

By the Committee on Information Technology and  
Representatives Crow and Mack

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

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17           Section 1. Subsections (3) and (4), paragraph (a) of  
18          subsection (5), paragraph (a) of subsection (6), paragraphs  
19          (a), (c), (d), (e), (f), (g), and (h) of subsection (7),  
20          paragraph (a) of subsection (8), subsection (9), and paragraph  
21          (f) of subsection (10) of section 288.99, Florida Statutes,  
22          are amended to read:

23                   288.99 Certified Capital Company Act.--

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

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

26                   1. Any person directly or indirectly beneficially  
27          owning, whether through rights, options, convertible  
28          interests, or otherwise, controlling, or holding power to vote  
29          10 percent or more of the outstanding voting securities or  
30          other ownership interests of the insurance company;

31

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

6           3. Any person directly or indirectly controlling,  
7 controlled by, or under common control with the insurance  
8 company;

9           4. A partnership in which the insurance company is a  
10 general partner; or

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

14           (b) "Certified capital" means an investment of cash by  
15 a certified investor in a certified capital company which  
16 fully funds the purchase price of either or both its equity  
17 interest in the certified capital company or a qualified debt  
18 instrument issued by the certified capital company.

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

21           1. Is certified by the department in accordance with  
22 this act.

23           2. Receives investments of certified capital from two  
24 or more certified investors.

25           3. Makes qualified investments as its primary  
26 activity.

27           (d) "Certified investor" means any insurance company  
28 subject to premium tax liability pursuant to s. 624.509 that  
29 contributes certified capital.

30           (e) "Department" means the Department of Banking and  
31 Finance.

- 1           (f) "Director" means the director of the Office of  
2 Tourism, Trade, and Economic Development.
- 3           (g) "Early stage technology business" means a  
4 qualified business that is:
- 5           1. Involved, at the time of the certified capital  
6 company's initial investment in such business, in activities  
7 related to developing initial product or service offerings,  
8 such as prototype development or the establishment of initial  
9 production or service processes; ~~The term includes a~~  
10 ~~qualified business that is~~
- 11           2. Less than 2 years old and has, together with its  
12 affiliates, less than \$3 million in annual revenues for the  
13 fiscal year immediately preceding the initial investment by  
14 the certified capital company on a consolidated basis, as  
15 determined in accordance with generally accepted accounting  
16 principles; ~~The term also includes~~
- 17           3. The Florida Black Business Investment Board; ~~or~~
- 18           4. Any entity that is majority owned by the Florida  
19 Black Business Investment Board; ~~or~~
- 20           5. Any entity in which the Florida Black Business  
21 Investment Board holds a majority voting interest on the board  
22 of directors; or
- 23           6. Any entity that is defined under s. 288.703(2).
- 24           (h) "Office" means the Office of Tourism, Trade, and  
25 Economic Development.
- 26           (i) "Premium tax liability" means any liability  
27 incurred by an insurance company under the provisions of s.  
28 624.509.
- 29           (j) "Principal" means an executive officer of a  
30 corporation, partner of a partnership, manager of a limited  
31

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

3 (k)1. "Qualified business" means a business that meets  
4 the following conditions as evidenced by documentation  
5 required by department rule:

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

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

31

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

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

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

22            2. The term "qualified business" does not include:

23            a. Any business predominantly engaged in retail sales,  
24 real estate development, insurance, banking, lending, or oil  
25 and gas exploration.

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

28            c. Any company that has no historical revenues and  
29 either has no specific business plan or purpose or has  
30 indicated that its business plan is solely to engage in a  
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1 merger or acquisition with any unidentified company or other  
2 entity.

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

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

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

21 1. Reasonable costs and expenses, including  
22 professional fees, of forming and, syndicating the certified  
23 capital company, if no such costs are paid to a certified  
24 investor;

25 2. Reasonable costs of managing, and operating the  
26 certified capital company, not exceeding 5 percent of the  
27 certified capital in any single year, including an annual  
28 management fee in an amount that does not exceed 2.5 percent  
29 of the certified capital of the certified capital company;  
30 ~~plus~~

31

1           3. Reasonable and necessary fees in accordance with  
2 industry custom for professional services, including, but not  
3 limited to, legal and accounting services, related to the  
4 operation of the certified capital company; or-

5           ~~4.2.~~ Any projected increase in federal or state taxes,  
6 including penalties and interest related to state and federal  
7 income taxes, of the equity owners of a certified capital  
8 company resulting from the earnings or other tax liability of  
9 the certified capital company to the extent that the increase  
10 is related to the ownership, management, or operation of a  
11 certified capital company.

12           (n)1. "Qualified investment" means the investment of  
13 cash by a certified capital company in a qualified business  
14 for the purchase of any debt, equity, or hybrid security ~~of~~  
15 ~~any nature and description whatsoever~~, including a debt  
16 instrument or security which has the characteristics of debt  
17 but which provides for conversion into equity or equity  
18 participation instruments such as options or warrants.

19           2. The term "qualified investment" does not include:

20           a. Any investment made after the effective date of  
21 this act the contractual terms of which require the repayment  
22 of any portion of the principal in instances, other than  
23 default as determined by department rule, within 12 months  
24 following the initial investment by the certified capital  
25 company unless such investment has a repayment schedule no  
26 faster than a level principal amortization of at least 2  
27 years;

28           b. Any "follow-on" or "add-on" investment except for  
29 the amount by which the new investment is in addition to the  
30 amount of the certified capital company's initial investment  
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1 returned to it other than in the form of interest, dividends,  
2 or other types of profit participation or distributions; or  
3 c. Any investment in a qualified business or affiliate  
4 of a qualified business that exceeds 15 percent of certified  
5 capital.

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

10 (p) "Program Two" means the \$250 million in premium  
11 tax credits to be issued under this act after April 1, 2002,  
12 the allocation of such credits under this act, and the  
13 regulation of certified capital companies and investments made  
14 by them hereunder.

15 (4) CERTIFICATION; GROUNDS FOR DENIAL OR  
16 DECERTIFICATION.--

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

20 (b) An applicant for certification as a certified  
21 capital company must file a verified application with the  
22 department on or before December 1, 1998, or November 1, 2001,  
23 in the case of applicants for Program Two, in a form which the  
24 department may prescribe by rule. The applicant shall submit  
25 a nonrefundable application fee of \$7,500 to the department.  
26 The applicant shall provide:

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

29 2. The applicant's form and place of organization and  
30 the relevant organizational documents, bylaws, and amendments  
31 or restatements of such documents, bylaws, or amendments.



1           3. Evidence from the Department of State that the  
2 applicant is registered with the Department of State as  
3 required by law, maintains an active status with the  
4 Department of State, and has not been dissolved or had its  
5 registration revoked, canceled, or withdrawn.

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

7           5. The applicant's financial condition and history,  
8 including an audit report on the financial statements prepared  
9 in accordance with generally accepted accounting principles  
10 showing net worth ~~capital~~ of not less than \$500,000 within 90  
11 days before ~~after~~ the date the application is submitted to the  
12 department. If the date of the application is more than 90  
13 days after preparation of the applicant's fiscal year-end  
14 financial statements, the applicant may file financial  
15 statements reviewed by an independent certified public  
16 accountant for the period subsequent to the audit report,  
17 together with the audited financial statement for the most  
18 recent fiscal year. If the applicant has been in business  
19 less than 12 months, and has not prepared an audited financial  
20 statement, the applicant may file a financial statement  
21 reviewed by an independent certified public accountant.

22           6. Copies of any offering materials used or proposed  
23 to be used by the applicant in soliciting investments of  
24 certified capital from certified investors.

25           (c) On December 31, 1998, or December 31, 2001, in the  
26 case of applicants for Program Two,the department shall grant  
27 or deny certification as a certified capital company. If the  
28 department denies certification within the time period  
29 specified, the department shall inform the applicant of the  
30 grounds for the denial. If the department has not granted or  
31 denied certification within the time specified, the

1 application shall be deemed approved. The department shall  
2 approve the application if the department finds that:

3 1. The applicant satisfies the requirements of  
4 paragraph (b).

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

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

15 4. The applicant's proposed method of doing business  
16 and raising certified capital as described in its offering  
17 materials and other materials submitted to the department  
18 conforms with the requirements of this act.

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

28 1. Violated any provision of this section;  
29 2. Made a material misrepresentation or false  
30 statement or concealed any essential or material fact from any  
31 person during the application process or with respect to

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 (e)(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 (f)~~(g)~~ No insurance company or any affiliate of an  
15 insurance company shall, directly or indirectly, own (whether  
16 through rights, options, convertible interests, or otherwise)  
17 10 percent or more of the equity interests of or manage or  
18 control the direction of investments of a certified capital  
19 company or have, through ownership or any agreement or  
20 understanding, the right to participate in 10 percent or more  
21 of the profits of a certified capital company. This  
22 prohibition does not preclude a certified investor, insurance  
23 company, or any other party from exercising its legal rights  
24 and remedies, which may include interim management of a  
25 certified capital company, if a certified capital company is  
26 in default of its obligations under law or its contractual  
27 obligations to such certified investor, insurance company, or  
28 other party.

29 (g)~~(h)~~ On or before December 31 of each year, each  
30 certified capital company shall pay to the department an  
31 annual, nonrefundable renewal certification fee of \$5,000. If

1 a certified capital company fails to pay its renewal fee by  
2 the specified deadline, the company must pay a late fee of  
3 \$5,000 in addition to the renewal fee on or by January 31 of  
4 each year in order to continue its certification in the  
5 program. On or before April 30 of each year, each certified  
6 capital company shall file audited financial statements with  
7 the department.No renewal fees shall be required within 6  
8 months after the date of initial certification.

9 (h)(i) The department shall administer and provide for  
10 the enforcement of certification requirements for certified  
11 capital companies as provided in this act. The department may  
12 adopt any rules necessary to carry out its duties,  
13 obligations, and powers related to certification, renewal of  
14 certification, or decertification of certified capital  
15 companies and may perform any other acts necessary for the  
16 proper administration and enforcement of such duties,  
17 obligations, and powers.

18 (i)(j) Decertification of a certified capital company  
19 under this subsection does not affect the ability of certified  
20 investors in such certified capital company from claiming  
21 future premium tax credits earned as a result of an investment  
22 in the certified capital company during the period in which it  
23 was duly certified.

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

25 (a) To remain certified, a certified capital company  
26 must make qualified investments according to the following  
27 schedule:

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

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

5           3. At least 40 percent of its certified capital must  
6 be invested in qualified investments by December 31, 2002, or,  
7 in the case of certified capital raised under Program Two, by  
8 December 31, 2005.

9           4. At least 50 percent of its certified capital must  
10 be invested in qualified investments by December 31, 2003, or,  
11 in the case of certified capital raised under Program Two, by  
12 December 31, 2006. At least 50 percent of such qualified  
13 investments must be invested in early stage technology  
14 businesses.

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

16           (a) Any certified investor who makes an investment of  
17 certified capital shall earn a vested credit against premium  
18 tax liability equal to 100 percent of the certified capital  
19 invested by the certified investor. Certified investors shall  
20 be entitled to use no more than 10 percentage points of the  
21 vested premium tax credit earned under a particular program,  
22 including any carryforward credits from such program under  
23 this act, per year beginning with premium tax filings for  
24 calendar year 2000 for credits earned under Program One and  
25 calendar year 2003 for credits earned under Program Two. Any  
26 premium tax credits not used by certified investors in any  
27 single year may be carried forward and applied against the  
28 premium tax liabilities of such investors for subsequent  
29 calendar years. ~~The carryforward credit may be applied~~  
30 ~~against subsequent premium tax filings through calendar year~~  
31 ~~2017.~~

1           (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION  
2 PROCESS.--

3           (a) The total amount of tax credits which may be  
4 allocated by the office shall not exceed \$150 million with  
5 respect to Program One and \$250 million with respect to  
6 Program Two. The total amount of tax credits which may be used  
7 by certified investors under this act shall not exceed \$15  
8 million annually with respect to credits earned under Program  
9 One and \$25 million annually with respect to credits earned  
10 under Program Two.

11           (c) Each certified capital company must apply to the  
12 office for an allocation of premium tax credits for potential  
13 certified investors by March 15, 1999, or by March 15, 2002,  
14 in the case of credits allocable under Program Two, on a form  
15 developed by the office with the cooperation of the Department  
16 of Revenue. The form shall be accompanied by an affidavit  
17 from each potential certified investor confirming that the  
18 potential certified investor has agreed to make an investment  
19 of certified capital in a certified capital company up to a  
20 specified amount, subject only to the receipt of a premium tax  
21 credit allocation pursuant to this subsection. No allocation  
22 shall be made to the potential investors of a certified  
23 capital company under Program Two unless such certified  
24 capital company has filed premium tax allocation claims ~~that~~  
25 ~~would result in an allocation to the potential investors in~~  
26 ~~such certified capital company~~ of not less than \$15 million in  
27 the aggregate.

28           (d) On or before April 1, 1999, or April 1, 2002, in  
29 the case of Program Two, the office shall inform each  
30 certified capital company of its share of total premium tax  
31

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

21 (f) If the total amount of capital committed by all  
22 certified investors to certified capital companies in premium  
23 tax allocation claims under Program Two exceeds the aggregate  
24 cap on the amount of credits that may be awarded under Program  
25 Two, the premium tax credits that may be allowed to any one  
26 certified investor under Program Two shall be allocated using  
27 the following ratio:

$$\frac{A}{B} = \frac{X}{\$250,000,000}$$

$$\frac{A}{B} = \frac{X}{\$150,000,000}$$



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

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

24 (h) To the extent that less than ~~\$250~~\$150 million in  
25 certified capital is raised in connection with the procedure  
26 set forth in paragraphs (c)-(g), the department may adopt  
27 rules to allow a subsequent allocation of the remaining  
28 premium tax credits authorized under this section.

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

30 (a) On an annual basis, on or before January ~~December~~  
31 31, each certified capital company shall file with the

1 department and the office, in consultation with the  
2 department, on a form prescribed by the office, for each  
3 calendar year:

4           1. The total dollar amount the certified capital  
5 company received from certified investors, the identity of the  
6 certified investors, and the amount received from each  
7 certified investor during the immediately preceding calendar  
8 year.

9           2. The total dollar amount the certified capital  
10 company invested and the amount invested in qualified  
11 businesses, together with the identity and location of those  
12 businesses and the amount invested in each qualified business  
13 during the immediately preceding calendar year.

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

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 out of  
26 funds related to a particular program, a certified capital  
27 company must have invested an amount cumulatively equal to 100  
28 percent of its certified capital raised under such program in  
29 qualified investments. Payments to debt holders of a certified  
30 capital company, however, may be made without restriction with  
31 respect to repayments of principal and interest on

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

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

1 contributions to the certified capital company with respect to  
2 such program, as determined by the audit, the certified  
3 capital company shall pay to the Department of Revenue 10  
4 percent of the portion of such distribution in excess of such  
5 amount. Payments to the Department of Revenue by a certified  
6 capital company pursuant to this paragraph shall not exceed  
7 the aggregate amount of tax credits used by all certified  
8 investors in such certified capital company for such program.

9 (10) DECERTIFICATION.--

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

18 1. Decertification of a certified capital company  
19 within 3 years after its certification date with respect to a  
20 particular program shall cause the recapture of all premium  
21 tax credits earned under such program and previously claimed  
22 by such company and the forfeiture of all future premium tax  
23 credits earned under such program which are to be claimed by  
24 certified investors with respect to such company.

25 2. When a certified capital company meets all  
26 requirements for continued certification under subparagraph  
27 (5)(a)1. with respect to certified capital raised under a  
28 particular program and subsequently fails to meet the  
29 requirements for continued certification under the provisions  
30 of subparagraph (5)(a)2. with respect to certified capital  
31 raised under such program, those premium tax credits earned

1 under such program which have been or will be taken by  
2 certified investors within 3 years after the certification  
3 date of the certified capital company with respect to such  
4 program shall not be subject to recapture or forfeiture;  
5 however, all premium tax credits earned under such program  
6 that have been or will be taken by certified investors after  
7 the third anniversary of the certification date of the  
8 certified capital company for such program shall be subject to  
9 recapture or forfeiture.

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

25           4. If a certified capital company has met all  
26 requirements for continued certification under paragraph  
27 (5)(a) with respect to certified capital raised under a  
28 particular program, but such company is subsequently  
29 decertified, those premium tax credits earned under such  
30 program which have been or will be taken by certified  
31 investors within 5 years after the certification date of such

1 company with respect to such program shall not be subject to  
2 recapture or forfeiture. Those premium tax credits earned  
3 under such program and to be taken subsequent to the 5th year  
4 of certification with respect to such program shall be subject  
5 to forfeiture only if the certified capital company is  
6 decertified within 5 years after its certification date with  
7 respect to such program.

8           5. If a certified capital company has invested an  
9 amount cumulatively equal to 100 percent of its certified  
10 capital raised under a particular program in qualified  
11 investments, all premium tax credits claimed or to be claimed  
12 by its certified investors under such program shall not be  
13 subject to recapture or forfeiture.

14           Section 2. This act shall take effect July 1, 2001.  
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