

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1697

BY: McCORKELL, APPLE, CROCKER,
ROACH, HUDSON and WILLIAMS
of the HOUSE

and

FISHER of the SENATE

COMMITTEE SUBSTITUTE AN ACT RELATING TO STATE GOVERNMENT; AMENDING SECTION 46, CHAPTER 222, O.S.L. 1987, AS AMENDED BY SECTION 1, CHAPTER 150, O.S.L. 1990 (74 O.S. SUPP. 1990, SECTION 5061.7), WHICH RELATES TO TAX CREDITS; AMENDING SECTION 1, CHAPTER 265, O.S.L. 1986, AS LAST AMENDED BY SECTION 14, CHAPTER 328, O.S.L. 1990 (68 O.S. SUPP. 1990, SECTION 2357.7), WHICH RELATES TO VENTURE CAPITAL COMPANIES; AMENDING 71 O.S. 1981, SECTION 102, AS AMENDED BY SECTION 113, CHAPTER 222, O.S.L. 1987 (71 O.S. SUPP. 1990, SECTION 102), WHICH RELATES TO SECURITIES ADVISORY ACTIVITIES; CREATING THE OKLAHOMA CAPITAL FORMATION ACT; PROVIDING SHORT TITLE; PROVIDING LEGISLATIVE INTENT; PROVIDING PROCEDURE FOR CERTAIN TRUST TO BECOME OKLAHOMA CAPITAL INVESTMENT BOARD; MAKING OKLAHOMA CAPITAL INVESTMENT BOARD A PUBLIC TRUST; PROVIDING MISSION OF OKLAHOMA CAPITAL INVESTMENT BOARD; REQUIRING LONG-TERM DIRECTION BY OKLAHOMA FUTURES; PROHIBITING CERTAIN INVOLVEMENT BY OKLAHOMA FUTURES; PROVIDING DEFINITIONS; PROVING MEMBERSHIP FOR OKLAHOMA CAPITAL INVESTMENT BOARD; PROVIDING FOR TERMS OF BOARD MEMBERS; PROVIDING FOR APPOINTMENT OF DIRECTOR; PROVIDING DIRECTORS WITH CERTAIN AUTHORITY; PROVIDING CERTAIN PROCEDURES FOR HOLDING OF MEETINGS; PROVIDING FOR CONFIDENTIALITY OF CERTAIN INFORMATION; PROVIDING FOR

EXECUTIVE SESSIONS; PROVIDING CONFLICT OF INTEREST GUIDELINES FOR CERTAIN INDIVIDUALS AND ENTITIES; MAKING BONDS ISSUED BY BOARD SUBJECT TO CERTAIN OVERSIGHT; PROVIDING FOR THE ISSUANCE OF TAX CREDITS; PROVIDING CERTAIN LIMITATIONS; TRANSFERRING CERTAIN TAX CREDITS TO BOARD; PROVIDING FOR THE TRANSFERABILITY OF TAX CREDITS; PROVIDING FOR OKLAHOMA CAPITAL INVESTMENT BOARD TO DETERMINE AMOUNT OF TAX CREDIT TRANSFER; REQUIRING BOARD TO DEVELOP REGISTRATION SYSTEM; PROVIDING FOR PAYMENT OF CERTAIN FEE; PROVIDING BOARD WITH CERTAIN POWERS; PROVIDING FOR THE EMPLOYMENT OF CERTAIN PERSONS; PROVIDING FOR THE SOLICITATION OF CERTAIN PROPOSALS; PROVIDING FOR THE ESTABLISHMENT OF CERTAIN CRITERIA; PROVIDING BOARD POWER TO EXTEND CERTAIN GUARANTEE; PROVIDING FOR FEE CHARGE; PROVIDING CERTAIN RESTRICTIONS ON FUNDS; PROVIDING FOR PURCHASE OF SECURITIES; PROVIDING BOARD WITH POWERS TO CONTRACT AND EMPLOY; CLARIFYING THAT CERTAIN PERSONS ARE NOT BROKER-DEALERS OR INVESTMENT ADVISORS AND TAX CREDITS ARE NOT SECURITIES; REQUIRING THE PUBLICATION OF CERTAIN REPORT; REQUIRING CERTAIN EVALUATION; CREATING CERTAIN FUND; PROVIDING BOARD AUTHORITY TO EXPEND CERTAIN FUNDS; PROVIDING FOR FUND TO BE CONTINUING; PROVIDING FOR EXPENDITURES FROM FUND; PROVIDING FOR TRANSFER OF CERTAIN FUNDS; MODIFYING TIME AND SCOPE OF APPLICATION OF CERTAIN TAX CREDITS; PROVIDING CERTAIN LIMITATION TO CERTAIN TAX CREDITS; PROVIDING BOARD WITH CERTAIN CERTIFICATION POWERS; MAKING CERTIFICATION BINDING ON TAX COMMISSION; MAKING CERTIFICATION OPTIONAL; PROVIDING FOR CERTAIN CERTIFICATION FEE; LIMITING TAX CREDIT FOR CERTAIN INVESTOR; CLARIFYING LANGUAGE; MODIFYING TITLE OF CERTAIN ACT; REPEALING SECTIONS 40, 41, 42, 43 AND 44, CHAPTER 222, O.S.L. 1987, SECTION 45, AS AMENDED BY SECTION 4, CHAPTER 2, 3RD EXTRAORDINARY SESSION, O.S.L. 1988, SECTION 47, CHAPTER 222, O.S.L. 1987, AS LAST AMENDED BY SECTION 2, CHAPTER 150, O.S.L. 1990, SECTION 48, CHAPTER 222, O.S.L. 1987 AND SECTIONS 6 AND 7, CHAPTER 2, 3RD EXTRAORDINARY SESSION, O.S.L. 1988 (74 O.S. SUPP. 1990, SECTIONS 5061.1, 5061.2, 5061.3, 5061.4, 5061.5, 5061.6,

5061.8, 5061.9, 5061.10 AND 5061.11), WHICH RELATE TO THE OKLAHOMA CAPITAL INVESTMENT ACT; PROVIDING FOR CODIFICATION; PROVIDING FOR RECODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 12 of this act shall be known and may be cited as the "Oklahoma Capital Formation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. Fundamental changes have occurred in national and international financial markets and in the financial markets of this state. Oklahoma needs to increase the availability of equity and near-equity capital for emerging, expanding and restructuring enterprises in Oklahoma. Such investments will create jobs for Oklahomans and will help to diversify the state's economic base.

B. Any public trust organized pursuant to Title 60 of the Oklahoma Statutes for the benefit of the entire State of Oklahoma, which was created for multiple purposes shall become eligible to be the Oklahoma Capital Investment Board as provided by this act. Such trust may amend its indenture to encompass the provisions of this act, and, upon certification by the Governor, such trust shall be known as and exercise all the powers of the Oklahoma Capital Investment Board as provided by law. After the certification of the trust as the Oklahoma Capital Investment Board, the trustees of such

trust shall become members of the Board of Directors of the Oklahoma Capital Investment Board as provided for in Section 6 of this act. The Oklahoma Capital Investment Board is hereby constituted a public trust of the state and the exercise of the Board and powers conferred by this act shall be deemed and held to be the performance of essential public purposes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.3 of Title 74, unless there is created a duplication in numbering, reads as follows:

The mission of the Oklahoma Capital Investment Board shall be to mobilize equity and near-equity capital for investment in such a manner that will result in a significant potential to create jobs and diversify and stabilize the economy of the State of Oklahoma.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

In order to fulfill its mission as mobilizer of equity and near-equity capital, the Oklahoma Capital Investment Board shall be subject to the policy development of Oklahoma Futures. The Oklahoma Capital Investment Board shall develop an annual business plan for the Board. The business plan shall be submitted to Oklahoma Futures for its approval and shall be included in the annual report of Oklahoma Futures. Oklahoma Futures shall review the business plan and the annual report of the Board to ensure its consistency with the goals of the state's recurring five-year economic development plan. The Board shall distribute copies of the business plan by such means that will make it widely available to communities, firms and local economic development managers throughout this state. Oklahoma Futures shall not be involved in the day-to-day administration of the Board.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.5 of Title 74, unless there is created a duplication in numbering, reads as follows:

For purposes of this act:

1. "Board" means the Oklahoma Capital Investment Board;
2. "Director" means any person who is a member of the Board;
3. "Equity capital" means capital invested in common or preferred stock, royalty rights, limited partnership interests, and any other securities or rights that evidence ownership in private businesses;
4. "Investor group" means any individual, corporation, partnership or other lawfully organized entity;
5. "Near-equity capital" means capital invested in unsecured, undersecured, subordinated or convertible loans or debt securities;
6. "Persons" means individuals, corporations, partnerships or other lawfully organized entities;
7. "Put option" means a right or privilege to sell an amount of a particular security or class of securities during a time period ending on the expiration date of the option; and
8. "Tax credits" means tax credits available against liabilities imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes and issued or transferred pursuant to this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.6 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Capital Investment Board shall consist of five (5) Directors who shall be appointed by the Governor with the advice and consent of the Senate. Directors shall be selected based upon outstanding knowledge and leadership and shall possess experience in the management of investments similar in nature and in value to those of the Board. Directors shall serve for a term of office of

five (5) years. Provided, the initial Board of Directors of the Oklahoma Capital Investment Board shall consist of the trustees of the trust certified as the Oklahoma Capital Investment Board pursuant to the provisions of Section 2 of this act and the Directors of the Oklahoma Capital Investment Board who were appointed pursuant to the provisions of Section 5061.6 of Title 74 of the Oklahoma Statutes. Positions on the Board of Directors held by trustees of such trust shall not be filled as the terms of office for said trustees expire. Positions on the Board of Directors held by Directors of the Oklahoma Capital Investment Board shall be filled by the Governor with the advice and consent of the Senate as the terms of office for said Directors expire and in a manner to allow one member to rotate off of the Board each year.

B. Annually, the Directors shall select a chairman to preside at their meetings. The Directors shall have the authority to manage the Oklahoma Capital Investment Board in accordance with the requirements of this act and its trust indenture.

C. The meetings of the Directors shall be subject to the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes. Any information submitted to or compiled by the Oklahoma Capital Investment Board with respect to the marketing plans, financial statements, trade secrets, research concepts, methods or products, or any other proprietary information of persons, firms, associations, partnerships, agencies, corporations or other entities shall be confidential, except to the extent that the person or entity that provided such information or that is the subject of such information consents to disclosure. Executive sessions may be held to discuss such materials if deemed necessary by the Directors.

D. A conflict of interest shall be deemed to exist in any contractual relationship in which a Director of the Board, officer,

agent or employee or any for-profit firm or corporation in which such Director, officer, agent or employee or any member of his or her immediate family is an officer, partner, or principal stockholder, shall directly or indirectly buy or sell goods or services to, or otherwise contract with the Board. Upon a showing thereof, such Director, officer, agent or employee shall be subject to removal and such contract shall be deemed unenforceable as against the Board unless the records of the Board shall reflect that such Director, officer, agent or employee fully and publicly disclosed all such interest or interests, and unless such contractual relationship shall have been secured by competitive bidding following a public invitation to bid. If a Director, officer, agent or employee holds such an interest, he or she shall refrain from any further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other Board members, officers, agents or employees concerning said contract or agreement.

E. Bonds issued by the Oklahoma Capital Investment Board shall be subject to oversight pursuant to the Oklahoma Bond Oversight and Reform Act, Section 695.1 et seq. of Title 62 of the Oklahoma Statutes.

SECTION 7. AMENDATORY Section 46, Chapter 222, O.S.L. 1987, as amended by Section 1, Chapter 150, O.S.L. 1990 (74 O.S. Supp. 1990, Section 5061.7), is amended to read as follows:

Section 5061.7 A. The State of Oklahoma hereby issues ~~income~~ tax credits that may be used to reduce the ~~income~~ tax liability of a person, firm or corporation if such liability is imposed pursuant to the provisions of Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes. Provided, tax credits against liabilities imposed pursuant to Section 624 of Title 36 of the Oklahoma Statutes shall be limited to the amount that

would otherwise be collected and allocated to the General Revenue Fund of the State Treasury. Tax credits issued and transferred to the Oklahoma Development Finance Authority pursuant to the provisions of this section and prior to the effective date of this act are hereby transferred to the Oklahoma Capital Investment Board, created pursuant to the provisions of this act. The total amount of ~~income~~ tax credits that are hereby issued ~~and,~~ or are transferred pursuant to this section to the ~~Authority Board,~~ is Fifty Million Dollars (\$50,000,000.00). The credits shall be freely transferable to subsequent transferees; however, no such ~~income~~ tax credit shall be exercisable before July 1, 1990, nor after July 1, 2015. The ~~Authority Board~~ shall not transfer tax credits except in conjunction with a legitimate call on ~~an Authority~~ a Board guarantee.

B. The Oklahoma Capital Investment Board shall determine the amount of individual tax credits to be transferred pursuant to this act and may negotiate for sale of such credits ~~on behalf of the Oklahoma Development Finance Authority and upon the approval of the Oklahoma Development Finance Authority,~~ subject only to the limits imposed by this act. The Board shall ensure that no more than Ten Million Dollars (\$10,000,000.00) in ~~income~~ tax credits has been transferred which may be claimed and used to reduce the tax otherwise imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes for any one (1) fiscal year. The ~~Authority Board~~ shall clearly indicate upon the face of the certificate or other document transferring the tax credit the principal amount of the tax credit and the taxable year or years for which the credit may be claimed. ~~Failure to claim the tax credit for the taxable year designated upon such certificate or other document shall result in loss of the credit for any other taxable year~~ Any original sale of tax credits by the Board shall be by competitive bidding unless the sale is for full-face value.

C. The ~~Authority~~ Board shall, in conjunction with the Oklahoma Tax Commission, develop a system for registration of any ~~income~~ tax credits issued or transferred pursuant to this act and a system of certificates that permits verification that any tax credit claimed upon ~~an income~~ a tax return is validly issued, properly taken in the year of claim and that any transfers of the ~~income~~ tax credit are made in accordance with the requirements of this act.

D. The ~~Authority~~ Board may pay a fee in connection with the purchase by the ~~Authority~~ Board of an option or other agreement pursuant to which a transfer of ~~income~~ tax credits authorized by this act may be made.

E. The ~~Authority~~ Board shall have the power to make any contract, execute any document, charge reasonable fees for services rendered, perform any act or enter into any financial or other transaction necessary in order to carry out ~~the purposes specified by this section~~ its mission. The ~~Authority at the direction of the~~ Board may employ such persons as may be required for the proper implementation of this act, the management of its assets, or the performance of any function authorized or required by this act or necessary for the accomplishment of any such function. Such persons shall be selected by the Board based upon outstanding knowledge and leadership in the field for which the person performs services for the Board.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.8 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board shall have the power to solicit proposals from qualified investor groups for investment of capital in accordance with the requirements of this act. The Board shall establish criteria for selection of persons, firms, corporations or other entities deemed qualified to generate capital for investment in a manner which will result in a significant potential to create jobs

and to diversify and stabilize the economy of the State of Oklahoma. Such criteria shall include the applicant's level of experience, quality of management, investment philosophy and process, historical investment performance, probability of success in fund raising, the amount and timing of fees to be paid, and such other investment criteria as may be commonly used in professional portfolio management as the Board may deem appropriate.

B. The Board shall have the power to extend a guarantee in the form of a put option or such other method as selected by the Board. Guarantees may extend to principal plus interest over the term of the guarantee at a rate set by Board resolution from time to time. Guarantees in whatever form negotiated by the Board may be made for any period of time, but no term shall expire prior to January 1, 1992. The Board may charge a reasonable fee for costs and the fair compensation of risk associated with its guarantee. The guarantees extended by the Board shall in no way be an obligation of the state and may be restricted to specific funds or assets of the Board; provided, however, proceeds from the sale of any tax credits shall be sufficient to meet contractual guarantee obligations of the Board. The Board shall have the right to contract freely to protect the interests of the State of Oklahoma. The Board shall ensure that at least Two Dollars (\$2.00) will be invested in Oklahoma businesses or projects for every One Dollar (\$1.00) of principal guaranteed by the Board.

C. If the Board purchases any security pursuant to an agreement with an investor group, the Board shall acquire such securities and may invest, manage, transfer or dispose of such securities in accordance with policies for management of assets adopted by the Board.

D. The Board shall have the power to make any contract, execute any document, perform any act or enter into any financial or other transaction necessary in order to carry out its mission. The Board

may employ such persons as may be required for the performance of any function authorized or required by this act or necessary for the accomplishment of any such function. Such persons shall be selected based upon outstanding knowledge and leadership in the field for which the person performs services for the Board. In selecting such persons, the Board shall hire persons who meet standards applicable to persons responsible for investment of equity and near-equity securities.

E. In carrying out the mission of the Board as authorized in this act, neither the Board nor its officers, directors or employees shall be considered to be broker-dealers, agents, investment advisors or investment adviser representatives under Title 71 of the Oklahoma Statutes. The tax credits issued or transferred pursuant to the Oklahoma Capital Formation Act and Section 2357.7 of Title 68 of the Oklahoma Statutes shall not be considered to be securities under Title 71 of the Oklahoma Statutes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.9 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Board shall publish a separate annual report in conjunction with its annual audit and present the report to the Governor, the Legislature and Oklahoma Futures. The annual report shall review the mission of the Board and programs implemented according to objective measures set forth in the Board's business plan. The Board shall distribute this annual report by such means that will make it available to the financial community.

B. Seven (7) years after the Board has begun operations, Oklahoma Futures shall review, analyze and evaluate the extent to which the Board has achieved its statutory mission. The evaluation shall include, but not be limited to, an examination of quantified results of the Board's programs and plans.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.10 of Title 74, unless there is created a duplication in numbering, reads as follows:

Notwithstanding other provisions of law, the Board or any entity designated by the Board, shall have the authority to expend funds to administer and operate the programs of the Oklahoma Capital Investment Board.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.11 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created in the State Treasury a revolving fund for the Oklahoma Department of Commerce to be designated the "Oklahoma Capital Formation Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of appropriated funds. All monies accruing to the credit of said fund are hereby appropriated and, as authorized by the Oklahoma Capital Investment Board, shall be expended by the Oklahoma Department of Commerce to perform the duties imposed upon the Oklahoma Capital Investment Board by law. Expenditures of appropriated funds from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. On the effective date of this act, any unencumbered funds remaining in the Oklahoma Capital Investment Board Revolving Fund shall be transferred to the credit of the Oklahoma Capital Formation Revolving Fund. Any unexpended funds remaining in the Oklahoma Capital Investment Board Revolving Fund after November 15, 1991, shall be transferred to the credit of the Oklahoma Capital Formation Revolving Fund.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5085.12 of Title 74, unless there is created a duplication in numbering, reads as follows:

Nothing contained herein is or shall be construed as a restriction or limitation upon any powers which the Oklahoma Capital Investment Board might otherwise have under any other law of this state heretofore or hereafter enacted and the provisions of this act are cumulative to such powers. The provisions hereof do and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws.

SECTION 13. AMENDATORY Section 1, Chapter 265, O.S.L. 1986, as last amended by Section 14, Chapter 328, O.S.L. 1990 (68 O.S. Supp. 1990, Section 2357.7), is amended to read as follows:

Section 2357.7 A. For taxable years beginning after December 31, 1986, and before January 1, ~~1996~~ 1999, there shall be allowed a credit against the tax imposed by Section 2355 of this title or Section 624 of Title 36 of the Oklahoma Statutes for investments in qualified venture capital companies whose purpose is to establish or expand the development of business and industry within Oklahoma. Provided, tax credits against liabilities imposed pursuant to Section 624 of Title 36 of the Oklahoma Statutes shall be limited to the amount that would otherwise be collected and allocated to the General Revenue Fund of the State Treasury.

B. For purposes of this section:

1. "Qualified venture capital company" means a C corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma or a registered business partnership with a certificate of partnership filed as required by law if such corporation or partnership is organized to provide the direct investment of debt and equity funds to companies within this state, with its principal place of business located within this state and which meets the following criteria:

- a. Capitalization of not less than Five Million Dollars (\$5,000,000.00),
- b. Having a purpose and objective of investing at least fifty-five percent (55%) of its capitalization in Oklahoma business ventures. Investment capital received by such venture capital company shall be invested pursuant to said objective within five (5) years after receipt of such capital. Provided, of the fifty-five percent (55%) of capitalization required to be invested, ten percent (10%) of capitalization may be reserved for additional investment, within ten (10) years after receipt of capital, in portfolio companies which are Oklahoma business ventures. The temporary investment of funds by a qualified venture capital company in obligations of the United States, state and municipal bonds, bank certificates of deposit, or money market securities pending investment in Oklahoma business ventures is hereby authorized, and
- c. Investment of not more than ten percent (10%) of its funds in any one company;

2. "Oklahoma business venture" means a business, incorporated or unincorporated, which:

- a. has or will have, immediately after a loan or investment is made by a qualified venture capital company, at least fifty percent (50%) of its employees or assets located in Oklahoma,
- b. needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services, and
- c. is not engaged in oil and gas exploration, real estate development, real estate sales, retail sales of food or clothing, farming, ranching, banking, or lending or

investing funds in other businesses. Provided, however, businesses which provide or intend to provide goods or services, including, but not limited to, goods or services involving new technology, equipment, or techniques to such businesses listed in this subparagraph, and investments in the development of tourism facilities in the form of amusement parks, entertainment parks, theme parks, golf courses, or museums shall not be subject to said prohibition;

3. "Direct investment" means the purchase of securities of a private company, or securities of a public company if the securities constitute a new issue of a public company and such public company had previous year sales of less than Ten Million Dollars (\$10,000,000.00); and

4. "Debt and equity funds" means investments in debt securities; including unsecured, undersecured, subordinated or convertible loans or debt securities; and/or equity securities, including common and preferred stock, royalty rights, limited partnership interest, and any other securities or rights that evidence ownership in businesses.

C. The credit provided for in subsection A of this section shall be twenty percent (20%) of the cash amount invested in qualified venture capital companies. The Oklahoma Capital Investment Board shall have the authority to certify an entity as a qualified venture capital company and to certify an investment to be a qualifying Oklahoma business venture for purposes of complying with subsection B of this section. Such certification shall be binding on the Oklahoma Tax Commission. Such certification shall not be mandatory but may be requested by any entity that desires to be certified. A reasonable certification fee may be charged by the Oklahoma Capital Investment Board for this service. If the tax credit allowed pursuant to subsection A of this section exceeds the

amount of ~~income~~ taxes due or if there are no state ~~income~~ taxes due ~~on the income~~ of the taxpayer, the amount of the claim not used as an offset against the ~~income~~ taxes of a taxable year may be carried forward as a credit against subsequent ~~income~~ tax liability for a period not to exceed three (3) years. No investor in a venture capital company organized after July 1, 1992, may claim tax credits under the provisions of this section.

D. No taxpayer may claim the credit provided for in subsection A of this section for investments in qualified venture capital companies made prior to January 1, 1987.

E. No investor ~~in a portfolio~~ whose capital is guaranteed by the Oklahoma Capital Investment Board may claim or transfer the credit provided for in subsection A of this section for investments in such guaranteed portfolio.

F. The credit provided for in subsection A of this section, to the extent not previously utilized, shall be freely transferable to and by the original investors subsequent transferees for a period of three (3) years from the date of investment.

SECTION 14. AMENDATORY 71 O.S. 1981, Section 102, as amended by Section 113, Chapter 222, O.S.L. 1987 (71 O.S. Supp. 1990, Section 102), is amended to read as follows:

Section 102. (a) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) to employ any device, scheme, or artifice to defraud the other person, or

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(b) It is unlawful for any investment advisor to enter into, extend, or renew any investment advisory contract unless it provides in writing

(1) that the investment advisor shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by the investment advisor without the consent of the other party to the contract; and

(3) that the investment advisor, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. For persons responsible for management of funds or assets pursuant to the Oklahoma Capital ~~Investment~~ Formation Act, clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner permitted by the Investment Adviser's Act of 1940, as amended, and the rules and regulations promulgated thereunder. Any such investment advisory contract providing for compensation based upon a manner permitted by the Investment Adviser's Act of 1940, as amended, and the rules and regulations promulgated thereunder shall be subject to review and approval of the Oklahoma Securities Commission. "Assignment", as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment advisor is a partnership, no assignment of an investment

advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment advisor having only a minority interest in the business of the investment advisor, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for any investment advisor to take or have custody of any securities or funds of any client if

(1) the Administrator by rule prohibits custody; or

(2) in the absence of rule, the investment advisor fails to notify the Administrator that he has or may have custody.

SECTION 15. REPEALER Sections 40, 41, 42, 43 and 44, Chapter 222, O.S.L. 1987, Section 45, as amended by Section 4, Chapter 2, 3rd Extraordinary Session, O.S.L. 1988, Section 47, Chapter 222, O.S.L. 1987, as last amended by Section 2, Chapter 150, O.S.L. 1990, Section 48, Chapter 222, O.S.L. 1987 and Sections 6 and 7, Chapter 2, 3rd Extraordinary Session, O.S.L. 1988 (74 O.S. Supp. 1990, Sections 5061.1, 5061.2, 5061.3, 5061.4, 5061.5, 5061.6, 5061.8, 5061.9, 5061.10 and 5061.11), are hereby repealed.

SECTION 16. RECODIFICATION Section 46, Chapter 222, O.S.L. 1987, as amended by Section 1, Chapter 150, O.S.L. 1990 (74 O.S. Supp. 1990, Section 5061.7), and as last amended by Section 7 of this act, shall be recodified as Section 5085.7 of Title 74 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 17. This act shall become effective July 1, 1991.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

