

(PRE-FILED)

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By: **Delegate Feldman**

Requested: October 23, 2003

Introduced and read first time: January 14, 2004

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Biotechnology Investment Incentive Act**

3 FOR the purpose of providing for credits against certain State taxes for certain  
4 investments in certain biotechnology companies and venture capital firms;  
5 providing for applications to the Department of Business and Economic  
6 Development for approval of the credit and certification by the Department to  
7 investors of approved credit amounts; limiting to a certain amount the total  
8 amount of credits that the Department may approve for any calendar year;  
9 requiring the Department to approve a prorated credit for each applicant if the  
10 total amount applied for exceeds the maximum that may be approved; providing  
11 for certain procedures to claim approved credits; providing that certain unused  
12 credits may be carried forward to certain taxable years; providing for revocation  
13 or recapture of a credit under certain circumstances; requiring the Department  
14 of Business and Economic Development and the State Comptroller jointly to  
15 adopt certain regulations; defining certain terms; providing for the application  
16 of this Act; and generally relating to credits against certain State taxes based on  
17 certain investments in certain biotechnology companies and venture capital  
18 firms.

19 BY adding to  
20 Article - Tax - General  
21 Section 10-725  
22 Annotated Code of Maryland  
23 (1997 Replacement Volume and 2003 Supplement)

24 BY adding to  
25 Article - Insurance  
26 Section 6-121  
27 Annotated Code of Maryland  
28 (1997 Volume and 2003 Supplement)

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

1 **Article - Tax - General**

2 10-725.

3 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.5 (2) "BIOTECHNOLOGY COMPANY" MEANS A COMPANY ORGANIZED FOR  
6 PROFIT THAT:7 (I) IS PRIMARILY ENGAGED IN THE RESEARCH, DEVELOPMENT,  
8 AND COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY THAT  
9 COMPRISES, INTERACTS WITH, OR ANALYZES BIOLOGICAL MATERIAL INCLUDING  
10 BIOMOLECULES (DNA, RNA, OR PROTEIN), CELLS, TISSUES, OR ORGANS;

11 (II) HAS SIGNIFICANT OPERATIONS IN THIS STATE;

12 (III) HAS FEWER THAN 100 FULL-TIME EMPLOYEES; AND

13 (IV) 1. HAS BEEN CERTIFIED AS A BIOTECHNOLOGY COMPANY  
14 BY THE DIRECTOR OF THE MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION;15 2. HAS RECEIVED FUNDING IN THE PREVIOUS 24 MONTHS  
16 FROM THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, THE  
17 MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION, MDBIO, INC., OR THE  
18 MARYLAND INDUSTRIAL PARTNERSHIPS PROGRAM; OR19 3. HAS BEEN A TENANT OF A STATE-FUNDED INCUBATOR  
20 FACILITY WITHIN THE PREVIOUS 24 MONTHS.21 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND  
22 ECONOMIC DEVELOPMENT.23 (4) (I) "INVESTMENT" MEANS THE CONTRIBUTION OF PROPERTY, AT A  
24 RISK OF LOSS, TO A QUALIFIED COMPANY IN EXCHANGE FOR STOCK, A PARTNERSHIP  
25 INTEREST, OR OTHER OWNERSHIP INTEREST IN THE QUALIFIED COMPANY.26 (II) FOR PURPOSES OF THIS SECTION, AN INVESTMENT IS AT RISK  
27 OF LOSS WHEN ITS REPAYMENT ENTIRELY DEPENDS UPON THE SUCCESS OF THE  
28 BUSINESS OPERATIONS OF THE QUALIFIED COMPANY.29 (5) "QUALIFIED COMPANY" MEANS A BIOTECHNOLOGY COMPANY OR  
30 VENTURE CAPITAL FIRM.31 (6) (I) "QUALIFIED INVESTOR" MEANS AN INDIVIDUAL OR  
32 CORPORATION THAT:

33 1. INVESTS AT LEAST \$30,000 IN A QUALIFIED COMPANY; OR



1 (3) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL QUALIFIED  
2 INVESTORS UNDER SUBSECTION (B) OF THIS SECTION EXCEEDS THE MAXIMUM  
3 SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL  
4 APPROVE A CREDIT UNDER SUBSECTION (B) OF THIS SECTION FOR EACH APPLICANT  
5 IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR  
6 BY THE APPLICANT TIMES A FRACTION:

7 (I) THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED  
8 UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND

9 (II) THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL CREDITS  
10 APPLIED FOR BY ALL APPLICANTS UNDER SUBSECTION (B) OF THIS SECTION IN A  
11 CALENDAR YEAR.

12 (4) (I) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE  
13 END OF THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE, THE  
14 DEPARTMENT SHALL CERTIFY TO THE QUALIFIED INVESTOR THE AMOUNT OF THE  
15 TAX CREDITS APPROVED BY THE DEPARTMENT FOR THE QUALIFIED INVESTOR  
16 UNDER SUBSECTION (B) OF THIS SECTION.

17 (II) THE CREDIT ALLOWABLE UNDER SUBSECTION (B) OF THIS  
18 SECTION TO A GROUP OF QUALIFIED INVESTORS SHALL BE ALLOCATED ACCORDING  
19 TO EACH INVESTOR'S PROPORTIONATE SHARE OF THE TOTAL INVESTMENT GIVING  
20 RISE TO THE CREDIT.

21 (5) TO CLAIM THE APPROVED CREDIT ALLOWED UNDER THIS SECTION, A  
22 QUALIFIED INVESTOR SHALL:

23 (I) FILE AN AMENDED STATE INCOME TAX RETURN FOR THE  
24 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE; AND

25 (II) ATTACH A COPY OF THE DEPARTMENT'S CERTIFICATION OF  
26 THE APPROVED CREDIT AMOUNT TO THE AMENDED STATE INCOME TAX RETURN.

27 (D) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR  
28 EXCEEDS THE STATE TAX LIABILITY FOR THAT TAXABLE YEAR, A QUALIFIED  
29 INVESTOR MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE TAX LIABILITY  
30 FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

31 (1) THE FULL AMOUNT OF THE EXCESS IS USED; OR

32 (2) THE EXPIRATION OF THE 15TH TAXABLE YEAR AFTER THE TAXABLE  
33 YEAR IN WHICH THE INVESTMENT WAS MADE.

34 (E) (1) THE CREDIT CLAIMED UNDER SUBSECTION (C) SHALL BE  
35 RECAPTURED AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION IF, WITHIN 2  
36 YEARS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT IS  
37 APPROVED, THE QUALIFIED INVESTOR SELLS, TRANSFERS, OR OTHERWISE DISPOSES  
38 OF THE OWNERSHIP INTEREST IN THE QUALIFIED COMPANY THAT GAVE RISE TO  
39 THE CREDIT.

1 (2) THE AMOUNT REQUIRED TO BE RECAPTURED UNDER THIS  
2 SUBSECTION IS THE PRODUCT OF MULTIPLYING:

3 (I) THE PORTION OF THE CREDIT ATTRIBUTABLE TO THE  
4 OWNERSHIP INTEREST DISPOSED OF AS DESCRIBED IN PARAGRAPH (1) OF THIS  
5 SUBSECTION; AND

6 (II) 1. 100%, IF THE DISPOSITION OCCURS DURING THE TAXABLE  
7 YEAR IN WHICH THE TAX CREDIT IS APPROVED;

8 2. 67%, IF THE DISPOSITION OCCURS DURING THE FIRST  
9 YEAR AFTER THE CLOSE OF THE TAXABLE YEAR FOR WHICH THE TAX CREDIT IS  
10 APPROVED; OR

11 3. 33%, IF THE DISPOSITION OCCURS MORE THAN 1 YEAR  
12 BUT NOT MORE THAN 2 YEARS AFTER THE CLOSE OF THE TAXABLE YEAR FOR WHICH  
13 THE TAX CREDIT IS APPROVED.

14 (3) THE QUALIFIED INVESTOR THAT CLAIMED THE CREDIT SHALL PAY  
15 THE AMOUNT TO BE RECAPTURED AS DETERMINED UNDER PARAGRAPH (2) OF THIS  
16 SUBSECTION AS TAXES PAYABLE TO THE STATE FOR THE TAXABLE YEAR IN WHICH  
17 THE DISPOSITION DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION OCCURS.

18 (F) (1) THE DEPARTMENT MAY REVOKE ITS CERTIFICATION OF AN  
19 APPROVED CREDIT UNDER SUBSECTION (C) OF THIS SECTION IF ANY  
20 REPRESENTATION IN CONNECTION WITH THE APPLICATION FOR THE  
21 CERTIFICATION PROVES TO HAVE BEEN FALSE WHEN MADE.

22 (2) THE REVOCATION MAY BE IN FULL OR IN PART AS THE DEPARTMENT  
23 MAY DETERMINE AND, SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, SHALL BE  
24 COMMUNICATED TO THE QUALIFIED INVESTOR AND THE COMPTROLLER.

25 (3) THE QUALIFIED INVESTOR SHALL HAVE AN OPPORTUNITY TO  
26 APPEAL ANY REVOCATION TO THE DEPARTMENT PRIOR TO NOTIFICATION OF THE  
27 COMPTROLLER.

28 (4) THE COMPTROLLER MAY MAKE AN ASSESSMENT AGAINST THE  
29 QUALIFIED INVESTOR TO RECAPTURE ANY AMOUNT OF TAX CREDIT THAT THE  
30 QUALIFIED INVESTOR HAS ALREADY CLAIMED.

31 (G) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT  
32 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

33 **Article - Insurance**

34 6-121.

35 AN INSURER MAY CLAIM A CREDIT AGAINST THE PREMIUM TAX FOR  
36 INVESTMENTS IN A BIOTECHNOLOGY COMPANY OR VENTURE CAPITAL FIRM AS  
37 PROVIDED UNDER § 10-725 OF THE TAX - GENERAL ARTICLE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 July 1, 2004, and shall be applicable to all taxable years beginning after December 31,  
3 2003.