

By: Eiland

H.B. No. 3839

A BILL TO BE ENTITLED

AN ACT

relating to premium tax credit for certain investments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

SECTION 1. Subtitle B, Title 3 of the Insurance Code is amended to add new Chapter 228A to read as follows:

CHAPTER 228A. PREMIUM TAX CREDIT FOR CERTAIN INVESTMENTS IN  
INSURANCE-CAPITAL COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 228A.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 other person that has state premium tax liability and that

1 contributes certified capital pursuant to an allocation of premium  
2 tax credits under this chapter.

3 (5) "Early stage carrier" means an insurance carrier  
4 or proposed insurance carrier described by Section 228A.152.

5 (6) "First Tier Coastal County" means:

6 (A) Aransas County;

7 (B) Brazoria County;

8 (C) Calhoun County;

9 (D) Cameron County;

10 (E) Chambers County;

11 (F) Galveston County;

12 (G) Jefferson County;

13 (H) Kennedy County;

14 (I) Kleberg County;

15 (J) Matagorda County;

16 (K) Nueces County;

17 (L) Refugio County;

18 (M) San Patricio County; or

19 (N) Willacy County.

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

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

25 (9) "Qualified insurance carrier" means a business  
26 described by Section 228A.201.

27 (10) "Qualified debt instrument" means a debt

1 instrument issued by a certified insurance-capital company, at par  
2 value or a premium, that:

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

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

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

9 (i) the profitability of the company; or

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

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

16 (12) "Second Tier Coastal County" means:

17 (A) Bee County;

18 (B) Brooks County;

19 (C) Fort Bend County;

20 (D) Goliad County;

21 (E) Hardin County;

22 (F) Harris County;

23 (G) Hildago County;

24 (H) Jackson County;

25 (I) Jim Wells County

26 (J) Liberty County;

27 (K) Live Oak County;

1           (L) Orange County;

2           (M) Victoria County; or

3           (N) Wharton County

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

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

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

12           Sec. 228A.002. DEFINITION OF AFFILIATE. In this chapter,  
13 "affiliate" of another person means:

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

16           (2) a person that directly or indirectly:

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

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

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

27           (A) beneficially owned by the other person,

1 whether through rights, options, convertible interests, or  
2 otherwise; or

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

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

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

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

11 SUBCHAPTER B. ADMINISTRATION AND PROMOTION

12 Sec. 228A.051. ADMINISTRATION BY COMPTROLLER AND  
13 COMMISSIONER.

14 The comptroller shall administer this chapter in a manner  
15 consistent with section 228 provided that the commissioner shall  
16 administer the licensing of any qualified insurance carrier  
17 described by Section 228A.201 and adopt carrier licensing rules  
18 under section 228A.052.

19 Sec. 228A.052. RULES AND FORMS ADOPTED BY THE COMPTROLLER.

20 The comptroller shall adopt rules and forms as necessary to  
21 implement this subchapter, including rules that:

22 (1) establish the application procedures for  
23 certified insurance-capital companies; and

24 (2) facilitate the transfer or assignment of premium  
25 tax credits by certified investors.

26 Sec. 228A.053. RULES AND FORMS ADOPTED BY THE COMMISSIONER.

27 (a) The commissioner shall adopt rules and forms as

1 necessary to implement this chapter, including rules that:

2 (1) require as a condition of licensure that qualified  
3 insurance carriers implement catastrophe management plans to  
4 ensure the payment of insured claims resulting from no less than two  
5 reasonably anticipated probable maximum loss events;

6 (2) require that qualified insurance carriers offer  
7 coverage for wind exposure at actuarially justified rates beginning  
8 no later than the third annual anniversary from the date the carrier  
9 obtained its certificate of authority to operate in Texas;

10 (3) require that qualified insurance carriers offer  
11 coverage for flood insurance on a direct basis, or facilitate the  
12 procurement of flood insurance offered through a federal flood  
13 insurance program, no later than the third annual anniversary from  
14 the date the carrier obtained its certificate of authority to  
15 operate in Texas;

16 (4) establish initial capitalization requirements  
17 that shall not be less than \$10 million in initial capital for  
18 qualifying insurance carriers;

19 (5) establish the percentage maximum limitation of  
20 business that may be written outside of Tier 1 and Tier 2 coastal  
21 counties, which in no event may exceed 50% of the qualified  
22 insurance carriers business;

23 (6) require the filing of rate information; and,

24 (7) provide for penalties that are in addition and  
25 cumulative of the penalties provided by this chapter that require  
26 the disgorgement of capital and surplus to replenish the state's  
27 general revenue if a qualified insurance carrier receives an

1 investment of certified capital but fails to use that capital to  
2 write a substantial amount of insurance business in one or more Tier  
3 1 or Tier Coastal County or counties.

4 (b) The rules adopted by the commissioner pursuant to  
5 subsection (2) shall provide for a five-year transition period that  
6 incepts with the carrier's third anniversary date that  
7 incrementally increase the amount of wind coverage required to be  
8 offered by the end of the transition period.

9 Sec 228A.054. REPORTS TO LEGISLATURE.

10 (a) The comptroller shall prepare a biennial report  
11 concerning the results of the implementation of this chapter. The  
12 report must include:

13 (1) the number of certified insurance-capital  
14 companies holding certified capital under this subchapter;

15 (2) the amount of certified capital invested in each  
16 certified insurance-capital company;

17 (3) the amount of certified capital the certified  
18 insurance-capital company invested in qualified insurance carriers  
19 as of January 1, 2008, and the cumulative total for each subsequent  
20 year;

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

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

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

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

3           (B) the total number of jobs retained as a result  
4 of the investment and the average wages paid for the jobs; and

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

8           (b) The commissioner shall prepare a biennial report  
9 concerning the results of the implementation of this subchapter.  
10 The report must include:

11           (1) the number and identity of the qualified insurance  
12 carriers created under this subchapter;

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

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

17           (4) information related to the capital adequacy and  
18 catastrophe management programs implemented by qualified insurance  
19 carriers.

20           (c) The comptroller and commissioner shall file the reports  
21 with the governor, the lieutenant governor, and the speaker of the  
22 house of representatives not later than December 15 of each  
23 even-numbered

24           Sec. 228A.055. PROMOTION OF PROGRAM.

25           The Texas Economic Development and Tourism Office shall  
26 promote the program established under this chapter in the Texas  
27 Business and Community Economic Development Clearinghouse.

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

3 Sec. 228A.101. APPLICATION FOR CERTIFICATION.

4 (a) An applicant for certification must file the  
5 application in the form prescribed by the comptroller. The  
6 application must be accompanied by a nonrefundable application fee  
7 of \$7,500.

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

12 Sec. 228A.102. QUALIFICATION.

13 To qualify as a certified insurance-capital company:

14 (1) the applicant must have, at the time of  
15 application for certification, an equity capitalization of at least  
16 \$500,000 in unencumbered cash or cash equivalents;

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

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

22 Sec. 228A.103. MANAGEMENT BY AND CERTAIN OWNERSHIP  
23 INTERESTS OF INSURANCE ENTITIES PROHIBITED.

24 (a) An insurer, group of insurers, or other persons who may  
25 have state premium tax liability or the insurer's or person's  
26 affiliates may not directly or indirectly:

27 (1) manage a certified insurance-capital company;

1           (2) beneficially own, whether through rights,  
2 options, convertible interests, or otherwise, more than 10 percent  
3 of the outstanding voting securities of a certified  
4 insurance-capital company; or

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

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

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

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

20           228A.104. ACTION ON APPLICATION.

21           (a) The comptroller shall:

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

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

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

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

5           Sec. 228A.105. CONTINUATION OF CERTIFICATION.

6           To continue to be certified, a certified insurance-capital  
7 company must make qualified investments according to the schedule  
8 established by Section 228A.151.

9           Sec. 228A.106. REPORTS TO COMPTROLLER; AUDITED FINANCIAL  
10 STATEMENT.

11           (a) Each certified insurance-capital company shall report  
12 to the comptroller as soon as practicable after the receipt of  
13 certified capital:

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

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

19               (3) the date on which the certified capital was  
20 received.

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

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

26               (2) whether or not the company has invested more than  
27 25 percent of the company's total certified capital in a single

1 carrier;

2 (3) each qualified investment that the company made  
3 during the preceding year and, with respect to each qualified  
4 investment, the number of employees of the qualified insurance  
5 carrier at the time the qualified investment was made; and

6 (4) any other information required by the comptroller,  
7 including any information required by the comptroller to comply  
8 with Section 228A.053.

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

15 (1) the company is complying with this chapter and the  
16 rules adopted under this chapter;

17 (2) the funds received by the company have been  
18 invested as required within the time provided by Section 228A.151;

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

21 Sec. 228A.107. RENEWAL FEE; LATE FEE; EXCEPTION.

22 (a) Not later than January 31 of each year, each certified  
23 insurance-capital company shall pay a nonrefundable renewal fee of  
24 \$5,000 to the comptroller.

25 (b) If a certified insurance-capital company fails to pay  
26 the renewal fee on or before the date specified by Subsection (a),  
27 the company must pay, in addition to the renewal fee, a late fee of

1 \$5,000 to continue the company's certification.

2 (c) A renewal fee is not required within six months of the  
3 date on which a certified insurance-capital company's initial  
4 certification is issued under Section 228A.104(b).

5 Sec. 228A.108. OFFERING MATERIAL USED BY CERTIFIED CAPITAL  
6 COMPANY.

7 Any offering material involving the sale of securities of the  
8 certified insurance-capital company must include the following  
9 statement:

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

19 SUBCHAPTER D. INVESTMENT BY CERTIFIED INSURANCE-CAPITAL COMPANIES

20 Sec. 228A.151. SCHEDULE OF INVESTMENT.

21 (a) Before the third anniversary of a certified  
22 insurance-capital company's allocation date, the company must make  
23 qualified investments in one or more qualified insurance carriers  
24 in an amount cumulatively equal to at least 30 percent of the  
25 company's certified capital, subject to section 228A.152(b).

26 (b) Before the fifth anniversary of a certified  
27 insurance-capital company's allocation date, the company must make

1 qualified investments in one or more qualified insurance carriers  
2 in an amount cumulatively equal to at least 50 percent of the  
3 company's certified capital, subject to section 228A.152(b).

4 Sec. 228A.152. INVESTMENT IN EARLY STAGE CARRIER REQUIRED.

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

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

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

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

18 (b) A certified insurance-capital company must place 50  
19 percent of the amount of qualified investments required by Section  
20 228A.151 in early stage carriers.

21 Sec. 228A.153. INVESTMENT IN EXISTING QUALIFIED INSURANCE  
22 CARRIERS.

23 A certified insurance-capital company may invest up to 50  
24 percent of the amount of qualified investments in an existing  
25 qualified insurance carrier or carriers that do not qualify as  
26 early stage carriers under section 228A.152.

27 Sec. 228A.154. CERTIFIED CAPITAL NOT INVESTED IN QUALIFIED

1 INVESTMENTS.

2 A certified insurance-capital company shall invest any  
3 certified capital not invested in qualified investments only in:

4 (1) cash deposited with a federally insured financial  
5 institution;

6 (2) certificates of deposit in a federally insured  
7 financial institution;

8 (3) investment securities that are:

9 (A) obligations of the United States or agencies  
10 or instrumentalities of the United States; or

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

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

20 (5) obligations of this state or a municipality or  
21 political subdivision of this state; or

22 (6) any other investment approved in advance in  
23 writing by the comptroller.

24 Sec. 228A.155. COMPUTATION OF AMOUNT OF INVESTMENTS.

25 (a) The aggregate cumulative amount of all qualified  
26 investments made by a certified insurance-capital company after the  
27 company's allocation date shall be considered in the computation of

1 the percentage requirements under this subchapter.

2 (b) A certified insurance-capital company may invest  
3 proceeds received from a qualified investment in another qualified  
4 investment, and that investment counts toward any requirement of  
5 this chapter with respect to investments of certified capital.

6 Sec. 228A.156. LIMIT ON QUALIFIED INVESTMENT.

7 A certified insurance-capital company may not make a qualified  
8 investment at a cost to the company that is greater than 50 percent  
9 of the company's total certified capital at the time of investment.

10 228A.157. DISTRIBUTIONS BY CERTIFIED INSURANCE-CAPITAL  
11 COMPANY.

12 (a) In this section, "qualified distribution" means any  
13 distribution or payment from certified insurance-capital by a  
14 certified capital company in connection with:

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

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

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

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

1 the increase is related to the ownership, management, or operation  
2 of the company.

3 (b) A certified insurance-capital company may make a  
4 qualified distribution at any time. To make a distribution or  
5 payment other than a qualified distribution, a company must have  
6 made qualified investments in an amount cumulatively equal to 100  
7 percent of the company's certified capital.

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

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

20 Sec. 228A.158. REPAYMENT OF DEBT.

21 Notwithstanding Section 228A.157(b), a certified  
22 insurance-capital company may make repayments of principal and  
23 interest on the company's indebtedness without any restriction,  
24 including repaying the company's indebtedness on which certified  
25 investors earned premium tax credits.

26 SUBCHAPTER E. QUALIFIED INSURANCE CARRIER

27 Sec. 228A.201. DEFINITION OF QUALIFIED INSURANCE CARRIER.

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

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) be licensed by the commissioner as a property and  
13 casualty insurance company, subject to section 822, subsection  
14 228A.202 and rules adopted under section 228A.053 or, in the case of  
15 an early stage carrier, apply for a such a license within 12 months  
16 of receipt of any funding from a certified insurance-capital  
17 company; and

18           (4) receive matching capital funds from private  
19 sources, which may be in the form of a surplus debenture, that match  
20 dollar-for-dollar all investments of certified capital received  
21 from certified insurance-capital companies.

22       (c) A qualified insurance carrier must agree to use the  
23 qualified investment to:

24           (1) to write commercial and personal property  
25 insurance in one or more Tier 1 and Tier 2 Coastal County or  
26 counties;

27           (2) in the case of a proposed or start-up carrier,

1 support the establishment or creation of a carrier to conduct the  
2 business of insurance in one or more Tier 1 and Tier 2 Coastal  
3 County or counties; and

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

6 (d) an early stage carrier or qualified insurance carrier is  
7 exempt from the rate filing requirements of Subchapters C and D of  
8 Chapter 2251, except that such carrier shall file with the  
9 department a schedule of the amounts the carrier charges a  
10 policyholder or an applicant for a policy, regardless of the term  
11 the carrier uses to refer to those charges, including "rate",  
12 "policy fee", "inspection fee", or "initial charge".

13 (e) A qualified insurance carrier must:

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

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

18 Sec. 228A.202. REQUIREMENT TO CONDUCT TIER 1 AND TIER 2  
19 COASTAL COUNTY INSURANCE BUSINESS.

20 (a) A qualified insurance carrier shall at all times be  
21 primarily engaged in the business of selling commercial and  
22 personal property insurance in one or more Tier 1 and Tier 2 Coastal  
23 County or counties and is prohibited from selling more than 50  
24 percent of its insurance business in other counties.

25 (b) The failure to comply with subsection (a) may result in  
26 penalties under section 228.303 and the recapture and forfeiture of  
27 premium tax credits under section 228.351.

1       Sec. 228A.203. LOCATION OF PRINCIPAL BUSINESS OPERATIONS.

2 If, before the 90th day after the date a certified  
3 insurance-capital company makes an investment in a qualified  
4 insurance carrier, the qualified insurance carrier moves its  
5 principal business operations from this state, the investment may  
6 not be considered a qualified investment for purposes of the  
7 percentage requirements under this chapter.

8       Sec. 228A.204. EVALUATION OF BUSINESS BY COMPTROLLER.

9       (a) A certified insurance-capital company may, before  
10 making an investment in an entity, request a written opinion from  
11 the comptroller as to whether the entity in which the company  
12 proposes to invest is a qualified insurance carrier or an early  
13 stage carrier.

14       (b) The Department of Insurance shall provide information  
15 requested by the comptroller necessary for making a determination  
16 as to whether an entity meets the definition of a qualified  
17 insurance carrier or an early stage carrier, as applicable.

18       (c) Not later than the 30th business day after the date of  
19 the receipt of a request under Subsection (a), the comptroller  
20 shall:

21           (1) determine whether the entity meets the definition  
22 of a qualified insurance carrier or an early stage carrier, as  
23 applicable, and notify the certified insurance-capital company of  
24 the determination and provide an explanation of the determination;  
25 or

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

1       (c) If the comptroller fails to notify the certified  
2 insurance-capital company with respect to the proposed investment  
3 within the period specified by Subsection (c), the entity in which  
4 the company proposes to invest is considered to be a qualified  
5 insurance carrier or an early stage carrier, as appropriate, which  
6 determination will be solely for the tax credits contemplated under  
7 section 228A.251 and for no other reason.

8       Sec. 228A.205. CONTINUATION OF CLASSIFICATION AS QUALIFIED  
9 BUSINESS; FOLLOW-ON INVESTMENTS AUTHORIZED.

10       (a) A business that is classified as a qualified business at  
11 the time of the first investment in the business by a certified  
12 insurance-capital company:

13               (1) remains classified as a qualified business; and

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

16       (b) Except as provided by Subsection (c), a follow-on  
17 investment made under Subsection (a) is a qualified investment even  
18 though the business may not meet the definition of a qualified  
19 business at the time of the follow-on investment.

20       (c) A follow-on investment does not qualify as a qualified  
21 investment if, at the time of the follow-on investment, the  
22 qualified business no longer has the business's principal business  
23 operations in this state.

24                       SUBCHAPTER F. PREMIUM TAX CREDIT

25       Sec. 228A.251. PREMIUM TAX CREDIT.

26       (a) A certified investor who makes an investment of  
27 certified capital shall earn in the year of investment a vested

1 credit against state premium tax liability equal to 100 percent of  
2 the certified investor's investment of certified capital, subject  
3 to the limits imposed by this chapter.

4 (b) Beginning with the tax report due March 1, 2009, for the  
5 2008 tax year, a certified investor may take up to 25 percent of the  
6 vested premium tax credit in any taxable year of the certified  
7 investor. The credit may not be applied to estimated payments due  
8 in 2008.

9 Sec. 228A.252. LIMIT ON PREMIUM TAX CREDIT.

10 (a) The credit to be applied against state premium tax  
11 liability of a certified investor in any one year may not exceed the  
12 state premium tax liability of the investor for the taxable year.

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

16 Sec. 228A.253. PREMIUM TAX CREDIT ALLOCATION CLAIM  
17 REQUIRED.

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

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

24 (c) The premium tax credit allocation claim form must  
25 include an affidavit of the certified investor under which the  
26 certified investor becomes legally bound and irrevocably committed  
27 to make an investment of certified capital in a certified

1 insurance-capital company in the amount allocated even if the  
2 amount allocated is less than the amount of the claim, subject only  
3 to the receipt of an allocation under Section 228A.255.

4 (d) A certified investor may not claim a premium tax credit  
5 under Section 228A.251 for an investment that has not been funded,  
6 without regard to whether the certified investor has committed to  
7 fund the investment.

8 Sec. 228A.254. TOTAL LIMIT ON PREMIUM TAX CREDITS.

9 (a) The total amount of certified capital for which premium  
10 tax credits may be allowed under this chapter for all years in which  
11 premium tax credits are allowed is \$200 million.

12 (b) The total amount of certified capital for which premium  
13 tax credits may be allowed for all certified investors under this  
14 chapter may not exceed the amount that would entitle all certified  
15 investors in certified capital companies to take total credits of  
16 \$50 million in a year.

17 (c) A certified insurance-capital company and the company's  
18 affiliates may not file premium tax credit allocation claims in  
19 excess of the maximum amount of certified capital for which premium  
20 tax credits may be allowed as provided by this section.

21 Sec. 228A.255. ALLOCATION OF PREMIUM TAX CREDIT.

22 (a) If the total premium tax credits claimed by all  
23 certified investors exceeds the total limits on premium tax credits  
24 established by Section 228A.254(a), the comptroller shall allocate  
25 the total amount of premium tax credits allowed under this chapter  
26 to certified investors in certified capital companies on a pro rata  
27 basis in accordance with this section.

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

3            (1) a fraction, the numerator of which is the amount of  
4 the premium tax credit allocation claim filed on behalf of the  
5 investor and the denominator of which is the total amount of all  
6 premium tax credit allocation claims filed on behalf of all  
7 certified investors; and

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

10        (c) The maximum amount of certified capital for which  
11 premium tax credit allocation may be allowed on behalf of single  
12 certified investor and the investor 's affiliates, whether by one  
13 or more certified insurance-capital companies, may not exceed the  
14 greater of:

15            (1) \$10 million; or

16            (2) 15 percent of the maximum aggregate amount  
17 available under Section 228A.254(a).

18        Sec. 228A.256. TREATMENT OF CREDITS AND CAPITAL.

19        In any case under this code or another insurance law of this  
20 state in which the assets of a certified investor are examined or  
21 considered, the certified capital may be treated as an admitted  
22 asset, subject to the applicable statutory valuation procedures.

23        Sec. 228A.257. TRANSFERABILITY OF CREDIT.

24        (a) A certified investor may transfer or assign premium tax  
25 credits only in compliance with the rules adopted under Section  
26 228A.052.

27        (b) The transfer or assignment of a premium tax credit does

1 not affect the schedule for taking the premium tax credit under this  
2 chapter.

3 Sec. 228A.258. IMPACT OF PREMIUM TAX CREDIT ON INSURANCE  
4 RATEMAKING.

5 A certified investor is not required to reduce the amount of  
6 premium tax included by the investor in connection with ratemaking  
7 for an insurance contract written in this state because of a  
8 reduction in the investor's premium tax derived from premium tax  
9 credits granted under this chapter.

10 Sec. 228A.259. RETALIATORY TAX.

11 A certified investor claiming a credit against state premium  
12 tax liability earned through an investment in a company is not  
13 required to pay any additional retaliatory tax levied under Chapter  
14 281 as a result of claiming that credit.

15 SUBCHAPTER G. ENFORCEMENT

16 228A.301. ANNUAL REVIEW BY COMPTROLLER.

17 (a) The comptroller shall conduct an annual review of each  
18 certified insurance-capital company to:

19 (1) ensure that the company:

20 (A) continues to satisfy the requirements of this  
21 chapter; and

22 (B) has not made any investment in violation of  
23 this chapter; and

24 (2) determine the eligibility status of the company's  
25 qualified investments.

26 (b) Each certified insurance-capital company shall pay the  
27 cost of the annual review according to a reasonable fee schedule

1 adopted by the comptroller.

2 Sec. 228A.302. DECERTIFICATION OF CERTIFIED CAPITAL 15  
3 COMPANY.

4 (a) A material violation of Section 228A.105, 228A.106,  
5 228A.107, 228A.151, 228A.152, 228A.153, 228A.154, 228A.155,  
6 228A.156, 228A.202, or 228A.204 is grounds for decertification of a  
7 certified insurance-capital company.

8 (b) If the comptroller determines that a certified  
9 insurance-capital company is not in compliance with a law listed in  
10 Subsection (a), the comptroller shall notify the company's officers  
11 in writing that the company may be subject to decertification after  
12 the 120th day after the date the notice is mailed unless the  
13 company:

- 14 (1) corrects the deficiencies; and  
15 (2) returns to compliance with that law.

16 (c) The comptroller may decertify a certified insurance  
17 capital company, after opportunity for hearing, if the comptroller  
18 finds that the company is not in compliance with a law listed in  
19 Subsection (a) at the end of the period established by Subsection  
20 (b).

21 (d) Decertification under this section is effective on  
22 receipt of notice of decertification by the certified  
23 insurance-capital company.

24 (e) The comptroller shall notify any appropriate state  
25 agency of a decertification of a certified insurance-capital  
26 company.

27 Sec. 228A.303. ADMINISTRATIVE PENALTY.

1       (a) The comptroller may impose an administrative penalty on  
2 a certified insurance-capital company that violates this chapter.

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

7           (1) the seriousness of the violation, including the  
8 nature, circumstances, extent, and gravity of the violation;

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

10          (3) the history of previous violations;

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

12          (5) efforts to correct the violation; and

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

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

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

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

20       SUBCHAPTER H. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS

21       Sec. 228A.351. RECAPTURE AND FORFEITURE OF PREMIUM TAX  
22 CREDIT FOLLOWING DECERTIFICATION.

23       (a) Decertification of a certified insurance-capital  
24 company may, in accordance with this section, cause:

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

27           (2) the forfeiture of future premium tax credits to be

1 claimed by the investors.

2 (b) Decertification of a certified insurance-capital  
3 company on or before the third anniversary of the company's  
4 allocation date causes the recapture of any premium tax credits  
5 previously claimed and the forfeiture of any future premium tax  
6 credits to be claimed by a certified investor with respect to the  
7 company.

8 (c) For a certified insurance-capital company that meets  
9 the requirements for continued certification under Section  
10 228A.151(a) and subsequently fails to meet the requirements for  
11 continued certification under Subsection (b) of that section:

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

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

18 (d) For a certified insurance-capital company that has met  
19 the requirements for continued certification under Section  
20 228A.151 and is subsequently decertified:

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

24 (2) any premium tax credit to be taken after the fifth  
25 anniversary of the allocation date is subject to forfeiture only if  
26 the company is decertified on or before the fifth anniversary of the  
27 company's allocation date.

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

6       Sec. 228A.352. NOTICE OF RECAPTURE AND FORFEITURE OF  
7 PREMIUM TAX CREDIT.

8       The comptroller shall send written notice to the address of  
9 each certified investor whose premium tax credit is subject to  
10 recapture or forfeiture, using the address shown on the investor's  
11 last premium tax filing.

12       Sec. 228A.353. INDEMNITY AGREEMENTS AND INSURANCE  
13 AUTHORIZED.

14       (a) A certified insurance-capital company may agree to  
15 indemnify, or purchase insurance for the benefit of, a certified  
16 investor for losses resulting from the recapture or forfeiture of  
17 premium tax credits under Section 228A.351.

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

22       SECTION 2. This Act takes effect immediately if it receives  
23 a vote of the two-thirds of all the members elected to each house,  
24 as provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2007.