

By: Senator(s) Hewes

To: Finance

SENATE BILL NO. 3193

1 AN ACT TO CREATE THE CERTIFIED CAPITAL COMPANY ACT; TO  
 2 PROVIDE THAT A CERTIFIED INVESTOR WHO MAKES AN INVESTMENT OF  
 3 CERTIFIED CAPITAL PURSUANT TO AN ALLOCATION UNDER THIS ACT SHALL  
 4 EARN A VESTED CREDIT AGAINST THE CERTIFIED INVESTOR'S INSURANCE  
 5 PREMIUM TAX LIABILITY EQUAL TO 100% OF THE CERTIFIED INVESTOR'S  
 6 INVESTMENT OF CERTIFIED CAPITAL; TO PROVIDE THAT A CERTIFIED  
 7 INVESTOR IS ENTITLED TO TAKE A MAXIMUM OF 10% OF THE VESTED TAX  
 8 CREDIT IN ANY TAX YEAR BEGINNING WITH THE 2006 TAX YEAR; TO  
 9 PROVIDE THAT THE CREDIT CLAIMED IN ANY ONE TAX YEAR SHALL NOT  
 10 EXCEED THE TAX LIABILITY OF THE INVESTOR FOR THE YEAR CLAIMED; TO  
 11 PROVIDE THAT ALL UNUSED CREDIT MAY BE CARRIED FORWARD UNTIL THE  
 12 CREDIT IS USED UP; TO PROVIDE THAT THE TOTAL AMOUNT OF CREDIT  
 13 ALLOWED UNDER THIS ACT FOR ALL TAXPAYERS SHALL NOT EXCEED  
 14 \$100,000,000.00 OR \$10,000,000.00 PER YEAR FOR 10 YEARS; TO  
 15 PROVIDE FOR THE ALLOCATION OF SUCH CREDITS BY THE MISSISSIPPI  
 16 DEVELOPMENT AUTHORITY; TO LIMIT THE AMOUNT OF THE TAX CREDIT  
 17 ALLOCATION FOR EACH CERTIFIED INVESTOR; TO PROVIDE THAT  
 18 APPLICATION MUST BE MADE TO THE MISSISSIPPI DEVELOPMENT AUTHORITY  
 19 FOR CERTIFICATION AS A CERTIFIED CAPITAL COMPANY; TO PROVIDE FOR A  
 20 FEE FOR SUCH CERTIFICATION; TO PROVIDE FOR REVIEW OF THE  
 21 APPLICATIONS BY THE MISSISSIPPI DEVELOPMENT AUTHORITY; TO REQUIRE  
 22 CERTIFIED CAPITAL COMPANIES TO REPORT CERTAIN INFORMATION TO THE  
 23 MISSISSIPPI DEVELOPMENT AUTHORITY; TO AUTHORIZE THE MISSISSIPPI  
 24 DEVELOPMENT AUTHORITY TO ISSUE OPINIONS AS TO WHETHER AN  
 25 INVESTMENT A CERTIFIED CAPITAL COMPANY PROPOSES TO MAKE IS A  
 26 QUALIFIED INVESTMENT; TO REQUIRE THE MISSISSIPPI DEVELOPMENT  
 27 AUTHORITY TO CONDUCT ANNUAL REVIEWS OF CERTIFIED CAPITAL COMPANIES  
 28 TO DETERMINE IF THE CERTIFIED CAPITAL COMPANY IS ABIDING BY THE  
 29 REQUIREMENTS OF CERTIFICATION; TO PROVIDE FOR A FEE FOR SUCH  
 30 REVIEW; TO PROVIDE PENALTIES FOR DECERTIFICATION IN THE FORM OF  
 31 RECAPTURE OR FORFEITURE OF TAX CREDITS; AND FOR RELATED PURPOSES.

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

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

35 **SECTION 2.** The state recognizes the importance of domestic  
 36 small businesses in creating new employment, retaining existing  
 37 employment and expanding the economy of the state.

38 In order to promote the foundation and growth of small  
 39 business within the state, sufficient resources, both in the form  
 40 of capital and management expertise, must be made available from  
 41 both within and without the state.

42           The state hereby enacts this Certified Capital Company Act to  
43 provide financial and management assistance to the formation of  
44 new businesses and the expansion of existing small businesses  
45 within the state by providing premium tax credits to insurance  
46 companies to encourage the insurance companies to invest in  
47 certified capital companies which, in turn, will invest in  
48 qualified businesses within the state.

49           **SECTION 3.** For the purpose of this act, the following terms  
50 shall have the following meanings:

51                   (a) "Affiliate" of a certified capital company,  
52 insurance company or qualified business means:

53                           (i) Any person, directly or indirectly  
54 beneficially owning (whether through rights, options, convertible  
55 interests or otherwise), controlling or holding power to vote  
56 fifteen percent (15%) or more of the outstanding voting securities  
57 or other voting ownership interests of the certified capital  
58 company, insurance company or qualified business, as applicable;

59                           (ii) Any person, fifteen percent (15%) or more of  
60 whose outstanding voting securities or other voting ownership  
61 interests are directly or indirectly beneficially owned (whether  
62 through rights, options, convertible interests or otherwise),  
63 controlled or held with power to vote by the certified capital  
64 company, insurance company or qualified business, as applicable;

65                           (iii) Any person directly or indirectly  
66 controlling, controlled by, or under common control with the  
67 certified capital company, or insurance company, or qualified  
68 business, as applicable;

69                           (iv) A partnership or limited liability company in  
70 which the certified capital company, insurance company or  
71 qualified business, as applicable, is a general partner, manager  
72 or managing member, as the case may be; or

73                           (v) Any person who is an officer, director,  
74 employee or agent of the certified capital company, insurance

75 company or qualified business, as applicable, or an immediate  
76 family member of such officer, director, employee or agent.

77 (b) "Allocation date" means the date on which the  
78 certified investors of a certified capital company are allocated  
79 tax credits by the authority pursuant to Section 6 of this act.

80 (c) "Authority" means the Mississippi Development  
81 Authority.

82 (d) "Certified capital" means an investment of cash by  
83 a certified investor in a certified capital company which fully  
84 funds the purchase price of an equity interest in the certified  
85 capital company or a qualified debt instrument issued by the  
86 certified capital company.

87 (e) "Certified capital company" means a partnership,  
88 corporation, trust or limited liability company, whether organized  
89 on a for profit or not-for-profit basis, that has as its primary  
90 business activity the investment of cash in qualified businesses  
91 and that is certified as a certified capital company by the  
92 authority by meeting the requirements of Section 4(1) of this act.

93 (f) "Certified investor" means any insurance company  
94 that invests certified capital pursuant to an allocation of tax  
95 credits under Section 6 of this act.

96 (g) "Early stage business" means a qualified business  
97 that (i) at the time of a certified capital company's initial  
98 investment in such qualified business, is involved in activities  
99 related to the development (including product development,  
100 manufacturing, and sales and marketing) of initial product or  
101 service offerings or (ii) for the fiscal year immediately  
102 preceding the year of a certified capital company's initial  
103 investment in such qualified business, had gross revenues of less  
104 than Five Hundred Thousand Dollars (\$500,000.00), on a  
105 consolidated basis, as determined in accordance with generally  
106 accepted accounting principles.

107           (h) "Experienced investor" means any natural person  
108 that has not less than four (4) years of experience making venture  
109 capital investments, which may include investments made in  
110 connection with a state or federally sponsored venture capital  
111 program.

112           (i) "Permissible investments" means:

113               (i) Deposits with a financial institution that is  
114 a member of the Federal Deposit Insurance Corporation;

115               (ii) Certificates of deposit issued by a financial  
116 institution that is a member of the Federal Deposit Insurance  
117 Corporation;

118               (iii) Investment securities that are obligations  
119 of the United States, its agencies or instrumentalities, or  
120 obligations that are guaranteed fully as to principal and interest  
121 by the United States;

122               (iv) Commercial paper rated at least A1, P1 or its  
123 equivalent by at least one (1) nationally recognized rating  
124 organization;

125               (v) Debt instruments rated at least "AA" or its  
126 equivalent by a nationally recognized rating organization, or  
127 issued by, or guaranteed with respect to payment by, an entity  
128 whose unsecured indebtedness is rated at least "AA" or its  
129 equivalent by a nationally recognized credit rating organization,  
130 and which is not subordinated to other unsecured indebtedness of  
131 the issuer or the guarantor, as the case may be;

132               (vi) Obligations of this state, or any  
133 municipality in this state, or any political subdivision thereof;

134               (vii) Interests in money market funds or other  
135 mutual funds, the portfolios of which are limited to cash and  
136 permissible investments;

137               (viii) Swaps or other hedging transactions with a  
138 counterparty rated at least "A" or its equivalent by a nationally

139 recognized rating agency designed to realize and/or protect the  
140 value of a qualified investment; or

141 (ix) Any other investments approved in advance and  
142 in writing by the authority.

143 (j) "Person" means any natural person, corporation,  
144 general or limited partnership, trust, limited liability company  
145 or other entity.

146 (k) "Qualified business" means a business that meets  
147 all of the following conditions as of the time of a certified  
148 capital company's first investment in such business:

149 (i) It is headquartered and has its principal  
150 business operations located in this state and intends to maintain  
151 its headquarters and principal business operations in this state  
152 after receipt of the certified capital company's investment, or  
153 has its headquarters and principal business operations located in  
154 another state, and commits to relocate its headquarters and  
155 principal business operations to this state and does so within  
156 ninety (90) days after receipt of the certified capital company's  
157 investment;

158 (ii) It is a small business concern that meets the  
159 requirements of the United States Small Business Administration's  
160 qualification size standards for its venture capital program, as  
161 defined in Section 13 CFR 121.301(c) of the Small Business  
162 Investment Act of 1958, as amended;

163 (iii) It is not predominantly engaged in any of  
164 the following:

165 1. The purchase or development of real estate  
166 for resale or solely for investment purposes;

167 2. The business of insurance, banking,  
168 lending, lobbying, or political consulting; or

169 3. The provision of professional services  
170 provided by accountants, attorneys or physicians;

171                   (iv) It is not (a) formed or organized, directly  
172 or indirectly, by a certified capital company or an affiliate of  
173 the certified capital company, (b) a franchisee of a certified  
174 capital company or an affiliate of the certified capital company,  
175 or (c) before the date on which a certified capital company makes  
176 its first investment in such business, an affiliate of the  
177 certified capital company; and

178                   (v) It does not have any financial relationship  
179 with a certified capital company before the date on which the  
180 certified capital company makes its first investment.

181                   (1) "Qualified debt instrument" means a debt instrument  
182 issued to a certified investor by a certified capital company  
183 which has the following characteristics: (i) an original maturity  
184 date of at least five (5) years from date of issuance, (ii) an  
185 issue price to the certified investor of at least par value, (iii)  
186 a repayment schedule that is no faster than a level principal  
187 amortization over five (5) years, (iv) does not permit the  
188 certified investor to receive prepayment of interest, and (v)  
189 contains no interest, distribution or payment features that are  
190 related to the profitability of the certified capital company or  
191 the performance of the certified capital company's investment  
192 portfolio until such time as the certified capital company is  
193 permitted to make distributions other than qualified distributions  
194 under Section 8 of this act.

195                   (m) "Qualified distribution" means any distribution or  
196 payment from certified capital or profits earned thereon in  
197 connection with any of the following:

198                   (i) 1. Costs and expenses of forming, organizing  
199 and syndicating the certified capital company, 2. the costs of  
200 financing (including the cost of purchasing securities for the  
201 purpose of defeasing the obligations of the certified capital  
202 company under its qualified debt instruments) and insuring the  
203 obligations of the certified capital company under its qualified

204 debt instruments, and 3. an amount equal to two and one-half  
205 percent (2-1/2%) of the certified capital of the certified capital  
206 company, which amount represents the certified capital company's  
207 first annual management fee so long as, at the time the certified  
208 capital company initially received its investment of certified  
209 capital from its certified investors, the certified capital  
210 company has cash or permissible investments available for  
211 investment in qualified businesses equal to at least fifty percent  
212 (50%) of the amount of certified capital such certified capital  
213 company initially received as investment from its certified  
214 investors; provided, however, nothing in this subparagraph (i)  
215 shall absolve the certified capital company from its obligation to  
216 make qualified investments of at least one hundred percent (100%)  
217 of its certified capital with at least ten percent (10%) of such  
218 investments being made in early stage businesses before it is  
219 entitled to make distributions other than qualified distributions;

220           (ii) From and after the first anniversary of the  
221 allocation date, an annual management fee in an amount that does  
222 not exceed two and one-half percent (2-1/2%) of the certified  
223 capital of the certified capital company, which amount shall be  
224 applied to the costs and expenses of managing and operating the  
225 certified capital company; provided that no such cost or expense  
226 shall be paid to a certified investor or an affiliate of a  
227 certified investor, nor to a lobbyist or political consultant; and  
228 provided further that after the seventh anniversary of the  
229 allocation date, the annual management fee shall not exceed one  
230 and one-half percent (1-1/2%) of the certified capital of the  
231 certified capital company and after the tenth anniversary of the  
232 allocation date, no annual management fee shall be permitted; and

233           (iii) Any projected increase in federal or state  
234 taxes, excluding penalties and interest related to state and  
235 federal income taxes, of the equity owners of a certified capital  
236 company resulting from the earnings or other tax liability of the

237 certified capital company without regard to any revenues or  
238 expenses from other operations of affiliates of the certified  
239 capital company, to the extent that the increase is related to the  
240 ownership, management or operation of a certified capital company  
241 or issuance, repayment or redemption of the qualified debt  
242 instruments of the certified capital company.

243 (n) "Qualified investment" means the investment of cash  
244 by a certified capital company in a qualified business for the  
245 purchase of any debt, debt participation, equity or hybrid  
246 security, of any nature and description whatsoever, including a  
247 debt instrument or security which has the characteristics of debt  
248 but which provides for conversion into equity or equity  
249 participation instruments such as options or warrants. Any  
250 qualified investment in the form of a debt instrument, including  
251 those owned through debt participations, must have a final stated  
252 maturity of at least two (2) years from the date of issuance and a  
253 repayment schedule that is no faster than level principal  
254 amortization over the same time period, and any qualified  
255 investment in the form of equity or equity participation  
256 instruments may not provide for the mandatory redemption or  
257 repurchase of such investment by the qualified business prior to  
258 two (2) years after the date of such investment. Nothing in this  
259 paragraph (n) shall prohibit (i) the qualified business from  
260 voluntarily prepaying, redeeming, or repurchasing qualified  
261 investments at anytime, or (ii) the certified capital company from  
262 exercising any of its rights and remedies following a default in  
263 the obligations of the qualified business, including the  
264 acceleration of the debt, redemption, or repurchase obligations  
265 owed upon a default by the qualified business under the terms of  
266 the qualified investment or upon the acquisition, merger or the  
267 sale of all or substantially all of the assets of the qualified  
268 business. Notwithstanding the foregoing, a qualified investment  
269 shall not include an investment that results, or could result in,

270 a certified capital company owning, after the investment, fifty  
271 percent (50%) or more of the voting or nonvoting stock of a  
272 qualified business, unless (a) such ownership is the result of the  
273 certified capital company's exercise of its rights and remedies  
274 following a default in the obligations of the qualified business  
275 or (b) such investment is approved by the authority prior its  
276 being made.

277 (o) "State premium tax liability" means any liability  
278 incurred by an insurance company under the provisions of Sections  
279 27-15-103 through 27-15-119 and Sections 27-15-121 through  
280 27-15-127, or in the case of a repeal or reduction by the state of  
281 the tax imposed by Sections 27-15-103 through 27-15-119 or  
282 Sections 27-15-121 through 27-15-127, any other tax imposed upon  
283 an insurance company by this state.

284 (p) "Tax credit" means the vested credit against state  
285 premium tax liability that is earned at the time of investment by  
286 a certified investor in connection with an investment of certified  
287 capital in a certified capital company pursuant to this act.

288 (q) "Tax credit allocation claim" means a claim for  
289 allocation of tax credits prepared and executed by an insurance  
290 company on a form provided by the authority and filed by a  
291 certified capital company with the authority. The form shall  
292 include an affidavit of the insurance company pursuant to which  
293 such insurance company shall attest that it (i) is legally bound  
294 and irrevocably committed to make an investment of certified  
295 capital in a certified capital company in the amount of allocated  
296 tax credits (even if such amount is less than the amount of the  
297 claim), subject only to the receipt of an allocation pursuant to  
298 Section 6 of this act and (ii) complies with the requirements of  
299 Section 4(4) of this act.

300 (r) "Tax credit allocation claim filing date" means the  
301 date on which the authority will first accept tax credit  
302 allocation claims on behalf of certified investors.

303           SECTION 4. (1) The authority shall certify an applicant  
304 that meets the following requirements as a certified capital  
305 company:

306           (a) The applicant has paid a nonrefundable application  
307 fee of Fifteen Thousand Dollars (\$15,000.00) at or before the time  
308 of filing its application with the authority.

309           (b) The applicant's equity capitalization at the time  
310 of seeking certification shall be at least Five Hundred Thousand  
311 Dollars (\$500,000.00) and shall be in the form of unencumbered  
312 cash or cash equivalents. As part of its application, each  
313 applicant shall submit to the authority its balance sheet, audited  
314 with an unqualified opinion of a firm of independent certified  
315 public accountants, of a date no more than thirty-five (35) days  
316 prior to the date of the application. In addition, the applicant  
317 shall submit an affidavit stating that, if certified, it will  
318 maintain the equity capitalization, except for reductions due to  
319 qualified distributions, until the allocation date.

320           (c) That at least two (2) principals of the applicant  
321 or at least two (2) persons employed or engaged to manage the  
322 funds of the applicant qualify as experienced investors. As part  
323 of its application, each applicant will provide to the authority  
324 affidavits, with detailed resumes or equivalent biographic  
325 materials appended, from such experienced investors stating that  
326 their experience meets the requirement of this act. In addition,  
327 such experienced investors shall provide to the authority  
328 affidavits stating that they have not violated federal or state  
329 securities or banking laws or been convicted of any crime  
330 involving fraud.

331           (d) The applicant shall provide an affidavit stating  
332 that within sixty (60) days of the investment of certified capital  
333 in the certified capital company, at least one (1) investment  
334 professional of the certified capital company shall be primarily

335 located in an office of the certified capital company based in  
336 this state.

337 (2) Within thirty (30) days of the filing of an application,  
338 the authority shall issue the certification or shall refuse the  
339 certification and communicate in detail to the applicant the  
340 requirements of subsection (1) of this section that the applicant  
341 failed to meet. If an applicant submits an amended application  
342 within fifteen (15) days of receipt of refusal by the authority,  
343 the authority shall have fifteen (15) days from the receipt of  
344 such amended application within which to communicate its approval  
345 or refusal of such amended application to the applicant. The  
346 authority shall review and approve or reject applications in the  
347 order submitted, and, in the event more than one (1) application  
348 is received by the authority on any date, all such applications  
349 shall be reviewed and approved simultaneously, except in the case  
350 of incomplete applications.

351 (3) (a) As part of the application, an applicant shall  
352 provide the authority with copies of either (i) its offering  
353 materials, which may be in draft or preliminary form, or (ii)  
354 other information that describes in reasonable detail the  
355 structure of its qualified debt instruments and any other  
356 securities to be issued to its certified investors so that the  
357 authority may verify the certified capital company's compliance  
358 with the requirements of this act and, if applicable, the  
359 inclusion of the statement described in paragraph (b) of this  
360 subsection (3).

361 (b) Any offering material involving the sale of  
362 securities of the certified capital company shall include the  
363 following statement:

364 "By authorizing the formation of a certified capital company,  
365 the State of Mississippi does not necessarily endorse the quality  
366 of management or the potential for earnings of such company and is  
367 not liable for damages or losses to a certified investor in the

368 company. Use of the word 'certified' in an offering does not  
369 constitute a recommendation or endorsement of the investment by  
370 the Mississippi Development Authority. In the event applicable  
371 provisions of the Certified Capital Company Act are violated, the  
372 state may require forfeiture of unused tax credits and repayment  
373 of used tax credits."

374 (4) (a) No insurance company or any affiliate of an  
375 insurance company shall, directly or indirectly, beneficially own,  
376 whether through rights, options, convertible interests or  
377 otherwise, fifteen percent (15%) or more of the voting equity  
378 interests of or manage a certified capital company or control the  
379 direction of investments for a certified capital company.

380 (b) Paragraph (a) of this subsection (4) shall not  
381 preclude a certified investor, insurance company or any other  
382 party from (i) exercising its legal rights and remedies, which may  
383 include interim management of a certified capital company or  
384 ownership of equity interests in excess of the limits contained  
385 herein, in the event that a certified capital company is in  
386 default of its statutory obligations or its contractual  
387 obligations to a certified investor, insurance company or other  
388 person, or (ii) establishing controls to insure that the certified  
389 capital company satisfies the requirements of Section 7(1) of this  
390 act.

391 (c) Nothing in this subsection (4) shall limit an  
392 insurance company's ownership of nonvoting equity securities or  
393 other nonvoting ownership interests of a certified capital  
394 company.

395 (5) A certified capital company may obtain a guaranty,  
396 indemnity, bond, insurance policy and/or other payment undertaking  
397 for the benefit of its certified investors from any entity;  
398 however, in no case shall more than one (1) certified investor of  
399 such certified capital company or affiliates of such certified  
400 investor be entitled to provide such guaranty, indemnity, bond,

401 insurance policy and/or other payment undertaking in favor of the  
402 certified investors of the certified capital company and its  
403 affiliates in this state.

404       **SECTION 5.** (1) Any certified investor who makes an  
405 investment of certified capital pursuant to an allocation of tax  
406 credits under Section 6 of this act shall, at the time of  
407 investment, earn a vested credit against state premium tax  
408 liability equal to one hundred percent (100%) of the certified  
409 investor's investment of certified capital. A certified investor  
410 shall be entitled to take up to ten percent (10%) of the vested  
411 tax credit to reduce the certified investor's state premium tax  
412 liability for any taxable year of the certified investor  
413 commencing with the tax year beginning in 2006, plus any amount of  
414 unused tax credits which are carried forward pursuant to  
415 subsection (2) of this section.

416       (2) The tax credit that may be applied against state premium  
417 tax liability in any one (1) year may not exceed the state premium  
418 tax liability of the certified investor for such taxable year.  
419 All unused tax credits against state premium tax liability may be  
420 carried forward indefinitely and used in any subsequent year until  
421 the tax credits are utilized in full.

422       (3) A certified investor claiming a tax credit against state  
423 premium tax liability earned through an investment in a certified  
424 capital company shall not be required to pay any additional  
425 retaliatory tax levied pursuant to Sections 27-15-121 through  
426 27-15-127 as a result of claiming that tax credit.

427       (4) A certified investor is not required to reduce the  
428 amount of tax pursuant to the state premium tax liability included  
429 by the certified investor in connection with ratemaking for any  
430 insurance contract written in this state because of a reduction in  
431 the certified investor's tax liability based on the tax credit  
432 allowed under this act.

433 (5) If the taxes paid by a certified investor with respect  
434 to its state premium tax liability constitute a credit against any  
435 other tax which is imposed by this state, the certified investor's  
436 credit against such other tax shall not be reduced by virtue of  
437 the reduction in the certified investor's tax liability based on  
438 the tax credit allowed under this act.

439 **SECTION 6.** (1) The maximum aggregate amount of certified  
440 capital for which tax credits are allowed for all certified  
441 investors under this act is equal to that amount that entitles all  
442 certified investors in certified capital companies to take  
443 aggregate tax credits of One Hundred Million Dollars  
444 (\$100,000,000.00) or Ten Million Dollars (\$10,000,000.00) per year  
445 for ten (10) years. No certified capital company, on an aggregate  
446 basis with its affiliates, may file tax credit allocation claims  
447 in excess of the maximum aggregate amount of certified capital for  
448 which tax credits are allowed as provided in this subsection (1).

449 (2) Tax credits will be allocated to certified investors in  
450 certified capital companies in the order that tax credit  
451 allocation claims are received by the authority by such certified  
452 capital companies on behalf of their certified investors. All  
453 filings made on the same day shall be treated as having been made  
454 contemporaneously. Filings made before the tax credit allocation  
455 claim filing date will be considered to have been received by the  
456 authority on the tax credit allocation claim filing date.

457 (3) (a) In the event that two (2) or more certified capital  
458 companies file tax credit allocation claims with the authority on  
459 behalf of their respective certified investors on the same day,  
460 and the amount of such tax credit allocation claims exceeds in the  
461 aggregate the limit of available tax credits under the provisions  
462 of subsection (1) of this section, capital for which tax credits  
463 are allowed shall be allocated among the certified investors who  
464 filed on that day on a pro rata basis with respect to the amounts  
465 claimed.

466           (b) Except as provided in paragraph (c) of this  
467 subsection (3), the pro rata allocation for any one (1) certified  
468 investor shall be the product of a fraction, the numerator of  
469 which is the amount of the tax credit allocation claim filed on  
470 behalf of such certified investor and the denominator of which is  
471 the total of all tax credit allocation claims filed on behalf of  
472 all certified investors on such day, multiplied by the aggregate  
473 limitation as provided in subsection (1) of this section, or such  
474 lesser amount of tax credits that remains unallocated on such day.

475           (c) No allocation shall be made to the certified  
476 investors of a certified capital company if such allocation  
477 results in less than five percent (5%) of the maximum amount of  
478 certified capital for which tax credits may be allocated under  
479 subsection (1) of this section being allocated to the certified  
480 investors of such certified capital company in the aggregate.

481           (d) If none of the certified investors of a certified  
482 capital company that filed tax credit allocation claims receive an  
483 allocation of tax credits as a result of the operation of  
484 paragraph (c) of this subsection (3), the pro rata allocation to  
485 be made pursuant to paragraph (a) of this subsection (3) among the  
486 certified investors of the other certified capital companies that  
487 filed tax credit allocation claims shall be made as if no tax  
488 credit allocation claim was ever filed on behalf of the certified  
489 investors who did not receive an allocation of tax credits as a  
490 result of the operation of paragraph (c) of this subsection (3).

491           (4) Within ten (10) business days after the authority  
492 receives a tax credit allocation claim filed by a certified  
493 capital company on behalf of one or more of its certified  
494 investors, the authority shall notify the certified capital  
495 company of the amount of tax credits allocated to each of the  
496 certified investors in such certified capital company.

497           (5) (a) In the event a certified capital company does not  
498 receive investments of certified capital in the aggregate equaling

499 the amount of tax credits allocated to its certified investors for  
500 which it filed tax credit allocation claims within ten (10)  
501 business days of its receipt of notice of allocation, then that  
502 portion of the tax credits allocated to the certified investors in  
503 the certified capital company in excess of the amount of certified  
504 capital invested in the certified capital company by such date  
505 will be forfeited, and the authority will reallocate those tax  
506 credits among the certified investors of the other certified  
507 capital companies on a pro rata basis with respect to the tax  
508 credit allocation claims filed on behalf of such certified  
509 investors.

510 (b) In the event a certified capital company does not  
511 receive investments of certified capital in the aggregate equaling  
512 or exceeding five percent (5%) of the maximum amount of certified  
513 capital for which tax credits may be allocated under subsection  
514 (1) of this section within ten (10) business days of its receipt  
515 of notice of allocation, then, at the discretion of the authority,  
516 all of the tax credits allocated to the certified investors in  
517 that certified capital company may be forfeited. If forfeited,  
518 the authority shall reallocate those tax credits among the  
519 certified investors of the other certified capital companies on a  
520 pro rata basis with respect to the tax credit allocation claims  
521 filed on behalf of such certified investors.

522 (6) The maximum amount of tax credit allocation claims that  
523 may be filed on behalf of any one (1) certified investor, on an  
524 aggregate basis with its affiliates, in one or more certified  
525 capital companies, shall not exceed the greater of (a) Ten Million  
526 Dollars (\$10,000,000.00), or (b) fifteen percent (15%) of the  
527 aggregate limitation as provided in subsection (1) of this  
528 section.

529 **SECTION 7.** (1) To continue to be certified, a certified  
530 capital company must make qualified investments according to the  
531 following schedule:

532           (a) Within the period ending three (3) years after its  
533 allocation date, a certified capital company must have made  
534 qualified investments cumulatively equal to at least thirty  
535 percent (30%) of its certified capital.

536           (b) Within the period ending five (5) years after its  
537 allocation date, a certified capital company must have made  
538 qualified investments cumulatively equal to at least fifty percent  
539 (50%) of its certified capital.

540           (2) (a) The aggregate cumulative amount of all qualified  
541 investments made by the certified capital company from its  
542 allocation date will be considered in the calculation of any of  
543 the percentage requirements under this act. Any funds received  
544 from a qualified investment may be invested in another qualified  
545 investment and shall count toward any requirement in this act with  
546 respect to investments of certified capital.

547           (b) Notwithstanding paragraph (a) of this subsection  
548 (2), in the event that a certified capital company makes a  
549 qualified investment that is guaranteed, in whole or in part, by  
550 any federal, state, or other governmental entity, then the  
551 guaranteed portion of any such investment shall not be considered  
552 in the calculation of any of the percentage requirements under  
553 this act.

554           (c) Notwithstanding paragraph (a) of this subsection  
555 (2), in the event that a qualified business relocates its  
556 headquarters or principal business operations to a state other  
557 than this state within six (6) months of the first investment in  
558 the business by a certified capital company, then for the purpose  
559 of determining whether the certified capital company has met the  
560 requirements of Sections 8, 9(6), and 9(7) of this act, the  
561 aggregate cumulative amount of all qualified investments made by  
562 the certified capital company from its allocation date shall be  
563 calculated as if such investment had not been made; provided,  
564 however, that this paragraph (c) shall not apply if the relocation

565 was a result of the acquisition (whether by merger, consolidation,  
566 or other form of reorganization) of the qualified business or the  
567 acquisition or sale of all or substantially all of the assets of  
568 the qualified business by a third party that is not an affiliate  
569 of either the qualified business or the certified capital company  
570 who made the qualified investment; and provided further that this  
571 paragraph (c) shall not apply once a certified capital company has  
572 made qualified investments of at least one hundred percent (100%)  
573 of its certified capital with at least ten percent (10%) of such  
574 investments being made in early stage businesses.

575 (d) Notwithstanding paragraph (a) of this subsection  
576 (2), any amounts received by a certified capital company from a  
577 qualified business as (i) commitment fees, closing fees, or other  
578 similar fees in excess of one percent (1%) of the certified  
579 capital company's investment in the qualified business or (ii)  
580 license fees, royalties, or similar charges, shall not be  
581 considered in the calculation of any of the percentage  
582 requirements under this act.

583 (3) Any business which is classified as a qualified business  
584 or early stage business at the time of the first investment in  
585 such business by a certified capital company shall remain  
586 classified as a qualified business or early stage business, as  
587 applicable, and may receive follow-on investments from any  
588 certified capital company, and such follow-on investments shall be  
589 qualified investments even though such business may not meet the  
590 definition of a qualified business or early stage business, as  
591 applicable, at the time of such follow-on investments.

592 (4) No qualified investment may be made if the aggregate  
593 investment by the certified capital company in the qualified  
594 business following such investment would exceed fifteen percent  
595 (15%) of the total certified capital of the certified capital  
596 company at the time of investment.

597           (5) A certified capital company, prior to making a proposed  
598 investment in a specific business, shall request from the  
599 authority a written opinion as to whether the investment which it  
600 proposes to make will constitute a qualified investment in a  
601 qualified business or early stage business. Upon receiving such a  
602 request, the authority shall have fifteen (15) business days to  
603 determine whether the proposed investment meets the definition of  
604 a qualified investment and whether the business is a qualified  
605 business or early stage business. The authority shall notify the  
606 certified capital company of its determination and explain its  
607 determination. If the authority fails to notify the certified  
608 capital company with respect to the proposed investment within the  
609 fifteen (15) business-day period, the proposed investment shall be  
610 deemed to be a qualified investment in a qualified business or  
611 early stage business, as applicable. If the authority determines  
612 that the proposed investment does not meet all of the criteria set  
613 forth in the definition of qualified investment or if the business  
614 does not meet all of the criteria set forth in the definition of  
615 qualified business or early stage business, the authority is  
616 expressly granted the authority to (i) deem the proposed  
617 investment a qualified investment and the business a qualified  
618 business or early stage business, as applicable and (ii) approve  
619 the investment if the authority determines that the proposed  
620 investment would further the intent of this act and the economic  
621 development of the state.

622           (6) All certified capital held by the certified capital  
623 company and not currently invested in qualified investments by the  
624 certified capital company must be invested in permissible  
625 investments. This subsection (6) shall not apply to securities  
626 received by a certified capital company in exchange for a  
627 qualified investment prior to the conversion of such securities  
628 into cash or cash equivalents.

629 (7) Each certified capital company shall report the  
630 following to the authority:

631 (a) Within thirty (30) days after the receipt of  
632 certified capital, (i) the name of each certified investor from  
633 which the certified capital was received, including such certified  
634 investor's insurance premium tax identification number, (ii) the  
635 amount of each certified investor's investment of certified  
636 capital and tax credits, and (iii) the date on which the certified  
637 capital was received.

638 (b) On an annual basis, on or before January 31, (i)  
639 the amount of the certified capital company's certified capital at  
640 the end of the immediately preceding year, (ii) whether or not the  
641 certified capital company has invested more than fifteen percent  
642 (15%) of its total certified capital in any one (1) qualified  
643 business, (iii) a description of all qualified investments that  
644 the certified capital company made during the previous calendar  
645 year, and (iv) a report on the number of persons employed by each  
646 qualified business in which the certified capital company  
647 maintains a qualified investment.

648 (c) Within ninety (90) days of the close of such  
649 certified capital company's fiscal year, annual audited financial  
650 statements, which shall include the opinion of an independent  
651 certified public accountant regarding the financial statements.

652 (8) Each certified capital company shall pay an annual,  
653 nonrefundable certification fee of Five Thousand Dollars  
654 (\$5,000.00) on or before January 31 of each year, or Ten Thousand  
655 Dollars (\$10,000.00) if paid later, to the authority; however, the  
656 fee shall not be required within six (6) months of the initial  
657 certification date of a certified capital company.

658 **SECTION 8.** (1) Prior to having made qualified investments  
659 in an amount cumulatively equal to at least one hundred percent  
660 (100%) of its certified capital, of which at least ten percent  
661 (10%) must have been invested in early stage businesses, a

662 certified capital company is prohibited from making any  
663 distribution other than (i) qualified distributions and (ii)  
664 payments of principal and interest on its indebtedness without any  
665 restriction whatsoever, including payments of indebtedness of the  
666 certified capital company on which certified investors earned tax  
667 credits.

668 (2) Each certified capital company shall pay ten percent  
669 (10%) of all distributions, other than (a) qualified  
670 distributions, (b) payments of principal and interest on its  
671 indebtedness, and (c) a return of any noncertified capital equity  
672 capital invested into the certified capital company (which  
673 includes a certified capital company's Five Hundred Thousand  
674 Dollars (\$500,000.00) equity contribution required by Section  
675 4(1)(b) of this act, to the State Treasurer for deposit into the  
676 State General Fund; provided, however, that in the event that a  
677 certified capital company fails to make qualified investments  
678 equal to at least one hundred percent (100%) of its certified  
679 capital with at least ten percent (10%) of such investments being  
680 made in early stage businesses on or before the tenth anniversary  
681 of the allocation date, then the percentage of such distributions  
682 that a certified capital company shall be required to pay to the  
683 State Treasurer shall be twenty percent (20%).

684 **SECTION 9.** (1) The authority shall conduct an annual review  
685 of each certified capital company to determine if the certified  
686 capital company is abiding by the requirements for continued  
687 certification. The cost of the annual review shall be paid by  
688 each certified capital company according to a reasonable fee  
689 schedule adopted by the authority.

690 (2) If a certified capital company certifies to the  
691 authority its good faith belief that it has complied with the  
692 provisions of Section 7(1)(b) of this act or subsection (7) of  
693 this section, the authority shall, within sixty (60) days of  
694 receipt of such certification, conduct a review of the qualified

695 investments of the certified capital company and shall certify in  
696 writing to the certified capital company whether the certified  
697 capital company has complied with the provisions of Section  
698 7(1)(b) of this act or subsection (7) of this section, as the case  
699 may be. The certified capital company shall pay the costs of the  
700 review according to a reasonable fee schedule adopted by the  
701 authority.

702 (3) Any intentional misstatement of material fact in a  
703 certified capital company's application for certification or any  
704 material violation of Section 7 of this act shall be grounds for  
705 decertification of the certified capital company subject to the  
706 notice and grace period provided for in this section. If the  
707 authority determines that a certified capital company  
708 intentionally misstated a material fact in its application for  
709 certification or materially violated the requirements of Section 7  
710 of this act, it shall, by written notice, inform the officers of  
711 the certified capital company that the certified capital company  
712 may be subject to decertification in one hundred twenty (120) days  
713 from the date of mailing of the notice, unless the deficiencies  
714 are corrected and the certified capital company is again in  
715 compliance with all requirements for certification.

716 (4) At the end of the one-hundred-twenty-day grace period,  
717 if the certified capital company is still in material  
718 noncompliance with Section 7 of this act, the authority may send a  
719 notice of decertification to the certified capital company and to  
720 all other appropriate state agencies.

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

725 (a) Decertification of a certified capital company  
726 within three (3) years of its allocation date and prior to its  
727 satisfaction of Section 7(1)(a) of this act shall cause the

728 recapture of all tax credits previously claimed and the forfeiture  
729 of all future tax credits to be claimed by certified investors  
730 with respect to such certified capital company.

731 (b) When a certified capital company meets all  
732 requirements for continued certification under Section 7(1)(a) of  
733 this act, and subsequently fails to meet the requirements for  
734 continued certification under the provisions of Section 7(1)(b) of  
735 this act, the first three (3) annual tax credits which have been  
736 or will be taken by its certified investors shall not be subject  
737 to recapture or forfeiture; however, all other tax credits that  
738 have been or will be taken by its certified investors shall be  
739 subject to recapture or forfeiture.

740 (c) Once a certified capital company has met all  
741 requirements for continued certification under Section 7(1)(a) and  
742 (b) of this act, and is subsequently decertified, the first five  
743 (5) annual tax credits which have been or will be taken by  
744 certified investors shall not be subject to recapture or  
745 forfeiture. Subsequent tax credits shall be subject to forfeiture  
746 only if the certified capital company is decertified within five  
747 (5) years after its allocation date.

748 (6) Notwithstanding the provisions of subsection (5) of this  
749 section, once a certified capital company has invested an amount  
750 cumulatively equal to one hundred percent (100%) of its certified  
751 capital in qualified investments, with at least ten percent (10%)  
752 of such investments in early stage businesses, all tax credits  
753 claimed or to be claimed by its certified investors shall no  
754 longer be subject to recapture or forfeiture.

755 (7) Once a certified capital company has invested an amount  
756 cumulatively equal to one hundred percent (100%) of its certified  
757 capital in qualified investments, with at least ten percent (10%)  
758 of such investments in early stage businesses, the certified  
759 capital company shall no longer be subject to regulation by the

760 authority with the exception of the requirements of Section 8(2)  
761 of this act.

762 (8) The authority shall send written notice to the address  
763 of each certified investor whose tax credit has been subject to  
764 recapture or forfeiture at such certified investor's address shown  
765 on such certified investor's last premium tax filing.

766 (9) The authority shall have the authority to waive any  
767 recapture or forfeiture of tax credits if, after considering all  
768 facts and circumstances, it determines that such waiver will have  
769 the effect of furthering the economic development of the state.

770 **SECTION 10.** After the date that the certified investors are  
771 first entitled to apply tax credits against their state premium  
772 tax liability, the tax credits earned pursuant to this act may be  
773 transferred or sold to any other person with state premium tax  
774 liability. Prior to such date, the tax credits may only be  
775 transferred or sold to a person who (a) is an affiliate of the  
776 certified investor transferring or selling the tax credits or (b)  
777 through the voluntary sale, assignment, or other transfer of the  
778 business or control of the business of the certified investor  
779 (including the sale or other transfer of stock or assets by  
780 merger, consolidation, or dissolution) succeeds to all or  
781 substantially all of the business or property of the certified  
782 investor. Any such transfer or sale shall not affect the time  
783 schedule for taking the tax credit as provided in this act. Any  
784 tax credits recaptured pursuant to Section 9 of this act shall be  
785 the liability of the taxpayer that actually claimed the tax  
786 credits.

787 **SECTION 11.** The authority shall administer this act and  
788 shall adopt rules and forms as necessary to implement this act.  
789 The rules must provide that the authority shall accept (a)  
790 applications for certification as a certified capital company not  
791 later than the thirtieth day after the date the rules are adopted  
792 and (b) premium tax credit allocation claims on behalf of

793 certified investors not later than the one hundred twentieth day  
794 after the date the rules are adopted.

795           **SECTION 12.** This act shall take effect and be in force from  
796 and after July 1, 2004.