

# As Passed by the Senate

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**SENATORS** Armbruster, Harris, Fingerhut, Spada, Ryan, Roberts, Amstutz, Austria, Blessing, Brady, Carnes, Coughlin, DiDonato, Finan, Randy Gardner, Robert Gardner, Goodman, Hagan, Herington, Hottinger, Jacobson, Mead, Mumper, Nein, Oelslager, White, Prentiss, Mallory, Espy, Wachtmann

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## A B I L L

To amend sections 5733.98 and 5747.98 and to enact	1
sections 150.01, 150.02, 150.03, 150.04, 150.05,	2
150.06, 150.07, 150.08, 150.09, 150.10, 5725.19,	3
5729.08, 5733.49, and 5747.80 of the Revised Code	4
to create the Ohio Venture Capital Program to	5
provide for the direction of moneys of a private	6
investment fund into loans and investments that are	7
consistent with a policy adopted by the Ohio	8
Venture Capital Authority and are secured by	9
Program revenues or, if insufficient, by tax	10
credits that may be claimed against the premium tax	11
on domestic or foreign insurance companies, or the	12
corporation franchise or personal income tax.	13

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

<b>Section 1.</b> That sections 5733.98 and 5747.98 be amended and	14
sections 150.01, 150.02, 150.03, 150.04, 150.05, 150.06, 150.07,	15
150.08, 150.09, 150.10, 5725.19, 5729.08, 5733.49, and 5747.80 of	16
the Revised Code be enacted to read as follows:	17

Sec. 150.01. (A) As used in this chapter:

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(1) "Authority" means the Ohio venture capital authority  
created under section 150.02 of the Revised Code.

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(2) "Program administrator" means the private, for-profit  
investment fund designated by the authority in accordance with  
section 150.05 of the Revised Code.

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(B) For the purposes of mobilizing capital for loans and  
investments that provide significant potential to propel the  
advancement of technology and build the entrepreneurial economy  
throughout this state, and promoting a strong, professional  
venture capital industry throughout this state, there is hereby  
created the Ohio venture capital program. The program, pursuant to  
this chapter, shall consist of the following general components:

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(1) The lending to and investment of private moneys in seed  
and venture capital partnerships pursuant to a general lending and  
investment policy prescribed by the Ohio venture capital authority  
created under section 150.02 of the Revised Code, and implemented  
and administered through a single, private, for-profit investment  
fund designated as the program administrator pursuant to section  
150.05 of the Revised Code;

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(2) The granting of tax credits by the authority in order to  
provide security against losses on loans or investments incurred  
under the program, up to the amount of outstanding contracts for  
those tax credits, if program revenues of the authority are  
insufficient for that purpose.

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Sec. 150.02. (A) There is hereby created the Ohio venture  
capital authority, which shall have the powers enumerated in this  
chapter. The exercise by the authority of its powers is hereby  
declared and shall be an essential state governmental function.

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The authority is subject to all laws generally applicable to state agencies and public officials, to the extent those laws do not conflict with this chapter.

(B) The authority shall consist of nine members, not more than seven of whom shall be of the same political party. Three of the members shall be appointed by the governor, with the advice and consent of the senate, from among the general public, one member shall be appointed by the speaker of the house of representatives from among the general public, and one member shall be appointed by the president of the senate from among the general public. All appointed members shall have experience in the field of banking, investments, commercial law, or industry that is relevant to the purposes of the Ohio venture capital program, as stated in section 150.01 of the Revised Code. The auditor of state, attorney general, director of development, and tax commissioner, or their designees, shall be ex officio nonvoting members.

Initial gubernatorial appointees to the authority shall serve staggered terms, one term expiring on January 31, 2004, another term expiring on January 31, 2005, and another term expiring on January 31, 2006. The initial terms of the members appointed by the speaker of the house of representatives and the president of the senate shall expire on January 31, 2004. Thereafter, terms of office for all appointees shall be for four years. A vacancy on the authority shall be filled in the same manner as the original appointment, except that a person appointed to fill a vacancy shall be appointed to the remainder of the unexpired term. Any appointed member of the authority is eligible for reappointment.

A member of the authority may be removed by the member's appointing authority for misfeasance, malfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless

the notice and hearing are waived in writing by the member.

(C) Members of the authority shall serve without compensation, but shall receive their reasonable and necessary expenses incurred in the conduct of authority business. The speaker of the house of representatives and the president of the senate shall each designate a member of the authority to serve as co-chairpersons. A majority of the voting members of the authority shall constitute a quorum, and the affirmative vote of a majority of the voting members present shall be necessary for any action taken by the authority. No vacancy in the voting membership of the authority impairs the rights of a quorum to exercise all rights and perform all duties of the authority.

(D) The department of development shall provide the authority with office space and such technical assistance as the authority requires.

**Sec. 150.03.** Within ninety days after the effective date of this section, the authority shall establish, and subsequently may modify as it considers necessary, a written lending and investment policy for the Ohio venture capital program. The authority is not subject to Chapter 119. of the Revised Code with respect to the establishment or modification of the policy. The policy shall meet all of the following requirements:

(A) It is consistent with the purposes of the program stated in section 150.01 of the Revised Code.

(B) It permits the direction of only private moneys into private, for-profit seed and venture capital partnerships, including funds of funds, that commit to maintaining a significant focus in this state, demonstrate the potential to generate high levels of successful lending and investment performance, and, in the aggregate, reflect portfolios diversified by sector, stage of

business development with a heavy emphasis on seed and early stage  
development, management style, and geographic location.

(C) It specifies the general conditions a private, for-profit  
investment fund must meet to be designated the program  
administrator under section 150.05 of the Revised Code.

(D) It specifies the criteria the authority must consider  
when making a determination under division (B) of section 150.04  
of the Revised Code of whether moneys may be expended without  
adversely affecting the program's continued viability.

(E) It includes lending and investment standards and general  
limitations on allowable loans and investments that the authority  
considers reasonable and necessary to achieve the purposes of the  
program, minimize the need for the authority to grant tax credits  
under section 150.07 of the Revised Code, ensure compliance of the  
program administrator with all applicable laws of this state and  
the United States, and ensure the safety and soundness of loans  
and investments made under the program.

**Sec. 150.04.** (A) The lending and investment policy  
established or modified under section 150.03 of the Revised Code  
shall specify the terms and conditions under which the authority  
may grant tax credits under section 150.07 of the Revised Code,  
subject to that section and division (B) of this section, to  
provide security against losses on loans or investments under the  
Ohio venture capital program.

(B) Nothing in this chapter authorizes the providing of  
security against losses to lenders or investors under the program  
on any bases other than the following:

(1) The application first of moneys of the Ohio venture  
capital fund, created under section 150.08 of the Revised Code,  
that the authority, under the criteria in its lending and

investment policy, determines may be expended without adversely  
affecting the program's continued viability; and then

(2) The granting of tax credits pursuant to section 150.07 of  
the Revised Code, but only to the extent moneys under division  
(B)(1) of this section are insufficient.

**Sec. 150.05.** (A) The authority shall designate, as the Ohio  
venture capital program administrator, one private, for-profit  
investment fund to carry out the lending and investment component  
of the program stated in division (B)(1) of section 150.01 of the  
Revised Code and further prescribed in the lending and investment  
policy established or modified by the authority in accordance with  
sections 150.03 and 150.04 of the Revised Code, provided the  
investment fund is incorporated or organized under Chapter 1701.,  
1705., 1775., 1782., or 1783. of the Revised Code and is  
capitalized in accordance with any state or federal laws  
applicable to the issuance or sale of securities. The authority  
shall so designate the program administrator by entering into a  
written agreement, in accordance with division (B) of this  
section, with the investment fund.

(B) The agreement shall include all of the following:

(1) Specification that borrowing and investing by the program  
administrator will be budgeted to guarantee that no tax credits  
will be granted during the first four years of the Ohio venture  
capital program;

(2) A requirement that lending and investment by the program  
administrator will be in compliance with the lending and  
investment policy established or modified in accordance with  
sections 150.03 and 150.04 of the Revised Code that is in effect  
at the time the loan or investment is made, and a prohibition  
against the program administrator engaging in any lending or  
investment activities other than activities to carry out

exclusively the lending and investment component of the program  
stated in division (B)(1) of section 150.01 of the Revised Code;

(3) A requirement of periodic financial reporting by the  
program administrator to the authority, which reporting shall  
include an annual audit by an independent auditor and such other  
financial reporting as is specified in the agreement or otherwise  
required by the authority for the purpose of ensuring that the  
program administrator is carrying out the lending and investment  
component of the program;

(4) Specification of any like standards or general  
limitations that are in addition to or in furtherance of lending  
and investment standards or limitations that apply pursuant to  
division (E) of section 150.03 of the Revised Code;

(5) A requirement of payment to the authority by the program  
administrator of fees prescribed in the agreement, pursuant to a  
schedule or terms and conditions specified in the agreement;

(6) Specification of the procedures under which the program  
administrator shall certify immediately to the authority the  
necessity for the authority to grant tax credits under a contract  
entered into pursuant to section 150.07 of the Revised Code;

(7) Specification of any general limitations regarding the  
employment of a fund manager by the program administrator, in  
addition to an express limitation that the fund manager be a  
person with demonstrated, substantial, successful experience in  
the design and management of seed and venture capital investment  
programs and in capital formation;

(8) Specification of any other terms and conditions of the  
program administrator's designation and operation that the  
authority and program administrator consider consistent with and  
necessary to achieve the purposes of the program;

(9) Specification of the terms and conditions under which the

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authority or the program administrator may terminate the agreement  
or under which the authority may cease granting tax credits to  
provide security against losses under this chapter.

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Sec. 150.06. (A) The authority is not an agency as defined in  
section 101.82 of the Revised Code for purposes of divisions (A)  
and (B) of section 101.83 of the Revised Code.

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(B) The designation of a program administrator and the  
entering into an agreement under section 150.05 of the Revised  
Code do not constitute a purchase of services under Chapter 125.  
of the Revised Code.

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(C) Information with respect to the marketing plans,  
financial statements, trade secrets, research concepts, production  
methods, or products, or any other proprietary information  
concerning any person, that is submitted to or compiled by the  
authority for the purpose of developing the policy required by  
sections 150.03 and 150.04 of the Revised Code, is confidential  
and not subject to section 149.43 of the Revised Code, except to  
the extent that the person that provides the information or that  
is the subject of the information consents in writing to  
disclosure.

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(D) Notwithstanding section 121.22 of the Revised Code, the  
authority may hold an executive session for either of the  
following purposes, but only after a majority of a quorum of the  
authority determines, by a roll call vote, to hold the session,  
and only at a regular or special meeting:

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(1) Presenting, reviewing, or discussing information  
described in division (C) of this section, but only if consent to  
disclosure has not been given as provided in that division;

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(2) Preparing for, conducting, or reviewing negotiating  
sessions with any private, for-profit investment fund for the

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purpose of designating the program administrator and entering into  
the agreement under section 150.05 of the Revised Code.

**Sec. 150.07.** (A) For the purpose stated in section 150.01 of  
the Revised Code and subject to division (B) of this section, the  
authority may grant to a lender or an investor of the Ohio venture  
capital program a refundable credit allowed against the tax  
imposed by section 5725.18, 5729.03, 5733.06, or 5747.02 of the  
Revised Code. The combined aggregate amount of all credits granted  
under this section shall not exceed one hundred million dollars.  
The authority shall enter into a written contract to grant the  
credit at a future time to such lender or investor, which may  
include the program administrator designated under section 150.05  
of the Revised Code, if the lender or investor incurs a loss under  
the program. The contract shall be consistent with this chapter  
and contain the terms and conditions under which the authority  
will grant the credit, including specifying the amount of loss the  
lender or investor must first incur before the credit is granted.  
The credit shall be claimed in accordance with section 5725.19,  
5729.08, 5733.49, or 5747.80 of the Revised Code.

(B) The authority may grant a tax credit under division (A)  
of this section, subject to all of the following limitations:

(1) The authority grants the credit solely pursuant to a  
contract entered into under division (A) of this section.

(2) The authority grants the credit as a result of a loss on  
a loan or investment made under the Ohio venture capital program,  
as that loss is certified by the program administrator to the  
authority pursuant to division (B)(6) of section 150.05 of the  
Revised Code.

(3) The authority does not grant any credit that may be  
claimed during the first four years of the program or after July  
1, 2026.

(4) The authority does not grant more than a total of twenty 264  
million dollars in credits for any one fiscal year. 265

(5) The authority grants the tax credit in an amount that 266  
does not exceed the amount of loss incurred and under conditions 267  
the authority shall specify in the lending and investment policy 268  
it establishes or modifies in accordance with sections 150.03 and 269  
150.04 of the Revised Code. 270

(C) The authority shall issue a tax certificate for any 271  
credit granted under this section. The certificate shall state the 272  
principal amount of the credit granted and the calendar year, 273  
under section 5725.19 or 5729.08, the tax year, under section 274  
5733.49, or the taxable year under section 5747.80 of the Revised 275  
Code, in which the credit may be claimed. The authority, in 276  
conjunction with the tax commissioner, shall develop a system for 277  
issuing tax certificates for the credits, for the purpose of 278  
verifying that any credit claimed is a credit issued under this 279  
section and is properly taken in the year specified in the 280  
certificate and in compliance with divisions (B)(3) and (4) of 281  
this section. 282

**Sec. 150.08.** (A) There is hereby created in the state 283  
treasury the Ohio venture capital fund, to which shall be credited 284  
all fees received by the authority pursuant to division (B)(5) of 285  
section 150.05 of the Revised Code, and all interest earned on 286  
moneys of the fund. 287

(B) Money in the Ohio venture capital fund shall be used 288  
exclusively to provide security against losses as authorized under 289  
this chapter. 290

**Sec. 150.09.** Neither the state nor an appointing authority 291  
under section 150.02 of the Revised Code, or a member of the 292  
authority is liable in damages to any person in a civil action for 293

any loss incurred as a result of any loan or investment made by  
the program administrator.

Sec. 150.10. (A) On the first day of January of the second  
year after the date of entering into an agreement under section  
150.05 of the Revised Code, and every other first day of January  
thereafter, the authority shall file with the clerk of the house  
of representatives, the clerk of the senate, and the chairpersons  
of the house and senate standing committees predominantly  
concerned with economic development a written report on the Ohio  
venture capital program, that includes all of the following:

(1) A description of the details of the lending and  
investment policy established or modified in accordance with  
sections 150.03 and 150.04 of the Revised Code;

(2) The authority's assessment of the program's achievement  
of its purposes stated in section 150.01 of the Revised Code;

(3) The amount of tax credits granted by the authority under  
section 150.07 of the Revised Code;

(4) The amount of tax credits claimed pursuant to section  
5725.19, 5729.08, 5733.49, or 5747.80 of the Revised Code, as to  
the respective taxes involved;

(5) The financial status of the Ohio venture capital fund;

(6) Any recommendations for modifying the program to better  
achieve the purposes stated in section 150.01 of the Revised Code.

(B) During each year that a report is issued under division  
(A) of this section, the co-chairpersons of the authority, or  
another member of the authority designated by the co-chairpersons  
as the authority's representative, shall be required to appear in  
person before the standing committees of the house and senate  
predominantly concerned with economic development to give

testimony concerning the status of the Ohio venture capital  
program.

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Sec. 5725.19. A refundable tax credit granted by the Ohio  
venture capital authority under section 150.07 of the Revised Code  
may be claimed against the tax imposed on a domestic insurance  
company under section 5725.18 of the Revised Code. The credit  
shall be claimed in the calendar year specified in the certificate  
issued by the authority. If the amount of the credit for a  
calendar year exceeds the tax otherwise due, the domestic  
insurance company is entitled to a refund of the excess.

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Sec. 5729.08. A refundable tax credit granted by the Ohio  
venture capital authority under section 150.07 of the Revised Code  
may be claimed against the tax imposed on a foreign insurance  
company under section 5729.03 of the Revised Code. The credit  
shall be claimed in the calendar year specified in the certificate  
issued by the authority. If the amount of the credit for a  
calendar year exceeds the tax otherwise due, the foreign insurance  
company is entitled to a refund of the excess.

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Sec. 5733.49. A refundable corporation franchise tax credit  
granted by the Ohio venture capital authority under section 150.07  
of the Revised Code may be claimed against the tax imposed by  
section 5733.06 of the Revised Code. The credit shall be claimed  
in the tax year specified in the certificate issued by the  
authority and in the order required under section 5733.98 of the  
Revised Code. If the amount of the credit for a tax year exceeds  
the tax otherwise due after allowing for any other credit that  
precedes it in the order required under that section, the taxpayer  
is entitled to a refund of the excess.

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For purposes of making tax payments under this chapter, taxes  
equal to the amount of the refundable credit shall be considered

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paid to this state on the first day of the tax year. 353

**Sec. 5733.98.** (A) To provide a uniform procedure for 354  
calculating the amount of tax imposed by section 5733.06 of the 355  
Revised Code that is due under this chapter, a taxpayer shall 356  
claim any credits to which it is entitled in the following order, 357  
except as otherwise provided in section 5733.058 of the Revised 358  
Code: 359

(1) The credit for taxes paid by a qualifying pass-through 360  
entity allowed under section 5733.0611 of the Revised Code; 361

(2) The credit allowed for financial institutions under 362  
section 5733.45 of the Revised Code; 363

(3) The credit for qualifying affiliated groups under section 364  
5733.068 of the Revised Code; 365

(4) The subsidiary corporation credit under section 5733.067 366  
of the Revised Code; 367

(5) The savings and loan assessment credit under section 368  
5733.063 of the Revised Code; 369

(6) The credit for recycling and litter prevention donations 370  
under section 5733.064 of the Revised Code; 371

(7) The credit for employers that enter into agreements with 372  
child day-care centers under section 5733.36 of the Revised Code; 373

(8) The credit for employers that reimburse employee child 374  
day-care expenses under section 5733.38 of the Revised Code; 375

(9) The credit for maintaining railroad active grade crossing 376  
warning devices under section 5733.43 of the Revised Code; 377

(10) The credit for purchases of lights and reflectors under 378  
section 5733.44 of the Revised Code; 379

(11) The job retention credit under division (B) of section 380

5733.0610 of the Revised Code;	381
(12) The credit for manufacturing investments under section 5733.061 of the Revised Code;	382 383
(13) The credit for purchases of new manufacturing machinery and equipment under section 5733.31 or section 5733.311 of the Revised Code;	384 385 386
(14) The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;	387 388
(15) The job training credit under section 5733.42 of the Revised Code;	389 390
(16) The credit for qualified research expenses under section 5733.351 of the Revised Code;	391 392
(17) The enterprise zone credit under section 5709.66 of the Revised Code;	393 394
(18) The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;	395 396
(19) The credit for employers that establish on-site child day-care under section 5733.37 of the Revised Code;	397 398
(20) The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;	399 400
(21) The export sales credit under section 5733.069 of the Revised Code;	401 402
(22) The credit for research and development and technology transfer investors under section 5733.35 of the Revised Code;	403 404
(23) The enterprise zone credits under section 5709.65 of the Revised Code;	405 406
(24) The credit for using Ohio coal under section 5733.39 of the Revised Code;	407 408

(25) The refundable jobs creation credit under division (A) 409  
of section 5733.0610 of the Revised Code; 410

(26) The refundable Ohio venture capital program credit under 411  
section 5733.49 of the Revised Code. 412

(B) For any credit, except the refundable jobs creation 413  
credit and the refundable Ohio venture capital program credit, the 414  
amount of the credit for a tax year shall not exceed the tax due 415  
after allowing for any other credit that precedes it in the order 416  
required under this section. Any excess amount of a particular 417  
credit may be carried forward if authorized under the section 418  
creating that credit. 419

**Sec. 5747.80.** A refundable income tax credit granted by the 420  
Ohio venture capital authority under section 150.07 of the Revised 421  
Code may be claimed against the tax imposed by section 5747.02 of 422  
the Revised Code. The credit shall be claimed in the taxable year 423  
specified in the certificate issued by the authority and in the 424  
order required under section 5747.98 of the Revised Code. If the 425  
amount of the credit for a taxable year exceeds the tax otherwise 426  
due after allowing for any other credit that precedes it in the 427  
order required under that section, the taxpayer is entitled to a 428  
refund of the excess. 429

For purposes of making tax payments under this chapter, taxes 430  
equal to the amount of the refundable credit shall be considered 431  
paid to this state on the first day of the taxable year. 432

**Sec. 5747.98.** (A) To provide a uniform procedure for 433  
calculating the amount of tax due under section 5747.02 of the 434  
Revised Code, a taxpayer shall claim any credits to which the 435  
taxpayer is entitled in the following order: 436

(1) The retirement income credit under division (B) of 437  
section 5747.055 of the Revised Code; 438

(2) The senior citizen credit under division (C) of section 5747.05 of the Revised Code;	439 440
(3) The lump sum distribution credit under division (D) of section 5747.05 of the Revised Code;	441 442
(4) The dependent care credit under section 5747.054 of the Revised Code;	443 444
(5) The lump sum retirement income credit under division (C) of section 5747.055 of the Revised Code;	445 446
(6) The lump sum retirement income credit under division (D) of section 5747.055 of the Revised Code;	447 448
(7) The lump sum retirement income credit under division (E) of section 5747.055 of the Revised Code;	449 450
(8) The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;	451 452
(9) The campaign contribution credit under section 5747.29 of the Revised Code;	453 454
(10) The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;	455 456
(11) The joint filing credit under division (G) of section 5747.05 of the Revised Code;	457 458
(12) The nonresident credit under division (A) of section 5747.05 of the Revised Code;	459 460
(13) The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;	461 462
(14) The credit for employers that enter into agreements with child day-care centers under section 5747.34 of the Revised Code;	463 464 465
(15) The credit for employers that reimburse employee child day-care expenses under section 5747.36 of the Revised Code;	466 467



(16) The credit for adoption of a minor child under section 5747.37 of the Revised Code;	468 469
(17) The credit for purchases of lights and reflectors under section 5747.38 of the Revised Code;	470 471
(18) The job retention credit under division (B) of section 5747.058 of the Revised Code;	472 473
(19) The credit for manufacturing investments under section 5747.051 of the Revised Code;	474 475
(20) The credit for purchases of new manufacturing machinery and equipment under section 5747.26 or section 5747.261 of the Revised Code;	476 477 478
(21) The second credit for purchases of new manufacturing machinery and equipment and the credit for using Ohio coal under section 5747.31 of the Revised Code;	479 480 481
(22) The job training credit under section 5747.39 of the Revised Code;	482 483
(23) The enterprise zone credit under section 5709.66 of the Revised Code;	484 485
(24) The credit for the eligible costs associated with a voluntary action under section 5747.32 of the Revised Code;	486 487
(25) The credit for employers that establish on-site child day-care centers under section 5747.35 of the Revised Code;	488 489
(26) The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;	490 491
(27) The export sales credit under section 5747.057 of the Revised Code;	492 493
(28) The credit for research and development and technology transfer investors under section 5747.33 of the Revised Code;	494 495
(29) The enterprise zone credits under section 5709.65 of the	496

Revised Code;	497
(30) The refundable jobs creation credit under division (A) of section 5747.058 of the Revised Code;	498 499
(31) The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;	500 501
(32) The refundable credits for taxes paid by a qualifying pass-through entity granted under division (J) of section 5747.08 of the Revised Code;	502 503 504
<u>(33) The refundable Ohio venture capital program credit under section 5747.80 of the Revised Code.</u>	505 506
(B) For any credit, except the refundable credits enumerated in divisions (A) (30), (31), <del>and (32)</del> , <u>and (33)</u> of this section and the credit granted under division (I) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.	507 508 509 510 511 512 513 514 515 516
<b>Section 2.</b> That existing sections 5733.98 and 5747.98 of the Revised Code are hereby repealed.	517 518