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**By: Delegates Finifter, Morhaim, Frank, and Klausmeier**

Introduced and read first time: January 31, 1997

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Job Creation Tax Credit - Small Business**

3 FOR the purpose of allowing certain credits against the State income tax, insurance  
4 premiums tax, financial institution franchise tax, and public service company  
5 franchise tax for certain business entities that establish or expand a business facility  
6 in the State under certain circumstances; providing for the calculation of the credit;  
7 providing for certification by the Secretary of Business and Economic Development  
8 of business entities as eligible for the credit; providing for the carry forward of  
9 unused credit; requiring the recapture of the credit under certain circumstances;  
10 providing for the application of this Act; and generally relating to certain tax credits  
11 for certain business entities that establish or expand a business facility in the State  
12 under certain circumstances.

13 BY repealing and reenacting, without amendments,  
14 Article 83A - Department of Business and Economic Development  
15 Section 5-1101(a), (d), (e), (g), (h)(1) and (2), and (j)  
16 Annotated Code of Maryland  
17 (1995 Replacement Volume and 1996 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article 83A - Department of Business and Economic Development  
20 Section 5-1101(f)(1), 5-1102(b), and 5-1103  
21 Annotated Code of Maryland  
22 (1995 Replacement Volume and 1996 Supplement)

23 BY adding to  
24 Article 83A - Department of Business and Economic Development  
25 Section 5-1102.1  
26 Annotated Code of Maryland  
27 (1995 Replacement Volume and 1996 Supplement)

28 BY repealing and reenacting, with amendments,  
29 Article - Insurance  
30 Section 6-114  
31 Annotated Code of Maryland

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1 (1995 Volume and 1996 Supplement)  
2 (As enacted by Chapter 36 of the Acts of the General Assembly of 1995 and  
3 Chapter 84 of the Acts of the General Assembly of 1996)

4 BY repealing and reenacting, with amendments,  
5 Article - Tax - General  
6 Section 8-214, 8-411, and 10-704.4  
7 Annotated Code of Maryland  
8 (1988 Volume and 1996 Supplement)

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

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

12 5-1101.

13 (a) In this subtitle the following words have the meanings indicated.

14 (d) "Credit year" means the taxable year in which a qualified business entity  
15 claims the credit allowed under this subtitle.

16 (e) "Full-time position" means a position requiring at least 840 hours of an  
17 employee's time during at least 24 weeks in a 6-month period.

18 (f) (1) "Qualified business entity" means a person conducting or operating a  
19 trade or business in Maryland who:

20 (i) Is engaged in an activity specified in § 5-1102(b)(2)(ii) of this  
21 subtitle;

22 (ii) During any 24-month period creates:

23 1. At least 60 qualified positions; or

24 2. At least 30 qualified positions if the aggregate payroll for the  
25 qualified positions is greater than a threshold amount equal to the product of multiplying  
26 60 times the State's average annual salary, as determined by the Department; and

27 (iii) Is certified by the Secretary under § 5-1102(b) of this subtitle as  
28 qualifying for the tax credit under § 5-1102 OF this subtitle.

29 (g) "Qualified employee" means an employee filling a qualified position.

30 (h) (1) "Qualified position" means a position that:

31 (i) Is a full-time position and is of indefinite duration;

32 (ii) Pays at least 150% of the federal minimum wage;

33 (iii) Is located in Maryland;

34 (iv) Is newly created, as a result of the establishment or expansion of a  
35 business facility in a single location in the State; and

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1 (v) Is filled.

2 (2) "Qualified position" does not include a position that is:

3 (i) Created when an employment function is shifted from an existing  
4 business facility of the business entity located in Maryland to another business facility of  
5 the same business entity if the position does not represent a net new job in the State;

6 (ii) Created through a change in ownership of a trade or business;

7 (iii) Created through a consolidation, merger, or restructuring of a  
8 business entity if the position does not represent a net new job in the State;

9 (iv) Created when an employment function is contractually shifted  
10 from an existing business entity located in the State to another business entity if the  
11 position does not represent a net new job in the State; or

12 (v) Filled for a period of less than 12 months.

13 (j) "Secretary" means the Secretary of Business and Economic Development or  
14 the Secretary's designee.

15 5-1102.

16 (b) (1) (i) The Secretary shall certify a person as a qualified business entity  
17 eligible for the tax credit under this [subtitle] SECTION if the person satisfies the criteria  
18 set forth in this section.

19 (ii) A business entity may not be certified as qualifying for the tax  
20 credit under this subtitle unless the business entity notifies the Department of its intent to  
21 seek certification before establishing or expanding the business facility on which the  
22 credit is based.

23 (2) To qualify for the tax credit provided under this [subtitle] SECTION, a  
24 business entity must establish or expand a business facility in the State that:

25 (i) Results in the creation of:

26 1. At least 60 qualified positions; or

27 2. At least 30 qualified positions if the aggregate payroll for the  
28 qualified positions is greater than a threshold amount equal to the product of multiplying  
29 60 times the State's average annual salary, as determined by the Department; and

30 (ii) Is engaged in:

31 1. Manufacturing or mining;

32 2. Transportation or communications;

33 3. Agriculture, forestry, or fishing;

34 4. Research, development, or testing;

35 5. Biotechnology;

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1 6. Computer programming, data processing, or other computer  
2 related services;

3 7. Central financial, real estate, or insurance services;

4 8. The operation of central administrative offices or a company  
5 headquarters;

6 9. A public utility;

7 10. Warehousing; or

8 11. Operation of entertainment, recreation, cultural, or  
9 tourism-related activities in a multiuse facility located within a revitalization area if the  
10 facility generates a minimum of 1,000 new full-time equivalent filled positions in a  
11 24-month period and is not primarily used by a professional sports franchise or for  
12 gaming.

13 (3) The terms used in paragraph (2)(ii) of this subsection to refer to various  
14 types of businesses shall have the same meanings as those terms which are commonly  
15 defined in the standard industrial classification manual.

16 5-1102.1.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
18 INDICATED.

19 (2) "ECONOMICALLY DISADVANTAGED INDIVIDUAL" MEANS AN  
20 INDIVIDUAL WHO IS CERTIFIED UNDER PROVISIONS THAT THE DEPARTMENT OF  
21 BUSINESS AND ECONOMIC DEVELOPMENT ADOPTS AS AN INDIVIDUAL WHO,  
22 BEFORE BECOMING EMPLOYED BY A BUSINESS ENTITY:

23 (I) WAS BOTH UNEMPLOYED FOR AT LEAST 30 CONSECUTIVE  
24 DAYS AND QUALIFIED TO PARTICIPATE IN TRAINING ACTIVITIES FOR THE  
25 ECONOMICALLY DISADVANTAGED UNDER TITLE II, PART B OF THE FEDERAL JOB  
26 TRAINING PARTNERSHIP ACT OR ITS SUCCESSOR; OR

27 (II) IN THE ABSENCE OF AN APPLICABLE FEDERAL ACT, MET THE  
28 CRITERIA FOR AN ECONOMICALLY DISADVANTAGED INDIVIDUAL THAT THE  
29 SECRETARY OF BUSINESS AND ECONOMIC DEVELOPMENT SETS.

30 (3) "NONQUALIFIED BUSINESS ENTITY" MEANS A PERSON CONDUCTING  
31 OR OPERATING A TRADE OR BUSINESS IN MARYLAND OTHER THAN A PERSON  
32 ELIGIBLE FOR THE TAX CREDIT UNDER § 5-1102 OF THIS SUBTITLE.

33 (B) A NONQUALIFIED BUSINESS ENTITY THAT CREATES AT LEAST FIVE  
34 QUALIFIED POSITIONS IN THE STATE BY ESTABLISHING OR EXPANDING A BUSINESS  
35 FACILITY IN THE STATE MAY CLAIM A TAX CREDIT IN THE AMOUNT DETERMINED  
36 UNDER THIS SECTION.

37 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR EACH  
38 QUALIFIED EMPLOYEE EMPLOYED BY THE BUSINESS ENTITY DURING THE CREDIT  
39 YEAR, THE BUSINESS ENTITY IS ALLOWED A CREDIT EQUAL TO:

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1 (I) \$100 IF THE QUALIFIED EMPLOYEE IS NOT AN ECONOMICALLY  
2 DISADVANTAGED INDIVIDUAL; AND

3 (II) \$200 IF THE QUALIFIED EMPLOYEE IS AN ECONOMICALLY  
4 DISADVANTAGED INDIVIDUAL.

5 (D) THE SAME CREDIT CANNOT BE APPLIED MORE THAN ONCE AGAINST  
6 DIFFERENT TAXES BY THE SAME TAXPAYER.

7 (E) (1) TO BE ELIGIBLE FOR THE TAX CREDIT ALLOWED UNDER THIS  
8 SECTION, A BUSINESS ENTITY SHALL SUBMIT THE FOLLOWING TO THE DEPARTMENT  
9 IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT:

10 (I) THE EFFECTIVE DATE OF THE START-UP OR EXPANSION;

11 (II) THE NUMBER OF FULL-TIME EMPLOYEES PRIOR TO THE  
12 START-UP OR EXPANSION;

13 (III) THE NUMBER OF QUALIFIED POSITIONS CREATED, QUALIFIED  
14 EMPLOYEES HIRED, AND THE PAYROLL OF THOSE EMPLOYEES; AND

15 (IV) ANY OTHER INFORMATION THAT THE DEPARTMENT  
16 REQUIRES BY REGULATION.

17 (2) THE DEPARTMENT MAY REQUIRE ANY INFORMATION REQUIRED  
18 UNDER THIS SUBSECTION TO BE VERIFIED BY AN INDEPENDENT AUDITOR  
19 SELECTED BY THE BUSINESS ENTITY.

20 (F) A BUSINESS ENTITY MUST OBTAIN, AND SUBMIT TO THE APPROPRIATE  
21 STATE AGENCY WITH THE TAX RETURN ON WHICH THE CREDIT IS CLAIMED,  
22 CERTIFICATION FROM THE DEPARTMENT THAT THE ENTITY HAS MET THE  
23 REQUIREMENTS OF THIS SECTION AND IS ELIGIBLE FOR THE CREDIT.

24 (G) (1) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE  
25 YEAR EXCEEDS THE TOTAL TAX OTHERWISE DUE FROM THE BUSINESS ENTITY FOR  
26 THAT TAXABLE YEAR, THE BUSINESS ENTITY MAY APPLY THE EXCESS AS A CREDIT  
27 FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

28 (I) THE FULL AMOUNT OF THE EXCESS IS USED; OR

29 (II) THE EXPIRATION OF THE 5TH TAXABLE YEAR FROM THE  
30 CREDIT YEAR.

31 (2) THE CREDIT UNDER THIS SECTION MAY NOT BE CARRIED BACK TO  
32 A PRECEDING TAXABLE YEAR.

33 (H) (1) IF, DURING ANY OF THE 3 YEARS SUCCEEDING THE CREDIT YEAR,  
34 THE NUMBER OF QUALIFIED POSITIONS OF THE BUSINESS ENTITY FALLS BELOW  
35 THE AVERAGE NUMBER OF QUALIFIED POSITIONS DURING THE CREDIT YEAR ON  
36 WHICH THE CREDIT WAS COMPUTED, THE CREDIT SHALL BE RECAPTURED AS  
37 FOLLOWS:

38 (I) THE CREDIT SHALL BE RECOMPUTED TO REDUCE THE CREDIT  
39 BY THE PERCENTAGE REDUCTION OF THE NUMBER OF QUALIFIED EMPLOYEES;

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1 (II) THE RECOMPUTED CREDIT SHALL BE SUBTRACTED FROM THE  
2 AMOUNT OF CREDIT PREVIOUSLY ALLOWED; AND

3 (III) THE QUALIFYING BUSINESS ENTITY SHALL PAY THE  
4 DIFFERENCE AS TAXES PAYABLE TO THE STATE FOR THE TAXABLE YEAR IN WHICH  
5 THE NUMBER OF QUALIFIED POSITIONS FALLS BELOW THE AVERAGE NUMBER OF  
6 QUALIFIED POSITIONS DURING THE CREDIT YEAR.

7 (2) (I) DURING THE 3 TAXABLE YEARS SUCCEEDING THE CREDIT  
8 YEAR, THE BUSINESS ENTITY SHALL SUPPLY INFORMATION REQUIRED BY THE  
9 DEPARTMENT IN REGULATION TO VERIFY THAT THE BUSINESS ENTITY IS NOT  
10 SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION.

11 (II) THE DEPARTMENT MAY REQUIRE ANY INFORMATION  
12 REQUIRED UNDER THIS PARAGRAPH TO BE VERIFIED BY AN INDEPENDENT  
13 AUDITOR SELECTED BY THE BUSINESS ENTITY.

14 (I) ANY INFORMATION PROVIDED TO THE COMPTROLLER OR THE  
15 APPROPRIATE AGENCY BY A BUSINESS ENTITY IN CONNECTION WITH ELIGIBILITY  
16 FOR A CREDIT ALLOWED UNDER THIS SECTION SHALL BE SHARED BY THE  
17 COMPTROLLER OR THE APPROPRIATE AGENCY WITH THE DEPARTMENT OF  
18 BUSINESS AND ECONOMIC DEVELOPMENT AND SHALL BE SUBJECT TO THE  
19 CONFIDENTIALITY REQUIREMENTS ESTABLISHED BY STATUTES OR REGULATIONS  
20 APPLICABLE TO THE COMPTROLLER OR THE APPROPRIATE AGENCY.

21 (J) THE CREDIT UNDER THIS SECTION MAY NOT BE ALLOWED WITH RESPECT  
22 TO AN EMPLOYEE IF THE BUSINESS ENTITY CLAIMS A CREDIT FOR WAGES PAID TO  
23 THE EMPLOYEE UNDER § 10-702 OF THE TAX - GENERAL ARTICLE.

24 5-1103.

25 (a) Subject to the provisions of this section, the provisions of this subtitle and the  
26 tax [credit] CREDITS authorized under §§ 5-1102 AND 5-1102.1 OF this subtitle shall  
27 terminate as of January 1, 2002.

28 (b) (1) The tax credits authorized under this subtitle:

29 (i) May be claimed only for qualified positions at a newly established  
30 or expanded facility that commences operations before January 1, 2001; and

31 (ii) May not be earned for any credit year beginning on or after  
32 January 1, 2002.

33 (2) Subject to the limitations under this subtitle, for taxable years beginning  
34 on or after January 1, 2002, tax credits earned in credit years beginning before January 1,  
35 2002, may be allowed ratably over a 2-year period, may be carried forward, and are  
36 subject to recapture as provided in § 5-1102 of this subtitle.

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1           **Article - Insurance**

2 6-114.

3           An insurer may claim a credit against the premium tax for [wages paid to qualified  
4 employees] JOB CREATION IN THE STATE as provided under TITLE 5, SUBTITLE 11 OF  
5 Article 83A[, § 5-1102] of the Code.

6           **Article - Tax - General**

7 8-214.

8           A financial institution may claim a credit against the financial institution franchise  
9 tax for [wages paid to qualified employees] JOB CREATION IN THE STATE as provided  
10 under TITLE 5, SUBTITLE 11 OF Article 83A[, § 5-1102] of the Code.

11 8-411.

12           A public service company may claim a credit against the public service company  
13 franchise tax for [wages paid to qualified employees] JOB CREATION IN THE STATE as  
14 provided under TITLE 5, SUBTITLE 11 OF Article 83A[, § 5-1102] of the Code.

15 10-704.4.

16           An individual or a corporation may claim a credit against the income tax for [wages  
17 paid to qualified employees] JOB CREATION IN THE STATE as provided under TITLE 5,  
18 SUBTITLE 11 OF Article 83A[, § 5-1102] of the Code.

19           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 1997 and shall be applicable to all taxable years beginning after December 31,  
21 1996 for all employees hired on or after December 31, 1996.