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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

31

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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