

1-1 By: Carona S.B. No. 891
1-2 (In the Senate - Filed February 23, 2011; March 23, 2011,
1-3 read first time and referred to Committee on Economic Development;
1-4 May 10, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 1; May 10, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 891 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain investments in certain Texas businesses by
1-11 insurance companies and related organizations.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 228.001, Insurance Code, is amended by
1-14 adding Subdivisions (5-b), (5-c), (7-c), and (7-d) and amending
1-15 Subdivisions (7-a) and (7-b) to read as follows:

1-16 (5-b) "Match" means cash invested or lent to a
1-17 qualified business by another party that is not a certified capital
1-18 company contemporaneously with, or subsequent to, a qualified
1-19 investment in the qualified business. The term includes cash
1-20 invested or lent to a qualified business by the certified capital
1-21 company or its affiliates that would otherwise be a qualified
1-22 investment but that is made with funds that are not certified
1-23 capital.

1-24 (5-c) "Net profit realized on qualified investments"
1-25 means the sum of all funds returned to a certified capital company
1-26 in repayment, sale, or exchange of the company's qualified
1-27 investments in excess of the sum of the cost basis of such qualified
1-28 investments. To compute the net profit realized on qualified
1-29 investments, all of the certified capital company's qualified
1-30 investments are aggregated such that gains on qualified investments
1-31 are netted against losses on qualified investments.

1-32 (7-a) "Profit share percentage" means a payment in an
1-33 amount equal to 20 percent of the net profit realized on qualified
1-34 investments.

1-35 (7-b) "Program One" means the program for allocation
1-36 and investment of certified capital under this chapter before
1-37 January 1, 2007.

1-38 (7-c) [~~(7-b)~~] "Program Two" means the program for
1-39 allocation and investment of certified capital under this chapter
1-40 on or after January 1, 2007.

1-41 (7-d) "Program Three" means the program for allocation
1-42 and investment of certified capital under this chapter on or after
1-43 September 1, 2011.

1-44 SECTION 2. Subchapter B, Chapter 228, Insurance Code, is
1-45 amended by adding Section 228.0525 to read as follows:

1-46 Sec. 228.0525. ACCEPTANCE OF PREMIUM TAX ALLOCATION CLAIMS.
1-47 The rules adopted under Section 228.052 must provide that the
1-48 comptroller shall accept premium tax credit allocation claims on
1-49 behalf of certified investors with respect to Program Three not
1-50 later than January 1, 2012.

1-51 SECTION 3. Section 228.101, Insurance Code, is amended by
1-52 adding Subsection (c) to read as follows:

1-53 (c) With respect to Program Three, an application must
1-54 include a sworn statement by the managers of the applicant that:

1-55 (1) the applicant, if certified as a certified capital
1-56 company, will, prior to decertification, secure match commitments
1-57 in an amount equal to at least 150 percent of the company's Program
1-58 Three allocation; and

1-59 (2) Section 228.3021(d) applies to a certified capital
1-60 company under Program Three.

1-61 SECTION 4. Subsection (a), Section 228.107, Insurance Code,
1-62 is amended to read as follows:

1-63 (a) Not later than January 31 of each year, each certified

2-1 capital company shall pay a nonrefundable renewal fee in an amount
 2-2 set by the comptroller that is sufficient to reimburse the
 2-3 comptroller for annual administrative costs of the program, not to
 2-4 exceed \$15,000 per certified capital company. The comptroller
 2-5 shall notify each certified capital company of the amount of the fee
 2-6 not later than January 31 of the year preceding the year in which
 2-7 the fee is due [of \$5,000 to the comptroller].

2-8 SECTION 5. Subsection (b), Section 228.157, Insurance Code,
 2-9 is amended to read as follows:

2-10 (b) A certified capital company may make a qualified
 2-11 distribution at any time. To make a distribution or payment other
 2-12 than a qualified distribution, a company must have:

2-13 (1) made qualified investments in an amount
 2-14 cumulatively equal to 100 percent of the company's certified
 2-15 capital; and

2-16 (2) with respect to Program Three, paid the state any
 2-17 applicable profit share percentage and:

2-18 (A) secured match investments in an amount equal
 2-19 to at least 150 percent of the company's Program Three allocation
 2-20 under Section 228.101; or

2-21 (B) been decertified under Section 228.3021.

2-22 SECTION 6. Section 228.251, Insurance Code, is amended by
 2-23 adding Subsection (d) to read as follows:

2-24 (d) With respect to credits earned as a result of
 2-25 investments made under Program Three, beginning with the tax report
 2-26 due March 1, 2017, for the 2016 tax year, a certified investor may
 2-27 take up to 25 percent of the vested premium tax credit in any
 2-28 taxable year of the certified investor. The credit may not be
 2-29 applied to estimated payments due in 2016.

2-30 SECTION 7. Subsection (b), Section 228.253, Insurance Code,
 2-31 is amended to read as follows:

2-32 (b) The certified capital company must have filed the claim
 2-33 with the comptroller on the date on which the comptroller accepted
 2-34 premium tax credit allocation claims on behalf of certified
 2-35 investors with respect to Program One, ~~or~~ Program Two, or Program
 2-36 Three, as applicable, under the comptroller's rules.

2-37 SECTION 8. Section 228.254, Insurance Code, is amended to
 2-38 read as follows:

2-39 Sec. 228.254. TOTAL LIMIT ON PREMIUM TAX CREDITS. (a) The
 2-40 total amount of certified capital for which premium tax credits may
 2-41 be allowed under this chapter for all years in which premium tax
 2-42 credits are allowed is:

2-43 (1) \$200 million for Program One; ~~and~~

2-44 (2) \$200 million for Program Two; and

2-45 (3) \$200 million for Program Three.

2-46 (b) The total amount of certified capital for which premium
 2-47 tax credits may be allowed for all certified investors under this
 2-48 chapter may not exceed the amount that would entitle all certified
 2-49 investors in certified capital companies to take total credits of
 2-50 \$50 million in a year with respect to Program One, ~~and~~ \$50 million
 2-51 in a year with respect to Program Two, and \$50 million in a year with
 2-52 respect to Program Three.

2-53 (c) A certified capital company and the company's
 2-54 affiliates may not file premium tax credit allocation claims with
 2-55 respect to Program One, ~~or~~ Program Two, or Program Three, as
 2-56 applicable, in excess of the maximum amount of certified capital
 2-57 for which premium tax credits may be allowed for that program as
 2-58 provided by this section.

2-59 SECTION 9. Section 228.255, Insurance Code, is amended to
 2-60 read as follows:

2-61 Sec. 228.255. ALLOCATION OF PREMIUM TAX CREDIT. (a) If
 2-62 the total premium tax credits claimed by all certified investors
 2-63 with respect to Program One, ~~or~~ Program Two, or Program Three, as
 2-64 applicable, exceeds the total limits on premium tax credits
 2-65 established for that program by Section 228.254(a), the comptroller
 2-66 shall allocate the total amount of premium tax credits allowed
 2-67 under this chapter to certified investors in certified capital
 2-68 companies on a pro rata basis in accordance with this section.

2-69 (b) The pro rata allocation for each certified investor

3-1 shall be the product of:
 3-2 (1) a fraction, the numerator of which is the amount of
 3-3 the premium tax credit allocation claim filed on behalf of the
 3-4 investor with respect to Program One, ~~or~~ Program Two, or Program
 3-5 Three, as applicable, and the denominator of which is the total
 3-6 amount of all premium tax credit allocation claims filed on behalf
 3-7 of all certified investors with respect to that program; and
 3-8 (2) the total amount of certified capital for which
 3-9 premium tax credits may be allowed with respect to that program
 3-10 under this chapter.

3-11 (c) The maximum amount of certified capital for which
 3-12 premium tax credit allocation may be allowed on behalf of a single
 3-13 certified investor and the investor's affiliates with respect to
 3-14 Program One, ~~or~~ Program Two, or Program Three, as applicable,
 3-15 whether by one or more certified capital companies, may not exceed
 3-16 the greater of:

- 3-17 (1) \$10 million; or
- 3-18 (2) 15 percent of the maximum aggregate amount
 3-19 available with respect to that program under Section 228.254(a).

3-20 SECTION 10. Subchapter G, Chapter 228, Insurance Code, is
 3-21 amended by adding Section 228.3021 to read as follows:

3-22 Sec. 228.3021. VOLUNTARY DECERTIFICATION OF CERTIFIED
 3-23 CAPITAL COMPANY. (a) The comptroller may decertify a certified
 3-24 capital company on the written request of the company if the
 3-25 comptroller finds that the company has made qualified investments
 3-26 in an amount equal to 100 percent of the company's certified
 3-27 capital.

3-28 (b) The comptroller shall notify any appropriate state
 3-29 agency of a decertification of a certified capital company.

3-30 (c) On being decertified by the comptroller, a certified
 3-31 capital company is not required to pay the annual renewal fee
 3-32 required by Section 228.107.

3-33 (d) With respect to Program Three, a certified capital
 3-34 company may not be decertified under this section before match
 3-35 investments have been made in an amount equal to at least 150
 3-36 percent of the company's Program Three allocation under Section
 3-37 228.101.

3-38 SECTION 11. Section 228.351, Insurance Code, is amended by
 3-39 adding Subsection (f) to read as follows:

3-40 (f) This subchapter does not authorize the recapture and
 3-41 forfeiture of premium tax credits following voluntary
 3-42 decertification of a certified capital company under Section
 3-43 228.3021.

3-44 SECTION 12. This Act takes effect September 1, 2011.

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