

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2001 ASSEMBLY BILL 579**

November 1, 2001 – Offered by Representative WARD.

1 **AN ACT** *to renumber* 560.32 (2) (c) and 560.35 (1m); *to renumber and amend*
2 560.32 (2) (b), 560.33 (1) (b) and 560.34 (1) (d); *to amend* 71.45 (2) (a) 10., 560.30
3 (3), 560.30 (10) (a), 560.30 (10) (c), 560.30 (10) (d), 560.31 (2) (b), 560.33 (1) (c),
4 560.35 (2) (intro.), 560.35 (2) (a), 560.35 (2) (c), 560.37 (4) and 560.37 (5); and
5 **to create** 71.47 (7), 71.49 (1) (dm), 560.30 (10) (e), 560.31 (2) (g), 560.32 (2) (b)
6 2., 560.32 (2) (c) 2., 560.32 (4), 560.33 (1) (b) 2., 560.34 (1) (d) 2., 560.34 (1m) (a)
7 3., 560.34 (1m) (a) 4., 560.35 (1c), 560.35 (1m) (b) and 560.35 (1r) of the statutes;
8 **relating to:** certified capital investment limitations, qualified distributions of
9 certified capital companies, creating a certified capital company income and
10 franchise tax credit for insurers, certified capital company office, certified
11 capital company net worth, qualified business requirements, qualified
12 investment schedule, certified capital company reporting requirements, and
13 requesting a performance audit.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.45 (2) (a) 10. of the statutes is amended to read:

2 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
3 computed under s. 71.47 (1dd) to (1dx) and (7) and not passed through by a
4 partnership, limited liability company, or tax-option corporation that has added that
5 amount to the partnership's, limited liability company's, or tax-option corporation's
6 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
7 s. 71.47 (1), (3), (4), and (5).

8 **SECTION 2.** 71.47 (7) of the statutes is created to read:

9 71.47 **(7)** CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

- 10 1. "Certified capital company" has the meaning given in s. 560.30 (2).
11 2. "Certified capital investment" has the meaning given in s. 560.30 (4).
12 3. "Investment date" has the meaning given in s. 560.30 (6).
13 4. "Investment pool" has the meaning given in s. 560.30 (7).
14 5. "Qualified investment" has the meaning given in s. 560.30 (11).

15 (b) An insurer who makes a certified capital investment may claim as a credit
16 against the tax imposed under s. 71.43, for 10 years beginning with the year of the
17 investment, an amount equal to either 10% of that investment or the amount by
18 which the sum of the insurer's certified capital investments and the insurer's
19 qualified investments exceeds the insurer's qualified investments in the taxable year
20 before the insurer first claimed the credit under this section, whichever is less.

21 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28
22 (4), applies to the credit under this subsection.

1 (d) Partnerships, limited liability companies, and tax–option corporations may
2 not claim the credit under this subsection, but the eligibility for, and the amount of,
3 the credit are based on their payment of a certified capital investment. A
4 partnership, limited liability company, or tax–option corporation shall compute the
5 amount of credit that each of its partners, members, or shareholders may claim and
6 shall provide that information to each of them. Partners, members of limited liability
7 companies, and shareholders of tax–option corporations may claim the credit in
8 proportion to their ownership interest.

9 (e) 1. If a certified capital company is decertified, or an investment pool is
10 disqualified, under s. 560.37 before the certified capital company fulfills the
11 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
12 pool, any insurer that has received a credit under this subsection with respect to that
13 investment pool shall repay that credit to the department of revenue and may not
14 claim more credit in respect to that investment pool.

15 2. If a certified capital company fulfills the investment requirement under s.
16 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
17 company is decertified, or an investment pool is disqualified, under s. 560.37 before
18 the certified capital company fulfills the investment requirement under s. 560.34
19 (1m) (a) 2. for that investment pool, any insurer that has received a credit under this
20 subsection with respect to that investment pool shall repay all credits that were
21 claimed for taxable years after the taxable year that includes the 3rd anniversary of
22 the investment date of the investment pool and may claim no more credits for taxable
23 years after the taxable year that includes the 3rd anniversary of the investment date
24 of the investment pool.

1 (f) An insurer may sell a credit under this subsection to another insurer who
2 is subject to the tax imposed under s. 71.43 if the insurer notifies the commissioner
3 of insurance and the department of revenue of the sale and includes with such
4 notifications copies of the transfer documents.

5 **SECTION 3.** 71.49 (1) (dm) of the statutes is created to read:

6 71.49 (1) (dm) Certified capital company credit under s. 71.47 (7).

7 **SECTION 4.** 560.30 (3) of the statutes is amended to read:

8 560.30 (3) “Certified capital company tax credit” means the tax credit under
9 s. ss. 71.47 (7) and 76.635.

10 **SECTION 5.** 560.30 (10) (a) of the statutes is amended to read:

11 560.30 (10) (a) The costs of forming, and syndicating, ~~managing or operating~~
12 the certified capital company, not to exceed 5% of the certified capital company’s total
13 certified capital.

14 **SECTION 6.** 560.30 (10) (c) of the statutes is amended to read:

15 560.30 (10) (c) Reasonable and necessary fees paid for professional services
16 related to the operation of the certified capital company, not to exceed 5% of the
17 certified capital company’s total certified capital unless approved by the department.

18 **SECTION 7.** 560.30 (10) (d) of the statutes is amended to read:

19 560.30 (10) (d) A projected increase in federal or state taxes, including
20 excluding penalties and interest on those taxes, of the equity owners of the certified
21 capital company if those amounts are related to the certified capital company’s
22 ownership, management, or operation.

23 **SECTION 8.** 560.30 (10) (e) of the statutes is created to read:

24 560.30 (10) (e) Reasonable costs associated with applying for qualified federal
25 funding programs, as determined by the department.

1 **SECTION 9.** 560.31 (2) (b) of the statutes is amended to read:

2 560.31 (2) (b) ~~The At the time of application and on the date on which the person~~
3 ~~is certified, the person~~ has a net worth, ~~at the time of application,~~ of at least \$500,000
4 and has at least \$500,000 in cash, cash equivalents, and marketable securities.

5 **SECTION 10.** 560.31 (2) (g) of the statutes is created to read:

6 560.31 (2) (g) The person agrees to maintain in this state an investment office
7 and staff actively engaged in making investments.

8 **SECTION 11.** 560.32 (2) (b) of the statutes is renumbered 560.32 (2) (b) 1. and
9 amended to read:

10 560.32 (2) (b) 1. ~~The Prior to the effective date of this subdivision~~ [revisor
11 ~~inserts date~~], the department may certify an investment under this subsection only
12 if, after the certification, the department will not have certified a total of more than
13 \$50,000,000 in investments under this subsection.

14 **SECTION 12.** 560.32 (2) (b) 2. of the statutes is created to read:

15 560.32 (2) (b) 2. The department may, beginning on the effective date of this
16 subdivision [revisor inserts date], certify up to \$100,000,000 in investments under
17 this subsection, excluding any investments certified under subd. 1.

18 **SECTION 13.** 560.32 (2) (c) of the statutes is renumbered 560.32 (2) (c) 1.

19 **SECTION 14.** 560.32 (2) (c) 2. of the statutes is created to read:

20 560.32 (2) (c) 2. The department may not certify an investment under par. (b)
21 2. if, after the certification, the investor, together with all affiliates of the investor,
22 would have in certified capital investments under par. (b) 2. more than the greater
23 of \$10,000,000 or 15% of the total amount of investments that the department may
24 certify under par. (b) 2.

25 **SECTION 15.** 560.32 (4) of the statutes is created to read:

1 560.32 (4) PROHIBITION ON RETURNING INITIAL INVESTMENTS. (a) Except as
2 provided in par. (b), a person that is certified as a certified capital company under s.
3 560.31 may not return to investors investments that were made in the certified
4 capital company prior to its certification for the purpose of enabling the person to
5 meet the requirements under s. 560.31 (2) (b).

6 (b) Paragraph (a) does not apply to an investment made in a certified capital
7 company prior to its certification if compliance with par. (a) would impair any
8 provision of a contract between the certified capital company and the investor that
9 was entered into before the effective date of this paragraph [revisor inserts date].

10 **SECTION 16.** 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)
11 and amended to read:

12 560.33 (1) (b) (intro.) The business has no more than 100 employees, ~~at~~ and any
13 of the following applies:

14 1. At least 75% of whom those employees are employed in this state.

15 **SECTION 17.** 560.33 (1) (b) 2. of the statutes is created to read:

16 560.33 (1) (b) 2. At least 75% of the total payroll of the business is paid to
17 employees who are employed in this state.

18 **SECTION 18.** 560.33 (1) (c) of the statutes is amended to read:

19 560.33 (1) (c) During its 2 most recent fiscal years, the business had, together
20 with all of its consolidated affiliates, an average annual net income, after federal
21 income taxes and excluding any carry-over losses, of not more than \$2,000,000, as
22 determined in accordance with generally accepted accounting principles. For
23 purposes of this paragraph, a partnership, limited liability company, or tax-option
24 corporation shall calculate its net annual income based on the net annual income,
25 after federal income taxes and excluding any carry-over losses, of its partners.

1 members, or shareholders that is related to the economic activity of the partnership,
2 limited liability company, or tax-option corporation.

3 **SECTION 19.** 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)
4 and amended to read:

5 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business
6 agrees, as long as the certified capital corporation continues to hold the investment,
7 to maintain do any of the following:

8 1. Maintain at least 75% of its employees in this state.

9 **SECTION 20.** 560.34 (1) (d) 2. of the statutes is created to read:

10 560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are
11 employed in this state.

12 **SECTION 21.** 560.34 (1m) (a) 3. of the statutes is created to read:

13 560.34 (1m) (a) 3. Within 7 years after the investment date for a particular
14 investment pool, at least 70% of the investment pool shall be placed in qualified
15 investments.

16 **SECTION 22.** 560.34 (1m) (a) 4. of the statutes is created to read:

17 560.34 (1m) (a) 4. Within 10 years after the investment date for a particular
18 investment pool, 100% of the investment pool shall be placed in qualified
19 investments.

20 **SECTION 23.** 560.35 (1c) of the statutes is created to read:

21 560.35 (1c) INVESTMENT IN QUALIFIED BUSINESS. Within 15 days after entering
22 into an agreement with a qualified business to make a qualified investment in the
23 business, a certified capital company shall report all of the following to the
24 department:

25 (a) The name of the qualified business.

1 (b) The agreed upon amount of the qualified investment.

2 (c) The type of investment, as specified in s. 560.34 (1) (a) 1. or 2. a. or b.

3 **SECTION 24.** 560.35 (1m) of the statutes is renumbered 560.35 (1m) (a).

4 **SECTION 25.** 560.35 (1m) (b) of the statutes is created to read:

5 560.35 **(1m)** (b) If a qualified business violates an agreement made under s.
6 560.34 (1) (b) to (e), for purposes of the requirements under subs. (2) (b) and (c) and
7 (3) and ss. 560.34 (1m) (a), 560.36 (3), and 560.37 (2), (3), and (3m) (a) 2. and the
8 certified capital company tax credit, the certified capital company's qualified
9 investments with respect to that qualified business shall be valued at one-half of the
10 actual amount invested by the certified capital company.

11 **SECTION 26.** 560.35 (1r) of the statutes is created to read:

12 560.35 **(1r)** QUALIFIED INVESTMENT SCHEDULE REPORT. Within 30 days after the
13 conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital
14 company shall report to the department, in the format and substance prescribed by
15 the department, information required by the department for determining whether
16 the certified capital company is in compliance with the percentage requirements
17 under s. 560.34 (1m) (a).

18 **SECTION 27.** 560.35 (2) (intro.) of the statutes is amended to read:

19 560.35 **(2)** ANNUAL SEMIANNUAL REPORTS. (intro.) On Each year, on or before
20 January 31 annually, for the preceding 6-month period ending on December 31, and
21 on or before July 31, for the preceding 6-month period ending on June 30, a certified
22 capital company shall report, in format and substance prescribed by the department,
23 all of the following to the department:

24 **SECTION 28.** 560.35 (2) (a) of the statutes is amended to read:

1 560.35 (2) (a) The amount of the certified capital company's certified capital at
2 the end of the preceding year 6-month period.

3 **SECTION 29.** 560.35 (2) (c) of the statutes is amended to read:

4 560.35 (2) (c) All qualified investments that the certified capital company has
5 made during the ~~previous calendar year~~ preceding 6-month period and the
6 investment pool from which each qualified investment was made.

7 **SECTION 30.** 560.37 (4) of the statutes is amended to read:

8 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital
9 company or an investment pool has the effects specified in ~~s.~~ ss. 71.47 (7) (e) and
10 76.635 (4).

11 **SECTION 31.** 560.37 (5) of the statutes is amended to read:

12 560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a
13 certified investor when the certified capital company tax credit arising from a
14 certified investment is no longer subject to recapture and forfeiture under ~~s.~~ ss. 71.47
15 (7) (e) and 76.635 (4).

16 **SECTION 32. Nonstatutory provisions.**

17 (1) PERFORMANCE EVALUATION AUDIT. The joint legislative audit committee is
18 requested to, and may, direct the legislative audit bureau to perform a performance
19 evaluation audit of the program under subchapter II of chapter 560 of the statutes,
20 which shall include evaluating the overall effectiveness of the program. If the
21 committee directs the legislative audit bureau to perform an audit under this
22 subsection, the bureau shall file its report as described in section 13.94 (1) (b) of the
23 statutes by January 1, 2003.

24 **SECTION 33. Initial applicability.**

