

SENATE BILL 431

Unofficial Copy  
Q3  
SB 801/01 - B&T

2002 Regular Session  
2r1919

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By: **Senator Hogan (Montgomery County Administration)**

Introduced and read first time: January 31, 2002

Assigned to: Budget and Taxation

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Biotechnology Companies - Tax Benefit Certificate Program**

3 FOR the purpose of creating the Maryland Biotechnology Tax Benefit Certificate  
4 Program; defining certain terms; establishing a certain application process for  
5 the transfer of certain tax benefits by certain biotechnology companies;  
6 establishing certain criteria for approval of certain applications; providing that  
7 certain companies may surrender certain tax benefits in exchange for private  
8 financial assistance; providing that certain companies are not eligible for the  
9 Program; requiring the Department of Business and Economic Development to  
10 issue a certain certificate; providing for the computation of transferable tax  
11 benefits; allowing a corporation that acquires certain tax benefits under the  
12 Program to claim a certain credit against the State income tax; providing that a  
13 certain credit must be claimed in a certain taxable year; requiring a certain  
14 addition modification under the corporate income tax; requiring the Department  
15 of Business and Economic Development and the Comptroller to adopt certain  
16 regulations; providing for the termination of this Act; and generally relating to  
17 the Maryland Biotechnology Tax Benefit Certificate Program.

18 BY adding to  
19 Article 83A - Department of Business and Economic Development  
20 Section 5-1701 through 5-1707, inclusive, to be under the new subtitle "Subtitle  
21 17. Maryland Biotechnology Tax Benefit Certificate Program"  
22 Annotated Code of Maryland  
23 (1998 Replacement Volume and 2001 Supplement)

24 BY repealing and reenacting, with amendments,  
25 Article - Tax - General  
26 Section 10-721(d)  
27 Annotated Code of Maryland  
28 (1997 Replacement Volume and 2001 Supplement)

29 BY adding to  
30 Article - Tax - General  
31 Section 10-305(e) and 10-724

1 Annotated Code of Maryland  
2 (1997 Replacement Volume and 2001 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article 83A - Department of Business and Economic Development**

6 SUBTITLE 17. MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE PROGRAM.

7 5-1701.

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
9 INDICATED.

10 (B) "BIOTECHNOLOGY" MEANS THE BODY OF KNOWLEDGE ABOUT THE  
11 FUNCTIONING OF BIOLOGICAL SYSTEMS FROM THE MACRO LEVEL TO THE  
12 MOLECULAR AND SUBATOMIC LEVELS, AND THE NOVEL PRODUCTS, SERVICES,  
13 TECHNOLOGIES, AND SUBTECHNOLOGIES DEVELOPED AS A RESULT OF INSIGHTS  
14 GAINED FROM RESEARCH ADVANCES THAT ADD TO THAT BODY OF KNOWLEDGE.

15 (C) "NEW OR EXPANDING BIOTECHNOLOGY COMPANY" MEANS A  
16 CORPORATION THAT:

17 (1) HAS SIGNIFICANT OPERATIONS IN THIS STATE;

18 (2) HAS FEWER THAN 225 EMPLOYEES, OF WHOM AT LEAST 75%  
19 ARE MARYLAND BASED EMPLOYEES FILLING A POSITION OR JOB IN THIS STATE; AND

20 (3) IS ENGAGED IN THE RESEARCH, DEVELOPMENT, PRODUCTION,  
21 OR PROVISION OF BIOTECHNOLOGY FOR THE PURPOSE OF DEVELOPING OR  
22 PROVIDING PRODUCTS OR PROCESSES FOR SPECIFIC COMMERCIAL OR PUBLIC  
23 PURPOSES, INCLUDING:

24 (I) MEDICAL, PHARMACEUTICAL, GENOMICS,  
25 BIOINFORMATICS, PROTEOMICS, NUTRITIONAL, AND OTHER HEALTH-RELATED  
26 PURPOSES;

27 (II) AGRICULTURE PURPOSES; OR

28 (III) ENVIRONMENTAL PURPOSES.

29 (D) "PROGRAM" MEANS THE MARYLAND BIOTECHNOLOGY TAX BENEFIT  
30 CERTIFICATE PROGRAM.

31 (E) "TAX BENEFIT" MEANS:

32 (1) IN THE CASE OF AN UNUSED RESEARCH AND DEVELOPMENT  
33 CREDIT, THE AMOUNT OF THE CREDIT THAT HAS NOT BEEN USED TO OFFSET STATE  
34 INCOME TAX; OR

1           (2)     IN THE CASE OF AN UNUSED NET OPERATING LOSS, THE STATE  
2 INCOME TAX RATE FOR A CORPORATION UNDER § 10-105(B) OF THE TAX - GENERAL  
3 ARTICLE MULTIPLIED TIMES THE PRODUCT OF MULTIPLYING THE AMOUNT OF THE  
4 NET OPERATING LOSS THAT HAS NOT BEEN CARRIED BACK OR CARRIED OVER TO  
5 OFFSET TAXABLE INCOME FOR ANOTHER TAXABLE YEAR TIMES THE  
6 APPORTIONMENT FRACTION UNDER § 10-402(C) OF THE TAX - GENERAL ARTICLE  
7 THAT IS APPLICABLE TO THE CORPORATION TRANSFERRING THE UNUSED NET  
8 OPERATING LOSS FOR THE TAX YEAR IN WHICH THE NET OPERATING LOSS  
9 OCCURRED.

10 5-1702.

11       (A)     THERE IS A MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE  
12 PROGRAM.

13       (B)     THE PURPOSES OF THE PROGRAM ARE TO:

14           (1)     ENCOURAGE THE EXTENSION OF PRIVATE FINANCIAL ASSISTANCE  
15 TO THE BIOTECHNOLOGY INDUSTRY; AND

16           (2)     ALLOW NEW OR EXPANDING BIOTECHNOLOGY COMPANIES IN THIS  
17 STATE WITH UNUSED AMOUNTS OF RESEARCH AND DEVELOPMENT TAX CREDITS  
18 AND UNUSED NET OPERATING LOSSES TO SURRENDER THOSE BENEFITS FOR USE BY  
19 OTHER CORPORATE TAXPAYERS IN THIS STATE.

20 5-1703.

21       (A)     (1)     A NEW OR EXPANDING BIOTECHNOLOGY COMPANY MAY APPLY TO  
22 THE DEPARTMENT, ON A FORM SUPPLIED BY THE DEPARTMENT, TO TRANSFER TAX  
23 BENEFITS UNDER THE PROGRAM.

24           (2)     A CORPORATION MAY APPLY TO THE DEPARTMENT, ON A FORM  
25 SUPPLIED BY THE DEPARTMENT, TO RECEIVE TRANSFERABLE TAX BENEFITS.

26           (3)     ALL APPLICATIONS MUST BE RECEIVED ON OR BEFORE JUNE 30 FOR  
27 THE NEXT SUCCEEDING STATE FISCAL YEAR.

28       (B)     THE DEPARTMENT SHALL EVALUATE APPLICATIONS FOR THE TRANSFER  
29 OF TAX BENEFITS UNDER THE PROGRAM IN A MANNER THAT WILL BEST STIMULATE  
30 AND ENCOURAGE THE EXTENSION OF PRIVATE FINANCIAL ASSISTANCE TO NEW OR  
31 EXPANDING BIOTECHNOLOGY COMPANIES IN THIS STATE.

32       (C)     (1)     THE DEPARTMENT SHALL DEVELOP CRITERIA FOR THE APPROVAL  
33 OR DISAPPROVAL OF APPLICATIONS.

34           (2)     CRITERIA FOR APPROVAL OF AN APPLICATION SHALL INCLUDE:

35                   (I)     AN EVALUATION OF THE NEW OR EXPANDING  
36 BIOTECHNOLOGY COMPANY'S ACTUAL OR POTENTIAL SCIENTIFIC AND  
37 TECHNOLOGICAL VIABILITY;

1 (II) A DETERMINATION THAT THE NEW OR EXPANDING  
2 BIOTECHNOLOGY COMPANY'S PRINCIPAL PRODUCTS OR SERVICES ARE  
3 SUFFICIENTLY INNOVATIVE TO PROVIDE A COMPETITIVE ADVANTAGE;

4 (III) A DETERMINATION THAT THE NEW OR EXPANDING  
5 BIOTECHNOLOGY COMPANY DOES NOT HAVE SUFFICIENT RESOURCES TO OPERATE  
6 IN THE SHORT TERM OR CANNOT SECURE FINANCIAL ASSISTANCE FROM VENTURE  
7 CAPITAL, STOCK ISSUANCE, PRODUCT SALES REVENUE, A PARENT CORPORATION OR  
8 OTHER AFFILIATES, A BANK, OR ANY OTHER METHOD OF OBTAINING CAPITAL; AND

9 (IV) A DETERMINATION THAT THE FINANCIAL ASSISTANCE  
10 PROVIDED UNDER THIS SUBTITLE DEMONSTRATES THE PROSPECT OF A  
11 SIGNIFICANT POSITIVE CHANGE IN THE NEW OR EXPANDING BIOTECHNOLOGY  
12 COMPANY'S NET INCOME.

13 (D) THE DEPARTMENT SHALL ESTABLISH THE WEIGHT OF IMPORTANCE TO  
14 BE GIVEN EACH CRITERION USED IN ITS APPLICATION APPROVAL PROCESS.

15 (E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A NEW OR  
16 EXPANDING BIOTECHNOLOGY COMPANY THAT HAS HAD ITS APPLICATION  
17 APPROVED MAY SURRENDER THE TAX BENEFITS THAT ARE REQUESTED IN THE  
18 APPLICATION REGARDLESS OF WHETHER THE APPLICANT CONTINUES TO MEET THE  
19 ELIGIBILITY CRITERIA ESTABLISHED UNDER THIS SUBTITLE IN SUBSEQUENT YEARS.

20 (2) AN APPLICANT'S TRANSFERABLE TAX BENEFITS:

21 (I) SHALL BE LIMITED TO TAX BENEFITS THAT THE APPLICANT  
22 REQUESTS TO SURRENDER IN ITS APPLICATION TO THE DEPARTMENT; AND

23 (II) MAY NOT, IN TOTAL, EXCEED THE MAXIMUM AMOUNT OF TAX  
24 BENEFITS THAT THE APPLICANT IS ELIGIBLE TO SURRENDER.

25 (F) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY IS NOT ELIGIBLE TO  
26 PARTICIPATE IN THE PROGRAM IF THE NEW OR EXPANDING BIOTECHNOLOGY  
27 COMPANY:

28 (1) HAS DEMONSTRATED POSITIVE NET INCOME IN ANY OF THE 2  
29 PREVIOUS FULL TAXABLE YEARS OF ONGOING OPERATIONS AS DETERMINED ON ITS  
30 FINANCIAL STATEMENTS;

31 (2) HAS DEMONSTRATED A RATIO IN EXCESS OF 110% OF OPERATING  
32 REVENUES DIVIDED BY OPERATING EXPENSES IN ANY OF THE 2 PREVIOUS FULL  
33 TAXABLE YEARS OF OPERATIONS AS DETERMINED ON ITS FINANCIAL STATEMENTS;

34 (3) IS DIRECTLY OR INDIRECTLY AT LEAST 50% OWNED OR CONTROLLED  
35 BY ANOTHER CORPORATION THAT HAS DEMONSTRATED POSITIVE NET TAXABLE  
36 INCOME IN ANY OF THE 2 PREVIOUS FULL TAXABLE YEARS OF ONGOING  
37 OPERATIONS AS DETERMINED ON ITS FINANCIAL STATEMENTS; OR

1 (4) IS PART OF A CONSOLIDATED GROUP OF AFFILIATED  
2 CORPORATIONS, AS FILED FOR FEDERAL INCOME TAX PURPOSES, THAT IN THE  
3 AGGREGATE HAS DEMONSTRATED POSITIVE NET TAXABLE INCOME IN ANY OF THE 2  
4 PREVIOUS FULL TAXABLE YEARS OF ONGOING OPERATIONS AS DETERMINED ON ITS  
5 COMBINED FINANCIAL STATEMENTS.

6 (G) THE DEPARTMENT SHALL ISSUE A CORPORATION BUSINESS TAX BENEFIT  
7 CERTIFICATE TO AN APPLICANT THAT IS APPROVED TO PARTICIPATE IN THE  
8 PROGRAM.

9 5-1704.

10 (A) (1) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY THAT HAS HAD  
11 ITS APPLICATION APPROVED MAY SURRENDER TAX BENEFITS IN EXCHANGE FOR  
12 PRIVATE FINANCIAL ASSISTANCE TO BE MADE BY A CORPORATION THAT IS THE  
13 RECIPIENT OF THE CORPORATION BUSINESS TAX BENEFIT CERTIFICATE IN AN  
14 AMOUNT EQUAL TO AT LEAST 75% OF THE AMOUNT OF THE SURRENDERED TAX  
15 BENEFIT.

16 (2) (I) THE AMOUNT OF THE SURRENDERED TAX BENEFIT FOR A  
17 SURRENDERED UNUSED RESEARCH AND DEVELOPMENT TAX CREDIT SHALL BE THE  
18 AMOUNT OF THE CREDIT.

19 (II) THE AMOUNT OF THE SURRENDERED TAX BENEFIT FOR A  
20 SURRENDERED NET OPERATING LOSS SHALL BE THE AMOUNT OF THE NET  
21 OPERATING LOSS THAT HAS NOT BEEN CARRIED BACK OR CARRIED OVER TO OFFSET  
22 TAXABLE INCOME FOR ANOTHER TAXABLE YEAR MULTIPLIED BY THE NEW OR  
23 EXPANDING BIOTECHNOLOGY COMPANY'S APPORTIONMENT FRACTION, AS  
24 DETERMINED UNDER § 10-402 OF THE TAX - GENERAL ARTICLE, FOR THE TAXABLE  
25 YEAR IN WHICH THE NET OPERATING LOSS OCCURRED AND SUBSEQUENTLY  
26 MULTIPLIED BY THE CORPORATE TAX RATE UNDER § 10-105(B) OF THE TAX -  
27 GENERAL ARTICLE.

28 (B) THE DEPARTMENT MAY NOT APPROVE THE TRANSFER OF MORE THAN  
29 \$20,000,000 OF TAX BENEFITS FOR ANY FISCAL YEAR.

30 (C) THE MAXIMUM LIFETIME VALUE OF TAX BENEFITS THAT A CORPORATION  
31 MAY SURRENDER UNDER THE PROGRAM IS \$4,000,000.

32 5-1705.

33 (A) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY THAT TRANSFERS TAX  
34 BENEFITS UNDER THE PROGRAM MAY USE THE PRIVATE FINANCIAL ASSISTANCE  
35 RECEIVED FROM THE CORPORATION THAT RECEIVES THE TRANSFERRED TAX  
36 BENEFITS, AS EVIDENCED BY THE CORPORATION BUSINESS TAX BENEFIT  
37 CERTIFICATE, IN THE FUNDING OF OPERATION AND DEVELOPMENT COSTS,  
38 INCLUDING:

39 (1) CONSTRUCTION, ACQUISITION, AND DEVELOPMENT OF REAL  
40 ESTATE;

- 1 (2) ACQUISITION OF MATERIALS;
- 2 (3) START-UP COSTS;
- 3 (4) TENANT FIT-OUT;
- 4 (5) WORKING CAPITAL;
- 5 (6) SALARIES;
- 6 (7) RESEARCH AND DEVELOPMENT EXPENDITURES; AND
- 7 (8) ANY OTHER EXPENSES DETERMINED BY THE DEPARTMENT BY
- 8 REGULATION.

9 (B) THE DEPARTMENT AND THE COMPTROLLER MAY REQUIRE  
10 CERTIFICATIONS OR AUDITS TO DETERMINE COMPLIANCE WITH SUBSECTION (A) OF  
11 THIS SECTION.

12 (C) A CORPORATION THAT ACQUIRES A CORPORATION BUSINESS TAX  
13 BENEFIT CERTIFICATE SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE NEW  
14 OR EXPANDING BIOTECHNOLOGY COMPANY CONCERNING THE TERMS AND  
15 CONDITIONS OF THE PRIVATE FINANCIAL ASSISTANCE MADE IN EXCHANGE FOR THE  
16 CERTIFICATE AUTHORIZED UNDER THIS SUBTITLE.

17 (D) A CORPORATION THAT RECEIVES SURRENDERED TAX BENEFITS UNDER  
18 THIS SUBTITLE MAY NOT, DIRECTLY OR INDIRECTLY, OWN OR CONTROL 5% OR MORE  
19 OF THE VOTING RIGHTS OR 5% OR MORE OF THE VALUE OF CLASSES OF STOCK OF  
20 THE CORPORATION THAT IS SURRENDERING THE SAME TAX BENEFITS UNDER THIS  
21 SUBTITLE.

22 5-1706.

23 (A) (1) A CORPORATION THAT RECEIVES SURRENDERED TAX BENEFITS  
24 UNDER THE PROGRAM MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN  
25 THE AMOUNT OF THE SURRENDERED TAX BENEFITS.

26 (2) A CORPORATION THAT CLAIMS A CREDIT UNDER THIS SUBSECTION  
27 MAY APPLY THE CREDIT ONLY IN THE TAXABLE YEAR IN WHICH THE CREDIT IS  
28 ACQUIRED.

29 (3) A TAX BENEFIT SURRENDERED UNDER THE PROGRAM MAY BE  
30 ACQUIRED BY ONLY ONE CORPORATION.

31 (B) A CORPORATION THAT RECEIVES SURRENDERED TAX BENEFITS UNDER  
32 THE PROGRAM SHALL ATTACH A COPY OF THE CORPORATION BUSINESS TAX  
33 BENEFIT CERTIFICATE TO ANY RETURN THE CORPORATION IS REQUIRED TO FILE  
34 UNDER TITLE 10, SUBTITLE 8 OF THE TAX - GENERAL ARTICLE.

35 (C) A NEW OR EXPANDING BIOTECHNOLOGY COMPANY THAT TRANSFERS TAX  
36 BENEFITS UNDER THE PROGRAM SHALL ATTACH A COPY OF THE CORPORATION

1 BUSINESS TAX BENEFIT CERTIFICATE TO ANY RETURN THE NEW OR EXPANDING  
2 BIOTECHNOLOGY COMPANY IS REQUIRED TO FILE UNDER TITLE 10, SUBTITLE 8 OF  
3 THE TAX - GENERAL ARTICLE.

4 5-1707.

5 (A) THE DEPARTMENT AND THE COMPTROLLER SHALL ADOPT REGULATIONS  
6 TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

7 (B) REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION MAY  
8 INCLUDE:

9 (1) PAYMENT OF PROCESSING FEES;

10 (2) ALLOCATION ON APPORTIONMENT OF TRANSFERABLE TAX  
11 BENEFITS IF THE TOTAL AMOUNT OF TRANSFERABLE TAX BENEFITS REQUESTED TO  
12 BE SURRENDERED BY APPROVED APPLICANTS EXCEEDS \$20,000,000, AS PROVIDED IN  
13 § 5-1704(B) OF THIS SUBTITLE; AND

14 (3) THE TRANSFER OF BUNDLED TAX BENEFITS.

15 **Article - Tax - General**

16 10-305.

17 (E) THE ADDITION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE  
18 AMOUNT OF ANY NET OPERATING LOSS DEDUCTION, TO THE EXTENT THAT THE TAX  
19 BENEFIT FOR ANY NET OPERATING LOSS ON WHICH THE DEDUCTION IS BASED HAS  
20 BEEN SURRENDERED UNDER THE MARYLAND BIOTECHNOLOGY TAX BENEFIT  
21 CERTIFICATE PROGRAM UNDER ARTICLE 83A, TITLE 5, SUBTITLE 17 OF THE CODE.

22 10-721.

23 (d) (1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
24 IF the credit allowed under this section in any taxable year exceeds the State income  
25 tax for that taxable year, an individual or corporation may apply the excess as a credit  
26 against the State income tax for succeeding taxable years until the earlier of:

27 [(1)] (I) the full amount of the excess is used; or

28 [(2)] (II) the expiration of the 15th taxable year after the taxable year in  
29 which the Maryland qualified research and development expense was incurred.

30 (2) ANY UNUSED CREDIT THAT HAS BEEN SURRENDERED UNDER THE  
31 MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE PROGRAM UNDER ARTICLE  
32 83A, TITLE 5, SUBTITLE 17 OF THE CODE MAY NOT BE CARRIED FORWARD UNDER  
33 PARAGRAPH (1) OF THIS SUBSECTION.

1 10-724.

2 A CORPORATION THAT HAS ACQUIRED A CORPORATION BUSINESS TAX BENEFIT  
3 CERTIFICATE UNDER THE MARYLAND BIOTECHNOLOGY TAX BENEFIT CERTIFICATE  
4 PROGRAM UNDER ARTICLE 83A, TITLE 5, SUBTITLE 17 OF THE CODE MAY CLAIM A  
5 CREDIT AGAINST STATE INCOME TAX AS PROVIDED UNDER ARTICLE 83A, § 1706(A) OF  
6 THE CODE.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 July 1, 2002. It shall remain effective for a period of 4 years and, at the end of June  
9 30, 2006, with no further action required by the General Assembly, this Act shall be  
10 abrogated and of no further force and effect.