

LOUISIANA REVISED STATUTES
THE LOUISIANA CAPITAL COMPANIES TAX CREDIT PROGRAM
TITLE 51 - CHAPTER 26

§1921. Short title

This Chapter may be cited as the Louisiana Capital Companies Tax Credit Program.

§1922. Policy statement

The primary purpose of the Louisiana Capital Companies Tax Credit Program is to provide assistance in the formation and expansion of new businesses which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of qualified Louisiana businesses.

§1922.1. Administration of the program

The Department of Economic Development shall maintain and interpret policy for the Louisiana Capital Companies Tax Credit Program. The Office of Financial Institutions shall perform the regulatory and examination functions of the program.

§1923. Definitions

For the purposes of this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise:

(1) “Certified capital” means an investment pursuant to R.S. 51:1924(A) and (B) or an investment pursuant to R.S. 22:1068(E) into a certified Louisiana capital company.

(2) “Certified Louisiana capital company” means any partnership, corporation, or other legal entity, whether organized on a profit or nonprofit basis, that has as its primary business activity the investment of cash in such a manner as to acquire equity in or provide financing assistance as a licensed business and industrial development corporation to qualified Louisiana businesses that are in need of capital for survival, expansion, new product development, or similar business purposes and that is certified by the commissioner of the office of financial institutions, as meeting the criteria of this Chapter and thus eligible for the tax credit provided in this Chapter.

(3) “Department” means the Department of Economic Development.

(4) “Equity in a qualified Louisiana business” is defined as an interest that in substance and in form is either:

(a) Common stock, preferred stock, or an equivalent ownership interest in a limited liability company, partnership, or other entity.

(b) A loan with a stated maturity of not less than five years which provides for conversion into equity at a future date or has equity features. The department shall promulgate rules to determine what constitutes equity features for the purpose of this definition.

(5) “Qualified investment” means:

An investment that in substance and in form furthers economic development within Louisiana as defined by rule and is either:

(a)(i) A transaction that consists of the investment of cash and results in the acquisition of equity in a qualified Louisiana business; or

(ii) Financing assistance provided in cash to a qualified Louisiana business by a business and industrial development corporation licensed pursuant to the Louisiana Business and Industrial Development Corporation Act, R.S. 51:2386 et seq.

(b) An equity investment or debt investment which has a stated final maturity date of not less than five years from the origination of the debt investment in a qualified venture fund approved by the secretary.

(c) An equity or debt investment in a Louisiana-based economic development infrastructure project approved by the secretary.

(d) An equity or debt investment in a qualified technology fund approved by the secretary.

(6)(a) “Qualified Louisiana business” means a business that at the time of investment meets, or, as the direct result of an investment pursuant to this Chapter would meet, each of the following requirements:

(i) Operates primarily in Louisiana or performs substantially all of its production in Louisiana, or is headquartered in Louisiana with a substantial portion of its assets located in Louisiana and which is in need of capital and is involved in commerce for the purpose of retail, or the manufacturing, processing, or assembling of products, or conducting research and development, or providing services, provided that at least eighty percent of the total employees of such business shall be domiciled in the state of Louisiana and that at least eighty percent of the payroll of such business shall be paid to such employees.

(ii) Has, together with its affiliates, a net worth which is not in excess of eighteen million dollars.

(iii) Has, together with its affiliates, an average annual net income, after federal income taxes, excluding any carry-over losses, for the preceding two completed fiscal years which is not in excess of six million dollars.

(iv) Has, together with its affiliates, no more than five hundred employees.

(b) Any business, which is classified as a qualified Louisiana business at the time of the first investment in said business by a certified Louisiana capital company, shall remain classified as a qualified Louisiana business for any later additional investment into the business by that certified Louisiana capital company, provided each additional investment meets the definition of a qualified investment.

(7) “Secretary” means the secretary of the Department of Economic Development.

(8) “Investment pool” means the aggregate of all investments of certified capital in a particular certified Louisiana capital company which are made as part of the same transaction.

(9) “Investment date” means, with respect to each investment pool, the date on which the investment pool transaction closes.

(10) “Commissioner” means the commissioner of the Office of Financial Institutions within the office of the governor.

(11) “Certified Louisiana capital company group” means any one or more certified Louisiana capital companies which share common management or are under common control, whether such management or control is accomplished directly or indirectly.

(12) “Disadvantaged business” means, with respect to all investment pools certified after January 1, 2002, any qualified Louisiana business that has its headquarters located, at the time of investment, in a low-income community, as such term is defined in Section 45(D)(e) of the Internal Revenue Code of 1986, as amended.

(13) “Qualified Louisiana startup business” means any qualified Louisiana business that is in development or has been operational for less than two years and is in need of capital for pre-startup, startup, survival, expansion, new product development, or similar business purpose or that is determined by the secretary as meeting the criteria of this Paragraph.

(14) “Qualified Louisiana technology-based business” means any qualified Louisiana business that is in need of capital for pre-startup, startup, survival, expansion stage, new product development, or similar business purpose that is engaged in or intends to provide technology-based products or services in information technology, communications, medical, biomedical, advanced materials, food, environmental, micro-manufacturing technologies, or that is determined by the secretary as meeting the criteria of this Paragraph.

(15) “Qualified venture fund” means any certified Louisiana capital company that is designated a specialty business and industrial development corporation as defined in this Section and which is further certified by the secretary as meeting all of the following criteria:

(a) The fund’s primary investment objectives include investing in Louisiana businesses in amounts not exceeding one million dollars.

(b) The fund agrees to make all of the investments made by it with the proceeds of any investment from a certified Louisiana capital company in qualified Louisiana businesses.

(c) A qualified venture fund shall not be an affiliate of a certified capital company that invests in a qualified venture fund.

(d) A qualified venture fund shall not have raised directly or combined with its affiliates more than ten million in certified capital, excluding any funds invested by a certified capital company as a qualified investment in a qualified venture fund pursuant to this Chapter. For purposes of this definition “affiliate” means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries.

(e) The fund shall agree that the commissioner shall regulate the investment of the certified capital received by the qualified venture fund pursuant to rules promulgated by the secretary.

(16) “Qualified technology fund” means any venture capital or private equity fund that meets all of the following criteria:

(a) The fund is managed or proposed to be managed directly or indirectly with representation from any of the following Louisiana research parks that elects to provide such representation: the Louisiana Technology Park in Baton Rouge, the University of New Orleans Research and Technology Park in New Orleans, the University Research Park in Lafayette and the InterTech Science Park in Shreveport; or any other technology parks certified by the secretary.

(b) The fund agrees to make all of the investments made by it with the proceeds of any investment from a certified Louisiana capital company in qualified Louisiana technology-based businesses.

(c) The investment policy of the qualified technology fund shall expressly provide that investments from the qualified technology fund may be made in qualified businesses located anywhere within the state of Louisiana.

(d) The fund agrees that the commissioner shall regulate the investment of the certified capital received by the qualified technology fund pursuant to rules promulgated by the secretary.

(17) “Approved technology-based businesses” means any qualified Louisiana business that is a qualified Louisiana technology-based business, the investment in which is approved in writing by at least two of the Louisiana research parks at the time.

(18)(a) “Louisiana research park” means any property-based venture located in the state of Louisiana which has all of the following elements:

(i) Existing or planned land and buildings designed primarily for private and public research and development facilities, high technology and science-based companies, and support services.

(ii) A contractual and/or formal ownership or operational relationship with one or more universities or other institutions of higher education and science research.

(iii) A role in promoting research and development by the university in partnership with industry, assisting in the growth of new ventures, and promoting economic development.

(iv) A role in aiding the transfer of technology and business skills between the university and industry tenants.

(b) A Louisiana research park may be a not-for-profit or for-profit entity owned wholly or partially by a university or a university-related entity. Alternatively, a Louisiana research park may be owned by a non-university entity but have a contractual or other formal relationship with a university, including joint or cooperative ventures between a privately developed research park and a university.

(19) “Research park early stage business” means any qualified Louisiana business that is a qualified Louisiana startup business which receives assistance from or has its principal place of business located at a Louisiana research park.

(20) “Specialty business and industrial development corporation” means any business and industrial development corporation licensed after January 1, 2002, and approved by the secretary as meeting one or more of the following criteria:

(a) A business and industrial development corporation that provides more than fifty percent of its qualified investments in businesses that are fifty-one percent owned or controlled by minorities or women.

(b) A business and industrial development corporation that provides more than fifty percent of its qualified investments in disadvantaged businesses.

(c) A business and industrial development corporation that is a nonprofit corporation providing more than fifty percent of its qualified investments in disadvantaged businesses or to businesses that are more than fifty percent owned or controlled by minorities or women.

(d) A business and industrial development corporation that is more than fifty percent owned or controlled in its daily operation by minorities or women. For purposes of this Subparagraph, any business and industrial development corporation that has been designated as a specialty business and industrial development corporation by the secretary prior to January 1, 2002, shall be considered a specialty business and industrial development corporation for purposes of this Section.

§1924. Income tax credit or premium tax reduction

A. A person, either natural or artificial, who invests in the certified capital of a certified Louisiana capital company may claim either a premium tax reduction pursuant to R.S. 22:1068(E) or a credit against the person's Louisiana income tax in the person's taxable year in which the investment is made, as certified by the commissioner, pursuant to rules promulgated by the secretary, to the Department of Insurance or the Department of Revenue.

B.(1) The income tax credit shall be calculated by the commissioner as thirty-five percent of the person's cash investment in the certified capital of a certified Louisiana capital company.

(2) The total income tax credits granted in any calendar year shall not result in an additional reduction of total income tax revenues of greater than two million dollars.

(3) During any calendar year in which this Subsection will limit the amount of certified capital for which income tax credits are allowed, certified capital for which income tax credits are allowed will be allocated among certified Louisiana capital company groups. Requests for allocation shall be prepared for filing not later than December first on a form prescribed by the commissioner, which form shall include an affidavit by the person pursuant to which such person shall become legally bound and irrevocably committed to make an investment of certified capital in a certified Louisiana capital company subject only to receipt of an allocation pursuant to this Subsection. Any requests for allocation filed with the commissioner before December first of any calendar year shall be deemed to have been filed on December first of such year. Requests for allocation shall be allocated as follows:

(a) When aggregate requests for allocation by certified Louisiana capital company groups do not exceed five million seven hundred fourteen thousand two hundred eighty-five dollars, all requests for allocations shall be approved by the commissioner.

(b) When aggregate requests for allocation exceed five million seven hundred fourteen thousand two hundred eighty-five dollars, each certified Louisiana capital company group shall be entitled to receive an allocation to be calculated by dividing five million seven hundred fourteen thousand two hundred eighty-five dollars by the number of certified Louisiana capital company groups requesting allocations. In the event that this allocation results in one or more certified Louisiana capital groups receiving an allocation in excess of the amount which was requested, such excess shall be reallocated to the remaining certified Louisiana capital groups on an equal basis until the entirety of the allocation has been fully distributed.

(c) No certified Louisiana capital company certified after December first of any year shall be entitled to receive an allocation pursuant to Subparagraph (b) of this Paragraph for the same calendar year in which it was certified.

(d) Annually within ten days of December first, the commissioner shall review all requests for allocation of income tax credits and notify the certified Louisiana capital companies of the amount of certified capital for which income tax credits are allowed to such persons that are investors in such companies. During this ten-day period, each certified Louisiana capital

company group may allow for the substitution of one investor for another when the initial investor is unable or unwilling to complete the proposed investment.

(e) If a certified Louisiana capital company does not receive an investment of certified capital equaling the amount of the allocation made to it pursuant to Subparagraph (c) of this Paragraph within ten days of receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining certified Louisiana capital company groups pursuant to the allocation procedure set forth in Subparagraph (b) of this Paragraph, substituting the reallocated amount for the total amount to be allocated.

C. A capital company's initial capitalization, at the time of seeking certification, must be two hundred thousand dollars or more.

D.(1) The total insurance premium tax credits granted pursuant to R.S. 22:1068(E) in any calendar year shall not result in an additional reduction of total premium tax revenues of greater than five million dollars per year.

(2) During any calendar year in which this Subsection will limit the amount of certified capital for which insurance premium tax credits are allowed, certified capital for which insurance premium tax credits are allowed will be allocated among certified Louisiana capital companies. Requests for allocation shall be prepared for filing not later than October first on a form prescribed by the commissioner, which form shall include an affidavit by the insurance company investor pursuant to which such investor shall become legally bound and irrevocably committed to make an investment of certified capital in a certified Louisiana capital company subject only to receipt of an allocation pursuant to this Subsection. Any requests for allocation filed with the commissioner before October first of any calendar year shall be deemed to have been filed on October first of such year. Requests for allocation shall be allocated as follows:

(a) When aggregate requests for allocation by certified Louisiana capital company groups do not exceed the maximum amount of capital for which insurance premium tax credits may be granted in such calendar year under Paragraph (1) of this Subsection, all requests for allocation shall be approved by the commissioner.

(b) When aggregate requests for allocation exceed the maximum amount of capital for which insurance premium tax credits may be granted in such calendar year under Paragraph (1) of this Subsection, each certified Louisiana capital company group shall be entitled to receive an allocation to be calculated by dividing the maximum amount of capital for which insurance premium tax credits may be granted in such calendar year under Paragraph (1) of this Subsection by the number of certified Louisiana capital company groups requesting allocations. If this allocation results in one or more certified Louisiana capital company groups receiving an allocation in excess of the amount which was requested, such excess shall be reallocated to the remaining certified Louisiana capital groups on an equal basis until the entirety of the allocation has been fully distributed.

(3) No certified Louisiana capital company certified after October first of any year shall be entitled to receive an allocation pursuant to Paragraph (2) of this Subsection for the same calendar year in which it was certified.

(4) Annually within ten days of October first, the commissioner shall review all requests for allocation of insurance premium tax credits and notify the certified Louisiana capital companies of the amount of certified capital for which insurance premium tax credits are allowed to the investors in such company.

(5) If a certified Louisiana capital company does not receive an investment of certified capital equaling the amount of the allocation made pursuant to Paragraph (4) of this Subsection within ten days of its receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining certified Louisiana capital company groups pursuant to the allocation procedure set forth in Paragraph (2) of this Subsection, substituting the reallocation amount for the total amount to be allocated.

(6) Each certified Louisiana capital company shall submit to the commissioner by the first day of September of each year a certified statement stating the amount of certified capital that such company possesses that has not yet been invested to meet the sixty percent investment requirement of R.S. 51:1928(B)(1), if applicable; the amount of certified capital that such company possesses that has not been invested to meet the one hundred percent investment requirements of R.S. 51:1928(B)(2) or (3), if applicable; and the amount of certified capital that such company possesses that has not been invested pursuant to other contractual agreements, if applicable. No certified Louisiana capital company group shall be eligible to submit a request on or before the first day of October of any calendar year for certified capital for which premium tax or income tax credits are allowed if on the first day of September of such year, such certified Louisiana capital company group had certified capital in excess of fifteen million dollars that has not yet met the aforementioned investment requirements of R.S. 51:1928(B)(1), (2), or (3), or other such contractual agreements.

E. The amount of the tax credit which exceeds the person's premium tax and income tax liability for the taxable year for which credits are allowed or the amount of premium and income tax credits that are not used by such person for the taxable year for which such credits are allowed may be carried forward to subsequent years until the credits are exhausted; however, the reduction in any taxable year shall not exceed such person's premium tax or income tax liability for such taxable year.

F. The department shall provide for the transfer or sale of premium and income tax credits under this Chapter. The transfer or sale of income or premium tax credits will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirers. No acquirer shall be able to utilize any premium tax credit earned after July 1, 2002, until at least the second anniversary of the investment date of the investment pool from which the premium tax credits were earned. Furthermore, even though a transfer or sale of credits, known as an election under this Section, may involve several entities, only one election may be made during any calendar quarter. Therefore, an investor in a certified Louisiana capital company may only transfer or sell credits once during a calendar quarter and the entity that

purchases the credit may not transfer credits obtained during the quarter in which the credits are transferred or purchased. In any subsequent calendar year, the purchaser of the credits may make one transfer election per calendar quarter.

G. The certified Louisiana capital company shall include in any offering involving the sale of shares to an investor, the following statement: "The state of Louisiana is not liable for damages to an investor in a certified Louisiana capital company. Use of the words 'certified' or 'Louisiana' in an offering does not constitute a recommendation or endorsement of the investment by the Louisiana Department of Economic Development or the Office of Financial Institutions".

§1925. Certification of a capital company

A. The commissioner shall provide by rule or regulation in accordance with the provisions of the Administrative Procedure Act for the procedures for making an application for certification of a capital company.

B. The commissioner shall review the articles of incorporation or the articles of partnership or articles of organization of each applicant for certification and the business history of the applicant, determine that the capitalization is at least two hundred thousand dollars, and determine that the officers, board of directors, partners, managers, or members are thoroughly acquainted with the requirements of the capital company's tax credit program and the certification and decertification procedures.

C. Within sixty days of application, the commissioner shall issue the certification and notify the Department of Revenue and the commissioner of insurance of said certification or shall refuse the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

D. The commissioner shall furnish a list of persons or businesses who may claim the tax credit to the Department of Revenue and the commissioner of insurance on a calendar year quarterly basis following receipt of such quarterly information as provided for under R.S. 51:1926(F).

§1926. Requirements for continuance of certification

A. A certified Louisiana capital company is required to comply with all of the requirements of this Section in order to continue certification of its investment pools as certified capital. To continue the certification of any investment pools as certified capital, a certified Louisiana capital company must make qualified investments from each investment pool according to the following schedule:

(1) Within three years after the investment date for each investment pool, at least fifty percent of each investment pool must be invested, with at least thirty percent of each investment pool placed in qualified investments; provided, with respect to investment pools certified after January 1, 2002, at least fifty percent of the amount required to be placed in qualified

investments within three years after their respective investment dates must be or have been placed in qualified Louisiana technology-based businesses, qualified Louisiana start-up businesses and/or qualified technology funds, with a minimum of fifty percent of such investments in qualified Louisiana technology-based businesses.

(2) Within five years after the investment date for each investment pool, at least eighty percent of each investment pool must be invested, with at least fifty percent of each investment pool placed in qualified investments; provided, with respect to investment pools certified after January 1, 2002, (a) at least fifty percent of the amount required to be placed in qualified investments within five years after their respective investment dates must be or have been placed in qualified Louisiana technology-based businesses, qualified Louisiana start-up businesses and/or qualified technology funds, with a minimum of fifty percent of such investments in qualified Louisiana technology-based businesses and (b) at least ten percent of the investment pool must be or have been placed in qualified technology funds, qualified investments in approved technology-based businesses and/or qualified investments in research park early stage businesses. The qualified investments used to satisfy the ten percent requirement in this Paragraph may also be used to satisfy the investment requirements regarding investment pools certified after January 1, 2002, as provided in Paragraphs (1) and (2) of this Subsection.

(3) The following are not qualified investments under this Subsection:

(a) Investments in businesses predominantly engaged in oil and gas exploration and development, gaming, real estate development for resale, banking, or lending, insurance, or professional services provided by accountants, lawyers, or physicians. The only exception to lending activities under this definition of a qualified investment are those activities permitted under R.S. 51:1935(A)(1)(a) and (b) and investments in qualified venture funds and investments in qualified technology funds.

(b) Investments in associates of certified Louisiana capital companies. The secretary, by rule, shall define "associate". If a legal entity is not an associate before a certified Louisiana capital company or any of its affiliated certified Louisiana capital companies initially invests in the entity, it will not be an associate if the certified Louisiana capital company or any of its affiliated certified Louisiana capital companies provide additional investment subsequent to the initial investment in the entity.

(c) That portion of a certified Louisiana capital company's qualified investments outstanding at any one time in any qualified Louisiana business or group of affiliated qualified Louisiana businesses in excess of fifteen percent of the certified Louisiana capital company's total certified capital.

(d) Qualified investments, with the exception of participations between certified Louisiana capital companies, which are reported as qualified investments on another certified Louisiana capital company's books.

(e) Reciprocal investments or loans made between certified Louisiana capital companies.

(4) For purposes of satisfying the requirements of Paragraphs (1) and (2) of this Subsection and satisfying the requirements of the three-year forty percent tests and the five year sixty percent tests contained in R.S. 51:1927.1, each dollar invested by a certified Louisiana capital company in a qualified venture fund shall be counted as two dollars.

B. A certified Louisiana capital company shall make no investment if after making such investment, the total investment outstanding would exceed fifteen percent of the total certified capital under management plus, upon written submission to and approval of the commissioner, any reserved leverage resulting from either the receipt by the certified capital company of a written commitment letter from the United States Small Business Administration or the United States Department of Agriculture Business and Industrial Loan Guarantee Program, or both, issued prior to refunding of the investment, unless the investment is defined to be a permissible investment for a certified Louisiana capital company. The department may promulgate rules which include a method of defining "permissible investments".

C. Repealed by Acts 1996, No. 21, § 3, eff. June 27, 1996.

D. Documents and other materials submitted by certified Louisiana capital companies or by Louisiana businesses for purposes of the continuance of certification shall not be public records if such records are determined to be trade or business secrets and shall be maintained in a secured environment by the commissioner. All reports, applications, and other information submitted to the commissioner shall contain no materially false or misleading information.

E. All qualified investments in equity in qualified Louisiana businesses as defined in R.S. 51:1923, including any losses therein incurred after certification, will be considered in the calculation of the percentage requirements under Subsections A and B of this Section.

F.(1) Each certified Louisiana capital company shall report the following to the commissioner on a calendar quarterly basis, starting with the first quarter after certification and each quarter thereafter, if any of the following information has changed since the first or any subsequent quarterly report filed:

(a) The name of each investor in a certified Louisiana capital company entitled to either an income tax credit or an insurance premium tax credit, including federal and state income tax identification numbers and, if applicable, the insurance premium tax identification number.

(b) The amount of each investor's investment and tax credit.

(c) The date on which the certified Louisiana capital company received the investment.

(d) The amount of the certified Louisiana capital company's certified capital at the end of the quarter.

(e) Whether or not the certified Louisiana capital company has invested more than fifteen percent, of the total certified capital under management in any one company.

(2) Each certified Louisiana capital company shall report to the commissioner annually, on or before January thirty-first, all qualified investments that the company has made during the previous calendar year, as well as the investment pool from which each investment originated.

(3) The certified Louisiana capital company shall submit to the commissioner, on or before April thirtieth, annual audited financial statements which include the opinion of an independent certified public accountant.

G.(1) Prior to making an investment in a business, a certified Louisiana capital company shall obtain, from an authorized representative of the business, a signed affidavit which shall be maintained by the company in its files.

(2) The commissioner shall by rule specify the substantive content of the affidavit.

H. A certified Louisiana capital company shall not:

(1) Operate or conceal any fact or condition which, if such operation or condition had existed at the time of application for certification, would have justified the commissioner's refusal of the certified Louisiana capital company's certification.

(2) Make any material misrepresentation to the commissioner in an application for certification which would have justified the commissioner's refusal of the certification.

(3) Willfully violate any provision of this Chapter, any rule or regulation promulgated hereunder, or any order of the secretary or the commissioner.

§1927. Decertification

A. The commissioner shall conduct an annual review of each capital company certified under the program to determine if the certified Louisiana capital company is abiding by the requirements of certification for its various investment pools, to advise the certified Louisiana capital company as to the certification status of its qualified investments, and to ensure compliance with R.S. 51:1924(D)(6) and 1926. The cost of the annual review shall be paid by each certified Louisiana capital company according to a reasonable fee schedule adopted under the provisions of the Administrative Procedure Act.

B. Any violation of R.S. 51:1926, other than R.S. 51:1926(A), shall be grounds for decertification of the certified Louisiana capital company and any investment pools that have not been decertified. A violation of R.S. 51:1926(A) shall be grounds for decertification of the noncomplying investment pool in accordance with Subsection C of this Section. If the commissioner determines that a company is not in compliance with any requirements of R.S. 51:1926, he shall, by written notice, inform the officers of the company and the board of directors, partners, managers, or members that the certified Louisiana capital company and any investment pools that have not yet been decertified, as the case may be, may be subject to involuntary decertification in one hundred twenty days from the date of mailing of the notice

unless they correct the deficiencies and are again in compliance with all requirements for certification.

C. At the end of the one-hundred-twenty-day grace period, if the certified Louisiana capital company and any investment pools that have not yet been decertified, as the case may be, are still not in compliance with R.S. 51:1926, the commissioner shall send a notice of involuntary decertification of the certified Louisiana capital company and any affected investment pools, as appropriate, to the company, to the secretary of the Department of Revenue, and the commissioner of the Department of Insurance. Voluntary or involuntary decertification of a certified Louisiana capital company and any affected investment pools may cause the forfeiture of the remaining and unclaimed income tax credits under this Chapter and premium tax credits under R.S. 22:1068(E), which correspond to such certified Louisiana capital company or to such investment pools, respectively, and shall cause the recapture of all credits taken by investors with respect to such certified Louisiana capital company or to such investment pools, respectively, to be due and payable to the Department of Revenue or the Department of Insurance in the year of decertification, notwithstanding the years for which the credits were originally taken may have prescribed, as follows:

(1) If any investment pools are decertified due to the inability of a certified Louisiana capital company to comply with all requirements for continued certification under the provisions of R.S. 51:1926 within three years of the investment dates of such investment pools, one hundred percent of all credits relating to such investment pools which have been taken by investors shall be due and payable and any remaining and previously unclaimed investor credits relating to such investment pools shall be forfeited.

(2) When a certified Louisiana capital company meets all requirements for continued certification of any investment pools under R.S. 51:1926, including R.S. 51:1926(A)(1), but excluding R.S. 51:1926(A)(2), those insurance premium tax credits relating to such investment pools which have been or will be taken by investors within three years from the investment dates of such investment pools will not be subject to recapture or repayment.

(3) When a certified Louisiana capital company meets all requirements of Paragraph (2) of this Subsection and subsequently fails to meet the requirements for continued certification of any investment pools under the provisions of R.S. 51:1926, only those insurance premium tax credits that have been or will be taken by investors after the third anniversary of the investment dates of such investment pools shall be subject to recapture and repayment and any other remaining and previously unclaimed insurance premium tax credits shall be forfeited.

(4) When a certified capital company meets all requirements for continued certification of any investment pools, including R.S. 51:1926(A)(1) and (2), no insurance premium tax credits or income tax credits relating to such pools shall be subject to recapture, repayment, retaliation, or forfeiture.

(5) The secretary may promulgate rules and regulations regarding the recapture or forfeiture of income tax credits associated with pools which are certified on or after January 1, 1999, and which fail to meet the continuing certification requirements of R.S. 51:1926.

D. The Department of Revenue and the Department of Insurance shall send written notice to the address of each person or insurance company whose tax credit has been subject to repayment or forfeiture, using the address last shown on the last income tax or premium tax filing.

§1927.1. Annual audit; annual rate of return; appreciation excess; remittance to Louisiana Economic Development Fund

A. Following a decertification of a pool that was certified on or after January 1, 1999, and for which insurance premium tax credits were granted, an independent certified public accountant shall perform a review of all distributions other than tax distributions and management fees from such pool to the equity holders of the pool to determine if such distributions produce an annual internal rate of return to the equity holders of the pool of at least fifteen percent calculated on the original amount of certified capital contributed to such pool as well as any additional capital contributed to such pool. Within thirty days following the issuance of the accountant's report, the certified capital company shall remit to the Louisiana Economic Development Fund twenty-five percent of all distributions in excess of the amount required to produce an annual internal rate of return of fifteen percent until the Louisiana Economic Development Fund shall have received an amount equal to the amount of tax credits granted for the pool. Thereafter, the certified capital company shall remit to the Louisiana Economic Development Fund five percent of such excess distributions.

B. Following a decertification of a pool that was certified on or after January 1, 2002, and for which income tax credits or insurance premium tax credits were granted, an independent certified public accountant shall annually perform a review of all distributions, other than tax distributions and management fees, from such pool to the equity holders of the pool to determine if such distributions produce a rate of return to the equity holders of the pool of at least ten percent calculated on the original amount of certified capital contributed to such pool as well as any additional capital contributed to such pool. Within thirty days following the issuance of the accountant's annual report, the certified capital company shall remit twenty-five percent of all distributions in excess of the amount required to produce a rate of return of ten percent to the Louisiana Economic Development Fund.

C. The calculation of internal rate of return shall include all cash distributions to equity investors out of the certified capital company's investment pool, except for tax distributions and management fees. Management fees shall not exceed two and one-half percent per annum of the total certified capital of the pool without the prior approval of the secretary. Notwithstanding any other provisions in this Chapter to the contrary, for all certified capital pools formed after December 31, 2001, if a certified Louisiana capital company does not place (1) forty percent of the investment pool in qualified investments within three years after the investment date, (2) sixty percent of the investment pool in qualified investments within five years of the investment date, and (3) one hundred percent of the investment pool in qualified investments within seven years of the investment date, then following a decertification pursuant to R.S. 51:1928(B)(3), such company shall remit to the Louisiana Economic Development Fund twenty-five percent of all distributions, other than tax distributions and management fees, until the Louisiana Economic

Development Fund shall have received one hundred percent of the tax credits granted for such pool and thereafter the company shall remit ten percent of all distributions, other than tax distributions and management fees to the Louisiana Economic Development Fund. If a certified Louisiana capital company has not decertified an investment pool formed after December 31, 2001, pursuant to R.S. 51:1928(B)(3) within ten years from the investment date, such company shall remit to the Louisiana Economic Development Fund fifty percent of all distributions until the Louisiana Economic Development Fund shall have received one hundred percent of the tax credits granted for such pool, and thereafter the company shall remit twenty percent of all distributions to the Louisiana Economic Development Fund.

§1927.2. Annual report to legislature

Prior to September 1, 2003, and each quarter thereafter, the secretary shall report to the House Committees on Commerce and Ways and Means and the Senate Committees on Commerce, Consumer Protection, and International Affairs and Revenue and Fiscal Affairs on the activities of all certified capital company groups with information provided to the secretary quarterly by each certified Louisiana capital company and certified Louisiana capital company group. The cost of preparation of such report by the secretary shall be paid by the certified Louisiana capital companies and/or certified Louisiana capital company groups, and such report shall include but not be limited to the following:

- (1) The total amount of certified capital raised.
- (2) The total amount of certified capital raised by each certified Louisiana capital company and/or certified Louisiana capital company group.
- (3) The total amount of certified capital invested in qualified investments.
- (4) The total amount of certified capital that each certified Louisiana capital company and/or certified Louisiana capital group has that has yet to meet the investment requirements contained in R.S. 51:1928.
- (5) The total amount of certified capital invested in qualified Louisiana businesses by each certified Louisiana capital company and/or certified Louisiana capital company group.
- (6) The following information about each qualified Louisiana business that received an investment of certified capital by a certified Louisiana capital company and/or certified Louisiana capital company group out of investment pools certified after July 1, 2002:
 - (a) The dollar amount of new investment in physical assets in the state.
 - (b) The actual number and gross payroll of new permanent full-time and part-time jobs created.
 - (c) The actual number and gross payroll of jobs retained as compared to the number and payroll of jobs existing prior to the investment from the certified capital company.

(d) Wage rates and benefits of the new permanent full-time and part-time jobs created, and those of the jobs retained.

(e) Tax revenues generated by each company receiving an investment from a certified capital company, as determined by the Department of Revenue.

(f) An estimate of the total direct and indirect economic impact on Louisiana for each company receiving an investment based upon the data collected in this Section.

(7) The amount of management fees taken by each certified Louisiana capital company and/or certified Louisiana capital company group as defined by R.S. 51:1927.1(B).

(8) All information contained in R.S. 51:1934(C).

§1928. Voluntary decertification

A. At any time a certified Louisiana capital company may voluntarily decertify particular investment pools by sending written request for decertification to the commissioner and by remitting to the secretary of the Department of Revenue and the commissioner of the Department of Insurance the amounts described in R.S. 51:1927(C). These amounts are due notwithstanding the fact that the years for which the credits were originally taken may have prescribed. Thereafter, the capital company shall be a full subrogee to the state of Louisiana through the Department of Revenue and the Department of Insurance for such sums as were remitted by the company, against its investors or equity owners.

B.(1) With respect to any investment pool certified on or before December 31, 1998, after ten years of continued certification of any investment pool or at any time when a certified Louisiana capital company has invested sixty percent of any investment pool in qualified investments, a certified Louisiana capital company may voluntarily decertify such investment pool by sending a written request for a review and decertification. If the decertification of the investment pool is approved by the commissioner, no tax credits claimed or to be claimed under R.S. 51:1924(A) and (B), R.S. 51:1932, and R.S. 22:1068(E) with respect to such investment pool will be subject to repayment, recapture, retaliation, or forfeiture by the certified Louisiana capital company or its investors.

(2) With respect to any investment pools certified after December 31, 1998, but prior to December 31, 2001, when a certified Louisiana capital company has invested one hundred percent of any investment pool in qualified investments, the certified Louisiana capital company may voluntarily decertify such investment pool by sending a written request for a review and decertification. If the decertification of the investment pool is approved by the commissioner, no tax credits claimed or to be claimed under R.S. 51:1924(A) and (B), R.S. 51:1932, and R.S. 22:1068(E) with respect to such investment pool will be subject to repayment, recapture, retaliation, or forfeiture by the certified Louisiana capital company or its investors.

(3) With respect to any investment pools certified after January 1, 2002, when the certified capital company has invested one hundred percent of such investment pool in qualified investments, with a minimum of twenty-five percent of such investment pool having been invested in disadvantaged businesses, the certified Louisiana capital company may voluntarily decertify such investment pool by sending a written request for a review and decertification. The dollar amount of any qualified investment made in a qualified venture fund after August 1, 2002, shall count one hundred fifty percent towards the satisfaction of the one hundred percent requirement of this Subsection and towards the seven-year one hundred percent requirement contained in R.S. 51:1927.1. In addition, any investment in a qualified venture fund after August 1, 2002, shall count one hundred percent towards the satisfaction of the twenty-five percent requirement imposed by this Section on investment pools certified after January 1, 2002. If the decertification of the investment pool is approved by the commissioner, no tax credits claimed or to be claimed under R.S. 51:1924(A) and (B), R.S. 51:1932, and R.S. 22:1068(E) with respect to such investment pool will be subject to repayment, recapture, retaliation, or forfeiture by the certified Louisiana capital company or its investors.

C. No distributions to equity owners shall be made from the certified capital contained within a pool prior to decertification other than for any of the following:

(1) Debt service.

(2) Tax payments or distributions to the equity owners of a certified Louisiana capital company in an amount equal to any projected increase in tax liability to the extent such increase is related to the ownership, management, or operation of the certified Louisiana capital company.

(3) A management fee which does not exceed two and one-half percent per annum of the pool's certified capital unless otherwise approved by the secretary; provided with respect to any investment pools formed after December 31, 2001, such management fee shall only be allowed for the seven years following the date the initial investment to the pool is made.

§1929. Rules and regulations

The secretary or the commissioner may make and promulgate rules and regulations as necessary to carry out the provisions of this Chapter, including but not limited to the following:

(1) Providing for definitions.

(2) Establishing licensure requirements.

(3) Providing for certification and decertification of licensees.

(4) Addressing issues regarding premium tax reductions and income tax credits.

(5) Establishing fees and assessments.

(6) Establishing dates by which reports shall be filed with the commissioner.

(7) Providing for administrative and enforcement actions.

§1929.1. Guidance by commissioner; advisory opinions

A. Advisory opinions and interpretations of the commissioner shall not be considered rules requiring compliance with the rulemaking process under the Louisiana Administrative Procedure Act.

B. This Section shall only have prospective application.

§1930. Other department responsibilities

The department, in addition to other grants of authority to promote the economic development of the state, is hereby authorized to serve as a clearinghouse for information relevant to potential incorporators or organizers of certified Louisiana capital companies and for the locating and promoting of qualified Louisiana businesses seeking infusions of capital.

§1931. Program termination

The commissioner shall not certify a capital company to begin the program later than June 30, 2003. The commissioner shall not certify capital later than December 31, 2003.

§1932. Corporation income and franchise tax exemption

A. Notwithstanding any other provision of law to the contrary, any corporation that is a certified Louisiana capital company as provided for in this Chapter shall be exempt from the corporation income tax and the corporation franchise tax levied pursuant to Title 47 of the Louisiana Revised Statutes of 1950 for five consecutive taxable periods. The exemption from the corporation income tax shall commence with the taxable period in which the capital company is certified by the commissioner. The exemption from the corporation franchise tax shall commence with the taxable period next following the taxable period in which certification as a certified Louisiana capital company is obtained from the commissioner.

B. In the case of a corporation obtaining certification as a certified Louisiana capital company prior to the beginning of its first taxable period, the exemption from corporation income tax provided for in Subsection A shall commence with the corporation's first taxable period and shall continue through its next four consecutive taxable periods. The exemption from corporation franchise tax shall commence with the corporation's second taxable period and shall continue through its next four consecutive taxable periods.

§1933. Administration matters

All investments of certified capital in a certified Louisiana capital company prior to June 27, 1996, shall be one investment pool; the investment date of such investment pool shall be

the date of certification or recertification, as the case may be, of the certified Louisiana capital company.

§1934. Confidentiality of records

A. The provisions of R.S. 51:2389(G)(5) shall apply to all records of certified Louisiana capital companies provided to or generated by the Office of Financial Institutions.

B. In conjunction with the execution of their respective duties and responsibilities, the department and the commissioner may share with one another documents and other materials submitted by certified Louisiana capital companies or by Louisiana businesses. All information exchanged by the department and the commissioner shall be kept strictly confidential within the respective agencies. Such information shall not be subject to subpoena or other legal process, except as set forth in R.S. 9:3518.1(D).

C. Notwithstanding any provision in this Section to the contrary, the secretary and the commissioner shall not be prohibited from disclosure of the following information:

- (1) The total amount of certified capital raised.
- (2) The total amount of certified capital raised by each certified Louisiana capital company group.
- (3) The total amount of certified capital invested in qualified Louisiana businesses.
- (4) The total amount of certified capital that each certified Louisiana capital company has that has yet to meet the sixty percent or one hundred percent requirements contained in R.S. 51:1928.
- (5) The total amount of certified capital invested in qualified Louisiana businesses by each certified Louisiana capital company group.
- (6) The amounts and types of jobs created or retained by the investments of certified capital by each certified Louisiana capital company group.

§1935. Investment in approved funds

A.(1) On or before December 31, 1998, any certified Louisiana capital company that will have capital certified pursuant to R.S. 51:1931 and which qualifies for credits pursuant to R.S. 22:1068(E) shall enter into an agreement with the secretary wherein the certified Louisiana capital company invests a specified amount, not to exceed five percent as determined by the secretary, of all certified capital investment pools for which insurance premium tax credits were granted and that have not been decertified into:

(a) One or more capital management funds as approved by the secretary whose primary investment objectives include pre-seed, seed, and early stage business ventures, and whose investment in any such business and its affiliates is limited to one million dollars or less.

(b) Any certified Louisiana capital company whose primary investment objectives include investing in certified disadvantaged businesses, business ventures operating in economically distressed areas, or Louisiana businesses and affiliates in an amount not exceeding one million dollars.

(2) Beginning on January 1, 2000, the secretary shall annually determine the amount of additional investment required to be invested by each certified Louisiana capital company. Such amount required to be invested by each certified Louisiana capital company shall not exceed ten percent of all capital certified in the previous calendar year that are eligible for credits pursuant to R.S. 22:1068(E) from insurance tax credit investors.

(3) Any investment made pursuant to this Section by a certified Louisiana capital company shall be considered a qualified Louisiana investment.

B. The department may promulgate rules and regulations in accordance with the Administrative Procedure Act to provide for the governance, administration, and operation of any such capital management fund, including a requirement that any approved capital management fund be managed by a qualified individual and a requirement that each certified Louisiana capital company be eligible for equal representation on any body formed for the governance of the management fund.

C. The requirements of this Section shall not apply to any investment pool certified after January 1, 2002.