



HOUSE BILL No. 5477

March 7, 2000, Introduced by Reps. Raczkowski, Scranton, Garcia, Ehardt, Mans, Richner, Thomas and Kilpatrick and referred to the Committee on Insurance and Financial Services.

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 or insurance
5 company" 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 10% or more of

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

4 (ii) A person, 10% 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 or insurance company, as
9 applicable.

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

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

15 (v) A person who is an officer, director, or agent of the
16 certified capital company or insurance company, as applicable, or
17 an immediate family member of the officer, director, or agent.

18 (b) "Certification date" means the date on which a certified
19 capital company is designated as a certified capital company by
20 the department.

21 (c) "Certified capital" means an investment of cash by a
22 certified investor in a certified capital company which fully
23 funds the purchase price of either of the following:

24 (i) An equity interest in the certified capital company.

25 (ii) A qualified preferred debt instrument.

26 (d) "Certified capital company" means a partnership,
27 corporation, trust, or limited liability company, whether

1 organized on a profit or not for profit basis, that has as its
2 primary business activity the investment of cash in qualified
3 businesses and that is certified by the department as meeting the
4 criteria under this act.

5 (e) "Certified investor" means an insurance company that
6 does either of the following:

7 (i) Contributes certified capital pursuant to an allocation
8 of tax credits under section 3.

9 (ii) Becomes irrevocably committed to contribute certified
10 capital by preparing and executing a tax credit allocation
11 claim.

12 (f) "Department" means the office of financial and insurance
13 services.

14 (g) "Person" means a natural person or entity, including a
15 corporation, general or limited partnership, trust, or limited
16 liability company.

17 (h) "Qualified business" means a business other than a busi-
18 ness predominantly engaged in professional services provided by
19 accountants, lawyers, or physicians that meets both of the fol-
20 lowing conditions at the time of a certified capital company's
21 first investment in the business:

22 (i) Is headquartered in this state and its principal busi-
23 ness operations are located in this state.

24 (ii) Is a small business concern as defined in section
25 121.201 of the small business size regulations of the United
26 States small business administration, 13 C.F.R. 121.201.

1 (i) "Qualified debt instrument" means a debt instrument
2 issued by a certified capital company at par value or a premium
3 with an original maturity date of at least 5 years from date of
4 issuance, a repayment schedule that is no faster than a level
5 principal amortization over 5 years. A qualified debt instrument
6 does not include an equity component or any interest, distribu-
7 tion, or payment features that are related to the profitability
8 of the certified capital company or the performance of the certi-
9 fied capital company's investment portfolio whether the component
10 or features are part of or attached to the debt instrument or are
11 distributed or sold separately and purchased or obtained by a
12 certified investor or affiliate of a certified investor.

13 (j) "Qualified distribution" means a distribution or payment
14 by a certified capital company from certified capital in connec-
15 tion with either of the following:

16 (i) Reasonable costs and expenses of forming and syndicating
17 the certified capital company, not to exceed 10% of the certified
18 capital of the certified capital company, and the reasonable man-
19 aging costs of and operating the certified capital company
20 including, but not limited to, an annual management fee in an
21 amount that does not exceed 2.5% of the certified capital of the
22 certified capital company, plus reasonable and necessary fees
23 paid for professional services such as legal and accounting serv-
24 ices related to the operation of the certified capital company
25 provided that no distribution or payment is directly or indi-
26 rectly made to a certified investor or affiliate of a certified
27 investor.

1 (ii) Any projected increase in federal or state taxes,
2 including penalties and interest related to state and federal
3 income taxes, of the equity owners of a certified capital company
4 resulting from the earnings or other tax liability of the certi-
5 fied capital company or the equity owners to the extent that the
6 increase is related to the ownership, management, or operation of
7 a certified capital company or the issuance, repayment, or
8 redemption of the qualified debt instruments of the certified
9 capital company.

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

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

24 (m) "Tax liability" means any liability incurred by a certi-
25 fied investor under the single business tax act, 1975 PA 228,
26 MCL 208.1 to 208.145.

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

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

14 (3) A certified investor claiming a credit against tax
15 liability under this section is not required to pay any addi-
16 tional retaliatory tax levied under the insurance code of 1956,
17 1956 PA 218, MCL 500.100 to 500.8302, as a result of claiming
18 that credit.

19 (4) The total amount of credits allowed under this section
20 for all taxpayers shall not exceed \$200,000,000.00. Tax credit
21 allocation claims filed with respect to investments in any 1 cer-
22 tified capital company on an aggregate basis with its affiliates
23 shall not exceed \$200,000,000.00.

24 (5) Allocation of certified capital shall be made in the
25 order in which the tax credit allocation claims are received by
26 the department. If 2 or more tax credit allocation claims are

1 filed on the same day, they are considered to have been received
2 simultaneously.

3 (6) If the total maximum amount of credits under
4 subsection (4) will be exceeded by allocations made based on fil-
5 ings that are received simultaneously, the credit amount
6 requested shall be allocated on a pro rata basis. The pro rata
7 allocation for each certified investor shall be the product of
8 multiplying a fraction, the numerator of which is the amount of
9 the tax credit allocation claim for that certified investor and
10 the denominator of which is the total of all tax credit alloca-
11 tion claims filed by all certified investors, by the maximum
12 total amount under subsection (4).

13 (7) Within 10 days after receiving a tax credit allocation
14 claim from a certified investor, the department shall notify that
15 certified investor of the amount of the tax credits allocated to
16 that certified investor.

17 (8) If a certified investor does not invest certified capi-
18 tal in a certified capital company within 10 business days after
19 receiving an allocation under this act, the certified investor
20 forfeits that portion of the allocation not invested. Any amount
21 of certified capital forfeited under this subsection shall be
22 reallocated to other certified investors on a pro rata basis as
23 provided in subsection (6).

24 (9) The department shall not approve a tax credit allocation
25 claim for any certified investor on an aggregate basis with its
26 affiliates, whether in 1 or more certified capital companies, for

1 more than the greater of \$10,000,000.00 or 15% of the maximum
2 total amount under subsection (4).

3 Sec. 4. (1) The department shall establish the procedures
4 for applying for certification as a certified capital company.
5 An applicant shall pay a nonrefundable application fee of
6 \$7,500.00 at the time of filing the application with the
7 department. The application process shall include a criminal
8 background investigation and fingerprint cards and resumes
9 detailing work experience for all principals of the certified
10 capital company.

11 (2) A certified capital company's net worth at the time of
12 seeking certification shall be at least \$500,000.00, which shall
13 be determined by the unencumbered cash, marketable securities,
14 and other liquid assets of the certified capital company.

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

22 (a) An audited balance sheet that contains an unqualified
23 opinion of an independent certified public accountant issued not
24 more than 35 days before the application date that states whether
25 the applicant is in compliance with the net worth requirements
26 under subsection (2).

1 (b) Copies of all offering materials sent by the applicant
2 to potential certified investors or drafts of offering
3 materials.

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

8 (5) Any offering material involving the sale of securities
9 of the certified capital company shall include the following
10 statement:

11 "By authorizing the formation of a certified capital com-
12 pany, this state does not necessarily endorse the quality of man-
13 agement or the potential for earnings of that company and is not
14 liable for damages or losses to a certified investor in the
15 company. Use of the word "certified" in an offering does not
16 constitute a recommendation or endorsement of the investment by
17 the office of financial and insurance services.

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

23 (6) Within 30 days after the application is filed, the
24 department shall issue a certificate or shall refuse to issue a
25 certificate. If the department refuses to issue a certificate,
26 the department shall communicate in detail to the applicant the
27 grounds for the refusal, including suggestions for remediation.

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

12 (8) No insurance company or any affiliate of an insurance
13 company shall directly or indirectly beneficially own, whether
14 through rights, options, or convertible interests, 10% or more of
15 the voting securities of a certified capital company, manage a
16 certified capital company, or control investments of a certified
17 capital company, or have, through ownership or any agreement or
18 understanding, the right to participate in 10% or more of the
19 profits of the certified capital company. This subsection does
20 not preclude the profits of the certified investor, insurance
21 company, or any other party from exercising its legal rights and
22 remedies, including interim management of a certified capital
23 company, in the event that a certified capital company is in
24 default of its statutory obligations or its contractual obliga-
25 tions to a certified investor, insurance company, or other
26 party.

1 Sec. 5. (1) A certified capital company shall make
2 qualified investments according to the following schedule:

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

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

9 (c) All certified capital not placed in qualified invest-
10 ments by the certified capital company may be held or invested in
11 a manner that the certified capital company, in its discretion,
12 considers appropriate provided that the certified capital company
13 does not invest more than 5% of its certified capital in any
14 security or policy issued by an insurance company or an affiliate
15 of an insurance company or any account maintained by an insurance
16 company or affiliate of any insurance company. Invested funds
17 returned to a certified capital company after being originally
18 placed in qualified investments may be placed again in qualified
19 investments and shall count toward any requirement of this act
20 with respect to making qualified investments with certified
21 capital.

22 (2) Any business that is classified as a qualified business
23 at the time of the first investment in that business by a certi-
24 fied capital company shall remain classified as a qualified busi-
25 ness and may receive follow-on investments from any certified
26 capital company, and the follow-on investments shall constitute
27 qualified investments, even though the business may not meet the

1 definition of a qualified business at the time of the follow-on
2 investments.

3 (3) No qualified investment shall be made at a cost to a
4 certified capital company greater than 15% of the total certified
5 capital of the certified capital company at the time of
6 investment.

7 (4) The aggregate cumulative amount of all qualified invest-
8 ments made by the certified capital company from its certifica-
9 tion date will be considered in the calculation of the percentage
10 requirements under this act.

11 (5) Each certified capital company shall report all of the
12 following to the department:

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

19 (b) On or before January 31 of each year, the amount of the
20 certified capital company's certified capital at the end of the
21 immediately preceding calendar year, whether or not the certified
22 capital company has invested more than 15% of its total certified
23 capital in any 1 business, and all qualified investments that the
24 certified capital company made during the immediately preceding
25 calendar year.

26 (c) Within 90 days after the close of each fiscal year of
27 the certified capital company, an audited financial statement

1 which shall include the opinion of an independent certified
2 public accountant. The audit shall address the methods of opera-
3 tion and conduct of the business of the certified capital company
4 to determine if the certified capital company is complying with
5 applicable statutes and rules and that the funds received by the
6 certified capital company have been invested as required under
7 this act.

8 (d) On or before January 31 of each year, each certified
9 capital company shall pay an annual, nonrefundable certification
10 fee of \$5,000.00 to the department, which shall not be required
11 to be paid if the due date falls within 6 months of the initial
12 certification date of a certified capital company.

13 Sec. 6. (1) Before making a proposed investment in a spe-
14 cific business, a certified capital company may request a written
15 opinion from the department as to whether the business in which
16 the certified capital company proposes to invest is a qualified
17 business.

18 (2) The department shall notify the certified capital com-
19 pany of its opinion not more than 10 days after the request is
20 made.

21 (3) If the department determines that the business does not
22 meet the definition of a qualified business, the department shall
23 provide the certified capital company with an explanation of its
24 determination.

25 (4) If the department fails to respond within the 10-day
26 period allowed under this section, the business is considered a
27 qualified business for purposes of this act.

1 (5) The department may determine that a business is a
2 qualified business for purposes of this act even if the business
3 does not meet the definition contained in the act if the depart-
4 ment determines that an investment in the business by a certified
5 capital company would further economic development in this
6 state.

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

9 (2) In order to make a distribution or payment from certi-
10 fied capital other than a qualified distribution or a distribu-
11 tion or payment permitted under subsection (3), a certified capi-
12 tal company must have made qualified investments in an amount
13 cumulatively equal to 100% of its certified capital.

14 (3) Payments to debt holders of a certified capital company
15 may be made without restriction with respect to repayments of
16 principal and interest on indebtedness owed to them by a certi-
17 fied capital company, including indebtedness of the certified
18 capital company on which certified investors earned tax credits.
19 A debt holder that is also a certified investor or equity holder
20 of a certified capital company may receive payments with respect
21 to the debt without restrictions.

22 Sec. 8. (1) The department shall conduct an annual review
23 of each certified capital company to determine if the certified
24 capital company is abiding by the requirements of certification,
25 to advise the certified capital company as to the eligibility
26 status of its qualified investments, and to ensure that its
27 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 within 3
22 years after its certification date shall cause the recapture of
23 all tax credits previously claimed and the forfeiture of all
24 future tax credits to be claimed by certified investors with
25 respect to the certified capital company.

26 (b) If after initial certification a certified capital
27 company subsequently fails to meet the requirements for

1 certification under section 5(1)(b), tax credits that have been
2 or will be taken by certified investors within 3 years after the
3 allocation date of the certified capital company will not be
4 subject to recapture or forfeiture; however, all tax credits that
5 have been or will be taken by certified investors after the third
6 anniversary of the allocation date of the certified capital com-
7 pany shall be subject to recapture or forfeiture.

8 (c) If a certified capital company has met all requirements
9 for certification under section 5(1)(a) and (b) and is subse-
10 quently decertified, tax credits that have been or will be taken
11 by certified investors within 5 years after the allocation date
12 of the certified capital company will not be subject to recapture
13 or forfeiture. Tax credits available to be taken after the fifth
14 year after the allocation date are subject to forfeiture only if
15 the certified capital company is decertified within 5 years after
16 its allocation date.

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

22 (5) If a certified capital company has invested an amount
23 cumulatively equal to 100% of its certified capital in qualified
24 investments and has met all other requirements under this act,
25 the certified capital company is no longer subject to regulation
26 by the department and is no longer subject to the requirements of
27 this act.

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

5 Sec. 9. A tax credit allowed under this act by a certified
6 investor may be transferred or sold only to a certified
7 investor. Any transfer or sale does not affect the time schedule
8 for taking the tax credit as provided in this act. Any tax
9 credit amount recaptured pursuant to section 5 shall be the
10 liability of the taxpayer that actually claimed the tax credit.

11 Sec. 10. The department may promulgate rules necessary to
12 administer this act pursuant to the administrative procedures act
13 of 1969, 1969 PA 306, MCL 24.201 to 24.328.