CHAPTER 2005-91

House Bill No. 1817

An act relating to review under the Open Government Sunset Review Act; amending s. 288.99, F.S., the "Certified Capital Company Act"; removing the October 2, 2005, repeal of information relating to an active investigation or office review of a certified capital company scheduled under the Open Government Sunset Review Act; narrowing the exemption; eliminating the exemption from public records requirements for social security numbers of any customers of a certified capital company, complainants, or persons associated with a certified capital company or qualified business; eliminating references to specified premium tax credits under the act designated as "Program One" and "Program Two"; providing editorial and conforming changes; providing for the future repeal of the Certified Capital Company Act; providing an effective date.

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

Section 1. Section 288.99, Florida Statutes, is amended 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, including minority-owned or minority-operated businesses and businesses located in a designated Front Porch community, enterprise zone, urban high-crime area, rural job tax credit county, or nationally recognized historic district. 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 15 percent or more of the outstanding voting securities or other voting ownership interests of the insurance company;

2. Any person 15 percent or more of whose outstanding voting securities or other voting 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 office in accordance with this act.

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

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 invests certified capital.

(e) "Commission" means the Financial Services Commission.

(f) "Early stage technology business" means a qualified business that is:

1. 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;

2. 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;

3. The Florida Black Business Investment Board;

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

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

(g) "Office" means the Office of Financial Regulation of the commission.

(h) "Premium tax liability" means any liability incurred by an insurance company under the provisions of ss. 624.509 and 624.5091.

(i) "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.

(j) "Qualified business" means the Digital Divide Trust Fund established under the State of Florida Technology Office or a business that meets the following conditions as evidenced by documentation required by commission rule:

1. The business is headquartered in this state and its principal business operations are located in this state or at least 75 percent of the employees are employed in the state.

2. At the time a certified capital company makes an initial investment in a business, the business would qualify for investment under 13 C.F.R. s. 121.301(c), 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, or the business is located in a designated Front Porch community, enterprise zone, urban high crime area, rural job tax credit county, or nationally recognized historic district;

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, or the business is located in a designated Front Porch community, enterprise zone, urban high crime area, rural job tax credit county, or nationally recognized historic district; and

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

4. The term does not include:

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

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

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

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

(k) "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.

(l) "Qualified distribution" means any distribution or payment by a certified capital company for:

1. Reasonable costs and expenses, including, but not limited to, professional fees, of forming and syndicating the certified capital company, if no such costs or expenses are paid to a certified investor, except as provided in subparagraph (4)(f)2., and the total cash, cash equivalents, and other current assets permitted by sub-subparagraph (5)(b)3.g. that can be converted into cash within 5 business days available to the certified capital company at the time of receipt of certified capital from certified investors, after deducting the costs and expenses of forming and syndicating the certified capital company, including any payments made over time for obligations incurred at the time of receipt of certified capital but excluding other future qualified distributions and payments made under paragraph (9)(a), are an amount equal to or greater than 50 percent of the total certified capital allocated to the certified capital pursuant to subsection (7);

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

3. 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; or

4. 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.

(m)1. "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, including a debt instrument or security that has the characteristics of debt but which provides for conversion into equity or equity participation instruments such as options or warrants.

2. The term does not include:

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

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

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

~~(n) "Program One" means the $150 million in premium tax credits issued under this section in 1999, the allocation of such credits under this section, and the regulation of certified capital companies and investments made by them hereunder.~~

~~(o) "Program Two" means the $150 million in premium tax credits to be issued under subsection (17), the allocation of such credits under this section, and the regulation of certified capital companies and investments made by them hereunder.~~

(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 of Banking and Finance or the office pursuant to this act.

(b) An applicant for certification as a certified capital company must file a verified application with the Department of Banking and Finance on or before December 1, 1998, ~~a date determined in rules adopted pursuant to subsection (17) in the case of applicants for Program Two,~~ in a form which the commission may prescribe by rule. The applicant shall submit a nonrefundable application fee of $7,500 to the office. 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. The applicant must have, at the time of application for certification, an equity capitalization of at least $500,000 in the form of cash or cash equivalents. The applicant must maintain this equity capitalization until the applicant receives an allocation of certified capital pursuant to this act. 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.

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

(c) Within 60 days after receipt of a verified application, the office shall grant or deny certification as a certified capital company. If the office denies certification within the time period specified, the office shall inform the applicant of the grounds for the denial. If the office has not granted or denied certification within the time specified, the application shall be deemed approved. The office shall approve the application if the office 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.

4. The applicant's proposed method of doing business and raising certified capital as described in its offering materials and other materials submitted to the office conforms with the requirements of this section.

(d) The office 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 office may deny certification or decertify a certified capital company if the certified capital company fails to maintain common stock or paid-in capital of at least $500,000, or if the office 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) 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."

(f)1. No insurance company or any affiliate of an insurance company shall, directly or indirectly, own, whether through rights, options, convertible interests, or otherwise, 15 percent or more of the voting equity interests of or 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. Nothing in this subparagraph shall limit an insurance company's ownership of nonvoting equity interests in a certified capital company.

2. A certified capital company may obtain a guaranty, indemnity, bond, insurance policy or other payment undertaking in favor of all of the certified investors of the certified capital company and its affiliates; provided that the entity from which such guaranty, indemnity, bond, insurance policy or other payment undertaking is obtained may not be a certified investor of, or be affiliated with more than one certified investor of, the certified capital company.

(g) On or before December 31 of each year, each certified capital company shall pay to the office an annual, nonrefundable renewal certification fee of $5,000. If a certified capital company fails to pay its renewal fee by the specified deadline, the company must pay a late fee of $5,000 in addition to the renewal fee on or by January 31 of each year in order to continue its certification ~~in the program~~. On or before April 30 of each year, each certified capital company shall file audited financial statements with the office. No renewal fees shall be required within 6 months after the date of initial certification.

(h) The commission and office shall administer and provide for the enforcement of certification requirements for certified capital companies as provided in this act. The commission 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 the commission and office may perform any other acts necessary for the proper administration and enforcement of such duties, obligations, and powers.

(i) 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, except as set forth in sub-subparagraph 3.g.

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, except for an investment permitted by sub-subparagraph 3.g., provided repayment terms do not permit the obligor to directly or indirectly manage or control the investment decisions 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 10 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;

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

g. Obligations that are issued by an insurance company that is not a certified investor of the certified capital company making the investment, that has provided a guarantee indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company's certified investors as permitted by subparagraph (3)(l)1. or an affiliate of such insurance company as defined by subparagraph (3)(a)3. that is not a certified investor of the certified capital company making the investment, provided that such obligations are:

(I) Issued or guaranteed as to principal by an entity whose senior debt is rated "AA" or better by Standard & Poor's Ratings Group or such other

nationally recognized credit rating agency as the commission may by rule determine.

(II) Not subordinated to other unsecured indebtedness of the issuer or the guarantor.

(III) Invested by such issuing entity in accordance with sub-subparagraphs 3.a.-f.

(IV) Readily convertible into cash within 5 business days for the purpose of making a qualified investment unless such obligations are held to provide a guarantee, indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company's certified investors as permitted by subparagraph (3)(l)1.

(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 ~~earned under a particular program~~, including any carryforward credits ~~from such program~~ under this act, per year beginning with premium tax filings for calendar year 2000 ~~for credits earned under Program One~~. 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.

(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.

(d) The amount of tax credits vested under the Certified Capital Company Act shall not be considered in ratemaking proceedings involving a certified investor.

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

(a) The total amount of tax credits which may be allocated by the Office of Tourism, Trade, and Economic Development shall not exceed $150 million ~~with respect to Program One and $150 million with respect to Program Two~~.

The total amount of tax credits which may be used by certified investors under this act shall not exceed $15 million annually ~~with respect to credits earned under Program One and $15 million annually with respect to credits earned under Program Two~~.

(b) The Office of Tourism, Trade, and Economic Development 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 of Tourism, Trade, and Economic Development for an allocation of premium tax credits for potential certified investors on a form developed by the Office of Tourism, Trade, and Economic Development 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 certified capital company shall submit premium tax allocation claims on behalf of certified investors that in the aggregate would exceed the total dollar amount appropriated by the Legislature ~~for the specific program~~. No allocation shall be made to the potential investors of a certified capital company ~~under Program Two~~ unless such certified capital company has filed premium tax allocation claims of not less than $15 million in the aggregate.

(d) The Office of Tourism, Trade, and Economic Development 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 of Tourism, Trade, and Economic Development 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 of Tourism, Trade, and Economic Development must make a pro rata allocation under paragraph (f), that 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 ~~under Program Two~~ exceeds the aggregate cap on the amount of credits that may be awarded ~~under Program Two~~, the premium tax credits that may be allowed to any one certified investor ~~under Program Two~~ 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 ~~under Program Two~~, the letter "B" represents the aggregate amount of certified capital that all certified investors have agreed to invest in all certified capital companies ~~under Program Two~~, 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 ~~on a date determined by rule adopted by the commission pursuant to subsection (17)~~, 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 ~~under Program Two~~. Any such premium tax credits are not first available for utilization until annual filings are made in 2001 for calendar year 2000 ~~in the case of Program One~~, and the tax credits may be used at a rate not to exceed 10 percent annually ~~per program~~.

(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 capital companies may not exceed $15 million ~~for Program One and $22.5 million for Program Two~~.

(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 commission may adopt rules to allow a subsequent allocation of the remaining premium tax credits authorized under this section.

(i) The Office of Tourism, Trade, and Economic Development shall issue a certification letter for each certified investor, showing the amount invested in the certified capital company ~~under each program~~. The applicable certified capital company shall attest to the validity of the certification letter.

(8) ANNUAL TAX CREDIT; CLAIM PROCESS.—

(a) On an annual basis, on or before January 31, each certified capital company shall file with the office and the Office of Tourism, Trade, and Economic Development, in consultation with the office, on a form prescribed by the Office of Tourism, Trade, and Economic Development, 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 immediately preceding 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 during the immediately preceding calendar year.

3. For informational purposes only, the total number of permanent, full-time jobs either created or retained by the qualified business during the immediately preceding 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 of Tourism, Trade, and Economic Development 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.

(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 ~~from funds related to a particular program~~, a certified capital company must have invested an amount cumulatively equal to 100 percent of its certified capital ~~raised under such program~~ 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 ~~from funds related to a particular program~~ to its certified investors and equity holders ~~under such program~~, other than qualified distributions, in excess of the certified capital company's original certified capital ~~raised under such program~~ and any additional capital contributions to the certified capital company ~~with respect to such program~~ may be audited by a nationally recognized certified public accounting firm acceptable to the office, at the expense of the certified capital company, if the office directs such audit be conducted. The audit shall determine whether aggregate cumulative distributions from the ~~funds related to a particular program made by the~~ certified capital

company to all certified investors and equity holders ~~under such program~~, other than qualified distributions, have equaled the sum of the certified capital company's original certified capital ~~raised under such program~~ and any additional capital contributions to the certified capital company ~~with respect to such program~~. If at the time of any such distribution made by the certified capital company, such distribution taken together with all other such distributions ~~from the funds related to such program~~ 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 ~~raised under such program~~ and any additional capital contributions to the certified capital company ~~with respect to such program~~, 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 ~~for such program~~.

(10) DECERTIFICATION.—

(a) The office 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 Chief Financial Officer's or the office'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 office determines that a certified capital company is no longer in compliance with the certification requirements of this act, the office 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 office may issue a notice to revoke or suspend the certification or to impose an administrative fine. The office shall advise each respondent of the right to an administrative hearing under chapter 120 prior to final action by the office.

(e) If the office 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) ~~with respect to the certified capital raised under a particular program~~ may cause the recapture of premium tax credits previously claimed by such company ~~under such program~~ and the forfeiture of future premium tax credits to be claimed by certified investors ~~under such program~~ with respect to such certified capital company, as follows:

1. Decertification of a certified capital company within 3 years after its certification date ~~with respect to a particular program~~ shall cause the recapture of all premium tax credits ~~earned under such program and~~ previously claimed by such company and the forfeiture of all future premium tax credits ~~earned under such program which are~~ 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. ~~with respect to certified capital raised under a particular program~~ and subsequently fails to meet the requirements for continued certification under the provisions of subparagraph (5)(a)2. ~~with respect to certified capital raised under such program~~, those premium tax credits ~~earned under such program~~ which have been or will be taken by certified investors within 3 years after the certification date of the certified capital company ~~with respect to such program~~ shall not be subject to recapture or forfeiture; however, all premium tax credits ~~earned under such program~~ that have been or will be taken by certified investors after the third anniversary of the certification date of the certified capital company ~~for such program~~ 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. ~~with respect to a particular program~~ and subsequently fails to meet the requirements for continued certification under subparagraph (5)(a)3. ~~with respect to such program~~, those premium tax credits ~~earned under such program~~ which have been or will be taken by certified investors within 4 years after the certification date of the certified capital company ~~with respect to such program~~ shall not be subject to recapture or forfeiture; however, all premium tax credits ~~earned under such program~~ that have been or will be taken by certified investors after the fourth anniversary of the certification date of the certified capital company ~~with respect to such program~~ shall be subject to recapture and forfeiture.

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

5. If a certified capital company has invested an amount cumulatively equal to 100 percent of its certified capital ~~raised under a particular program~~ in qualified investments, all premium tax credits claimed or to be claimed by its certified investors ~~under such program~~ 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 of Tourism, Trade, and Economic Development 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 commission may prescribe by rule 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 premium tax credit established pursuant to this act may be transferred or sold. The Department of Revenue shall

adopt rules to facilitate the transfer or sale of such premium tax credits. A transfer or sale shall not affect the time schedule for taking the premium tax credit as provided in this act. Any premium tax credits recaptured shall be the liability of the taxpayer who actually claimed the premium tax credits. 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.

(12) REPORTING REQUIREMENTS.—The Office of Tourism, Trade, and Economic Development 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:

(a) 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.

(b) 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.

(c) The return for the state as a result of the certified capital company investments, including the extent to which:

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

2. 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.

3. 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 office 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 commission and the Office of Tourism, Trade, and Economic Development may adopt any rules necessary to carry out their respective duties, obligations, and powers related to the administration, review, and reporting provisions of this section and may perform any other acts neces-

sary for the proper administration and enforcement of such duties, obligations, and powers.

(15)(a) PUBLIC RECORDS EXEMPTION; ~~CONFIDENTIALITY OF~~ INVESTIGATION AND REVIEW INFORMATION.—Except as otherwise provided by this section, ~~any~~ information relating to an investigation or office review of a certified capital company~~, including any consumer complaint,~~ is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or review is complete or ceases to be active. Such information shall remain confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution after the investigation or review is complete or ceases to be active if the information is submitted to any law enforcement or administrative agency for further investigation, and shall remain confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution until that agency's investigation is complete or ceases to be active. For purposes of this subsection, an investigation or review shall be considered "active" so long as the office, a law enforcement agency, or an administrative agency is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation may lead to the filing of an administrative, civil, or criminal proceeding. ~~This section shall not be construed to prohibit disclosure of information which is required by law to be filed with the office and which, but for the investigation, would otherwise be subject to s. 119.07(1).~~

(b) Except as necessary to enforce the provisions of this chapter, ~~a consumer complaint or~~ information relating to an investigation or review shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution after an investigation or review is complete or ceases to be active to the extent disclosure would:

1. Reveal a trade secret as defined in s. 688.002 or s. 812.081.

2. Jeopardize the integrity of another active investigation or review.

3. Disclose the identity of a confidential source. ~~or~~

4. Disclose investigative techniques or procedures.

(c) Nothing in this section shall be construed to prohibit the office from providing information to any law enforcement or administrative agency. Any law enforcement or administrative agency receiving such confidential and exempt information in connection with its official duties shall maintain the confidential and exempt status ~~confidentiality~~ of the information so long as it would otherwise be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(d) In the event office personnel are or have been involved in an investigation or review of such nature as to endanger their lives or physical safety or that of their families, the home addresses, telephone numbers, places of employment, and photographs of such personnel, together with the home addresses, telephone numbers, photographs, and places of employment of spouses and children of such personnel and the names and locations of~~

~~schools and day care facilities attended by the children of such personnel are confidential and exempt from s. 119.07(1).~~

~~(e) All information obtained by the office from any person which is only made available to the office on a confidential or similarly restricted basis shall be confidential and exempt from s. 119.07(1). This exemption shall not be construed to prohibit disclosure of information which is specifically required by law to be filed with the office or which is otherwise subject to s. 119.07(1).~~

~~(f) If information subject to this subsection is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in his or her discretion, prevent the disclosure of information which would be confidential pursuant to paragraph (b).~~

(16) CIVIL LIABILITY.—~~(g)~~ A privilege against civil liability is granted to a person with regard to information or evidence furnished to the office, unless such person acts in bad faith or with malice in providing such information or evidence.

(17) This section shall stand repealed December 31, 2010.

~~(h) This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.~~

~~(16) CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS.—The social security number of any customer of a certified capital company, complainant, or person associated with a certified capital company or qualified business, is exempt from s. 119.07(1). This subsection is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.~~

~~(17) Notwithstanding the limitations set forth in paragraph (7)(a), in the first fiscal year in which the total insurance premium tax collections as determined by the Revenue Estimating Conference exceed collections for fiscal year 2000-2001 by more than the total amount of tax credits issued pursuant to this section which were used by certified investors in that year, the Office of Tourism, Trade, and Economic Development may allocate to certified investors in accordance with paragraph (7)(a) tax credits for Program Two. The commission shall establish, by rule, a date and procedures by which certified capital companies must file applications for allocations of such additional premium tax credits, which date shall be no later than 180 days from the date of determination by the Revenue Estimating Conference. With respect to new certified capital invested and premium tax credits earned pursuant to this subsection, the schedule specified in subparagraphs (5)(a)1.-4. is satisfied by investments by December 31 of the 2nd, 3rd, 4th, and 5th calendar year, respectively, after the date established by the commission for applications of additional premium tax credits. The commission shall adopt rules by which an entity not already certified as a certified capital company may apply for certification as a certified capital company~~

~~for participation in this additional allocation. The insurance premium tax credit authorized by Program Two may not be used by certified investors until the annual return due March 1, 2004, and may be used on all subsequent returns and estimated payments; however, notwithstanding the provisions of s. 624.5092(2)(b), the installments of taxes due and payable on April 15, 2004, and June 15, 2004, shall be based on the net tax due in 2003 not taking into account credits granted pursuant to this section for Program Two.~~

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 2005.

Filed in Office Secretary of State May 26, 2005.