

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2269

Introduced by

Senators Grindberg, Holmberg

Representatives Dosch, Froseth

1 A BILL for an Act to amend and reenact section 57-38-01.26 of the North Dakota Century
2 Code, relating to angel fund investment income tax credits; and to provide an effective date.

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

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

6 **57-38-01.26. Angel fund investment tax credit.**

- 7 1. A taxpayer is entitled to a credit against state income tax liability under section
8 57-38-29, 57-38-30, or 57-38-30.3 for an investment made in an angel fund that is
9 incorporated in this state. ~~The angel fund must be in compliance with the~~
10 ~~securities laws of this state for the investment to qualify for the tax credit under this~~
11 ~~section.~~ The amount of the credit to which a taxpayer is entitled is forty-five
12 percent of the amount invested by the taxpayer in an angel fund during the taxable
13 year. The aggregate annual credit for which a taxpayer may obtain a tax credit is
14 not more than forty-five thousand dollars.
- 15 2. To be eligible for the credit, the investment must be at risk in the angel fund for at
16 least three years. Investments placed in escrow do not qualify for the credit. The
17 credit must be claimed in the taxable year in which the investment in the angel
18 fund was received by the angel fund. The credit allowed may not exceed the
19 liability for tax under this chapter. If the amount of credit determined under this
20 section exceeds the liability for tax under this chapter, the excess may be carried
21 forward to each of the four succeeding taxable years. A taxpayer claiming a credit
22 under this section may not claim any credit available to the taxpayer as a result of
23 an investment made by the angel fund in a qualified business under chapter
24 57-38.5 or 57-38.6.

- 1 3. An angel fund must:
- 2 a. Be a partnership, limited partnership, corporation, limited liability company,
- 3 limited liability partnership, trust, or estate organized on a for-profit basis
- 4 which is headquartered in this state.
- 5 b. Be organized for the purpose of investing in a portfolio of at least three
- 6 early-stage and mid-stage private, nonpublicly traded enterprises with strong
- 7 growth potential.
- 8 c. Consist of at least six accredited investors as defined by securities and
- 9 exchange commission regulation D, rule 501.
- 10 d. Not have more than twenty-five percent of its capitalized investment assets
- 11 owned by an individual investor.
- 12 e. Have at least five hundred thousand dollars in commitments from accredited
- 13 investors and that capital must be subject to call to be invested over an
- 14 unspecified number of years to build a portfolio of investments in enterprises.
- 15 f. Be member-managed and the investor members or a designated board that
- 16 includes investor members must make decisions as a group on which
- 17 enterprises are worthy of investments.
- 18 g. Be certified as an angel fund that meets the requirements of this section by
- 19 the department of commerce.
- 20 h. Be in compliance with the securities laws of this state.
- 21 4. Angel fund investors may be actively involved in the enterprises in which the angel
- 22 fund invests but the angel fund may not invest in any enterprise if any one angel
- 23 fund investor owns more than forty-nine percent of the ownership interests in the
- 24 enterprise.
- 25 5. Investors in one angel fund may not receive more than five million dollars in
- 26 aggregate credits under this section during the life of the angel fund but this
- 27 provision may not be interpreted to limit additional investments in that angel fund.

28 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
29 December 31, 2008.