

The House Committee on Insurance offers the following substitute to SB 203:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Annotated, relating to insurance, so as to provide
2 that certain individuals who collect and input data into an automated claims adjudication
3 system are exempt from licensure; to provide for definitions; to change certain resident
4 independent adjuster license requirements; to add certain nonresident independent adjuster
5 license requirements; to establish a small business investment company credit; to provide
6 definitions; to provide standardized application format; to provide for qualification
7 requirements; to provide for limitations; to provide for certification continuance
8 requirements; to provide for reporting; to provide for decertification; to provide for
9 registration; to provide for reports to the Governor and General Assembly; to provide reports
10 to the Commissioner of Insurance; to provide the tax credit; to provide for an effective date;
11 to provided for related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
15 adding a new paragraph to subsection (a) of Code Section 33-23-1, relating to definitions,
16 to read as follows:

17 "(3.1) 'Automated claims adjudication system' means a preprogrammed computer system
18 designed for the collection, data entry, calculation, and final resolution of property
19 insurance claims used under policies described in subsection (d) of Code Section 33-23-12
20 which:

21 (1) May only be utilized by a licensed independent adjuster, licensed agent, or supervised
22 individuals operating pursuant to this paragraph;

23 (2) Shall comply with all claims payment requirements of the Georgia Insurance Code;
24 and

25 (3) Shall be certified as compliant with this Code section by a licensed independent
26 adjuster that is an officer of a business entity licensed under this chapter."

27 **SECTION 2.**

28 Said title is further amended by adding a new paragraph to subsection (b) of Code Section
29 33-23-1, relating to definitions, to read as follows:

30 "(8) An individual who collects claim information from, or furnishes claim information
31 to, insureds or claimants, and who conducts data entry including entering data into an
32 automated claims adjudication system, provided that the individual is an employee of a
33 licensed independent adjuster or its affiliate where no more than 25 such persons are
34 under the supervision of one licensed independent adjuster or licensed agent."

35 **SECTION 3.**

36 Said title is further amended by adding a new Code section to read as follows:

37 "33-1-19.

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

39 (1) 'Affiliate' means:

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

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

48 (2) 'Allocation date' means the date on which a Georgia small business investment
49 company receives an investment of designated capital from participating investors under
50 this Code section.

51 (3) 'Department' means the Department of Economic Development established by Code
52 Section 50-7-1.

53 (4) 'Designated capital' means an amount of money that:

54 (A) Is invested by a participating investor in a Georgia small business investment
55 company; and

56 (B) Fully funds the purchase price of either or both participating investor's equity
57 interest in a Georgia small business investment company or a qualified debt instrument
58 issued by a Georgia small business investment company.

59 (5) 'Georgia small business investment company' means a partnership, corporation, trust,
60 or limited liability company, organized on a for profit basis, that:

61 (A) Has its principal office located or is headquartered in Georgia;

62 (B) Has as its primary business activity the investment of cash in qualified businesses;
63 and

- 64 (C) Is certified by the department as meeting the criteria in this Code section.
- 65 (6) 'Participating investor' means a person with state premium tax liability that
 66 contributes designated capital pursuant to this Code section.
- 67 (7) 'Person' means any natural person or entity, including, but not limited to, a
 68 corporation, general or limited partnership, trust, or limited liability company.
- 69 (8) 'Qualified business' means a business that meets all of the following requirements:
- 70 (A) It is headquartered in Georgia, its principal business operations are located in this
 71 state, and at least 60 percent of its employees are located in Georgia;
- 72 (B) It has not more than 100 employees;
- 73 (C) It is not predominantly engaged in:
- 74 (i) Professional services provided by accountants, doctors, or lawyers;
- 75 (ii) Banking or lending;
- 76 (iii) Real estate development;
- 77 (iv) Insurance;
- 78 (v) Oil and gas exploration;
- 79 (vi) Direct gambling activities; or
- 80 (vii) Making loans to or investments in a Georgia small business investment
 81 company or an affiliate; and
- 82 (D) It is not a franchise of and has no financial relationship with a Georgia small
 83 business investment company or any affiliate of a Georgia small business investment
 84 company prior to a Georgia small business investment company's first qualified
 85 investment in the business.
- 86 A business classified as a qualified business at the time of the first qualified investment
 87 in the business will remain classified as a qualified business and may receive continuing
 88 qualified investments from any Georgia small business investment company. Continuing
 89 investments will constitute qualified investments even though the business may not meet
 90 the definition of a qualified business at the time of such continuing investments.
- 91 (9) 'Qualified debt instrument' means a debt instrument issued by a Georgia small
 92 business investment company which meets all of the following criteria:
- 93 (A) It is issued at par value or a premium;
- 94 (B) It has an original maturity date of at least four years from the date of issuance, and
 95 a repayment schedule which is not faster than a level principal amortization over four
 96 years; and
- 97 (C) Has no interest or payment features that allow for the prepayment of interest or are
 98 tied to the profitability of the Georgia small business investment company or the
 99 success of its investments.
- 100 (10) 'Qualified distribution' means any distribution or payment by a Georgia small
 101 business investment company in connection with the following:

102 (A) Costs and expenses of forming, syndicating, and organizing the Georgia small
103 business investment company, including fees paid for professional services, and the
104 costs of financing and insuring the obligations of a Georgia small business investment
105 company provided such payments are not made to a participating investor;

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

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

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

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

121 (11) 'Qualified investment' means the investment of money by a Georgia small business
122 investment company in a qualified business for the purchase of any debt, debt
123 participation, equity, or hybrid security of any nature and description whatsoever,
124 including a debt instrument or security that has the characteristics of debt but which
125 provides for conversion into equity or equity participation instruments such as options or
126 warrants.

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

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

132 (A) File an application with the department;

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

135 (C) Submit as part of its application an audited balance sheet that contains an
136 unqualified opinion of an independent certified public accountant issued not more than
137 35 days before the application date that states that the applicant has an equity
138 capitalization of \$500,000.00 or more in the form of unencumbered cash, marketable
139 securities, or other liquid assets; and

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

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

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

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

157 (5) The department shall begin accepting applications to become a Georgia small
158 business investment company as defined by subsection (a) of this Code section by August
159 1, 2011.

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

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

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

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

168 (2) This subsection does not preclude a participating investor, insurance company, or
169 other party from exercising its legal rights and remedies, including, without limitation,
170 interim management of a Georgia small business investment company, in the event that
171 a Georgia small business investment company is in default of its statutory obligations or
172 its contractual obligations to such participating investor, insurance company, or other
173 party, or from monitoring a Georgia small business investment company to ensure its
174 compliance with this Code section or disallowing any investments that have not been
175 approved by the department.

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

178 (d)(1) The aggregate amount of investment tax credits to be allocated to all participating
179 investors of Georgia business investment companies under this Code section shall not
180 exceed \$125,000,000.00. No Georgia small business investment company, on an
181 aggregate basis with its affiliates, may file credit allocation claims that exceed
182 \$125,000,000.00.

183 (2) Credits shall be allocated to participating investors in the order that the credit
184 allocation claims are filed with the department, provided that all credit allocation claims
185 filed with the department on the same day shall be treated as having been filed
186 contemporaneously. Any credit allocation claims filed with the department prior to the
187 initial credit allocation claim filing date will be deemed to have been filed on such initial
188 credit allocation claim filing date. The department will set the initial credit allocation
189 claim filing date to be not less than 120 days and not greater than 150 days after the
190 department begins accepting applications for certification.

191 (3) In the event that two or more Georgia small business investment companies file
192 credit allocation claims with the department on behalf of their respective participating
193 investors on the same day, and the aggregate amount of credit allocation claims exceeds
194 the aggregate limit of investment tax credits under this Code section or the lesser amount
195 of credits that remain unallocated on that day, then the credits shall be allocated among
196 the participating investors who filed on that day on a pro rata basis with respect to the
197 amounts claimed. The pro rata allocation for any one participating investor is the product
198 obtained by multiplying a fraction, the numerator of which is the amount of the credit
199 allocation claim filed on behalf of a participating investor and the denominator of which
200 is the total of all credit allocation claims filed on behalf of all participating investors on
201 that day, by the aggregate limit of credits under this Code section or the lesser amount of
202 credits that remain unallocated on that day.

203 (4) Within ten business days after the department receives a credit allocation claim filed
204 by a Georgia small business investment company on behalf of one or more of its
205 participating investors, the department shall notify the Georgia small business investment
206 company of the amount of credits allocated to each of the participating investors of that
207 Georgia small business investment company. In the event a Georgia small business
208 investment company does not receive an investment of designated capital from each
209 participating investor required to earn the amount of credits allocated to such
210 participating investor within ten business days of the Georgia small business investment
211 company's receipt of notice of allocation, then it shall notify the department on or before
212 the next business day, and the credits allocated to such participating investor of the
213 Georgia small business investment company will be forfeited. The department shall then
214 reallocate those forfeited credits among the participating investors of the other Georgia
215 small business investment companies on a pro rata basis with respect to the credit

216 allocation claims filed on behalf of the participating investors. The commissioner is
217 authorized, but not required, to levy a fine of not more than \$50,000.00 on any
218 participating investor that does not invest the full amount of designated capital required
219 to fund the credits allocated to it by the department in accordance with the credit
220 allocation claim filed on its behalf.

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

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

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

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

233 (2) Prior to making a proposed qualified investment in a specific business, a Georgia
234 small business investment company shall request from the department a written
235 determination that the proposed investment will qualify as a qualified investment in a
236 qualified business. The department shall notify a Georgia small business investment
237 company within ten business days from the receipt of a request of its determination and
238 an explanation thereof. If the department fails to notify the Georgia small business
239 investment company of its determination within the ten-business-day period, the
240 proposed investment shall be deemed to be a qualified investment in a qualified business.
241 If the department determines that the proposed investment does not meet the definition
242 of a qualified investment or qualified business or both, the department may nevertheless
243 consider the proposed investment a qualified investment and, if necessary, the business
244 a qualified business, if the department determines that the proposed investment will
245 further state economic development.

246 (3) All designated capital not invested in qualified investments by a Georgia small
247 business investment company shall be held or invested in such manner as the Georgia
248 small business investment company, in its discretion, deems appropriate. Designated
249 capital and proceeds of designated capital returned to a Georgia small business
250 investment company after being originally invested in qualified investments may be
251 invested again in qualified investments, and such investment shall count toward the
252 requirements of this subsection with respect to making investments of designated capital
253 in qualified investments.

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

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

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

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

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

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

- 273 (i) The name of each participating investor from which the designated capital was
274 received, including such participating investor's insurance tax identification number;
275 (ii) The amount of each participating investor's investment of designated capital; and
276 (iii) The date on which the designated capital was received;

277 (B) On an annual basis, on or before January 31 of each year:

- 278 (i) The amount of the Georgia small business investment company's remaining
279 uninvested designated capital at the end of the immediately preceding taxable year;
280 (ii) Whether or not the Georgia small business investment company has invested
281 more than 15 percent of its total designated capital in any one business;
282 (iii) All qualified investments that the Georgia small business investment company
283 has made in the previous taxable year, including the number of employees of each
284 qualified business in which it has made investments at the time of such investment
285 and as of December 1 of the preceding taxable year; and
286 (iv) For any qualified business where the Georgia small business investment
287 company no longer has an investment, the Georgia small business investment
288 company shall provide employment figures for that company as of the last day before
289 the investment was terminated;

290 (C) Other information that the department may reasonably request that will help the
291 department ascertain the impact of the Georgia small business investment company

292 program both directly and indirectly on the economy of the State of Georgia, including,
293 but not limited to, the number of jobs created by qualified businesses that have received
294 qualified investments; and

295 (D) Within 180 days of the close of its fiscal year, annual audited financial statements
296 of the Georgia small business investment company, which shall include the opinion of
297 an independent certified public accountant.

298 (2) A Georgia small business investment company shall pay to the department an annual,
299 nonrefundable certification fee of \$5,000.00 on or before April 1, or \$10,000.00 if later.
300 No annual certification fee is required if the payment date for such fee is within six
301 months of the date that a Georgia small business investment company is first certified by
302 the department.

303 (3) Upon satisfying the requirements of subparagraph (B) of paragraph (1) of subsection
304 (e) of this Code section, a Georgia small business investment company shall provide
305 notice to the department and the department shall, within 60 days of receipt of such
306 notice, either confirm that the Georgia small business investment company has satisfied
307 the requirements of subparagraph (B) of paragraph (1) of subsection (e) of this Code
308 section as of such date or provide notice of noncompliance and an explanation of any
309 existing deficiencies. If the department does not provide such notification within 60
310 days, the Georgia small business investment company shall be deemed to have met the
311 requirements of subparagraph (B) of paragraph (1) of subsection (e) of this Code section.

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

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

323 (2) Any violation of paragraphs (A) and (B) of paragraph (1) of subsection (e) of this
324 Code section may be grounds for decertification of a Georgia small business investment
325 company and the disallowance of credits under subsection (k) of this Code section,
326 provided that in all instances the department shall provide notice to the Georgia small
327 business investment of the grounds of such proposed decertification and the opportunity
328 to cure such violation before any such decertification shall become effective.

329 (3) Once a Georgia small business investment company has invested an amount
330 cumulatively equal to 100 percent of its designated capital in qualified investments,
331 provided that the Georgia small business investment company has met all other
332 requirements under this Code section as of such date, the Georgia small business
333 investment company shall no longer be subject to regulation by the department or the
334 reporting requirements under subsection (f) of this Code section. Upon receiving
335 certification by a Georgia small business investment company that it has invested an
336 amount equal to 100 percent of its designated capital, the department shall notify a
337 Georgia small business investment company within 60 days that it has or has not met the
338 requirements, with a reason for the determination if it has not. If the department does not
339 provide notification of deregulation within 60 days, the Georgia small business
340 investment company shall be deemed to have met the requirements and shall be deemed
341 to no longer be subject to regulation by the department.

342 (4) The department shall send written notice of any decertification proceedings to the
343 Commissioner of Insurance and to the address of each participating investor whose tax
344 credit may be subject to recapture or forfeiture, using the address shown on the last filing
345 submitted to the department.

346 (i) All investments by participating investors for which tax credits are awarded under this
347 Code section shall be registered or specifically exempt from registration.

348 (j) The department shall make an annual report to the governor and the chairs and ranking
349 minority members of the committees having jurisdiction over taxes and economic
350 development. The report shall include:

351 (1) The number of Georgia small business investment companies holding designated
352 capital;

353 (2) The amount of designated capital invested in each Georgia small business investment
354 company;

355 (3) The cumulative amount that each Georgia small business investment company has
356 invested as of January 1, 2012, and the cumulative total each year thereafter;

357 (4) The cumulative amount of follow-on capital that the investments of each Georgia
358 small business investment company have created in terms of capital invested in qualified
359 businesses at the same time or subsequent to investments made by a Georgia small
360 business investment company in such businesses by sources other than Georgia small
361 business investment companies;

362 (5) The total amount of investment tax credits applied under this Code section for each
363 year;

364 (6) The performance of each Georgia small business investment company with regard
365 to the requirements for continued certification;

- 366 (7) The classification of the companies in which each Georgia small business investment
367 company has invested according to industrial sector and size of company;
- 368 (8) The gross number of jobs created by investments made by each Georgia small
369 business investment company and the number of jobs retained;
- 370 (9) The location of the companies in which each Georgia small business investment
371 company has invested;
- 372 (10) Those Georgia small business investment companies that have been decertified,
373 including the reasons for decertification; and
- 374 (11) Other related information as necessary to evaluate the effect of this Code section on
375 economic development.
- 376 (k)(1) A participating investor as defined under subsection (a) of this Code section shall
377 earn a vested credit against its state premium tax liability equal to 100 percent of the
378 participating investor's investment of designated capital in a Georgia small business
379 investment company. Beginning January 1, 2014, a participating investor may claim the
380 credit as follows:
- 381 (A) In tax year 2014, an amount equal to 20 percent of the participating investor's
382 investment of designated capital;
- 383 (B) In tax year 2015, an amount equal to 20 percent of the participating investor's
384 investment of designated capital;
- 385 (C) In tax year 2016, an amount equal to 20 percent of the participating investor's
386 investment of designated capital;
- 387 (D) In tax year 2017, an amount equal to 20 percent of the participating investor's
388 investment of designated capital; and
- 389 (E) In tax year 2018, an amount equal to 20 percent of the participating investor's
390 investment of designated capital.
- 391 (2) The credit for any taxable year shall not exceed the state premium tax liability for
392 such year. If the amount of the credit determined under this Code section for any taxable
393 year exceeds the state premium tax liability for such year, the excess shall be an
394 investment tax credit carryover to future taxable years without limitation. Credits may
395 be used in connection with both final payments and prepayments of a participating
396 investor's state premium tax liability.
- 397 (3) A participating investor claiming a credit under this Code section is not required to
398 pay any additional retaliatory tax levied as a result of claiming the credit.
- 399 (4) A participating investor is not required to reduce the amount of tax pursuant to the
400 state premium tax liability included by the participating investor in connection with
401 ratemaking for any insurance contract written in this state because of a reduction in the
402 participating investor's tax liability based on the tax credit allowed under this Code
403 section.

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

409 (6) Final decertification of a Georgia small business investment company under
410 subsection (h) of this Code section may result in the disallowance and the recapture of
411 the credit allowed under this Code section. The amount to be disallowed and recaptured
412 shall be assessed as follows:

413 (A) Decertification of a Georgia small business investment company within two years
414 of its allocation date and prior to meeting the requirements of subparagraph (A) of
415 paragraph (1) of subsection (e) of this Code section shall result in the disallowance of
416 all of the credits allowed under this Code section; and

417 (B) Decertification of a Georgia small business investment company that has already
418 met the requirements of subparagraphs (A) and (B) of paragraph (1) of subsection (e)
419 of this Code section shall not cause the disallowance of any credits allowed under this
420 Code section nor the recapture of any portion of the credits that was previously taken.

421 (7) A participating investor shall not transfer, agree to transfer, sell, or agree to sell the
422 credit under this Code section until 180 days from the date on which the participating
423 investor invested designated capital. After 180 days from the date of investment, a
424 participating investor, or subsequent transferee, may transfer credits based upon rules
425 adopted by the department to facilitate such transfers. Any transfer or sale of the credits
426 shall not affect the time schedule for claiming the credit. Any tax credits recaptured
427 under this Code section shall remain the liability of the original participating investor that
428 applied the credit towards its tax liability.

429 (l) The Commissioner of Insurance may require each participating investor to provide an
430 annual report, the contents of which to be determined by the Department of Insurance."

431 **SECTION 4.**

432 (a) This Act shall become effective July 1, 2011, except as provided in subsection (b) of
433 this section.

434 (b) Section 3 of this Act shall become effective January 1, 2012.

435 **SECTION 5.**

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