

1 A bill to be entitled
2 An act relating to certified capital companies;
3 amending s. 14.2015, F.S.; requiring the Office
4 of Tourism, Trade, and Economic Development of
5 the Executive Office of the Governor to
6 administer tax credits; creating s. 288.99,
7 F.S.; creating the "Certified Capital Company
8 Act"; providing a short title; providing a
9 purpose; providing definitions; providing
10 certification procedures; providing deadlines;
11 requiring an application fee; providing grounds
12 for application denial or decertification;
13 requiring the Department of Banking and Finance
14 to enforce certification and decertification
15 procedures; requiring certification reports
16 filed with the Office of Tourism, Trade, and
17 Economic Development; requiring an annual
18 renewal fee; specifying investment benchmarks;
19 specifying depositories for funds not invested
20 in qualified businesses; providing a credit
21 against premium tax liability; specifying
22 effect of credit on retaliatory tax; providing
23 an aggregate premium tax credit cap; providing
24 a tax credit allocation formula; requiring
25 forfeiture of tax credits under certain
26 circumstances; providing for an annual report
27 by each certified capital company; requiring
28 the Office of Tourism, Trade, and Economic
29 Development to review and verify annual
30 reports; authorizing the Department of Revenue
31 to audit and examine books of certified capital

1 companies and investors; providing for
2 distributions to debt holders; requiring the
3 Department of Banking and Finance to conduct
4 annual reviews of certified capital companies;
5 providing requirements for distributions;
6 providing decertification procedures; providing
7 a cure period; providing recapture of tax
8 credits under certain circumstances; providing
9 a schedule for tax credit recapture and
10 penalties; providing for transfer of tax
11 credits; requiring the Office of Tourism,
12 Trade, and Economic Development to annually
13 report to the Governor and the Legislature;
14 providing for application and renewal fees;
15 providing rulemaking authority; providing
16 appropriations; providing effective dates.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraphs (g) and (j) of subsection (2) of
21 section 14.2015, Florida Statutes, are amended to read:

22 14.2015 Office of Tourism, Trade, and Economic
23 Development; creation; powers and duties.--

24 (2) The purpose of the Office of Tourism, Trade, and
25 Economic Development is to assist the Governor in working with
26 the Legislature, state agencies, business leaders, and
27 economic development professionals to formulate and implement
28 coherent and consistent policies and strategies designed to
29 provide economic opportunities for all Floridians. To
30 accomplish such purposes, the Office of Tourism, Trade, and
31 Economic Development shall:

1 (g)1. Administer the Florida Enterprise Zone Act under
2 ss. 290.001-290.016, the community contribution tax credit
3 program under ss. 220.183 and 624.5105, the tax refund program
4 for qualified target industry businesses under s. 288.106,
5 contracts for transportation projects under s. 288.063, the
6 sports franchise facility program under s. 288.1162, the
7 professional golf hall of fame facility program under s.
8 288.1168, the Florida Jobs Siting Act under ss.
9 403.950-403.972, the Rural Community Development Revolving
10 Loan Fund under s. 288.065, the Regional Rural Development
11 Grants Program under s. 288.018, the Certified Capital Company
12 Act under s. 288.99, the Florida State Rural Development
13 Council, and the Rural Economic Development Initiative.

14 2. The office may enter into contracts in connection
15 with the fulfillment of its duties concerning the Florida
16 First Business Bond Pool under chapter 159, tax incentives
17 under chapters 212 and 220, tax incentives under the Certified
18 Capital Company Act in chapter 288, foreign offices under
19 chapter 288, the Enterprise Zone program under chapter 290,
20 the Seaport Employment Training program under chapter 311, the
21 Florida Professional Sports Team License Plates under chapter
22 320, Spaceport Florida under chapter 331, Job Siting and
23 Expedited Permitting under chapter 403, and in carrying out
24 other functions that are specifically assigned to the office
25 by law.

26 (j) Promulgate rules to carry out its functions in
27 connection with the administration of the Qualified Target
28 Industry program, the Qualified Defense Contractor program,
29 the Certified Capital Company Act, the Enterprise Zone
30 program, and the Florida First Business Bond pool.

31

1 Section 2. Section 288.99, Florida Statutes, is
2 created to read:

3 288.99 Certified Capital Company Act.--

4 (1) SHORT TITLE.--This section may be cited as the
5 "Certified Capital Company Act."

6 (2) PURPOSE.--The primary purpose of this act is to
7 stimulate a substantial increase in venture capital
8 investments in this state by providing an incentive for
9 insurance companies to invest in certified capital companies
10 in this state which, in turn, will make investments in new
11 businesses or in expanding businesses. The increase in
12 investment capital flowing into new or expanding businesses is
13 intended to contribute to employment growth, create jobs which
14 exceed the average wage for the county in which the jobs are
15 created, and expand or diversify the economic base of this
16 state.

17 (3) DEFINITIONS.--As used in this section, the term:

18 (a) "Affiliate of an insurance company" means:

19 1. Any person directly or indirectly beneficially
20 owning, whether through rights, options, convertible
21 interests, or otherwise, controlling, or holding power to vote
22 10 percent or more of the outstanding voting securities or
23 other ownership interests of the insurance company;

24 2. Any person 10 percent or more of whose outstanding
25 voting securities or other ownership interest is directly or
26 indirectly beneficially owned, whether through rights,
27 options, convertible interests, or otherwise, controlled, or
28 held with power to vote by the insurance company;

29 3. Any person directly or indirectly controlling,
30 controlled by, or under common control with the insurance
31 company;

1 4. A partnership in which the insurance company is a
2 general partner; or

3 5. Any person who is a principal, director, employee,
4 or agent of the insurance company or an immediate family
5 member of the principal, director, employee, or agent.

6 (b) "Certified capital" means an investment of cash by
7 a certified investor in a certified capital company which
8 fully funds the purchase price of either or both its equity
9 interest in the certified capital company or a qualified debt
10 instrument issued by the certified capital company.

11 (c) "Certified capital company" means a corporation,
12 partnership, or limited liability company which:

13 1. Is certified by the department in accordance with
14 this act.

15 2. Receives investments of certified capital.

16 3. Makes qualified investments as its primary
17 activity.

18 (d) "Certified investor" means any insurance company
19 subject to premium tax liability pursuant to s. 624.509 that
20 contributes certified capital.

21 (e) "Department" means the Department of Banking and
22 Finance.

23 (f) "Director" means the director of the Office of
24 Tourism, Trade, and Economic Development.

25 (g) "Early stage technology business" means a
26 qualified business that is involved, at the time of the
27 certified capital company's initial investment in such
28 business, in activities related to developing initial product
29 or service offerings, such as prototype development or the
30 establishment of initial production or service processes. The
31 term includes a qualified business that is less than 2 years

1 old and has, together with its affiliates, less than \$3
2 million in annual revenues for the fiscal year immediately
3 preceding the initial investment by the certified capital
4 company on a consolidated basis, as determined in accordance
5 with generally accepted accounting principles.

6 (h) "Office" means the Office of Tourism, Trade, and
7 Economic Development.

8 (i) "Premium tax liability" means any liability
9 incurred by an insurance company under the provisions of s.
10 624.509.

11 (j) "Principal" means an executive officer of a
12 corporation, partner of a partnership, manager of a limited
13 liability company, or any other person with equivalent
14 executive functions.

15 (k) "Qualified business" means a business that meets
16 the following conditions:

17 1. The business is headquartered in this state and its
18 principal business operations are located in this state.

19 2. At the time a certified capital company makes an
20 initial investment in a business, the business is a small
21 business concern as defined in 13 C.F.R., s. 121.201, "Size
22 Standards Used to Define Small Business Concerns" of the
23 United States Small Business Administration which is involved
24 in manufacturing, processing or assembling products,
25 conducting research and development, or providing services.

26 3. At the time a certified capital company makes an
27 initial investment in a business, the business certifies in an
28 affidavit that:

29 a. The business is unable to obtain conventional
30 financing, which means that the business has failed in an
31 attempt to obtain funding for a loan from a bank or other

1 commercial lender or that the business cannot reasonably be
2 expected to qualify for such financing under the standards of
3 commercial lending;

4 b. The business plan for the business projects that
5 the business is reasonably expected to achieve in excess of
6 \$25 million in sales revenue within 5 years after the initial
7 investment;

8 c. The business will maintain its headquarters in this
9 state for the next 10 years and any new manufacturing facility
10 financed by a qualified investment will remain in this state
11 for the next 10 years; and

12 d. The business has fewer than 200 employees and at
13 least 75 percent of the employees are employed in this state.

14
15 A business predominantly engaged in retail sales, real estate
16 development, insurance, banking, lending, oil and gas
17 exploration or engaged in professional services provided by
18 accountants, lawyers, or physicians does not constitute a
19 qualified business.

20 (l) "Qualified debt instrument" means a debt
21 instrument, or a hybrid of a debt instrument, issued by a
22 certified capital company, at par value or a premium, with an
23 original maturity date of at least 5 years after the date of
24 issuance, a repayment schedule which is no faster than a level
25 principal amortization over a 5-year period, and interest,
26 distribution, or payment features which are not related to the
27 profitability of the certified capital company or the
28 performance of the certified capital company's investment
29 portfolio.

30 (m) "Qualified distribution" means any distribution or
31 payment to equity holders of a certified capital company for:

1 1. Costs and expenses of forming, syndicating,
2 managing, and operating the certified capital company,
3 including an annual management fee in an amount that does not
4 exceed 2.5 percent of the certified capital of the certified
5 capital company, plus reasonable and necessary fees in
6 accordance with industry custom for professional services,
7 including, but not limited to, legal and accounting services,
8 related to the operation of the certified capital company.

9 2. Any projected increase in federal or state taxes,
10 including penalties and interest related to state and federal
11 income taxes, of the equity owners of a certified capital
12 company resulting from the earnings or other tax liability of
13 the certified capital company to the extent that the increase
14 is related to the ownership, management, or operation of a
15 certified capital company.

16 (n) "Qualified investment" means the investment of
17 cash by a certified capital company in a qualified business
18 for the purchase of any debt, equity, or hybrid security of
19 any nature and description whatsoever, including a debt
20 instrument or security which has the characteristics of debt
21 but which provides for conversion into equity or equity
22 participation instruments such as options or warrants.

23 (4) CERTIFICATION; GROUNDS FOR DENIAL OR
24 DECERTIFICATION.--

25 (a) To operate as a certified capital company, a
26 corporation, partnership, or limited liability company must be
27 certified by the department pursuant to this act.

28 (b) An applicant for certification as a certified
29 capital company must file a verified application with the
30 department on or before December 1, 1998, in a form which the
31 department may prescribe by rule. The applicant shall submit

1 a nonrefundable application fee of \$7,500 to the department.

2 The applicant shall provide:

3 1. The name of the applicant and the address of its
4 principal office and each office in this state.

5 2. The applicant's form and place of organization and
6 the relevant organizational documents, bylaws, and amendments
7 or restatements of such documents, bylaws, or amendments.

8 3. Evidence from the Department of State that the
9 applicant is registered with the Department of State as
10 required by law, maintains an active status with the
11 Department of State, and has not been dissolved or had its
12 registration revoked, canceled, or withdrawn.

13 4. The applicant's proposed method of doing business.

14 5. The applicant's financial condition and history,
15 including an audit report on the financial statements prepared
16 in accordance with generally accepted accounting principles
17 showing net capital of not less than \$500,000 within 90 days
18 after the date the application is submitted to the department.

19 If the date of the application is more than 90 days after
20 preparation of the applicant's fiscal year-end financial
21 statements, the applicant may file financial statements
22 reviewed by an independent certified public accountant for the
23 period subsequent to the audit report, together with the
24 audited financial statement for the most recent fiscal year.

25 If the applicant has been in business less than 12 months, and
26 has not prepared an audited financial statement, the applicant
27 may file a financial statement reviewed by an independent
28 certified public accountant.

29 (c) On December 31, 1998, the department shall grant
30 or deny certification as a certified capital company. If the
31 department denies certification within the time period

1 specified, the department shall inform the applicant of the
2 grounds for the denial. If the department has not granted or
3 denied certification within the time specified, the
4 application shall be deemed approved. The department shall
5 approve the application if the department finds that:

6 1. The applicant satisfies the requirements of
7 paragraph (b).

8 2. No evidence exists that the applicant has committed
9 any act specified in paragraph (d).

10 3. At least two of the principals have a minimum of 5
11 years of experience making venture capital investments out of
12 private equity funds, with not less than \$20 million being
13 provided by third-party investors for investment in the early
14 stage of operating businesses. At least one full-time manager
15 or principal of the certified capital company who has such
16 experience must be primarily located in an office of the
17 certified capital company which is based in this state.

18 (d) The department may deny certification or decertify
19 a certified capital company if the grounds for decertification
20 are not removed or corrected within 90 days after the notice
21 of such grounds is received by the certified capital company.
22 The department may deny certification or decertify a certified
23 capital company if the certified capital company fails to
24 maintain a net worth of at least \$500,000, or if the
25 department determines that the applicant, or any principal or
26 director of the certified capital company, has:

27 1. Violated any provision of this section;

28 2. Made a material misrepresentation or false
29 statement or concealed any essential or material fact from any
30 person during the application process or with respect to
31

1 information and reports required of certified capital
2 companies under this section;

3 3. Been convicted of, or entered a plea of guilty or
4 nolo contendere to, a crime against the laws of this state or
5 any other state or of the United States or any other country
6 or government, including a fraudulent act in connection with
7 the operation of a certified capital company, or in connection
8 with the performance of fiduciary duties in another capacity;

9 4. Been adjudicated liable in a civil action on
10 grounds of fraud, embezzlement, misrepresentation, or deceit;
11 or

12 5.a. Been the subject of any decision, finding,
13 injunction, suspension, prohibition, revocation, denial,
14 judgment, or administrative order by any court of competent
15 jurisdiction, administrative law judge, or any state or
16 federal agency, national securities, commodities, or option
17 exchange, or national securities, commodities, or option
18 association, involving a material violation of any federal or
19 state securities or commodities law or any rule or regulation
20 adopted under such law, or any rule or regulation of any
21 national securities, commodities, or options exchange or
22 national securities, commodities, or options association; or

23 b. Been the subject of any injunction or adverse
24 administrative order by a state or federal agency regulating
25 banking, insurance, finance or small loan companies, real
26 estate, mortgage brokers, or other related or similar
27 industries.

28 (e) The certified capital company shall file a copy of
29 its certification with the office by January 31, 1999.

30 (f) Any offering material involving the sale of
31 securities of the certified capital company shall include the

1 following statement: "By authorizing the formation of a
2 certified capital company, the State of Florida does not
3 endorse the quality of management or the potential for
4 earnings of such company and is not liable for damages or
5 losses to a certified investor in the company. Use of the
6 word 'certified' in an offering does not constitute a
7 recommendation or endorsement of the investment by the State
8 of Florida. Investments in a certified capital company prior
9 to the time such company is certified are not eligible for
10 premium tax credits. If applicable provisions of law are
11 violated, the state may require forfeiture of unused premium
12 tax credits and repayment of used premium tax credits by the
13 certified investor."

14 (g) No insurance company or any affiliate of an
15 insurance company shall, directly or indirectly, manage or
16 control the direction of investments of, a certified capital
17 company. This prohibition does not preclude a certified
18 investor, insurance company, or any other party from
19 exercising its legal rights and remedies, which may include
20 interim management of a certified capital company, if a
21 certified capital company is in default of its obligations
22 under law or its contractual obligations to such certified
23 investor, insurance company, or other party.

24 (h) On or before December 31 of each year, each
25 certified capital company shall pay to the department an
26 annual, nonrefundable renewal certification fee of \$5,000. No
27 renewal fees shall be required within 6 months after the date
28 of initial certification.

29 (i) The department shall administer and provide for
30 the enforcement of certification requirements for certified
31 capital companies as provided in this act. The department may

1 adopt any rules necessary to carry out its duties,
2 obligations, and powers related to certification, renewal of
3 certification, or decertification of certified capital
4 companies and may perform any other acts necessary for the
5 proper administration and enforcement of such duties,
6 obligations, and powers.

7 (j) Decertification of a certified capital company
8 under this subsection does not affect the ability of certified
9 investors in such certified capital company from claiming
10 future premium tax credits earned as a result of an investment
11 in the certified capital company during the period in which it
12 was duly certified.

13 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.--

14 (a) To remain certified, a certified capital company
15 must make qualified investments according to the following
16 schedule:

17 1. At least 20 percent of its certified capital must
18 be invested in qualified investments by December, 31, 2000.

19 2. At least 30 percent of its certified capital must
20 be invested in qualified investments by December 31, 2001.

21 3. At least 40 percent of its certified capital must
22 be invested in qualified investments by December 31, 2002.

23 4. At least 50 percent of its certified capital must
24 be invested in qualified investments by December 31, 2003. At
25 least 50 percent of such qualified investments must be
26 invested in early stage technology businesses.

27 (b) All capital not invested in qualified investments
28 by the certified capital company:

29 1. Must be held in a financial institution as defined
30 by s. 655.005(1)(h) or held by a broker-dealer registered
31 under s. 517.12.

1 2. Must not be invested in a certified investor of the
2 certified capital company or any affiliate of the certified
3 investor of the certified capital company.

4 3. Must be invested only in:

5 a. Any United States Treasury obligations;

6 b. Certificates of deposit or other obligations,
7 maturing within 3 years after acquisition of such certificates
8 or obligations, issued by any financial institution or trust
9 company incorporated under the laws of the United States;

10 c. Marketable obligations, maturing within 5 years or
11 less after the acquisition of such obligations, which are
12 rated "A" or better by any nationally recognized credit rating
13 agency;

14 d. Mortgage-backed securities, with an average life of
15 5 years or less, after the acquisition of such securities,
16 which are rated "A" or better by any nationally recognized
17 credit rating agency;

18 e. Collateralized mortgage obligations and real estate
19 mortgage investment conduits that are direct obligations of an
20 agency of the United States Government; are not private-label
21 issues; are in book-entry form; and do not include the classes
22 of interest only, principal only, residual, or zero; or

23 f. Interests in money market funds, the portfolio of
24 which is limited to cash and obligations described in
25 sub-subparagraphs a.-d.

26 (c) The aggregate amount of all qualified investments
27 made by the certified capital company from the date of its
28 certification shall be considered in the calculation of the
29 percentage requirements under paragraph (a).

30 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.--
31

1 (a) Any certified investor who makes an investment of
2 certified capital shall earn a vested credit against premium
3 tax liability equal to 100 percent of the certified capital
4 invested by the certified investor. Certified investors shall
5 be entitled to use no more than 10 percentage points of the
6 vested premium tax credit, including any carryforward credits
7 under this act, per year beginning with premium tax filings
8 for calendar year 2000. Any premium tax credits not used by
9 certified investors in any single year may be carried forward
10 and applied against the premium tax liabilities of such
11 investors for subsequent calendar years. The carryforward
12 credit may be applied against subsequent premium tax filings
13 through calendar year 2017.

14 (b) The credit to be applied against premium tax
15 liability in any single year may not exceed the premium tax
16 liability of the certified investor for that taxable year.

17 (c) A certified investor claiming a credit against
18 premium tax liability earned through an investment in a
19 certified capital company shall not be required to pay any
20 additional retaliatory tax levied pursuant to s. 624.5091 as a
21 result of claiming such credit. Because credits under this
22 section are available to a certified investor, s. 624.5091
23 does not limit such credit in any manner.

24 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
25 PROCESS.--

26 (a) The total amount of tax credits which may be
27 allocated by the office shall not exceed \$150 million. The
28 total amount of tax credits which may be used by certified
29 investors under this act shall not exceed \$15 million
30 annually.

31

1 (b) The office shall be responsible for allocating
2 premium tax credits as provided for in this act to certified
3 capital companies.

4 (c) Each certified capital company must apply to the
5 office for an allocation of premium tax credits for potential
6 certified investors by March 15, 1999, on a form developed by
7 the office with the cooperation of the Department of Revenue.
8 The form shall be accompanied by an affidavit from each
9 potential certified investor confirming that the potential
10 certified investor has agreed to make an investment of
11 certified capital in a certified capital company up to a
12 specified amount, subject only to the receipt of a premium tax
13 credit allocation pursuant to this subsection. No allocation
14 shall be made to the potential investors of a certified
15 capital company unless such certified capital company has
16 filed premium tax allocation claims that would result in an
17 allocation to the potential investors in such certified
18 capital company of not less than \$15 million in the aggregate.

19 (d) On or before April 1, 1999, the office shall
20 inform each certified capital company of its share of total
21 premium tax credits available for allocation to each of its
22 potential investors.

23 (e) If a certified capital company does not receive
24 certified capital equaling the amount of premium tax credits
25 allocated to a potential certified investor for which the
26 investor filed a premium tax allocation claim within 10
27 business days after the investor received a notice of
28 allocation, the certified capital company shall notify the
29 office by overnight common carrier delivery service of the
30 company's failure to receive the capital. That portion of the
31 premium tax credits allocated to the certified capital company

1 certified investor and its affiliates by one or more certified
2 companies may not exceed \$15 million.

3 (h) To the extent that less than \$150 million in
4 certified capital is raised in connection with the procedure
5 set forth in paragraphs (c)-(g), the department may adopt
6 rules to allow a subsequent allocation of the remaining
7 premium tax credits authorized under this section.

8 (8) ANNUAL TAX CREDIT; CLAIM PROCESS.--

9 (a) On an annual basis, on or before December 31, each
10 certified capital company shall file with the department and
11 the office, in consultation with the department, on a form
12 prescribed by the office, for each calendar year:

13 1. The total dollar amount the certified capital
14 company received from certified investors, the identity of the
15 certified investors, and the amount received from each
16 certified investor during the calendar year.

17 2. The total dollar amount the certified capital
18 company invested and the amount invested in qualified
19 businesses, together with the identity and location of those
20 businesses and the amount invested in each qualified business.

21 3. For informational purposes only, the total number
22 of permanent, full-time jobs either created or retained by the
23 qualified business during the calendar year, the average wage
24 of the jobs created or retained, the industry sectors in which
25 the qualified businesses operate, and any additional capital
26 invested in qualified businesses from sources other than
27 certified capital companies.

28 (b) The form shall be verified by one or more
29 principals of the certified capital company submitting the
30 form. Verification shall be accomplished as provided in s.
31 92.525(1)(b) and subject to the provisions of s. 92.525(3).

1 (c) The office shall review the form, and any
2 supplemental documentation, submitted by each certified
3 capital company for the purpose of verifying:

4 1. That the businesses in which certified capital has
5 been invested by the certified capital company are in fact
6 qualified businesses, and that the amount of certified capital
7 invested by the certified capital company is as represented in
8 the form.

9 2. The amount of certified capital invested in the
10 certified capital company by the certified investors.

11 3. The amount of premium tax credit available to
12 certified investors.

13 (d) The Department of Revenue is authorized to audit
14 and examine the accounts, books, or records of certified
15 capital companies and certified investors for the purpose of
16 ascertaining the correctness of any report and financial
17 return which has been filed, and to ascertain a certified
18 capital company's compliance with the tax-related provisions
19 of this act.

20 (e) This subsection shall take effect January 1, 1999.

21 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
22 PARTICIPATION.--

23 (a) A certified capital company may make qualified
24 distributions at any time. In order to make a distribution to
25 its equity holders, other than a qualified distribution, a
26 certified capital company must have invested an amount
27 cumulatively equal to 100 percent of its certified capital in
28 qualified investments. Payments to debt holders of a certified
29 capital company, however, may be made without restriction with
30 respect to repayments of principal and interest on
31 indebtedness owed to them by a certified capital company,

1 including indebtedness of the certified capital company on
2 which certified investors earned premium tax credits. A debt
3 holder that is also a certified investor or equity holder of a
4 certified capital company may receive payments with respect to
5 such debt without restrictions.

6 (b) Cumulative distributions from a certified capital
7 company to its certified investors and equity holders, other
8 than qualified distributions, in excess of the certified
9 capital company's original certified capital and any
10 additional capital contributions to the certified capital
11 company may be audited by a nationally recognized certified
12 public accounting firm acceptable to the department, at the
13 expense of the certified capital company, if the department
14 directs such audit be conducted. The audit shall determine
15 whether aggregate cumulative distributions from the certified
16 capital company to all certified investors and equity holders,
17 other than qualified distributions, have equaled the sum of
18 the certified capital company's original certified capital and
19 any additional capital contributions to the certified capital
20 company. If at the time of any such distribution made by the
21 certified capital company, such distribution taken together
22 with all other such distributions made by the certified
23 capital company, other than qualified distributions, exceeds
24 in the aggregate the sum of the certified capital company's
25 original certified capital and any additional capital
26 contributions to the certified capital company, as determined
27 by the audit, the certified capital company shall pay to the
28 Department of Revenue 10 percent of the portion of such
29 distribution in excess of such amount. Payments to the
30 Department of Revenue by a certified capital company pursuant
31 to this paragraph shall not exceed the aggregate amount of tax

1 credits used by all certified investors in such certified
2 capital company.

3 (10) DECERTIFICATION.--

4 (a) The department shall conduct an annual review of
5 each certified capital company to determine if the certified
6 capital company is abiding by the requirements of
7 certification, to advise the certified capital company as to
8 the eligibility status of its qualified investments, and to
9 ensure that no investment has been made in violation of this
10 act. The cost of the annual review shall be paid by each
11 certified capital company.

12 (b) Nothing contained in this subsection shall be
13 construed to limit the Comptroller's authority to conduct
14 audits of certified capital companies as deemed appropriate
15 and necessary.

16 (c) Any material violation of this section, or a
17 finding that the certified capital company or any principal or
18 director thereof has committed any act specified in paragraph
19 (4)(d), shall be grounds for decertification of the certified
20 capital company. If the department determines that a certified
21 capital company is no longer in compliance with the
22 certification requirements of this act, the department shall,
23 by written notice, inform the officers of such company that
24 the company may be subject to decertification 90 days after
25 the date of mailing of the notice, unless the deficiencies are
26 corrected and such company is again found to be in compliance
27 with all certification requirements.

28 (d) At the end of the 90-day grace period, if the
29 certified capital company is still not in compliance with the
30 certification requirements, the department may issue a notice
31 to revoke or suspend the certification or to impose an

1 administrative fine. The department shall advise each
2 respondent of the right to an administrative hearing under
3 chapter 120 prior to final action by the department.

4 (e) If the department revokes a certification, such
5 revocation shall also deny, suspend, or revoke the
6 certifications of all affiliates of the certified capital
7 company.

8 (f) Decertification of a certified capital company for
9 failure to meet all requirements for continued certification
10 under paragraph (5)(a) may cause the recapture of premium tax
11 credits previously claimed by such company and the forfeiture
12 of future premium tax credits to be claimed by certified
13 investors with respect to such certified capital company, as
14 follows:

15 1. Decertification of a certified capital company
16 within 3 years after its certification date shall cause the
17 recapture of all premium tax credits previously claimed by
18 such company and the forfeiture of all future premium tax
19 credits to be claimed by certified investors with respect to
20 such company.

21 2. When a certified capital company meets all
22 requirements for continued certification under subparagraph
23 (5)(a)1. and subsequently fails to meet the requirements for
24 continued certification under the provisions of subparagraph
25 (5)(a)2., those premium tax credits which have been or will be
26 taken by certified investors within 3 years after the
27 certification date of the certified capital company shall not
28 be subject to recapture or forfeiture; however, all premium
29 tax credits that have been or will be taken by certified
30 investors after the third anniversary of the certification

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1 date of the certified capital company shall be subject to
2 recapture or forfeiture.

3 3. When a certified capital company meets all
4 requirements for continued certification under subparagraphs
5 (5)(a)1. and 2. and subsequently fails to meet the
6 requirements for continued certification under the
7 subparagraph (5)(a)3., those premium tax credits which have
8 been or will be taken by certified investors within 4 years
9 after the certification date of the certified capital company
10 shall not be subject to recapture or forfeiture; however, all
11 premium tax credits that have been or will be taken by
12 certified investors after the fourth anniversary of the
13 certification date of the certified capital company shall be
14 subject to recapture and forfeiture.

15 4. If a certified capital company has met all
16 requirements for continued certification under paragraph
17 (5)(a), but such company is subsequently decertified, those
18 premium tax credits which have been or will be taken by
19 certified investors within 5 years after the certification
20 date of such company shall not be subject to recapture or
21 forfeiture. Those premium tax credits to be taken subsequent
22 to the 5th year of certification shall be subject to
23 forfeiture only if the certified capital company is
24 decertified within 5 years after its certification date.

25 5. If a certified capital company has invested an
26 amount cumulatively equal to 100 percent of its certified
27 capital in qualified investments, all premium tax credits
28 claimed or to be claimed by its certified investors shall not
29 be subject to recapture or forfeiture.

30 (g) Decertification of a certified capital company
31 pursuant to subsection (4) or this subsection does not affect

1 the ability of certified investors in such certified capital
2 company to continue to claim future premium tax credits earned
3 as an investment in the certified capital company during the
4 period in which it was duly certified.

5 (h) The office shall send written notice to the
6 address of each certified investor whose premium tax credit
7 has been subject to recapture or forfeiture, using the address
8 last shown on the last premium tax filing.

9 (i) The certified investor is responsible for
10 returning to the Department of Revenue any forfeited insurance
11 premium tax credits and such funds shall be paid into the
12 General Revenue Fund of the state.

13 (j) The certified investor shall file with the
14 Department of Revenue an amended return or such other report
15 as the department may prescribe by regulation and pay any
16 required tax, not later than 60 days after such
17 decertification has been agreed to or finally determined,
18 whichever shall first occur.

19 (k) A notice of deficiency may be issued:

20 1. At any time within 5 years after the date such
21 notification is given; or

22 2. At any time if a certified investor fails to notify
23 the Department of Revenue.

24
25 In either case, the amount of any proposed assessment set
26 forth in such notice shall be limited to the amount of any
27 deficiency resulting under this act from the recomputation of
28 the certified investor's insurance premium tax and, if
29 applicable, its retaliatory tax for the taxable year giving
30 effect only to the item or items reflected in the
31 decertification adjustment.

1 (l) Any certified investor who fails to report and
2 timely pay any tax due as a result of the forfeiture of its
3 insurance premium tax credit is in violation of this
4 subsection and is subject to a penalty of 10 percent of any
5 underpayment or delinquent taxes due and payable.

6 (m) When any taxpayer fails to pay any amount due as a
7 result of the forfeiture of its insurance premium tax credit
8 as provided for in this subsection, on or before the due date
9 as specified in this subsection, interest shall be due on any
10 insurance premium or retaliatory tax deficiency resulting from
11 such forfeiture, at the rate of 12 percent per year from the
12 due date of such amended return until paid.

13 (11) TRANSFERABILITY.--The claim of a transferee of a
14 certified investor's unused premium tax credit shall be
15 permitted in the same manner and subject to the same
16 provisions and limitations of this act as the original
17 certified investor. The term "transferee" means any person
18 who:

19 (a) Through the voluntary sale, assignment, or other
20 transfer of the business or control of the business of the
21 certified investor, including the sale or other transfer of
22 stock or assets by merger, consolidation, or dissolution,
23 succeeds to all or substantially all of the business and
24 property of the certified investor;

25 (b) Becomes by operation of law or otherwise the
26 parent company of the certified investor; or

27 (c) Directly or indirectly owns, whether through
28 rights, options, convertible interests, or otherwise,
29 controls, or holds power to vote 10 percent or more of the
30 outstanding voting securities or other ownership interest of
31 the certified investor.

1 (12) REPORTING REQUIREMENTS.--

2 (a) The office shall report on an annual basis to the
3 Governor, the President of the Senate, and the Speaker of the
4 House of Representatives on or before April 1:

5 1. The total dollar amount each certified capital
6 company received from all certified investors and any other
7 investor, the identity of the certified investors, and the
8 total amount of premium tax credit used by each certified
9 investor for the previous calendar year.

10 2. The total dollar amount invested by each certified
11 capital company and that portion invested in qualified
12 businesses, the identity and location of those businesses, the
13 amount invested in each qualified business, and the total
14 number of permanent, full-time jobs created or retained by
15 each qualified business.

16 3. The return for the state as a result of the
17 certified capital company investments, including the extent to
18 which:

19 a. Certified capital company investments have
20 contributed to employment growth.

21 b. The wage level of businesses in which certified
22 capital companies have invested exceed the average wage for
23 the county in which the jobs are located.

24 c. The investments of the certified capital companies
25 in qualified businesses have contributed to expanding or
26 diversifying the economic base of the state.

27 (13) FEES.--All fees and charges of any nature
28 collected by the department pursuant to this act shall be paid
29 into the State Treasury and credited to the General Revenue
30 Fund.

31 (14) RULEMAKING AUTHORITY.--

1 (a) The Department of Revenue may by rule prescribe
2 forms and procedures for the tax credit filings, audits, and
3 forfeiture of premium tax credits described in this section,
4 and for certified capital company payments under paragraph
5 (9)(b).

6 (b) The office may adopt any rules necessary to carry
7 out its duties, obligations, and powers related to the
8 administration, review, and reporting provisions of this
9 section and may perform any other acts necessary for the
10 proper administration and enforcement of such duties,
11 obligations, and powers.

12 Section 3. There is hereby appropriated \$240,434 for
13 fiscal year 1998-1999 from the General Revenue Fund to the
14 Department of Banking and Finance and four additional career
15 service positions are authorized within the department for the
16 purpose of enforcing the provisions of this act.

17 Section 4. There is hereby appropriated \$100,000 from
18 the General Revenue Fund to the Office of Tourism, Trade, and
19 Economic Development to implement this act.

20 Section 5. Except as otherwise provided in this act,
21 this act shall take effect upon becoming a law.
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