AN ACT TO ENACT THE CERTIFIED CAPITAL COMPANY ACT; TO PROVIDE
THAT A CERTIFIED INVESTOR WHO MAKES AN INVESTMENT OF CERTIFIED
CAPITAL PURSUANT TO AN ALLOCATION UNDER THIS ACT SHALL EARN A
VESTED CREDIT AGAINST THE CERTIFIED INVESTOR'S INSURANCE PREMIUM
TAX LIABILITY EQUAL TO 100% OF THE CERTIFIED INVESTOR'S INVESTMENT
OF CERTIFIED CAPITAL; TO PROVIDE THAT A CERTIFIED INVESTOR IS
ENTITLED TO TAKE A MAXIMUM OF 10% OF THE VESTED TAX CREDIT IN ANY
TAX YEAR BEGINNING WITH THE TAX YEAR DURING WHICH THE INVESTMENT
IS MADE; TO PROVIDE THAT THE CREDIT CLAIMED IN ANY ONE TAX YEAR
SHALL NOT EXCEED THE TAX LIABILITY OF THE INVESTOR FOR THE YEAR
CLAIMED; TO PROVIDE THAT ALL UNUSED CREDIT MAY BE CARRIED FORWARD
UNTIL THE CREDIT IS USED UP; TO PROVIDE THAT THE TOTAL AMOUNT OF
CREDIT ALLOWED UNDER THIS ACT FOR ALL TAXPAYERS SHALL NOT EXCEED
$50,000,000.00; TO PROVIDE FOR THE ALLOCATION OF SUCH CREDITS BY
THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO LIMIT THE AMOUNT OF THE
TAX CREDIT ALLOCATION FOR EACH CERTIFIED INVESTOR; TO PROVIDE THAT
APPLICATION MUST BE MADE TO THE MISSISSIPPI DEVELOPMENT AUTHORITY
FOR CERTIFICATION AS A CERTIFIED CAPITAL COMPANY; TO PROVIDE FOR A
FEE FOR SUCH CERTIFICATION; TO PROVIDE FOR REVIEW OF THE
APPLICATIONS BY THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO PROHIBIT
INSURANCE COMPANIES OR THEIR AFFILIATES FROM HAVING CERTAIN
INTERESTS IN CERTIFIED CAPITAL COMPANIES OR QUALIFIED BUSINESSES
IN WHICH A CERTIFIED CAPITAL COMPANY INVESTS; TO PROVIDE A
SCHEDULE BY WHICH CERTIFIED CAPITAL COMPANIES SHALL MAKE QUALIFIED
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CERTAIN INFORMATION TO THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO
PROHIBIT INSURANCE COMPANY MAY NOT BE TRANSFERRED OR SOLD TO ANY OTHER
INSURANCE COMPANY EXCEPT A MEMBER OF THE INSURANCE COMPANY'S
AFFILIATED GROUP; AND FOR RELATED PURPOSES.

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

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

SECTION 2. As used in this act:
(a) "Affiliate of a certified capital company or insurance company" means any of the following:

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

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

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

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

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

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

(c) "Allocation date" means the date on which the authority approves the allocation of the certified capital of the certified investors of a certified capital company.
(d) "Authority" means the Mississippi Development Authority.

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

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

(ii) A qualified debt instrument.

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

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

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

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

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

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

(i) Is headquartered in this state and its principal business operations are located in this state.
(ii) Is a small business concern as defined in Section 121.201 of the small business size regulations of the United States Small Business Administration, 13 C.F.R. 121.201.

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

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

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

(ii) 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 or the equity owners to the extent that
the increase is related to the ownership, management or operation
of a certified capital company or the issuance, repayment, or
redemption of the qualified debt instruments of the certified
capital company.

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

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

(n) "Tax credit allocation claim" means a claim for the
allocation of tax credits allowed under this act prepared,
executed, and filed with the authority by a certified investor on
a form provided by the authority that includes a statement that
the certified investor is legally bound and irrevocably committed
to make an investment of certified capital in a certified capital
company in the amount allocated under Section 3 of this act.
"Tax liability" means any liability incurred by a certified investor under the provisions of Sections 27-15-103 through 27-15-119.

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

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

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

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

(5) Allocation of certified capital shall be made in the order in which the tax credit allocation claims are received by the authority. If two (2) or more tax credit allocation claims are filed on the same day, they are considered to have been received simultaneously.
(6) If the total maximum amount of credits under subsection (4) of this section will be exceeded by allocations made based on filings that are received simultaneously, the credit amount requested shall be allocated on a pro rata basis. The pro rata allocation for each certified investor shall be the product of multiplying a fraction, the numerator of which is the amount of the tax credit allocation claim for that certified investor and the denominator of which is the total of all tax credit allocation claims filed by all certified investors, by the maximum total amount under subsection (4) of this section that have not previously been allocated.

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

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

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

(10) Within three (3) business days of the investment of certified capital by a certified investor within the timeframe identified in subsection (8) of this section, the certified capital company shall deliver to the authority a letter which
identifies each investor, and the date and amount of certified capital invested and tax credits earned by such investor.

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

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

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

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

(a) An audited balance sheet that contains an unqualified opinion of an independent certified public accountant issued not more than thirty-five (35) days before the application date that states whether the applicant is in compliance with the net worth requirements provided for in subsection (2) of this section.
(b) Copies of all offering materials sent by the applicant to potential certified investors or drafts of offering materials.

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

(5) 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, this state and the Mississippi Development Authority do not necessarily endorse the quality of management or the potential for earnings of that 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 Mississippi Development Authority. Investments in a prospective certified capital company prior to the time the company is certified are not eligible for tax credits. If any provision of this act is violated, the state and the Mississippi Development Authority may require forfeiture of unused tax credits and repayment of used tax credits."

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

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

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

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

(b) Manage a certified capital company;

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

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

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

SECTION 5. (1) A certified capital company shall make qualified investments according to the following schedule:
(a) Within three (3) years after its allocation date, a certified capital company shall have made qualified investments cumulatively equal to at least thirty percent (30%) of its certified capital.

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

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

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

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

(4) The aggregate cumulative amount of all qualified investments made by the certified capital company from its allocation date will be considered in the calculation of the percentage requirements under this act.
(5) Each certified capital company shall report all of the following to the authority:

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

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

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

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

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

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

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

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

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

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

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

(3) Payments to debt holders of a certified capital company 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 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 the debt without restrictions.
SECTION 8.  (1) The authority 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 its investments have not been made in violation of this act. The authority shall not charge more than Five Thousand Dollars ($5,000.00) for the annual review and shall be paid by each certified capital company.

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

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

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

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

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

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

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

(5) If a certified capital company has invested an amount cumulatively equal to one hundred percent (100%) of its certified capital in qualified investments and has met all other requirements under this act, the certified capital company is no longer subject to regulation by the authority and is no longer subject to the requirements of this act.
The authority shall send written notice to the address of each certified investor whose tax credit has been subject to recapture or forfeiture using the address shown on the last tax filing.

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

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

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

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

SECTION 10. The authority may promulgate rules necessary to administer this act pursuant to the Mississippi Administrative Procedures Act.
SECTION 11. This act shall take effect and be in force from and after July 1, 2004, and shall stand repealed from and after June 30, 2004.