

ENROLLED HOUSE
BILL NO. 2795

By: Boyd (Betty), Apple,
Cotner, Ferguson, Gray,
Hamilton (Jeff), Hefner,
Henshaw, Isaac, Larason,
Mass, Paulk, Rhoads
(Karroll), Ross, Seikel,
Voskuhl, Benson, Bonny,
Boyd (Laura), Culver,
Erwin, Fields, Holt,
Hutchison, Key, Monks,
Satterfield, Stites,
Toure, Widener and
Williams of the House

and

Williams (Penny), Fair,
Horner, Shedrick,
Monson, Brown, Fisher,
Cole, Long (Ed) and
Henry of the Senate

An Act relating to breast cancer prevention and treatment; directing Secretary of State to refer a proposed act to the people for their approval or rejection; stating legislative findings; stating facts pointing to such findings; providing short title; enacting the Oklahoma Breast Cancer Act; creating the Oklahoma Breast Cancer Prevention and Treatment Advisory Committee; providing for membership, appointments, qualifications, terms, officers, meetings, subcommittees, reimbursement and staff of such Committee; providing for certain powers and duties of such relating to the contracting for certain services by the Oklahoma Center for the Advancement of Science and Technology; requiring certain reports; specifying such reports; creating the Oklahoma Breast Cancer Act Revolving Fund; stating purposes; providing for budgeting and expenditure from such fund, and providing for procedures related thereto; amending 74 O.S. 1991, Sections 5060.4, as amended by Section 3, Chapter 230, O.S.L. 1992 and 5060.14 (74 O.S. Supp. 1993, Section 5060.4), which relate to the Oklahoma Center for the Advancement of Science and Technology; modifying definitions; authorizing certain uses of the Breast Cancer Research Account; providing definitions; levying tax on admissions to certain places of amusement, entertainment or recreation; providing exemptions; providing for payment, collection and apportionment of tax; allowing for other funds to be received; providing procedure for remittance of tax; requiring certain information and reports; requiring certain permit;

providing for codification; providing for noncodification; providing ballot title; and directing filing.

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

SECTION 1. The Secretary of State shall refer to the people for their approval or rejection, as and in the manner provided for by law, the following proposed statute.

SECTION 2. A. The purpose of the Oklahoma Breast Cancer Act is to establish programs in the State of Oklahoma that will make a meaningful and significant scientific contribution in determining the causes of breast cancer and will lead to finding a cure or more effective prevention and treatment strategies for those who are afflicted with breast cancer.

B. The Oklahoma Legislature hereby finds that breast cancer is a major public health problem in Oklahoma that devastates those who are afflicted with the disease and those family members and others who care for the persons afflicted with the disease. This finding is based on the following facts:

1. In 1992, five hundred ten women died from breast cancer in Oklahoma. Of these five hundred ten women, three hundred were less than seventy (70) years of age;

2. In 1992, one thousand five hundred eighty women in Oklahoma were diagnosed with breast cancer;

3. Approximately one out of eight women in Oklahoma are projected to have breast cancer during their lifetime, with predictions that in the future one out of six women in Oklahoma will need treatment for breast cancer as that population's life expectancy increases;

4. Only sixty-one percent (61%) of women in Oklahoma over the age of forty (40) have ever had a mammogram, and only forty percent (40%) of these women have routine mammograms, which is considered the most effective first line of defense in the detection of breast cancer; and

5. Projections are that ninety-eight thousand seven hundred women in Oklahoma between the ages of forty (40) and sixty-four (64) are in need of mammography screening but are not being screened because their insurance does not cover mammograms or they are uninsured.

C. Statistically, the Legislature finds that if the state developed an adequate public education program regarding breast cancer and that if ninety percent (90%) of all women between the ages of forty (40) and sixty-four (64) in Oklahoma received routine age-specific mammograms and performed breast self-evaluations, the mortality rate from breast cancer would be reduced by thirty-five percent (35%) without any improvement in treatment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3315 of Title 74, unless there is created a duplication in numbering, reads as follows:

Sections 3 through 6 of this act shall be known and may be cited as the "Oklahoma Breast Cancer Act".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5060.9b of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Oklahoma Breast Cancer Prevention and Treatment Advisory Committee" within the Oklahoma Center for the Advancement of Science and Technology. The Committee shall consist of fifteen (15) members and be advisory to the Oklahoma Center for the Advancement of Science and Technology.

B. Members of the Committee shall be appointed as follows:

1. Five members appointed by the Governor, of which four members shall represent organizations which are at the time of the

appointment advocating statewide for the enhanced prevention or treatment or early detection of breast cancer in Oklahoma;

2. Five members appointed by the Speaker of the House of Representatives, of which two members shall be breast cancer survivors and one shall be a medical director of a multi-disciplinary breast center in Oklahoma; and

3. Five members appointed by the President Pro Tempore of the Senate, of which two members shall have been married to or children of persons who have died of breast cancer or conditions related to breast cancer and one shall be a medical director of a multi-disciplinary breast center in Oklahoma.

The remaining appointees to the Committee shall be medical professionals who specialize in the detection, prevention or treatment of breast cancer. Appointments to the Committee shall be made to provide the Committee with a geographically, economically, and ethnically diverse composition. Associations and advocacy groups may provide appointing authorities lists from which they may select appointments.

C. Members of the Committee shall serve a four-year term and may be reappointed. The Committee shall elect from among its members a chair, vice-chair, and any other officers that the Committee determines are necessary.

D. The President of the Oklahoma Center for the Advancement of Science and Technology shall call the first meeting of the Committee by February 15, 1995. The Committee shall meet at least once each quarter.

E. The Committee may appoint subcommittees as it deems necessary.

F. Members of the Committee shall not receive a salary for duties performed for the Committee. Reimbursement for necessary travel expenses incurred in the performance of their official duties as members of the Committee shall be made in accordance with the State Travel Reimbursement Act.

G. For purposes of determining a quorum for the Committee, a majority of members serving shall be required.

H. The Oklahoma Center for the Advancement of Science and Technology shall provide staff assistance for the Committee.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5060.9c of Title 74, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Breast Cancer Prevention and Treatment Advisory Committee shall advise the Oklahoma Center for the Advancement of Science and Technology regarding the contracting on the following statewide services related to breast cancer, including but not limited to:

1. Mammography screening of women for breast cancer as early detection health care measures provided by facilities accredited by national organizations which have formed coalitions to issue national cancer screening guidelines;

2. Medical referral of screened persons with abnormal findings for definitive diagnosis and, to the extent practical, additional services or assistance for such persons;

3. Education and training programs for health care professionals to improve the detection and control of breast cancer, and communication with breast cancer patients after diagnosis;

4. Annual public education awareness campaigns to improve the knowledge and health care practices of all Oklahoma women with respect to breast cancer;

5. Epidemiological trend studies utilizing the data from the Oklahoma Central Cancer Registry for incidence, prevalence and survival of breast cancer victims; and

6. Outreach to groups with high proportions of uninsured and underinsured women.

B. The contracts for services specified in this section shall provide appropriate requirements resulting in:

1. Enhancement of quality control standards within facilities which perform diagnostic cancer screening for breast cancer; and

2. Establishment of fees for breast cancer screening and diagnostic tests at the accepted Medicare/Medicaid rate and a sliding fee schedule to encourage self-responsibility.

C. The Oklahoma Breast Cancer Prevention and Treatment Advisory Committee shall make annual reports to the Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate by October 1 of each year. The annual reports shall report activities pursuant to the Oklahoma Breast Cancer Act during the prior fiscal year, including the funding for related activities. The report shall account for research and breast cancer screenings for uninsured and underinsured women. The report shall also recommend additional funding, if necessary, to provide screenings and treatment for breast cancer for uninsured and underinsured women.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5060.9d of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma Center for the Advancement of Science and Technology to be designated the "Breast Cancer Act Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies apportioned to the fund and gifts or donations to the fund. All monies apportioned or accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Oklahoma Center for the Advancement of Science and Technology for the purposes specified in the Oklahoma Breast Cancer Act including but not limited to the compensation of staff and other expenses associated with the implementation of the Oklahoma Breast Cancer Act. Fifty percent (50%) of all monies apportioned to the credit of said fund are hereby transferred to the Breast Cancer Prevention and Treatment Account hereby established and shall be used to carry out the purposes specified in Section 5 of this act. Fifty percent (50%) of all monies apportioned to the fund shall be transferred to the Breast Cancer Research Account hereby established and shall be budgeted and expended by the Oklahoma Center for the Advancement of Science and Technology for breast cancer research. Expenditures from the 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.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 5060.4, as amended by Section 3, Chapter 230, O.S.L. 1992 (74 O.S. Supp. 1993, Section 5060.4), is amended to read as follows:

Section 5060.4 As used in the Oklahoma Center for the Advancement of Science and Technology Act:

1. "Applied research" means those research activities occurring at institutions of higher education, nonprofit research foundations, and in private enterprises which have potential commercial application;

2. "Basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial

objective, but having potential long-range value to commercial interests;

3. "Center" means the Oklahoma Center for the Advancement of Science and Technology;

4. "Enterprise" means a firm with its principal place of business in Oklahoma;

5. "Health research project" means a specific examination, experimentation or investigation, or initiative to provide research resources oriented principally toward basic, applied, and developmental scientific inquiry related to the causes, diagnosis, prevention, and treatment of human diseases and disabilities and mental health and emotional disorders, and the rehabilitation of persons afflicted with such diseases, disabilities, and disorders; new knowledge, better understanding, and innovative methods to improve the processes by which health care services are made available and how they may be provided more efficiently, more effectively and at a lower cost, for all the citizens of this state; and the development of new products and services which shall form the basis of new high-technology health research and care industry for this state;

6. "Industrial Extension System" means a coordinated network of public and private manufacturing modernization resources, the purpose of which is to stimulate the competitiveness of Oklahoma small and medium-sized manufacturing firms;

7. "Institutional Review Board" means a committee composed of investigators, lay representatives, and legal counsel, which is established at each institution of higher learning and each nonprofit research institution receiving funds from the Health Research Account, for the express purpose of determining the appropriateness of any research involving human subjects;

8. "Institutions of higher education" means public and private colleges and universities in the state;

9. "Investigator" means a person who proposes research projects and is primarily responsible for the execution of the proposed projects and is employed by or affiliated with an institution of higher education, a nonprofit research institution in this state, or a private enterprise;

10. "New technology" means methods, products, processes and procedures developed through science or research;

11. "Nonprofit research institution" means any not-for-profit public or private facility in this state which has the capabilities for research projects and which is not a subsidiary of any corporation, partnership, or association organized for profit, nor is its stock or assets owned or controlled by a corporation, partnership, or association organized for profit;

12. "OAME" means the Oklahoma Alliance for Manufacturing Excellence, Inc., a corporation to be formed pursuant to the provisions of Title 18 of the Oklahoma Statutes and ~~Section 6 of this act~~ 5060.26 of this title;

13. "Person" means any individual, partnership, corporation or joint venture carrying on business or proposing to carry on business within the state;

14. "Product" means any outcome, device, technique or process, which is or may be developed or marketed commercially and which has advanced beyond the theoretical stage and is in a prototype or practice stage;

15. "Professional service contract" means a written agreement providing funds for the performance of a research project; for salaries and fringe benefits of personnel associated with research programs; for research equipment; for operating expenses associated

with a research program; or for services provided in connection with the evaluation of applications submitted to the Center;

16. "Qualified security" means any public or private financial arrangement, involving any note, security, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate or subscription, transferable security, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application therefor, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant or right to subscribe to or purchase any of the foregoing to the extent allowed by law;

17. "Seed-capital" means financing that is provided for the development, refinement and commercialization of a product, process or innovation, whether for the startup of a new firm or the expansion or the restructuring of a small firm; and

18. "Technology transfer" means a two-way process by which ideas or inventions for processes or products (developed in research programs usually on a laboratory or pilot-plant scale) are converted to commercial use.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 5060.14, is amended to read as follows:

Section 5060.14 A. The Center may use the Health Research Account of the Research Support Revolving Fund and the Breast Cancer Research Account of the Breast Cancer Act Revolving Fund to carry out the purposes of this act by awarding competitive health research funds, through professional service contracts, to institutions of higher education, nonprofit research foundations and private enterprises of special importance to the Oklahoma economy. Monies from the Breast Cancer Research Account shall be used only to support the awarding of professional service contracts for breast cancer research.

B. There is hereby created within the Oklahoma Center for the Advancement of Science and Technology, the Oklahoma Health Research Committee to be appointed by the Governor which shall consist of nine (9) members, no more than five nor less than three of whom shall be physicians licensed pursuant to the laws of this state. For the initial Committee, three members shall be appointed for a term of two (2) years; three members shall be appointed for a term of four (4) years; and three members shall be appointed for a term of six (6) years. Thereafter members shall be appointed for a term of six (6) years. At all times the Committee shall be composed of at least:

1. One member from the clergy or who has an advanced degree in philosophy from an accredited institution of higher learning;

2. Five members who shall be basic health research scientists each having an established record of basic health science research accomplishment and a demonstrated interest in public service to represent the following areas: Epidemiology, public health or biometrics or psychology; biochemistry, anatomy or nutrition; microbiology, immunology or molecular biology; genetics, pathology, or pharmacology; biology or physiology; and

3. Three members who shall be clinical research scientists having an established record of clinical biomedical science research accomplishment and a demonstrated interest in public service to represent the clinical research disciplines.

The Health Research Committee as constituted prior to the effective date of this act shall be re-created within the Oklahoma

Center for the Advancement of Science and Technology. Members of the Committee, formerly within the Oklahoma Department of Commerce, serving terms upon the effective date of this act shall continue to serve such terms.

Upon expiration of any term of office of the Health Research Committee, in making appointments to the Committee appropriate consideration shall be given to representation upon the Committee by race, gender and geographical area.

C. Any vacancy on the Committee shall be filled for the unexpired term within thirty (30) days after the vacancy occurs.

D. No more than three members of the Committee shall have the same primary affiliation with an institution of higher learning or a nonprofit research institution.

E. A basic health research scientist or clinical research scientist shall not be eligible to become a member of the Committee unless said scientist is the inventor of one or more products which have earned more than Two Hundred Thousand Dollars (\$200,000.00) in royalties or other profit within the fifteen (15) years immediately preceding appointment or is the principal investigator for research grants awarded by national health research organizations for at least five (5) years during the fifteen (15) years immediately preceding appointment. Contractual commitments which have been made for a product or products shall qualify in meeting the royalty or profit requirement. Tentative commitments for future funding from national health research organizations shall satisfy the research grant requirement. Research grants awarded by the National Science Foundation, the National Institutes of Health, the American Heart Association, the Lung Association, the American Cancer Society, the Arthritis Foundation, the March of Dimes, and such other organizations that hold a peer-reviewed national competition for the distribution of research funds that the Committee deems acceptable from time to time shall satisfy the research grant requirement. Research grants which only may be awarded to investigators in this state shall not be used to satisfy the research grant time of support requirement. Service contracts or other grants which do not require submission of a research project or which are not funded competitively on the basis of scientific merit of the research project shall not satisfy the research grant time of support requirement.

F. Members of the Committee shall be reimbursed for expenses incurred in the performance of their duties as provided by the board of directors of the Center.

G. The Committee shall elect from its membership a chairman to serve a two-year term and such other officers from its membership as deemed necessary for the performance of the duties of the Committee. The Committee shall hold regular meetings not less than once a quarter and such additional meetings as called by the chairman as may be required for the proper discharge of the duties of the Committee. Any action by the Committee shall require the affirmative vote of a majority of its members present. Five members shall constitute a quorum.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50100 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in Sections 9 through 11 of this act:

1. "Person" means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, public trust, business trust, or other trust, receiver or trustee appointed by any state or federal court or otherwise or syndicate, this state, any county, city, municipality,

school district or any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number;

2. "Taxpayer" means any person as defined in subsection 1 of this section who is subject to any tax imposed by Section 11 of this act; and

3. "Admission charge" means the amount paid for the right or privilege to have access to a place or location where amusement, entertainment or recreation is provided, and shall include, but not be limited to, charges or tickets for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities, including free or complimentary admissions which have a value equivalent to the charge that would have otherwise been made, charges made for the privilege of entering or engaging in any kind of activity, such as tennis, racquetball, or handball, when spectators are charged no admission fee, charges made for the privilege of using items for amusement, sports, entertainment, or recreational activity, such as trampolines or golf carts, and the rental of equipment for amusement, sports, entertainment, or other recreational activities, such as bowling shoes, skates, golf carts, or other sports or athletic equipment. In addition to the above, places of amusement, entertainment or recreation include, but are not limited to, theaters, motion picture shows, auditoriums where lectures and concerts are given, theatrical, musical and artistical performances or shows, amusement parks, commercial animal, reptile, and zoological exhibits, water parks, commercial museums, fairgrounds, dance halls, ball rooms, professional and semi-professional sporting events, golf courses, miniature golf courses, tennis courts, skating rinks, swimming pools, gymnasiums, auto shows, boat shows, camping shows, home shows, garden shows, horse shows, dog shows and antique shows.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50101 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There is hereby levied a tax of one percent (1%) of the admission charge to any place of amusement, entertainment or recreation. However, except for charges or tickets for admission to any county, district or state fair, the tax imposed by this section shall not apply to any person exempt from sales tax pursuant to Sections 1356 and 1357 of Title 68 of the Oklahoma Statutes, or to any horse racing track, or on admissions to university, college, high school or grammar school games or events.

The tax imposed by this section shall be paid by the person paying the admission price and shall be collected and remitted to the Oklahoma Tax Commission by the person collecting the admission price.

B. All taxes levied pursuant to this section shall be collected by the Oklahoma Tax Commission and apportioned as follows:

1. Two percent (2%) of such monies collected shall be placed to the credit of the Tax Commission Reimbursement Fund; and

2. Ninety-eight percent (98%) of such monies collected shall be placed to the credit of the Breast Cancer Act Revolving Fund as set forth in Section 6 of this act.

C. The monies collected from the tax levied pursuant to the provisions of this section shall be in addition to all other revenues and funds received by the Oklahoma Center for the Advancement of Science and Technology for breast cancer research and prevention.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 50102 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The tax levied pursuant to the provisions of Section 10 of this act shall be due and payable by the taxpayer on the first day of each month immediately following the month of receipt, except as provided in this section.

B. For the purpose of ascertaining the amount of the tax payable pursuant to the provisions of Section 10 of this act, it shall be the duty of all taxpayers, on or before the 15th day of each month, to deliver to the Oklahoma Tax Commission, upon forms prescribed and furnished by it, admissions tax reports signed under oath, which shall include:

1. The name of the taxpayer;
2. The taxpayer's permit number issued pursuant to the Oklahoma Sales Tax Code;
3. Gross admission receipts from all admissions, as specified in Section 10 of this act, during the preceding calendar month; and
4. Such further information as the Oklahoma Tax Commission may require to enable it to compute correctly and collect the tax levied pursuant to Section 10 of this act.

C. In addition to the information required on reports, the Oklahoma Tax Commission may request and the taxpayer shall furnish any information deemed necessary for a correct computation of the tax levied pursuant to this act.

D. Such taxpayer shall compute and pay to the Oklahoma Tax Commission the required tax due for the preceding calendar month, the payment of the tax to accompany the reports required pursuant to this section. If the payment of such tax is not postmarked or delivered to the Oklahoma Tax Commission on or before the 15th of such month, the tax shall be delinquent from such date.

E. It shall be the duty of every taxpayer required to make an admissions tax report and pay any tax pursuant to the provisions of this act to keep and preserve suitable records of the gross admissions and other pertinent records and documents which may be necessary to determine the amount of tax due as will substantiate and prove the accuracy of such reports. All such records shall be preserved for a period of three (3) years, unless the Oklahoma Tax Commission, in writing, has authorized their destruction or disposal at an earlier date, and shall be open to examination at any time by the Oklahoma Tax Commission or by any of its authorized employees.

F. Any person or taxpayer who has not been issued a permit pursuant to Section 1350 et seq. of this title shall be required to secure an appropriate permit from the Oklahoma Tax Commission. The Oklahoma Tax Commission shall issue the appropriate permit upon compliance and in accordance with Section 1350 et seq. of this title.

SECTION 12. The provisions of Section 2 of this act shall not be codified in the Oklahoma Statutes.

SECTION 13. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. _____ State Question No. _____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure would create the Oklahoma Breast Cancer Act. The act would create the Oklahoma Breast Cancer Prevention and Treatment Advisory Committee. This Committee would be part of the Oklahoma Center for the Advancement of Science and Technology (OCAST). Members of the Committee shall be appointed. The Committee would advise OCAST on matters related

to breast cancer treatment and prevention. This measure would levy a new tax. The tax would be 1% of the amount paid for admission into any place of amusement, recreation or entertainment. Admissions to school games or events would be exempt. Admissions to horse racing tracks would be exempt. Certain persons exempt from sales tax would also be exempt. Monies collected from this tax would be deposited into the Breast Cancer Act Revolving Fund. Monies collected from this tax shall be used for breast cancer research, prevention and treatment.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

 / YES, FOR THE ACT

 / NO, AGAINST THE ACT

SECTION 14. The Chief Clerk of the House of Representatives, immediately after the passage of this act, shall prepare and file one copy thereof, including the Ballot Title set forth in SECTION 13 hereof, with the Secretary of State and one copy with the Attorney General.

Passed the House of Representatives the 18th day of May, 1994.

Speaker of the House of
Representatives

Passed the Senate the 19th day of May, 1994.

President of the Senate