

By the Committee on Banking and Insurance; and Senator Latvala

311-1492-01

1 A bill to be entitled
2 An act relating to the Certified Capital
3 Company Act; amending s. 288.99, F.S.;
4 redefining the terms "early stage technology
5 business" and "qualified distribution";
6 defining the terms "Program One" and "Program
7 Two"; revising procedures and dates for
8 certification and decertification under Program
9 One and Program Two; revising the process for
10 earning premium tax credits; providing a
11 limitation on tax credits under Program Two;
12 authorizing the Department of Banking and
13 Finance to levy a fine; providing for
14 distributions under both programs; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsections (3) and (4), paragraph (a) of
20 subsection (5), paragraph (a) of subsection (6), paragraphs
21 (a), (c), (d), (e), (f), (g), and (h) of subsection (7),
22 paragraph (a) of subsection (8), paragraphs (a) and (b) of
23 subsection (9), and paragraph (f) of subsection (10) of
24 section 288.99, Florida Statutes, are amended to read:

25 288.99 Certified Capital Company Act.--

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

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

28 1. Any person directly or indirectly beneficially
29 owning, whether through rights, options, convertible
30 interests, or otherwise, controlling, or holding power to vote

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1 10 percent or more of the outstanding voting securities or
2 other ownership interests of the insurance company;
3 2. Any person 10 percent or more of whose outstanding
4 voting securities or other ownership interest is directly or
5 indirectly beneficially owned, whether through rights,
6 options, convertible interests, or otherwise, controlled, or
7 held with power to vote by the insurance company;
8 3. Any person directly or indirectly controlling,
9 controlled by, or under common control with the insurance
10 company;
11 4. A partnership in which the insurance company is a
12 general partner; or
13 5. Any person who is a principal, director, employee,
14 or agent of the insurance company or an immediate family
15 member of the principal, director, employee, or agent.
16 (b) "Certified capital" means an investment of cash by
17 a certified investor in a certified capital company which
18 fully funds the purchase price of either or both its equity
19 interest in the certified capital company or a qualified debt
20 instrument issued by the certified capital company.
21 (c) "Certified capital company" means a corporation,
22 partnership, or limited liability company which:
23 1. Is certified by the department in accordance with
24 this act.
25 2. Receives investments of certified capital from two
26 or more unaffiliated certified investors.
27 3. Makes qualified investments as its primary
28 activity.
29 (d) "Certified investor" means any insurance company
30 subject to premium tax liability pursuant to s. 624.509 that
31 contributes certified capital.

1 (e) "Department" means the Department of Banking and
2 Finance.

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

5 (g) "Early stage technology business" means a
6 qualified business that is either:

7 1. Involved, at the time of the certified capital
8 company's initial investment in such business, in activities
9 related to developing initial product or service offerings,
10 such as prototype development or the establishment of initial
11 production or service processes; ~~The term includes a~~
12 ~~qualified business that is~~

13 2. Less than 2 years old and has, together with its
14 affiliates, less than \$3 million in annual revenues for the
15 fiscal year immediately preceding the initial investment by
16 the certified capital company on a consolidated basis, as
17 determined in accordance with generally accepted accounting
18 principles; ~~The term also includes~~

19 3. The Florida Black Business Investment Board; ~~or~~

20 4. Any entity that is majority-owned ~~majority-owned~~ by
21 the Florida Black Business Investment Board; ~~or~~

22 5. Any entity in which the Florida Black Business
23 Investment Board holds a majority voting interest on the board
24 of directors.

25 (h) "Office" means the Office of Tourism, Trade, and
26 Economic Development.

27 (i) "Premium tax liability" means any liability
28 incurred by an insurance company under the provisions of s.
29 624.509.

30 (j) "Principal" means an executive officer of a
31 corporation, partner of a partnership, manager of a limited

1 liability company, or any other person with equivalent
2 executive functions.

3 (k) "Qualified business" means a business that meets
4 the following conditions as evidenced by documentation
5 required by department rule:

6 1. The business is headquartered in this state and its
7 principal business operations are located in this state.

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

15 3. At the time a certified capital company makes an
16 initial investment in a business, the business certifies in an
17 affidavit that:

18 a. The business is unable to obtain conventional
19 financing, which means that the business has failed in an
20 attempt to obtain funding for a loan from a bank or other
21 commercial lender or that the business cannot reasonably be
22 expected to qualify for such financing under the standards of
23 commercial lending;

24 b. The business plan for the business projects that
25 the business is reasonably expected to achieve in excess of
26 \$25 million in sales revenue within 5 years after the initial
27 investment, or the business is located in a designated Front
28 Porch community, enterprise zone, urban high crime area, rural
29 job tax credit county, or nationally recognized historic
30 district;

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1 c. The business will maintain its headquarters in this
2 state for the next 10 years and any new manufacturing facility
3 financed by a qualified investment will remain in this state
4 for the next 10 years, or the business is located in a
5 designated Front Porch community, enterprise zone, urban high
6 crime area, rural job tax credit county, or nationally
7 recognized historic district; and

8 d. The business has fewer than 200 employees and at
9 least 75 percent of the employees are employed in this state.
10 For purposes of this subsection, the term "~~qualified business~~"
11 also includes the Florida Black Business Investment Board, any
12 entity majority owned by the Florida Black Business Investment
13 Board, or any entity in which the Florida Black Business
14 Investment Board holds a majority voting interest on the board
15 of directors.

16 4. The term does not include:

17 a. Any business predominantly engaged in retail sales,
18 real estate development, insurance, banking, lending, or oil
19 and gas exploration.

20 b. Any business predominantly engaged in professional
21 services provided by accountants, lawyers, or physicians.

22 c. Any company that has no historical revenues and
23 either has no specific business plan or purpose or has
24 indicated that its business plan is solely to engage in a
25 merger or acquisition with any unidentified company or other
26 entity.

27 d. Any company that has a strategic plan to grow
28 through the acquisition of firms with substantially similar
29 business which would result in the planned net loss of
30 Florida-based jobs over a 12-month period after the
31 acquisition as determined by the department.

1
2 ~~A business predominantly engaged in retail sales, real estate~~
3 ~~development, insurance, banking, lending, oil and gas~~
4 ~~exploration, or engaged in professional services provided by~~
5 ~~accountants, lawyers, or physicians does not constitute a~~
6 ~~qualified business.~~

7 (1) "Qualified debt instrument" means a debt
8 instrument, or a hybrid of a debt instrument, issued by a
9 certified capital company, at par value or a premium, with an
10 original maturity date of at least 5 years after the date of
11 issuance, a repayment schedule which is no faster than a level
12 principal amortization over a 5-year period, and interest,
13 distribution, or payment features which are not related to the
14 profitability of the certified capital company or the
15 performance of the certified capital company's investment
16 portfolio.

17 (m) "Qualified distribution" means any distribution or
18 payment by ~~to equity holders~~ of a certified capital company
19 for:

20 1. Reasonable costs and expenses, including
21 professional fees, of forming and, syndicating the certified
22 capital company, if no such costs are paid to a certified
23 investor and the total cash or cash equivalents available to
24 the certified capital company at the time of receipt of
25 certified capital from certified investors, after deducting
26 the costs and expenses of forming and syndicating the
27 certified capital company, including any payments made over
28 time for obligations incurred at the time of receipt of
29 certified capital excluding other future qualified
30 distributions and payments made under s. 288.99(9)(a), are an
31 amount equal to or greater than 50 percent of the total

1 certified capital allocated to the certified capital company
2 pursuant to s. 288.99(7);

3 2. Reasonable costs of managing and operating the
4 certified capital company, not exceeding 5 percent of the
5 certified capital in any 1 year, including an annual
6 management fee in an amount that does not exceed 2.5 percent
7 of the certified capital of the certified capital company; ~~;~~
8 plus

9 3. Reasonable and necessary fees in accordance with
10 industry custom for professional services, including, but not
11 limited to, legal and accounting services, related to the
12 operation of the certified capital company; or.

13 ~~4.2.~~ Any projected increase in federal or state taxes,
14 including penalties and interest related to state and federal
15 income taxes, of the equity owners of a certified capital
16 company resulting from the earnings or other tax liability of
17 the certified capital company to the extent that the increase
18 is related to the ownership, management, or operation of a
19 certified capital company.

20 (n)1. "Qualified investment" means the investment of
21 cash by a certified capital company in a qualified business
22 for the purchase of any debt, equity, or hybrid security ~~of~~
23 ~~any nature and description whatsoever,~~ including a debt
24 instrument or security that ~~which~~ has the characteristics of
25 debt but which provides for conversion into equity or equity
26 participation instruments such as options or warrants.

27 2. The term does not include:

28 a. Any investment made after the effective date of
29 this act the contractual terms of which require the repayment
30 of any portion of the principal in instances, other than
31 default as determined by department rule, within 12 months

1 following the initial investment by the certified capital
2 company unless such investment has a repayment schedule no
3 faster than a level principal amortization of at least 2
4 years;

5 b. Any "follow-on" or "add-on" investment except for
6 the amount by which the new investment is in addition to the
7 amount of the certified capital company's initial investment
8 returned to it other than in the form of interest, dividends,
9 or other types of profit participation or distributions; or

10 c. Any investment in a qualified business or affiliate
11 of a qualified business that exceeds 15 percent of certified
12 capital.

13 (o) "Program One" means the \$150 million in premium
14 tax credits issued under this act in 1999, the allocation of
15 such credits under this act, and the regulation of certified
16 capital companies and investments made by them hereunder.

17 (p) "Program Two" means the \$250 million in premium
18 tax credits to be issued under this act on April 1, 2002, the
19 allocation of such credits under this act, and the regulation
20 of certified capital companies and investments made by them
21 hereunder.

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

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

27 (b) An applicant for certification as a certified
28 capital company must file a verified application with the
29 department on or before December 1, 1998, or November 1, 2001,
30 in the case of applicants for Program Two, 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 worth ~~capital~~ of not less than \$500,000 within 90
18 days prior to ~~after~~ the date the application is submitted to
19 the department. If the date of the application is more than 90
20 days after preparation of the applicant's fiscal year-end
21 financial statements, the applicant may file financial
22 statements reviewed by an independent certified public
23 accountant for the period subsequent to the audit report,
24 together with the audited financial statement for the most
25 recent fiscal year. If the applicant has been in business
26 less than 12 months, and has not prepared an audited financial
27 statement, the applicant may file a financial statement
28 reviewed by an independent certified public accountant.
29 6. Copies of any offering materials used or proposed
30 to be used by the applicant in soliciting investments of
31 certified capital from certified investors.

1 (c) On December 31, 1998, or December 31, 2001, in the
2 case of applicants for Program Two,the department shall grant
3 or deny certification as a certified capital company. If the
4 department denies certification within the time period
5 specified, the department shall inform the applicant of the
6 grounds for the denial. If the department has not granted or
7 denied certification within the time specified, the
8 application shall be deemed approved. The department shall
9 approve the application if the department finds that:

10 1. The applicant satisfies the requirements of
11 paragraph (b).

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

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

22 4. The applicant's proposed method of doing business
23 and raising certified capital as described in its offering
24 materials and other materials submitted to the department
25 conforms with the requirements of this act.

26 (d) The department may deny certification or decertify
27 a certified capital company if the grounds for decertification
28 are not removed or corrected within 90 days after the notice
29 of such grounds is received by the certified capital company.
30 The department may deny certification or decertify a certified
31 capital company if the certified capital company fails to

1 maintain a net worth of at least \$500,000, or if the
2 department determines that the applicant, or any principal or
3 director of the certified capital company, has:

- 4 1. Violated any provision of this section;
- 5 2. Made a material misrepresentation or false
6 statement or concealed any essential or material fact from any
7 person during the application process or with respect to
8 information and reports required of certified capital
9 companies under this section;
- 10 3. Been convicted of, or entered a plea of guilty or
11 nolo contendere to, a crime against the laws of this state or
12 any other state or of the United States or any other country
13 or government, including a fraudulent act in connection with
14 the operation of a certified capital company, or in connection
15 with the performance of fiduciary duties in another capacity;
- 16 4. Been adjudicated liable in a civil action on
17 grounds of fraud, embezzlement, misrepresentation, or deceit;
18 or
- 19 5.a. Been the subject of any decision, finding,
20 injunction, suspension, prohibition, revocation, denial,
21 judgment, or administrative order by any court of competent
22 jurisdiction, administrative law judge, or any state or
23 federal agency, national securities, commodities, or option
24 exchange, or national securities, commodities, or option
25 association, involving a material violation of any federal or
26 state securities or commodities law or any rule or regulation
27 adopted under such law, or any rule or regulation of any
28 national securities, commodities, or options exchange, or
29 national securities, commodities, or options association; or
- 30 b. Been the subject of any injunction or adverse
31 administrative order by a state or federal agency regulating

1 banking, insurance, finance or small loan companies, real
2 estate, mortgage brokers, or other related or similar
3 industries.

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

6 (e)(f) Any offering material involving the sale of
7 securities of the certified capital company shall include the
8 following statement: "By authorizing the formation of a
9 certified capital company, the State of Florida does not
10 endorse the quality of management or the potential for
11 earnings of such company and is not liable for damages or
12 losses to a certified investor in the company. Use of the
13 word 'certified' in an offering does not constitute a
14 recommendation or endorsement of the investment by the State
15 of Florida. Investments in a certified capital company prior
16 to the time such company is certified are not eligible for
17 premium tax credits. If applicable provisions of law are
18 violated, the state may require forfeiture of unused premium
19 tax credits and repayment of used premium tax credits by the
20 certified investor."

21 (f)(g) No insurance company or any affiliate of an
22 insurance company shall, directly or indirectly, own (whether
23 through rights, options, convertible interests, or otherwise)
24 10 percent or more of the equity interests of or manage or
25 control the direction of investments of a certified capital
26 company or have, through ownership or any agreement or
27 understanding, the right to participate in 10 percent or more
28 of the profits of a certified capital company. This
29 prohibition does not preclude a certified investor, insurance
30 company, or any other party from exercising its legal rights
31 and remedies, which may include interim management of a

1 certified capital company, if a certified capital company is
2 in default of its obligations under law or its contractual
3 obligations to such certified investor, insurance company, or
4 other party.

5 ~~(g)(h)~~ On or before December 31 of each year, each
6 certified capital company shall pay to the department an
7 annual, nonrefundable renewal certification fee of \$5,000. If
8 a certified capital company fails to pay its renewal fee by
9 the specified deadline, it must pay a late fee of \$5,000 in
10 addition to the renewal fee on or by January 31 of each year
11 in order to continue its certification in the program. On or
12 before April 30 of each year, each certified capital company
13 shall file audited financial statements with the department.

14 No renewal fees shall be required within 6 months after the
15 date of initial certification.

16 ~~(h)(i)~~ The department shall administer and provide for
17 the enforcement of certification requirements for certified
18 capital companies as provided in this act. The department may
19 adopt any rules necessary to carry out its duties,
20 obligations, and powers related to certification, renewal of
21 certification, or decertification of certified capital
22 companies and may perform any other acts necessary for the
23 proper administration and enforcement of such duties,
24 obligations, and powers.

25 ~~(i)(j)~~ Decertification of a certified capital company
26 under this subsection does not affect the ability of certified
27 investors in such certified capital company from claiming
28 future premium tax credits earned as a result of an investment
29 in the certified capital company during the period in which it
30 was duly certified.

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

1 (a) To remain certified, a certified capital company
2 must make qualified investments according to the following
3 schedule:

4 1. At least 20 percent of its certified capital must
5 be invested in qualified investments by December 31, 2000, or
6 in the case of certified capital raised under Program Two, by
7 December 31, 2003.

8 2. At least 30 percent of its certified capital must
9 be invested in qualified investments by December 31, 2001, or
10 in the case of certified capital raised under Program Two, by
11 December 31, 2004.

12 3. At least 40 percent of its certified capital must
13 be invested in qualified investments by December 31, 2002, or
14 in the case of certified capital raised under Program Two, by
15 December 31, 2005.

16 4. At least 50 percent of its certified capital must
17 be invested in qualified investments by December 31, 2003, or
18 in the case of certified capital raised under Program Two, by
19 December 31, 2006. At least 50 percent of such qualified
20 investments must be invested in early stage technology
21 businesses.

22 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.--

23 (a) Any certified investor who makes an investment of
24 certified capital shall earn a vested credit against premium
25 tax liability equal to 100 percent of the certified capital
26 invested by the certified investor. Certified investors shall
27 be entitled to use no more than 10 percentage points of the
28 vested premium tax credit earned under a particular program,
29 including any carryforward credits from such program under
30 this act, per year beginning with premium tax filings for
31 calendar year 2000 for credits earned under Program One and

1 calendar year 2003 for credits earned under Program Two. Any
2 premium tax credits not used by certified investors in any
3 single year may be carried forward and applied against the
4 premium tax liabilities of such investors for subsequent
5 calendar years. ~~The carryforward credit may be applied~~
6 ~~against subsequent premium tax filings through calendar year~~
7 ~~2017.~~

8 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION
9 PROCESS.--

10 (a) The total amount of tax credits which may be
11 allocated by the office shall not exceed \$150 million with
12 respect to Program One and \$250 million with respect to
13 Program Two. The total amount of tax credits which may be used
14 by certified investors under this act shall not exceed \$15
15 million annually with respect to credits earned under Program
16 One and \$25 million annually with respect to credits earned
17 under Program Two.

18 (c) Each certified capital company must apply to the
19 office for an allocation of premium tax credits for potential
20 certified investors by March 15, 1999, or by March 15, 2002,
21 in the case of credits allocable under Program Two, on a form
22 developed by the office with the cooperation of the Department
23 of Revenue. The form shall be accompanied by an affidavit
24 from each potential certified investor confirming that the
25 potential certified investor has agreed to make an investment
26 of certified capital in a certified capital company up to a
27 specified amount, subject only to the receipt of a premium tax
28 credit allocation pursuant to this subsection. No allocation
29 shall be made to the potential investors of a certified
30 capital company under Program Two unless such certified
31 capital company has filed premium tax allocation claims ~~that~~

1 ~~would result in an allocation to the potential investors in~~
2 ~~such certified capital company~~ of not less than \$15 million in
3 the aggregate.

4 (d) On or before April 1, 1999, or April 1, 2002, in
5 the case of Program Two,the office shall inform each
6 certified capital company of its share of total premium tax
7 credits available for allocation to each of its potential
8 investors.

9 (e) If a certified capital company does not receive
10 certified capital equaling the amount of premium tax credits
11 allocated to a potential certified investor for which the
12 investor filed a premium tax allocation claim within 10
13 business days after the investor received a notice of
14 allocation, the certified capital company shall notify the
15 office by overnight common carrier delivery service of the
16 company's failure to receive the capital. That portion of the
17 premium tax credits allocated to the certified capital company
18 shall be forfeited. The department may levy a fine of not more
19 than \$50,000 on any certified investor that does not invest
20 the full amount of certified capital allocated by the
21 department to such investor in accordance with the affidavit
22 filed on its behalf. If the office must make a pro rata
23 allocation under paragraph (f), the office shall reallocate
24 such available credits among the other certified capital
25 companies on the same pro rata basis as the initial
26 allocation.

27 (f) If the total amount of capital committed by all
28 certified investors to certified capital companies in premium
29 tax allocation claims under Program Two exceeds the aggregate
30 cap on the amount of credits that may be awarded under Program
31 Two, the premium tax credits that may be allowed to any one

1 certified investor under Program Two shall be allocated using
2 the following ratio:

$$3 \quad \quad \quad A/B = X/\$250,000,000$$

$$4 \quad \quad \quad A/B = X/\$150,000,000$$

5
6
7 where the letter "A" represents the total amount of certified
8 capital certified investors have agreed to invest in any one
9 certified capital company under Program Two, the letter "B"
10 represents the aggregate amount of certified capital that all
11 certified investors have agreed to invest in all certified
12 capital companies under Program Two, the letter "X" is the
13 numerator and represents the total amount of premium tax
14 credits and certified capital that may be allocated to a
15 certified capital company on April 1, 2002 ~~in calendar year~~
16 ~~1999~~, and ~~\$250~~\$150 million is the denominator and represents
17 the total amount of premium tax credits and certified capital
18 that may be allocated to all certified investors in calendar
19 year 2002 ~~1999~~. Any such premium tax credits are not first
20 available for utilization until annual filings are made in
21 2001 for calendar year 2000 in the case of Program One, and
22 until annual filings are made in 2004 for calendar year 2003
23 in the case of Program Two, and the tax credits may be used at
24 a rate not to exceed 10 percent annually per program.

25 (g) The maximum amount of certified capital for which
26 premium tax allocation claims may be filed on behalf of any
27 certified investor and its affiliates by one or more certified
28 capital companies may not exceed \$15 million with respect to
29 Program One and \$25 million with respect to Program Two.

30 (h) To the extent that less than ~~\$250~~\$150 million in
31 certified capital is raised in connection with the procedure

1 set forth in paragraphs (c)-(g), the department may adopt
2 rules to allow a subsequent allocation of the remaining
3 premium tax credits authorized under this section.

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

5 (a) On an annual basis, on or before January ~~December~~
6 31, each certified capital company shall file with the
7 department and the office, in consultation with the
8 department, on a form prescribed by the office, for each
9 calendar year:

10 1. The total dollar amount the certified capital
11 company received from certified investors, the identity of the
12 certified investors, and the amount received from each
13 certified investor during the immediately preceding calendar
14 year.

15 2. The total dollar amount the certified capital
16 company invested and the amount invested in qualified
17 businesses, together with the identity and location of those
18 businesses and the amount invested in each qualified business
19 during the immediately preceding calendar year.

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

27 (9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE
28 PARTICIPATION.--

29 (a) A certified capital company may make qualified
30 distributions at any time. In order to make a distribution to
31 its equity holders, other than a qualified distribution out of

1 funds related to a particular program, a certified capital
2 company must have invested an amount cumulatively equal to 100
3 percent of its certified capital raised under such program in
4 qualified investments. Payments to debt holders of a certified
5 capital company, however, may be made without restriction with
6 respect to repayments of principal and interest on
7 indebtedness owed to them by a certified capital company,
8 including indebtedness of the certified capital company on
9 which certified investors earned premium tax credits. A debt
10 holder that is also a certified investor or equity holder of a
11 certified capital company may receive payments with respect to
12 such debt without restrictions.

13 (b) Cumulative distributions from a certified capital
14 company out of funds related to a particular program to its
15 certified investors and equity holders under such program,
16 other than qualified distributions, in excess of the certified
17 capital company's original certified capital raised under such
18 program and any additional capital contributions to the
19 certified capital company with respect to such program may be
20 audited by a nationally recognized certified public accounting
21 firm acceptable to the department, at the expense of the
22 certified capital company, if the department directs such
23 audit be conducted. The audit shall determine whether
24 aggregate cumulative distributions from the funds related to a
25 particular program made by the certified capital company to
26 all certified investors and equity holders under such program,
27 other than qualified distributions, have equaled the sum of
28 the certified capital company's original certified capital
29 raised under such program and any additional capital
30 contributions to the certified capital company with respect to
31 such program. If at the time of any such distribution made by

1 the certified capital company, such distribution taken
2 together with all other such distributions from the funds
3 related to such program made by the certified capital company,
4 other than qualified distributions, exceeds in the aggregate
5 the sum of the certified capital company's original certified
6 capital raised under such program and any additional capital
7 contributions to the certified capital company with respect to
8 such program, as determined by the audit, the certified
9 capital company shall pay to the Department of Revenue 10
10 percent of the portion of such distribution in excess of such
11 amount. Payments to the Department of Revenue by a certified
12 capital company pursuant to this paragraph shall not exceed
13 the aggregate amount of tax credits used by all certified
14 investors in such certified capital company for such program.

15 (10) DECERTIFICATION.--

16 (f) Decertification of a certified capital company for
17 failure to meet all requirements for continued certification
18 under paragraph (5)(a) with respect to the certified capital
19 raised under a particular program may cause the recapture of
20 premium tax credits previously claimed by such company under
21 such program and the forfeiture of future premium tax credits
22 to be claimed by certified investors under such program with
23 respect to such certified capital company, as follows:

24 1. Decertification of a certified capital company
25 within 3 years after its certification date with respect to a
26 particular program shall cause the recapture of all premium
27 tax credits earned under such program and previously claimed
28 by such company and the forfeiture of all future premium tax
29 credits earned under such program which are to be claimed by
30 certified investors with respect to such company.

31

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

17 3. When a certified capital company meets all
18 requirements for continued certification under subparagraphs
19 (5)(a)1. and 2. with respect to a particular program and
20 subsequently fails to meet the requirements for continued
21 certification under the subparagraph (5)(a)3. with respect to
22 such program, those premium tax credits earned under such
23 program which have been or will be taken by certified
24 investors within 4 years after the certification date of the
25 certified capital company with respect to such program shall
26 not be subject to recapture or forfeiture; however, all
27 premium tax credits earned under such program that have been
28 or will be taken by certified investors after the fourth
29 anniversary of the certification date of the certified capital
30 company with respect to such program shall be subject to
31 recapture and forfeiture.

1 4. If a certified capital company has met all
2 requirements for continued certification under paragraph
3 (5)(a) with respect to certified capital raised under a
4 particular program, but such company is subsequently
5 decertified, those premium tax credits earned under such
6 program which have been or will be taken by certified
7 investors within 5 years after the certification date of such
8 company with respect to such program shall not be subject to
9 recapture or forfeiture. Those premium tax credits earned
10 under such program and to be taken subsequent to the 5th year
11 of certification with respect to such program shall be subject
12 to forfeiture only if the certified capital company is
13 decertified within 5 years after its certification date with
14 respect to such program.

15 5. If a certified capital company has invested an
16 amount cumulatively equal to 100 percent of its certified
17 capital raised under a particular program in qualified
18 investments, all premium tax credits claimed or to be claimed
19 by its certified investors under such program shall not be
20 subject to recapture or forfeiture.

21 Section 2. This act shall take effect July 1, 2001.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1130

4 The committee substitute provides the following changes:

- 5 1. Revises the definition of "qualified distribution" to
6 include the payment of reasonable costs and expenses,
7 including professional fees of forming and syndicating a
8 certified capital company ("CAPCO"), if:
- 9 a) Such costs are not paid to a certified investor;
10 and
 - 11 b) The amount of cash and cash-equivalent assets
12 available to the CAPCO at the time of receipt from
13 investors, after deducting these professional
14 fees, including payments made over time for
15 obligations incurred at the time of receipt of the
16 certified capital must be an amount equal to or
17 greater than 50 percent of the total certified
18 capital allocated to the CAPCO.
- 19 2. Requires a company seeking certification as a certified
20 capital company to provide an audit report of their
21 financial statements documenting net worth of at least
22 \$500,000 within 90 days "prior to" rather than "after"
23 the date the application is submitted to the Department
24 of Banking and Finance.