

Committee Substitute for House Bill No. 1575

An act relating to certified capital companies; amending s. 14.2015, F.S.; requiring the Office of Tourism, Trade, and Economic Development of the Executive Office of the Governor to administer tax credits; creating s. 288.99, F.S.; creating the "Certified Capital Company Act"; providing a short title; providing a purpose; providing definitions; providing certification procedures; providing deadlines; requiring an application fee; providing grounds for application denial or decertification; requiring the Department of Banking and Finance to enforce certification and decertification procedures; requiring certification reports filed with the Office of Tourism, Trade, and Economic Development; requiring an annual renewal fee; specifying investment benchmarks; specifying depositories for funds not invested in qualified businesses; providing a credit against premium tax liability; specifying effect of credit on retaliatory tax; providing an aggregate premium tax credit cap; providing a tax credit allocation formula; requiring forfeiture of tax credits under certain circumstances; providing for an annual report by each certified capital company; requiring the Office of Tourism, Trade, and Economic Development to review and verify annual reports; authorizing the Department of Revenue to audit and examine books of certified capital companies and investors; providing for distributions to debt holders; requiring the Department of Banking and Finance to conduct annual reviews of certified capital companies; providing requirements for distributions; providing decertification procedures; providing a cure period; providing recapture of tax credits under certain circumstances; providing a schedule for tax credit recapture and penalties; providing for transfer of tax credits; requiring the Office of Tourism, Trade, and Economic Development to annually report to the Governor and the Legislature; providing for application and renewal fees; providing rulemaking authority; providing appropriations; providing effective dates.

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

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

14.2015 Office of Tourism, Trade, and Economic Development; creation; powers and duties.—

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

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

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

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

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

288.99 Certified Capital Company Act.—

(1) SHORT TITLE.—This section may be cited as the “Certified Capital Company Act.”

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

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

(a) “Affiliate of an insurance company” means:

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

2. Any person 10 percent or more of whose outstanding voting securities or other ownership interest is directly or indirectly beneficially owned,

whether through rights, options, convertible interests, or otherwise, controlled, or held with power to vote by the insurance company;

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

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

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

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

(c) “Certified capital company” means a corporation, partnership, or limited liability company which:

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

2. Receives investments of certified capital.

3. Makes qualified investments as its primary activity.

(d) “Certified investor” means any insurance company subject to premium tax liability pursuant to s. 624.509 that contributes certified capital.

(e) “Department” means the Department of Banking and Finance.

(f) “Director” means the director of the Office of Tourism, Trade, and Economic Development.

(g) “Early stage technology business” means a qualified business that is involved, at the time of the certified capital company’s initial investment in such business, in activities related to developing initial product or service offerings, such as prototype development or the establishment of initial production or service processes. The term includes a qualified business that is less than 2 years old and has, together with its affiliates, less than \$3 million in annual revenues for the fiscal year immediately preceding the initial investment by the certified capital company on a consolidated basis, as determined in accordance with generally accepted accounting principles.

(h) “Office” means the Office of Tourism, Trade, and Economic Development.

(i) “Premium tax liability” means any liability incurred by an insurance company under the provisions of s. 624.509.

(j) “Principal” means an executive officer of a corporation, partner of a partnership, manager of a limited liability company, or any other person with equivalent executive functions.

(k) “Qualified business” means a business that meets the following conditions:

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

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

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

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

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

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

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

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

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

(m) “Qualified distribution” means any distribution or payment to equity holders of a certified capital company for:

1. Costs and expenses of forming, syndicating, managing, and operating the certified capital company, including an annual management fee in an amount that does not exceed 2.5 percent of the certified capital of the certified capital company, plus reasonable and necessary fees in accordance with

industry custom for professional services, including, but not limited to, legal and accounting services, related to the operation of the certified capital company.

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

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

(4) CERTIFICATION; GROUNDS FOR DENIAL OR DECERTIFICATION.—

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

(b) An applicant for certification as a certified capital company must file a verified application with the department on or before December 1, 1998, in a form which the department may prescribe by rule. The applicant shall submit a nonrefundable application fee of \$7,500 to the department. The applicant shall provide:

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

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

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

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

5. The applicant's financial condition and history, including an audit report on the financial statements prepared in accordance with generally accepted accounting principles showing net capital of not less than \$500,000 within 90 days after the date the application is submitted to the department. If the date of the application is more than 90 days after preparation of the applicant's fiscal year-end financial statements, the applicant may file financial statements reviewed by an independent certified public accountant for the period subsequent to the audit report, together with the audited

financial statement for the most recent fiscal year. If the applicant has been in business less than 12 months, and has not prepared an audited financial statement, the applicant may file a financial statement reviewed by an independent certified public accountant.

(c) On December 31, 1998, the department shall grant or deny certification as a certified capital company. If the department denies certification within the time period specified, the department shall inform the applicant of the grounds for the denial. If the department has not granted or denied certification within the time specified, the application shall be deemed approved. The department shall approve the application if the department finds that:

1. The applicant satisfies the requirements of paragraph (b).
2. No evidence exists that the applicant has committed any act specified in paragraph (d).
3. At least two of the principals have a minimum of 5 years of experience making venture capital investments out of private equity funds, with not less than \$20 million being provided by third-party investors for investment in the early stage of operating businesses. At least one full-time manager or principal of the certified capital company who has such experience must be primarily located in an office of the certified capital company which is based in this state.

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

1. Violated any provision of this section;
2. Made a material misrepresentation or false statement or concealed any essential or material fact from any person during the application process or with respect to information and reports required of certified capital companies under this section;
3. Been convicted of, or entered a plea of guilty or nolo contendere to, a crime against the laws of this state or any other state or of the United States or any other country or government, including a fraudulent act in connection with the operation of a certified capital company, or in connection with the performance of fiduciary duties in another capacity;
4. Been adjudicated liable in a civil action on grounds of fraud, embezzlement, misrepresentation, or deceit; or
 - 5.a. Been the subject of any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by any court of competent jurisdiction, administrative law judge, or any state or

federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association, involving a material violation of any federal or state securities or commodities law or any rule or regulation adopted under such law, or any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association; or

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

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

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

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

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

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

(j) Decertification of a certified capital company under this subsection does not affect the ability of certified investors in such certified capital company from claiming future premium tax credits earned as a result of an

investment in the certified capital company during the period in which it was duly certified.

(5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.—

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

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

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

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

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

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

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

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

3. Must be invested only in:

a. Any United States Treasury obligations;

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

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

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

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

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

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

(6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.—

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

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

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

(7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT; ALLOCATION PROCESS.—

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

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

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

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

(e) If a certified capital company does not receive certified capital equaling the amount of premium tax credits allocated to a potential certified investor for which the investor filed a premium tax allocation claim within 10 business days after the investor received a notice of allocation, the certified capital company shall notify the office by overnight common carrier delivery service of the company's failure to receive the capital. That portion of the premium tax credits allocated to the certified capital company shall be forfeited. If the office must make a pro rata allocation under paragraph (f), the office shall reallocate such available credits among the other certified capital companies on the same pro rata basis as the initial allocation.

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

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

where the letter "A" represents the total amount of certified capital certified investors have agreed to invest in any one certified capital company, the letter "B" represents the aggregate amount of certified capital that all certified investors have agreed to invest in all certified capital companies, the letter "X" is the numerator and represents the total amount of premium tax credits and certified capital that may be allocated to a certified capital company in calendar year 1999, and \$150 million is the denominator and represents the total amount of premium tax credits and certified capital that may be allocated to all certified investors in calendar year 1999. Any such premium tax credits are not first available for utilization until annual filings are made in 2001 for calendar year 2000, and the tax credits may be used at a rate not to exceed 10 percent annually.

(g) The maximum amount of certified capital for which premium tax allocation claims may be filed on behalf of any certified investor and its affiliates by one or more certified companies may not exceed \$15 million.

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

(8) ANNUAL TAX CREDIT; CLAIM PROCESS.—

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

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

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

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

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

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

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

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

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

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

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

(9) REQUIREMENT FOR 100 PERCENT INVESTMENT; STATE PARTICIPATION.—

(a) A certified capital company may make qualified distributions at any time. In order to make a distribution to its equity holders, other than a qualified distribution, a certified capital company must have invested an amount cumulatively equal to 100 percent of its certified capital in qualified investments. Payments to debt holders of a certified capital company, however, may be made without restriction with respect to repayments of principal and interest on indebtedness owed to them by a certified capital company, including indebtedness of the certified capital company on which certified investors earned premium tax credits. A debt holder that is also a certified investor or equity holder of a certified capital company may receive payments with respect to such debt without restrictions.

(b) Cumulative distributions from a certified capital company to its certified investors and equity holders, other than qualified distributions, in excess of the certified capital company's original certified capital and any additional capital contributions to the certified capital company may be audited by a nationally recognized certified public accounting firm acceptable to the department, at the expense of the certified capital company, if the department directs such audit be conducted. The audit shall determine whether aggregate cumulative distributions from the certified capital company to all certified investors and equity holders, other than qualified distributions, have equaled the sum of the certified capital company's original certified capital and any additional capital contributions to the certified capital company. If at the time of any such distribution made by the certified capital company, such distribution taken together with all other such distributions made by the certified capital company, other than qualified distributions, exceeds in the aggregate the sum of the certified capital company's original certified capital and any additional capital contributions to the certified capital company, as determined by the audit, the certified capital company shall pay to the Department of Revenue 10 percent of the portion of such distribution in excess of such amount. Payments to the Department of Revenue by a certified capital company pursuant to this paragraph shall not exceed the aggregate amount of tax credits used by all certified investors in such certified capital company.

(10) DECERTIFICATION.—

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

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

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

(d) At the end of the 90-day grace period, if the certified capital company is still not in compliance with the certification requirements, the department may issue a notice to revoke or suspend the certification or to impose an administrative fine. The department shall advise each respondent of the right to an administrative hearing under chapter 120 prior to final action by the department.

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

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

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

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

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

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

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

(g) Decertification of a certified capital company pursuant to subsection (4) or this subsection does not affect the ability of certified investors in such certified capital company to continue to claim future premium tax credits

earned as an investment in the certified capital company during the period in which it was duly certified.

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

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

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

(k) A notice of deficiency may be issued:

1. At any time within 5 years after the date such notification is given; or
2. At any time if a certified investor fails to notify the Department of Revenue.

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

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

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

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

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

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

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

(12) REPORTING REQUIREMENTS.—

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

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

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

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

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

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

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

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

(14) RULEMAKING AUTHORITY.—

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

(b) The office may adopt any rules necessary to carry out its duties, obligations, and powers related to the administration, review, and reporting provisions of this section and may perform any other acts necessary for the

proper administration and enforcement of such duties, obligations, and powers.

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

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

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

Became a law without the Governor's approval May 28, 1998.

Filed in Office Secretary of State May 27, 1998.