

CHAPTER 319

INSURANCE

SENATE BILL 04-247

BY SENATOR(S) Taylor, Andrews, Teck, and Tupa;
also REPRESENTATIVE(S) Coleman, Frangas, Marshall, Paccione, Ragsdale, Rhodes, Romanoff, and Williams S.

AN ACT

CONCERNING REFORM OF THE FIRST POOL OF PREMIUM TAX CREDITS AVAILABLE UNDER THE "CERTIFIED CAPITAL COMPANY ACT".

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OF PREMIUM TAX CREDITS UNDER THE "CERTIFIED CAPITAL COMPANY ACT" THAT WAS TO BE MADE AFTER JANUARY 31, 2004, HAS BEEN REPEALED AND REALLOCATED PURSUANT TO THE PROVISIONS OF SENATE BILL 04-106 AND HOUSE BILL 04-1206, ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL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:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) THE "CERTIFIED CAPITAL COMPANY ACT" SHOULD BE MODIFIED TO MORE EFFICIENTLY AND EFFECTIVELY ACHIEVE THE PURPOSES FOR WHICH IT WAS ENACTED; AND

(II) THOSE PURPOSES ARE BEST SERVED BY PROSPECTIVELY AMENDING THE "CERTIFIED CAPITAL COMPANY ACT" PURSUANT TO SENATE BILL 04-247, 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. 10-3.5-103 (11) and (14), Colorado Revised Statutes, are amended, and the said 10-3.5-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10-3.5-103. Definitions. As used in this article, unless the context otherwise requires:

(11) "Qualified business" means a business that:

(a) Meets all of the following conditions as of the time of a certified capital company's first investment in the business IF THAT INVESTMENT OCCURRED BEFORE THE EFFECTIVE DATE OF THIS PARAGRAPH (a):

~~(a)~~ (I) It is headquartered in this state, and its principal business operations are located in this state;

~~(b)~~ (II) It is a small business concern as described in the small business size regulations of the United States small business administration, 13 CFR 121.201; and

~~(c)~~ (III) It is not a business predominantly engaged in professional services provided by accountants or lawyers.

(b) SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (11), MEETS ALL OF THE FOLLOWING CONDITIONS AS OF THE TIME OF A CERTIFIED CAPITAL COMPANY'S FIRST INVESTMENT IN THE BUSINESS IF THAT INVESTMENT OCCURS ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b):

(I) EITHER OF THE FOLLOWING:

(A) IT IS HEADQUARTERED IN THIS STATE, ITS PRINCIPAL BUSINESS OPERATIONS ARE LOCATED IN THIS STATE, AND THE CERTIFIED CAPITAL COMPANY HAS A REASONABLE EXPECTATION, BASED UPON AN AFFIDAVIT OF ONE OF THE PRINCIPAL OFFICERS OF THE BUSINESS OR OTHER COMPARABLE EVIDENCE, THAT THE BUSINESS INTENDS TO PRESERVE ITS HEADQUARTERS AND PRINCIPAL PLACE OF BUSINESS IN COLORADO FOR AT LEAST THREE YEARS AFTER THE QUALIFIED INVESTMENT AND THAT IT WILL EXPEND SUBSTANTIALLY ALL OF THE QUALIFIED INVESTMENT WITHIN COLORADO PURSUANT TO CRITERIA ADOPTED BY THE OFFICE BY RULE. IF A BUSINESS MEETS SOME BUT NOT ALL OF THE CRITERIA OF THIS SUB-SUBPARAGRAPH (A), THE BUSINESS MAY NEVERTHELESS BE DEEMED TO BE A QUALIFIED BUSINESS IF THE COLORADO ECONOMIC DEVELOPMENT COMMISSION DETERMINES THAT AN INVESTMENT OF CERTIFIED CAPITAL PROPOSED BY A CERTIFIED CAPITAL COMPANY PURSUANT TO THIS ARTICLE

WILL FURTHER THE ECONOMIC DEVELOPMENT OF THE STATE.

(B) IT HAS ENTERED INTO A CONTRACT WITH THE CERTIFIED CAPITAL COMPANY TO COMPLY, WITHIN NINETY DAYS AFTER FINALIZATION OF THE CONTRACT, WITH SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), AND THE CONTRACT CONTAINS ENFORCEABLE PROVISIONS REQUIRING A RETURN OF ANY INVESTMENT OF CERTIFIED CAPITAL IF THE BUSINESS FAILS TO SO COMPLY;

(II) IT IS A SMALL BUSINESS CONCERN AS DESCRIBED IN THE SMALL BUSINESS SIZE REGULATIONS OF THE UNITED STATES SMALL BUSINESS ADMINISTRATION, 13 CFR 121.201; AND

(III) IT IS NOT A BUSINESS PREDOMINANTLY ENGAGED IN:

(A) PROFESSIONAL SERVICES PROVIDED BY ACCOUNTANTS, DOCTORS, OR LAWYERS;

(B) BANKING OR LENDING;

(C) REAL ESTATE DEVELOPMENT;

(D) INSURANCE;

(E) OIL AND GAS EXPLORATION;

(F) DIRECT GAMBLING ACTIVITIES, WHICH SHALL NOT INCLUDE ANCILLARY GAMBLING EQUIPMENT AND OTHER INDIRECT GAMBLING ACTIVITIES, AS DEFINED BY THE OFFICE; OR

(G) BUSINESSES THAT MAKE LOANS TO OR INVEST IN A CERTIFIED CAPITAL COMPANY OR AN AFFILIATE OF A CERTIFIED CAPITAL COMPANY OR INSURANCE COMPANY.

(c) ANY BUSINESS THAT IS CLASSIFIED AS A QUALIFIED BUSINESS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (11) AT THE TIME OF THE FIRST QUALIFIED INVESTMENT IN SAID BUSINESS SHALL REMAIN CLASSIFIED AS A QUALIFIED BUSINESS, MAY RECEIVE CONTINUING QUALIFIED INVESTMENTS, AND SUCH CONTINUING INVESTMENTS SHALL BE QUALIFIED INVESTMENTS EVEN THOUGH SUCH BUSINESS MAY NOT MEET THE DEFINITION OF A QUALIFIED BUSINESS AT THE TIME OF SUCH CONTINUING INVESTMENTS; EXCEPT THAT, UNLESS OTHERWISE DETERMINED BY THE ECONOMIC DEVELOPMENT COMMISSION, SUCH BUSINESS SHALL NOT BE ELIGIBLE TO RECEIVE FURTHER QUALIFIED INVESTMENTS IF:

(I) IT HAS RELOCATED ITS HEADQUARTERS OR PRINCIPAL BUSINESS OPERATIONS OUTSIDE OF THIS STATE; OR

(II) IT HAS NOT EXPENDED SUBSTANTIALLY ALL OF ITS PRIOR QUALIFIED INVESTMENTS WITHIN COLORADO PURSUANT TO CRITERIA ADOPTED BY THE OFFICE BY RULE; EXCEPT THAT THIS LIMITATION SHALL NOT BE DEEMED TO EITHER:

(A) PRECLUDE THE PURCHASE OF SERVICES OR GOODS FROM OUTSIDE OF

COLORADO IF SUCH SERVICES ARE PERFORMED AND SUCH GOODS ARE USED IN COLORADO; OR

(B) APPLY RETROACTIVELY TO DISQUALIFY A QUALIFIED INVESTMENT PREVIOUSLY APPROVED BY THE OFFICE AFTER THE QUALIFIED INVESTMENT HAS BEEN MADE.

(14) (a) "Qualified investment" means the investment of cash by a certified capital company in a qualified business or qualified rural business for the purchase of any debt, debt participation, equity, or hybrid security, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments, including, but not limited to, options or warrants; except that, with respect to all certified capital invested pursuant to an allocation of tax credits pursuant to section 10-3.5-106 (2) (a) (I), ~~or (2) (b) (I)~~; the investment shall be made in a qualified rural business.

(b) UNLESS PREVIOUSLY APPROVED BY THE OFFICE BASED UPON UNIQUE CIRCUMSTANCES, A CERTIFIED CAPITAL COMPANY SHALL NOT MAKE A LOAN ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b) TO A QUALIFIED BUSINESS OR QUALIFIED RURAL BUSINESS UNLESS THE BUSINESS HAS RECEIVED TWO WRITTEN LOAN REJECTION LETTERS FROM TWO DIFFERENT COMMERCIAL BANKS THAT ARE FEDERALLY OR STATE CHARTERED IN COLORADO AND THAT MAKE SMALL BUSINESS LOANS, AT LEAST ONE OF WHICH BANKS IS A PREFERRED OR CERTIFIED LENDER DESIGNATED BY THE FEDERAL SMALL BUSINESS ADMINISTRATION. ANY SUCH LOAN BY A CERTIFIED CAPITAL COMPANY SHALL NOT BE MADE THROUGH OR IN CONNECTION WITH ANY GUARANTEED LOAN PROGRAM. ADDITIONALLY, A CERTIFIED CAPITAL COMPANY SHALL NOT MAKE A LOAN ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b) TO A QUALIFIED BUSINESS OR QUALIFIED RURAL BUSINESS UNLESS THE STATE'S REVOLVING LOAN FUND THAT COVERS THE AREA WHERE THE BUSINESS IS LOCATED HAS DECLINED THE LOAN.

(15.5) "SEED OR EARLY STAGE", IN REFERENCE TO A QUALIFIED BUSINESS, MEANS THAT THE QUALIFIED BUSINESS, AT THE TIME OF THE INITIAL QUALIFIED INVESTMENT, EITHER:

(a) HAD LESS THAN FIVE HUNDRED THOUSAND DOLLARS IN TOTAL REVENUES FOR THE FISCAL YEAR IMMEDIATELY PRECEDING THE INITIAL QUALIFIED INVESTMENT;

(b) HAS RECEIVED NO MORE THAN ONE INVESTMENT FROM A PROFESSIONAL VENTURE CAPITAL FIRM WITH FUNDS RAISED FROM INSTITUTIONAL INVESTORS; OR

(c) DOES NOT HAVE POSITIVE OPERATIONAL CASH FLOW FOR THE FISCAL YEAR IMMEDIATELY PRECEDING THE INITIAL QUALIFIED INVESTMENT.

SECTION 3. 10-3.5-107 (3), (4), and (5), Colorado Revised Statutes, are amended to read:

10-3.5-107. Requirements for continuance of certification - fees. (3) Any business that is classified as a qualified business or qualified rural business at the time of the first investment in said business by a certified capital company shall remain classified as a qualified business or qualified rural business, as applicable, ~~and~~ may receive continuing investments from any certified capital company or any

of its affiliates, AND such continuing investments shall be qualified investments even though such business may not meet the definition of a qualified business or qualified rural business, as applicable, at the time of such continuing investments; EXCEPT THAT:

(a) A BUSINESS THAT IS A QUALIFIED BUSINESS OR QUALIFIED RURAL BUSINESS AT THE TIME OF THE FIRST INVESTMENT BY A CERTIFIED CAPITAL COMPANY IN SUCH BUSINESS WHEN SUCH INVESTMENT OCCURS ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (3), AS AMENDED, BUT THAT SUBSEQUENTLY VIOLATES THE REQUIREMENTS OF SECTION 10-3.5-103 (11) (b) (I) OR (11) (c) WITHIN THE FIRST SIX MONTHS AFTER SUCH QUALIFIED INVESTMENT SHALL NOT BE DEEMED TO BE A QUALIFIED BUSINESS OR QUALIFIED RURAL BUSINESS, AS APPLICABLE, FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION AND SECTION 10-3.5-109 (2) (a) ONLY, AND MAY NOT RECEIVE CONTINUING INVESTMENTS FROM ANY CERTIFIED CAPITAL COMPANY OR ANY OF ITS AFFILIATES.

(b) AN INVESTMENT IN A BUSINESS THAT RELOCATES EITHER ITS HEADQUARTERS OR ITS PRINCIPAL BUSINESS OPERATIONS OUTSIDE OF COLORADO AFTER SIX MONTHS BUT LESS THAN THREE YEARS AFTER THE INITIAL QUALIFIED INVESTMENT SHALL:

(I) NOT BE DEEMED TO SATISFY A REQUIREMENT OF SECTION 10-3.5-109 (2) (a) IF SUCH REQUIREMENT HAS NOT ALREADY BEEN COMPLIED WITH AND IF THE RELOCATION OCCURRED DURING THE CERTIFIED CAPITAL COMPANY'S INVESTMENT IN THE BUSINESS; AND

(II) BE DEEMED TO CONTINUE TO SATISFY A REQUIREMENT OF SECTION 10-3.5-109 (2) (a) THAT HAS ALREADY BEEN COMPLIED WITH AND PARAGRAPHS (a) AND (b) OF SUBSECTION (1) OF THIS SECTION.

(4) A certified capital company shall not:

(a) Invest more than fifteen percent of its total certified capital in any one qualified business or qualified rural business; OR

(b) OWN, THROUGH AN INITIAL QUALIFIED INVESTMENT OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b), IN AGGREGATE TOTAL WITH A BUSINESS THAT WAS ORGANIZED BY, IS A FRANCHISEE OF, OR IS AN AFFILIATE OF, THE CERTIFIED CAPITAL COMPANY, MORE THAN FORTY-NINE PERCENT OF ANY ONE QUALIFIED BUSINESS OR QUALIFIED RURAL BUSINESS WITHOUT THE SPECIFIC APPROVAL OF THE OFFICE; EXCEPT THAT NOTHING IN THIS PARAGRAPH (b) SHALL PRECLUDE A CERTIFIED CAPITAL COMPANY FROM EXERCISING ANY:

(I) RIGHT OR REMEDY UPON A DEFAULT BY THE QUALIFIED BUSINESS PURSUANT TO AN INVESTMENT CONTRACT; OR

(II) ANTI-DILUTION OR PREEMPTIVE RIGHTS IT MAY HAVE BEEN GRANTED IN CONNECTION WITH AN INITIAL QUALIFIED INVESTMENT THAT CAN BE EXERCISED UPON AN INVESTMENT IN THE BUSINESS BY A PARTY OTHER THAN THE CERTIFIED CAPITAL COMPANY OR AN AFFILIATE OF THE CERTIFIED CAPITAL COMPANY.

(5) At its option, a certified capital company, before making a proposed investment

in a specific business, may request from the office a written opinion that the business in which it proposes to invest should be considered a qualified business or qualified rural business, as applicable. Upon receiving such a request, the office shall have ten working days to determine whether the business meets the definition of a qualified business or qualified rural business, as applicable, and notify the certified capital company of its determination with an explanation of the determination. If the office fails to notify the certified capital company with respect to the proposed investment within such ten-working-day period, the business in which the certified capital company proposes to invest shall be deemed to be a qualified business or qualified rural business, as applicable. If the office determines that the business in which the certified capital company proposes to invest BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (5), AS AMENDED, does not meet all of the criteria set forth in section 10-3.5-103 ~~(11)~~ (11) (a) or (15), as applicable, the office may nevertheless consider the business a qualified business or qualified rural business, as applicable, and approve the investment if the Colorado economic development commission determines that the proposed investment will further the economic development of the state.

SECTION 4. 10-3.5-107 (7) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

10-3.5-107. Requirements for continuance of certification - fees. (7) (b) On or before January 31 of each year, each certified capital company shall report the following to the office:

(IV) THE LOCATION AND NUMBER OF NEW JOBS THAT HAVE BEEN CREATED DUE TO THE CERTIFIED CAPITAL COMPANY'S QUALIFIED INVESTMENTS DURING THE PREVIOUS TWELVE MONTHS AND SINCE THE CERTIFIED CAPITAL COMPANY'S INITIAL QUALIFIED INVESTMENT.

SECTION 5. 10-3.5-108 (1) and (2), Colorado Revised Statutes, are amended to read:

10-3.5-108. Distributions - remittance of portion of proceeds. (1) SUBJECT TO SECTION 10-3.5-109 (2) (a), a certified capital company may make qualified distributions at any time.

(2) (a) SUBJECT TO SECTION 10-3.5-109 (2) (a) AND PARAGRAPH (b) OF THIS SUBSECTION (2), in order to make a distribution OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (a), AS AMENDED, out of PROCEEDS OR GAINS FROM QUALIFIED INVESTMENTS, PROCEEDS OR GAINS FROM ANY OTHER USE OF CERTIFIED CAPITAL, EQUITY CAPITALIZATION CONTRIBUTIONS PAID INTO THE CERTIFIED CAPITAL COMPANY ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (a), OR certified capital allocated to its certified investors on a particular allocation date other than a qualified distribution OR A DISTRIBUTION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2), a certified capital company shall:

(I) Have made qualified investments in an amount cumulatively equal to:

(A) One hundred percent of the certified capital allocated to its certified investors on such allocation date AND HAVE MET THE SIX-MONTH REQUIREMENT STATED IN

SECTION 10-3.5-107 (3) (a); ~~except that~~ AND

(B) AT LEAST ONE-THIRD OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS UNDER SECTION 10-3.5-106 (2) (a) (II) IN QUALIFIED BUSINESSES THAT ARE IN THE SEED OR EARLY STAGE. SEED OR EARLY STAGE INVESTMENTS OF CERTIFIED CAPITAL ALLOCATED UNDER SECTION 10-3.5-106 (2) (a) (II) AND SECTION 10-3.5-106 (2) (a) (I) SHALL BOTH COUNT TOWARD MEETING THE REQUIREMENT OF THIS SUB-SUBPARAGRAPH (B).

(II) HAVE PROPOSED A DISTRIBUTION AMOUNT AND CALCULATED THE AMOUNT OF THE TRANSFERS IDENTIFIED IN SUBSECTION (3) OF THIS SECTION PURSUANT TO RULES PROMULGATED BY THE OFFICE; AND

(III) MAKE THE TRANSFERS TO THE ENTITIES DESIGNATED IN PARAGRAPHS (c) AND (d) OF SUBSECTION (3) OF THIS SECTION.

(b) A certified capital company may make repayments of principal and interest on its indebtedness without any restriction whatsoever, including repayments of indebtedness of the certified capital company on which certified investors earned premium tax credits. A CERTIFIED CAPITAL COMPANY MAY MAKE A DISTRIBUTION:

(I) WITHOUT ANY RESTRICTION WHATSOEVER TO PAY ANY PROJECTED INCREASE IN FEDERAL OR STATE TAXES, INCLUDING PENALTIES AND INTEREST RELATED TO FEDERAL AND STATE INCOME TAXES, OF THE EQUITY OWNERS OF A CERTIFIED CAPITAL COMPANY RESULTING FROM OPERATIONS OR OWNERSHIP OF THE CERTIFIED CAPITAL COMPANY; OR

(II) TO RETURN ANY EQUITY CAPITALIZATION PAID INTO THE CERTIFIED CAPITAL COMPANY BEFORE THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (II) FROM ANY EQUITY CAPITALIZATION CONTRIBUTIONS PAID INTO THE CERTIFIED CAPITAL COMPANY BEFORE THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (II), PROCEEDS OR GAINS FROM QUALIFIED INVESTMENTS, OR PROCEEDS OR GAINS FROM ANY OTHER USE OF CERTIFIED CAPITAL.

SECTION 6. 10-3.5-109 (2), (3), and (5), Colorado Revised Statutes, are amended to read:

10-3.5-109. Annual review - decertification - penalties. (2) (a) (I) WITHIN THE PERIOD ENDING TEN YEARS AFTER AN ALLOCATION DATE, A CERTIFIED CAPITAL COMPANY SHALL HAVE MADE QUALIFIED INVESTMENTS IN AN AMOUNT CUMULATIVELY EQUAL TO:

(A) ONE HUNDRED PERCENT OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE. FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL NOT SUBJECT THE CERTIFIED CAPITAL COMPANY TO DECERTIFICATION.

(B) AT LEAST ONE-THIRD OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS UNDER SECTION 10-3.5-106 (2) (a) (II) IN QUALIFIED BUSINESSES THAT ARE IN THE SEED OR EARLY STAGE. SEED OR EARLY STAGE INVESTMENTS OF CERTIFIED CAPITAL ALLOCATED UNDER SECTION 10-3.5-106 (2) (a) (II) AND SECTION

10-3.5-106 (2) (a) (I) SHALL BOTH COUNT TOWARD MEETING THE REQUIREMENT OF THIS SUB-SUBPARAGRAPH (B). FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL NOT SUBJECT THE CERTIFIED CAPITAL COMPANY TO DECERTIFICATION.

(II) BEGINNING ON THE TENTH ANNIVERSARY OF AN ALLOCATION DATE, A CERTIFIED CAPITAL COMPANY SHALL MAKE NO FURTHER DISTRIBUTIONS OF ANY KIND, INCLUDING QUALIFIED DISTRIBUTIONS, FROM CERTIFIED CAPITAL OR PROCEEDS OR GAINS FROM ANY TYPE OF INVESTMENT OF CERTIFIED CAPITAL, UNLESS AND UNTIL THE CERTIFIED CAPITAL COMPANY HAS MADE QUALIFIED INVESTMENTS CUMULATIVELY EQUAL TO ONE HUNDRED PERCENT OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE; EXCEPT THAT THIS SUBPARAGRAPH (II) SHALL NOT PROHIBIT PAYMENTS ON INDEBTEDNESS OF THE CERTIFIED CAPITAL COMPANY, INCLUDING INDEBTEDNESS TO CERTIFIED INVESTORS, ON QUALIFIED DEBT INSTRUMENTS OR DISTRIBUTIONS PERMITTED BY SECTION 10-3.5-108 (2) (b).

(III) IF A CERTIFIED CAPITAL COMPANY FAILS TO HAVE MADE QUALIFIED INVESTMENTS CUMULATIVELY EQUAL TO ONE HUNDRED PERCENT OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE WITHIN THE PERIOD ENDING:

(A) TWELVE YEARS AFTER AN ALLOCATION DATE, THE PERCENTAGE REPORTED TO THE DIVISION OF HOUSING IN SECTION 10-3.5-108 (3) (b) SHALL EQUAL SIXTY PERCENT.

(B) SIXTEEN YEARS AFTER AN ALLOCATION DATE, THE PERCENTAGE REPORTED TO THE DIVISION OF HOUSING IN SECTION 10-3.5-108 (3) (b) SHALL EQUAL ONE HUNDRED PERCENT, AND THE ECONOMIC DEVELOPMENT COMMISSION SHALL HAVE THE AUTHORITY OVER ALL MONETARY AND INVESTMENT ASSETS OF THE CERTIFIED CAPITAL COMPANY, INCLUDING, BUT NOT LIMITED TO, THE ABILITY TO SELECT A NEW MANAGER FOR ALL FUTURE INVESTMENTS OF THE CERTIFIED CAPITAL COMPANY'S ASSETS.

(b) Any material violation of section 10-3.5-107 shall be grounds for decertification of the certified capital company, ASSESSMENT OF AN ADMINISTRATIVE FINE DETERMINED BY THE OFFICE BY RULE, OR BOTH. ANY MATERIAL VIOLATION OF THIS ARTICLE OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b) SHALL BE GROUNDS FOR ASSESSMENT OF AN ADMINISTRATIVE FINE PURSUANT TO A SCHEDULE DETERMINED BY THE OFFICE BY RULE. VIOLATIONS INVOLVING A USE OF FUNDS THAT IS UNAUTHORIZED UNDER THIS ARTICLE SHALL REQUIRE THE REPAYMENT OR REINVESTMENT OF THE FUNDS, AND FINES FOR SUCH VIOLATIONS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF FUNDS INVOLVED. FINES FOR VIOLATIONS NOT INVOLVING THE MISUSE OF FUNDS SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS. If the office determines that a certified capital company is not in compliance with the requirements of ~~section 10-3.5-107~~ REFERENCED IN THIS PARAGRAPH (b), it shall, by written notice, inform the officers of the certified capital company that the certified capital company may be subject to decertification, OR THE ASSESSMENT OF A FINE AS ALLOWED BY THIS PARAGRAPH (b), one hundred twenty days after the date of mailing of the notice unless the deficiencies are corrected and the certified capital company is again in compliance with all requirements for certification.

(c) (I) FOR THE PURPOSE OF DETERMINING COMPLIANCE WITH THIS ARTICLE, INCLUDING ALL REQUIREMENTS FOR DISTRIBUTIONS AND CERTIFICATION, REGARDLESS OF ANY CLAIM THAT SUCH RECORDS OR OPERATIONS ARE CONFIDENTIAL OR OTHERWISE EXEMPT FROM INSPECTION, THE OFFICE MAY, UPON REASONABLE NOTICE, INSPECT THE RECORDS AND OPERATIONS OF:

(A) A CERTIFIED CAPITAL COMPANY; OR

(B) IF THE INFORMATION RECEIVED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) IS INSUFFICIENT, A QUALIFIED BUSINESS OR QUALIFIED RURAL BUSINESS.

(II) A RECORD THAT IS EXEMPT FROM INSPECTION PURSUANT TO SECTION 24-72-204, C.R.S., SHALL BE EXEMPT FROM INSPECTION WHILE IN THE CUSTODY OF THE OFFICE IF THE REQUIREMENTS OF PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., ARE COMPLIED WITH, AND THE OFFICE AND ITS EMPLOYEES SHALL NOT DISCLOSE THE CONFIDENTIAL OR EXEMPT PORTIONS OF THE CONTENTS OF ANY SUCH RECORD TO ANYONE OUTSIDE OF THE OFFICE UNLESS DISCLOSURE OF THE CONFIDENTIAL OR EXEMPT PORTIONS OF THE CONTENTS OF SUCH RECORD IS REQUIRED TO EFFECTUATE FINAL ADMINISTRATIVE ACTION AGAINST A CERTIFIED CAPITAL COMPANY PURSUANT TO THIS SECTION.

(3) At the end of the one-hundred-twenty-day period provided in subsection (2) of this section, if the certified capital company is still not in compliance with ~~section 10-3.5-107~~ THE REQUIREMENTS REFERENCED IN PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, the office ~~shall~~ MAY DO EITHER OR BOTH OF THE FOLLOWING, AS APPROPRIATE:

(a) Send a notice of decertification to the certified capital company and to all other appropriate state agencies, including without limitation the division of insurance in the department of regulatory agencies;

(b) ASSESS AN ADMINISTRATIVE FINE PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION AGAINST THE CERTIFIED CAPITAL COMPANY. THE ASSESSMENT SHALL OCCUR ONLY AFTER THE DIRECTOR OF THE OFFICE HOLDS A HEARING IN ACCORDANCE WITH SECTION 24-4-105, C.R.S. JUDICIAL REVIEW MAY BE OBTAINED IN THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S. THE OFFICE SHALL TRANSFER ANY SUCH FINE THAT IT RECEIVES TO THE STATE TREASURER, WHO SHALL CREDIT IT TO THE GENERAL FUND.

(5) Once a certified capital company has invested an amount cumulatively equal to one hundred percent of its certified capital in qualified investments AND COMPLIED WITH SECTIONS 10-3.5-107(3) (a) AND 10-3.5-108(2) (a) (I) (B), the certified capital company shall no longer be subject to regulation by the office EXCEPT IN SO FAR AS IS NECESSARY TO OVERSEE THE DISTRIBUTIONS MADE PURSUANT TO SECTION 10-3.5-108 (3) (b).

SECTION 7. 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 8. 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 27, 2004