

CHAPTER 335

INSURANCE

HOUSE BILL 01-1097

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also SENATOR(S) Matsunaka, Hernandez, and Linkhart.

AN ACT

CONCERNING CREATION OF THE "CERTIFIED CAPITAL COMPANY ACT", AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 3.5
Certified Capital Companies

10-3.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "CERTIFIED CAPITAL COMPANY ACT".

10-3.5-102. Legislative declaration. 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.

10-3.5-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) (a) "AFFILIATE", WITH RESPECT TO A CERTIFIED CAPITAL COMPANY OR INSURANCE COMPANY, MEANS:

(I) ANY PERSON WHO, DIRECTLY OR INDIRECTLY, BENEFICIALLY OWNS (WHETHER THROUGH RIGHTS, OPTIONS, CONVERTIBLE INTERESTS, OR OTHERWISE), CONTROLS,

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

OR HOLDS POWER TO VOTE FIFTEEN PERCENT OR MORE OF THE OUTSTANDING VOTING SECURITIES OR OTHER VOTING OWNERSHIP INTERESTS OF THE CERTIFIED CAPITAL COMPANY OR INSURANCE COMPANY, AS APPLICABLE;

(II) ANY PERSON, FIFTEEN PERCENT OR MORE OF WHOSE OUTSTANDING VOTING SECURITIES OR OTHER VOTING OWNERSHIP INTERESTS ARE DIRECTLY OR INDIRECTLY BENEFICIALLY OWNED (WHETHER THROUGH RIGHTS, OPTIONS, CONVERTIBLE INTERESTS, OR OTHERWISE), CONTROLLED, OR HELD WITH POWER TO VOTE BY THE CERTIFIED CAPITAL COMPANY OR INSURANCE COMPANY, AS APPLICABLE;

(III) ANY PERSON WHO, DIRECTLY OR INDIRECTLY, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE CERTIFIED CAPITAL COMPANY OR INSURANCE COMPANY, AS APPLICABLE;

(IV) A PARTNERSHIP IN WHICH THE CERTIFIED CAPITAL COMPANY OR INSURANCE COMPANY, AS APPLICABLE, IS A GENERAL PARTNER; OR

(V) ANY PERSON WHO IS AN OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF THE CERTIFIED CAPITAL COMPANY OR INSURANCE COMPANY, AS APPLICABLE, OR AN IMMEDIATE FAMILY MEMBER OF SUCH OFFICER, DIRECTOR, EMPLOYEE, OR AGENT.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (1), AN INVESTMENT BY A CERTIFIED INVESTOR IN A CERTIFIED CAPITAL COMPANY PURSUANT TO AN ALLOCATION OF PREMIUM TAX CREDITS IN ACCORDANCE WITH SECTION 10-3.5-106 SHALL NOT CAUSE SUCH CERTIFIED CAPITAL COMPANY TO BECOME AN AFFILIATE OF SUCH CERTIFIED INVESTOR.

(2) "ALLOCATION DATE" MEANS THE DATE ON WHICH THE OFFICE ALLOCATES PREMIUM TAX CREDITS TO THE CERTIFIED INVESTORS OF A CERTIFIED CAPITAL COMPANY.

(3) "CERTIFIED CAPITAL" MEANS AN AMOUNT OF CASH THAT:

(a) IS INVESTED BY A CERTIFIED INVESTOR IN A CERTIFIED CAPITAL COMPANY; AND

(b) FULLY FUNDS THE PURCHASE PRICE OF EITHER OR BOTH THE CERTIFIED INVESTOR'S EQUITY INTEREST IN THE CERTIFIED CAPITAL COMPANY OR A QUALIFIED DEBT INSTRUMENT ISSUED BY THE CERTIFIED CAPITAL COMPANY.

(4) "CERTIFIED CAPITAL COMPANY" MEANS A PARTNERSHIP, CORPORATION, TRUST, OR LIMITED LIABILITY COMPANY, ORGANIZED ON A FOR-PROFIT BASIS, THAT HAS ITS PRINCIPAL OFFICE LOCATED OR IS HEADQUARTERED IN COLORADO, THAT HAS AS ITS PRIMARY BUSINESS ACTIVITY THE INVESTMENT OF CASH IN QUALIFIED BUSINESSES OR QUALIFIED RURAL BUSINESSES, AND THAT IS CERTIFIED BY THE OFFICE AS MEETING THE CRITERIA OF THIS ARTICLE.

(5) "CERTIFIED INVESTOR" MEANS ANY INSURANCE COMPANY THAT CONTRIBUTES CERTIFIED CAPITAL PURSUANT TO AN ALLOCATION OF PREMIUM TAX CREDITS AS SET FORTH IN SECTION 10-3.5-106.

(6) "DESIGNATED RURAL COUNTY" MEANS ANY COUNTY, BUT NOT ANY CITY AND

COUNTY, IN THIS STATE THAT, AS OF THE EFFECTIVE DATE OF THIS ARTICLE, HAS A POPULATION OF NOT MORE THAN ONE HUNDRED FIFTY THOUSAND PEOPLE AND, IF THE COUNTY'S POPULATION EXCEEDS TWENTY THOUSAND PEOPLE, THAT HAS A GROWTH RATE THAT DOES NOT EXCEED THE STATEWIDE AVERAGE FOR THE PERIOD 1990-2000 BY MORE THAN TWENTY-FIVE PERCENT AS DEFINED IN THE TWO MOST RECENT DECENNIAL CENSUSES.

(7) "DISTRESSED URBAN COMMUNITY" MEANS ANY COUNTY OR PORTION OF A COUNTY IN THIS STATE AS DEFINED BY THE OFFICE.

(8) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT, CREATED IN SECTION 24-48.5-101, C.R.S.

(9) "PERSON" MEANS ANY NATURAL PERSON OR ENTITY, INCLUDING WITHOUT LIMITATION A CORPORATION, GENERAL OR LIMITED PARTNERSHIP, TRUST, OR LIMITED LIABILITY COMPANY.

(10) "PREMIUM TAX CREDIT ALLOCATION CLAIM" MEANS A CLAIM FOR ALLOCATION OF PREMIUM TAX CREDITS PREPARED AND EXECUTED BY A CERTIFIED INVESTOR ON A FORM PROVIDED BY THE OFFICE AND FILED BY A CERTIFIED CAPITAL COMPANY WITH THE OFFICE. THE FORM SHALL INDICATE WHETHER THE PREMIUM TAX CREDIT ALLOCATION CLAIM IS FOR AN ALLOCATION OF PREMIUM TAX CREDITS PURSUANT TO SECTION 10-3.5-106 (2) (a) (I), (2) (a) (II), (2) (b) (I), OR (2) (b) (II), AND SHALL INCLUDE AN AFFIDAVIT OF THE CERTIFIED INVESTOR PURSUANT TO WHICH SUCH CERTIFIED INVESTOR SHALL BECOME LEGALLY BOUND AND IRREVOCABLY COMMITTED TO MAKE AN INVESTMENT OF CERTIFIED CAPITAL IN A CERTIFIED CAPITAL COMPANY IN THE AMOUNT ALLOCATED, EVEN IF SUCH AMOUNT IS LESS THAN THE AMOUNT OF THE CLAIM, SUBJECT ONLY TO THE RECEIPT OF AN ALLOCATION PURSUANT TO SECTION 10-3.5-106.

(11) "QUALIFIED BUSINESS" MEANS A BUSINESS THAT MEETS ALL OF THE FOLLOWING CONDITIONS AS OF THE TIME OF A CERTIFIED CAPITAL COMPANY'S FIRST INVESTMENT IN THE BUSINESS:

(a) IT IS HEADQUARTERED IN THIS STATE, AND ITS PRINCIPAL BUSINESS OPERATIONS ARE LOCATED IN THIS STATE;

(b) 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) IT IS NOT A BUSINESS PREDOMINANTLY ENGAGED IN PROFESSIONAL SERVICES PROVIDED BY ACCOUNTANTS OR LAWYERS.

(12) "QUALIFIED DEBT INSTRUMENT" MEANS A DEBT INSTRUMENT ISSUED BY A CERTIFIED CAPITAL COMPANY, AT PAR VALUE OR A PREMIUM, WITH AN ORIGINAL MATURITY DATE OF AT LEAST FIVE YEARS AFTER THE DATE OF ISSUANCE, A REPAYMENT SCHEDULE THAT IS NO FASTER THAN A LEVEL PRINCIPAL AMORTIZATION OVER FIVE YEARS, AND INTEREST, DISTRIBUTION, OR PAYMENT FEATURES THAT ARE NOT RELATED TO THE PROFITABILITY OF THE CERTIFIED CAPITAL COMPANY OR THE PERFORMANCE OF THE CERTIFIED CAPITAL COMPANY'S INVESTMENT PORTFOLIO.

(13) "QUALIFIED DISTRIBUTION" MEANS ANY DISTRIBUTION OUT OF CERTIFIED CAPITAL IN CONNECTION WITH ANY OF THE FOLLOWING:

(a) REASONABLE COSTS AND EXPENSES OF FORMING, SYNDICATING, AND ORGANIZING THE CERTIFIED CAPITAL COMPANY, INCLUDING REASONABLE AND NECESSARY FEES PAID FOR PROFESSIONAL SERVICES, INCLUDING, BUT NOT LIMITED TO, LEGAL AND ACCOUNTING SERVICES, RELATED TO THE FORMATION OF THE CERTIFIED CAPITAL COMPANY, AND THE COST OF FINANCING AND INSURING THE OBLIGATIONS OF THE CERTIFIED CAPITAL COMPANY;

(b) REASONABLE COSTS AND EXPENSES OF MANAGING AND OPERATING THE CERTIFIED CAPITAL COMPANY, INCLUDING AN ANNUAL MANAGEMENT FEE IN AN AMOUNT THAT DOES NOT EXCEED TWO AND ONE-HALF PERCENT OF CERTIFIED CAPITAL; EXCEPT THAT NO SUCH COST OR EXPENSE SHALL BE PAID TO A CERTIFIED INVESTOR OR AFFILIATE OF A CERTIFIED INVESTOR AND THAT SUCH COSTS AND EXPENSES IN THE AGGREGATE SHALL NOT EXCEED FIVE PERCENT OF CERTIFIED CAPITAL IN ANY ONE YEAR;

(c) REASONABLE AND NECESSARY FEES IN ACCORDANCE WITH INDUSTRY CUSTOM FOR PROFESSIONAL SERVICES, INCLUDING, BUT NOT LIMITED TO, LEGAL AND ACCOUNTING SERVICES, RELATED TO THE OPERATION OF THE CERTIFIED CAPITAL COMPANY; AND

(d) ANY PROJECTED INCREASE IN FEDERAL OR STATE TAXES, INCLUDING PENALTIES AND INTEREST RELATED TO STATE AND FEDERAL INCOME TAXES, OF THE EQUITY OWNERS OF A CERTIFIED CAPITAL COMPANY RESULTING FROM A TAX LIABILITY OF THE CERTIFIED CAPITAL COMPANY TO THE EXTENT THAT THE INCREASE IS RELATED TO THE OWNERSHIP, MANAGEMENT, OR OPERATION OF A CERTIFIED CAPITAL COMPANY.

(14) "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.

(15) "QUALIFIED RURAL BUSINESS" MEANS A QUALIFIED BUSINESS THAT HAS ITS PRINCIPAL BUSINESS OPERATIONS IN A DESIGNATED RURAL COUNTY.

(16) "STATE PREMIUM TAX LIABILITY" MEANS ANY LIABILITY INCURRED BY AN INSURANCE COMPANY UNDER THE PROVISIONS OF SECTIONS 10-3-209 AND 10-6-128, OR, IN THE CASE OF A REPEAL OR REDUCTION BY THE STATE OF THE LIABILITY IMPOSED BY SECTIONS 10-3-209 OR 10-6-128, ANY OTHER TAX LIABILITY IMPOSED UPON AN INSURANCE COMPANY BY THE STATE.

10-3.5-104. Certification - fees. (1) THE OFFICE SHALL ESTABLISH BY RULE THE PROCEDURES FOR MAKING AN APPLICATION TO BECOME A CERTIFIED CAPITAL COMPANY.

(2) AN APPLICANT SHALL:

(a) FILE AN APPLICATION WITH THE OFFICE;

(b) PAY A NONREFUNDABLE APPLICATION FEE OF SEVEN THOUSAND FIVE HUNDRED DOLLARS AT THE TIME OF FILING THE APPLICATION;

(c) HAVE AN EQUITY CAPITALIZATION AT THE TIME OF SEEKING CERTIFICATION OF FIVE HUNDRED THOUSAND DOLLARS OR MORE IN THE FORM OF UNENCUMBERED CASH, MARKETABLE SECURITIES, OR OTHER LIQUID ASSETS. THE APPLICANT SHALL SUBMIT AS PART OF ITS APPLICATION AN AUDITED BALANCE SHEET THAT CONTAINS AN UNQUALIFIED OPINION OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT ISSUED NOT MORE THAN THIRTY-FIVE DAYS BEFORE THE APPLICATION DATE THAT STATES WHETHER THE APPLICANT SATISFIES THIS EQUITY CAPITALIZATION REQUIREMENT.

(d) HAVE AT LEAST TWO PRINCIPALS OR AT LEAST TWO PERSONS EMPLOYED TO MANAGE THE FUNDS WHO EACH HAVE AT LEAST TWO YEARS OF MONEY MANAGEMENT EXPERIENCE IN THE VENTURE CAPITAL INDUSTRY; EXCEPT THAT AN APPLICANT THAT SEEKS TO BE CERTIFIED WITH RESPECT TO PREMIUM TAX CREDITS TO BE ALLOCATED PURSUANT TO SECTION 10-3.5-106 (2) (a) (I) OR (2) (b) (I) NEED ONLY HAVE AT LEAST TWO PRINCIPALS OR AT LEAST TWO PERSONS EMPLOYED TO MANAGE THE FUNDS WHO EACH HAVE AT LEAST TWO YEARS OF EXPERIENCE IN EITHER THE VENTURE CAPITAL OR INVESTMENT BANKING INDUSTRY.

(3) THE OFFICE SHALL VERIFY WHETHER THE APPLICANT MEETS THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION.

(4) ANY OFFERING MATERIAL INVOLVING THE SALE OF SECURITIES OF THE CERTIFIED CAPITAL COMPANY SHALL INCLUDE THE FOLLOWING STATEMENT:

"BY AUTHORIZING THE FORMATION OF A CERTIFIED CAPITAL COMPANY, THE STATE DOES NOT NECESSARILY ENDORSE THE QUALITY OF MANAGEMENT OR THE POTENTIAL FOR EARNINGS OF SUCH COMPANY AND IS NOT LIABLE FOR DAMAGES OR LOSSES TO A CERTIFIED INVESTOR IN THE COMPANY. USE OF THE WORD "CERTIFIED" IN AN OFFERING DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE INVESTMENT BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT. IF ANY APPLICABLE PROVISIONS OF THE "CERTIFIED CAPITAL COMPANY ACT" ARE VIOLATED, THE STATE MAY REQUIRE FORFEITURE OF UNUSED PREMIUM TAX CREDITS AND REPAYMENT OF USED PREMIUM TAX CREDITS."

(5) THE OFFICE SHALL STAMP APPLICATIONS FOR CERTIFICATION WITH THE DATE AND TIME OF RECEIPT. WITHIN THIRTY DAYS AFTER RECEIPT OF AN APPLICATION, THE OFFICE SHALL ISSUE THE CERTIFICATION OR REFUSE THE CERTIFICATION AND COMMUNICATE IN DETAIL TO THE APPLICANT THE GROUNDS FOR THE REFUSAL, INCLUDING SUGGESTIONS FOR THE REMOVAL OF SUCH GROUNDS. THE OFFICE SHALL REVIEW AND APPROVE OR REJECT APPLICATIONS IN THE ORDER SUBMITTED, TREATING ALL APPLICATIONS RECEIVED ON THE SAME DAY AS BEING RECEIVED SIMULTANEOUSLY; EXCEPT THAT AN APPLICATION THAT IS INCOMPLETE OR FOR WHICH ADDITIONAL INFORMATION IS REQUESTED BY THE OFFICE SHALL BE TREATED AS HAVING BEEN RECEIVED ON THE DATE ORIGINALLY SUBMITTED ONLY IF THE APPLICANT SUBMITS THE ADDITIONAL INFORMATION WITHIN FIFTEEN DAYS AFTER THE

OFFICE'S REQUEST. THE DEADLINE FOR REVIEW MAY BE EXTENDED BY THE OFFICE AN ADDITIONAL TEN DAYS. THE CERTIFICATION ISSUED BY THE OFFICE SHALL INDICATE WHETHER THE CERTIFICATION IS APPLICABLE ONLY TO CREDITS TO BE ALLOCATED PURSUANT TO SECTION 10-3.5-106 (2) (a) (I) OR (2) (b) (I).

(6) (a) NO INSURANCE COMPANY OR AFFILIATE OF AN INSURANCE COMPANY SHALL, DIRECTLY OR INDIRECTLY:

(I) BENEFICIALLY OWN, WHETHER THROUGH RIGHTS, OPTIONS, CONVERTIBLE INTERESTS, OR OTHERWISE, FIFTEEN PERCENT OR MORE OF THE VOTING SECURITIES OR OTHER VOTING OWNERSHIP INTERESTS OF A CERTIFIED CAPITAL COMPANY;

(II) MANAGE A CERTIFIED CAPITAL COMPANY; OR

(III) CONTROL THE DIRECTION OF INVESTMENTS FOR A CERTIFIED CAPITAL COMPANY.

(b) A CERTIFIED CAPITAL COMPANY MAY OBTAIN A GUARANTY, INDEMNITY, BOND, INSURANCE POLICY, OR OTHER PAYMENT UNDERTAKING FOR THE BENEFIT OF ITS CERTIFIED INVESTORS FROM ANY ENTITY; EXCEPT THAT IN NO CASE SHALL MORE THAN ONE CERTIFIED INVESTOR OF SUCH CERTIFIED CAPITAL COMPANY OR AFFILIATE OF SUCH CERTIFIED INVESTOR BE ENTITLED TO PROVIDE SUCH GUARANTY, INDEMNITY, BOND, INSURANCE POLICY, OR OTHER PAYMENT UNDERTAKING IN FAVOR OF THE CERTIFIED INVESTORS OF THE CERTIFIED CAPITAL COMPANY AND ITS AFFILIATES IN THIS STATE.

(c) THIS SUBSECTION (6) SHALL NOT PRECLUDE A CERTIFIED INVESTOR, INSURANCE COMPANY, OR OTHER PARTY FROM EXERCISING ITS LEGAL RIGHTS AND REMEDIES, INCLUDING, WITHOUT LIMITATION, INTERIM MANAGEMENT OF A CERTIFIED CAPITAL COMPANY, IN THE EVENT THAT A CERTIFIED CAPITAL COMPANY IS IN DEFAULT OF ITS STATUTORY OBLIGATIONS OR ITS CONTRACTUAL OBLIGATIONS TO SUCH CERTIFIED INVESTOR, INSURANCE COMPANY, OR OTHER PARTY.

10-3.5-105. Premium tax credit. (1) ANY CERTIFIED INVESTOR THAT MAKES AN INVESTMENT OF CERTIFIED CAPITAL PURSUANT TO AN ALLOCATION OF PREMIUM TAX CREDITS AS SET FORTH IN SECTION 10-3.5-106 SHALL, DURING THE YEAR OF INVESTMENT, EARN A VESTED CREDIT AGAINST STATE PREMIUM TAX LIABILITY EQUAL TO ONE HUNDRED PERCENT OF THE CERTIFIED INVESTOR'S INVESTMENT OF CERTIFIED CAPITAL. WITH RESPECT TO INVESTMENTS OF CERTIFIED CAPITAL MADE SUBSEQUENT TO JANUARY 31, 2002, BUT PRIOR TO JANUARY 31, 2004, A CERTIFIED INVESTOR SHALL BE ENTITLED TO TAKE UP TO TEN PERCENT OF THE VESTED PREMIUM TAX CREDIT EACH YEAR BEGINNING IN TAX YEAR 2003 AND CONTINUING THEREAFTER FOR TEN YEARS OR, IF THE CREDIT IS CARRIED FORWARD PURSUANT TO SUBSECTION (2) OF THIS SECTION, UNTIL THE CREDIT IS FULLY UTILIZED. WITH RESPECT TO INVESTMENTS OF CERTIFIED CAPITAL MADE SUBSEQUENT TO JANUARY 31, 2004, A CERTIFIED INVESTOR SHALL BE ENTITLED TO TAKE UP TO TEN PERCENT OF THE VESTED PREMIUM TAX CREDIT EACH YEAR BEGINNING IN TAX YEAR 2005 AND CONTINUING THEREAFTER FOR TEN YEARS OR, IF THE CREDIT IS CARRIED FORWARD PURSUANT TO SUBSECTION (2) OF THIS SECTION, UNTIL THE CREDIT IS FULLY UTILIZED.

(2) THE CREDIT TO BE APPLIED AGAINST STATE PREMIUM TAX LIABILITY IN ANY ONE

YEAR SHALL NOT EXCEED THE STATE PREMIUM TAX LIABILITY OF THE CERTIFIED INVESTOR FOR SUCH TAXABLE YEAR. ALL UNUSED CREDITS AGAINST STATE PREMIUM TAX LIABILITY MAY BE CARRIED FORWARD FOR UP TO TEN YEARS FROM THE DATE ON WHICH THE CREDIT MAY FIRST BE UTILIZED.

(3) A CERTIFIED INVESTOR CLAIMING A CREDIT AGAINST STATE PREMIUM TAX LIABILITY EARNED THROUGH AN INVESTMENT IN A CERTIFIED CAPITAL COMPANY SHALL NOT BE REQUIRED TO PAY ANY ADDITIONAL OR RETALIATORY TAX AS A RESULT OF CLAIMING SUCH CREDIT.

10-3.5-106. Aggregate limitations on credits. (1) THE AGGREGATE AMOUNT OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED FOR ALL CERTIFIED INVESTORS UNDER THIS ARTICLE SHALL NOT EXCEED THE AMOUNT THAT WOULD ENTITLE ALL CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES TO TAKE AGGREGATE CREDITS OF TEN MILLION DOLLARS PER YEAR FOR TEN YEARS BEGINNING IN TAX YEAR 2003, WHICH CERTIFIED CAPITAL MAY BE INVESTED IN CERTIFIED CAPITAL COMPANIES NO EARLIER THAN JANUARY 31, 2002, PLUS AN ADDITIONAL AMOUNT THAT WOULD ENTITLE ALL CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES TO TAKE AGGREGATE CREDITS OF TEN MILLION DOLLARS PER YEAR FOR TEN YEARS BEGINNING IN TAX YEAR 2005, WHICH CERTIFIED CAPITAL MAY BE INVESTED IN CERTIFIED CAPITAL COMPANIES NO EARLIER THAN JANUARY 31, 2004. A CERTIFIED CAPITAL COMPANY, ON AN AGGREGATE BASIS TOGETHER WITH ITS AFFILIATES, SHALL NOT FILE PREMIUM TAX CREDIT ALLOCATION CLAIMS IN EXCESS OF THE MAXIMUM AMOUNT OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS MAY BE ALLOWED AT THE TIME OF FILING AS PROVIDED IN THIS SUBSECTION (1); EXCEPT THAT A CERTIFIED CAPITAL COMPANY WHOSE CERTIFICATION IS APPLICABLE ONLY TO CREDITS TO BE ALLOCATED PURSUANT TO SECTION 10-3.5-106 (2) (a) (I) OR (2) (b) (I) SHALL NOT FILE PREMIUM TAX CREDIT ALLOCATION CLAIMS IN EXCESS OF THE MAXIMUM AMOUNT OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS MAY BE ALLOWED PURSUANT TO SUCH SECTION 10-3.5-106 (2) (a) (I) OR (2) (b) (I) AT THE TIME OF FILING.

(2) (a) WITH REGARD TO INVESTMENTS TO BE MADE IN CERTIFIED CAPITAL COMPANIES NO EARLIER THAN JANUARY 31, 2002, BUT PRIOR TO JANUARY 31, 2004:

(I) TWENTY-FIVE MILLION DOLLARS OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED SHALL BE ALLOCATED TO CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES IN THE ORDER IN WHICH PREMIUM TAX CREDIT ALLOCATION CLAIMS THAT REQUEST AN ALLOCATION OF PREMIUM TAX CREDITS UNDER THIS SUBPARAGRAPH (I) ARE FILED WITH THE OFFICE BY CERTIFIED CAPITAL COMPANIES ON BEHALF OF THEIR CERTIFIED INVESTORS; AND

(II) AFTER ALL TWENTY-FIVE MILLION DOLLARS HAVE BEEN ALLOCATED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), SEVENTY-FIVE MILLION DOLLARS OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED SHALL BE ALLOCATED TO CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES IN THE ORDER IN WHICH PREMIUM TAX CREDIT ALLOCATION CLAIMS THAT REQUEST AN ALLOCATION OF PREMIUM TAX CREDITS UNDER THIS SUBPARAGRAPH (II) ARE FILED WITH THE OFFICE BY CERTIFIED CAPITAL COMPANIES ON BEHALF OF THEIR CERTIFIED INVESTORS.

(b) WITH REGARD TO INVESTMENTS TO BE MADE IN CERTIFIED CAPITAL COMPANIES

AFTER JANUARY 31, 2004:

(I) TWENTY-FIVE MILLION DOLLARS OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED SHALL BE ALLOCATED TO CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES IN THE ORDER IN WHICH PREMIUM TAX CREDIT ALLOCATION CLAIMS THAT REQUEST AN ALLOCATION OF PREMIUM TAX CREDITS UNDER THIS SUBPARAGRAPH (I) ARE FILED WITH THE OFFICE BY CERTIFIED CAPITAL COMPANIES ON BEHALF OF THEIR CERTIFIED INVESTORS; AND

(II) AFTER ALL TWENTY-FIVE MILLION DOLLARS HAVE BEEN ALLOCATED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), SEVENTY-FIVE MILLION DOLLARS OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED SHALL BE ALLOCATED TO CERTIFIED INVESTORS IN CERTIFIED CAPITAL COMPANIES IN THE ORDER IN WHICH PREMIUM TAX CREDIT ALLOCATION CLAIMS THAT REQUEST AN ALLOCATION OF PREMIUM TAX CREDITS UNDER THIS SUBPARAGRAPH (II) ARE FILED WITH THE OFFICE BY CERTIFIED CAPITAL COMPANIES ON BEHALF OF THEIR CERTIFIED INVESTORS.

(3) IF TWO OR MORE CERTIFIED CAPITAL COMPANIES FILE PREMIUM TAX CREDIT ALLOCATION CLAIMS SEEKING AN ALLOCATION OF PREMIUM TAX CREDITS PURSUANT TO THE SAME SUBPARAGRAPH OF THE SAME PARAGRAPH OF SUBSECTION (2) OF THIS SECTION WITH THE OFFICE ON BEHALF OF THEIR RESPECTIVE CERTIFIED INVESTORS ON THE SAME DAY AND THE SUM OF SUCH PREMIUM TAX CREDIT ALLOCATION CLAIMS EXCEEDS, IN THE AGGREGATE, THE MAXIMUM AGGREGATE AMOUNT AVAILABLE UNDER SUCH PARTICULAR SUBPARAGRAPH AT THE TIME OF FILING, THE CAPITAL FOR WHICH PREMIUM TAX CREDITS ARE ALLOWED UNDER SUCH PARTICULAR SUBPARAGRAPH SHALL BE ALLOCATED AMONG THE CERTIFIED INVESTORS ON A PRO RATA BASIS. THE PRO RATA ALLOCATION FOR ANY ONE CERTIFIED INVESTOR SHALL BEAR THE SAME RELATION TO THE MAXIMUM AGGREGATE AMOUNT AVAILABLE UNDER SUCH PARTICULAR SUBPARAGRAPH AT THE TIME OF FILING, AS THAT CERTIFIED INVESTOR'S PREMIUM TAX CREDIT ALLOCATION CLAIM UNDER SUCH PARTICULAR SUBPARAGRAPH BEARS TO THE TOTAL OF ALL PREMIUM TAX CREDIT ALLOCATION CLAIMS SEEKING AN ALLOCATION OF PREMIUM TAX CREDITS PURSUANT TO THE SAME SUBPARAGRAPH OF THE SAME PARAGRAPH OF SUBSECTION (2) OF THIS SECTION FILED ON BEHALF OF ALL CERTIFIED INVESTORS ON THE SAME DAY.

(4) WITHIN FIVE BUSINESS DAYS AFTER THE OFFICE RECEIVES A PREMIUM TAX CREDIT ALLOCATION CLAIM FILED BY A CERTIFIED CAPITAL COMPANY ON BEHALF OF ONE OR MORE OF ITS CERTIFIED INVESTORS, THE OFFICE SHALL NOTIFY THE CERTIFIED CAPITAL COMPANY OF THE AMOUNT OF TAX CREDITS ALLOCATED TO EACH OF THE CERTIFIED INVESTORS IN SUCH CERTIFIED CAPITAL COMPANY.

(5) IF A CERTIFIED CAPITAL COMPANY DOES NOT RECEIVE AN INVESTMENT OF CERTIFIED CAPITAL EQUALING THE AMOUNT OF PREMIUM TAX CREDITS ALLOCATED TO A CERTIFIED INVESTOR FOR WHICH IT FILED A PREMIUM TAX CREDIT ALLOCATION CLAIM WITHIN FIVE BUSINESS DAYS AFTER ITS RECEIPT OF NOTICE OF ALLOCATION, THAT PORTION OF THE PREMIUM TAX CREDITS ALLOCATED TO SUCH CERTIFIED INVESTOR IN THE CERTIFIED CAPITAL COMPANY SHALL BE FORFEITED AND THE OFFICE SHALL REALLOCATE THE CERTIFIED CAPITAL AMONG THE OTHER CERTIFIED INVESTORS IN ALL CERTIFIED CAPITAL COMPANIES THAT FILED PREMIUM TAX CREDIT ALLOCATION CLAIMS UNDER THE SAME SUBPARAGRAPH UNDER WHICH THE FORFEITED CREDITS WERE ALLOCATED ON A PRO RATA BASIS IN ACCORDANCE WITH SUBSECTION (3) OF

THIS SECTION. THE OFFICE IS AUTHORIZED TO LEVY A FINE OF NOT MORE THAN FIFTY THOUSAND DOLLARS ON ANY CERTIFIED INVESTOR THAT DOES NOT INVEST THE FULL AMOUNT OF CERTIFIED CAPITAL ALLOCATED BY THE OFFICE TO SUCH INVESTOR IN ACCORDANCE WITH THE PREMIUM TAX CREDIT ALLOCATION CLAIM FILED ON ITS BEHALF.

(6) THE MAXIMUM AMOUNT OF PREMIUM TAX CREDIT ALLOCATION CLAIMS THAT ANY ONE CERTIFIED INVESTOR AND ITS AFFILIATES MAY FILE IN ONE OR MORE CERTIFIED CAPITAL COMPANIES SHALL NOT EXCEED FIFTEEN PERCENT OF THE MAXIMUM AGGREGATE AMOUNT AVAILABLE UNDER SUBSECTION (1) OF THIS SECTION AT THE TIME OF SUCH FILING; EXCEPT THAT A CERTIFIED INVESTOR THAT FILES A PREMIUM TAX CREDIT ALLOCATION CLAIM FOR AN INVESTMENT IN A CERTIFIED CAPITAL COMPANY WHOSE CERTIFICATION IS APPLICABLE ONLY TO CREDITS TO BE ALLOCATED PURSUANT TO SECTION 10-3.5-106 (2) (a) (I) OR (2) (b) (I) SHALL NOT FILE, ON AN AGGREGATE BASIS WITH ITS AFFILIATES, PREMIUM TAX CREDIT ALLOCATION CLAIMS IN EXCESS OF THE MAXIMUM AMOUNT OF CERTIFIED CAPITAL FOR WHICH PREMIUM TAX CREDITS MAY BE ALLOWED PURSUANT TO SUCH SECTIONS AT THE TIME OF FILING.

(7) UNLESS ITS CERTIFICATION INDICATES OTHERWISE, A CERTIFIED CAPITAL COMPANY MAY FILE PREMIUM TAX CREDIT ALLOCATION CLAIMS ON BEHALF OF ITS CERTIFIED INVESTORS PURSUANT TO EITHER OR BOTH OF THE SUBPARAGRAPHS OF PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION. IF THE CERTIFIED INVESTORS OF A CERTIFIED CAPITAL COMPANY ARE ALLOCATED PREMIUM TAX CREDITS PURSUANT TO BOTH SUBPARAGRAPHS OF PARAGRAPHS (a) AND (b) OF SUBSECTION (2) OF THIS SECTION, THE REQUIREMENTS OF THIS ACT SHALL APPLY TO THE CERTIFIED CAPITAL INVESTED PURSUANT TO EACH SUCH ALLOCATION ON A SEPARATE AND INDEPENDENT BASIS.

10-3.5-107. Requirements for continuance of certification - fees. (1) TO CONTINUE TO BE ELIGIBLE FOR CERTIFICATION, A CERTIFIED CAPITAL COMPANY SHALL MAKE QUALIFIED INVESTMENTS ACCORDING TO THE FOLLOWING SCHEDULE:

(a) WITHIN THE PERIOD ENDING THREE YEARS AFTER AN ALLOCATION DATE, A CERTIFIED CAPITAL COMPANY SHALL HAVE MADE QUALIFIED INVESTMENTS CUMULATIVELY EQUAL TO AT LEAST THIRTY PERCENT OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE.

(b) WITHIN THE PERIOD ENDING FIVE YEARS AFTER AN ALLOCATION DATE, A CERTIFIED CAPITAL COMPANY SHALL HAVE MADE QUALIFIED INVESTMENTS CUMULATIVELY EQUAL TO AT LEAST FIFTY PERCENT OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE.

(2) THE AGGREGATE CUMULATIVE AMOUNT OF ALL QUALIFIED INVESTMENTS MADE BY THE CERTIFIED CAPITAL COMPANY FROM AN ALLOCATION DATE SHALL BE CONSIDERED IN THE CALCULATION OF THE PERCENTAGE REQUIREMENTS UNDER THIS ARTICLE. FOR PURPOSES OF SATISFYING THE PERCENTAGE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION ONLY, A CERTIFIED CAPITAL COMPANY THAT HAS RAISED CERTIFIED CAPITAL PURSUANT TO AN ALLOCATION UNDER SECTION 10-3.5-106 (2) (a) (II) OR (2) (b) (II) SHALL BE DEEMED TO HAVE INVESTED TWO DOLLARS FOR EVERY DOLLAR ACTUALLY INVESTED IN A QUALIFIED RURAL BUSINESS OR QUALIFIED

BUSINESS THAT HAS ITS PRINCIPAL BUSINESS OPERATIONS LOCATED IN A DISTRESSED URBAN COMMUNITY FROM CERTIFIED CAPITAL RAISED UNDER SUCH SECTION. ANY PROCEEDS RECEIVED FROM A QUALIFIED INVESTMENT MAY BE INVESTED IN ANOTHER QUALIFIED INVESTMENT AND SHALL COUNT TOWARD ANY REQUIREMENT IN THIS ARTICLE WITH RESPECT TO INVESTMENTS OF CERTIFIED CAPITAL.

(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. 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.

(4) A CERTIFIED CAPITAL COMPANY SHALL NOT INVEST MORE THAN FIFTEEN PERCENT OF ITS TOTAL CERTIFIED CAPITAL IN ANY ONE QUALIFIED BUSINESS OR QUALIFIED RURAL BUSINESS.

(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 DOES NOT MEET ALL OF THE CRITERIA SET FORTH IN SECTION 10-3.5-103 (11) 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.

(6) ALL CERTIFIED CAPITAL NOT CURRENTLY INVESTED IN QUALIFIED INVESTMENTS BY THE CERTIFIED CAPITAL COMPANY SHALL BE INVESTED IN:

- (a) CASH THAT IS DEPOSITED IN A FEDERALLY INSURED FINANCIAL INSTITUTION;
- (b) CERTIFICATES OF DEPOSIT IN A FEDERALLY INSURED FINANCIAL INSTITUTION;
- (c) INVESTMENT SECURITIES THAT ARE OBLIGATIONS OF THE UNITED STATES, ITS AGENCIES, OR INSTRUMENTALITIES OR OBLIGATIONS THAT ARE GUARANTEED FULLY AS TO PRINCIPAL AND INTEREST BY THE UNITED STATES;

(d) DEBT INSTRUMENTS RATED AT LEAST "AA" OR ITS EQUIVALENT BY A NATIONALLY RECOGNIZED CREDIT RATING ORGANIZATION, OR ISSUED BY, OR GUARANTEED WITH RESPECT TO PAYMENT BY, AN ENTITY WHOSE UNSECURED INDEBTEDNESS IS RATED AT LEAST "AA" OR ITS EQUIVALENT BY A NATIONALLY RECOGNIZED CREDIT RATING ORGANIZATION, AND THAT IS NOT SUBORDINATED TO OTHER UNSECURED INDEBTEDNESS OF THE ISSUER OR THE GUARANTOR, AS THE CASE MAY BE;

(e) OBLIGATIONS OF THIS STATE, ANY MUNICIPALITY IN THIS STATE, OR ANY POLITICAL SUBDIVISION THEREOF;

(f) INTERESTS IN MONEY MARKET FUNDS, THE PORTFOLIOS OF WHICH ARE LIMITED TO CASH AND OBLIGATIONS DESCRIBED IN THIS SUBSECTION (6); OR

(g) ANY OTHER INVESTMENTS APPROVED IN ADVANCE AND IN WRITING BY THE OFFICE.

(7) (a) AS SOON AS PRACTICABLE AFTER THE RECEIPT OF CERTIFIED CAPITAL, EACH CERTIFIED CAPITAL COMPANY SHALL PROVIDE THE OFFICE WITH A COPY OF ALL DOCUMENTS RELATING TO EACH CERTIFIED INVESTOR'S INVESTMENT OF CERTIFIED CAPITAL, AND SHALL REPORT THE FOLLOWING TO THE OFFICE:

(I) THE NAME OF EACH CERTIFIED INVESTOR FROM WHICH THE CERTIFIED CAPITAL WAS RECEIVED, INCLUDING SUCH CERTIFIED INVESTOR'S INSURANCE PREMIUM TAX IDENTIFICATION NUMBER;

(II) THE AMOUNT OF EACH CERTIFIED INVESTOR'S INVESTMENT OF CERTIFIED CAPITAL AND PREMIUM TAX CREDITS; AND

(III) THE DATE ON WHICH THE CERTIFIED CAPITAL WAS RECEIVED.

(b) ON OR BEFORE JANUARY 31 OF EACH YEAR, EACH CERTIFIED CAPITAL COMPANY SHALL REPORT THE FOLLOWING TO THE OFFICE:

(I) THE AMOUNT OF THE CERTIFIED CAPITAL COMPANY'S CERTIFIED CAPITAL AT THE END OF THE IMMEDIATELY PRECEDING YEAR;

(II) WHETHER OR NOT THE CERTIFIED CAPITAL COMPANY HAS INVESTED MORE THAN FIFTEEN PERCENT OF ITS TOTAL CERTIFIED CAPITAL IN ANY ONE BUSINESS; AND

(III) ALL QUALIFIED INVESTMENTS THAT THE CERTIFIED CAPITAL COMPANY MADE DURING THE PREVIOUS CALENDAR YEAR.

(c) ANNUALLY, AND WITHIN NINETY DAYS AFTER THE CLOSE OF ITS FISCAL YEAR, EACH CERTIFIED CAPITAL COMPANY SHALL PROVIDE TO THE OFFICE AN AUDITED FINANCIAL STATEMENT THAT INCLUDES THE OPINION OF AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. THE AUDIT SHALL ADDRESS THE METHODS OF OPERATION AND CONDUCT OF THE BUSINESS OF THE CERTIFIED CAPITAL COMPANY TO DETERMINE IF THE CERTIFIED CAPITAL COMPANY IS COMPLYING WITH THIS ARTICLE AND THE RULES SET FORTH BY THE OFFICE AND THAT THE MONEYS RECEIVED BY THE CERTIFIED CAPITAL COMPANY HAVE BEEN INVESTED AS REQUIRED WITHIN THE TIME LIMITS

PROVIDED BY SUBSECTION (1) OF THIS SECTION.

(d) ON OR BEFORE JANUARY 31 OF EACH YEAR, EACH CERTIFIED CAPITAL COMPANY SHALL PAY TO THE OFFICE A NONREFUNDABLE CERTIFICATION FEE OF FIVE THOUSAND DOLLARS; EXCEPT THAT NO SUCH FEE SHALL BE REQUIRED WITHIN SIX MONTHS OF THE INITIAL ALLOCATION DATE OF A CERTIFIED CAPITAL COMPANY.

(e) DURING EACH CALENDAR YEAR FROM 2003 TO 2010, THE OFFICE SHALL HOLD A MEETING IN EACH OF FIVE COUNTIES THAT HAVE POPULATIONS OF NO MORE THAN ONE HUNDRED FIFTY THOUSAND PERSONS AT WHICH A REPRESENTATIVE FROM EACH CERTIFIED CAPITAL COMPANY SHALL BE PRESENT TO REVIEW BUSINESS PLANS FROM QUALIFIED BUSINESSES HEADQUARTERED IN THOSE COUNTIES.

10-3.5-108. Distributions - remittance of portion of proceeds. (1) A CERTIFIED CAPITAL COMPANY MAY MAKE QUALIFIED DISTRIBUTIONS AT ANY TIME.

(2) IN ORDER TO MAKE A DISTRIBUTION OUT OF CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON A PARTICULAR ALLOCATION DATE OTHER THAN A QUALIFIED DISTRIBUTION, A CERTIFIED CAPITAL COMPANY SHALL HAVE MADE QUALIFIED INVESTMENTS IN AN AMOUNT CUMULATIVELY EQUAL TO ONE HUNDRED PERCENT OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE; EXCEPT THAT 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.

(3) (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 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 WHETHER THE AGGREGATE TOTAL OF 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 CAPITAL CONTRIBUTIONS TO THE CERTIFIED CAPITAL COMPANY.

(b) 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 REPORT TO THE DIVISION OF HOUSING IN THE DEPARTMENT OF LOCAL AFFAIRS THE AMOUNT OF MONEY EQUAL TO THIRTY PERCENT OF ANY FURTHER DISTRIBUTIONS

FROM SUCH CERTIFIED CAPITAL, OTHER THAN QUALIFIED DISTRIBUTIONS, ABOVE THE AMOUNT REQUIRED TO PRODUCE SUCH TEN PERCENT RETURN.

(c) UPON THE APPROVAL OF THE STATE HOUSING BOARD WITHIN THE DIVISION OF HOUSING IN ACCORDANCE WITH RULES PROMULGATED BY THE BOARD, THE DIVISION SHALL DIRECT EACH CERTIFIED CAPITAL COMPANY THAT REPORTS TO THE DIVISION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3) TO TRANSFER TO ONE OR MORE LOCAL HOUSING AUTHORITIES, PUBLIC NONPROFIT CORPORATIONS, OR PRIVATE NONPROFIT CORPORATIONS AN AMOUNT OF MONEY EQUAL TO ONE-HALF OF THE AMOUNT IDENTIFIED IN SUCH REPORT FOR:

(I) DEVELOPMENT OR REDEVELOPMENT COSTS INCURRED PRIOR TO THE COMPLETION OR OCCUPANCY OF LOW- OR MODERATE-INCOME HOUSING, AS DEFINED IN SECTION 24-32-717 (4) (b), C.R.S., OR FOR THE REHABILITATION OF SUCH HOUSING;

(II) PROVIDING INCENTIVES FOR THE ADDITIONAL ACQUISITION, CONSTRUCTION, REHABILITATION, OR RENOVATION OF AFFORDABLE HOUSING THAT IS MADE AVAILABLE TO HOUSEHOLDS OF VERY LOW INCOMES AND TO HOUSEHOLDS OF SENIOR CITIZENS AND THAT ADDRESSES THE SPECIAL NEEDS OF MEMBERS OF THESE COMMUNITIES, ESPECIALLY IN CONNECTION WITH THE AVAILABILITY OF RENTAL HOUSING;

(III) PROVIDING MIXED-INCOME HOUSING TO BETTER ENSURE ECONOMIC INTEGRATION;

(IV) ENSURING THE AFFORDABILITY OF HOUSING OVER THE LONG TERM AND HELPING TO PRESERVE PROJECT-BASED FEDERALLY-AUTHORIZED RENTAL UNITS;

(V) ALLOWING THE STATE OR A LOCAL GOVERNMENT OR ANY OF THEIR AGENCIES TO LEVERAGE FEDERAL, LOCAL, AND PRIVATE RESOURCES SUCH AS LOW-INCOME HOUSING TAX CREDITS, PRIVATE ACTIVITY BONDS, MORTGAGE REVENUE BONDS, COMMUNITY DEVELOPMENT BLOCK GRANTS, MCKINNEY FUNDS, HOME FUNDS, PRIVATE GRANTS, AND LAND DONATIONS TO INCREASE THE POOL OF CAPITAL AVAILABLE TO FINANCE THE PROVISION OF AFFORDABLE HOUSING;

(VI) PROVIDING RESOURCES TO LOCAL GOVERNMENTS AND OTHER APPROPRIATE ENTITIES THAT RESULT IN THE OPERATION, CONSTRUCTION, AND RENOVATION OF EMERGENCY SHELTERS AND DIRECT SERVICES LINKED TO HOUSING; OR

(VII) PROVIDING RESOURCES TO LOCAL GOVERNMENTS TO ASSIST HOME BUYERS WITH THE FINANCING OF DOWN PAYMENTS OR CLOSING COSTS.

(d) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL DIRECT EACH CERTIFIED CAPITAL COMPANY THAT REPORTS TO THE DIVISION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3) TO TRANSFER TO ONE OR MORE APPROVED COMMUNITY MENTAL HEALTH CLINICS OR APPROVED COMMUNITY MENTAL HEALTH CENTERS, AS DEFINED IN SECTION 27-1-201, C.R.S., AN AMOUNT OF MONEY EQUAL TO ONE-HALF OF THE AMOUNT IDENTIFIED IN SUCH REPORT TO BE USED SOLELY FOR THE PURPOSES IDENTIFIED IN SECTIONS 27-1-203 AND 27-1-204 (5), C.R.S., TAKING INTO ACCOUNT THE STANDARDS CONTAINED IN SECTION 27-1-205, C.R.S.

10-3.5-109. Annual review - decertification. (1) THE OFFICE SHALL CONDUCT AN ANNUAL REVIEW OF EACH CERTIFIED CAPITAL COMPANY TO DETERMINE WHETHER THE CERTIFIED CAPITAL COMPANY IS ABIDING BY THE REQUIREMENTS OF CERTIFICATION, TO ADVISE THE CERTIFIED CAPITAL COMPANY AS TO THE ELIGIBILITY STATUS OF ITS QUALIFIED INVESTMENTS, AND TO ENSURE THAT NO INVESTMENT HAS BEEN MADE IN VIOLATION OF THIS ARTICLE. THE COST OF THE ANNUAL REVIEW SHALL BE PAID BY EACH CERTIFIED CAPITAL COMPANY ACCORDING TO A REASONABLE FEE SCHEDULE ADOPTED BY THE OFFICE.

(2) ANY MATERIAL VIOLATION OF SECTION 10-3.5-107 SHALL BE GROUNDS FOR DECERTIFICATION OF THE CERTIFIED CAPITAL COMPANY. IF THE OFFICE DETERMINES THAT A CERTIFIED CAPITAL COMPANY IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 10-3.5-107, IT SHALL, BY WRITTEN NOTICE, INFORM THE OFFICERS OF THE CERTIFIED CAPITAL COMPANY THAT THE CERTIFIED CAPITAL COMPANY MAY BE SUBJECT TO DECERTIFICATION 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.

(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 OFFICE SHALL 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.

(4) DECERTIFICATION OF A CERTIFIED CAPITAL COMPANY MAY CAUSE THE RECAPTURE OF PREMIUM TAX CREDITS PREVIOUSLY CLAIMED AND THE FORFEITURE OF FUTURE PREMIUM TAX CREDITS TO BE CLAIMED BY CERTIFIED INVESTORS WITH RESPECT TO SUCH CERTIFIED CAPITAL COMPANY, AS FOLLOWS:

(a) DECERTIFICATION OF A CERTIFIED CAPITAL COMPANY WITHIN THREE YEARS AFTER AN ALLOCATION DATE SHALL CAUSE THE RECAPTURE OF ALL PREMIUM TAX CREDITS ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE THAT WERE PREVIOUSLY CLAIMED AND THE FORFEITURE OF ALL PREMIUM TAX CREDITS ALLOCATED TO ITS CERTIFIED INVESTORS ON SUCH ALLOCATION DATE THAT ARE STILL TO BE CLAIMED BY CERTIFIED INVESTORS WITH RESPECT TO SUCH CERTIFIED CAPITAL COMPANY.

(b) WHEN A CERTIFIED CAPITAL COMPANY MEETS ALL REQUIREMENTS FOR CONTINUED CERTIFICATION UNDER SECTION 10-3.5-107 (1) (a) WITH RESPECT TO CERTIFIED CAPITAL ALLOCATED ON A PARTICULAR ALLOCATION DATE AND SUBSEQUENTLY FAILS TO MEET THE REQUIREMENTS FOR CONTINUED CERTIFICATION UNDER THE PROVISIONS OF SECTION 10-3.5-107 (1) (b) WITH RESPECT TO SUCH CERTIFIED CAPITAL, THOSE PREMIUM TAX CREDITS ALLOCATED TO THE CERTIFIED INVESTORS OF THE CERTIFIED CAPITAL COMPANY ON SUCH ALLOCATION DATE THAT HAVE BEEN OR WILL BE TAKEN BY CERTIFIED INVESTORS WITHIN THREE YEARS AFTER SUCH ALLOCATION DATE SHALL NOT BE SUBJECT TO RECAPTURE OR FORFEITURE, BUT ALL OTHER PREMIUM TAX CREDITS ALLOCATED TO THE CERTIFIED INVESTORS OF THE CERTIFIED CAPITAL COMPANY ON SUCH ALLOCATION DATE THAT HAVE BEEN OR WILL BE TAKEN BY CERTIFIED INVESTORS SHALL BE SUBJECT TO RECAPTURE OR FORFEITURE.

(c) ONCE A CERTIFIED CAPITAL COMPANY HAS MET ALL REQUIREMENTS FOR CONTINUED CERTIFICATION UNDER SECTION 10-3.5-107 (1) WITH RESPECT TO CERTIFIED CAPITAL ALLOCATED ON A PARTICULAR ALLOCATION DATE AND IS SUBSEQUENTLY DECERTIFIED, THOSE PREMIUM TAX CREDITS ALLOCATED TO THE CERTIFIED INVESTORS OF THE CERTIFIED CAPITAL COMPANY ON SUCH ALLOCATION DATE THAT HAVE BEEN OR WILL BE TAKEN BY CERTIFIED INVESTORS WITHIN FIVE YEARS AFTER SUCH ALLOCATION DATE SHALL NOT BE SUBJECT TO RECAPTURE OR FORFEITURE. THOSE PREMIUM TAX CREDITS ALLOCATED TO THE CERTIFIED INVESTORS OF THE CERTIFIED CAPITAL COMPANY ON SUCH ALLOCATION DATE TO BE TAKEN AFTER THE FIFTH ANNIVERSARY OF SUCH ALLOCATION DATE SHALL BE SUBJECT TO FORFEITURE ONLY IF THE CERTIFIED CAPITAL COMPANY IS DECERTIFIED WITHIN FIVE YEARS AFTER SUCH ALLOCATION DATE.

(d) ONCE A CERTIFIED CAPITAL COMPANY HAS INVESTED AN AMOUNT CUMULATIVELY EQUAL TO ONE HUNDRED PERCENT OF THE CERTIFIED CAPITAL ALLOCATED TO ITS CERTIFIED INVESTORS ON A PARTICULAR ALLOCATION DATE IN QUALIFIED INVESTMENTS, ALL PREMIUM TAX CREDITS ALLOCATED TO SUCH CERTIFIED INVESTORS ON SUCH ALLOCATION DATE THAT WERE CLAIMED OR REMAIN TO BE CLAIMED BY ITS CERTIFIED INVESTORS ARE NO LONGER SUBJECT TO RECAPTURE OR FORFEITURE.

(5) ONCE A CERTIFIED CAPITAL COMPANY HAS INVESTED AN AMOUNT CUMULATIVELY EQUAL TO ONE HUNDRED PERCENT OF ITS CERTIFIED CAPITAL IN QUALIFIED INVESTMENTS, THE CERTIFIED CAPITAL COMPANY SHALL NO LONGER BE SUBJECT TO REGULATION BY THE OFFICE.

(6) THE OFFICE SHALL SEND WRITTEN NOTICE TO THE ADDRESS OF EACH CERTIFIED INVESTOR WHOSE PREMIUM TAX CREDIT HAS BEEN SUBJECT TO RECAPTURE OR FORFEITURE, USING THE ADDRESS SHOWN ON THE MOST RECENT PREMIUM TAX FILING.

(7) THE OFFICE SHALL HAVE THE AUTHORITY TO WAIVE ANY RECAPTURE OR FORFEITURE OF CREDITS IF, AFTER CONSIDERING ALL FACTS AND CIRCUMSTANCES, IT DETERMINES THAT SUCH WAIVER WILL HAVE THE EFFECT OF FURTHERING THE ECONOMIC DEVELOPMENT OF THE STATE.

10-3.5-110. Transferability. THE PREMIUM TAX CREDIT ESTABLISHED PURSUANT TO THIS ARTICLE MAY BE TRANSFERRED OR SOLD. THE OFFICE SHALL PROMULGATE RULES TO FACILITATE THE TRANSFER OR SALE OF SUCH PREMIUM TAX CREDITS. A TRANSFER OR SALE SHALL NOT AFFECT THE TIME SCHEDULE FOR TAKING THE PREMIUM TAX CREDIT AS PROVIDED IN THIS ARTICLE. ANY PREMIUM TAX CREDITS RECAPTURED PURSUANT TO SECTION 10-3.5-109 SHALL BE THE LIABILITY OF THE TAXPAYER WHO ACTUALLY CLAIMED THE PREMIUM TAX CREDITS.

SECTION 2. Article 48.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-48.5-106. Certified capital companies - rules. (1) THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT SHALL CARRY OUT THE RESPONSIBILITIES DELEGATED TO IT PURSUANT TO ARTICLE 3.5 OF TITLE 10, C.R.S., RELATED TO CERTIFIED CAPITAL COMPANIES.

(2) THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT SHALL PROMULGATE RULES NECESSARY TO CARRY OUT THE PROVISIONS OF ARTICLE 3.5 OF TITLE 10, C.R.S., BY SEPTEMBER 30, 2001. SUCH RULES SHALL PROVIDE THAT THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT SHALL BEGIN ACCEPTING APPLICATIONS FOR CERTIFICATION AS A CERTIFIED CAPITAL COMPANY NO LATER THAN OCTOBER 31, 2001. SUCH RULES SHALL FURTHER PROVIDE THAT ANY CERTIFIED CAPITAL COMPANY MAY FILE PREMIUM TAX CREDIT ALLOCATION CLAIMS ON BEHALF OF ITS CERTIFIED INVESTORS AT ANY TIME ON OR AFTER IT BECOMES CERTIFIED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT, BUT IN NO CASE EARLIER THAN JANUARY 31, 2002, FOR PREMIUM TAX CREDITS THAT MAY BE TAKEN BEGINNING IN TAX YEAR 2003, AND NO EARLIER THAN JANUARY 31, 2004, FOR PREMIUM TAX CREDITS THAT MAY BE TAKEN BEGINNING IN TAX YEAR 2005, AND THAT PREMIUM TAX CREDITS SHALL BE EARNED BY AND VESTED IN CERTIFIED INVESTORS AT THE TIME OF SUCH INVESTMENT OF CERTIFIED CAPITAL, ALTHOUGH SUCH PREMIUM TAX CREDITS MAY NOT BE CLAIMED OR UTILIZED UNTIL THE TAX YEAR BEGINNING ON OR AFTER JANUARY 1, 2003, WITH RESPECT TO INVESTMENTS OF CERTIFIED CAPITAL MADE SUBSEQUENT TO JANUARY 31, 2002, BUT PRIOR TO JANUARY 31, 2004, OR UNTIL THE TAX YEAR BEGINNING ON OR AFTER JANUARY 1, 2005, WITH RESPECT TO INVESTMENTS OF CERTIFIED CAPITAL MADE SUBSEQUENT TO JANUARY 31, 2004.

(3) ALL DIRECT AND INDIRECT EXPENDITURES INCURRED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT IN CARRYING OUT THE RESPONSIBILITIES ASSIGNED TO THE OFFICE IN THIS SECTION SHALL BE PAID FROM THE DIVISION OF INSURANCE CASH FUND, CREATED IN SECTION 10-1-103 (3), C.R.S.

(4) BY JANUARY 1, 2004, THE OFFICE SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY REGARDING THE EFFECTS OF THE IMPLEMENTATION OF ARTICLE 3.5 OF TITLE 10, C.R.S.

SECTION 3. 10-1-103 (3), Colorado Revised Statutes, is amended to read:

10-1-103. Division of insurance - subject to termination - division of insurance cash fund - repeal of article. (3) All direct and indirect expenditures of the division shall be paid from the division of insurance cash fund, which fund is hereby created in the state treasury. All fees collected pursuant to sections 8-44-204 (7), C.R.S., 8-44-205 (6), C.R.S., 10-2-413, 10-3-108, 10-3-207, 10-3.5-104, 10-3.5-107, 10-12-106, 10-15-103, 10-16-110 (1) and (2), 10-16-111 (1), ~~10-16-503~~; 12-7-104, C.R.S., 24-10-115.5 (5), C.R.S., and 29-13-102 (5), C.R.S., and all taxes collected pursuant to section 10-3-209 (4) designated for the division of insurance, shall be transmitted to the state treasurer, who shall credit the same to the division of insurance cash fund. All moneys credited to the division of insurance cash fund shall be used as provided in this section AND IN SECTION 24-48.5-106, C.R.S., shall not be deposited in, or transferred to, the general fund of the state or to any other fund, and shall be subject to annual appropriation by the general assembly for the purposes authorized in this title and as otherwise authorized by law. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of moneys in the fund shall be credited to the general fund.

SECTION 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund created in section 10-1-103, Colorado Revised Statutes, not otherwise appropriated,

to the governor - lieutenant governor - state planning and budgeting, for allocation to the office of economic development, for the fiscal year beginning July 1, 2001, the sum of eighty-four thousand one hundred sixty-eight dollars (\$84,168) and 1.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund created in section 10-1-103, Colorado Revised Statutes, not otherwise appropriated, to the governor - lieutenant governor - state planning and budgeting, for allocation to the office of the governor, for the provision of legal services, for the fiscal year beginning July 1, 2001, the sum of two thousand two hundred thirty-two dollars (\$2,232), or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2001, the sum of two thousand two hundred thirty-two dollars (\$2,232), or so much thereof as may be necessary, for the provision of legal services to the office of economic development related to the implementation of this act. Such sum shall be from cash funds exempt received from the office of the governor out of the appropriation made in subsection (2) of this section.

SECTION 5. 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.

Became Law: June 9, 2001