

By: Eiland

H.B. No. 3839

Substitute the following for H.B. No. 3839:

By: Eiland

C.S.H.B. No. 3839

A BILL TO BE ENTITLED

AN ACT

relating to premium tax credits for certain investments; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 229 to read as follows:

CHAPTER 229. PREMIUM TAX CREDIT FOR CERTAIN INVESTMENTS IN
INSURANCE-CAPITAL COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 229.001. GENERAL DEFINITIONS. In this chapter:

(1) "Allocation date" means the date on which
certified investors are allocated premium tax credits.

(2) "Certified capital" means cash invested by a
certified investor that fully funds the purchase price of an equity
interest in a certified insurance-capital company or a qualified
debt instrument issued by that company.

(3) "Certified insurance-capital company" means a
partnership, corporation, or trust or limited liability company,
whether organized on a profit or nonprofit basis, that:

(A) has as its business activity the investment
of cash in a qualified insurance carrier or carriers; and

(B) is certified as meeting the criteria of this
chapter.

(4) "Certified investor" means an insurance company or

1 other person that has state premium tax liability and that
2 contributes certified capital pursuant to an allocation of premium
3 tax credits under this chapter.

4 (5) "Early stage carrier" means an insurance carrier
5 or proposed insurance carrier described by Section 229.152.

6 (6) "First tier coastal county" means:

7 (A) Aransas County;

8 (B) Brazoria County;

9 (C) Calhoun County;

10 (D) Cameron County;

11 (E) Chambers County;

12 (F) Galveston County;

13 (G) Jefferson County;

14 (H) Kenedy County;

15 (I) Kleberg County;

16 (J) Matagorda County;

17 (K) Nueces County;

18 (L) Refugio County;

19 (M) San Patricio County; or

20 (N) Willacy County.

21 (7) "Person" means an individual or entity, including
22 a corporation, general or limited partnership, or trust or limited
23 liability company.

24 (8) "Premium tax credit allocation claim" means a
25 claim for allocation of premium tax credits.

26 (9) "Qualified debt instrument" means a debt
27 instrument issued by a certified insurance-capital company, at par

1 value or a premium, that:

2 (A) has an original maturity date that is a date
3 on or after the fifth anniversary of the date of issuance;

4 (B) has a repayment schedule that is not faster
5 than a level principal amortization over five years; and

6 (C) does not have interest, distribution, or
7 payment features that are related to:

8 (i) the profitability of the company; or

9 (ii) the performance of the company's
10 investment portfolio.

11 (10) "Qualified insurance carrier" means a business
12 described by Section 229.201.

13 (11) "Qualified investment" means the investment of
14 cash by a certified insurance-capital company in a qualified
15 insurance carrier for the purchase of any debt, debt participation,
16 or hybrid security.

17 (12) "Second tier coastal county" means:

18 (A) Bee County;

19 (B) Brooks County;

20 (C) Fort Bend County;

21 (D) Goliad County;

22 (E) Hardin County;

23 (F) Harris County;

24 (G) Hildago County;

25 (H) Jackson County;

26 (I) Jim Wells County;

27 (J) Liberty County;

1 (K) Live Oak County;

2 (L) Orange County;

3 (M) Victoria County; or

4 (N) Wharton County.

5 (13) "State premium tax liability" means:

6 (A) any liability incurred by any person under
7 Chapter 221, 222, 223, or 224; or

8 (B) if the tax liability imposed under Chapter
9 222, 223, or 224 is eliminated or reduced, any tax liability imposed
10 on an insurer or other person that had premium tax liability under
11 Subchapter A, Chapter 4, or Article 9.59 as those laws existed on
12 January 1, 2003.

13 Sec. 229.002. DEFINITION OF AFFILIATE. In this chapter,
14 "affiliate" of another person means:

15 (1) a person that is an affiliate for purposes of
16 Section 823.003;

17 (2) a person that directly or indirectly:

18 (A) beneficially owns 10 percent or more of the
19 outstanding voting securities or other voting or management
20 interests of the other person, whether through rights, options,
21 convertible interests, or otherwise; or

22 (B) controls or holds power to vote 10 percent or
23 more of the outstanding voting securities or other voting or
24 management interests of the other person;

25 (3) a person 10 percent or more of the outstanding
26 voting securities or other voting or management interests of which
27 are directly or indirectly:

1 (A) beneficially owned by the other person,
2 whether through rights, options, convertible interests, or
3 otherwise; or

4 (B) controlled or held with power to vote by the
5 other person;

6 (4) a partnership in which the other person is a
7 general partner;

8 (5) an officer, director, employee, or agent of the
9 other person; or

10 (6) an immediate family member of an officer,
11 director, employee, or agent described by Subdivision (5).

12 [Sections 229.003-229.050 reserved for expansion]

13 SUBCHAPTER B. ADMINISTRATION AND PROMOTION

14 Sec. 229.051. ADMINISTRATION BY COMPTROLLER AND
15 COMMISSIONER. (a) Except as provided by Subsection (b), the
16 comptroller shall administer this chapter in a manner consistent
17 with Subchapter B, Chapter 4.

18 (b) The commissioner shall administer the licensing of any
19 qualified insurance carrier described by Section 229.201 and adopt
20 carrier licensing rules under Section 229.053.

21 Sec. 229.052. RULES AND FORMS ADOPTED BY COMPTROLLER. The
22 comptroller shall adopt rules and forms as necessary to implement
23 this subchapter, including rules that:

24 (1) establish the application procedures for
25 certified insurance-capital companies;

26 (2) facilitate the transfer or assignment of premium
27 tax credits by certified investors; and

1 (3) provide for the allocation of tax credits from
2 certified insurance-capital companies created by Subchapter B,
3 Chapter 4, and that may include provisions for the early allocation
4 of those credits.

5 Sec. 229.053. RULES AND FORMS ADOPTED BY COMMISSIONER. The
6 commissioner shall adopt rules and forms as necessary to implement
7 this chapter, including rules that:

8 (1) require as a condition of holding a certificate of
9 authority that qualified insurance carriers implement catastrophe
10 management plans to ensure the payment of insured claims resulting
11 from not less than two reasonably anticipated probable maximum loss
12 events;

13 (2) require that qualified insurance carriers offer
14 coverage for wind exposure, subject to a premium limit equal to 10
15 percent of the insurer's aggregate premiums, at rates that comply
16 with Article 1.02 beginning not later than the third anniversary of
17 the date the carrier obtained the carrier's certificate of
18 authority to operate in this state;

19 (3) establish initial equity and capitalization
20 requirements that must be at least \$10 million in initial capital
21 for qualifying insurance carriers;

22 (4) establish the percentage maximum limitation of
23 business that may be written outside of first and second tier
24 coastal counties, which may not exceed 50 percent of the qualified
25 insurance carrier's business;

26 (5) require the filing of rate information; and

27 (6) provide for penalties, in addition to and

1 cumulative of the penalties provided by this chapter, that require
2 the disgorgement of capital and surplus to replenish the state's
3 general revenue if a qualified insurance carrier receives an
4 investment of certified capital but fails to use that capital to
5 write a substantial amount of insurance business in one or more
6 first or second tier coastal counties.

7 Sec. 229.054. REPORTS TO LEGISLATURE. (a) The comptroller
8 shall prepare a biennial report concerning the results of the
9 implementation of this chapter. The report must include:

10 (1) the number of certified insurance-capital
11 companies holding certified capital under this chapter;

12 (2) the amount of certified capital invested in each
13 certified insurance-capital company;

14 (3) the amount of certified capital the certified
15 insurance-capital company invested in qualified insurance carriers
16 as of January 1, 2009, and the cumulative total for each subsequent
17 year;

18 (4) the total amount of tax credits granted under this
19 chapter for each year that credits have been granted;

20 (5) the performance of each certified
21 insurance-capital company with respect to renewal and reporting
22 requirements imposed under this chapter; and

23 (6) with respect to the qualified insurance carriers
24 in which certified insurance-capital companies have invested:

25 (A) the total number of jobs created by the
26 investment and the average wages paid for the jobs;

27 (B) the total number of jobs retained as a result

1 of the investment and the average wages paid for the jobs; and

2 (C) the certified insurance-capital companies
3 that have been decertified or that have failed to renew the
4 certification and the reason for any decertification.

5 (b) The commissioner shall prepare a biennial report
6 concerning the results of the implementation of this chapter. The
7 report must include:

8 (1) the number and identity of the qualified insurance
9 carriers created under this chapter;

10 (2) the amount of premiums sold to Texas consumers and
11 the insured property value covered by qualified insurance carriers;

12 (3) information related to the rates charged consumers
13 by qualified insurance carriers; and

14 (4) information related to the capital adequacy and
15 catastrophe management programs implemented by qualified insurance
16 carriers.

17 (c) The comptroller and commissioner shall file the reports
18 with the governor, the lieutenant governor, and the speaker of the
19 house of representatives not later than December 15 of each
20 even-numbered year.

21 Sec. 229.055. PROMOTION OF PROGRAM. The Texas Economic
22 Development and Tourism Office shall promote the program
23 established under this chapter in the Texas Business and Community
24 Economic Development Clearinghouse established under Section
25 481.167, Government Code.

26 [Sections 229.056-229.100 reserved for expansion]

SUBCHAPTER C. APPLICATION FOR AND GENERAL OPERATION OF CERTIFIED
INSURANCE-CAPITAL COMPANIES

Sec. 229.101. APPLICATION FOR CERTIFICATION. (a) An
applicant for certification must file the application in the form
prescribed by the comptroller. The application must be accompanied
by a nonrefundable application fee of \$7,500.

(b) The application must include an audited balance sheet of
the applicant, with an unqualified opinion from an independent
certified public accountant, as of a date not more than 35 days
before the date of the application.

Sec. 229.102. QUALIFICATION. To qualify as a certified
insurance-capital company:

(1) the applicant must have, at the time of
application for certification, an equity capitalization of at least
\$500,000 in unencumbered cash or cash equivalents;

(2) at least two principals or persons employed to
manage the funds of the applicant must have at least four years of
experience in the venture capital industry; and

(3) the applicant must satisfy any additional
requirement imposed by the comptroller by rule.

Sec. 229.103. MANAGEMENT BY AND CERTAIN OWNERSHIP INTERESTS
OF INSURANCE ENTITIES PROHIBITED. (a) An insurer, group of
insurers, or other persons who may have state premium tax liability
or the insurer's or person's affiliates may not directly or
indirectly:

(1) manage a certified insurance-capital company;

(2) beneficially own, whether through rights,

1 options, convertible interests, or otherwise, more than 10 percent
2 of the outstanding voting securities of a certified
3 insurance-capital company; or

4 (3) control the direction of investments for a
5 certified insurance-capital company.

6 (b) Subsection (a) applies without regard to whether the
7 insurer or other person or the affiliate of the insurer or other
8 person is authorized by or engages in business in this state.

9 (c) Subsections (a) and (b) do not preclude an insurer,
10 certified investor, or any other party from exercising its legal
11 rights and remedies, including interim management of a certified
12 insurance-capital company, if authorized by law, with respect to a
13 certified insurance-capital company that is in default of the
14 company's statutory or contractual obligations to the insurer,
15 certified investor, or other party.

16 (d) This chapter does not limit an insurer's ownership of
17 nonvoting equity interests in a certified insurance-capital
18 company.

19 Sec. 229.104. ACTION ON APPLICATION. (a) The comptroller
20 shall:

21 (1) review the application, organizational documents,
22 and business history of each applicant; and

23 (2) ensure that the applicant satisfies the
24 requirements of this chapter.

25 (b) Not later than the 30th day after the date an
26 application is filed, the comptroller shall:

27 (1) issue the certification; or

1 (2) refuse to issue the certification and communicate
2 in detail to the applicant the grounds for the refusal, including
3 suggestions for the removal of those grounds.

4 Sec. 229.105. CONTINUATION OF CERTIFICATION. To continue
5 to be certified, a certified insurance-capital company must make
6 qualified investments according to the schedule established by
7 Section 229.151.

8 Sec. 229.106. REPORTS TO COMPTROLLER; AUDITED FINANCIAL
9 STATEMENT. (a) Each certified insurance-capital company shall
10 report to the comptroller as soon as practicable after the receipt
11 of certified capital:

12 (1) the name of each certified investor from whom the
13 certified capital was received, including the certified investor's
14 insurance premium tax identification number;

15 (2) the amount of each certified investor's investment
16 of certified capital and premium tax credits; and

17 (3) the date on which the certified capital was
18 received.

19 (b) Not later than January 31 of each year, each certified
20 insurance-capital company shall report to the comptroller:

21 (1) the amount of the company's certified capital at
22 the end of the preceding year;

23 (2) whether or not the company has invested more than
24 25 percent of the company's total certified capital in a single
25 carrier;

26 (3) each qualified investment that the company made
27 during the preceding year and, with respect to each qualified

1 investment, the number of employees of the qualified insurance
2 carrier at the time the qualified investment was made; and

3 (4) any other information required by the comptroller,
4 including any information required by the comptroller to comply
5 with Section 229.054.

6 (c) Not later than April 1 of each year, each certified
7 insurance-capital company shall provide to the comptroller an
8 annual audited financial statement that includes the opinion of an
9 independent certified public accountant. The audit must address
10 the methods of operation and conduct of the business of the company
11 to determine whether:

12 (1) the company is complying with this chapter and the
13 rules adopted under this chapter;

14 (2) the funds received by the company have been
15 invested as required within the time provided by Section 229.151;
16 and

17 (3) the company has invested the funds in qualified
18 insurance carriers and other specifically authorized investments.

19 Sec. 229.107. RENEWAL FEE; LATE FEE; EXCEPTION. (a) Not
20 later than January 31 of each year, each certified
21 insurance-capital company shall pay a nonrefundable renewal fee of
22 \$5,000 to the comptroller.

23 (b) If a certified insurance-capital company fails to pay
24 the renewal fee on or before the date specified by Subsection (a),
25 the company must pay, in addition to the renewal fee, a late fee of
26 \$5,000 to continue the company's certification.

27 (c) A renewal fee is not required within six months of the

1 date on which a certified insurance-capital company's initial
2 certification is issued under Section 229.104(b).

3 Sec. 229.108. OFFERING MATERIAL USED BY CERTIFIED CAPITAL
4 COMPANY. Any offering material involving the sale of securities of
5 the certified insurance-capital company must include the following
6 statement:

7 "By authorizing the formation of a certified
8 insurance-capital company, the State of Texas does not endorse the
9 quality of management or the potential for earnings of the company
10 and is not liable for damages or losses to a certified investor in
11 the company. Use of the word "certified" in an offering does not
12 constitute a recommendation or endorsement of the investment by the
13 comptroller of public accounts. If applicable provisions of law
14 are violated, the State of Texas may require forfeiture of unused
15 premium tax credits and repayments of used premium tax credits."

16 [Sections 229.109-229.150 reserved for expansion]

17 SUBCHAPTER D. INVESTMENT BY CERTIFIED INSURANCE-CAPITAL COMPANIES

18 Sec. 229.151. SCHEDULE OF INVESTMENT. (a) Before the third
19 anniversary of a certified insurance-capital company's allocation
20 date, the company must make qualified investments in one or more
21 qualified insurance carriers in an amount cumulatively equal to at
22 least 30 percent of the company's certified capital, subject to
23 Section 229.152(b).

24 (b) Before the fifth anniversary of a certified
25 insurance-capital company's allocation date, the company must make
26 qualified investments in one or more qualified insurance carriers
27 in an amount cumulatively equal to at least 50 percent of the

1 company's certified capital, subject to Section 229.152(b).

2 Sec. 229.152. INVESTMENT IN EARLY STAGE CARRIER REQUIRED.

3 (a) In this section, "early stage carrier" means a qualified
4 insurer or proposed insurer that:

5 (1) is involved, at the time of a certified
6 insurance-capital company's first investment, in activities
7 related to the organization of the carrier, such as its original
8 incorporation or development of a proposed business model;

9 (2) was initially organized less than two years before
10 the date of the certified insurance-capital company's first
11 investment; or

12 (3) during the fiscal year immediately preceding the
13 year of the certified insurance-capital company's first
14 investment, had gross revenues of not more than \$2 million as
15 determined in accordance with generally accepted accounting
16 principles.

17 (b) A certified insurance-capital company must place 50
18 percent of the amount of qualified investments required by Section
19 229.151 in early stage carriers.

20 Sec. 229.153. INVESTMENT IN EXISTING QUALIFIED INSURANCE
21 CARRIERS. A certified insurance-capital company may invest up to
22 50 percent of the amount of qualified investments in an existing
23 qualified insurance carrier or carriers that do not qualify as
24 early stage carriers under Section 229.152.

25 Sec. 229.154. CERTIFIED CAPITAL NOT INVESTED IN QUALIFIED
26 INVESTMENTS. A certified insurance-capital company shall invest
27 any certified capital not invested in qualified investments only

1 in:

2 (1) cash deposited with a federally insured financial
3 institution;

4 (2) certificates of deposit in a federally insured
5 financial institution;

6 (3) investment securities that are:

7 (A) obligations of the United States or agencies
8 or instrumentalities of the United States; or

9 (B) obligations that are guaranteed fully as to
10 principal and interest by the United States;

11 (4) debt instruments rated at least "A" or the
12 equivalent by a nationally recognized credit rating organization,
13 or issued by, or guaranteed with respect to payment by, an entity
14 whose unsecured indebtedness is rated at least "A" or the
15 equivalent by a nationally recognized credit rating organization,
16 and which indebtedness is not subordinated to other unsecured
17 indebtedness of the issuer or the guarantor;

18 (5) obligations of this state or a municipality or
19 political subdivision of this state; or

20 (6) any other investment approved in advance in
21 writing by the comptroller.

22 Sec. 229.155. COMPUTATION OF AMOUNT OF INVESTMENTS. (a)
23 The aggregate cumulative amount of all qualified investments made
24 by a certified insurance-capital company after the company's
25 allocation date shall be considered in the computation of the
26 percentage requirements under this subchapter.

27 (b) A certified insurance-capital company may invest

1 proceeds received from a qualified investment in another qualified
2 investment, and that investment counts toward any requirement of
3 this chapter with respect to investments of certified capital.

4 Sec. 229.156. LIMIT ON QUALIFIED INVESTMENT. A certified
5 insurance-capital company may not make a qualified investment at a
6 cost to the company that is greater than 50 percent of the company's
7 total certified capital at the time of investment.

8 Sec. 229.157. DISTRIBUTIONS BY CERTIFIED INSURANCE-CAPITAL
9 COMPANY. (a) In this section, "qualified distribution" means any
10 distribution or payment from certified capital by a certified
11 insurance-capital company in connection with:

12 (1) the reasonable costs and expenses of forming,
13 syndicating, managing, and operating the company, provided that the
14 distribution or payment is not made directly or indirectly to a
15 certified investor, including:

16 (A) reasonable and necessary fees paid for
17 professional services, including legal and accounting services,
18 related to the company's formation and operation; and

19 (B) an annual management fee in an amount that
20 does not exceed 2.5 percent of the company's certified capital; and

21 (2) a projected increase in federal or state taxes,
22 including penalties and interest related to state and federal
23 income taxes, of the company's equity owners resulting from the
24 earnings or other tax liability of the company to the extent that
25 the increase is related to the ownership, management, or operation
26 of the company.

27 (b) A certified insurance-capital company may make a

qualified distribution at any time. To make a distribution or payment other than a qualified distribution, a company must have made qualified investments in an amount cumulatively equal to 100 percent of the company's certified capital.

(c) If an insurance carrier in which a qualified investment is made relocates the carrier's principal business operations to another state during the term of the certified insurance-capital company's investment in the business, the cumulative amount of qualified investments made by the certified insurance-capital company for purposes of satisfying the requirements of Subsection (b) only is reduced by the amount of the certified insurance-capital company's qualified investments in the carrier that has relocated.

(d) Subsection (c) does not apply if the insurance carrier demonstrates that the carrier has returned the carrier's principal business operations to this state not later than the 90th day after the date of the relocation.

Sec. 229.158. REPAYMENT OF DEBT. Notwithstanding Section 229.157(b), a certified insurance-capital company may make repayments of principal and interest on the company's indebtedness without any restriction, including repaying the company's indebtedness on which certified investors earned premium tax credits.

[Sections 229.159-229.200 reserved for expansion]

SUBCHAPTER E. QUALIFIED INSURANCE CARRIER

Sec. 229.201. DEFINITION OF QUALIFIED INSURANCE CARRIER; EXEMPTION FROM CERTAIN RATE-FILING REQUIREMENTS. (a) In this

1 chapter, "qualified insurance carrier" means a carrier that
2 complies with this section at the time of a certified
3 insurance-capital company's first investment in the carrier.

4 (b) A qualified insurance carrier must:

5 (1) be legally domiciled in this state and intend to
6 remain domiciled in this state after receipt of the certified
7 insurance-capital company's investment;

8 (2) have the carrier's principal business operations
9 located in this state and intend to maintain business operations in
10 this state after receipt of the certified insurance-capital
11 company's investment;

12 (3) hold a certificate of authority issued by the
13 commissioner to engage in business as a property and casualty
14 insurance company, subject to Chapter 822, Section 229.202, and
15 rules adopted under Section 229.053 or, in the case of an early
16 stage carrier, apply for such a certificate within 12 months of
17 receipt of any funding from a certified insurance-capital company;
18 and

19 (4) receive from private sources matching capital
20 funds that may, subject to Subsection (c), be in the form of a
21 surplus debenture and that match dollar-for-dollar all investments
22 of certified capital received from certified insurance-capital
23 companies.

24 (c) If a surplus debenture is used as part of the capital
25 structure as described by Subsection (b)(4), the debenture must
26 provide for:

27 (1) the repayment of principal not earlier than the

1 fifth anniversary of the date of the debenture; and

2 (2) an interest rate that does not exceed the London
3 Inter-Bank Offered Rate plus two percent, subject to a maximum
4 interest rate of seven percent.

5 (d) A qualified insurance carrier must agree to use the
6 qualified investment to:

7 (1) write commercial and personal property insurance
8 in one or more first or second tier coastal counties;

9 (2) in the case of a proposed or start-up carrier,
10 support the establishment or creation of a carrier to conduct the
11 business of insurance in one or more first or second tier coastal
12 counties; and

13 (3) support business operations in this state and the
14 economic development of the state and its seacoast.

15 (e) An early stage carrier or qualified insurance carrier is
16 exempt from the rate filing requirements of Subchapters C and D,
17 Chapter 2251, except that the carrier shall file with the
18 department a schedule of the amounts the carrier charges a
19 policyholder or an applicant for a policy, regardless of the term
20 the carrier uses to refer to those charges, including "rate,"
21 "policy fee," "inspection fee," or "initial charge."

22 (f) A qualified insurance carrier must:

23 (1) employ in this state at least 80 percent of the
24 carrier's employees; or

25 (2) pay to employees in this state 80 percent of the
26 carrier's payroll.

27 Sec. 229.202. REQUIREMENT TO CONDUCT FIRST OR SECOND TIER

1 COASTAL COUNTY INSURANCE BUSINESS. (a) A qualified insurance
2 carrier shall at all times be primarily engaged in the business of
3 selling commercial and personal property insurance in one or more
4 first or second tier coastal counties and may not sell more than 50
5 percent of its insurance business in other counties.

6 (b) The failure to comply with Subsection (a) may result in
7 penalties under Section 229.303 and the recapture and forfeiture of
8 premium tax credits under Section 229.351.

9 Sec. 229.203. LOCATION OF PRINCIPAL BUSINESS OPERATIONS.
10 If, before the 90th day after the date a certified
11 insurance-capital company makes an investment in a qualified
12 insurance carrier, the qualified insurance carrier moves its
13 principal business operations from this state, the investment may
14 not be considered a qualified investment for purposes of the
15 percentage requirements under this chapter.

16 Sec. 229.204. EVALUATION OF BUSINESS BY COMPTROLLER.
17 (a) A certified insurance-capital company may, before making an
18 investment in an entity, request a written opinion from the
19 comptroller as to whether the entity in which the company proposes
20 to invest is a qualified insurance carrier or an early stage
21 carrier.

22 (b) The department shall provide information requested by
23 the comptroller necessary for making a determination as to whether
24 an entity meets the definition of a qualified insurance carrier or
25 an early stage carrier, as applicable.

26 (c) Not later than the 30th business day after the date of
27 the receipt of a request under Subsection (a), the comptroller

1 shall:

2 (1) determine whether the entity meets the definition
3 of a qualified insurance carrier or an early stage carrier, as
4 applicable, and notify the certified insurance-capital company of
5 the determination and provide an explanation of the determination;
6 or

7 (2) notify the company that an additional 15 days will
8 be needed to review the request and make the determination.

9 (d) If the comptroller fails to notify the certified
10 insurance-capital company with respect to the proposed investment
11 within the period specified by Subsection (c), the entity in which
12 the company proposes to invest is considered to be a qualified
13 insurance carrier or an early stage carrier, as appropriate, only
14 for purposes of the applicability of the tax credits under
15 Subchapter F and not for any other purpose.

16 Sec. 229.205. CONTINUATION OF CLASSIFICATION AS QUALIFIED
17 INSURANCE CARRIER; FOLLOW-ON INVESTMENTS AUTHORIZED. (a) A
18 business that is classified as a qualified insurance carrier at the
19 time of the first investment in the carrier by a certified
20 insurance-capital company:

21 (1) remains classified as a qualified insurance
22 carrier; and

23 (2) may receive follow-on investments from any
24 certified insurance-capital company.

25 (b) Except as provided by Subsection (c), a follow-on
26 investment made under Subsection (a) is a qualified investment even
27 though the insurance carrier may not meet the definition of a

1 qualified insurance carrier at the time of the follow-on
2 investment.

3 (c) A follow-on investment does not qualify as a qualified
4 investment if, at the time of the follow-on investment, the
5 qualified insurance carrier no longer has the carrier's principal
6 business operations in this state.

7 [Sections 229.206-229.250 reserved for expansion]

8 SUBCHAPTER F. PREMIUM TAX CREDIT

9 Sec. 229.251. PREMIUM TAX CREDIT. (a) A certified
10 investor who makes an investment of certified capital shall earn in
11 the year of investment a vested credit against state premium tax
12 liability equal to 100 percent of the certified investor's
13 investment of certified capital, subject to the limits imposed by
14 this chapter.

15 (b) Beginning with the tax report due March 1, 2011, for the
16 2010 tax year, a certified investor may take up to 25 percent of the
17 vested premium tax credit in any taxable year of the certified
18 investor. The credit may not be applied to estimated payments due
19 in 2010.

20 Sec. 229.252. LIMIT ON PREMIUM TAX CREDIT. (a) The credit
21 to be applied against state premium tax liability of a certified
22 investor in any one year may not exceed the state premium tax
23 liability of the investor for the taxable year.

24 (b) A certified investor may carry forward any unused credit
25 against state premium tax liability indefinitely until the premium
26 tax credits are used.

27 Sec. 229.253. PREMIUM TAX CREDIT ALLOCATION CLAIM REQUIRED.

1 (a) A certified investor must prepare and execute a premium tax
2 credit allocation claim on a form provided by the comptroller.

3 (b) The certified insurance-capital company must have filed
4 the claim with the comptroller on the date on which the comptroller
5 accepted premium tax credit allocation claims on behalf of
6 certified investors under the comptroller's rules.

7 (c) The premium tax credit allocation claim form must
8 include an affidavit of the certified investor under which the
9 certified investor becomes legally bound and irrevocably committed
10 to make an investment of certified capital in a certified
11 insurance-capital company in the amount allocated, even if the
12 amount allocated is less than the amount of the claim, subject only
13 to the receipt of an allocation under Section 229.255.

14 (d) A certified investor may not claim a premium tax credit
15 under Section 229.251 for an investment that has not been funded,
16 without regard to whether the certified investor has committed to
17 fund the investment.

18 Sec. 229.254. TOTAL LIMIT ON PREMIUM TAX CREDITS. (a) The
19 total amount of certified capital for which premium tax credits may
20 be allowed under this chapter for all years in which premium tax
21 credits are allowed is \$200 million.

22 (b) The total amount of certified capital for which premium
23 tax credits may be allowed for all certified investors under this
24 chapter may not exceed the amount that would entitle all certified
25 investors in certified capital companies to take total credits of
26 \$50 million in a year.

27 (c) A certified insurance-capital company and the company's

1 affiliates may not file premium tax credit allocation claims in
2 excess of the maximum amount of certified capital for which premium
3 tax credits may be allowed as provided by this section.

4 Sec. 229.255. ALLOCATION OF PREMIUM TAX CREDIT. (a) If the
5 total premium tax credits claimed by all certified investors exceed
6 the total limits on premium tax credits established by Section
7 229.254(a), the comptroller shall allocate the total amount of
8 premium tax credits allowed under this chapter to certified
9 investors in certified capital companies on a pro rata basis in
10 accordance with this section.

11 (b) The pro rata allocation for each certified investor
12 shall be the product of:

13 (1) a fraction, the numerator of which is the amount of
14 the premium tax credit allocation claim filed on behalf of the
15 investor and the denominator of which is the total amount of all
16 premium tax credit allocation claims filed on behalf of all
17 certified investors; and

18 (2) the total amount of certified capital for which
19 premium tax credits may be allowed under this chapter.

20 (c) The maximum amount of certified capital for which
21 premium tax credit allocation may be allowed on behalf of a single
22 certified investor and the investor's affiliates, whether by one or
23 more certified insurance-capital companies, may not exceed the
24 greater of:

25 (1) \$10 million; or

26 (2) 15 percent of the maximum aggregate amount
27 available under Section 229.254(a).

1 Sec. 229.256. TREATMENT OF CREDITS AND CAPITAL. In any
2 situation under this code or another insurance law of this state in
3 which the assets of a certified investor are examined or
4 considered, the certified capital may be treated as an admitted
5 asset, subject to the applicable statutory valuation procedures.

6 Sec. 229.257. TRANSFERABILITY OF CREDIT. (a) A certified
7 investor may transfer or assign premium tax credits only in
8 compliance with the rules adopted under Section 229.052.

9 (b) The transfer or assignment of a premium tax credit does
10 not affect the schedule for taking the premium tax credit under this
11 chapter.

12 Sec. 229.258. IMPACT OF PREMIUM TAX CREDIT ON INSURANCE
13 RATEMAKING. A certified investor is not required to reduce the
14 amount of premium tax included by the investor in connection with
15 ratemaking for an insurance contract written in this state because
16 of a reduction in the investor's premium tax derived from premium
17 tax credits granted under this chapter.

18 Sec. 229.259. RETALIATORY TAX. A tax credit allowed under
19 this chapter and similar tax credits allowed by other states are not
20 to be used in the computation of retaliatory taxes under Chapter
21 281.

22 [Sections 229.260-229.300 reserved for expansion]

23 SUBCHAPTER G. ENFORCEMENT

24 Sec. 229.301. ANNUAL REVIEW BY COMPTROLLER. (a) The
25 comptroller shall conduct an annual review of each certified
26 insurance-capital company to:

27 (1) ensure that the company:

1 (A) continues to satisfy the requirements of this
2 chapter; and

3 (B) has not made any investment in violation of
4 this chapter; and

5 (2) determine the eligibility status of the company's
6 qualified investments.

7 (b) Each certified insurance-capital company shall pay the
8 cost of the annual review according to a reasonable fee schedule
9 adopted by the comptroller.

10 Sec. 229.302. DECERTIFICATION OF CERTIFIED
11 INSURANCE-CAPITAL COMPANY. (a) A material violation of Section
12 229.105, 229.106, 229.107, 229.151, 229.152, 229.154, 229.155,
13 229.156, 229.202, 229.203, or 229.205 is grounds for
14 decertification of a certified insurance-capital company.

15 (b) If the comptroller determines that a certified
16 insurance-capital company is not in compliance with a law listed in
17 Subsection (a), the comptroller shall notify the company's officers
18 in writing that the company may be subject to decertification after
19 the 120th day after the date the notice is mailed unless the
20 company:

21 (1) corrects the deficiencies; and

22 (2) returns to compliance with that law.

23 (c) The comptroller may decertify a certified
24 insurance-capital company, after opportunity for hearing, if the
25 comptroller finds that the company is not in compliance with a law
26 listed in Subsection (a) at the end of the period established by
27 Subsection (b).

1 (d) Decertification under this section is effective on
2 receipt of notice of decertification by the certified
3 insurance-capital company.

4 (e) The comptroller shall notify any appropriate state
5 agency of a decertification of a certified insurance-capital
6 company.

7 Sec. 229.303. ADMINISTRATIVE PENALTY. (a) The comptroller
8 may impose an administrative penalty on a certified
9 insurance-capital company that violates this chapter.

10 (b) The amount of the penalty may not exceed \$25,000. Each
11 day a violation continues or occurs is a separate violation for the
12 purpose of imposing the penalty. The amount of the penalty shall be
13 based on:

14 (1) the seriousness of the violation, including the
15 nature, circumstances, extent, and gravity of the violation;

16 (2) the economic harm caused by the violation;

17 (3) the history of previous violations;

18 (4) the amount necessary to deter a future violation;

19 (5) efforts to correct the violation; and

20 (6) any other matter that justice may require.

21 (c) A certified insurance-capital company assessed a
22 penalty under this chapter may request a redetermination as
23 provided by Chapter 111, Tax Code.

24 (d) The attorney general may sue to collect the penalty.

25 (e) A proceeding to impose the penalty is a contested case
26 under Chapter 2001, Government Code.

27 [Sections 229.304-229.350 reserved for expansion]

1 SUBCHAPTER H. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS

2 Sec. 229.351. RECAPTURE AND FORFEITURE OF PREMIUM TAX
3 CREDIT FOLLOWING DECERTIFICATION. (a) Decertification of a
4 certified insurance-capital company may, in accordance with this
5 section, cause:

6 (1) the recapture of premium tax credits previously
7 claimed by the company's certified investors; and

8 (2) the forfeiture of future premium tax credits to be
9 claimed by the investors.

10 (b) Decertification of a certified insurance-capital
11 company on or before the third anniversary of the company's
12 allocation date causes the recapture of any premium tax credits
13 previously claimed and the forfeiture of any future premium tax
14 credits to be claimed by a certified investor with respect to the
15 company.

16 (c) For a certified insurance-capital company that meets
17 the requirements for continued certification under Sections
18 229.105 and 229.151(a) and subsequently fails to meet the
19 requirements for continued certification under Section 229.151(b):

20 (1) any premium tax credit that has been or will be
21 taken by a certified investor on or before the third anniversary of
22 the allocation date is not subject to recapture or forfeiture; and

23 (2) any premium tax credit that has been or will be
24 taken by a certified investor after the third anniversary of the
25 company's allocation date is subject to recapture or forfeiture.

26 (d) For a certified insurance-capital company that has met
27 the requirements for continued certification under Sections

1 229.105 and 229.151 and is subsequently decertified:

2 (1) any premium tax credit that has been or will be
3 taken by a certified investor on or before the fifth anniversary of
4 the allocation date is not subject to recapture or forfeiture; and

5 (2) any premium tax credit to be taken after the fifth
6 anniversary of the allocation date is subject to forfeiture only if
7 the company is decertified on or before the fifth anniversary of the
8 company's allocation date.

9 (e) For a certified insurance-capital company that has
10 invested an amount cumulatively equal to 100 percent of the
11 company's certified capital in qualified investments, any premium
12 tax credit claimed or to be claimed by a certified investor is not
13 subject to recapture or forfeiture under this section.

14 Sec. 229.352. NOTICE OF RECAPTURE AND FORFEITURE OF PREMIUM
15 TAX CREDIT. The comptroller shall send written notice to the
16 address of each certified investor whose premium tax credit is
17 subject to recapture or forfeiture, using the address shown on the
18 investor's last premium tax filing.

19 Sec. 229.353. INDEMNITY AGREEMENTS AND INSURANCE
20 AUTHORIZED. (a) A certified insurance-capital company may agree
21 to indemnify, or purchase insurance for the benefit of, a certified
22 investor for losses resulting from the recapture or forfeiture of
23 premium tax credits under Section 229.351.

24 (b) Any guaranty, indemnity, bond, insurance policy, or
25 other payment undertaking made under this section may not be
26 provided by more than one certified investor of the certified
27 insurance-capital company or affiliate of the certified investor.

SECTION 2. Article 4.51(12), Insurance Code, is amended to read as follows:

(12) "Qualified investment" means the investment of cash by a certified capital company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including:

(A) surplus debentures issued by qualified insurance carriers authorized by Subchapter E, Chapter 229, provided that the surplus debentures do not have voting rights and do not constitute a majority of the issuing entity's capital structure; and

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

SECTION 3. Subchapter B, Chapter 4, Insurance Code, is amended by adding Article 4.515 to read as follows:

Art. 4.515. INVESTMENT IN CERTAIN SURPLUS DEBENTURES. Notwithstanding Article 4.51(9)(F) of this code, the limitation on a qualified business does not include investments in surplus debentures issued by qualified insurance carriers authorized by Subchapter E, Chapter 229, provided that the surplus debentures:

(1) do not have voting rights; and
(2) do not constitute a majority of the issuing entity's capital structure.

SECTION 4. As soon as practicable after the effective date of this Act, the comptroller and the commissioner of insurance

1 shall adopt rules as required by Sections 229.052 and 229.053,
2 Insurance Code, as added by this Act.

3 SECTION 5. (a) The comptroller shall:

4 (1) begin accepting applications for certification as
5 a certified insurance-capital company not later than November 1,
6 2007; and

7 (2) accept premium tax credit allocation claims on
8 behalf of certified investors on a date not later than January 1,
9 2008.

10 (b) Not later than January 16, 2008, the comptroller shall
11 notify each certified insurance-capital company of the amount of
12 tax credits allocated to each certified investor. Each certified
13 insurance-capital company shall notify each certified investor of
14 the investor's premium tax credit allocation.

15 (c) If a certified insurance-capital company does not
16 receive an investment of certified capital equaling the amount of
17 premium tax credits allocated to a certified investor for which it
18 filed a premium tax credit allocation claim before the end of the
19 10th business day after the date of receipt of notice of allocation
20 under Subsection (b) of this section, the company shall notify the
21 comptroller by overnight common carrier delivery service and that
22 portion of capital allocated to the certified investor shall be
23 forfeited. The comptroller shall reallocate the forfeited capital
24 among the certified investors in the other certified
25 insurance-capital companies that originally received an allocation
26 so that the result after reallocation is the same as if the initial
27 allocation under this section had been performed without

1 considering the premium tax credit allocation claims that were
2 subsequently forfeited.

3 SECTION 6. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2007.