

By: Senator(s) Chaney

To: Finance

SENATE BILL NO. 3143

1 AN ACT TO ENACT THE CERTIFIED CAPITAL COMPANY ACT; TO PROVIDE
2 THAT A CERTIFIED INVESTOR WHO MAKES AN INVESTMENT OF CERTIFIED
3 CAPITAL PURSUANT TO AN ALLOCATION UNDER THIS ACT SHALL EARN A
4 VESTED CREDIT AGAINST THE CERTIFIED INVESTOR'S INSURANCE PREMIUM
5 TAX LIABILITY EQUAL TO 100% OF THE CERTIFIED INVESTOR'S INVESTMENT
6 OF CERTIFIED CAPITAL; TO PROVIDE THAT A CERTIFIED INVESTOR IS
7 ENTITLED TO TAKE A MAXIMUM OF 10% OF THE VESTED TAX CREDIT IN ANY
8 TAX YEAR BEGINNING WITH THE TAX YEAR DURING WHICH THE INVESTMENT
9 IS MADE; TO PROVIDE THAT THE CREDIT CLAIMED IN ANY ONE TAX YEAR
10 SHALL NOT EXCEED THE TAX LIABILITY OF THE INVESTOR FOR THE YEAR
11 CLAIMED; TO PROVIDE THAT ALL UNUSED CREDIT MAY BE CARRIED FORWARD
12 UNTIL THE CREDIT IS USED UP; TO PROVIDE THAT THE TOTAL AMOUNT OF
13 CREDIT ALLOWED UNDER THIS ACT FOR ALL TAXPAYERS SHALL NOT EXCEED
14 \$50,000,000.00; TO PROVIDE FOR THE ALLOCATION OF SUCH CREDITS BY
15 THE DEPARTMENT OF INSURANCE; TO LIMIT THE AMOUNT OF THE TAX CREDIT
16 ALLOCATION FOR EACH CERTIFIED INVESTOR; TO PROVIDE THAT
17 APPLICATION MUST BE MADE TO THE DEPARTMENT OF INSURANCE FOR
18 CERTIFICATION AS A CERTIFIED CAPITAL COMPANY; TO PROVIDE FOR A FEE
19 FOR SUCH CERTIFICATION; TO PROVIDE FOR REVIEW OF THE APPLICATIONS
20 BY THE DEPARTMENT OF INSURANCE; TO PROHIBIT INSURANCE COMPANIES OR
21 THEIR AFFILIATES FROM HAVING CERTAIN INTERESTS IN CERTIFIED
22 CAPITAL COMPANIES OR QUALIFIED BUSINESSES IN WHICH A CERTIFIED
23 CAPITAL COMPANY INVESTS; TO PROVIDE A SCHEDULE BY WHICH CERTIFIED
24 CAPITAL COMPANIES SHALL MAKE QUALIFIED INVESTMENTS; TO REQUIRE
25 CERTIFIED CAPITAL COMPANIES TO REPORT CERTAIN INFORMATION TO THE
26 DEPARTMENT OF INSURANCE; TO AUTHORIZE THE DEPARTMENT OF INSURANCE
27 TO ISSUE OPINIONS AS TO WHETHER A BUSINESS IN WHICH A CERTIFIED
28 CAPITAL COMPANY PROPOSES TO INVEST IS A QUALIFIED BUSINESS; TO
29 REQUIRE THE DEPARTMENT OF INSURANCE TO CONDUCT ANNUAL REVIEWS OF
30 CERTIFIED CAPITAL COMPANIES TO DETERMINE IF THE CERTIFIED CAPITAL
31 COMPANY IS ABIDING BY THE REQUIREMENTS OF CERTIFICATION; TO
32 PROVIDE FOR A FEE FOR SUCH REVIEW; TO PROVIDE PENALTIES FOR
33 DECERTIFICATION IN THE FORM OF LOSS OR REPAYMENT OF TAX CREDITS;
34 TO AUTHORIZE ANY TAX CREDIT EARNED UNDER THIS ACT BY AN INSURANCE
35 COMPANY MAY BE TRANSFERRED OR SOLD TO ANY OTHER INSURANCE COMPANY;
36 AND FOR RELATED PURPOSES.

37 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

38 SECTION 1. This act shall be known and may be cited as the
39 "Certified Capital Company Act."

40 SECTION 2. As used in this act:

41 (a) "Affiliate of a certified capital company or
42 insurance company" means any of the following:

43 (i) A person, directly or indirectly beneficially
44 owning, whether through rights, options, convertible interests, or
45 otherwise, controlling or holding power to vote ten percent (10%)
46 or more of the outstanding voting securities or other ownership
47 interests of the certified capital company or insurance company,
48 as applicable.

49 (ii) A person, ten percent (10%) or more of whose
50 outstanding voting securities or other ownership interest is
51 directly or indirectly beneficially owned, whether through rights,
52 options, convertible interests, or otherwise, controlled, or held
53 with power to vote by the certified capital company or insurance
54 company, as applicable.

55 (iii) A person, directly or indirectly
56 controlling, controlled by, or under common control with the
57 certified capital company or insurance company, as applicable.

58 (iv) A partnership in which the certified capital
59 company or insurance company, as applicable, is a general partner.

60 (v) A person who is an officer, director, or agent
61 of the certified capital company or insurance company, as
62 applicable, or an immediate family member of the officer, director
63 or agent.

64 (b) "Affiliated group" shall have, with respect to any
65 certified investor, the same meaning as described in Section 1504
66 of the Internal Revenue Code, except the reference to "at least
67 eighty percent" in Section 1504 shall be read as "more than fifty
68 percent," regardless of whether the certified investor files a
69 combined federal or state tax return.

70 (c) "Allocation date" means the date on which the
71 department approves the allocation of the certified capital of the
72 certified investors of a certified capital company.

73 (d) "Certified capital" means an investment of cash by
74 a certified investor in a certified capital company which fully
75 funds the purchase price of either of the following:

76 (i) An equity interest in the certified capital
77 company.

78 (ii) A qualified debt instrument.

79 (e) "Certified capital company" means a partnership,
80 corporation, trust, or limited liability company, whether
81 organized on a profit or not for profit basis, that has as its
82 primary business activity the investment of cash in qualified
83 businesses and that is certified by the department as meeting the
84 criteria under this act.

85 (f) "Certified investor" means an insurance company
86 that does either of the following:

87 (i) Contributes certified capital pursuant to an
88 allocation of tax credits under Section 3.

89 (ii) Becomes irrevocably committed to contribute
90 certified capital by preparing and executing a tax credit
91 allocation claim.

92 (g) "Department" means the Department of Insurance.

93 (h) "Person" means a natural person or entity,
94 including a corporation, general or limited partnership, trust, or
95 limited liability company.

96 (i) "Qualified business" means a business other than a
97 business predominantly engaged in professional services provided
98 by accountants, lawyers or physicians that meets both of the
99 following conditions at the time of a certified capital company's
100 first investment in the business:

101 (i) Is headquartered in this state and its
102 principal business operations are located in this state.

103 (ii) Is a small business concern as defined in
104 Section 121.201 of the small business size regulations of the
105 United States Small Business Administration, 13 C.F.R. 121.201.

106 (j) "Qualified debt instrument" means a debt instrument
107 issued by a certified capital company at par value or a premium
108 with an original maturity date of at least five (5) years from
109 date of issuance, a repayment schedule that is no faster than a
110 level principal amortization over five (5) years. A qualified
111 debt instrument does not include an equity component or any
112 interest, distribution, or payment features that are related to
113 the profitability of the certified capital company or the
114 performance of the certified capital company's investment
115 portfolio; provided that the holder of a qualified debt instrument
116 or an affiliate thereof may own a separate equity ownership
117 interest in the certified capital company or a separate instrument
118 with equity features to the extent that such ownership interest or
119 instrument precludes the receipt of distributions other than
120 qualified distributions until the certified capital company has
121 invested an amount equal to one hundred percent (100%) of its
122 certified capital in qualified investments.

123 (k) "Qualified distribution" means a distribution or
124 payment by a certified capital company from certified capital in
125 connection with either of the following:

126 (i) Reasonable costs and expenses of forming and
127 syndicating the certified capital company, including, but not
128 limited to, reasonable premiums or fees paid to a qualified policy
129 issuer, the reasonable costs of managing and operating the
130 certified capital company, including, but not limited to, an
131 annual management fee in an amount that does not exceed two and
132 one-half percent (2.5%) of the certified capital of the certified
133 capital company, and reasonable and necessary fees paid for
134 professional services such as legal and accounting services
135 related to the formation, syndication and operation of the
136 certified capital company.

137 (ii) Any projected increase in federal or state
138 taxes, including penalties and interest related to state and

139 federal income taxes, of the equity owners of a certified capital
140 company resulting from the earnings or other tax liability of the
141 certified capital company or the equity owners to the extent that
142 the increase is related to the ownership, management or operation
143 of a certified capital company or the issuance, repayment, or
144 redemption of the qualified debt instruments of the certified
145 capital company.

146 (l) "Qualified investment" means the investment of cash
147 by a certified capital company in a qualified business for the
148 purchase of any debt, equity or hybrid security, of any nature and
149 description, including a debt instrument or security that has the
150 characteristics of debt but that provides for conversion into
151 equity or equity participation instruments such as options or
152 warrants.

153 (m) "Qualified policy issuer" means an insurance
154 company or any affiliate of an insurance company that provides a
155 guaranty, indemnity, bond, insurance policy or other payment
156 undertaking in favor of the certified investors of a certified
157 capital company.

158 (n) "Tax credit allocation claim" means a claim for the
159 allocation of tax credits allowed under this act prepared,
160 executed, and filed with the department by a certified investor on
161 a form provided by the department that includes a statement that
162 the certified investor is legally bound and irrevocably committed
163 to make an investment of certified capital in a certified capital
164 company in the amount allocated under Section 3 of this act.

165 (o) "Tax liability" means any liability incurred by a
166 certified investor under the provisions of Sections 27-15-103
167 through 27-15-119.

168 SECTION 3. (1) A certified investor who makes an investment
169 of certified capital pursuant to an allocation under this act
170 shall, at the time of the investment, earn a vested credit against
171 the certified investor's tax liability equal to one hundred

172 percent (100%) of the certified investor's investment of certified
173 capital. A certified investor is entitled to take a maximum of
174 ten percent (10%) of the vested tax credit in any tax year of the
175 certified investor beginning with the tax year during which the
176 investment is made.

177 (2) The credit that can be claimed against the tax liability
178 of the certified investor in any one (1) tax year shall not exceed
179 the tax liability of the certified investor for that tax year.
180 All unused credits against tax liability may be carried forward
181 until the credit is used up.

182 (3) A certified investor claiming a credit against tax
183 liability under this section is not required to pay any additional
184 retaliatory tax levied under the provisions of the Mississippi
185 Insurance Premium Tax Retaliatory Law (Sections 27-15-121 through
186 27-15-127), as a result of claiming the credit.

187 (4) The total amount of credits allowed under this section
188 for all taxpayers shall not exceed Fifty Million Dollars
189 (\$50,000,000.00). Tax credit allocation claims filed with respect
190 to investments in any one (1) certified capital company on an
191 aggregate basis with its affiliates shall not exceed Fifty Million
192 Dollars (\$50,000,000.00).

193 (5) Allocation of certified capital shall be made in the
194 order in which the tax credit allocation claims are received by
195 the department. If two (2) or more tax credit allocation claims
196 are filed on the same day, they are considered to have been
197 received simultaneously.

198 (6) If the total maximum amount of credits under subsection
199 (4) of this section will be exceeded by allocations made based on
200 filings that are received simultaneously, the credit amount
201 requested shall be allocated on a pro rata basis. The pro rata
202 allocation for each certified investor shall be the product of
203 multiplying a fraction, the numerator of which is the amount of
204 the tax credit allocation claim for that certified investor and

205 the denominator of which is the total of all tax credit allocation
206 claims filed by all certified investors, by the maximum total
207 amount under subsection (4) of this section that have not
208 previously been allocated.

209 (7) Within ten (10) days after receiving a tax credit
210 allocation claim from a certified investor, the department shall
211 notify that certified investor of the amount of the tax credits
212 allocated to that certified investor.

213 (8) If a certified investor does not invest certified
214 capital in a certified capital company within ten (10) business
215 days after receiving an allocation under this act, the certified
216 investor forfeits that portion of the allocation not invested.
217 Any amount of certified capital forfeited under this subsection
218 shall be reallocated to other certified investors on a pro rata
219 basis as provided for in subsection (6) of this section.

220 (9) The department shall not approve a tax credit allocation
221 claim for any certified investor on an aggregate basis with its
222 affiliated group, whether in one or more certified capital
223 companies, for more than the greater of Ten Million Dollars
224 (\$10,000,000.00) or twenty percent (20%) of the maximum total
225 amount under subsection (4) of this section.

226 SECTION 4. (1) The department shall establish the
227 procedures for applying for certification as a certified capital
228 company. An applicant shall pay a nonrefundable application fee
229 of Seven Thousand Five Hundred Dollars (\$7,500.00) at the time of
230 filing the application with the department. The application
231 process shall include a criminal background investigation and
232 fingerprint cards and resumes detailing work experience for all
233 principals of the certified capital company.

234 (2) A certified capital company's net worth at the time of
235 seeking certification shall be at least Five Hundred Thousand
236 Dollars (\$500,000.00), which shall be determined by the

237 unencumbered cash, marketable securities, and other liquid assets
238 of the certified capital company.

239 (3) The department shall review the organizational documents
240 of each applicant for certification and the business history of
241 the applicant and determine whether the applicant's net worth in
242 the form of unencumbered cash, marketable securities, and other
243 liquid assets is at least Five Hundred Thousand Dollars
244 (\$500,000.00). The department shall require that an applicant for
245 certification as a certified capital company submit both of the
246 following with its application:

247 (a) An audited balance sheet that contains an
248 unqualified opinion of an independent certified public accountant
249 issued not more than thirty-five (35) days before the application
250 date that states whether the applicant is in compliance with the
251 net worth requirements provided for in subsection (2) of this
252 section.

253 (b) Copies of all offering materials sent by the
254 applicant to potential certified investors or drafts of offering
255 materials.

256 (4) At least two (2) principals of the certified capital
257 company or a person employed to manage the funds of the certified
258 capital company shall have not less than two (2) years of
259 experience in the venture capital industry.

260 (5) Any offering material involving the sale of securities
261 of the certified capital company shall include the following
262 statement:

263 "By authorizing the formation of a certified capital company,
264 this state does not necessarily endorse the quality of management
265 or the potential for earnings of that company and is not liable
266 for damages or losses to a certified investor in the company. Use
267 of the word 'certified' in an offering does not constitute a
268 recommendation or endorsement of the investment by the Department
269 of Insurance.

270 Investments in a prospective certified capital company prior
271 to the time the company is certified are not eligible for tax
272 credits. If any provision of this act is violated, the state may
273 require forfeiture of unused tax credits and repayment of used tax
274 credits."

275 (6) Within thirty (30) days after the application is filed,
276 the department shall issue a certification as a certified capital
277 company or shall refuse to issue a certification. If the
278 department refuses to issue a certification as a certified capital
279 company, the department shall communicate in detail to the
280 applicant the grounds for the refusal, including suggestions for
281 remediation.

282 (7) The department shall review all applications in the
283 order in which they are received by the department. If the
284 department receives more than one (1) application on the same day,
285 the department shall consider the applications to have been
286 received simultaneously, except that an application that is
287 incomplete or an application for which the department has
288 requested additional information and that information has not been
289 provided within a reasonable time as determined by the department,
290 is considered to have been received on the date that the
291 additional information is submitted rather than on the date that
292 the application was originally submitted.

293 (8) No insurance company or any affiliate of an insurance
294 company shall:

295 (a) Directly or indirectly beneficially own, whether
296 through rights, options or convertible interests, ten percent
297 (10%) or more of the voting securities of a certified capital
298 company;

299 (b) Manage a certified capital company;

300 (c) Dictate the qualified businesses into which a
301 certified capital company invests; or

302 (d) Have, through ownership or any agreement or
303 understanding, the right to participate in ten percent (10%) or
304 more of the profits of the certified capital company, unless such
305 insurance company or affiliate of an insurance company is a
306 qualified policy issuer or any affiliate of a qualified policy
307 issuer.

308 This subsection shall not preclude a certified investor,
309 insurance company, or any other party from exercising its legal
310 rights and remedies, including interim management of a certified
311 capital company, in the event that a certified capital company is
312 in default of its statutory obligations or its contractual
313 obligations to a certified investor, insurance company or other
314 party.

315 SECTION 5. (1) A certified capital company shall make
316 qualified investments according to the following schedule:

317 (a) Within three (3) years after its allocation date, a
318 certified capital company shall have made qualified investments
319 cumulatively equal to at least thirty percent (30%) of its
320 certified capital.

321 (b) Within five (5) years after its allocation date, a
322 certified capital company shall have made qualified investments
323 cumulatively equal to at least fifty percent (50%) of its
324 certified capital.

325 (c) All certified capital not placed in qualified
326 investments by the certified capital company may be held or
327 invested in a manner that the certified capital company, in its
328 discretion, considers appropriate. Invested funds returned to a
329 certified capital company after being originally placed in
330 qualified investments may be placed again in qualified investments
331 and shall count toward any requirement of this act with respect to
332 making qualified investments with certified capital.

333 (2) Any business that is classified as a qualified business
334 at the time of the first investment in that business by a

335 certified capital company shall remain classified as a qualified
336 business and may receive follow-on investments from any certified
337 capital company, and the follow-on investments shall constitute
338 qualified investments, even though the business may not meet the
339 definition of a qualified business at the time of the follow-on
340 investments.

341 (3) No qualified investment shall be made at a cost to a
342 certified capital company greater than fifteen percent (15%) of
343 the total certified capital of the certified capital company at
344 the time of investment.

345 (4) The aggregate cumulative amount of all qualified
346 investments made by the certified capital company from its
347 allocation date will be considered in the calculation of the
348 percentage requirements under this act.

349 (5) Each certified capital company shall report all of the
350 following to the department:

351 (a) As soon as practicable after the receipt of
352 certified capital, the name of each certified investor from which
353 the certified capital was received, including the certified
354 investor's tax identification number, the amount of each certified
355 investor's investment of certified capital and tax credits, and
356 the date on which the certified capital was received.

357 (b) On or before January 31 of each year, the amount of
358 the certified capital company's certified capital at the end of
359 the immediately preceding calendar year, whether or not the
360 certified capital company has invested more than fifteen percent
361 (15%) of its total certified capital in any one (1) business, and
362 all qualified investments that the certified capital company made
363 during the immediately preceding calendar year.

364 (c) Within ninety (90) days after the close of each
365 fiscal year of the certified capital company, an audited financial
366 statement which shall include the opinion of an independent
367 certified public accountant. The audit shall address the methods

368 of operation and conduct of the business of the certified capital
369 company to determine if the certified capital company is complying
370 with applicable statutes and rules and that the funds received by
371 the certified capital company have been invested as required under
372 this act.

373 (6) On or before January 31 of each year, each certified
374 capital company shall pay an annual, nonrefundable certification
375 fee of Five Thousand Dollars (\$5,000.00) to the department, which
376 shall not be required to be paid if the due date falls within six
377 (6) months of the initial allocation date of a certified capital
378 company.

379 SECTION 6. (1) Before making a proposed investment in a
380 specific business, a certified capital company may request a
381 written opinion from the department as to whether the business in
382 which the certified capital company proposes to invest is a
383 qualified business.

384 (2) The department shall notify the certified capital
385 company of its opinion not more than ten (10) days after the
386 request is made.

387 (3) If the department determines that the business does not
388 meet the definition of a qualified business, the department shall
389 provide the certified capital company with an explanation of its
390 determination.

391 (4) If the department fails to respond within the ten-day
392 period allowed under this section, the business is considered a
393 qualified business for purposes of this act.

394 (5) The department may determine that a business is a
395 qualified business for purposes of this act even if the business
396 does not meet the definition contained in the act if the
397 department determines that an investment in the business by a
398 certified capital company would further economic development in
399 this state.

400 SECTION 7. (1) A certified capital company may make
401 qualified distributions at any time.

402 (2) In order to make a distribution or payment from
403 certified capital other than a qualified distribution or a
404 distribution or payment permitted under subsection (3) of this
405 section, a certified capital company must have made qualified
406 investments in an amount cumulatively equal to one hundred percent
407 (100%) of its certified capital.

408 (3) Payments to debt holders of a certified capital company
409 may be made without restriction with respect to repayments of
410 principal and interest on indebtedness owed to them by a certified
411 capital company, including indebtedness of the certified capital
412 company on which certified investors earned tax credits. A debt
413 holder that is also a certified investor or equity holder of a
414 certified capital company may receive payments with respect to the
415 debt without restrictions.

416 SECTION 8. (1) The department shall conduct an annual
417 review of each certified capital company to determine if the
418 certified capital company is abiding by the requirements of
419 certification, to advise the certified capital company as to the
420 eligibility status of its qualified investments, and to ensure
421 that its investments have not been made in violation of this act.
422 The department shall not charge more than Five Thousand Dollars
423 (\$5,000.00) for the annual review and shall be paid by each
424 certified capital company.

425 (2) Any material violation of Section 5(1) is grounds for
426 decertification of a certified capital company. If the department
427 determines that a certified capital company is not in compliance
428 with Section 5(1), the department shall, by written notice, inform
429 the officers of the certified capital company that the certified
430 capital company may be subject to decertification in one hundred
431 twenty (120) days from the date of mailing of the notice unless

432 the deficiencies are corrected and the certified capital company
433 is again in compliance with all requirements for certification.

434 (3) At the end of the 120-day period under subsection (2) of
435 this section, if the certified capital company is still not in
436 compliance with Section 5(1), the department may send a notice of
437 decertification to the certified capital company and to all other
438 appropriate state agencies.

439 (4) Decertification of a certified capital company may cause
440 the recapture of tax credits previously claimed and the forfeiture
441 of future tax credits to be claimed by certified investors with
442 respect to the certified capital company, as follows:

443 (a) Decertification of a certified capital company
444 before the certified capital company has met the requirements of
445 Section 5(1)(a) shall cause the recapture of all tax credits
446 previously claimed and the forfeiture of all future tax credits to
447 be claimed by certified investors with respect to the certified
448 capital company.

449 (b) If after initial certification a certified capital
450 company subsequently fails to meet the requirements for
451 certification under Section 5(1)(b) after having met the
452 requirements for certification under Section 5(1)(a), thirty
453 percent (30%) of the tax credits earned by each certified investor
454 of the certified capital company will not be subject to recapture
455 or forfeiture; however, seventy percent (70%) of the tax credits
456 earned by each certified investor of the certified capital company
457 shall be subject to recapture or forfeiture.

458 (c) If a certified capital company has met all
459 requirements for certification under Section 5(1)(a) and (b) and
460 is subsequently decertified, fifty percent (50%) of the tax
461 credits earned by each certified investor of the certified capital
462 company will not be subject to recapture or forfeiture; however,
463 fifty percent (50%) of the tax credits earned by each certified
464 investor of the certified capital company shall be subject to

465 recapture or forfeiture if the certified capital company is
466 decertified within three (3) years after its allocation date.

467 (d) If a certified capital company has invested an
468 amount cumulatively equal to one hundred percent (100%) of its
469 certified capital in qualified investments, all tax credits
470 claimed or to be claimed by its certified investors are no longer
471 subject to recapture or forfeiture.

472 (5) If a certified capital company has invested an amount
473 cumulatively equal to one hundred percent (100%) of its certified
474 capital in qualified investments and has met all other
475 requirements under this act, the certified capital company is no
476 longer subject to regulation by the department and is no longer
477 subject to the requirements of this act.

478 (6) The department shall send written notice to the address
479 of each certified investor whose tax credit has been subject to
480 recapture or forfeiture using the address shown on the last tax
481 filing.

482 SECTION 9. Any tax credit earned under this act by an
483 insurance company may be transferred or sold to any other
484 insurance company. Any transfer or sale does not affect the time
485 schedule for taking the tax credits as provided in this act. Any
486 tax credit amount recaptured pursuant to Section 8 of this act
487 shall be the liability of the taxpayer that actually claimed the
488 tax credit.

489 SECTION 10. The department may promulgate rules necessary to
490 administer this act pursuant to the Mississippi Administrative
491 Procedures Act.

492 SECTION 11. This act shall take effect and be in force from
493 and after July 1, 2001.