

CHAPTER 330

INSURANCE

HOUSE BILL 04-1190

BY REPRESENTATIVE(S) Romano ff, Borodkin, Boyd, Hodge, Jahn, Marshall, McGihon, Merrifield, Paccione, Plant, Sinclair, Spradley, Stafford, Stengel, Williams S., and Williams T.;
also SENATOR(S) Teck, Isgar, and Taylor.

AN ACT

CONCERNING ECONOMIC DEVELOPMENT INCENTIVES, AND, IN CONNECTION THEREWITH, ALLOWING A CERTIFIED CAPITAL COMPANY TO USE PROCEEDS OR GAINS FROM THE USE OF CERTIFIED CAPITAL TO PAY TAXES PASSED THROUGH TO THE EQUITY OWNERS OF THE CERTIFIED CAPITAL COMPANY AND MODIFYING THE CIRCUMSTANCES UNDER WHICH A CERTIFIED CAPITAL COMPANY MAY MAKE DISTRIBUTIONS FROM CERTIFIED CAPITAL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-3.5-102, Colorado Revised Statutes, is amended to read:

10-3.5-102. Legislative declaration. (1) The primary purpose of the "Certified Capital Company Act" is to provide assistance in the formation of new businesses and the expansion of existing businesses that create jobs in the state by providing an incentive for insurance companies to invest in certified capital companies.

(2) THE GENERAL ASSEMBLY HEREBY:

(a) FINDS THAT THE LEGISLATIVE AUDIT COMMITTEE OF THE GENERAL ASSEMBLY HAS EVALUATED THE IMPLEMENTATION OF THE "CERTIFIED CAPITAL COMPANY ACT" PURSUANT TO SENATE JOINT RESOLUTION 03-050, ENACTED AT THE FIRST REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY;

(b) DETERMINES THAT THE ALLOCATION OF PREMIUM TAX CREDITS UNDER THE "CERTIFIED CAPITAL COMPANY ACT" THAT WAS TO BE MADE AFTER JANUARY 31, 2004, HAS BEEN REPEALED AND REALLOCATED PURSUANT TO THE PROVISIONS OF SENATE BILL 04-106 AND HOUSE BILL 04-1206, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY, WHICH LEAVES ONLY THOSE PREMIUM TAX CREDITS ALLOCATED BEFORE JANUARY 31, 2004, REMAINING SUBJECT

TO THE "CERTIFIED CAPITAL COMPANY ACT"; AND

(c) DECLARES THAT:

(I) THE "CERTIFIED CAPITAL COMPANY ACT" SHOULD BE MODIFIED TO MORE EFFICIENTLY AND EFFECTIVELY ACHIEVE THE PURPOSES FOR WHICH IT WAS ENACTED, IN PARTICULAR BY AMENDING THE METHOD BY WHICH THE OFFICE OF ECONOMIC DEVELOPMENT CALCULATES CERTIFIED CAPITAL COMPANIES' INTERNAL RATE OF RETURN TO ADDRESS AMBIGUITIES AND WEAKNESSES IN CURRENT LAW; AND

(II) THOSE PURPOSES ARE BEST SERVED BY PROSPECTIVELY AMENDING THE "CERTIFIED CAPITAL COMPANY ACT" PURSUANT TO HOUSE BILL 04-1190, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY. NO PROVISION OF THIS ARTICLE SHALL BE CONSTRUED TO RETROSPECTIVELY MODIFY ANY EXISTING STATUTORY, REGULATORY, OR CONTRACTUAL OBLIGATION.

SECTION 2. 10-3.5-108 (3) (a) and (3) (b), Colorado Revised Statutes, are amended to read:

10-3.5-108. Distributions - remittance of portion of proceeds.

(3) (a) (I) ~~SUBJECT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (a), distributions out of certified capital allocated on a particular allocation date that are not qualified distributions and that are made to equity holders after the aggregate total of distributions from such certified capital, not including qualified distributions, cumulatively exceeds the certified capital allocated to the certified investors of the certified capital company on such allocation date plus any additional capital contributions to the certified capital company~~ PROCEEDS OR GAINS FROM QUALIFIED INVESTMENTS, PROCEEDS OR GAINS FROM ANY OTHER USE OF CERTIFIED CAPITAL, PROCEEDS OR GAINS FROM EQUITY CAPITALIZATION CONTRIBUTIONS, EQUITY CAPITALIZATION CONTRIBUTIONS, AND CERTIFIED CAPITAL ALLOCATED TO CERTIFIED INVESTORS ON A PARTICULAR ALLOCATION DATE, shall be specifically examined as part of the annual review conducted pursuant to section 10-3.5-109. On the basis of such review, the office shall determine PURSUANT TO RULES whether the aggregate total of SUCH distributions, ~~from such certified capital, not including qualified distributions, to the certified capital company's certified investors and equity holders~~ when combined with all tax credits allocated on such allocation date and utilized by ~~certified investors~~ pursuant to this article, have resulted in an annual internal rate of return exceeding ten percent on the certified capital allocated to the certified investors of the certified capital company on such allocation date plus any additional EQUITY capital contributions to the certified capital company. EQUITY CAPITAL CONTRIBUTIONS SHALL NOT BE DEEMED TO INCLUDE PROCEEDS OR GAINS FROM:

- (A) QUALIFIED INVESTMENTS;
- (B) ANY OTHER USE OF CERTIFIED CAPITAL; OR
- (C) EQUITY CAPITAL CONTRIBUTIONS.

(II) QUALIFIED DISTRIBUTIONS SHALL NOT BE SUBJECT TO THE REVIEW CONDUCTED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(III) THE FOLLOWING TYPES OF DISTRIBUTION SHALL SPECIFICALLY BE SUBJECT TO THE REVIEW CONDUCTED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a):

(A) A DISTRIBUTION TO PAY ANY PROJECTED INCREASE IN FEDERAL OR STATE TAXES OF THE EQUITY OWNERS OF A CERTIFIED CAPITAL COMPANY RESULTING FROM OPERATIONS OR OWNERSHIP OF THE CERTIFIED CAPITAL COMPANY;

(B) REPAYMENTS OF PRINCIPAL AND INTEREST ON A CERTIFIED CAPITAL COMPANY'S INDEBTEDNESS, INCLUDING REPAYMENTS OF INDEBTEDNESS OF THE CERTIFIED CAPITAL COMPANY ON WHICH CERTIFIED INVESTORS EARNED PREMIUM TAX CREDITS;

(C) A DISTRIBUTION TO RETURN ANY EQUITY CAPITALIZATION PAID INTO THE CERTIFIED CAPITAL COMPANY BEFORE THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (C);

(D) A DISTRIBUTION TO RETURN ANY EQUITY CAPITALIZATION PAID INTO THE CERTIFIED CAPITAL COMPANY ON OR AFTER THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (D); AND

(E) ANY OTHER DISTRIBUTION OTHER THAN A QUALIFIED DISTRIBUTION.

(b) (I) If the ~~certified capital company's~~ annual internal rate of return determined in accordance with paragraph (a) of this subsection (3) exceeds ten percent, then the certified capital company shall annually:

(A) Report to the division of housing in the department of local affairs the amount of money equal to ~~thirty~~ TWENTY percent of any further distributions, from ~~such certified capital other than qualified distributions~~ AN ITEM SUBJECT TO SUBPARAGRAPH (I) OR (III) OF PARAGRAPH (a) OF THIS SUBSECTION (3), above the amount required to produce such ten percent return; EXCEPT THAT DISTRIBUTIONS FOR ITEMS DESCRIBED SPECIFICALLY IN SUB-SUBPARAGRAPH (A), (B), OR (C) OF SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL EITHER BE REPORTED TO THE DIVISION OF HOUSING OR ACCRUED FOR REPORTING AT A LATER DATE AS DETERMINED BY THE ECONOMIC DEVELOPMENT COMMISSION; AND EXCEPT THAT IN NO EVENT SHALL THIS SUB-SUBPARAGRAPH (A) RESTRICT A CERTIFIED CAPITAL COMPANY'S ABILITY TO MAKE REPAYMENTS OF INDEBTEDNESS, INCLUDING MAKING REPAYMENTS OF INDEBTEDNESS OF THE CERTIFIED CAPITAL COMPANY ON WHICH CERTIFIED INVESTORS EARNED PREMIUM TAX CREDITS; AND

(B) Make the transfers required pursuant to paragraphs (c) AND (d) OF THIS SUBSECTION (3).

(II) IF THE ANNUAL INTERNAL RATE OF RETURN DETERMINED IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (3) DOES NOT EXCEED TEN PERCENT, THEN THE CERTIFIED CAPITAL COMPANY SHALL ANNUALLY:

(A) REPORT TO THE DIVISION OF HOUSING IN THE DEPARTMENT OF LOCAL AFFAIRS THE AMOUNT OF MONEY EQUAL TO FIFTEEN PERCENT OF THE PROPOSED DISTRIBUTION AMOUNT OTHER THAN QUALIFIED DISTRIBUTIONS AND DISTRIBUTIONS DESCRIBED IN SUB-SUBPARAGRAPHS (A), (B), AND (C) OF SUBPARAGRAPH (III) OF PARAGRAPH (a)

OF THIS SUBSECTION (3);

(B) MAKE THE TRANSFERS REQUIRED PURSUANT TO PARAGRAPHS (c) AND (d) OF THIS SUBSECTION (3); AND

(C) CONTINUE THE FIFTEEN PERCENT DISTRIBUTION UNTIL THE CERTIFIED CAPITAL COMPANY'S INTERNAL RATE OF RETURN EXCEEDS TEN PERCENT. AT THAT TIME, ALL FUTURE TRANSFER AMOUNTS SHALL BE CALCULATED USING THE METHOD DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b). AMOUNTS PREVIOUSLY TRANSFERRED BY THE CERTIFIED CAPITAL COMPANY SHALL BE TAKEN INTO CONSIDERATION WHEN DETERMINING THE NET AMOUNT OF FUTURE TRANSFERS.

(III) THE OFFICE SHALL PROMULGATE RULES TO ESTABLISH THE PROCEDURES BY WHICH THE INTERNAL RATE OF RETURN IS CALCULATED AND TO GOVERN OTHER ITEMS SUCH AS THE TIMING OF DISTRIBUTIONS AND THE AMOUNT AND TIMING OF FUTURE CAPITAL CONTRIBUTIONS TO THE CERTIFIED CAPITAL COMPANY TO ENSURE THAT THE CALCULATION OF THE INTERNAL RATE OF RETURN IS ACCURATELY CALCULATED.

SECTION 3. Applicability. This act shall apply to actions taken by, or with respect to, certified capital companies on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 28, 2004