

House Bill 298

By: Representatives Harbin of the 118th, Peake of the 137th, Stephens of the 164th, Martin of the 47th, and Smyre of the 132nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 33 of the Official Code of Georgia Annotated, relating to insurance, so as
2 to establish a small business investment company credit; to provide definitions; to provide
3 standardized application format; to provide for qualification requirements; to provide for
4 limitations; to provide for certification continuance requirements; to provide for reporting;
5 to provide for decertification; to provide for registration; to provide for reports to the
6 Governor and General Assembly; to provide the tax credit; to provide for an effective date;
7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
11 adding a new Code section to read as follows:

12 "33-1-19.

13 (a) As used in this Code section, the term:

14 (1) 'Affiliate' means:

15 (A) Any person who, directly or indirectly, beneficially owns, controls, or holds power
16 to vote 15 percent or more of the outstanding voting securities or other voting
17 ownership interest of a Georgia small business investment company or insurance
18 company; or

19 (B) Any person, 15 percent or more of whose outstanding voting securities or other
20 voting ownership interests are directly or indirectly beneficially owned, controlled, or
21 held with power to vote by a Georgia small business investment company or insurance
22 company.

23 (2) 'Allocation date' means the date on which credits under subsection (j) of this Code
24 section are allocated to the participating investors of a Georgia small business investment
25 company under this Code section.

26 (3) 'Department' means the Insurance Department established by Code Section 33-2-1.

- 27 (4) 'Designated capital' means an amount of money that:
 28 (A) Is invested by a participating investor in a Georgia small business investment
 29 company; and
 30 (B) Fully funds the purchase price of either or both participating investor's equity
 31 interest in a Georgia small business investment company or a qualified debt instrument
 32 issued by a Georgia small business investment company.
- 33 (5) 'Georgia small business investment company' means a partnership, corporation, trust,
 34 or limited liability company, organized on a for-profit basis, that:
 35 (A) Has its principal office located or is headquartered in Georgia;
 36 (B) Has as its primary business activity the investment of cash in qualified businesses;
 37 and
 38 (C) Is certified by the department as meeting the criteria in this Code section.
- 39 (6) 'Participating investor' means a person with state premium tax liability that
 40 contributes designated capital pursuant to this Code section.
- 41 (7) 'Person' means any natural person or entity, including, but not limited to, a
 42 corporation, general or limited partnership, trust, or limited liability company.
- 43 (8) 'Qualified business' means a business that is independently owned and operated and
 44 meets all of the following requirements:
 45 (A) It is headquartered in Georgia, its principal business operations are located in this
 46 state, and at least 60 percent of its employees are located in Georgia;
 47 (B) It has not more than 100 employees;
 48 (C) It is not predominantly engaged in:
 49 (i) Professional services provided by accountants, doctors, or lawyers;
 50 (ii) Banking or lending;
 51 (iii) Real estate development;
 52 (iv) Insurance;
 53 (v) Oil and gas exploration;
 54 (vi) Direct gambling activities; or
 55 (vii) Making loans to or investments in a Georgia small business investment
 56 company or an affiliate; and
 57 (D) It is not a franchise of and has no financial relationship with a Georgia small
 58 business investment company or any affiliate of a Georgia small business investment
 59 company prior to a Georgia small business investment company's first qualified
 60 investment in the business.
- 61 A business classified as a qualified business at the time of the first qualified investment
 62 in the business will remain classified as a qualified business and may receive continuing
 63 qualified investments from any Georgia small business investment company. Continuing

64 investments will constitute qualified investments even though the business may not meet
65 the definition of a qualified business at the time of such continuing investments.
66 (9) 'Qualified debt instrument' means a debt instrument issued by a Georgia small
67 business investment company which meets all of the following criteria:
68 (A) It is issued at par value or a premium;
69 (B) It has an original maturity date of at least four years from the date of issuance, and
70 a repayment schedule which is not faster than a level principal amortization over four
71 years; and
72 (C) Has no interest or payment features that allow for the prepayment of interest or are
73 tied to the profitability of the Georgia small business investment company or the
74 success of its investments.
75 (10) 'Qualified distribution' means any distribution or payment by a Georgia small
76 business investment company in connection with the following:
77 (A) Costs and expenses of forming, syndicating, and organizing the Georgia small
78 business investment company, including fees paid for professional services, and the
79 costs of financing and insuring the obligations of a Georgia small business investment
80 company provided such payments are not made to a participating investor or affiliate
81 of a participating investor;
82 (B) An annual management fee not to exceed two percent of designated capital on an
83 annual basis to offset the costs and expenses of managing and operating a Georgia
84 small business investment company;
85 (C) Reasonable and necessary fees in accordance with industry custom for ongoing
86 professional services, including, but not limited to, legal and accounting services related
87 to the operation of a Georgia small business investment company, not including any
88 lobbying or governmental relations;
89 (D) Any increase or projected increase in federal or state taxes, including penalties and
90 related interest of the equity owners of a Georgia small business investment company
91 resulting from the earnings or other tax liability of a Georgia small business investment
92 company to the extent that the increase is related to the ownership, management, or
93 operation of a Georgia small business investment company; and
94 (E) Payments of principal and interest to holders of qualified debt instruments issued
95 by a Georgia small business investment company may be made without restriction
96 whatsoever.
97 (11) 'Qualified investment' means the investment of money by a Georgia small business
98 investment company in a qualified business for the purchase of any debt, debt
99 participation, equity, or hybrid security of any nature and description whatsoever,
100 including a debt instrument or security that has the characteristics of debt but which

101 provides for conversion into equity or equity participation instruments such as options or
102 warrants.

103 (12) 'State premium tax liability' means any liability incurred by an insurance company
104 under Chapter 8 of this title.

105 (b)(1) The department shall provide a standardized format for applying for the small
106 business investment credit under subsection (j) of this Code section. An applicant is
107 required to:

108 (A) File an application with the department;

109 (B) Pay a nonrefundable application fee of \$7,500.00 at the time of filing the
110 application;

111 (C) Submit as part of its application an audited balance sheet that contains an
112 unqualified opinion of an independent certified public accountant issued not more than
113 35 days before the application date that states that the applicant has an equity
114 capitalization of \$500,000.00 or more in the form of unencumbered cash, marketable
115 securities, or other liquid assets; and

116 (D) Have at least two principals or persons employed or engaged to manage the funds
117 who each have a minimum of five years of money management experience in the
118 venture capital or small business investment industry.

119 (2) The department may certify partnerships, corporations, trusts, or limited liability
120 companies, organized on a for-profit basis, which submit an application to be designated
121 as a Georgia small business investment company if such applicant is located,
122 headquartered, and licensed or registered to conduct business in Georgia, has as its
123 primary business activity the investment of cash in qualified businesses, and meets the
124 other criteria set forth in this Code section.

125 (3) The department shall review the organizational documents of each applicant for
126 certification and the business history of each applicant, determine whether the applicant
127 has satisfied the requirements of this Code section, and determine whether the officers
128 and the board of directors, general partners, trustees, managers, or members are
129 trustworthy and are thoroughly acquainted with the requirements of this Code section.

130 (4) Within 30 days after the receipt of an application, the department shall issue the
131 certification or refuse the certification and communicate in detail to the applicant the
132 grounds for refusal, including suggestions for the removal of such grounds.

133 (5) The department shall begin accepting applications to become a Georgia small
134 business investment company as defined by subsection (a) of this Code section by August
135 1, 2011.

136 (c)(1) An insurance company or affiliate of an insurance company shall not, directly or
137 indirectly:

138 (A) Beneficially own, whether through rights, options, convertible interest, or
139 otherwise, 15 percent or more of the voting securities or other voting ownership interest
140 of a Georgia small business investment company;

141 (B) Manage a Georgia small business investment company; or

142 (C) Control the direction of investments for a Georgia small business investment
143 company.

144 (2) This subsection does not preclude a participating investor, insurance company, or
145 other party from exercising its legal rights and remedies, including, without limitation,
146 interim management of a Georgia small business investment company, in the event that
147 a Georgia small business investment company is in default of its statutory obligations or
148 its contractual obligations to such participating investor, insurance company, or other
149 party, or from monitoring a Georgia small business investment company to ensure its
150 compliance with this Code section or disallowing any investments that have not been
151 approved by the department.

152 (3) The department may contract with an independent third party to review, investigate,
153 and certify that the applications comply with the provisions of this Code section.

154 (d)(1) The aggregate amount of investment tax credits to be allocated to all participating
155 investors of Georgia business investment companies under this Code section shall not
156 exceed \$180,000,000.00. No Georgia small business investment company, on an
157 aggregate basis with its affiliates, may file credit allocation claims that exceed
158 \$180,000,000.00.

159 (2) Credits shall be allocated to participating investors in the order that the credit
160 allocation claims are filed with the department, provided that all credit allocation claims
161 filed with the department on the same day shall be treated as having been filed
162 contemporaneously. Any credit allocation claims filed with the department prior to the
163 initial credit allocation claim filing date will be deemed to have been filed on such initial
164 credit allocation claim filing date. The department will set the initial credit allocation
165 claim filing date to be not less than 120 days and not greater than 150 days after the
166 department begins accepting applications for certification.

167 (3) In the event that two or more Georgia small business investment companies file
168 credit allocation claims with the department on behalf of their respective participating
169 investors on the same day, and the aggregate amount of credit allocation claims exceeds
170 the aggregate limit of investment tax credits under this Code section or the lesser amount
171 of credits that remain unallocated on that day, then the credits shall be allocated among
172 the participating investors who filed on that day on a pro rata basis with respect to the
173 amounts claimed. The pro rata allocation for any one participating investor is the product
174 obtained by multiplying a fraction, the numerator of which is the amount of the credit

175 allocation claim filed on behalf of a participating investor and the denominator of which
176 is the total of all credit allocation claims filed on behalf of all participating investors on
177 that day, by the aggregate limit of credits under this Code section or the lesser amount of
178 credits that remain unallocated on that day.

179 (4) Within ten business days after the department receives a credit allocation claim filed
180 by a Georgia small business investment company on behalf of one or more of its
181 participating investors, the department shall notify the Georgia small business investment
182 company of the amount of credits allocated to each of the participating investors of that
183 Georgia small business investment company. In the event a Georgia small business
184 investment company does not receive an investment of designated capital from each
185 participating investor required to earn the amount of credits allocated to such
186 participating investor within ten business days of the Georgia small business investment
187 company's receipt of notice of allocation, then it shall notify the department on or before
188 the next business day, and the credits allocated to such participating investor of the
189 Georgia small business investment company will be forfeited. The department shall then
190 reallocate those forfeited credits among the participating investors of the other Georgia
191 small business investment companies on a pro rata basis with respect to the credit
192 allocation claims filed on behalf of the participating investors. The commissioner is
193 authorized, but not required, to levy a fine of not more than \$50,000.00 on any
194 participating investor that does not invest the full amount of designated capital required
195 to fund the credits allocated to it by the department in accordance with the credit
196 allocation claim filed on its behalf.

197 (5) No participating investor, on an aggregate basis with its affiliates, shall file an
198 allocation claim for more than 25 percent of the maximum amount of investment tax
199 credits authorized hereunder, regardless of whether such claim is made in connection
200 with one or more Georgia small business investment companies.

201 (e)(1) To maintain its certification, a Georgia small business investment company shall
202 make qualified investments as follows:

203 (A) Within three years after the allocation date, a Georgia small business investment
204 company shall invest an amount equal to at least 35 percent of its designated capital in
205 qualified investments; and

206 (B) Within four years after the allocation date, a Georgia small business investment
207 company shall invest an amount equal to at least 50 percent of its designated capital in
208 qualified investments.

209 (2) Prior to making a proposed qualified investment in a specific business, a Georgia
210 small business investment company shall request from the department a written
211 determination that the proposed investment will qualify as a qualified investment in a

212 qualified business. The department shall notify a Georgia small business investment
213 company within ten business days from the receipt of a request of its determination and
214 an explanation thereof. If the department fails to notify the Georgia small business
215 investment company of its determination within the ten-business-day period, the
216 proposed investment shall be deemed to be a qualified investment in a qualified business.
217 If the department determines that the proposed investment does not meet the definition
218 of a qualified investment or qualified business or both, the department may nevertheless
219 consider the proposed investment a qualified investment and, if necessary, the business
220 a qualified business, if the department determines that the proposed investment will
221 further state economic development.

222 (3) All designated capital not invested in qualified investments by a Georgia small
223 business investment company shall be held or invested in such manner as the Georgia
224 small business investment company, in its discretion, deems appropriate. Designated
225 capital and proceeds of designated capital returned to a Georgia small business
226 investment company after being originally invested in qualified investments may be
227 invested again in qualified investments, and such investment shall count toward the
228 requirements of this subsection with respect to making investments of designated capital
229 in qualified investments.

230 (4) If, within five years after its allocation date, a Georgia small business investment
231 company has not invested at least 60 percent of its designated capital in qualified
232 investments, neither the Georgia small business investment company nor its affiliates
233 shall be permitted to receive management fees, until such time as it has made such
234 qualified investments.

235 (5) If, within six years after its allocation date, a Georgia small business investment
236 company has not invested at least 100 percent of its designated capital in qualified
237 investments, neither the Georgia small business investment company nor its affiliates
238 shall be permitted to receive management fees, until such time as it has made such
239 qualified investments.

240 (6) A Georgia small business investment company shall not invest more than 15 percent
241 of its designated capital in any one qualified business without the specific approval of the
242 department.

243 (7) For purposes of calculating the above investment percentage thresholds of paragraph
244 (1) of this subsection, the cumulative amount of all qualified investments made by a
245 Georgia small business investment company from the allocation date shall be considered.

246 (f)(1) Each Georgia small business investment company shall report the following to the
247 department:

248 (A) As soon as practicable after the receipt of designated capital:

249 (i) The name of each participating investor from which the designated capital was
 250 received, including such participating investor's insurance tax identification number;
 251 (ii) The amount of each participating investor's investment of designated capital; and
 252 (iii) The date on which the designated capital was received;
 253 (B) On an annual basis, on or before January 31 of each year:
 254 (i) The amount of the Georgia small business investment company's remaining
 255 uninvested designated capital at the end of the immediately preceding taxable year;
 256 (ii) Whether or not the Georgia small business investment company has invested
 257 more than 15 percent of its total designated capital in any one business;
 258 (iii) All qualified investments that the Georgia small business investment company
 259 has made in the previous taxable year, including the number of employees of each
 260 qualified business in which it has made investments at the time of such investment
 261 and as of December 1 of the preceding taxable year; and
 262 (iv) For any qualified business where the Georgia small business investment
 263 company no longer has an investment, the Georgia small business investment
 264 company shall provide employment figures for that company as of the last day before
 265 the investment was terminated;
 266 (C) Other information that the department may reasonably request that will help the
 267 department ascertain the impact of the Georgia small business investment company
 268 program both directly and indirectly on the economy of the State of Georgia, including,
 269 but not limited to, the number of jobs created by qualified businesses that have received
 270 qualified investments; and
 271 (D) Within 180 days of the close of its fiscal year, annual audited financial statements
 272 of the Georgia small business investment company, which shall include the opinion of
 273 an independent certified public accountant.
 274 (2) A Georgia small business investment company shall pay to the department an annual,
 275 nonrefundable certification fee of \$5,000.00 on or before April 1, or \$10,000.00 if later.
 276 No annual certification fee is required if the payment date for such fee is within six
 277 months of the date that a Georgia small business investment company is first certified by
 278 the department.
 279 (3) Upon satisfying the requirements of subsection (d) of this Code section, a Georgia
 280 small business investment company shall provide notice to the department and the
 281 department shall, within 60 days of receipt of such notice, either confirm that the Georgia
 282 small business investment company has satisfied the requirements of subsection (d) of
 283 this Code section as of such date or provide notice of noncompliance and an explanation
 284 of any existing deficiencies. If the department does not provide such notification within

285 60 days, the Georgia small business investment company shall be deemed to have met
286 the requirements of subsection (d) of this Code section.

287 (g) A Georgia small business investment company may make qualified distributions at
288 any time. In order for a Georgia small business investment company to make a
289 distribution other than a qualified distribution to its equity holders, the cumulative
290 amount of all qualified investments of the Georgia small business investment company
291 shall equal or exceed 100 percent of its designated capital.

292 (h)(1) The department shall conduct an annual review of each Georgia small business
293 investment company to determine if a Georgia small business investment company is
294 abiding by the requirements of certification and to ensure that no investment has been
295 made in violation of this Code section. The cost of the annual review shall be paid by
296 each Georgia small business investment company according to a reasonable fee schedule
297 adopted by the department.

298 (2) Any violation of paragraphs (A) and (B) of subsection (e) of this Code section may
299 be grounds for decertification of a Georgia small business investment company and the
300 disallowance of credits under subsection (k) of this Code section, provided that in all
301 instances the department shall provide notice to the Georgia small business investment
302 of the grounds of such proposed decertification and the opportunity to cure such violation
303 before any such decertification shall become effective.

304 (3) Once a Georgia small business investment company has invested an amount
305 cumulatively equal to 100 percent of its designated capital in qualified investments,
306 provided that the Georgia small business investment company has met all other
307 requirements under this Code section as of such date, the Georgia small business
308 investment company shall no longer be subject to regulation by the department or the
309 reporting requirements under subsection (f) of this Code section. Upon receiving
310 certification by a Georgia small business investment company that it has invested an
311 amount equal to 100 percent of its designated capital, the department shall notify a
312 Georgia small business investment company within 60 days that it has or has not met the
313 requirements, with a reason for the determination if it has not. If the department does not
314 provide notification of deregulation within 60 days, the Georgia small business
315 investment company shall be deemed to have met the requirements and shall be deemed
316 to no longer be subject to regulation by the department.

317 (4) The department shall send written notice of any decertification proceedings to the
318 commissioner of revenue and to the address of each participating investor whose tax
319 credit may be subject to recapture or forfeiture, using the address shown on the last filing
320 submitted to the department.

- 321 (i) All investments by participating investors for which tax credits are awarded under this
322 Code section shall be registered or specifically exempt from registration.
- 323 (j) The department shall make an annual report to the governor and the chairs and ranking
324 minority members of the committees having jurisdiction over taxes and economic
325 development. The report shall include:
- 326 (1) The number of Georgia small business investment companies holding designated
327 capital;
- 328 (2) The amount of designated capital invested in each Georgia small business investment
329 company;
- 330 (3) The cumulative amount that each Georgia small business investment company has
331 invested as of January 1, 2012, and the cumulative total each year thereafter;
- 332 (4) The cumulative amount of follow-on capital that the investments of each Georgia
333 small business investment company have created in terms of capital invested in qualified
334 businesses at the same time or subsequent to investments made by a Georgia small
335 business investment company in such businesses by sources other than Georgia small
336 business investment companies;
- 337 (5) The total amount of investment tax credits applied under this Code section for each
338 year;
- 339 (6) The performance of each Georgia small business investment company with regard
340 to the requirements for continued certification;
- 341 (7) The classification of the companies in which each Georgia small business investment
342 company has invested according to industrial sector and size of company;
- 343 (8) The gross number of jobs created by investments made by each Georgia small
344 business investment company and the number of jobs retained;
- 345 (9) The location of the companies in which each Georgia small business investment
346 company has invested;
- 347 (10) Those Georgia small business investment companies that have been decertified,
348 including the reasons for decertification; and
- 349 (11) Other related information as necessary to evaluate the effect of this Code section on
350 economic development.
- 351 (k)(1) A participating investor as defined under subsection (a) of this Code section shall
352 earn a vested credit against the tax imposed in this chapter equal to 100 percent of the
353 participating investor's investment of designated capital in a Georgia small business
354 investment company. Beginning January 1, 2013, a participating investor may claim the
355 credit as follows:
- 356 (A) In tax year 2013, an amount equal to 20 percent of the participating investor's
357 investment of designated capital;

358 (B) In tax year 2014, an amount equal to 20 percent of the participating investor's
359 investment of designated capital;

360 (C) In tax year 2015, an amount equal to 20 percent of the participating investor's
361 investment of designated capital;

362 (D) In tax year 2016, an amount equal to 20 percent of the participating investor's
363 investment of designated capital; and

364 (E) In tax year 2017, an amount equal to 20 percent of the participating investor's
365 investment of designated capital.

366 (2) The credit for any taxable year shall not exceed the liability for tax under this chapter
367 for such year. If the amount of the credit determined under this Code section for any
368 taxable year exceeds the liability for tax under this chapter, the excess shall be an
369 investment tax credit carryover to future taxable years without limitation. Credits may
370 be used in connection with both final payments and prepayments of a participating
371 investor's state premium tax liability.

372 (3) A participating investor claiming a credit under this Code section is not required to
373 pay any additional retaliatory tax levied as a result of claiming the credit.

374 (4) A participating investor is not required to reduce the amount of tax pursuant to the
375 state premium tax liability included by the participating investor in connection with
376 ratemaking for any insurance contract written in this state because of a reduction in the
377 participating investor's tax liability based on the tax credit allowed under this Code
378 section.

379 (5) If the taxes paid by a participating investor with respect to its state premium tax
380 liability constitute a credit against any other tax that is imposed by this state, the
381 participating investor's credit against the other tax shall not be reduced by virtue of the
382 reduction in the participating investor's tax liability based on the tax credit allowed under
383 this Code section.

384 (6) Final decertification of a Georgia small business investment company under
385 subsection (g) of this Code section shall result in the disallowance and the recapture of
386 the credit allowed under this Code section. The amount to be disallowed and recaptured
387 shall be assessed as follows:

388 (A) Decertification of a Georgia small business investment company within two years
389 of its allocation date and prior to meeting the requirements of subsection (d) of this
390 Code section shall result in the disallowance of all of the credits allowed under this
391 Code section; and

392 (B) Decertification of a Georgia small business investment company that has already
393 met the requirements of subsection (d) of this Code section shall not cause the

394 disallowance of any credits allowed under this Code section nor the recapture of any
395 portion of the credits that was previously taken.
396 (7) A participating investor shall not transfer, agree to transfer, sell, or agree to sell the
397 credit under this Code section until 180 days from the date on which the participating
398 investor invested designated capital. After 180 days from the date of investment, a
399 participating investor, or subsequent transferee, may transfer credits based upon rules
400 adopted by the department to facilitate such transfers. Any transfer or sale of the credits
401 shall not affect the time schedule for claiming the credit. Any tax credits recaptured
402 under this Code section shall remain the liability of the original participating investor that
403 applied the credit towards its tax liability."

404 **SECTION 2.**

405 This Act shall become effective January 1, 2012.

406 **SECTION 3.**

407 All laws and parts of laws in conflict with this Act are repealed.