HOUSE BILL No. 1752

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-14.

Synopsis: Certified capital companies. Permits the formation of certified capital companies. Allows certified capital companies to invest in certain Indiana businesses. Allows insurance companies that invest in certified capital companies to claim a credit against the insurance premiums tax. Provides that the credit is equal to the amount of the insurance company's investment in a certified capital company, but allows the insurance company to take only 10% of the allowed credit in a particular taxable year.

Effective: January 1, 2000.

Bottorff

January 26, 1999, read first time and referred to Committee on Commerce and Economic Development.

Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1752

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

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

SECTION 1. IC 27-14 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2000]:

ARTICLE 14. CERTIFIED CAPITAL COMPANIES

Chapter 1. Citation

Sec. 1. This article may be cited as the Certified Capital Company Law.

Sec. 2. The primary purpose of this article is to provide assistance in the formation of new and expansion of existing high growth potential businesses that create jobs in Indiana by providing an incentive for insurance companies to invest in certified capital companies.

Chapter 2. Definitions

Sec. 1. As used in this article, "affiliate of a certified capital company" means the following:

(1) A person, directly or indirectly owning (whether through rights, options, convertible interests or otherwise), controlling

or holding power to vote ten percent (10%) or more of the outstanding voting securities or other ownership interests of the certified capital company.

(2) A person in whom at least ten percent (10%) of the outstanding voting securities or other 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.

(3) A person directly or indirectly controlling, controlled by, or under common control with the certified capital company.

(4) A partnership in which the certified capital company is a general partner.

(5) A person who is an officer, a director, or an agent of the certified capital company or an immediate family member of an officer, director, or agent.

Sec. 2. As used in this article, "applicable percentage" means one hundred percent (100%).

Sec. 3. As used in this article, "capital in a qualified Indiana business" means the following acquired by a certified capital company as a result of a transfer of cash to a business:

(1) A debt.

(2) An equity.

(3) A hybrid security, including a debt instrument or security that has the characteristics of debt but provides for conversion into equity or equity participation instruments such as options or warrants.

The term does not include a secured debt instrument.

Sec. 4. As used in this article, "certification date" means the date on which a certified capital company is designated by the department.

Sec. 5. As used in this article, "capital" means an investment of cash by an investor in a certified capital company that fully funds the purchase price of its equity interest in the certified capital company.

Sec. 6. As used in this article, "certified capital company" means a for-profit partnership, corporation, trust, or limited liability company that:

(1) is located, headquartered, and registered to conduct business in Indiana;

(2) has as its primary business activity the investment of cash in qualified Indiana businesses; and

(3) is certified by the department as meeting the criteria of

this article.

Sec. 7. As used in this article, "department" means the Indiana development finance authority.

Sec. 8. As used in this article, "director" means the director of the Indiana development finance authority or a person acting under the supervision of the director.

Sec. 9. As used in this article, "investor" means an insurance company licensed to do business in Indiana that contributes capital to a certified capital company.

Sec. 10. As used in this article, "person" means an individual or entity, including a corporation, general or limited partnership, trust, or limited liability company.

Sec. 11. As used in this article, "qualified distribution" means a distribution or payment to equity holders of a certified capital company in connection with the following:

(1) The reasonable costs and expenses of forming, syndicating, managing, and operating the certified capital company, including an annual management fee in an amount that does not exceed two and one-half percent (2.5%) of the capital of the certified capital company, plus reasonable and necessary fees paid for professional services (such as legal and accounting services) related to the operation of the certified capital company.

(2) A projected increase in the federal or state taxes of the equity owners of a certified capital company resulting from the earnings or other 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.

Sec. 12. As used in this article, "qualified Indiana business" means an independently owned and operated business that:

(1) is headquartered and located in Indiana, or

(2) has its principal business operations located in Indiana.

Sec. 13. As used in this article, "qualified investment" means an investment of cash by a certified capital company in a manner that enables the certified capital company to acquire capital in a qualified Indiana business.

Sec. 14. As used in this article, "insurance premiums tax liability" mean any liability incurred by an insurance company under IC 27-1-18-2.

Chapter 3. Requirements of a Qualified Indiana Business

Sec. 1. A qualified Indiana business may not have more than two

hundred (200) employees. At least seventy percent (70%) of the employees must be employed in Indiana.

Sec. 2. A qualified Indiana business must be involved in commerce for the purpose of developing and manufacturing products and systems, including high technology products and systems such as computers, computer software, medical equipment, biotechnology, telecommunications equipment and products, processing or assembling all types of products, conducting research and development, or providing services in interstate commerce.

Sec. 3. A qualified Indiana business may not be involved in the following enterprises:

(1) Real estate.

(2) Real estate development.

(3) Insurance.

(4) Professional services provided by the following:

(A) Accountants.

(B) Lawyers.

(C) Physicians.

Sec. 4. A qualified Indiana business may not be involved in retail sales. However, a qualified Indiana business may engage in developing or supporting electronic commerce using the Internet.

Sec. 5. If the two (2) year average gross sales of a business during its last two (2) most recently complete fiscal years exceed four million dollars ($4,000,000), the business may not be classified as a qualified Indiana business under this article.

Sec. 6. A business that is classified as a qualified Indiana business at the time of the first investment in the business by a certified capital company remains classified as a qualified Indiana business for seven (7) years after the date of the first investment. The qualified Indiana business may receive follow-on investments from any certified capital company. A follow-on investment is a qualified investment even though the business may not meet the other qualifications of this chapter at the time of the follow-on investment.

Chapter 4. Certified Capital Company Funding

Sec. 1. A certified capital company shall have a funding period of sixty (60) days from the date of receiving certification from the director. The aggregate amount of capital in the certified capital company approved by the director must be deposited in the certified capital company within the sixty (60) day funding period. A certified capital company shall notify the department in

accordance with IC 27-14-6-5(1).

Chapter 5. Certification

Sec. 1. The department shall adopt rules under IC 4-22-2 to establish the procedures for making an application to become a certified capital company. The applicant shall pay a nonrefundable fee of seven thousand five hundred dollars ($7,500) at the time of filing the application with the department. The application must include a criminal background investigation, fingerprint cards, and resumes detailing work related experience for all principals.

Sec. 2. (a) A certified capital company's initial capitalization at the time of seeking certification must equal at least five hundred thousand dollars ($500,000).

(b) A certified capital company must maintain a liquid asset base of at least five hundred thousand dollars ($500,000) at all times during the company's participation in the program authorized by this article.

Sec. 3. (a) The department shall review the organizational documents for each applicant for certification and the business history of the applicant.

(b) The department shall determine that the certified capital company's cash, marketable securities and other liquid assets are at least five hundred thousand dollars ($500,000). The department shall determine that the liquid asset base of each certified capital company is at least five hundred thousand dollars ($500,000) at all times during the company's participation in the program authorized by this article.

Sec. 4. A principal of a certified capital company or a manager of the certified capital company must have at least five (5) years experience in the venture capital industry.

Sec. 5. An offering of material involving the sale of securities of the certified capital company must include the following statement:

> **"By authorizing the formation of a certified capital company, the State of Indiana does not endorse the quality of management or the potential for earnings of a particular company and is not liable for damages or losses to an investor in the company. The use of the word "certified" in an offering does not constitute a recommendation or endorsement of the investment by the Indiana Development Finance Authority. Investments in a prospective certified capital company before the time the company is certified are not eligible for premium tax credits. If certain statutory provisions (as specified in IC 27-14) are violated, the State of Indiana may require**

forfeiture of unused insurance premium tax credits and repayment of used insurance premium tax credits."

Sec. 6. Not later than sixty (60) days of application, the department shall either issue the certification or shall refuse the certification and communicate in detail to the applicant the grounds for the refusal, including the suggestions for the removal of those grounds. The department shall administer the tax credits authorized by this article.

Sec. 7. An insurance company licensed by or transacting business in Indiana may not, individually or with or through one (1) or more affiliates, be a managing general partner of or control the direction of investments of a certified capital company. This section does not preclude an investor, insurance company, or any other party from exercising its legal rights and remedies (which may include interim management of certified capital company) if a certified capital company is in default of its statutory obligations or its contractual obligations to an investor, insurance company, or other party.

Chapter 6. Requirements for Continued Certification

Sec. 1. (a) To continue to be certified, a certified capital company must make qualified investments according to the following schedule:

(1) Not later than two (2) years after the date on which a certified capital company is designated as a certified capital company at least twenty-five percent (25%) of its capital must be placed in qualified investments.

(2) Not later than three (3) years after the date on which a certified capital company is designated as a certified capital company at least forty percent (40%) of its capital must be placed in qualified investments.

(3) Not later than four (4) years after the date on which a certified capital company is designated as a certified capital company, at least fifty percent (50%) of its total capital must be placed in qualified investments.

(b) A certified capital company may not make an investment in an affiliate of the certified capital company. For purposes of this subsection, if a legal entity is not an affiliate before a certified capital company initially invests in the entity, it will not be an affiliate if a certified capital company provides additional investment in the entity after its initial investment.

Sec. 2. All capital that is not required to be placed in a qualified investment or that has been placed in qualified investments and

can be received by the certified capital company may be held or invested in a manner as the certified capital company considers appropriate. The proceeds of capital received by a certified capital company after it was originally placed in a qualified investment may be placed again in a qualified investment. Capital reinvested under this section counts toward the requirements of section 1 of this chapter.

Sec. 3. A qualified investment may not be made at a cost to a certified capital company greater than fifteen percent (15%) of the total capital of the certified capital company at the time of investment.

Sec. 4. The aggregate cumulative amount of all qualified investments made by the certified capital company from the date of its certification shall be considered in the calculation of the percentage requirements under section 1(a) of this chapter.

Sec. 5. A certified capital company shall report the following to the department:

(1) As soon as practicable after the receipt of capital:

(A) the name of each investor from which the capital was received;

(B) the insurance premiums tax identification number of the investor;

(C) the amount of each investor's investment of capital;

(D) the premium tax credits computed without regard to any limitations under IC 27-14-9-3; and

(E) the date on which the capital was received.

(2) Before March 31 of each year:

(A) the amount of the certified capital company's capital at the end of the immediately preceding year;

(B) whether or not the certified capital company has invested more than fifteen percent (15%) of the total capital under management in any one (1) company; and

(C) all qualified investments that the certified capital company made during the previous calendar year.

(3) Before March 31 of each year, for each qualified investment made by the certified capital company:

(A) the number of employees of each qualified business in which it made investments at the time of investment and as of the end of the immediately preceding year;

(B) the annual payroll of each qualified business in which it made investments at the time of investment and as of the end of the immediately preceding year; and

(C) the classification of each qualified business in which it made investments according to industry sector.

(4) Within ninety (90) days of the end of the fiscal year, provide annual audited financial statements that include an opinion of an independent certified public accountant.

Sec. 6. The audit required under section 5(4) of this chapter must 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 the statutes and program rules and that the funds received by the certified capital company have been invested as required within the time limits set forth in section 1(a) of this chapter.

Sec. 7. On or before January 31 of each year, a certified capital company shall pay an annual, nonrefundable certification fee of five thousand dollars ($5,000) to the department. However, the department may not require a certification fee under this section within six (6) months of the initial certification date of a certified capital company.

Chapter 7. Distributions

Sec. 1. A certified capital company may make qualified distributions as defined in IC 27-14-2-11 at any time.

Sec. 2. Except as provided in section 3 of this chapter, a certified capital company may not make distributions, other than qualified distributions, unless the certified capital company has placed an amount cumulatively equal to one hundred percent (100%) of its capital in qualified investments.

Sec. 3. Distributions or payments to debt holders of a certified capital company may be made without restriction with respect to debt owed to them by a certified capital company. A debt holder that is also an investor or equity holder of a certified capital company may receive distributions or payments with respect to the debt without restriction.

Chapter 8. Decertification

Sec. 1. (a) The department shall conduct an annual review of each certified capital company to determine if the certified capital company is abiding by the requirements of certification. The department shall advise the certified capital company as to the certification status of its qualified investments. The department shall insure that no investment has been made in violation of this article.

(b) The cost of the annual review shall be paid from the annual certification fee paid under IC 27-14-6-7.

Sec. 2. A material violation of IC 27-14-6 is grounds for decertification of the certified capital company. If the department determines that a company is not in compliance with the requirements for continuing certification, the department shall provide written notice to the officers of the company and the board of directors, managers, trustees, or general partners that the company may be decertified in one hundred twenty (120) days from the date of mailing of the notice unless the company corrects the deficiencies and is again in compliance with the requirements for certification.

Sec. 3. If the certified capital company is still not in compliance with the requirements of IC 27-14-6 at the end of the one hundred twenty (120) day period described in section 2 of this chapter, the department may send a notice of decertification to the company and to all other appropriate state agencies.

Sec. 4. If a certified capital company is decertified before meeting the requirements of IC 27-14-6-1, the state shall recapture the premium tax credits previously claimed by an investor under IC 27-14-9, and all future credits to be claimed by an investor with respect to its investment in the certified capital company are forfeited.

Sec. 5. If a certified capital company is decertified after it has met the requirements of IC 27-14-6-1, the premium tax credits claimed by an investor under IC 27-14-9:

(1) for the taxable year of the investor in which the decertification arose; and

(2) for the future taxable years of the investor;

are forfeited. However, premium tax credits obtained by an investor with respect to the investor's tax years that ended before the decertification occurred may not be recaptured by the state.

Sec. 6. Once a certified capital company has invested one hundred percent (100%) of its capital in qualified Indiana businesses, all future premium tax credits to be claimed by investors with respect to the certified capital company under this article are nonforfeitable.

Sec. 7. Once a certified capital company has invested one hundred percent (100%) of its capital in qualified Indiana businesses and has met all other requirements of this article, the company is no longer subject to regulation by the department with the exception of the reporting requirements of IC 27-14-6-5(3).

Sec. 8. The department shall send written notice to the address of each investor whose premium tax credit has been subject to

recapture or forfeiture, using the address shown on the last premium tax filing.

Sec. 9. The department may revoke the certification of a certified capital company if a material representation to the department in connection with the application process proves to have been falsely made or if the application materially violates any requirement established by the department under this article.

Chapter 9. Insurance Premiums Tax Credit

Sec. 1. An investor that makes an investment of capital is entitled to a vested credit in the year of the investor's investment against the investor's insurance premiums tax liability equal to the amount of the investor's investment of capital multiplied by the applicable percentage. However, the investor may not claim more than ten percent (10%) of the amount of the vested credit in a taxable year.

Sec. 2. The aggregate amount of capital invested in qualified Indiana businesses after December 31, 1999, for which insurance premiums tax credits may be allowed under this chapter may not exceed one hundred million dollars ($100,000,000).

Sec. 3. The maximum amount of capital invested in a particular certified capital company for which insurance premiums tax credits may be allowed under this chapter may not exceed thirty million dollars ($30,000,000).

Sec. 4. An investor's insurance premiums tax credit allowed under this article may not exceed the investor's insurance premiums tax liability. The amount of credit exceeding the investor's insurance premiums tax liability may be carried forward until the credit is fully used. However, the credit may not be carried forward to a taxable year beginning more than fifteen (15) years after the certification date of the certified capital company for which the investor's investment entitled the investor to a tax credit.

Sec. 5. The aggregate amount of capital for which credits against the insurance premiums tax liability are allowed under this chapter may not exceed ten million dollars ($10,000,000) in a taxable year beginning after December 31, 1999. If the aggregate amount of capital investments in a taxable year exceed ten million dollars ($10,000,000), the credits allowed under this chapter are allocated according to the proportional amount of investment in each certified capital company.

Sec. 6. The department shall advise in writing a certified capital company filing for certification within fifteen (15) days after

receiving the filing for certification whether the limitations of section 5 of this chapter apply.

Sec. 7. (a) A tax credit allowed under this chapter may be sold or transferred in accordance with rules adopted by the department. A sale or transfer does not affect the schedule for taking the credit set forth in section 1 of this chapter.

(b) An insurance premiums tax credit recaptured under this article is the liability of the taxpayer that actually claimed the credit.

(c) In approving the sale or transfer of a credit under this section, the department may require the transferor or the transferee, or both, to execute guarantees or post bonds with respect to any potential credit recapture.

Chapter 10. Reports

Sec. 1. Before June 1 of each year, the director shall submit a report to the legislative services agency. The report must include the following:

(1) The number of certified capital companies holding capital.

(2) The amount of capital invested in each certified capital company.

(3) The cumulative amount that each certified capital company has invested in qualified Indiana businesses.

(4) The total amount of insurance premiums tax credits allowed under this article in the previous year and the cumulative total.

(5) The performance of each certified capital company with regards to the requirements of IC 27-14-6-1.

(6) The classification of companies in which each certified capital company has invested according to industry sector as defined by the department.

(7) The total number of jobs of each qualified Indiana business before and after the qualified investments made by the certified capital company.

(8) The annual payroll of each qualified Indiana business before and after the qualified investments made by the certified capital company.

(9) The name of each certified capital company that is decertified or has its certification revoked together with the reasons for the decertification or revocation.

Chapter 12. Rulemaking

Sec. 1. The department shall adopt rules under IC 4-22-2 to implement this article.

SECTION 2. [EFFECTIVE JANUARY 1, 2000] **IC 27-14-9, as added by this act, applies to a taxable year beginning after December 31, 1999.**