

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3205

By: Roach

AS INTRODUCED

An Act relating to revenue and taxation; amending Section 2, Chapter 167, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.61), which relates to small business capital formation; clarifying language; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 167, O.S.L. 1997 (68 O.S. Supp. 1997, Section 2357.61), is amended to read as follows:

Section 2357.61 As used in this act:

1. "Acquisition" means the use of capital by an Oklahoma small business venture within six (6) months after obtaining the capital to purchase fifty-one percent (51%) or more of the voting interest entitled to elect the governing board, or its equivalent, of any other legal entity, regardless of the legal form of the entity. As used in this act, "acquisition" does not mean the right to participate in the proceeds from sale of goods or services, whether denominated a royalty, royalty interest or otherwise, and does not mean the right to intellectual property, whether the rights arise from copyright, trademark or patent law;

2. "Capitalization" means a contractual commitment to provide funds with substantial economic penalties for breach of the commitment to provide such funds;

3. "Equity ~~and~~ or near-equity security" means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, royalty interest, or an interest in a partnership;

4. "Financial lending institution" means a bank, credit union, savings and loan, commercial finance company or other entity principally engaged in the extension of credit;

5. "Oklahoma small 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 small business 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,
- c. is not primarily engaged in oil and gas exploration, real estate development, real estate sales or rentals, wholesale sales, retail sales, 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 the businesses listed in this subparagraph, shall not be considered to be primarily engaged in the business listed in this subparagraph, and

d. qualifies as a small business as defined by the federal Small Business Administration;

6. "Qualified investment" means "equity" and "near-equity" as defined in paragraph 3 of this section or "subordinated debt" as defined in paragraph 8 of this section;

7. "Qualified small business capital company" means a C corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law, which meets the following criteria:

- a. the corporation, limited liability company or partnership is organized to provide the direct investment of equity and near-equity funds to companies within this state,
- b. the principal place of business of the corporation, limited liability company or partnership is located within this state,
- c. the capitalization of the corporation, limited liability company or partnership is not less than One Million Dollars (\$1,000,000.00), and
- d. the corporation, limited liability company or partnership has investment of not more than twenty percent (20%) of its funds in any one company; and

8. "Subordinated debt" means indebtedness that is subordinated to all other indebtedness of the issuer that has been issued or is to be issued to a financial lending institution.

SECTION 2. This act shall become effective January 1, 1998.

46-2-8316

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