

The House Committee on Insurance offers the following substitute to HB 298:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 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 a Georgia small business investment
24 company receives an investment of designated capital from participating investors under
25 this Code section.

- 26 (3) 'Department' means the Department of Economic Development established by Code
 27 Section 50-7-1.
- 28 (4) 'Designated capital' means an amount of money that:
 29 (A) Is invested by a participating investor in a Georgia small business investment
 30 company; and
 31 (B) Fully funds the purchase price of either or both participating investor's equity
 32 interest in a Georgia small business investment company or a qualified debt instrument
 33 issued by a Georgia small business investment company.
- 34 (5) 'Georgia small business investment company' means a partnership, corporation, trust,
 35 or limited liability company, organized on a for profit basis, that:
 36 (A) Has its principal office located or is headquartered in Georgia;
 37 (B) Has as its primary business activity the investment of cash in qualified businesses;
 38 and
 39 (C) Is certified by the department as meeting the criteria in this Code section.
- 40 (6) 'Participating investor' means a person with state premium tax liability that
 41 contributes designated capital pursuant to this Code section.
- 42 (7) 'Person' means any natural person or entity, including, but not limited to, a
 43 corporation, general or limited partnership, trust, or limited liability company.
- 44 (8) 'Qualified business' means a business that 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;

81 (B) An annual management fee not to exceed two percent of designated capital on an
82 annual basis to offset the costs and expenses of managing and operating a Georgia
83 small business investment company;

84 (C) Reasonable and necessary fees in accordance with industry custom for ongoing
85 professional services, including, but not limited to, legal and accounting services related
86 to the operation of a Georgia small business investment company, not including any
87 lobbying or governmental relations;

88 (D) Any increase or projected increase in federal or state taxes, including penalties and
89 related interest of the equity owners of a Georgia small business investment company
90 resulting from the earnings or other tax liability of a Georgia small business investment
91 company to the extent that the increase is related to the ownership, management, or
92 operation of a Georgia small business investment company; and

93 (E) Payments of principal and interest to holders of qualified debt instruments issued
94 by a Georgia small business investment company may be made without restriction
95 whatsoever.

96 (11) 'Qualified investment' means the investment of money by a Georgia small business
97 investment company in a qualified business for the purchase of any debt, debt
98 participation, equity, or hybrid security of any nature and description whatsoever,
99 including a debt instrument or security that has the characteristics of debt but which

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

102 (12) 'State premium tax liability' means any liability incurred by an insurance company
103 under Code Sections 33-3-26 and 33-8-4.

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

107 (A) File an application with the department;

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

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

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

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

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

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

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

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

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

140 (B) Manage the operations of a Georgia small business investment company; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

285 days, the Georgia small business investment company shall be deemed to have met the
286 requirements of subparagraph (B) of paragraph (1) of subsection (e) 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 paragraph (1) of subsection (e) of this
299 Code section may be grounds for decertification of a Georgia small business investment
300 company and the disallowance of credits under subsection (k) of this Code section,
301 provided that in all instances the department shall provide notice to the Georgia small
302 business investment of the grounds of such proposed decertification and the opportunity
303 to cure such violation 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 its state premium tax liability 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 (h) of this Code section may 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 subparagraph (A) of
390 paragraph (1) of subsection (e) of this Code section shall result in the disallowance of
391 all of the credits allowed under this Code section; and
- 392 (B) Decertification of a Georgia small business investment company that has already
393 met the requirements of subparagraphs (A) and (B) of paragraph (1) of subsection (e)

394 of this Code section shall not cause the disallowance of any credits allowed under this
395 Code section nor the recapture of any 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.