

BILL ANALYSIS

Senate Research Center
76R6861 DLF-D

S.B. 899
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Economic Development
3/29/1999
As Filed

DIGEST

Currently, Texas does not offer insurance companies a premium tax credit for investing in small business venture capital funds. SB 899 creates certified capital companies (CAPCOs), small business venture capital funds that would be licensed by the Texas Department of Insurance and invest in small, including early-stage, businesses. Under the bill, insurance companies would fund CAPCOs in exchange for receiving premium tax credits equal to 100 percent of an insurance company's investment in the CAPCO. The credit would be taken over a 10 year period in installments of 10 percent of the credit. The total amount of credits that could be taken in any given year is \$20 million.

PURPOSE

As proposed, S.B. 899 creates premium tax credits for investments made in certain certified capital companies.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of insurance in SECTION 1 (Article 4.52, 4.53(a), and 4.66(b), Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 4, Insurance Code, by adding Subchapter B, as follows:

SUBCHAPTER B. PREMIUM TAX CREDIT FOR INVESTMENT IN CERTIFIED CAPITAL COMPANY

Art 4.51. DEFINITIONS. Defines "affiliate," "certification date," "certified capital," "certified capital company," "certified investor," "person," "premium tax credit allocation claim," "qualified business," "qualified debt instrument," "qualified distribution," "qualified investment," and "state premium tax liability."

Art. 4.52. AUTHORITY OF DEPARTMENT; RULES. Requires the Texas Department of Insurance(department) to administer this subchapter and the commissioner of the Department of Insurance (commissioner) to adopt rules to implement this subchapter.

Art. 4.53. CERTIFICATION. Requires the department to establish the application procedures for certified capital companies. Requires a person who files an application to submit the application on the department's prescribed form, pay an application fee of \$7,500, and include a certain audited balance sheet. Sets forth terms and conditions to qualify as a capital company. Requires the department to review and to ensure the application, organizational documents, and business history of each applicants, to satisfy the requirements of this subchapter. Requires the department to take certain actions on the application within a certain time period. Requires the department to review the applications on a first-come, first-served basis. Requires the department to review simultaneously submitted applications on the same day, except in certain cases when information is missing.

Art. 4.54. MANAGEMENT BY CERTAIN ENTITIES PROHIBITED. Prohibits certain insurance companies from certain involvements in a capital company. Provides that Subsection (a) applies without regard to whether the insurance company or a person is licensed by or transacts

business in this state. Provides that this article does not preclude certain companies and parties from exercising their legal rights and remedies.

Art. 4.55. OFFERING MATERIAL USED BY CERTIFIED CAPITAL COMPANY. Sets forth required language for any offering material involving the sale of securities of a certified capital company.

Art. 4.56. REQUIREMENTS FOR CONTINUANCE OF CERTIFICATION. Sets forth required schedules, qualified and certified capital investment guidelines, and classifications for a certified capital company to continue certification.

Art. 4.57. DEPARTMENT EVALUATION OF BUSINESS. Authorizes a certified capital company to request from the department a written opinion as to whether a business is a qualified business. Sets forth terms and conditions for the department to respond to the request, notify the company on the status of a business, and determine, if necessary, that a business is considered to be a qualified business if investment in that business will further state economic development.

Art. 4.58. REPORTS TO DEPARTMENT; AUDITED FINANCIAL STATEMENT. Requires each certified capital company to report to the department certain investment information and financial statements about the company by a certain date, depending on the conditions of the reporting requirements. Requires the audit in the financial statement to address the methods of operation, the business conduct of the company regarding compliance with this subchapter and the subchapter's rules, and that funds are invested as required by Article 4.56(a) of this code.

Art. 4.59. RENEWAL. Requires each certified company to pay a nonrefundable fee of \$5,000 to the department by a certain date. Provides that a renewal fee is not required within six months of the initial certification date of a certified capital company.

Art. 4.60. DISTRIBUTIONS; REPAYMENT OF DEBT. Authorizes a certified capital company to make a qualified distribution at any time. Sets forth investment conditions for a certified capital company to make a distribution to its equity holders, including payments of principal and interest.

Art. 4.61. ANNUAL REVIEW; DECERTIFICATION. Requires the department to conduct an annual review of each certified capital company to ensure satisfaction of this subchapter's requirements and to advise the company as to the eligibility status of its qualified investments. Requires the annual review to be paid by each certified capital company. Establishes procedures for decertification of a certified capital company including a list of violations, notice requirements, and required actions by the department. Sets forth policy and procedures for the possible recapture of premium tax credits and forfeiture of future premium tax credits of a decertified capital company. Requires the department to send written notification to each certified investor whose premium tax credit is subject to recapture or forfeiture. Authorizes the department to waive the recapture or forfeiture if the waiver has the effect of furthering state economic development.

Art. 4.62. TERMINATION OF REGULATORY AUTHORITY OF DEPARTMENT. Provides that certain minimum investments make a company no longer subject to certain renewal requirements or decertification provisions. Provides that this section does not affect premium tax credits earned by certified investors through the certified capital company.

Art. 4.63. PREMIUM TAX CREDIT. Requires certain certified investors to earn a certain amount of vested credit against state premium tax liability equal to 100 percent of the investor's investment of certified capital. Prohibits the credit to be applied against certain state premium tax liabilities from exceeding the state premium tax liability of the certified investor. Authorizes any unused tax credit to be carried forward indefinitely. Provides that a certified investor claiming a credit against certain state premium tax liabilities is not required to pay additional retaliatory tax levied under Article 21.46 as a result of claiming that credit. Provides that an investment under this subchapter is a "Texas investment."

Art. 4.64. PREMIUM TAX CREDIT ALLOCATION CLAIM FORM. Requires a premium tax credit allocation claim to be prepared by a certified investor, prepared on a certain claim form, filed

by a certified capital company, and accompanied by an affidavit regarding the investment responsibilities of a certified capital company.

Art. 4.65. AGGREGATE LIMIT ON CREDITS. Prohibits the total certified capital for which all premium tax credits may be allowed for all certified investor's from exceeding the amount that would entitle all investors in certified capital companies to take aggregate credits of \$20 million in a year. Prohibits a certified capital company and its affiliates from filing premium tax credit claims in excess of the total amount allowed. Requires the certified capital to be allocated to the certified investors in the order the claim was filed. Requires simultaneous filing to be considered contemporaneously. Requires the tax credits to be allocated on a pro rata basis in the event the tax credit claims filed by two or more companies on the same day exceed the total capital for tax credits. Sets forth the calculations and required procedures for the department for distribution of tax credits under a pro rata allocation, including a credit allocation for claims filed on a date before which no premium tax credit allocation claims have been filed with the department. Requires the department to notify a company when each of its investors receive tax credit allocation. Requires a company not receiving an investment of certified capital equaling the full amount of premium tax credits to notify the department and the portion of capital allocated to the certified investor shall be forfeited. Requires the department to reallocate the forfeited amount among the other certified investors if the allocation was a result of the pro-rata scheme; otherwise the tax credit becomes available to subsequent premium tax credit allocation claims. Prohibits the maximum claim for premium tax credits from exceeding \$2 million each year on behalf of any one certified investor and its affiliates.

Art. 4.66. TRANSFERABILITY OF CREDITS. Authorizes a premium tax credit established under this chapter to be transferred or sold. Requires the commissioner to adopt rules to facilitate the transfer or sale of premium tax credits. Provides that the transfer or sale of the credits does not affect the schedule for taking the premium tax credit under this subchapter. Provides that recaptured premium tax credits under Article 4.61 are the liability of the taxpayer who actually claimed the premium tax credits.

SECTION 2. Redesignates Articles 4.01-4.11, 4.11A, 4.11B, 4.11C, 4.12, and 4.17-4.19, Insurance Code, as Chapter 4A, Insurance Code, and adds the following subchapter heading:

SUBCHAPTER A: IMPOSITION AND COLLECTION OF TAXES AND FEES

SECTION 3. Requires the commissioner of insurance to adopt the rules under Chapter 4B, Insurance Code, by a certain date. Requires the department to begin to accept applications for certification on a certain date. Prohibits a certified investor from making an investment with a certified capital company under Chapter 4B, Insurance Code, before January 1, 2000.

SECTION 4. Emergency clause.
Effective date: upon passage.