is five hundred thousand~~
23 ~~dollars. The investment used to calculate the credit under this section may not be used~~
24 ~~to calculate any other income tax deduction or credit allowed by law.~~
- 25 ~~2. To be eligible for the credit, the investment must be at risk in the angel fund for at least~~
26 ~~three years. An investment made in a qualified business from the assets of a~~
27 ~~retirement plan is deemed to be the retirement plan participant's investment for the~~
28 ~~purpose of this section if a separate account is maintained for the plan participant and~~
29 ~~the participant directly controls where the account assets are invested. Investments~~
30 ~~placed in escrow do not qualify for the credit. The credit must be claimed in the taxable~~
31 ~~year in which the investment in the angel fund was received by the angel fund. The~~

1 credit allowed may not exceed the liability for tax under this chapter. If the amount of
2 credit determined under this section exceeds the liability for tax under this chapter, the
3 excess may be carried forward to each of the seven succeeding taxable years. A
4 taxpayer claiming a credit under this section may not claim any credit available to the
5 taxpayer as a result of an investment made by the angel fund in a qualified business
6 under chapter 57-38.5 or 57-38.6.

7 ~~3. An angel fund must:~~

8 ~~a. Be a partnership, limited partnership, corporation, limited liability company, limited~~
9 ~~liability partnership, limited liability limited partnership, trust, or estate organized~~
10 ~~on a for-profit basis which is headquartered in this state.~~

11 ~~b. Be organized for the purpose of investing in a portfolio of at least three primary~~
12 ~~sector companies that are early-stage and mid-stage private, nonpublicly traded~~
13 ~~enterprises with strong growth potential. For purposes of this section, an~~
14 ~~early-stage entity means an entity with annual revenues of up to two million~~
15 ~~dollars and a mid-stage entity means an entity with annual revenues over two~~
16 ~~million dollars not to exceed ten million dollars. Investments in real estate or real~~
17 ~~estate holding companies are not eligible investments by certified angel funds.~~
18 ~~Any angel fund certified before January 1, 2013, which has invested in real estate~~
19 ~~or a real estate holding company is not eligible for recertification.~~

20 ~~c. Consist of at least six accredited investors as defined by securities and exchange~~
21 ~~commission regulation D, rule 501.~~

22 ~~d. Not have more than twenty-five percent of its capitalized investment assets~~
23 ~~owned by an individual investor.~~

24 ~~e. Have at least five hundred thousand dollars in commitments from accredited~~
25 ~~investors and that capital must be subject to call to be invested over an~~
26 ~~unspecified number of years to build a portfolio of investments in enterprises.~~

27 ~~f. Be member-managed or a manager-managed limited liability company and the~~
28 ~~investor members or a designated board that includes investor members must~~
29 ~~make decisions as a group on which enterprises are worthy of investments.~~

30 ~~g. Be certified as an angel fund that meets the requirements of this section by the~~
31 ~~department of commerce.~~

- 1 ~~h. Be in compliance with the securities laws of this state.~~
- 2 ~~i. Within thirty days after the date on which an investment in an angel fund is made,~~
3 ~~the angel fund shall file with the tax commissioner and provide to the investor~~
4 ~~completed forms prescribed by the tax commissioner which show as to each~~
5 ~~investment in the angel fund the following:~~
- 6 ~~(1) The name, address, and social security number or federal employer~~
7 ~~identification number of the taxpayer or passthrough entity that made the~~
8 ~~investment;~~
- 9 ~~(2) The dollar amount remitted by the taxpayer or passthrough entity; and~~
- 10 ~~(3) The date the payment was received by the angel fund for the investment.~~
- 11 ~~j. Within thirty days after the end of a calendar year, the angel fund shall file with~~
12 ~~the tax commissioner a report showing the name and principal place of business~~
13 ~~of each enterprise in which the angel fund has an investment.~~
- 14 ~~4. The tax commissioner may disclose to the legislative management the reported~~
15 ~~information described under paragraphs 2 and 3 of subdivision i of subsection 3 and~~
16 ~~the reported information described under subdivision j of subsection 3.~~
- 17 ~~5. Angel fund investors may be actively involved in the enterprises in which the angel~~
18 ~~fund invests but the angel fund may not invest in any enterprise if any one angel fund~~
19 ~~investor owns directly or indirectly more than forty-nine percent of the ownership~~
20 ~~interests in the enterprise. The angel fund may not invest in an enterprise if any one~~
21 ~~partner, shareholder, or member of a passthrough entity that directly or indirectly owns~~
22 ~~more than forty-nine percent of the ownership interests in the enterprise.~~
- 23 ~~6. Investors in one angel fund may not receive more than five million dollars in aggregate~~
24 ~~credits under this section during the life of the angel fund but this provision may not be~~
25 ~~interpreted to limit additional investments in that angel fund.~~
- 26 ~~7. a. A passthrough entity entitled to the credit under this section must be considered~~
27 ~~to be the taxpayer for purposes of this section, and the amount of the credit~~
28 ~~allowed must be determined at the passthrough entity level.~~
- 29 ~~b. For the first two taxable years beginning after December 31, 2010, if a~~
30 ~~passthrough entity does not elect to sell, transfer, or assign the credit as provided~~
31 ~~under this subsection and subsection 8, the amount of the total credit determined~~

1 at the entity level must be passed through to the partners, shareholders, or
2 members in proportion to their respective interests in the passthrough entity.

3 ~~c. For the first two taxable years beginning after December 31, 2010, if a
4 passthrough entity elects to sell, transfer, or assign a credit as provided under
5 this subsection and subsection 8, the passthrough entity shall make an
6 irrevocable election to sell, transfer, or assign the credit on the return filed by the
7 entity for the taxable year in which the credit was earned. A passthrough entity
8 that makes a valid election to sell, transfer, or assign a credit shall sell one-
9 hundred percent of the credit earned, may sell the credit to only one purchaser,
10 and shall comply with the requirements of this subsection and subsection 8.~~

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

15 ~~a. A taxpayer's total credit sale, transfer, or assignment under this section may not
16 exceed one hundred thousand dollars over any combination of taxable years.
17 The cumulative credits transferred by all investors in an angel fund may not
18 exceed fifty percent of the aggregate credits under this section during the life of
19 the angel fund under subsection 6.~~

20 ~~b. If the taxpayer elects to sell, assign, or transfer a credit under this subsection, the
21 tax credit transferor and the tax credit purchaser jointly shall file with the tax
22 commissioner a copy of the purchase agreement and a statement containing the
23 names, addresses, and taxpayer identification numbers of the parties to the
24 transfer, the amount of the credit being transferred, the gross proceeds received
25 by the transferor, and the taxable year or years for which the credit may be
26 claimed. The taxpayer and the purchaser also shall file a document allowing the
27 tax commissioner to disclose tax information to either party for the purpose of
28 verifying the correctness of the transferred tax credit. The purchase agreement,
29 supporting statement, and waiver must be filed within thirty days after the date
30 the purchase agreement is fully executed.~~

~~c. The purchaser of the tax credit shall claim the credit beginning with the taxable year in which the credit purchase agreement was fully executed by the parties. A purchaser of a tax credit under this section has only such rights to claim and use the credit under the terms that would have applied to the tax credit transferor. This subsection does not limit the ability of the tax credit purchaser to reduce the tax liability of the purchaser, regardless of the actual tax liability of the tax credit transferor.~~

~~d. A sale, assignment, or transfer of a tax credit under this section is irrevocable and the purchaser of the tax credit may not sell, assign, or otherwise transfer the credit.~~

~~e. If the amount of the credit available under this section is changed as a result of an amended return filed by the transferor, or as the result of an audit conducted by the internal revenue service or the tax commissioner, the transferor shall report to the purchaser the adjusted credit amount within thirty days of the amended return or within thirty days of the final determination made by the internal revenue service or the tax commissioner. The tax credit purchaser shall file amended returns reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40, and the tax commissioner may audit these returns and assess or issue refunds, even though other time periods prescribed in these sections may have expired for the purchaser.~~

~~f. Gross proceeds received by the tax credit transferor must be assigned to North Dakota. The amount assigned under this subsection cannot be reduced by the taxpayer's income apportioned to North Dakota or any North Dakota net operating loss of the taxpayer.~~

~~g. The tax commissioner has four years after the date of the credit assignment to audit the returns of the credit transferor and the purchaser to verify the correctness of the amount of the transferred credit and if necessary assess the credit purchaser if additional tax is found due. This subdivision does not limit or restrict any other time period prescribed in this chapter for the assessment of tax.~~

~~h. The tax commissioner may adopt rules to establish necessary administrative provisions for the credit under this section, including provisions to permit verification of the validity and timeliness of the transferred tax credit.~~

1. For investments made after June 30, 2017, an angel investor is entitled to a credit against the income tax liability under section 57-38-30.3 for investments made by a certified angel fund into an in-state qualified business or an out-of-state qualified business. The credit is equal to thirty-five percent of the amount invested by the angel fund on behalf of the angel investor in an in-state qualified business during the taxable year and twenty-five percent of the amount invested by the angel fund on behalf of the angel investor in an out-of-state qualified business during the taxable year.

a. The aggregate amount of credits allowed to an angel investor in a taxable year is limited to forty-five thousand dollars. The aggregate amount of credits allowed to an angel investor for investments made in all taxable years is five hundred thousand dollars. The limitation under this subdivision does not apply to the angel fund but applies to each angel investor.

b. The credit must be claimed in the taxable year in which the investment is made in an in-state qualified business or an out-of-state qualified business. The credit allowed may not exceed the liability for tax under this chapter. If the amount of the credit determined under this section exceeds the liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.

c. The investment used to calculate the credit under this section may not be used to calculate any other income tax deduction or credit allowed by law.

d. Angel investors may not receive more than five million dollars in aggregate credits under this section during the life of an angel fund but this provision may not be interpreted to limit additional investments in that angel fund.

e. Investments placed in escrow do not qualify for the credit.

f. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners.

1 shareholders, or members in proportion to their respective interests in the
2 passthrough entity. An individual taxpayer may take the credit passed through
3 under this section against the individual's state income tax liability under section
4 57-38-30.3.

5 2. For purposes of this section:

6 a. "Early-stage entity" means an entity with annual revenues of up to two million
7 dollars.

8 b. "In-state qualified business" means an early-stage or mid-stage private,
9 nonpublicly traded enterprise that:

10 (1) Is created, or its satellite operation is created, as a for-profit entity under the
11 laws of this state.

12 (2) Has its principal office in this state and has the majority of its business
13 activity performed in this state, except sales activity, or has a significant
14 operation in this state that has or is projected to have more than ten
15 employees in this state.

16 (3) Relies on research or the development of new products and processes in its
17 plans for growth and profitability.

18 (4) Is in compliance with state and federal securities laws.

19 (5) Is not an entity or enterprise which is engaged in real estate development, is
20 a real estate holding company, derives income from the selling or leasing of
21 residential or commercial real estate, or carries on operations in the hotel,
22 restaurant, convention, or hospitality industries, or makes any other similar
23 use of real estate.

24 (6) Is certified as an in-state qualified business that meets the requirements of
25 this section by the department of commerce.

26 c. "Investment" means a cash investment in an in-state qualified business or
27 out-of-state qualified business that is made in exchange for common stock, a
28 partnership or membership interest, preferred stock, debt with a mandatory
29 conversion to equity, or an equivalent ownership interest as determined by the
30 tax commissioner.

1 d. "Mid-stage entity" means an entity with annual revenues over two million dollars
2 not to exceed ten million dollars.

3 e. "Out-of-state qualified business" means an early-stage or mid-stage private,
4 nonpublicly traded enterprise that:

5 (1) Is created as a for-profit entity.

6 (2) Relies on research or the development of new products and processes in its
7 plans for growth and profitability.

8 (3) Is in compliance with state and federal securities laws.

9 (4) Is not an entity or enterprise engaged in real estate development, is a real
10 estate holding company, derives income from the selling or leasing of
11 residential or commercial real estate, or carries on operations in the hotel,
12 restaurant, convention, or hospitality industries, or makes any other similar
13 use of real estate.

14 (5) Is certified as an out-of-state qualified business that meets the requirements
15 of this section by the department of commerce.

16 3. An angel fund must:

17 a. Be a passthrough entity organized after June 30, 2017, as a domestic for-profit
18 entity under the laws of this state, and have its headquarters in this state.

19 b. Not have invested, or intend on investing during its certification period, in real
20 estate or real estate activities as described under subdivision e of subsection 2.

21 c. Consist of at least six accredited investors as defined in regulation D, rule 501 of
22 the federal Securities Act of 1933.

23 d. Not have more than twenty-five percent of its capitalized investment assets
24 owned by any one investor.

25 e. Have at least five hundred thousand dollars in commitments from accredited
26 investors which are subject to call to be invested over an unspecified number of
27 years to build a portfolio of investments in enterprises.

28 f. Be member-managed or a manager-managed limited liability company and the
29 investor members or a designated board that includes investor members must
30 make decisions as a group on which enterprises are worthy of investments.

1 g. Be certified as an angel fund that meets the requirements of this subsection by
2 the department of commerce.

3 h. Be in, and remain in, compliance with state and federal securities laws, and
4 invest only in in-state qualified businesses or an out-of-state qualified business
5 that are issuing securities in compliance with state and federal securities laws.

6 4. On or before December 31, 2019, and every two calendar years thereafter, a minimum
7 of fifty percent of an angel fund's investments, as defined under subdivision b of
8 subsection 2, must be invested into an in-state qualified business.

9 5. An angel fund shall hold the investment in an in-state qualified business or an
10 out-of-state qualified business for at least three years from the date of investment. The
11 three-year period does not apply if, before the end of the three-year period:

12 a. The investment becomes worthless;

13 b. Eighty percent or more of the assets of the in-state qualified business or
14 out-of-state qualified business are sold;

15 c. The in-state qualified business or out-of-state qualified business is sold;

16 d. The common stock of the in-state qualified business or out-of-state qualified
17 business begins trading on a public exchange; or

18 e. A partner, shareholder, or member of the angel fund dies, in which case the
19 exception to the three-year holding period only applies to the deceased
20 individual's portion of the investment and related credit.

21 6. Within thirty days after the date on which an angel fund makes an investment in an
22 in-state qualified business or an out-of-state qualified business, the angel fund shall
23 report the investment to the tax commissioner on forms and in the manner prescribed
24 by the tax commissioner. The report must contain:

25 a. The name, address, and federal employer identification number of the angel
26 fund;

27 b. The total amount of the investment from all angel investors investing in the
28 in-state qualified business or out-of-state qualified business;

29 c. The name, address, and social security or federal identification number of each
30 angel investor investing in the in-state qualified business or out-of-state qualified
31 business;

1 d. The amount invested by each angel investor in the in-state qualified business or
2 out-of-state qualified business;

3 e. The type of security received by the angel fund in exchange for the investment;

4 f. The name, address, and federal employer identification number of the in-state
5 qualified business or out-of-state qualified business;

6 g. The type of industry in which the in-state qualified business or out-of-state
7 qualified business is engaged; and

8 h. Any other information the tax commissioner determines is necessary for
9 administration of this section.

10 7. An angel fund is subject to a penalty of one thousand dollars per month for each
11 month, or fraction thereof, the report under subsection 6 is not filed. The tax
12 commissioner, for good cause shown, may waive all or part of the penalty imposed
13 under this subsection.

14 8. By January thirty-first of each year, the angel fund shall file with the tax commissioner
15 a report showing:

16 a. The name and address of each in-state qualified business or out-of-state
17 qualified business in which the angel fund has made an investment;

18 b. The principal place of business for each in-state qualified business or out-of-state
19 qualified business reported under subdivision a;

20 c. The total amount invested in each in-state qualified business or out-of-state
21 qualified business; and

22 d. Any other information the tax commissioner determines is necessary for
23 administration of this section.

24 9. For an angel fund certified before July 1, 2017, within thirty days after the end of each
25 calendar year, the angel fund shall file with the tax commissioner a report showing the
26 name and principal place of business of each enterprise in which the angel fund has
27 an investment and the amount of the investment.

28 10. Upon receipt of a written request from the chairman of the legislative management or
29 the chairman of a standing committee of the legislative assembly, the tax
30 commissioner shall disclose any information described under subsections 6, 8, and 9.
31 This subsection does not authorize disclosure of the angel investor's name, social

security number or federal employer identification number, address, or any other information prohibited from disclosure under this chapter.

11. Angel investors may be actively involved in the in-state qualified businesses or out-of-state qualified businesses in which the angel fund invests but the angel fund may not invest in any in-state qualified business or out-of-state qualified business if any one angel investor owns directly or indirectly more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business.

The angel fund may not invest in an in-state qualified business or an out-of-state qualified business if any one angel investor is a partner, shareholder, or member of another passthrough entity that directly or indirectly owns more than forty-nine percent of the ownership interests in the in-state qualified business or out-of-state qualified business.

12. Failure to comply with any provision of this section is cause to revoke the certification of an angel fund or an in-state qualified business or an out-of-state qualified business, or disallow the credit attributable to the noncompliance.

a. Notice of the revocation of the angel fund or an in-state qualified business's or out-of-state qualified business's certification must be provided to the angel fund or the in-state qualified business or out-of-state qualified business by the tax commissioner, department of commerce, or securities commissioner. Within thirty days of receipt of the notice, the angel fund shall provide a copy of the notice to each of its angel investors.

b. The angel fund's investors shall file an amended return for each taxable year in which the disallowed credit reduced the investor's income tax liability and pay the amount due. The amended return, if required, must be filed within ninety days after the date of the written notice given to the angel fund.

c. If the amended return is not timely filed, the tax commissioner shall disallow the credit and assess any tax due. An assessment of tax made under this subsection is final and irrevocably fixed.

d. If an amended return is filed as required under subdivision b, the tax commissioner has two years after the amended return is filed in which to audit and assess any tax due attributable to the revocation of the credit, even though

1 other time periods for assessment under this chapter have expired. This
2 subdivision does not limit or restrict any other time period for assessment under
3 this chapter that has not expired.

4 13. An angel fund or a representative of the fund that knowingly makes, or causes to be
5 made, any material false statement or representation in any application, report, or
6 other document required to be filed under any provision of this section, or omits to
7 state any material statement or fact in any such application, report, or other document
8 required to be filed under any provision of this section, or fails to file the report
9 required in subsection 8 or 9, and after thirty days' notice to file is given by the tax
10 commissioner, is subject to a penalty of ten thousand dollars.

11 14. Notwithstanding any other provision of law, the tax commissioner, securities
12 commissioner, and the department of commerce may exchange any information
13 obtained under this section to the extent necessary to administer this section.

14 **SECTION 3. AMENDMENT.** Subsection 7 of section 57-38-30.3 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 7. A taxpayer filing a return under this section is entitled to the following tax credits:
- 17 a. Family care tax credit under section 57-38-01.20.
 - 18 b. Renaissance zone tax credits under sections 40-63-04, 40-63-06, and 40-63-07.
 - 19 c. Agricultural business investment tax credit under section 57-38.6-03.
 - 20 d. ~~Seed~~Angel investor seed capital investment tax credit under section 57-38.5-03
21 ~~(effective for the first three taxable years beginning after December 31, 2016).~~
 - 22 e. Planned gift tax credit under section 57-38-01.21.
 - 23 f. Biodiesel fuel or green diesel fuel tax credits under sections 57-38-01.22 and
24 57-38-01.23.
 - 25 g. Internship employment tax credit under section 57-38-01.24.
 - 26 h. Workforce recruitment credit under section 57-38-01.25.
 - 27 i. Angel fund investment tax credit under section 57-38-01.26 (effective for the first
28 three taxable year~~taxable year~~ beginning after December 31, 2016).
 - 29 j. Microbusiness tax credit under section 57-38-01.27.
 - 30 k. Marriage penalty credit under section 57-38-01.28.
 - 31 l. ~~Homestead income tax credit under section 57-38-01.29.~~

- 1 m. ~~Commercial property income tax credit under section 57-38-01.30.~~
- 2 n. ~~Research and experimental expenditures under section 57-38-30.5.~~
- 3 ~~e.m.~~ Geothermal energy device installation credit under section 57-38-01.8.
- 4 ~~p.n.~~ Long-term care partnership plan premiums income tax credit under section
5 57-38-29.3.
- 6 ~~e.o.~~ Employer tax credit for salary and related retirement plan contributions of
7 mobilized employees under section 57-38-01.31.
- 8 ~~r.p.~~ Automating manufacturing processes tax credit under section 57-38-01.33
9 (effective for the first five taxable years beginning after December 31, 2012).
- 10 ~~s.q.~~ Income tax credit for passthrough entity contributions to private education
11 institutions under section 57-38-01.7.

12 r. [Angel investor tax credit under section 57-38-01.26.](#)

13 ~~SECTION 4. AMENDMENT. Subsection 5 of section 57-38.5-01 of the North Dakota~~
14 ~~Century Code is amended and reenacted as follows:—~~

15 ~~5. "Qualified business" means a business other than a real estate investment trust which~~
16 ~~is a primary sector business that:~~

17 ~~a. Is incorporated or its satellite operation is incorporated as a for-profit corporation,~~
18 ~~passthrough entity, or joint venture;~~

19 ~~b. Is in compliance with the requirements for filings with the securities commissioner~~
20 ~~under the securities laws of this state;~~

21 ~~c. Has North Dakota residents as a majority of its employees in the North Dakota~~
22 ~~principal office or the North Dakota satellite operation;~~

23 ~~d. Has its principal office in this state and has the majority of its business activity~~
24 ~~performed in this state, except sales activity, or has a significant operation in~~
25 ~~North Dakota that has or is projected to have more than ten employees or one~~
26 ~~hundred fifty thousand dollars of sales annually; and~~

27 ~~e. Relies on innovation, research, or the development of new products and~~
28 ~~processes in its plans for growth and profitability.~~

29 ~~SECTION 5. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is~~
30 ~~amended and reenacted as follows:~~

~~1 — **57-38.5-02. Certification – Investment reporting by qualified businesses – Maximum**
2 **investments in qualified businesses.**~~

~~3 — 1. The director shall certify whether a business that has requested to become a qualified
4 business meets the requirements of subsection 5 of section 57-38.5-01. The director
5 shall establish the necessary forms and procedures for certifying qualified businesses.~~

~~6 — 2. A qualified business may apply to the director for a recertification. Only one
7 recertification is available to a qualified business. The application for recertification
8 must be filed with the director within ninety days before the original certification expiry
9 date. The recertification issued by the director must comply with the provisions of
10 subsection 3.~~

~~11 — 3. A certification letter must be issued by the director to the qualified business. The
12 certification letter must include:~~

~~13 — a. The certification effective date.~~

~~14 — b. The certification expiry date. The expiry date may not be more than four years
15 from the certification effective date.~~

~~16 — 4. The maximum aggregate amount of qualified investments a qualified business may
17 receive for all tax years is limited to five hundred thousand dollars under this chapter.
18 The tax credit allowed on qualified investments in a qualified business must be
19 allowed to taxpayers in the chronological order of the taxpayer's qualified investments
20 as determined from the forms filed under section 57-38.5-07. The limitation on
21 investments under this subsection may not be interpreted to limit additional investment
22 by a taxpayer for which that taxpayer is not applying for a credit.~~

~~23 — 5. By February first in each of the five years following a year in which a qualified
24 business receives a qualified investment, the qualified business shall file with the tax
25 commissioner completed forms prescribed by the tax commissioner which show the
26 qualified business meets the requirements under section 57-38.5-01.~~

~~27 — **SECTION 6. AMENDMENT.** Section 57-38.5-03 of the North Dakota Century Code is
28 amended and reenacted as follows:~~

~~29 — **57-38.5-03. SeedAngel investor seed capital investment tax credit.**~~

~~30 — If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to
31 a credit against state income tax liability under section 57-38-30 or 57-38-30.3.~~

- ~~1. The amount of the credit to which a taxpayer is entitled is forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year.~~
- ~~2. The maximum annual credit a taxpayer may claim under this section is not more than one hundred twelve thousand five hundred dollars. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.~~
- ~~3. Any amount of credit under subsection 1 not allowed because of the limitation in subsection 2 may be carried forward for up to five taxable years after the taxable year in which the investment was made.~~
- ~~4. A passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and the amount of the credit allowed with respect to a passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.~~
- ~~5. An investment made in a qualified business from the assets of a retirement plan is deemed to be the retirement plan participant's investment for the purpose of this chapter if a separate account is maintained for the plan participant and the participant directly controls where the account assets are invested.~~
- ~~6. The investment must be made on or after the certification effective date and must be at risk in the business to be eligible for the tax credit under this section. An investment for which a credit is received under this section must remain in the business for at least three years. Investments placed in escrow do not qualify for the credit.~~
- ~~7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.~~
- ~~8. A taxpayer who owns a controlling interest in the qualified business or who receives more than fifty percent of the taxpayer's gross annual income from the qualified business is not entitled to a credit under this section. A member of the immediate~~

1 family of a taxpayer disqualified by this subsection is not entitled to the credit under
2 this section. For purposes of this subsection, "immediate family" means the taxpayer's
3 spouse, parent, sibling, or child or the spouse of any such person.

4 ~~9. The tax commissioner may disallow any credit otherwise allowed under this section if~~
5 ~~any representation by a business in the application for certification as a qualified~~
6 ~~business proves to be false or if the taxpayer or qualified business fails to satisfy any~~
7 ~~conditions under this section or any conditions consistent with this section otherwise~~
8 ~~determined by the tax commissioner. The commissioner has four years after the due~~
9 ~~date of the return or after the return was filed, whichever period expires later, to audit~~
10 ~~the credit and assess additional tax that may be found due to failure to comply with the~~
11 ~~provisions of this chapter. The amount of any credit disallowed by the tax~~
12 ~~commissioner that reduced the taxpayer's income tax liability for any or all applicable~~
13 ~~tax years, plus penalty and interest as provided under section 57-38-45, must be paid~~
14 ~~by the taxpayer.~~

15 ~~10. An angel fund that invests in a qualified business must be considered to be the~~
16 ~~taxpayer for purposes of the investment limitations in this section. The amount of the~~
17 ~~credit allowed with respect to an angel fund's investment in a qualified business must~~
18 ~~be determined at the angel fund level. The amount of the total credit determined at the~~
19 ~~angel fund level must be allowed to the investors in the angel fund in proportion to the~~
20 ~~investor's respective interests in the fund. An angel fund that is subject to the tax~~
21 ~~imposed under chapter 57-38 or which was certified under section 57-38-01.26 before~~
22 ~~April 1, 2017, is not eligible for the investment tax credit under this chapter.~~

23 ~~SECTION 7. AMENDMENT. Section 57-38.5-04 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~57-38.5-04. Taxable year for angel investor seed capital investment tax credit.~~

26 ~~The tax credit under section 57-38.5-03 must be credited against the taxpayer's income tax~~
27 ~~liability for the taxable year in which the investment in the qualified business was received by~~
28 ~~the qualified business.~~

29 ~~SECTION 8. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is~~
30 ~~amended and reenacted as follows:~~

1 ~~— **57-38.5-05. SeedAngel investor seed capital investment tax credit limits.**~~

2 ~~— The aggregate amount of angel investor seed capital investment tax credit allowed for~~
3 ~~investments under this chapter is limited to threeten million five hundred thousand dollars for~~
4 ~~each calendar year. If investments in qualified businesses reported to the commissioner under~~
5 ~~section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the~~
6 ~~credit must be allowed to taxpayers in the chronological order of their investments in qualified~~
7 ~~businesses as determined from the forms filed under section 57-38.5-07.~~

8 ~~— **SECTION 9. AMENDMENT.** Section 57-38.5-06 of the North Dakota Century Code is~~
9 ~~amended and reenacted as follows:~~

10 ~~— **57-38.5-06. SeedAngel investor seed capital investment tax credit - Procedure -**~~

11 ~~**Rules:**~~

12 ~~— To receive the tax credit provided by section 57-38.5-03, a taxpayer must claim the credit on~~
13 ~~the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner~~
14 ~~and file with the return a copy of the form issued by the qualified business as to the taxpayer's~~
15 ~~investment in the qualified business under section 57-38.5-07.~~

16 ~~— **SECTION 10. REPEAL.** Section 57-38-01.26 and chapter 57-38.5 of the North Dakota~~
17 ~~Century Code are repealed.~~

18 ~~**SECTION 4. EFFECTIVE DATE.** Section 9 of this This Act is effective for taxable years~~
19 ~~beginning after December 31, 2019, and sections 2 through 8 of this Act are effective for~~
20 ~~taxable years beginning after December 31, 2016.~~