

SENATE BILL No. 618

July 12, 2001, Introduced by Senators GARCIA, JOHNSON, GOUGEON, BULLARD, HAMMERSTROM, BYRUM, PETERS, SHUGARS, SIKKEMA, BENNETT, SCHUETTE, MC COTTER and GOSCHKA and referred to the Committee on Economic Development, International Trade and Regulatory Affairs.

A bill to provide certain investment opportunities in this state; to exempt income from certain taxes; to prescribe the powers and duties of certain public officers and departments; to impose powers and duties upon certain officials, departments, and authorities of this state; and to provide penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "certified capital company act".

3 Sec. 2. As used in this act:

4 (a) "Affiliate of a certified capital company, certified
5 investor, or insurer" means any of the following:

6 (i) A person, directly or indirectly beneficially owning,
7 whether through rights, options, convertible interests, or
8 otherwise, controlling or holding power to vote 15% or more of

1 the outstanding securities or other ownership interests of the
2 certified capital company, certified investor, or insurer, as
3 applicable.

4 (ii) A person, 15% or more of whose outstanding voting
5 securities or other ownership interest is directly or indirectly
6 beneficially owned, whether through rights, options, convertible
7 interests, or otherwise, controlled, or held with power to vote
8 by the certified capital company, certified investor, or insurer,
9 as applicable.

10 (iii) A person, directly or indirectly controlling, con-
11 trolled by, or under common control with the certified capital
12 company, certified investor, or insurer, as applicable.

13 (iv) A partnership in which the certified capital company,
14 certified investor, or insurer, as applicable, is a general
15 partner.

16 (v) A person who is an officer, director, or agent of the
17 certified capital company, certified investor, or insurer, as
18 applicable, or an immediate family member of the officer, direc-
19 tor, or agent.

20 (b) "Allocation date" means the date on which the certified
21 investors of a certified capital company are allocated tax cred-
22 its by the department.

23 (c) "Certified capital" means an investment of cash by a
24 certified investor in a certified capital company which fully
25 funds the purchase price of an equity interest in the certified
26 capital company or a qualified debt instrument issued by the
27 certified capital company.

1 (d) "Certified capital company" means a partnership,
2 corporation, trust, or limited liability company, whether orga-
3 nized on a profit or not for profit basis, that has as its pri-
4 mary business activity the investment of cash in qualified busi-
5 nesses and that is certified by the department as meeting the
6 criteria under this act.

7 (e) "Certified investor" means an individual, corporation,
8 association, partnership, or other legal entity subject to tax
9 under section 22f of the single business tax act, 1975 PA 228,
10 MCL 208.22f, as of the date of its initial investment of certi-
11 fied capital, that invests certified capital pursuant to an allo-
12 cation of tax credits under section 3.

13 (f) "Department" means the department of treasury.

14 (g) "Early stage business" means a business that, at the
15 time of the request for a written opinion under section 6 or, if
16 no request is made for an opinion under section 6, at the time of
17 the initial investment in the business, meets 1 or more of the
18 following conditions:

19 (i) The business is engaged in activities related to the
20 development of initial product or service offerings, including,
21 but not limited to, prototype development of initial product or
22 service offerings, prototype development, or the establishment of
23 initial or production service processes.

24 (ii) The business is less than 2 years old.

25 (iii) During the fiscal year immediately preceding the
26 request for a written opinion under section 6 or, if no request
27 is made for a written opinion under section 6, during the fiscal

1 year immediately preceding the initial investment in the
2 business, the business had gross revenues of no more than
3 \$3,000,000.00 calculated on a consolidated basis according to
4 generally accepted accounting principles.

5 (h) "Eligible distressed area" means an eligible distressed
6 area as that term is defined in section 11 of the state housing
7 development authority act of 1966, 1966 PA 346, MCL 125.1411,
8 that is an eligible distressed area at the time of the request
9 for a written opinion under section 6 or, if no request is made
10 for a written opinion under section 6, at the time of the initial
11 investment in the business.

12 (i) "High-technology activity" means 1 or more of the
13 following:

14 (i) Advanced computing, which is any technology used in the
15 design and development of any of the following:

16 (A) Computer hardware and software.

17 (B) Data communications.

18 (C) Information technologies.

19 (ii) Advanced materials, which are materials with engineered
20 properties created through the development of specialized process
21 and synthesis technology.

22 (iii) Biotechnology, which is any technology that uses
23 living organisms, cells, macromolecules, microorganisms, or sub-
24 stances from living organisms to make or modify a product,
25 improve plants or animals, or develop microorganisms for useful
26 purposes. Biotechnology does not include human cloning as

1 defined in section 16274 of the public health code, 1978 PA 368,
2 MCL 333.16274, or stem cell research with embryonic tissue.

3 (iv) Electronic device technology, which is any technology
4 that involves microelectronics, semiconductors, electronic equip-
5 ment, and instrumentation, radio frequency, microwave, and milli-
6 meter electronics, and optical and optic-electrical devices, or
7 data and digital communications and imaging devices.

8 (v) Engineering or laboratory testing related to the devel-
9 opment of a product.

10 (vi) Technology that assists in the assessment or prevention
11 of threats or damage to human health or the environment, includ-
12 ing, but not limited to, environmental cleanup technology, pollu-
13 tion prevention technology, or development of alternative energy
14 sources.

15 (vii) Medical device technology, which is any technology
16 that involves medical equipment or products other than a pharma-
17 ceutical product that has therapeutic or diagnostic value and is
18 regulated.

19 (viii) Product research and development.

20 (ix) Advanced vehicles technology that is any technology
21 that involves electric vehicles, hybrid vehicles, or alternative
22 fuel vehicles, or components used in the construction of electric
23 vehicles, hybrid vehicles, or alternative fuel vehicles. For
24 purposes of this act:

25 (A) "Electric vehicle" means a road vehicle that draws pro-
26 pulsion energy only from an on-board source of electrical
27 energy.

1 (B) "Hybrid vehicle" means a road vehicle that can draw
2 propulsion energy from both a consumable fuel and a rechargeable
3 energy storage system.

4 (j) "Insurer" means that term as defined in section 106 of
5 the insurance code of 1956, 1956 PA 218, MCL 500.106

6 (k) "Michigan economic development corporation" means the
7 public body corporate created under section 28 of article VII of
8 the state constitution of 1963 and the urban cooperation act of
9 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contrac-
10 tual interlocal agreement effective April 5, 1999 between local
11 participating economic development corporations formed under the
12 economic development corporations act, 1974 PA 338, MCL 125.1601
13 to 125.1636, and the Michigan strategic fund. If it is deter-
14 mined that the Michigan economic development corporation is
15 unable to perform its duties under this act, those duties shall
16 be exercised by the Michigan strategic fund.

17 (l) "Michigan strategic fund" means the Michigan strategic
18 fund as described in the Michigan strategic fund act, 1984
19 PA 270, MCL 125.2001 to 125.2093.

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

23 (n) "Qualified business" means a business other than a busi-
24 ness predominantly engaged in professional services provided by
25 accountants, lawyers, or physicians that, at the time of a
26 request for a written opinion under section 6 or, if no request
27 is made for a written opinion under section 6, at the time of the

1 initial investment in the business, has its headquarters or
2 principal business operations located in this state and that
3 meets either or both of the following conditions:

4 (i) Is a small business concern as defined in 13
5 C.F.R. 121.201.

6 (ii) Has its principal business operations located in 1 or
7 more eligible distressed areas.

8 (o) "Qualified debt instrument" means a debt instrument
9 issued by a certified capital company at par value or a premium
10 with an original maturity date of at least 5 years from date of
11 issuance, a repayment schedule that is no faster than a level
12 principal amortization over 5 years, and that contains no inter-
13 est, distribution, or payment features that are related to the
14 profitability of the certified capital company or the performance
15 of the certified capital company's investment portfolio.

16 (p) "Qualified distribution" means a distribution or payment
17 by a certified capital company from certified capital in connec-
18 tion with any of the following:

19 (i) Reasonable costs and expenses of forming and syndicating
20 the certified capital company.

21 (ii) Reasonable costs and expenses of managing and operating
22 the certified capital company including, but not limited to, an
23 annual management fee in an amount that does not exceed 2.5% of
24 the certified capital of the certified capital company.

25 (iii) Any projected increase in federal or state taxes,
26 including penalties and interest related to state and federal
27 income taxes, of the equity owners of a certified capital company

1 resulting from the earnings or other tax liability of the
2 certified capital company or the equity owners to the extent that
3 the increase is related to the ownership, management, or opera-
4 tion of a certified capital company or the issuance, repayment,
5 or redemption of the qualified debt instruments of the certified
6 capital company.

7 (q) "Qualified investment" means the investment of cash by a
8 certified capital company in a qualified business for the pur-
9 chase of any debt, equity, or hybrid security, of any nature and
10 description, including a debt instrument, debt participation, or
11 security that has the characteristics of debt but that provides
12 for conversion into equity or equity participation instruments
13 such as options or warrants.

14 (r) "Tax credit allocation claim" means a claim for the
15 allocation of tax credits allowed under this act prepared, exe-
16 cuted, and filed with the department by a certified investor on a
17 form provided by the department that includes a statement that
18 the certified investor is legally bound and irrevocably committed
19 to make an investment of certified capital in a certified capital
20 company in the amount allocated under section 3.

21 (s) "Tax liability" means any liability incurred by a certi-
22 fied investor under the single business tax act, 1975 PA 228,
23 MCL 208.1 to 208.145, or other liability incurred by a certified
24 investor under any tax levied by this state on premiums written
25 in this state by the certified investor or any other tax levied
26 by this state on the business income of the certified investor.

1 Sec. 3. (1) A certified investor who makes an investment of
2 certified capital pursuant to an allocation of tax credits under
3 this act shall, at the time of the investment, earn a vested tax
4 credit against the certified investor's tax liability equal to
5 100% of the certified investor's investment of certified
6 capital. A certified investor is entitled to take a maximum of
7 10% of the vested tax credit in any tax year of the certified
8 investor beginning with the tax year during which the investment
9 is made.

10 (2) The tax credit that can be claimed against the tax
11 liability of the certified investor in any 1 tax year shall not
12 exceed the tax liability of the certified investor for that tax
13 year. All unused tax credits against tax liability may be car-
14 ried forward until the tax credit is used up.

15 (3) A certified investor claiming a tax credit pursuant to
16 this section against tax liability under this section is not
17 required to pay any additional tax levied under the insurance
18 code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, as a result
19 of claiming that tax credit. A certified investor is not
20 required to reduce the amount of tax pursuant to the single busi-
21 ness tax act, 1975 PA 228, MCL 208.1 to 208.145, included by the
22 certified investor in connection with ratemaking for any insur-
23 ance contract written in this state because of a reduction in the
24 certified investor's tax liability based on the credit allowed
25 under this act.

26 (4) The total amount of tax credits allowed under this
27 section for all taxpayers shall not exceed \$200,000,000.00.

1 (5) Tax credit allocation claims filed with respect to the
2 certified investors in any 1 certified capital company on an
3 aggregate basis with its affiliates shall not exceed
4 \$200,000,000.00.

5 (6) Allocation of tax credits under this act shall be made
6 in the order in which the tax credit allocation claims are
7 received by the department. If 2 or more tax credit allocation
8 claims are filed on the same day, they are considered to have
9 been received simultaneously.

10 (7) If 2 or more certified capital companies file tax credit
11 allocation claims on behalf of their certified investors on the
12 same day, and the amount of the tax credit allocation claims
13 exceeds the total maximum aggregate amounts under subsection (4),
14 capital for which tax credits are allowed shall be allocated to
15 each certified investor on whose behalf a tax credit allocation
16 claim was filed on that day on a pro rata basis by multiplying
17 the difference between the maximum total of tax credits allowed
18 under subsection (4) and any tax credits previously allocated
19 pursuant to this section by a fraction, the numerator of which is
20 the amount of the tax credit allocation claim filed by that cer-
21 tified investor and the denominator of which is the total of all
22 tax credit allocation claims filed by all certified investors on
23 that day.

24 (8) Within 10 days after receiving a tax credit allocation
25 claim from a certified investor, the department shall notify that
26 certified investor of the amount of the tax credits allocated to
27 that certified investor.

1 (9) If a certified investor does not invest certified
2 capital in a certified capital company within 10 business days
3 after receiving an allocation under this act, the certified
4 investor forfeits that portion of the allocation not invested.
5 Any amount of certified capital forfeited under this subsection
6 shall be reallocated to other certified investors using the for-
7 mula under subsection (7).

8 (10) A certified investor, on an aggregate basis with its
9 affiliates, shall not file tax credit allocation claims under
10 this act whether in 1 or more certified capital companies, for
11 more than the 15% of the total maximum aggregate amount under
12 subsection (4) or \$10,000,000.00, whichever is greater.

13 (11) No tax credits shall be allocated to the certified
14 investors of any certified capital company under this section
15 unless the certified capital company receives an investment of
16 certified capital from certified investors that are members of at
17 least 3 different groups of affiliates of a certified capital
18 company, certified investor, or insurer.

19 Sec. 4. (1) The department may promulgate rules necessary
20 to administer this act pursuant to the administrative procedures
21 act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department
22 shall submit rules for promulgation on or before September 30,
23 2001 relating to procedures for applying for certification as a
24 certified capital company. The application process shall include
25 a criminal background investigation and fingerprint cards and
26 resumes detailing work experience for all principals of the
27 certified capital company.

1 (2) The department shall begin accepting applications for
2 certification of a certified capital company not later than
3 October 31, 2001.

4 (3) Certified capital companies may file tax allocation
5 claims on behalf of its certified investors at any time after it
6 becomes certified by the department but not earlier than May 31,
7 2002.

8 (4) Tax credits under this act may be claimed or otherwise
9 used pursuant to this act with respect to tax liability relating
10 to the certified investor's tax year that begins on or after
11 January 1, 2002.

12 (5) An applicant shall pay a nonrefundable application fee
13 of \$7,500.00 at the time of filing the application with the
14 department.

15 (6) A certified capital company's net worth at the time of
16 seeking certification shall be at least \$500,000.00, which shall
17 be determined by the unencumbered cash, marketable securities,
18 and other liquid assets of the certified capital company.

19 (7) The department shall review the organizational documents
20 of each applicant for certification and the business history of
21 the applicant and determine whether the applicant's net worth in
22 the form of unencumbered cash, marketable securities, and other
23 liquid assets is at least \$500,000.00. The department shall
24 require that an applicant for certification as a certified capi-
25 tal company submit both of the following with its application:

26 (a) An audited balance sheet that contains an unqualified
27 opinion of an independent certified public accountant issued not

1 more than 35 days before the application date that states whether
2 the applicant is in compliance with the net worth requirements
3 under subsection (6).

4 (b) Copies of all offering materials sent by the applicant
5 to potential certified investors or drafts of offering
6 materials.

7 (8) At least 2 principals of the certified capital company
8 or a person employed to manage the funds of the certified capital
9 company shall have not less than 2 years of experience in the
10 venture capital industry.

11 (9) Any offering material involving the sale of securities
12 of the certified capital company shall include the following
13 statement:

14 "By authorizing the formation of a certified capital com-
15 pany, this state does not necessarily endorse the quality of man-
16 agement or the potential for earnings of that company and is not
17 liable for damages or losses to a certified investor in the
18 company. Use of the word "certified" in an offering does not
19 constitute a recommendation or endorsement of the investment by
20 this state, the department of treasury, or the Michigan economic
21 development corporation.

22 Investments in a prospective certified capital company prior
23 to the time the company is certified are not eligible for tax
24 credits. If any provision of this act is violated, the state may
25 require forfeiture of unused tax credits and repayment of used
26 tax credits."

1 (10) Within 30 days after the application is filed, the
2 department shall issue a certification as a certified capital
3 company or shall refuse to issue a certification as a certified
4 capital company. If the department refuses to issue a certifica-
5 tion as a certified capital company, the department shall commu-
6 nicate in detail to the applicant the grounds for the refusal,
7 including suggestions for remediation.

8 (11) The department shall review all applications in the
9 order in which they are received by the department. If the
10 department receives more than 1 application on the same day, the
11 department shall consider the applications to have been received
12 simultaneously, except that an application that is incomplete or
13 an application for which the department has requested additional
14 information and that information has not been provided within a
15 reasonable time as determined by the department, is considered to
16 have been received on the date that the additional information is
17 submitted rather than on the date that the application was origi-
18 nally submitted.

19 (12) No insurer or any affiliate of an insurer shall do any
20 of the following:

21 (a) Directly or indirectly beneficially own, whether through
22 rights, options, or convertible interests, 10% or more of the
23 equity securities of a certified capital company.

24 (b) Manage a certified capital company.

25 (c) Control the direction of investments for a certified
26 capital company.

1 (13) A certified capital company may obtain a guaranty,
2 indemnity, bond, insurance policy, or other payment undertaking
3 for the benefit of its certified investors from any entity pro-
4 vided that in no case shall more than 1 certified investor of a
5 certified capital company or affiliate of that certified investor
6 be entitled to provide the guaranty, indemnity, bond, insurance
7 policy, or other payment undertaking for the benefit of the cer-
8 tified investors of the certified capital company and its affili-
9 ates in this state.

10 (14) Subsection (12) does not preclude a certified investor
11 or any other person from exercising its legal rights and reme-
12 dies, including interim management of a certified capital com-
13 pany, in the event that a certified capital company is in default
14 of its statutory obligations or its contractual obligations to a
15 certified investor or any other person.

16 Sec. 5. (1) A certified capital company shall make quali-
17 fied investments according to the following schedule:

18 (a) Within 3 years after its allocation date, a certified
19 capital company shall have made qualified investments cumula-
20 tively equal to at least 30% of its certified capital.

21 (b) Within 5 years after its allocation date, a certified
22 capital company shall have made qualified investments cumula-
23 tively equal to at least 50% of its certified capital.

24 (c) All certified capital not placed in qualified invest-
25 ments by the certified capital company may be held or invested in
26 a manner that the certified capital company, in its discretion,
27 considers appropriate. Invested funds returned to a certified

1 capital company after being originally placed in qualified
2 investments may be placed again in qualified investments and
3 shall count toward any requirement of this act with respect to
4 making qualified investments with certified capital.

5 (d) For purposes of satisfying the percentage requirements
6 of this subsection, a certified capital company is considered to
7 have invested \$2.00 for every \$1.00 invested in a qualified busi-
8 ness that has its principal business operations located in 1 or
9 more eligible distressed areas.

10 (2) Any business that is classified as a qualified business
11 at the time of the first investment in that business by a certi-
12 fied capital company shall remain classified as a qualified busi-
13 ness and may receive subsequent investments from any certified
14 capital company, and the subsequent investments shall constitute
15 qualified investments, even though the business may not meet the
16 definition of a qualified business at the time of the follow-on
17 investments.

18 (3) An area that is an eligible distressed area at the time
19 of the first qualified investment in a business with its princi-
20 pal business operations located in the eligible distressed area
21 shall continue to be considered an eligible distressed area for
22 purposes of subsequent investments by any certified capital com-
23 pany in a business with its principal business operations located
24 in the eligible distressed area, even if the area no longer meets
25 the definition of eligible distressed area at the time of the
26 subsequent investment.

1 (4) A certified capital company shall not invest more than
2 15% of its certified capital in any 1 qualified business.

3 (5) The aggregate cumulative amount of all qualified invest-
4 ments made by the certified capital company from its allocation
5 date will be considered in the calculation of the percentage
6 requirements under this act.

7 (6) Each certified capital company shall report all of the
8 following to the department and to the Michigan economic develop-
9 ment corporation:

10 (a) As soon as practicable after the receipt of certified
11 capital, the name of each certified investor from which the cer-
12 tified capital was received, including the certified investor's
13 tax identification number, the amount of each certified
14 investor's investment of certified capital and tax credits, and
15 the date on which the certified capital was received.

16 (b) On or before January 31 of each year, all of the
17 following:

18 (i) The amount of the certified capital company's certified
19 capital at the end of the immediately preceding calendar year.

20 (ii) Whether or not the certified capital company has
21 invested more than 15% of its total certified capital in any
22 1 business.

23 (iii) A description of all qualified investments that the
24 certified capital company made during the immediately preceding
25 calendar year.

1 (iv) A description of all investments in early stage
2 businesses engaged in high-technology activity made during the
3 immediately preceding calendar year.

4 (v) A description of all investments in qualified businesses
5 with principal business locations in 1 or more eligible dis-
6 tressed areas made during the immediately preceding calendar
7 year.

8 (c) Within 90 days after the close of each fiscal year of
9 the certified capital company, an audited financial statement
10 which shall include the opinion of an independent certified
11 public accountant.

12 (d) Within 90 days after the close of each fiscal year of
13 the certified capital company, a report prepared by the indepen-
14 dent certified public accountant responsible for the financial
15 statement under subdivision (c) addressing the methods of opera-
16 tion and conduct of the business of the certified capital company
17 to determine if the certified capital company is complying with
18 applicable statutes and rules and that the funds received by the
19 certified capital company have been invested as required under
20 this act.

21 (e) On or before January 31 of each year, each certified
22 capital company shall pay an annual, nonrefundable certification
23 fee of \$5,000.00 to the department, which shall not be required
24 to be paid if the due date falls within 6 months of the initial
25 allocation date of a certified capital company.

26 (f) On or before January 31 of each year, an annual report
27 of the economic impact of the investments made by the certified

1 capital company in the immediately preceding calendar year with
2 specific identification of the investment in qualified businesses
3 engaged in high-technology activity or with principal business
4 operations located in 1 or more eligible distressed areas.

5 Sec. 6. (1) Before making a proposed investment in a spe-
6 cific business, a certified capital company may request a written
7 opinion from the department as to whether the business in which
8 the certified capital company proposes to invest is a qualified
9 business and if the request is made in writing by a certified
10 capital company, an opinion from the Michigan economic develop-
11 ment corporation as to whether the business in which the certi-
12 fied capital company proposes to invest is an early stage busi-
13 ness engaged in high-technology activity or has its principal
14 business operations located in 1 or more eligible distressed
15 areas.

16 (2) The department or the Michigan economic development cor-
17 poration, as applicable, shall notify the certified capital com-
18 pany of its opinion not more than 10 days after the request is
19 made.

20 (3) If the department determines that the business does not
21 meet the definition of a qualified business, the department shall
22 provide the certified capital company with an explanation of its
23 determination. If the Michigan economic development corporation
24 determines that the business is not an early stage business
25 engaged in high-technology activity or that the business does not
26 have its principal business operations located in 1 or more
27 eligible distressed areas, the Michigan economic development

1 corporation shall provide the certified capital company with an
2 explanation of its determination.

3 (4) If the department fails to respond within the 10-day
4 period allowed under this section to a request for an opinion as
5 to whether a business is a qualified business, the business is
6 considered a qualified business for purposes of this act. If the
7 Michigan economic development corporation fails to respond within
8 the 10-day period allowed under this section to a request for an
9 opinion whether a business is an early stage business engaged in
10 high-technology activity, the business is considered an early
11 stage business engaged in high-technology activity for purposes
12 of this act. If the Michigan economic development corporation
13 fails to respond within the 10-day period allowed under this sec-
14 tion to a request for an opinion as to whether a business has its
15 principal business operations located in 1 or more eligible dis-
16 tressed areas, the business is considered to have its principal
17 business operations located in 1 or more eligible distressed
18 areas for purposes of this act.

19 (5) The department may determine that a business is a quali-
20 fied business or the Michigan economic development corporation
21 may determine that a business is an early stage business engaged
22 in high-technology activity for purposes of this act even if the
23 business does not meet either definition of a qualified business
24 or an early stage business engaged in high-technology activity
25 contained in this act if the department or the Michigan economic
26 development corporation, as applicable, determines that an

1 investment in the business by a certified capital company would
2 further economic development in this state.

3 (6) Each applicant shall certify in the application form
4 that it has contacted the Michigan economic development corpora-
5 tion for information identifying businesses or industries in this
6 state that are or may be eligible for qualified investments based
7 on the likelihood that those businesses or industries will qual-
8 ify as a qualified business or an early stage business engaged in
9 high-technology activity, or that the businesses or industries
10 have their principal business operations located in 1 or more
11 eligible distressed areas, and for which this state may have sig-
12 nificant location or structural advantages.

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

15 (2) In order to make a distribution or payment from certi-
16 fied capital other than a qualified distribution or a distribu-
17 tion or payment permitted under subsection (3), a certified capi-
18 tal company must have made qualified investments in an amount
19 cumulatively equal to at least 100% of its certified capital with
20 at least 20% of its certified capital invested in early stage
21 businesses engaged in high-technology activity.

22 (3) Payments to debt holders of a certified capital company
23 may be made without restriction with respect to repayments of
24 principal and interest on indebtedness owed to them by a certi-
25 fied capital company, including indebtedness of the certified
26 capital company on which certified investors earned tax credits.
27 A debt holder that is also a certified investor or equity holder

1 of a certified capital company may receive payments with respect
2 to the debt without restrictions.

3 (4) The department shall determine annually whether the
4 aggregate total of distributions from certified capital, not
5 including qualified distributions, to each certified capital
6 company's certified investors and equity holders, when combined
7 with all tax credits allocated to and utilized by the certified
8 investors under this act, have resulted in an annual internal
9 rate of return that exceeds 15% on the certified capital allo-
10 cated to the certified investors of the certified capital company
11 plus any additional capital contributions to the certified capi-
12 tal company.

13 (5) If, as of the date of any determination under
14 subsection (4), the certified capital company's annual internal
15 rate of return, as determined under subsection (4), exceeds 15%,
16 the certified capital company shall pay to the department within
17 30 days of the determination an amount equal to 30% of any subse-
18 quent distributions from the certified capital, other than quali-
19 fied distributions, above the amount required to produce a
20 15% return.

21 Sec. 8. (1) The department shall conduct an annual review
22 of each certified capital company to determine if the certified
23 capital company is abiding by the requirements of certification,
24 to advise the certified capital company as to the eligibility
25 status of its qualified investments, and to ensure that its
26 investments have not been made in violation of this act. The

1 department shall not charge more than \$5,000.00 for the annual
2 review and shall be paid by each certified capital company.

3 (2) Any material violation of section 5 is grounds for
4 decertification of a certified capital company. If the depart-
5 ment determines that a certified capital company is not in com-
6 pliance with section 5, the department shall, by written notice,
7 inform the officers of the certified capital company that the
8 certified capital company may be subject to decertification in
9 120 days from the date of mailing of the notice unless the defi-
10 ciencies are corrected and the certified capital company is again
11 in compliance with all requirements for certification.

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

17 (4) Decertification of a certified capital company may cause
18 the recapture of tax credits previously claimed and the forfei-
19 ture of future tax credits to be claimed by certified investors
20 with respect to the certified capital company, as follows:

21 (a) Decertification of a certified capital company before
22 the certified capital company has met the requirements of
23 section 5(1)(a) shall cause the recapture of all tax credits pre-
24 viously claimed and the forfeiture of all future tax credits to
25 be claimed by certified investors with respect to the certified
26 capital company.

1 (b) If after initial certification a certified capital
2 company subsequently fails to meet the requirements for
3 certification under section 5(1)(b) after having met the require-
4 ments for certification under section 5(1)(a), the first 30% of
5 vested tax credits that may be claimed by each certified investor
6 of the certified capital company under section 3 will not be
7 subject to recapture or forfeiture. However, the remainder of
8 the vested tax credits of each certified investor of the certi-
9 fied capital company shall be subject to recapture or
10 forfeiture.

11 (c) If a certified capital company has met all requirements
12 for certification under section 5(1)(a) and (b) and is subse-
13 quently decertified, the first 50% of the vested tax credits that
14 may be claimed by each certified investor of the certified capi-
15 tal company under section 3 will not be subject to recapture or
16 forfeiture. However, the remainder of the vested tax credits of
17 each certified investor of the certified capital company shall be
18 subject to recapture or to forfeiture if the certified capital
19 company is decertified within 3 years after its allocation date.

20 (d) If a certified capital company has invested an amount
21 cumulatively equal to 100% of its certified capital in qualified
22 investments, all tax credits claimed or to be claimed by its cer-
23 tified investors are no longer subject to recapture or
24 forfeiture.

25 (5) If a certified capital company has invested an amount
26 cumulatively equal to 100% of its certified capital in qualified
27 investments and has met all other requirements under this act,

1 the certified capital company is no longer subject to regulation
2 by the department and is no longer subject to the requirements of
3 this act.

4 (6) The department shall send written notice to the address
5 of each certified investor whose tax credit has been subject to
6 recapture or forfeiture using the address shown on the last tax
7 filing.

8 Sec. 9. A certified investor may transfer or sell a vested
9 credit according to rules promulgated by the department only to
10 an individual, corporation, association, partnership, or other
11 legal entity subject to tax under section 22f of the single busi-
12 ness tax act, 1975 PA 228, MCL 208.22f. Any transfer or sale
13 does not affect the time schedule for taking the tax credits as
14 provided in this act. Any tax credit amount recaptured pursuant
15 to section 8 shall be the liability of the taxpayer that actually
16 claimed the tax credit.