

Stricken language would be deleted from and underlined language would be added to present law.
Act 925 of the Regular Session

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: H4/1/19
A Bill

HOUSE BILL 1920

By: Representative Capp
By: Senator K. Hammer

For An Act To Be Entitled

AN ACT CONCERNING THE CONSOLIDATION OF VENTURE CAPITAL PROGRAMS IN THE STATE; TO AMEND THE VENTURE CAPITAL INVESTMENT ACT OF 2001; TO REPEAL THE ARKANSAS RISK CAPITAL MATCHING FUND ACT OF 2007; AND FOR OTHER PURPOSES.

Subtitle

TO CONSOLIDATE VENTURE CAPITAL PROGRAMS IN THE STATE; TO AMEND THE VENTURE CAPITAL INVESTMENT ACT OF 2001; AND TO REPEAL THE ARKANSAS RISK CAPITAL MATCHING FUND ACT OF 2007.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 15-3-503(b)(2)(C), concerning the programs and initiatives for which the Board of Directors of the Division of Science and Technology of the Arkansas Economic Development Commission shall make funding recommendations, is amended to read as follows:

(C) ~~Arkansas Risk Capital Matching Fund Act of 2007, § 15-5-1601 et seq.~~ Venture Capital Investment Act of 2001, § 15-5-1401 et seq.;

SECTION 2. Arkansas Code § 15-5-703(8), concerning the definitions used under the Arkansas Development Finance Authority Small Business Act of 1989, is amended to read as follows:

(8) "Direct Fund" means a cash fund used for qualified



investments to invest exclusively in Arkansas small businesses, preferably as a co-investor with other professional venture investors or accredited investors as defined in § ~~15-5-1603~~ 15-5-1403, consisting of the total dollar amount of cash funds of the authority from any combination of:

- (A) The Venture Capital Investment Trust as defined in § ~~15-5-1603~~ 15-5-1403 that is dedicated and made available by the board; and
- (B) An authorized source under § 15-5-711;

SECTION 3. Arkansas Code § 15-5-703(11), concerning the definitions used under the Arkansas Development Finance Authority Small Business Act of 1989, is amended to read as follows:

(11) “Qualified investment” means any form of investment by the Venture Capital Investment Trust as defined in § ~~15-5-1603~~ 15-5-1403 in the capital structure of a small business:

- (A) Through the Direct Fund; or
- (B) By investing in or cooperating with other investment entities, including without limitation an accredited investor as defined in § ~~15-5-1603~~ 15-5-1403;

SECTION 4. Arkansas Code § 15-5-1403, concerning the definitions used under the Venture Capital Investment Act of 2001, is amended to add additional subdivisions to read as follows:

(12) “Accredited investor” means an accredited investor as defined in 17 C.F.R. § 230.215, as it existed on January 1, 2013;

(13) “Equity capital” means capital invested in common stock or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other equity, securities, or rights that evidence ownership or investment in private enterprises;

(14) “Near-equity capital” means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities;

(15) “Review committee” means a committee composed of the President of the Arkansas Development Finance Authority, the Executive Director of the Arkansas Economic Development Commission, and the members of the Board of Directors of the Arkansas Development Finance Authority;

(16) “Technology-based enterprises” means a group of growing businesses in one (1) or more of the following business sectors:

(A) Advanced materials and manufacturing systems;
(B) Agriculture, food, and environmental sciences;
(C) Biotechnology, bioengineering, medical technology, and
life sciences;

(D) Information technology;
(E) Transportation logistics; and
(F) Biobased products;

(17) "Venture capital funds" means private, for-profit
investment funds that seek to invest in technology-based enterprises; and

(18) "Venture Capital Investment Trust" means the public trust
formed July 21, 2003, under § 28-72-201 et seq., the trustees of which are
the President of the Arkansas Development Finance Authority, the Executive
Director of the Arkansas Economic Development Commission, and the Director of
the Department of Finance and Administration, and that has as a principal
purpose increasing the availability of equity capital and near-equity capital
for emerging and expanding enterprises in the State of Arkansas.

SECTION 5. Arkansas Code Title 15, Chapter 5, Subchapter 14, is amended to add additional sections to read as follows:

15-5-1410. Legislative findings.

The General Assembly finds:

(1) There is a need to strengthen and advance the infrastructure
that supports and accelerates the advancement of the growth of technology-
based enterprises in Arkansas;

(2) There exists a shortage of risk capital and financial
assistance at the early stages of development for technology-based
enterprises;

(3) An improved investment climate for early stage technology-
based enterprises is expected to increase, advance, and accelerate the growth
and development of technology-based enterprises in Arkansas;

(4) The ultimate goal of supporting technology-based enterprises
is to convert research and development activities and early stage technology-
based enterprises into viable commercial ventures; and

(5) The provision of financial investment and assistance to aid
early stage technology-based enterprises is expected to strengthen the
economic base of the State of Arkansas and create better paying jobs, thereby

benefiting all residents of the state.

15-5-1411. Creation of the Arkansas Venture Capital Development Fund.

(a) There is established the Arkansas Venture Capital Development Fund, and within that fund the Arkansas Venture Capital Development Fund Account, which fund and account shall be held by and maintained as a separate fund and separate account within the Venture Capital Investment Trust.

(b)(1) The fund is a Direct Fund, as defined in § 15-5-703, created for the purpose of providing financial assistance to technology-based enterprises located in Arkansas with the expectation of:

(A) Developing jobs paying in excess of county and state average wages;

(B) Improving the growth, development, and advancement of technology-based enterprises; and

(C) Converting research and development activities and early stage technology-based enterprises into viable and productive commercial ventures.

(2) The fund shall target financial assistance toward:

(A) Technology-based enterprises that are in the early stages of development and that are not yet able to attract adequate private sources of traditional financing or venture or investor-backed capital for their growth and development; and

(B) Venture capital funds that have a direct connection to Arkansas and are focused on providing equity capital or near-equity capital to technology-based enterprises.

15-5-1412. Eligibility for financial assistance – Limitation.

(a) For a technology-based enterprise or venture capital fund to be eligible for financial assistance under this subchapter, the technology-based enterprise or venture capital fund shall:

(1) Demonstrate that at least one dollar (\$1.00) of financial assistance provided by the Arkansas Venture Capital Development Fund will result in at least one dollar (\$1.00) of new private financial assistance;

(2) Demonstrate a reasonable expectation that financial assistance from the Arkansas Venture Capital Development Fund can, over time, result in private financial assistance that is at least ten (10) times the

amount of financial assistance provided by the Arkansas Venture Capital Development Fund; and

(3) Have no more than five hundred (500) employees.

(b) Funds from the Arkansas Venture Capital Development Fund shall not be used to provide financial assistance that exceeds five million dollars (\$5,000,000) to any single technology-based enterprise or venture capital fund.

15-5-1413. Funding of Arkansas Venture Capital Development Fund.

(a) The trustees of the Venture Capital Investment Trust may accept moneys and funds for the Arkansas Venture Capital Development Fund from any source.

(b) Moneys and funds received by the trustees of the trust for the fund shall be dedicated and used solely as authorized in this subchapter.

(c)(1) Moneys and funds received by the Arkansas Development Finance Authority or the Arkansas Economic Development Commission designated for use or ownership by the fund shall be deposited to the trust and held in the Arkansas Venture Capital Development Fund Account, as applicable and as specified in this subchapter, until used for the purposes of this subchapter.

(2) Moneys deposited to the trust for the purposes of providing financial assistance to technology-based enterprises under this subchapter shall be allocated to the Arkansas Venture Capital Development Fund Account according to a ratio approved by the trustees of the trust.

15-5-1414. Review committee.

The review committee shall:

(1) Recommend to the trustees of the Venture Capital Investment Trust the payment of fees and expenses out of the Arkansas Venture Capital Development Fund for the operation of the fund; and

(2) Approve an investment policy under this subchapter.

15-5-1415. Annual report.

The trustees of the Venture Capital Investment Trust shall publish an annual report within five (5) months after the close of each fiscal year that shall:

(1) Include an annual audit of the Arkansas Venture Capital

Development Fund's activities conducted by the trustees with the assistance of the review committee;

(2) Be presented in writing, and by testimony if requested, to the:

(A) Governor;

(B) House Committee on Agriculture, Forestry, and Economic Development;

(C) Senate Committee on Agriculture, Forestry, and Economic Development;

(D) Arkansas Development Finance Authority; and

(E) Arkansas Economic Development Commission; and

(3) Document and review the progress of the trustees of the trust and the review committee in implementing the investment and financial assistance activities under this subchapter.

15-5-1416. Powers of the trustees of the Venture Capital Investment Trust.

The trustees of the Venture Capital Investment Trust may promulgate guidelines and rules and make any contract, execute any document, perform any act, or enter into any financial or other transaction necessary to implement the duties of the trustees under this subchapter.

SECTION 6. Arkansas Code Title 15, Chapter 5, Subchapter 16, is repealed.

~~Subchapter 16 — Arkansas Risk Capital Matching Fund Act of 2007~~

~~15-5-1601. Title.~~

~~This subchapter shall be known and may be cited as the "Arkansas Risk Capital Matching Fund Act of 2007".~~

~~15-5-1602. Legislative intent.~~

~~The General Assembly finds:~~

~~(1) There is a need to strengthen and advance the infrastructure that supports and accelerates the advancement of the growth of technology-based enterprises in Arkansas;~~

~~(2) There exists a shortage of risk capital and financial~~

~~assistance at the early stages of development for technology-based enterprises;~~

~~(3) An improved investment climate for early stage technology-based enterprises is expected to increase, advance, and accelerate the growth and development of technology-based enterprises in Arkansas;~~

~~(4) The ultimate goal of supporting technology-based enterprises is to convert research and development activities and early stage technology-based enterprises into viable commercial ventures; and~~

~~(5) The provision of financial investment and assistance to aid early stage technology-based enterprises is expected to strengthen the economic base of the State of Arkansas and create better paying jobs, thereby benefiting all citizens of the state.~~

~~15-5-1603.—Definitions.~~

~~As used in this subchapter:~~

~~(1) “Accredited investor” means an accredited investor as defined in 17 C.F.R. § 230.215, as it existed on January 1, 2013;~~

~~(2) “Enterprise Development Account” means a separate account bearing that name and to be maintained within the Arkansas Risk Capital Matching Fund, the moneys in which account shall be used for the purposes and in the manner prescribed by this subchapter;~~

~~(3) “Equity capital” means capital invested in common stock or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other equity, securities, or rights that evidence ownership or investment in private enterprises;~~

~~(4) “Near equity capital” means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities;~~

~~(5) “Review committee” means a committee composed of the President of the Arkansas Development Finance Authority and the Executive Director of the Arkansas Economic Development Commission;~~

~~(6) “Technology-based enterprises” means a group of growing businesses in one (1) or more of the following business sectors:~~

~~(A) Advanced materials and manufacturing systems;~~

~~(B) Agriculture, food, and environmental sciences;~~

~~(C) Biotechnology, bioengineering, medical technology, and life sciences;~~

- ~~(D) Information technology;~~
- ~~(E) Transportation logistics; and~~
- ~~(F) Biobased products;~~

~~(7) "Technology Validation Account" means the separate account bearing that name and to be maintained as a separate account within the Arkansas Risk Capital Matching Fund, the moneys in which account shall be used for the purposes and in the manner prescribed by this subchapter; and~~

~~(8) "Venture Capital Investment Trust" means the public trust formed July 21, 2003, under § 28-72-201 et seq., the trustees of which are the President of the Arkansas Development Finance Authority, the Executive Director of the Arkansas Economic Development Commission, and the Director of the Department of Finance and Administration, and that has as a principal purpose increasing the availability of equity capital and near-equity capital for emerging and expanding enterprises in the State of Arkansas.~~

~~15-5-1604.—Creation of Arkansas Risk Capital Matching Fund.~~

~~(a) There is established the Arkansas Risk Capital Matching Fund, and within that fund the Enterprise Development Account and the Technology Validation Account, which fund and accounts shall be held by and maintained as a separate fund and separate accounts within the Venture Capital Investment Trust.~~

~~(b)(1) The fund is created for the purpose of providing financial assistance to technology-based enterprises located in Arkansas, with the expectation of developing jobs paying in excess of county and state average wages, improving the growth, development, and advancement of technology-based enterprises, and converting research and development activities and early stage technology-based enterprises into viable and productive commercial ventures.~~

~~(2) The fund shall target the financial assistance toward those technology-based enterprises that are in the early stages of development and that are not yet able to attract adequate private sources of traditional financing or venture or investor-backed capital for their growth and development.~~

~~15-5-1605.—Funding of Arkansas Risk Capital Matching Fund.~~

~~(a) The trustees of the Venture Capital Investment Trust may accept~~

~~moneys and funds for the Arkansas Risk Capital Matching Fund from any source.~~

~~(b) Moneys and funds received by the trustees of the trust for the fund shall be dedicated and used solely as authorized in this subchapter.~~

~~(c)(1) Moneys and funds received by the Arkansas Development Finance Authority or the Arkansas Economic Development Commission designated for use or ownership by the fund shall be deposited to the trust and held in the Technology Validation Account and the Enterprise Development Account of the fund, as applicable and as specified in this subchapter, until used for the purposes of this subchapter.~~

~~(2)(A) Moneys deposited to the trust for the purposes of providing financial assistance to technology-based enterprises under this subchapter shall be allocated between the Technology Validation Account and the Enterprise Development Account according to a ratio recommended by the private sector advisory committee and approved by the trustees of the trust from time to time.~~

~~(B) Until a different ratio is approved by the trustees, moneys shall be allocated as follows:~~

~~(i) Seventy-five percent (75%) of the moneys shall be allocated to the Enterprise Development Account; and~~

~~(ii) Twenty-five percent (25%) of the moneys shall be allocated to the Technology Validation Account.~~

~~(d) The trustees of the trust will establish separate accounting and tracking and will be responsible for administering the moneys in the Enterprise Development Account and the Technology Validation Account.~~

~~(e) Proceeds received by the trust as a return on or in full or partial liquidation of any investments made from either the Enterprise Development Account or the Technology Validation Account, subject to § 15-5-1607, shall be restricted in their use and dedicated and retained in either the Enterprise Development Account or the Technology Development Account or allocated between those accounts, as recommended by the private sector advisory committee and approved by the trustees of the trust and not commingled with other moneys held by the trust, and such proceeds may be used and reused from time to time for the purposes specified for moneys held in such accounts as provided by this subchapter.~~

~~(f) Moneys shall be withdrawn from either the Enterprise Development Account or the Technology Validation Account, as appropriate, upon~~

~~requisition from the trustees of the trust for achieving the purposes of this subchapter.~~

~~(g)(1) Moneys and funds within the Technology Validation Account shall be used within the parameters expressed in this subsection for the purpose of assisting very early stage technology based enterprises in developing or achieving one (1) or more of the following:~~

~~(A) A sound business plan;~~

~~(B) Market research;~~

~~(C) Marketing plans;~~

~~(D) Software or hardware and equipment relating to the particular technology or technologies on which the technology based enterprise is being built;~~

~~(E) Development of laboratory, preclinical, or other testing procedures and results;~~

~~(F) Attaining proof of concept;~~

~~(G) Building of experimental or pilot-scale models of products or facilities; or~~

~~(H) Achieving other similar milestones required for the advancement of very early stage technology based enterprises as approved by the review committee.~~

~~(2) Financial assistance provided from the Technology Validation Account may be made in the form of equity capital or near-equity capital, as approved by the review committee.~~

~~(3) Financial assistance made from the Technology Validation Account may but shall not be required to be structured or approved based on a market rate based rate of return or other benchmark rate of return expected to be achieved with respect to an investment, it being the primary purpose of investments made from the Technology Validation Account, within the reasonable discretion of the review committee, to assist in validating the technology or technologies on which these technology based enterprises rely or are based, so that such technology based enterprises may be better enabled to attract additional investments by angel investors or other investors.~~

~~(4) Financial assistance made from the Technology Validation Account shall be required to be matched by a contribution of equity capital or near equity capital, or other sources of funds as set forth in this section, in some proportion as determined by the review committee on a case-~~

~~by case basis or as a matter of rule, but on not less than a one to nine (1:9) basis with not less than one dollar (\$1.00) from the applicant technology based enterprise for every nine dollars (\$9.00) from the Technology Validation Account, from:~~

~~(A) One (1) or more owners of any technology based enterprise receiving financial assistance from the fund;~~

~~(B) Proceeds of state or federal research grants, including without limitation federal Small Business Innovation Research grants, Small Business Technology Transfer Program grants, United States Department of Defense research grants, National Institutes of Health research grants, or from any successor programs or agency grants; or~~

~~(C) Community based investment sources.~~

~~(5) Any technology based enterprise receiving financial assistance to be disbursed from the Technology Validation Account shall have a business valuation as represented by the technology based enterprise and approved by the review committee of not more than two million dollars (\$2,000,000) determined prior to the making of the investment from the Technology Validation Account and as the maximum valuation may be adjusted from year to year by the review committee to take into account the effects of inflation.~~

~~(6) The maximum investment that may be made to any one (1) technology based enterprise from the Technology Validation Account shall be one hundred thousand dollars (\$100,000), as may be adjusted from year to year by the review committee to take into account the effects of inflation.~~

~~(h)(1) Moneys and funds within the Enterprise Development Account shall be used within the parameters expressed in this subsection for the purpose of assisting early stage technology based enterprises in augmenting the investments made or proposed to be made in early stage technology based enterprises from accredited investors or owners of the applicant technology based enterprise, or both, when established milestones for further development of early stage technology based enterprises are set forth in a business plan to be approved by the review committee.~~

~~(2) Financial assistance provided from the Enterprise Development Account may be made in the form of equity capital or near equity capital, as approved by the review committee, and shall be on substantially the same terms and conditions as other investments proposed to be made by~~

~~accredited investors or owners of the applicant technology based enterprise, or both, contemporaneously with the assistance to be provided from the fund.~~

~~(3) Financial assistance made from the Enterprise Development Account shall be required to be matched by investments from accredited investors, owners of the applicant technology based enterprise, or both accredited investors and owners of the applicant technology based enterprise in the proportion determined by the review committee on a case by case basis or as a matter of rule, but on not less than a four to one (4:1) basis with not less than four dollars (\$4.00) from the applicant technology based enterprise for every one dollar (\$1.00) from the Enterprise Development Account.~~

~~(4) Any technology based enterprise receiving financial assistance to be disbursed from the Enterprise Development Account shall have a business valuation as represented by the technology based enterprise and approved by the review committee of not more than twenty five million dollars (\$25,000,000), determined prior to the making of the investment from the Enterprise Development Account and as the maximum valuation may be adjusted from year to year by the review committee to take into account the effects of inflation.~~

~~(5) The maximum investment that may be made to any one (1) technology based enterprise from the Enterprise Development Account shall be seven hundred fifty thousand dollars (\$750,000), as may be adjusted from year to year by the review committee to take into account the effects of inflation.~~

~~15-5-1607. Review committee.~~

~~The review committee shall recommend to the trustees of the Venture Capital Investment Trust the payment of fees and expenses out of the Arkansas Risk Capital Matching Fund for the operation of the fund.~~

~~15-5-1608. Annual report.~~

~~The trustees of the Venture Capital Investment Trust shall publish an annual report within five (5) months after the close of each fiscal year that shall:~~

~~(1) Include an annual audit of the Arkansas Risk Capital Matching Fund's activities conducted by the trustees with the assistance of~~

~~the review committee;~~

~~(2) Be presented in writing, and by testimony if requested, to
the:~~

~~(A) Governor;~~

~~(B) House Committee on Agriculture, Forestry, and Economic
Development;~~

~~(C) Senate Committee on Agriculture, Forestry, and
Economic Development;~~

~~(D) Arkansas Development Finance Authority; and~~

~~(E) Arkansas Economic Development Commission; and~~

~~(3) Document and review the progress of the trustees of the
trust and the review committee in implementing the investment and financial
assistance activities under this subchapter.~~

~~15-5-1609. Powers of the trustees of the Venture Capital Investment
Trust.~~

~~The trustees of the Venture Capital Investment Trust shall have the
power to promulgate guidelines and rules, and make any contract, execute any
document, perform any act, or enter into any financial or other transaction
necessary to implement this subchapter.~~

/s/Capp

APPROVED: 4/11/19