

By: Senator(s) Chaney

To: Finance

COMMITTEE SUBSTITUTE  
FOR  
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 MISSISSIPPI DEVELOPMENT AUTHORITY; TO LIMIT THE AMOUNT OF THE  
16 TAX CREDIT ALLOCATION FOR EACH CERTIFIED INVESTOR; TO PROVIDE THAT  
17 APPLICATION MUST BE MADE TO THE MISSISSIPPI DEVELOPMENT AUTHORITY  
18 FOR CERTIFICATION AS A CERTIFIED CAPITAL COMPANY; TO PROVIDE FOR A  
19 FEE FOR SUCH CERTIFICATION; TO PROVIDE FOR REVIEW OF THE  
20 APPLICATIONS BY THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO PROHIBIT  
21 INSURANCE COMPANIES OR THEIR AFFILIATES FROM HAVING CERTAIN  
22 INTERESTS IN CERTIFIED CAPITAL COMPANIES OR QUALIFIED BUSINESSES  
23 IN WHICH A CERTIFIED CAPITAL COMPANY INVESTS; TO PROVIDE A  
24 SCHEDULE BY WHICH CERTIFIED CAPITAL COMPANIES SHALL MAKE QUALIFIED  
25 INVESTMENTS; TO REQUIRE CERTIFIED CAPITAL COMPANIES TO REPORT  
26 CERTAIN INFORMATION TO THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO  
27 AUTHORIZE THE MISSISSIPPI DEVELOPMENT AUTHORITY TO ISSUE OPINIONS  
28 AS TO WHETHER A BUSINESS IN WHICH A CERTIFIED CAPITAL COMPANY  
29 PROPOSES TO INVEST IS A QUALIFIED BUSINESS; TO REQUIRE THE  
30 MISSISSIPPI DEVELOPMENT AUTHORITY TO CONDUCT ANNUAL REVIEWS OF  
31 CERTIFIED CAPITAL COMPANIES TO DETERMINE IF THE CERTIFIED CAPITAL  
32 COMPANY IS ABIDING BY THE REQUIREMENTS OF CERTIFICATION; TO  
33 PROVIDE FOR A FEE FOR SUCH REVIEW; TO PROVIDE PENALTIES FOR  
34 DECERTIFICATION IN THE FORM OF LOSS OR REPAYMENT OF TAX CREDITS;  
35 TO PROVIDE THAT ANY TAX CREDIT EARNED UNDER THIS ACT BY AN  
36 INSURANCE COMPANY MAY NOT BE TRANSFERRED OR SOLD TO ANY OTHER  
37 INSURANCE COMPANY EXCEPT A MEMBER OF THE INSURANCE COMPANY'S  
38 AFFILIATED GROUP; AND FOR RELATED PURPOSES.

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

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

42 SECTION 2. As used in this act:

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

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

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

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

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

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

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

72           (c) "Allocation date" means the date on which the  
73 authority approves the allocation of the certified capital of the  
74 certified investors of a certified capital company.

75           (d) "Authority" means the Mississippi Development  
76 Authority.

77           (e) "Certified capital" means an investment of cash by  
78 a certified investor in a certified capital company which fully  
79 funds the purchase price of either of the following:

80                 (i) An equity interest in the certified capital  
81 company.

82                 (ii) A qualified debt instrument.

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

89           (g) "Certified investor" means an insurance company  
90 that does either of the following:

91                 (i) Contributes certified capital pursuant to an  
92 allocation of tax credits under Section 3 of this act.

93                 (ii) Becomes irrevocably committed to contribute  
94 certified capital by preparing and executing a tax credit  
95 allocation claim.

96           (h) "Person" means a natural person or entity,  
97 including a corporation, general or limited partnership, trust, or  
98 limited liability company.

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

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

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

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

126                   (k) "Qualified distribution" means a distribution or  
127 payment by a certified capital company from certified capital in  
128 connection with either of the following:

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

138 related to the formation, syndication and operation of the  
139 certified capital company.

140 (ii) Any projected increase in federal or state  
141 taxes, including penalties and interest related to state and  
142 federal income taxes, of the equity owners of a certified capital  
143 company resulting from the earnings or other tax liability of the  
144 certified capital company or the equity owners to the extent that  
145 the increase is related to the ownership, management or operation  
146 of a certified capital company or the issuance, repayment, or  
147 redemption of the qualified debt instruments of the certified  
148 capital company.

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

156 (m) "Qualified policy issuer" means an insurance  
157 company or any affiliate of an insurance company that provides a  
158 guaranty, indemnity, bond, insurance policy or other payment  
159 undertaking in favor of the certified investors of a certified  
160 capital company, and a participation interest in a loan to a  
161 qualified business.

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

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

172           SECTION 3. (1) A certified investor who makes an investment  
173 of certified capital pursuant to an allocation under this act  
174 shall, at the time of the investment, earn a vested credit against  
175 the certified investor's tax liability equal to one hundred  
176 percent (100%) of the certified investor's investment of certified  
177 capital. A certified investor is entitled to take a maximum of  
178 ten percent (10%) of the vested tax credit in any tax year of the  
179 certified investor beginning July 1, 2004.

180           (2) The credit that can be claimed against the tax liability  
181 of the certified investor in any one (1) tax year shall not exceed  
182 the tax liability of the certified investor for that tax year.  
183 All unused credits against tax liability may be carried forward  
184 until the credit is fully utilized.

185           (3) A certified investor claiming a credit against tax  
186 liability under this section is not required to pay any additional  
187 retaliatory tax levied under the provisions of the Mississippi  
188 Insurance Premium Tax Retaliatory Law (Sections 27-15-121 through  
189 27-15-127), as a result of claiming the credit.

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

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

201           (6) If the total maximum amount of credits under subsection  
202 (4) of this section will be exceeded by allocations made based on  
203 filings that are received simultaneously, the credit amount  
204 requested shall be allocated on a pro rata basis. The pro rata  
205 allocation for each certified investor shall be the product of  
206 multiplying a fraction, the numerator of which is the amount of  
207 the tax credit allocation claim for that certified investor and  
208 the denominator of which is the total of all tax credit allocation  
209 claims filed by all certified investors, by the maximum total  
210 amount under subsection (4) of this section that have not  
211 previously been allocated.

212           (7) Within ten (10) days after receiving a tax credit  
213 allocation claim from a certified investor, the authority shall  
214 notify that certified investor of the amount of the tax credits  
215 allocated to that certified investor.

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

223           (9) The authority shall not approve a tax credit allocation  
224 claim for any certified investor on an aggregate basis with its  
225 affiliated group, whether in one or more certified capital  
226 companies, for more than the greater of Ten Million Dollars  
227 (\$10,000,000.00) or twenty percent (20%) of the maximum total  
228 amount under subsection (4) of this section.

229           (10) Within there (3) business days of the investment of  
230 certified capital by a certified investor within the timeframe  
231 identified in subsection (8) of this section, the certified  
232 capital company shall deliver to the authority a letter which

233 identifies each investor, and the date and amount of certified  
234 capital invested and tax credits earned by such investor.

235 (11) Within ten (10) business days of the receipt by the  
236 authority of a letter in the form identified in subsection (10) of  
237 this section, the authority shall notify the State Tax Commission  
238 of the insurance companies that are entitled to the tax credits.

239 SECTION 4. (1) The authority shall establish the procedures  
240 for applying for certification as a certified capital company. An  
241 applicant shall pay a nonrefundable application fee of Seven  
242 Thousand Five Hundred Dollars (\$7,500.00) at the time of filing  
243 the application with the authority. The application process shall  
244 include a criminal background investigation and fingerprint cards  
245 and resumes detailing work experience for all principals of the  
246 certified capital company.

247 (2) A certified capital company's net worth at the time of  
248 seeking certification shall be at least Five Hundred Thousand  
249 Dollars (\$500,000.00), which shall be determined by the  
250 unencumbered cash, marketable securities, and other liquid assets  
251 of the certified capital company.

252 (3) The authority shall review the organizational documents  
253 of each applicant for certification and the business history of  
254 the applicant and determine whether the applicant's net worth in  
255 the form of unencumbered cash, marketable securities, and other  
256 liquid assets is at least Five Hundred Thousand Dollars  
257 (\$500,000.00). The authority shall require that an applicant for  
258 certification as a certified capital company submit both of the  
259 following with its application:

260 (a) An audited balance sheet that contains an  
261 unqualified opinion of an independent certified public accountant  
262 issued not more than thirty-five (35) days before the application  
263 date that states whether the applicant is in compliance with the  
264 net worth requirements provided for in subsection (2) of this  
265 section.

266 (b) Copies of all offering materials sent by the  
267 applicant to potential certified investors or drafts of offering  
268 materials.

269 (4) At least two (2) principals of the certified capital  
270 company or a person employed to manage the funds of the certified  
271 capital company shall have not less than five (5) years of  
272 experience in the venture capital industry.

273 (5) Any offering material involving the sale of securities  
274 of the certified capital company shall include the following  
275 statement:

276 "By authorizing the formation of a certified capital company,  
277 this state and the Mississippi Development Authority do not  
278 necessarily endorse the quality of management or the potential for  
279 earnings of that company and is not liable for damages or losses  
280 to a certified investor in the company. Use of the word  
281 'certified' in an offering does not constitute a recommendation or  
282 endorsement of the investment by the Mississippi Development  
283 Authority.

284 Investments in a prospective certified capital company prior  
285 to the time the company is certified are not eligible for tax  
286 credits. If any provision of this act is violated, the state and  
287 the Mississippi Development Authority may require forfeiture of  
288 unused tax credits and repayment of used tax credits."

289 (6) Within thirty (30) days after the application is filed,  
290 the authority shall issue a certification as a certified capital  
291 company or shall refuse to issue a certification. If the  
292 authority refuses to issue a certification as a certified capital  
293 company, the authority shall communicate in detail to the  
294 applicant the grounds for the refusal, including suggestions for  
295 remediation.

296 (7) The authority shall review all applications in the order  
297 in which they are received by the authority. If the authority  
298 receives more than one (1) application on the same day, the

299 authority shall consider the applications to have been received  
300 simultaneously, except that an application that is incomplete or  
301 an application for which the authority has requested additional  
302 information and that information has not been provided within a  
303 reasonable time as determined by the authority, is considered to  
304 have been received on the date that the additional information is  
305 submitted rather than on the date that the application was  
306 originally submitted.

307 (8) No insurance company or any affiliate of an insurance  
308 company shall:

309 (a) Directly or indirectly beneficially own, whether  
310 through rights, options or convertible interests, ten percent  
311 (10%) or more of the voting securities of a certified capital  
312 company;

313 (b) Manage a certified capital company;

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

316 (d) Have, through ownership or any agreement or  
317 understanding, the right to participate in ten percent (10%) or  
318 more of the profits of the certified capital company, unless such  
319 insurance company or affiliate of an insurance company is a  
320 qualified policy issuer or any affiliate of a qualified policy  
321 issuer.

322 This subsection shall not preclude a certified investor,  
323 insurance company, or any other party from exercising its legal  
324 rights and remedies, including interim management of a certified  
325 capital company, in the event that a certified capital company is  
326 in default of its statutory obligations or its contractual  
327 obligations to a certified investor, insurance company or other  
328 party.

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

331           (a) Within three (3) years after its allocation date, a  
332 certified capital company shall have made qualified investments  
333 cumulatively equal to at least thirty percent (30%) of its  
334 certified capital.

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

339           (c) All certified capital not placed in qualified  
340 investments by the certified capital company may be held or  
341 invested in a manner that the certified capital company, in its  
342 discretion, considers appropriate. Invested funds returned to a  
343 certified capital company after being originally placed in  
344 qualified investments may be placed again in qualified investments  
345 and shall count toward any requirement of this act with respect to  
346 making qualified investments with certified capital.

347           (2) Any business that is classified as a qualified business  
348 at the time of the first investment in that business by a  
349 certified capital company shall remain classified as a qualified  
350 business and may receive follow-on investments from any certified  
351 capital company, and the follow-on investments shall constitute  
352 qualified investments, even though the business may not meet the  
353 definition of a qualified business at the time of the follow-on  
354 investments.

355           (3) No qualified investment shall be made at a cost to a  
356 certified capital company greater than twenty percent (20%) of the  
357 total certified capital of the certified capital company at the  
358 time of investment.

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

363 (5) Each certified capital company shall report all of the  
364 following to the authority:

365 (a) As soon as practicable after the receipt of  
366 certified capital, the name of each certified investor from which  
367 the certified capital was received, including the certified  
368 investor's tax identification number, the amount of each certified  
369 investor's investment of certified capital and tax credits, and  
370 the date on which the certified capital was received.

371 (b) On or before January 31 of each year, the amount of  
372 the certified capital company's certified capital at the end of  
373 the immediately preceding calendar year, whether or not the  
374 certified capital company has invested more than fifteen percent  
375 (15%) of its total certified capital in any one (1) business, and  
376 all qualified investments that the certified capital company made  
377 during the immediately preceding calendar year.

378 (c) Within ninety (90) days after the close of each  
379 fiscal year of the certified capital company, an audited financial  
380 statement which shall include the opinion of an independent  
381 certified public accountant. The audit shall address the methods  
382 of operation and conduct of the business of the certified capital  
383 company to determine if the certified capital company is complying  
384 with applicable statutes and rules and that the funds received by  
385 the certified capital company have been invested as required under  
386 this act.

387 (6) On or before January 31 of each year, each certified  
388 capital company shall pay an annual, nonrefundable certification  
389 fee of Five Thousand Dollars (\$5,000.00) to the authority, which  
390 shall not be required to be paid if the due date falls within six  
391 (6) months of the initial allocation date of a certified capital  
392 company.

393 SECTION 6. (1) Before making a proposed investment in a  
394 specific business, a certified capital company may request a  
395 written opinion from the authority as to whether the business in

396 which the certified capital company proposes to invest is a  
397 qualified business.

398 (2) The authority shall notify the certified capital company  
399 of its opinion not more than ten (10) days after the request is  
400 made.

401 (3) If the authority determines that the business does not  
402 meet the definition of a qualified business, the authority shall  
403 provide the certified capital company with an explanation of its  
404 determination.

405 (4) If the authority fails to respond within the ten-day  
406 period allowed under this section, the business is considered a  
407 qualified business for purposes of this act.

408 (5) The authority may determine that a business is a  
409 qualified business for purposes of this act even if the business  
410 does not meet the definition contained in the act if the authority  
411 determines that an investment in the business by a certified  
412 capital company would further economic development in this state.

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

415 (2) In order to make a distribution or payment from  
416 certified capital other than a qualified distribution or a  
417 distribution or payment permitted under subsection (3) of this  
418 section, a certified capital company must have made qualified  
419 investments in an amount cumulatively equal to one hundred percent  
420 (100%) of its certified capital.

421 (3) Payments to debt holders of a certified capital company  
422 may be made without restriction with respect to repayments of  
423 principal and interest on indebtedness owed to them by a certified  
424 capital company, including indebtedness of the certified capital  
425 company on which certified investors earned tax credits. A debt  
426 holder that is also a certified investor or equity holder of a  
427 certified capital company may receive payments with respect to the  
428 debt without restrictions.

429           SECTION 8. (1) The authority shall conduct an annual review  
430 of each certified capital company to determine if the certified  
431 capital company is abiding by the requirements of certification,  
432 to advise the certified capital company as to the eligibility  
433 status of its qualified investments, and to ensure that its  
434 investments have not been made in violation of this act. The  
435 authority shall not charge more than Five Thousand Dollars  
436 (\$5,000.00) for the annual review and shall be paid by each  
437 certified capital company.

438           (2) Any material or fraudulent misrepresentation made to the  
439 authority in the process of certification as a certified capital  
440 company or any material violation of Section 5(1) of this act is  
441 grounds for decertification of a certified capital company. If  
442 the authority determines that a certified capital company is not  
443 in compliance with Section 5(1) of this act, the authority shall,  
444 by written notice, inform the officers of the certified capital  
445 company that the certified capital company may be subject to  
446 decertification in one hundred twenty (120) days from the date of  
447 mailing of the notice unless the deficiencies are corrected and  
448 the certified capital company is again in compliance with all  
449 requirements for certification.

450           (3) At the end of the 120-day period under subsection (2) of  
451 this section, if the certified capital company is still not in  
452 compliance with Section 5(1), the authority may send a notice of  
453 decertification to the certified capital company and to all other  
454 appropriate state agencies.

455           (4) Decertification of a certified capital company may cause  
456 the recapture of tax credits previously claimed and the forfeiture  
457 of future tax credits to be claimed by certified investors with  
458 respect to the certified capital company, as follows:

459           (a) Decertification of a certified capital company  
460 before the certified capital company has met the requirements of  
461 Section 5(1)(a) shall cause the recapture of all tax credits

462 previously claimed and the forfeiture of all future tax credits to  
463 be claimed by certified investors with respect to the certified  
464 capital company.

465 (b) If after initial certification a certified capital  
466 company subsequently fails to meet the requirements for  
467 certification under Section 5(1)(b) after having met the  
468 requirements for certification under Section 5(1)(a), thirty  
469 percent (30%) of the tax credits earned by each certified investor  
470 of the certified capital company will not be subject to recapture  
471 or forfeiture; however, seventy percent (70%) of the tax credits  
472 earned by each certified investor of the certified capital company  
473 shall be subject to recapture or forfeiture.

474 (c) If a certified capital company has met all  
475 requirements for certification under Section 5(1)(a) and (b) and  
476 is subsequently decertified, fifty percent (50%) of the tax  
477 credits earned by each certified investor of the certified capital  
478 company will not be subject to recapture or forfeiture; however,  
479 fifty percent (50%) of the tax credits earned by each certified  
480 investor of the certified capital company shall be subject to  
481 recapture or forfeiture if the certified capital company is  
482 decertified within three (3) years after its allocation date.

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

488 (5) If a certified capital company has invested an amount  
489 cumulatively equal to one hundred percent (100%) of its certified  
490 capital in qualified investments and has met all other  
491 requirements under this act, the certified capital company is no  
492 longer subject to regulation by the authority and is no longer  
493 subject to the requirements of this act.

494 (6) The authority shall send written notice to the address  
495 of each certified investor whose tax credit has been subject to  
496 recapture or forfeiture using the address shown on the last tax  
497 filing.

498 SECTION 9. (1) Any tax credit earned under this act by an  
499 insurance company shall not be transferred or sold to any other  
500 insurance company except to a member of the insurance company's  
501 affiliated group.

502 (2) An insurance company may only transfer or sell tax  
503 credits once during a calendar year, although on such date, the  
504 insurance company may make several transfers to different members  
505 of its affiliated group and each entity that purchases the tax  
506 credits may not transfer the tax credits obtained during the year  
507 of purchase. In any subsequent calendar year, the purchaser of  
508 the tax credits may make one (1) election per year, if needed.

509 (3) An insurance company that transfers or sells tax credits  
510 shall submit to the State Tax Commission, in writing, a  
511 notification of such transfer or sale of tax credits within thirty  
512 (30) days of the transfer or sale of such tax credits. The  
513 notification shall include the insurance company's tax credit  
514 balance prior to the transfer, the remaining balance after the  
515 transfer, all tax identification numbers for both the transferor  
516 and purchaser, the date of transfer and the amount transferred.

517 (4) The transfer or sale of tax credits shall not affect the  
518 time schedule for taking such tax credits. Any tax credits  
519 transferred or sold which are subject to recapture pursuant to  
520 Section 8 of this act shall be the liability of the taxpayer that  
521 actually claimed the tax credit.

522 SECTION 10. The authority may promulgate rules necessary to  
523 administer this act pursuant to the Mississippi Administrative  
524 Procedures Act.

525 SECTION 11. This act shall take effect and be in force from  
526 and after July 1, 2004, and shall stand repealed from and after  
527 June 30, 2004.