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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 872**      Session of  
2003

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INTRODUCED BY ARMSTRONG, FUMO, ERICKSON, M. WHITE, D. WHITE,  
WAUGH, WOZNIAK, WONDERLING, MOWERY AND RAFFERTY, JULY 8, 2003

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REFERRED TO FINANCE, JULY 8, 2003

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AN ACT

1 Relating to certified capital companies, providing for financial  
2 and management assistance to the formation of new businesses  
3 and the expansion of existing small businesses and for  
4 premium tax credits to insurance companies to encourage  
5 investment in certified capital companies.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 101. Short title.

9 This act shall be known and may be cited as the Pennsylvania  
10 Certified Capital Company Act.

11 Section 102. Policy statement.

12 (1) The Legislature recognizes the importance of domestic  
13 small businesses in creating new employment and expanding the  
14 economy of this Commonwealth.

15 (2) In order to promote the foundation and growth of small  
16 business within this Commonwealth, sufficient resources both in  
17 the form of capital and management expertise must be made  
18 available from both within and without this Commonwealth.

19 (3) This act is intended to provide financial and management

1 assistance to the formation of new businesses and expansion of  
2 existing small businesses by providing premium tax credits to  
3 insurance companies in order to encourage the insurance  
4 companies to invest in certified capital companies.

5 Section 103. Definitions.

6 For purposes of this act, the following terms shall have the  
7 meanings given to them in this section unless the context  
8 clearly indicates otherwise:

9 "Affiliate." Any of the following:

10 (1) A person, directly or indirectly beneficially  
11 owning, whether through rights, options, convertible  
12 interests or otherwise, controlling or holding power to vote  
13 15% or more of the outstanding voting securities or other  
14 voting ownership interests of a certified capital company or  
15 insurance company.

16 (2) A person, 15% or more of whose outstanding voting  
17 securities or other voting ownership interests are directly  
18 or indirectly beneficially owned, whether through rights,  
19 options, convertible interests or otherwise, controlled or  
20 held with power to vote by a certified capital company or  
21 insurance company.

22 (3) A person directly or indirectly controlling,  
23 controlled by or under common control with the certified  
24 capital company or insurance company.

25 (4) A partnership or limited liability company in which  
26 a certified capital company or insurance company is a general  
27 partner, manager or managing member.

28 (5) A person who is an officer, director, employee or  
29 agent of a certified capital company or insurance company or  
30 an immediate family member of the officer, director, employee

1 or agent.

2 "Allocation date." The date on which the department  
3 allocates tax credits to certified investors of a certified  
4 capital company pursuant to section 106.

5 "Certified capital." An investment of cash by a certified  
6 investor in a certified capital company which fully funds the  
7 purchase price of an equity interest in the certified capital  
8 company or a qualified debt instrument issued by the certified  
9 capital company.

10 "Certified capital company." A partnership, corporation,  
11 trust or limited liability company, whether organized on a for-  
12 profit or not-for-profit basis, that has as its primary business  
13 activity the investment of cash in qualified businesses and that  
14 is certified as a certified capital company by the Department of  
15 Community and Economic Development by meeting the requirements  
16 of section 104(a).

17 "Certified investor." An insurance company that invests  
18 certified capital pursuant to an allocation of tax credits under  
19 section 106.

20 "Department." The Department of Community and Economic  
21 Development of the Commonwealth.

22 "Early stage business." A business or enterprise that alone  
23 or in any combination with another entity has less than 20  
24 employees, is in development or has been operational for less  
25 than seven years and is in need of capital for prestartup,  
26 startup, survival, expansion, new product development or similar  
27 business purposes.

28 "Experienced investor." A natural person with at least four  
29 years of experience making venture capital investments, which  
30 may include investments made in connection with a federally

1 sponsored or State-sponsored venture capital program.

2 "Permissible investments." Any of the following:

3 (1) Deposits with a financial institution that is a  
4 member of the Federal Deposit Insurance Corporation.

5 (2) Certificates of deposit issued by a financial  
6 institution that is a member of the Federal Deposit Insurance  
7 Corporation.

8 (3) Investment securities that are obligations of the  
9 United States, its agencies or instrumentalities or  
10 obligations that are guaranteed fully as to principal and  
11 interest by the United States.

12 (4) Commercial paper rated at least A1, P1 or the  
13 equivalent by at least one nationally recognized rating  
14 organization.

15 (5) Debt instruments rated at least AA or the equivalent  
16 by a nationally recognized rating organization or issued by  
17 or guaranteed with respect to payment by an entity whose  
18 unsecured indebtedness is rated at least AA or the equivalent  
19 by a nationally recognized credit rating organization, and  
20 which is not subordinated to other unsecured indebtedness of  
21 the issuer or guarantor.

22 (6) Obligations of the Commonwealth or any municipality  
23 located in this Commonwealth or any political subdivision  
24 thereof.

25 (7) Interests in money market funds or other mutual  
26 funds, the portfolios of which are limited to cash and  
27 permissible investments.

28 (8) Swaps or other hedging transactions with a  
29 counterparty rated at least A or its equivalent by a  
30 nationally recognized rating agency designed to realize or

1 protect the value of a qualified investment.

2 (9) Any other investments approved in advance and in  
3 writing by the Department of Community and Economic  
4 Development.

5 "Person." A natural person, corporation, general or limited  
6 partnership, trust, limited liability company or other entity.

7 "Qualified business." A business other than a business  
8 primarily engaged in professional services provided by  
9 accountants, lawyers or physicians that meets all of the  
10 following conditions as of the time of a certified capital  
11 company's first investment in such business:

12 (1) It is headquartered and has its principal business  
13 operations located in this Commonwealth.

14 (2) It is a small business concern that meets the  
15 requirements of the United States Small Business  
16 Administration's qualification size standards for its venture  
17 capital program, as defined in 13 C.F.R. 121.301(c) (relating  
18 to what size standards are applicable to financial assistance  
19 programs).

20 (3) It has agreed to use the qualified investment  
21 primarily to support business operations in this  
22 Commonwealth, except that advertising, sales and promotional  
23 operations may be conducted outside this Commonwealth.

24 (4) It employs at least 80% of its employees in this  
25 Commonwealth or pays at least 80% of its payroll to employees  
26 in this Commonwealth.

27 "Qualified debt instrument." A debt instrument issued to a  
28 certified investor by a certified capital company, at par value  
29 or a premium, with an original maturity date of at least five  
30 years from date of issuance and a repayment schedule that is no

1 faster than a level principal amortization over five years and  
2 that contains no interest, distribution or payment features that  
3 are related to the profitability of the certified capital  
4 company or the performance of the certified capital company's  
5 investment portfolio until such time as the certified capital  
6 company is permitted to make distributions, other than qualified  
7 distributions, under section 109.

8 "Qualified distribution." Any distribution or payment from  
9 certified capital or profits earned thereon in connection with  
10 any of the following:

11 (1) Costs and expenses of forming, organizing and  
12 syndicating the certified capital company, including the  
13 costs of financing and insuring the obligations of the  
14 certified capital company so long as, at the time the  
15 certified capital company initially receives its investment  
16 of certified capital from its certified investors, the  
17 certified capital company has initial capital available for  
18 investment in the form of cash or permissible investments  
19 equal to at least 50% of the amount of certified capital such  
20 certified capital company initially received as investment  
21 from its certified investors.

22 (2) Costs and expenses of managing and operating the  
23 certified capital company, including, but not limited to,  
24 reasonable and necessary fees paid for professional services,  
25 such as legal and accounting services, related to the  
26 operation of the certified capital company and an annual  
27 management fee in an amount that does not exceed 2 1/2% of  
28 the certified capital of the certified capital company.

29 (3) A projected increase in Federal or State taxes,  
30 including penalties and interest related to Federal and State

1 income taxes, of the equity owners of a certified capital  
2 company resulting from the earnings or other tax liability of  
3 the certified capital company without regard to any revenues  
4 or expenses from other operations of affiliates of the  
5 certified capital company, to the extent that the increase is  
6 related to the ownership, management or operation of a  
7 certified capital company or issuance, repayment or  
8 redemption of the qualified debt instruments of the certified  
9 capital company.

10 "Qualified investment." The investment of cash by a  
11 certified capital company in a qualified business for the  
12 purchase of any debt, debt participation, equity or hybrid  
13 security of any nature and description whatsoever, including a  
14 debt instrument or security which has the characteristics of  
15 debt but which provides for conversion into equity or equity  
16 participation instruments such as options or warrants. Any  
17 qualified investment in the form of a debt instrument, including  
18 those owned through debt participations, must have a final  
19 stated maturity of at least two years from the date of issuance  
20 and a repayment schedule that is no faster than level principal  
21 amortization over two years and one of the following conditions  
22 must be met:

23 (1) The qualified business must certify in an affidavit  
24 that the business has failed in an attempt to obtain funding  
25 for a loan from a bank or other commercial lender or that the  
26 business cannot reasonably be expected to qualify for  
27 financing under the standards of commercial lending.

28 (2) The debt is unsecured.

29 (3) The debt is convertible into equity securities or  
30 equity participation instruments such as options or warrants.

1 "State premium tax liability." Any liability incurred by an  
2 insurance company under the provisions Article IX of the act of  
3 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
4 1971.

5 "Targeted business." Any qualified business that has  
6 received an investment from a certified Ben Franklin Technology  
7 Development Partner pursuant to the act of June 22, 2001  
8 (P.L.569, No.38), known as The Ben Franklin Technology  
9 Development Authority Act.

10 "Tax credit." The vested credit against State premium tax  
11 liability that is earned at the time of investment by a  
12 certified investor in connection with an investment of certified  
13 capital in a certified capital company pursuant to this act.

14 "Tax credit allocation claim." A claim for allocation of tax  
15 credits prepared and executed by an insurance company on a form  
16 provided by the Department of Community and Economic Development  
17 and filed by a certified capital company with the department.  
18 The form shall include an affidavit from the insurance company  
19 stating that such insurance company complies with the  
20 requirements of sections 104(d) and 106(g) and is legally bound  
21 and irrevocably committed to make an investment of certified  
22 capital in a certified capital company in the amount of  
23 allocated tax credits even if such amount is less than the  
24 amount of the claim, subject only to the receipt of an  
25 allocation pursuant to section 106.

26 "Tax credit allocation claim filing date." The date on which  
27 the Department of Community and Economic Development will first  
28 accept tax credit allocation claims on behalf of certified  
29 investors.

30 Section 104. Certification.

1 (a) General rule.--The department shall certify as a  
2 certified capital company an applicant that meets the following  
3 requirements:

4 (1) The applicant has paid a nonrefundable application  
5 fee of \$15,000 at or before the date of filing its  
6 application with the department.

7 (2) The applicant's equity capitalization at the date of  
8 filing its application with the department is at least  
9 \$500,000 and is in the form of unencumbered cash or cash  
10 equivalents. As part of its application, each applicant shall  
11 submit to the department its audited balance sheet as of a  
12 date no more than 35 days prior to the date of filing its  
13 application with an unqualified opinion from an independent  
14 certified public accountant and an affidavit stating that, if  
15 certified, it will maintain an equity capitalization of at  
16 least \$500,000, except for reductions due to qualified  
17 distributions, until the allocation date.

18 (3) At least two principals of the applicant or at least  
19 two persons employed or engaged to manage the funds of the  
20 applicant qualify as an experienced investor. As part of its  
21 application, the applicant shall submit to the department an  
22 affidavit from each experienced investor stating that such  
23 person's experience meets the requirement of this paragraph,  
24 attaching the investor's detailed resume or equivalent  
25 biographic material and stating that the investor has not  
26 violated Federal or State securities or banking laws or been  
27 convicted of any crime involving fraud.

28 (4) The applicant shall submit with the application an  
29 affidavit stating that within 60 days of the investment of  
30 certified capital in the certified capital company at least

1 one investment professional of the certified capital company  
2 shall be primarily located in an office of the certified  
3 capital company based in this Commonwealth.

4 (b) Department action.--Within 30 days of the receipt of an  
5 application, the department shall either certify the applicant  
6 as a certified capital company or refuse to so certify the  
7 applicant, and, in the case of a refusal, the department shall  
8 specifically communicate to the applicant the requirements of  
9 subsection (a) the applicant failed to satisfy. An applicant may  
10 file an amended application within 15 days of receipt of a  
11 refusal. Within 15 days from receipt of an amended application,  
12 the department shall either certify the applicant as a certified  
13 capital company or refuse to so certify the applicant. The  
14 department shall review applications in the order received, and  
15 in the event more than one application is received by the  
16 department on the same day, all such applications shall be  
17 reviewed simultaneously, except in the case of incomplete  
18 applications.

19 (c) Additional materials.--As part of the application, an  
20 applicant shall provide the department with copies of its  
21 offering materials, which may be in draft or preliminary form,  
22 or other information that describes in reasonable detail the  
23 structure of its qualified debt instruments and any other  
24 securities to be issued to its certified investors to enable the  
25 department to verify the certified capital company's compliance  
26 with the requirements of this act. Any offering material  
27 involving the sale of securities of the certified capital  
28 company shall include the following statement:

29 By authorizing the formation of a certified capital  
30 company, the Commonwealth does not necessarily endorse

1 the quality of management or the potential for earnings  
2 of such company and is not liable for damages or losses  
3 to a certified investor in the company. Use of the word  
4 certified in an offering does not constitute a  
5 recommendation or endorsement of the investment by the  
6 Department of Community and Economic Development. In the  
7 event applicable provisions of the Certified Capital  
8 Company Act are violated, the Commonwealth may require  
9 forfeiture of unused tax credits and repayment of used  
10 tax credits.

11 (d) Prohibition.--No insurance company or any affiliate of  
12 an insurance company shall, directly or indirectly, beneficially  
13 own, whether through rights, options, convertible interests or  
14 otherwise, 15% or more of the voting equity interests of or  
15 manage a certified capital company or control the direction of  
16 investments for a certified capital company. This provision  
17 shall not preclude a certified investor, insurance company or  
18 any other party from:

19 (1) exercising its legal rights and remedies, which may  
20 include interim management of a certified capital company or  
21 ownership of equity interests in excess of the limits  
22 contained herein, in the event that a certified capital  
23 company is in default of its statutory obligations or its  
24 contractual obligations to a certified investor, insurance  
25 company or other person; or

26 (2) establishing controls to insure that the certified  
27 capital company satisfies the requirements of section 107(a).

28 Nothing in this subsection shall limit an insurance company's  
29 ownership of nonvoting equity securities or other nonvoting  
30 ownership interests of a certified capital company.

1 (e) Payment in favor of certified investors.--A certified  
2 capital company may obtain a guaranty, indemnity, bond,  
3 insurance policy or other payment undertaking for the benefit of  
4 its certified investors from any entity, except that in no case  
5 shall more than one certified investor of such certified capital  
6 company or affiliates of such certified investor be entitled to  
7 provide the guaranty, indemnity, bond, insurance policy or other  
8 payment undertaking in favor of the certified investors of the  
9 certified capital company and its affiliates in this  
10 Commonwealth.

11 Section 105. Tax credits.

12 (a) General rule.--Any certified investor who makes an  
13 investment of certified capital pursuant to an allocation of tax  
14 credits under section 106 shall, at the time of investment, earn  
15 a vested credit against State premium tax liability equal to  
16 100% of the certified investor's investment of certified  
17 capital. A certified investor shall be entitled to take up to  
18 10% of the vested tax credit to reduce the certified investor's  
19 State premium tax liability for any tax year of the certified  
20 investor beginning with the tax year commencing on January 1,  
21 2006, plus any amount of unused tax credits carried forward  
22 pursuant to subsection (b).

23 (b) Limitation.--The tax credit that may be applied against  
24 State premium tax liability in any one tax year may not exceed  
25 the State premium tax liability of the certified investor for  
26 such tax year. All unused tax credits against State premium tax  
27 liability may be carried forward indefinitely and used in any  
28 subsequent year until the tax credits are utilized in full.

29 (c) Retaliatory taxes.--A certified investor claiming a tax  
30 credit against State premium tax liability earned through an

1 investment in a certified capital company shall not be required  
2 to pay any additional retaliatory tax levied pursuant to section  
3 212 of the act of May 17, 1921 (P.L.789, No.285), known as The  
4 Insurance Department Act of 1921, as a result of claiming that  
5 tax credit.

6 (d) Reduction not required.--A certified investor is not  
7 required to reduce the amount of tax pursuant to the State  
8 premium tax liability included by the certified investor in  
9 connection with ratemaking for any insurance contract written in  
10 this Commonwealth as a result of a reduction in the certified  
11 investor's tax liability based on the tax credit allowed under  
12 this act.

13 (e) Treatment of credits.--If the taxes paid by a certified  
14 investor with respect to its State premium tax liability  
15 constitute a credit against any other tax which is imposed by  
16 the Commonwealth, the certified investor's credit against such  
17 other tax shall not be reduced by virtue of the reduction in the  
18 certified investor's tax liability based on the tax credit  
19 allowed under this act.

20 (f) Police and firefighter pensions.--The credits allowed by  
21 this section shall not reduce the amounts which would otherwise  
22 be payable for firemen's relief pension or retirement purposes  
23 or for police pension, retirement or disability purposes. The  
24 Department of Revenue shall transfer by June 30 of each fiscal  
25 year an amount equal to the credits taken under this section by  
26 foreign fire and casualty insurance companies from the General  
27 Fund to the Municipal Pension Aid Fund and the Fire Insurance  
28 Tax Fund, as appropriate.

29 Section 106. Aggregate limitations on tax credits; allocation.

30 (a) General rule.--The aggregate amount of certified capital

1 for which tax credits will be allocated to all certified  
2 investors under this act shall not exceed the amount that would  
3 entitle all certified investors of certified capital companies  
4 to take aggregate tax credits of \$100,000,000 or \$10,000,000 per  
5 year for ten years. No certified capital company, on an  
6 aggregate basis with its affiliates, may file tax credit  
7 allocation claims that exceed the maximum amount of certified  
8 capital for which tax credits will be allocated as provided in  
9 this subsection.

10 (b) Allocation.--Tax credits shall be allocated to certified  
11 investors in the order that the tax credit allocation claims are  
12 filed with the department. All tax credit allocation claims  
13 filed with the department on the same day shall be treated as  
14 having been filed contemporaneously. Any tax credit allocation  
15 claims filed with the department prior to the tax credit  
16 allocation claim filing date will be deemed to have been filed  
17 on the tax credit allocation claim filing date.

18 (c) Multiple tax credit claims.--In the event that two or  
19 more certified capital companies file tax credit allocation  
20 claims with the department on behalf of their respective  
21 certified investors on the same day and the aggregate amount of  
22 such tax credit allocation claims exceeds the aggregate limit of  
23 tax credits under subsection (a) or such lesser amount of tax  
24 credits that remain unallocated on such day, then the tax  
25 credits shall be allocated among the certified investors who  
26 filed on that day on a pro rata basis with respect to the  
27 amounts claimed. Subject to subsection (d), the pro rata  
28 allocation for any one certified investor shall be the product  
29 obtained by multiplying a number which is a fraction, the  
30 numerator of which is the amount of the tax credit allocation

1 claim filed on behalf of such certified investor and the  
2 denominator of which is the total of all tax credit allocation  
3 claims filed on behalf of all certified investors on such day,  
4 by a number which is the aggregate limit of tax credits under  
5 subsection (a) or such lesser amount of tax credits that remain  
6 unallocated on such day.

7 (d) Limitation.--No tax credits shall be allocated to the  
8 certified investors of any certified capital company if that  
9 allocation would result in less than 10% of the maximum amount  
10 of certified capital for which tax credits will be allocated  
11 under subsection (a) being invested in such certified capital  
12 company. If the certified investors of one or more certified  
13 capital companies that filed tax credit allocation claims do not  
14 receive allocations of tax credits by operation of the previous  
15 sentence, the pro rata allocation described in subsection (c)  
16 shall be made as if the tax credit allocation claims filed on  
17 behalf of such certified investors had not filed in the first  
18 place.

19 (e) Department action.--Within ten business days after the  
20 department receives a tax credit allocation claim filed by a  
21 certified capital company on behalf of one or more of its  
22 certified investors, the department shall notify the certified  
23 capital company of the amount of tax credits allocated to each  
24 of the certified investors of such certified capital company.

25 (f) Inadequate capital received.--If a certified capital  
26 company does not receive aggregate investments of certified  
27 capital equaling the amount of tax credits allocated to its  
28 certified investors within ten business days of the certified  
29 capital company's receipt of notice of allocation, then it shall  
30 so notify the department on or before the next business day and

1 that portion of the tax credits allocated to the certified  
2 investors of such certified capital company in excess of the  
3 amount of certified capital invested in such certified capital  
4 company by such date will be forfeited. The department shall  
5 then reallocate those forfeited tax credits among the certified  
6 investors of the other certified capital companies on a pro rata  
7 basis with respect to the tax credit allocation claims filed on  
8 behalf of such certified investors. If a certified capital  
9 company does not receive investments of certified capital in the  
10 aggregate equaling or exceeding 10% of the maximum amount of  
11 certified capital for which tax credits will be allocated under  
12 subsection (a) within ten business days of the certified capital  
13 company's receipt of notice of allocation, then, at the  
14 discretion of the department, all of the tax credits allocated  
15 to the certified investors of that certified capital company may  
16 be forfeited. If forfeited, the department shall reallocate  
17 those tax credits among the certified investors of the other  
18 certified capital companies on a pro rata basis with respect to  
19 the tax credit allocation claims filed on behalf of such  
20 certified investors.

21 (g) Maximum tax credit claims.--The maximum amount of tax  
22 credit allocation claims that may be filed on behalf of any one  
23 certified investor on an aggregate basis with its affiliates in  
24 one or more certified capital companies shall not exceed the  
25 lesser of the following:

26 (1) The greater of \$10,000,000 or 15% of the aggregate  
27 limitation as provided in subsection (a).

28 (2) Ten times the largest annual State premium tax  
29 liability incurred by the certified investor on an aggregate  
30 basis with its affiliates during the three tax years

1 preceding the year of the allocation date for which final  
2 returns have been filed.

3 Section 107. Qualified investments.

4 (a) General rule.--In order to continue to be certified as a  
5 certified capital company, a certified capital company must make  
6 qualified investments according to the following schedule:

7 (1) Within the period ending three years after its  
8 allocation date, a certified capital company must have made  
9 qualified investments cumulatively equal to at least 30% of  
10 its certified capital. At least 30% of such investments shall  
11 have been made in qualified businesses that have  
12 headquarterd or will headquarter within 90 days of the time  
13 of investment in counties other than first class, second  
14 class or second class A. At least 25% of such investments,  
15 regardless of where the business is headquarterd in this  
16 Commonwealth, shall have been made in qualified businesses  
17 that are early stage businesses at the time of investment.

18 (2) Within the period ending five years after its  
19 allocation date, a certified capital company must have made  
20 qualified investments cumulatively equal to at least 50% of  
21 its certified capital. At least 30% of such investments must  
22 have been made in qualified businesses that have headquarters  
23 or will have headquarters within 90 days of the time of  
24 investment in counties other than first class, second class  
25 or second class A. At least 25% of such investments,  
26 regardless of where the business is headquarterd in this  
27 Commonwealth, shall have been made in qualified businesses  
28 that are early stage businesses at the time of investment.

29 (b) Calculation.--The aggregate cumulative amount of all  
30 qualified investments made by the certified capital company from

1 its allocation date will be considered in the calculation of the  
2 percentage requirements under this act. For purposes of  
3 satisfying the 30% requirement and the 50% requirement of  
4 subsection (a)(1) and (2), a certified capital company that  
5 makes an investment in a targeted business that is headquartered  
6 or will headquarter within 90 days of the time of investment in  
7 a county other than a county that is of the first class, second  
8 class or second class A shall be deemed to have invested \$1.50  
9 for every dollar actually so invested. Funds received from a  
10 qualified investment may be invested in another qualified  
11 investment and shall count toward any requirement in this act  
12 with respect to investments of certified capital.

13 (c) Written opinion of department.--Prior to making a  
14 proposed investment in a specific business, a certified capital  
15 company may, at its option, request from the department a  
16 written opinion that the proposed investment will qualify as a  
17 qualified investment. The department shall have 15 business days  
18 from the receipt of such a request to determine whether the  
19 proposed investment qualifies as a qualified investment and to  
20 notify the certified capital company of its determination and an  
21 explanation thereof. If the department fails to notify the  
22 certified capital company of its determination within the 15-day  
23 period, the proposed investment shall be deemed to be a  
24 qualified investment. If the department determines that the  
25 proposed investment does not meet the definition of a qualified  
26 investment, the department may nevertheless consider the  
27 proposed investment a qualified investment if the department  
28 determines that the proposed investment will further economic  
29 development in this Commonwealth.

30 (d) Status as qualified business.--Any business which is

1 classified as a qualified business at the time of the first  
2 investment in such business by a certified capital company shall  
3 remain classified as a qualified business and may receive  
4 follow-on investments from any certified capital company, and  
5 such follow-on investments shall be qualified investments even  
6 if such business may not qualify as a qualified business at the  
7 time of such follow-on investments. A follow-on investment does  
8 not qualify as a qualified investment if, at the time of the  
9 follow-on investment, the qualified business no longer has its  
10 headquarters in this Commonwealth.

11 (e) Limitation.--An investment shall not be a qualified  
12 investment if the aggregate investment by the certified capital  
13 company in the qualified business following such investment  
14 would exceed 15% of the total certified capital of the certified  
15 capital company at the time of investment.

16 (f) Restriction on investments.--All certified capital held  
17 by the certified capital company and not currently invested in  
18 qualified investments by the certified capital company must be  
19 invested in permissible investments. This subsection shall not  
20 apply to securities received by a certified capital company in  
21 exchange for a qualified investment prior to the conversion of  
22 such securities into cash or cash equivalents.

23 Section 108. Fees; reports; annual review.

24 (a) General rule.--Each certified capital company shall pay  
25 to the department an annual, nonrefundable certification fee of  
26 \$5,000 on or before January 31, or \$10,000 thereafter, except  
27 that no fee shall be required within six months of the date a  
28 certified capital company is first certified by the department.

29 (b) Reports.--Each certified capital company shall report  
30 the following to the department:

1           (1) Within 30 days after receipt of certified capital,  
2           the name of each certified investor from which the certified  
3           capital was received, including such certified investor's  
4           insurance premium tax identification number; the amount of  
5           each certified investor's investment of certified capital and  
6           tax credits; and the date on which the certified capital was  
7           received.

8           (2) On an annual basis, on or before January 31, the  
9           amount of the certified capital company's certified capital  
10          as of December 31 of the immediately preceding year, whether  
11          the certified capital company has invested more than 15% of  
12          its total certified capital in any one qualified business and  
13          a description of all qualified investments that the certified  
14          capital company made during the previous calendar year.

15          (3) Within 90 days of the close of such certified  
16          capital company's fiscal year, annual audited financial  
17          statements, which shall include the opinion of an independent  
18          certified public accountant regarding the financial  
19          statements.

20          (c) Annual review.--The department shall conduct an annual  
21          review of each certified capital company to determine if the  
22          certified capital company is in compliance with this act. The  
23          cost of the annual review shall be paid by each certified  
24          capital company according to a reasonable fee schedule adopted  
25          by the department.

26          Section 109. Distributions.

27          (a) General rule.--A certified capital company may make  
28          qualified distributions at any time. In order to make a  
29          distribution from certified capital other than a qualified  
30          distribution, a certified capital company must have made

1 qualified investments in an amount cumulatively equal to at  
2 least 100% of its certified capital, with:

3 (1) at least 30% of such investments having been made in  
4 qualified businesses that at the time of, or within 90 days  
5 of the time of, investment are headquartered in counties  
6 other than first class, second class or second class A; and

7 (2) at least 25% of such investments, regardless of  
8 where the business is headquartered in this Commonwealth at  
9 the time of investment, shall have been made in qualified  
10 businesses that were early stage businesses at the time of  
11 investment. A certified capital company may, however, make  
12 payments of principal and interest on its indebtedness  
13 without any restriction whatsoever, including payments of  
14 indebtedness of the certified capital company on which  
15 certified investors earned tax credits.

16 (b) Audit.--Any proposed distribution from a certified  
17 capital company out of certified capital or profits earned  
18 thereon to its certified investors or equity holders, other than  
19 a qualified distribution or a payment of principal and interest  
20 on its indebtedness, that will result in cumulative  
21 distributions, excluding qualified distributions and payments of  
22 principal and interest on its indebtedness, being in excess of  
23 the certified capital company's initial capital available for  
24 investment, plus any additional capital contributions to the  
25 certified capital company may be audited by a nationally  
26 recognized certified public accounting firm acceptable to the  
27 department at the expense of the certified capital company if  
28 the department directs such audit be conducted. The audit shall  
29 determine whether aggregate cumulative distributions, including  
30 the proposed distribution, but excluding qualified distributions

1 and payments of principal and interest on its indebtedness, from  
2 the certified capital company to all certified investors and  
3 equity holders, will result in cumulative returns in excess of  
4 the certified capital company's initial capital available for  
5 investment and any additional capital contributions to the  
6 certified capital company. If a proposed distribution results in  
7 cumulative returns in excess of the certified capital company's  
8 initial capital available for investment and any additional  
9 capital contributions to the certified capital company, then the  
10 certified capital company shall pay to the Commonwealth 10% of  
11 such excess at the time such certified capital company makes the  
12 proposed distribution up to a cumulative amount equal to the  
13 certified capital company's certified capital.

14 Section 110. Decertification.

15 (a) General rule.--Any intentional misstatement of material  
16 fact in a certified capital company's application for  
17 certification or any material violation of section 107 or 109  
18 shall be grounds for decertification of the certified capital  
19 company subject to the notice and grace period provided for in  
20 this subsection. If the department determines that a certified  
21 capital company intentionally misstated a material fact in its  
22 application for certification or materially violated the  
23 requirements of section 107 or 109, then it shall inform the  
24 officers of the certified capital company in writing that the  
25 certified capital company may be subject to decertification in  
26 120 days from the date of mailing of the notice unless the  
27 deficiencies are corrected and the certified capital company is  
28 again in compliance with all requirements for certification.

29 (b) Continued noncompliance.--At the end of the 120-day  
30 grace period, if the certified capital company is still in

1 material noncompliance with section 107 or 109, the department  
2 may send a notice of decertification to the certified capital  
3 company and to all other appropriate Commonwealth agencies.

4 (c) Effect of decertification.--Decertification of a  
5 certified capital company may cause the recapture of tax credits  
6 previously claimed and the forfeiture of future tax credits to  
7 be claimed by certified investors with respect to such certified  
8 capital company, as follows:

9 (1) Decertification of a certified capital company  
10 within three years of its allocation date and prior to its  
11 satisfaction of section 107(a)(1) shall cause the recapture  
12 of all tax credits previously taken and the forfeiture of all  
13 future tax credits to be taken by such certified capital  
14 company's certified investors.

15 (2) When a certified capital company meets all  
16 requirements for continued certification under section  
17 107(a)(1) and subsequently fails to meet the requirements for  
18 continued certification under the provisions of section  
19 107(a)(2), the first three annual tax credits which have been  
20 or will be taken by such certified capital company's  
21 certified investors will not be subject to recapture or  
22 forfeiture, except that all other tax credits that have been  
23 or will be taken by such certified capital company's  
24 certified investors shall be subject to recapture or  
25 forfeiture.

26 (3) Once a certified capital company has met all  
27 requirements for continued certification under section  
28 107(a)(1) and (2) and is subsequently decertified, the first  
29 five annual tax credits which have been or will be taken by  
30 such certified capital company's certified investors will not

1 be subject to recapture or forfeiture. Subsequent tax credits  
2 to be taken by such certified capital company's certified  
3 investors shall be subject to forfeiture only if the  
4 certified capital company is decertified within five years  
5 after its allocation date.

6 (4) Notwithstanding anything to the contrary in  
7 paragraphs (1), (2) and (3), once a certified capital company  
8 has invested an amount cumulatively equal to 100% of its  
9 certified capital in qualified investments, all tax credits  
10 which have been or will be taken by such certified capital  
11 company's certified investors shall no longer be subject to  
12 recapture or forfeiture.

13 (d) Written notice.--The department shall send written  
14 notice to the address of each certified investor whose tax  
15 credits have been subject to recapture or forfeiture at such  
16 certified investor's address shown on such certified investor's  
17 last premium tax filing.

18 (e) Waiver.--The department shall have the authority to  
19 waive any recapture or forfeiture of tax credits if, after  
20 considering all facts and circumstances, it determines that such  
21 waiver will have the effect of furthering economic development  
22 in this Commonwealth.

23 (f) End of regulation by department.--After a certified  
24 capital company has invested an amount cumulatively equal to  
25 100% of its certified capital in qualified investments, the  
26 certified capital company shall no longer be subject to  
27 regulation by the department except for the requirements of  
28 section 109(b).

29 (g) Certification.--If a certified capital company certifies  
30 to the department its good faith belief that it has complied

1 with section 107(a)(2) or subsection (f), then the department  
2 shall, within 60 days of receipt of such certification, conduct  
3 a review of the qualified investments of the certified capital  
4 company and shall certify in writing to the certified capital  
5 company whether the certified capital company has complied with  
6 the provisions of section 107(a)(2) or subsection (f), as the  
7 case may be. The certified capital company shall pay the costs  
8 of the review according to a reasonable fee schedule adopted by  
9 the department.

10 Section 111. Transferability.

11 The tax credit earned pursuant to this act may be transferred  
12 or sold to any other person with State premium tax liability.  
13 Any such transfer or sale shall not affect the time schedule for  
14 taking the tax credit as provided in this act. Any tax credits  
15 recaptured pursuant to section 110 shall be the liability of the  
16 taxpayer that actually claimed the tax credits.

17 Section 112. Regulations.

18 The department shall establish guidelines and develop any  
19 forms necessary to implement this act within 90 days of the  
20 effective date of this act. The guidelines shall include  
21 provisions to encourage persons to become a certified capital  
22 company. The department shall publish notice in the Pennsylvania  
23 Bulletin and in newspapers of general circulation information  
24 regarding the process to become a certified capital company. The  
25 guidelines shall provide that the department shall begin  
26 accepting applications for certification as a certified capital  
27 company not later than 180 days after the effective date of this  
28 act. The guidelines shall also provide that the tax credit  
29 allocation claim filing date shall be the first business day  
30 which occurs 90 days after the date on which the department

- 1 begins accepting applications for certification.
- 2 Section 112. Effective date.
- 3 This act shall take effect immediately.