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Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2005

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CHAPTER \_\_\_\_\_

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; ~~allowing certain investors to allocate~~  
 8 ~~approved credits by agreement and limiting the maximum amount of credits~~  
 9 ~~that may be allocated to an investor; limiting to a certain amount the total~~  
 10 ~~amount of credits that the Department may approve for any calendar year and~~  
 11 ~~that the Department may approve in the aggregate; prohibiting the Department~~  
 12 ~~from approving credits for aggregate investment in one biotechnology company~~  
 13 ~~that would exceed a certain percentage of credits in a calendar year; providing~~  
 14 ~~for the issuance of certain initial credit certificates by the Department, subject~~  
 15 ~~to certain requirements and limitations; providing certain limits on the amount~~  
 16 ~~of credits that can be claimed; requiring the Secretary of the Department to~~  
 17 ~~issue final credit certificates under certain circumstances; making certain~~  
 18 ~~credits refundable under certain circumstances; establishing the Maryland~~

1 Biotechnology Investment Tax Credit Reserve Fund; authorizing the Governor  
 2 to include certain appropriations to a certain fund in the annual budget bill;  
 3 requiring the Comptroller to transfer certain amounts from a certain fund to the  
 4 General Fund under certain circumstances; specifying the year in which certain  
 5 credits may first be claimed; limiting the maximum amount of credits that may  
 6 be claimed on certain State income tax returns; providing for certain procedures  
 7 to claim approved credits; ~~providing that certain unused credits may be carried~~  
 8 ~~forward to certain taxable years; requiring certain venture capital firms to~~  
 9 ~~perform a certain audit each year and to make payments to the Department~~  
 10 ~~under certain circumstances; providing for revocation or recapture of a credit~~  
 11 ~~under certain circumstances; requiring the Department to make a certain report~~  
 12 ~~by a certain date each year; requiring the Department of Business and Economic~~  
 13 ~~Development and the State Comptroller jointly to adopt certain regulations;~~  
 14 ~~defining certain terms; providing for the application of this Act; and generally~~  
 15 ~~relating to credits against certain State taxes based on certain investments in~~  
 16 ~~certain biotechnology companies and venture capital firms.~~

17 BY adding to

18 Article - Tax - General  
 19 Section 10-725  
 20 Annotated Code of Maryland  
 21 (2004 Replacement Volume)

22 ~~BY adding to~~

23 ~~Article - Insurance~~  
 24 ~~Section 6-121~~  
 25 ~~Annotated Code of Maryland~~  
 26 ~~(2003 Replacement Volume and 2004 Supplement)~~

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

29 **Article - Tax - General**

30 10-725.

31 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
 32 INDICATED.

33 (2) "BIOTECHNOLOGY COMPANY" MEANS A COMPANY ORGANIZED FOR  
 34 PROFIT THAT IS PRIMARILY ENGAGED IN THE RESEARCH, DEVELOPMENT, ~~AND OR~~  
 35 COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY THAT  
 36 COMPRISES, INTERACTS WITH, OR ANALYZES BIOLOGICAL MATERIAL INCLUDING  
 37 BIOMOLECULES (DNA, RNA, OR PROTEIN), CELLS, TISSUES, OR ORGANS.

38 (3) "DEPARTMENT" MEANS THE DEPARTMENT OF BUSINESS AND  
 39 ECONOMIC DEVELOPMENT.

1 (4) (I) "INVESTMENT" MEANS THE CONTRIBUTION OF PROPERTY, AT A  
 2 RISK OF LOSS, TO A QUALIFIED COMPANY IN EXCHANGE FOR STOCK, A PARTNERSHIP  
 3 INTEREST, OR OTHER OWNERSHIP INTEREST IN THE QUALIFIED COMPANY.

4 (II) FOR PURPOSES OF THIS SECTION, AN INVESTMENT IS AT RISK  
 5 OF LOSS WHEN ITS REPAYMENT ENTIRELY DEPENDS UPON THE SUCCESS OF THE  
 6 BUSINESS OPERATIONS OF THE QUALIFIED COMPANY.

7 ~~(5) "INVESTMENT ROUND" MEANS THE OFFERING OF INVESTMENT IN A  
 8 BIOTECHNOLOGY COMPANY TO EXTERNAL INVESTORS.~~

9 ~~(6) "INVESTOR" DOES NOT INCLUDE:~~

10 ~~(I) AN INDIVIDUAL OR CORPORATION THAT, DIRECTLY OR  
 11 INDIRECTLY, HOLDS OR CONTROLS AN OWNERSHIP INTEREST OF 10% OR MORE IN A  
 12 QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY; OR~~

13 ~~(II) A PERSON RELATED, WITHIN THE MEANING OF § 267(B) OF THE  
 14 INTERNAL REVENUE CODE, TO AN INDIVIDUAL OR CORPORATION DESCRIBED IN  
 15 ITEM (I) OF THIS PARAGRAPH.~~

16 ~~(7)~~ (5) "QUALIFIED INVESTOR" MEANS AN INVESTOR THAT IS:

17 (I) AN INDIVIDUAL THAT INVESTS AT LEAST \$25,000 IN A  
 18 QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY; OR

19 (II) A CORPORATION THAT INVESTS AT LEAST \$250,000 IN A  
 20 QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY.

21 ~~(8)~~ (6) "QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY" MEANS A  
 22 BIOTECHNOLOGY COMPANY THAT:

23 (I) HAS ITS ~~PRINCIPAL PLACE~~ HEADQUARTERS AND BASE OF  
 24 OPERATIONS IN THIS STATE;

25 (II) HAS FEWER THAN ~~400~~ 25 FULL-TIME EMPLOYEES;

26 (III) HAS BEEN IN ACTIVE BUSINESS ~~FOR LESS~~ NO LONGER THAN ~~40~~  
 27 5 YEARS; AND

28 (IV) ~~1-~~ HAS BEEN CERTIFIED AS A BIOTECHNOLOGY COMPANY  
 29 BY THE ~~DIRECTOR OF THE MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION~~  
 30 DEPARTMENT;

31 ~~2-~~ HAS RECEIVED FUNDING IN THE PREVIOUS 24 MONTHS  
 32 FROM THE DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, THE  
 33 MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION, MDBIO, INC., OR THE  
 34 MARYLAND INDUSTRIAL PARTNERSHIPS PROGRAM; OR

35 ~~3-~~ HAS BEEN A TENANT OF A STATE FUNDED INCUBATOR  
 36 FACILITY WITHIN THE PREVIOUS 24 MONTHS.

1           ~~(9)~~     (7)     "QUALIFIED MARYLAND VENTURE CAPITAL FIRM" MEANS AN  
2 ENTITY THAT:

3                   (I)     IS ORGANIZED FOR THE PURPOSE OF INVESTING FUNDS IN  
4 PRIVATELY HELD COMPANIES ENGAGED IN THE RESEARCH, DEVELOPMENT, ~~AND OR~~  
5 COMMERCIALIZATION OF INNOVATIVE AND PROPRIETARY TECHNOLOGY;

6                   (II)    HAS AT LEAST TWO PRINCIPALS THAT EACH HAVE AT LEAST ~~3~~ 5  
7 YEARS OF VENTURE CAPITAL EXPERIENCE;

8                   (III)   HAS AT LEAST 1 YEAR OF EXPERIENCE INVESTING IN  
9 BIOTECHNOLOGY OR BIOPHARMACEUTICAL COMPANIES; AND

10                  (IV)   HAS ITS PRINCIPAL PLACE OF OPERATIONS IN THIS STATE;  
11 AND.

12                  (V)     ~~HAS AT LEAST ONE PRINCIPAL THAT HAS INVESTED AT LEAST~~  
13 ~~\$5,000,000 IN BIOTECHNOLOGY COMPANIES IN THE STATE AT THE TIME OF~~  
14 ~~APPLICATION FOR THE CREDIT UNDER THIS SECTION.~~

15    (B)   ~~(1)~~     ~~SUBJECT TO PARAGRAPHS (2) THROUGH (4) OF THIS SUBSECTION~~  
16 ~~SUBSECTIONS (D) AND (E) OF THIS SECTION, A QUALIFIED INVESTOR, OR A~~  
17 ~~QUALIFIED MARYLAND VENTURE CAPITAL FIRM, OR THE PARTNERS OF A QUALIFIED~~  
18 ~~MARYLAND VENTURE CAPITAL FIRM MAY CLAIM CREDITS A CREDIT AGAINST THE~~  
19 ~~STATE INCOME TAX IN AN AMOUNT EQUAL TO THE FINAL CREDIT CERTIFICATE~~  
20 ~~APPROVED BY THE SECRETARY OR THE PREMIUM TAX IMPOSED UNDER § 6-102 OF~~  
21 ~~THE INSURANCE ARTICLE FOR INVESTMENTS AN INVESTMENT IN A QUALIFIED~~  
22 ~~MARYLAND BIOTECHNOLOGY COMPANY AS PROVIDED UNDER THIS SECTION.~~

23                  ~~(2)~~     ~~A QUALIFIED INVESTOR MAY CLAIM CREDITS AGAINST THE STATE~~  
24 ~~INCOME TAX OR THE PREMIUM TAX IMPOSED UNDER § 6-102 OF THE INSURANCE~~  
25 ~~ARTICLE IN AN AMOUNT EQUAL TO 50% OF THE INVESTMENT MADE IN A QUALIFIED~~  
26 ~~MARYLAND BIOTECHNOLOGY COMPANY.~~

27                  ~~(3)~~   ~~(1)~~     ~~IF A QUALIFIED MARYLAND VENTURE CAPITAL FIRM INVESTS~~  
28 ~~AT LEAST ONE THIRD OF THE TOTAL INVESTMENT MADE IN A INVESTMENT ROUND~~  
29 ~~IN A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY, EACH INVESTOR IN THE~~  
30 ~~INVESTMENT ROUND MAY CLAIM CREDITS AGAINST THE STATE INCOME TAX OR THE~~  
31 ~~PREMIUM TAX IMPOSED UNDER § 6-102 OF THE INSURANCE ARTICLE FOR~~  
32 ~~INVESTMENTS IN A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY AS~~  
33 ~~PROVIDED UNDER THIS SECTION.~~

34                  ~~(H)~~     ~~EXCEPT AS PROVIDED IN SUBPARAGRAPH (H) OF THIS~~  
35 ~~PARAGRAPH, THE INVESTORS IN AN INVESTMENT ROUND UNDER SUBPARAGRAPH (I)~~  
36 ~~OF THIS PARAGRAPH MAY BY AGREEMENT ALLOCATE AMONG THE INVESTORS THE~~  
37 ~~TOTAL CREDITS EARNED BY ALL INVESTORS.~~

38                  ~~(H)~~     ~~AN INVESTOR MAY NOT BE ALLOCATED AN AMOUNT OF~~  
39 ~~CREDITS THAT EXCEEDS TWICE THE AMOUNT INVESTED IN THE ROUND.~~

1           (4)     ~~THE SAME TAX CREDIT MAY NOT BE APPLIED MORE THAN ONCE~~  
2 ~~AGAINST DIFFERENT STATE TAXES.~~

3       (C)     (1)     AT LEAST 30 DAYS PRIOR TO MAKING AN INVESTMENT IN A  
4 QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY FOR WHICH A QUALIFIED  
5 INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM ~~INTENDS TO CLAIM~~  
6 ~~CREDITS WOULD BE ELIGIBLE FOR AN INITIAL TAX CREDIT CERTIFICATE~~ UNDER  
7 SUBSECTION (B) OF THIS SECTION, THE QUALIFIED INVESTOR OR QUALIFIED  
8 MARYLAND VENTURE CAPITAL FIRM SHALL SUBMIT AN APPLICATION TO THE  
9 DEPARTMENT.

10           (2)     ~~IF AN INVESTMENT ROUND IS LED BY A QUALIFIED MARYLAND~~  
11 ~~VENTURE CAPITAL FIRM AS PROVIDED IN SUBSECTION (B)(3) OF THIS SECTION, THE~~  
12 ~~APPLICATION SHALL INCLUDE THE PROPOSED ALLOCATION OF THE CREDITS~~  
13 ~~AMONG THE INVESTORS IN THE INVESTMENT ROUND.~~

14           (3)     (2)     THE DEPARTMENT SHALL:

15                   (I)     APPROVE ALL APPLICATIONS THAT QUALIFY FOR CREDITS  
16 UNDER THIS SECTION ON A FIRST COME FIRST SERVED BASIS; AND

17                   (II)    WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION, CERTIFY THE  
18 AMOUNT OF ANY APPROVED TAX CREDITS TO A QUALIFIED INVESTOR OR QUALIFIED  
19 MARYLAND VENTURE CAPITAL FIRM.

20           (4)     (3)     (I)     AFTER THE DEPARTMENT HAS ~~CERTIFIED TAX CREDITS~~  
21 ~~ISSUED AN INITIAL TAX CREDIT CERTIFICATE~~ UNDER THIS SECTION, A QUALIFIED  
22 INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM SHALL HAVE ~~44~~ 30  
23 DAYS TO MAKE AN INVESTMENT IN A QUALIFIED MARYLAND BIOTECHNOLOGY  
24 COMPANY UNDER THIS SECTION.

25                   (II)    WITHIN ~~5~~ 10 DAYS OF MAKING AN INVESTMENT IN A QUALIFIED  
26 MARYLAND BIOTECHNOLOGY COMPANY, A QUALIFIED INVESTOR OR QUALIFIED  
27 MARYLAND VENTURE CAPITAL FIRM SHALL PROVIDE NOTICE TO THE DEPARTMENT.

28                   (III)   ~~THE NOTICE TO THE DEPARTMENT SHALL INCLUDE THE~~  
29 ~~PROPOSED ALLOCATION OF CREDITS AMONG INVESTORS IN AN INVESTMENT ROUND~~  
30 ~~LED BY A QUALIFIED MARYLAND VENTURE CAPITAL FIRM AS PROVIDED IN~~  
31 ~~SUBSECTION (B)(3) OF THIS SECTION.~~

32           (4)     (III)    IF A QUALIFIED INVESTOR OR QUALIFIED MARYLAND  
33 VENTURE CAPITAL FIRM DOES NOT PROVIDE THE NOTICE REQUIRED IN  
34 SUBPARAGRAPH (II) OF THIS PARAGRAPH WITHIN ~~20~~ 30 DAYS AFTER THE  
35 ~~CERTIFICATION OF TAX CREDITS~~ ISSUANCE OF AN INITIAL TAX CREDIT CERTIFICATE  
36 UNDER THIS SECTION, THE DEPARTMENT SHALL RESCIND THE ~~CERTIFICATION~~  
37 CERTIFICATE.

38       (D)     (1)     (1)     THE TAX CREDIT ALLOWED IN AN INITIAL TAX CREDIT  
39 CERTIFICATE ISSUED UNDER THIS SECTION IS 50% OF THE INVESTMENT IN A  
40 QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY, NOT TO EXCEED:



1                                   3.       FOR ANY FISCAL YEAR, IF FUNDS ARE TRANSFERRED  
2 FROM THE RESERVE FUND UNDER THE AUTHORITY OF ANY PROVISION OF LAW  
3 OTHER THAN UNDER PARAGRAPH (4) OF THIS SUBSECTION, THE MAXIMUM CREDIT  
4 AMOUNTS IN THE AGGREGATE FOR WHICH THE SECRETARY MAY ISSUE INITIAL TAX  
5 CREDIT CERTIFICATES SHALL BE REDUCED BY THE AMOUNT TRANSFERRED.

6                                   (IV)   FOR EACH FISCAL YEAR, THE GOVERNOR SHALL INCLUDE IN  
7 THE BUDGET BILL AN APPROPRIATION TO THE RESERVE FUND.

8                                   (V)    NOTWITHSTANDING THE PROVISIONS OF § 7-213 OF THE STATE  
9 FINANCE AND PROCUREMENT ARTICLE, THE GOVERNOR MAY NOT REDUCE AN  
10 APPROPRIATION TO THE RESERVE FUND IN THE STATE BUDGET AS APPROVED BY  
11 THE GENERAL ASSEMBLY.

12                                  (VI)   BASED ON THE ACTUAL AMOUNT OF AN INVESTMENT MADE BY  
13 A QUALIFIED INVESTOR OR A QUALIFIED MARYLAND VENTURE CAPITAL FIRM, THE  
14 SECRETARY SHALL ISSUE A FINAL TAX CREDIT CERTIFICATE TO THE QUALIFIED  
15 INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM.

16                                  (VII) A QUALIFIED INVESTOR OR A QUALIFIED MARYLAND VENTURE  
17 CAPITAL FIRM MAY REDEEM A FINAL TAX CREDIT CERTIFICATE FOR A TAXABLE  
18 YEAR BEGINNING AFTER DECEMBER 31, 2006.

19                                  (4)    (I)    EXCEPT AS PROVIDED IN THIS PARAGRAPH, MONEY  
20 APPROPRIATED TO THE RESERVE FUND SHALL REMAIN IN THE FUND.

21                                  (II)    1.    WITHIN 15 DAYS AFTER THE END OF EACH CALENDAR  
22 QUARTER, THE DEPARTMENT SHALL NOTIFY THE COMPTROLLER AS TO EACH FINAL  
23 CREDIT CERTIFICATE ISSUED DURING THE QUARTER:

24    A.    THE MAXIMUM CREDIT AMOUNT STATED IN THE INITIAL  
25 TAX CREDIT CERTIFICATE FOR THE INVESTMENT; AND

26    B.    THE FINAL CERTIFIED CREDIT AMOUNT FOR THE  
27 INVESTMENT.

28    2.    ON NOTIFICATION THAT AN INVESTMENT HAS BEEN  
29 CERTIFIED, THE COMPTROLLER SHALL TRANSFER AN AMOUNT EQUAL TO THE  
30 CREDIT AMOUNT STATED IN THE INITIAL TAX CREDIT CERTIFICATE FOR THE  
31 INVESTMENT FROM THE RESERVE FUND TO THE GENERAL FUND.

32    ~~(D)    (1)    (1)    THE TOTAL AMOUNT OF CREDITS APPROVED BY THE~~  
33 ~~DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION MAY NOT EXCEED~~  
34 ~~\$12,000,000 FOR ANY CALENDAR YEAR.~~

35    ~~(H)    THE DEPARTMENT MAY NOT APPROVE CREDITS UNDER THIS~~  
36 ~~SECTION FOR AGGREGATE INVESTMENTS IN ONE QUALIFIED MARYLAND~~  
37 ~~BIOTECHNOLOGY COMPANY THAT WOULD REPRESENT MORE THAN 10% OF THE~~  
38 ~~TOTAL CREDITS APPROVED BY THE DEPARTMENT IN A CALENDAR YEAR.~~

1           (2)     ~~THE TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT~~  
2 ~~UNDER SUBSECTION (B) OF THIS SECTION MAY NOT EXCEED:~~

3           (1)     ~~\$18,000,000 FOR ALL INVESTMENTS MADE BY QUALIFIED~~  
4 ~~INVESTORS; AND~~

5           (11)    ~~\$42,000,000 FOR ALL INVESTMENTS MADE IN INVESTMENT~~  
6 ~~ROUNDS LED BY QUALIFIED MARYLAND VENTURE CAPITAL FIRMS.~~

7           (3)     ~~ONCE THE TOTAL AMOUNT OF CREDITS APPLIED FOR UNDER~~  
8 ~~SUBSECTION (B) OF THIS SECTION EXCEEDS THE AMOUNTS SPECIFIED UNDER~~  
9 ~~PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT MAY NOT APPROVE ANY~~  
10 ~~ADDITIONAL CREDITS UNDER THIS SECTION.~~

11          (E)     ~~A TAX CREDIT UNDER THIS SECTION MAY BE CLAIMED IN THE THIRD~~  
12 ~~TAXABLE YEAR AFTER THE TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.~~

13          (F)     ~~NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS SECTION, THE~~  
14 ~~TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED BY ANY INDIVIDUAL OR~~  
15 ~~CORPORATION FOR ANY TAXABLE YEAR MAY NOT EXCEED:~~

16           (1)     ~~\$200,000 ON A STATE INDIVIDUAL INCOME TAX RETURN; OR~~

17           (2)     ~~\$500,000 ON A STATE CORPORATE INCOME TAX RETURN.~~

18          (G)     ~~TO CLAIM THE APPROVED CREDIT ALLOWED UNDER THIS SECTION, A~~  
19 ~~QUALIFIED INVESTOR OR PARTNER IN A QUALIFIED MARYLAND VENTURE CAPITAL~~  
20 ~~FIRM SHALL:~~

21           (1)     ~~FILE AN AMENDED STATE INCOME TAX RETURN FOR THE TAXABLE~~  
22 ~~YEAR IN WHICH THE INVESTMENT WAS MADE; AND~~

23           (2)     ~~ATTACH A COPY OF THE DEPARTMENT'S CERTIFICATION OF THE~~  
24 ~~APPROVED CREDIT AMOUNT TO THE AMENDED STATE INCOME TAX RETURN.~~

25          (H)     ~~IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR~~  
26 ~~EXCEEDS THE STATE TAX LIABILITY FOR THAT TAXABLE YEAR, A QUALIFIED~~  
27 ~~INVESTOR OR A PARTNER IN A QUALIFIED MARYLAND VENTURE CAPITAL FIRM MAY~~  
28 ~~APPLY THE EXCESS AS A CREDIT AGAINST THE STATE TAX LIABILITY FOR~~  
29 ~~SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:~~

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

31           (2)     ~~THE EXPIRATION OF THE FIFTH TAXABLE YEAR AFTER THE~~  
32 ~~TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.~~

33          (1)     (1)     (1)     ~~ON OR BEFORE APRIL 30TH OF EACH YEAR, A QUALIFIED~~  
34 ~~MARYLAND VENTURE CAPITAL FIRM SHALL:~~



1 ~~1. HAVE AN AUDIT PERFORMED ON ITS FINANCIAL~~  
2 ~~STATEMENTS FOR THE PRECEDING CALENDAR YEAR BY A FIRM OF CERTIFIED~~  
3 ~~PUBLIC ACCOUNTANTS LICENSED TO PRACTICE IN THE STATE; AND~~

4 ~~2. PROVIDE A COPY OF THE AUDIT TO THE DEPARTMENT.~~

5 ~~(H) THE AUDIT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS~~  
6 ~~PARAGRAPH SHALL INCLUDE A DETERMINATION OF WHETHER PROFITS PRODUCING~~  
7 ~~AN INTERNAL RATE OF RETURN OF 10% HAVE BEEN EARNED ON INVESTMENTS~~  
8 ~~MADE BY THE QUALIFIED MARYLAND VENTURE CAPITAL FIRM THAT THE QUALIFIED~~  
9 ~~MARYLAND VENTURE CAPITAL FIRM CLAIMED CREDITS UNDER THIS SECTION.~~

10 ~~(2) WITHIN 60 DAYS FOLLOWING THE ISSUANCE OF THE AUDIT REPORT~~  
11 ~~REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A QUALIFIED MARYLAND~~  
12 ~~VENTURE CAPITAL FIRM SHALL PAY TO THE DEPARTMENT AN AMOUNT EQUAL TO~~  
13 ~~25% OF ALL PROFITS DETERMINED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION~~  
14 ~~TO BE IN EXCESS OF THE AMOUNT REQUIRED TO PRODUCE AN ANNUAL INTERNAL~~  
15 ~~RATE OF RETURN OF 10%.~~

16 ~~(F)~~ (F) (1) THE CREDIT CLAIMED UNDER THIS SECTION SHALL BE  
17 RECAPTURED AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION IF, WITHIN 2  
18 YEARS FROM THE CLOSE OF THE TAXABLE YEAR IN WHICH THE CREDIT IS  
19 APPROVED, THE QUALIFIED INVESTOR SELLS, TRANSFERS, OR OTHERWISE DISPOSES  
20 OF THE OWNERSHIP INTEREST IN THE QUALIFIED MARYLAND BIOTECHNOLOGY  
21 COMPANY THAT GAVE RISE TO THE CREDIT.

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

24 (I) THE PORTION OF THE CREDIT ATTRIBUTABLE TO THE  
25 OWNERSHIP INTEREST DISPOSED OF AS DESCRIBED IN PARAGRAPH (1) OF THIS  
26 SUBSECTION; AND

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

29 2. 67%, IF THE DISPOSITION OCCURS DURING THE FIRST  
30 YEAR AFTER THE CLOSE OF THE TAXABLE YEAR FOR WHICH THE TAX CREDIT IS  
31 APPROVED; OR

32 3. 33%, IF THE DISPOSITION OCCURS MORE THAN 1 YEAR  
33 BUT NOT MORE THAN 2 YEARS AFTER THE CLOSE OF THE TAXABLE YEAR FOR WHICH  
34 THE TAX CREDIT IS APPROVED.

35 (3) THE QUALIFIED INVESTOR OR ~~PARTNER~~ IN A QUALIFIED MARYLAND  
36 VENTURE CAPITAL FIRM THAT CLAIMED THE CREDIT SHALL PAY THE AMOUNT TO BE  
37 RECAPTURED AS DETERMINED UNDER PARAGRAPH (2) OF THIS SUBSECTION AS  
38 TAXES PAYABLE TO THE STATE FOR THE TAXABLE YEAR IN WHICH THE DISPOSITION  
39 DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION OCCURS.

1 ~~(K)~~ (G) (1) THE DEPARTMENT MAY REVOKE ITS CERTIFICATION OF AN  
2 APPROVED CREDIT UNDER THIS SECTION IF ANY REPRESENTATION IN CONNECTION  
3 WITH THE APPLICATION FOR THE CERTIFICATION PROVES TO HAVE BEEN FALSE  
4 WHEN MADE.

5 (2) THE REVOCATION MAY BE IN FULL OR IN PART AS THE DEPARTMENT  
6 MAY DETERMINE AND, SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, SHALL BE  
7 COMMUNICATED TO THE QUALIFIED INVESTOR, THE QUALIFIED MARYLAND  
8 VENTURE CAPITAL FIRM, AND THE COMPTROLLER.

9 (3) THE QUALIFIED INVESTOR OR ~~A PARTNER IN A QUALIFIED~~  
10 MARYLAND VENTURE CAPITAL FIRM SHALL HAVE AN OPPORTUNITY TO APPEAL ANY  
11 REVOCATION TO THE DEPARTMENT PRIOR TO NOTIFICATION OF THE COMPTROLLER.

12 (4) THE COMPTROLLER MAY MAKE AN ASSESSMENT AGAINST THE  
13 QUALIFIED INVESTOR OR ~~A PARTNER IN A QUALIFIED MARYLAND VENTURE CAPITAL~~  
14 FIRM TO RECAPTURE ANY AMOUNT OF TAX CREDIT THAT THE QUALIFIED INVESTOR  
15 OR ~~PARTNER IN A QUALIFIED MARYLAND VENTURE CAPITAL FIRM~~ HAS ALREADY  
16 CLAIMED.

17 ~~(L)~~ (H) (1) ON OR BEFORE JANUARY 10 OF EACH YEAR, THE DEPARTMENT  
18 SHALL REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE  
19 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY, ON THE ~~CREDITS~~ INITIAL TAX  
20 CREDIT CERTIFICATES AWARDED UNDER THIS SECTION FOR THE PRIOR CALENDAR  
21 YEAR.

22 (2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS  
23 SUBSECTION SHALL INCLUDE FOR EACH ~~CREDIT~~ INITIAL TAX CREDIT CERTIFICATE  
24 AWARDED:

25 (I) THE NAME OF THE QUALIFIED INVESTOR OR THE NAME OF THE  
26 QUALIFIED MARYLAND VENTURE CAPITAL FIRM ~~AND THE PARTNERS IN THE~~  
27 ~~QUALIFIED MARYLAND VENTURE CAPITAL FIRM~~ AND THE AMOUNT OF CREDIT  
28 AWARDED OR ALLOCATED TO EACH INVESTOR OR FIRM;

29 (II) THE NAME AND ADDRESS OF THE QUALIFIED MARYLAND  
30 BIOTECHNOLOGY COMPANY THAT RECEIVED THE INVESTMENT GIVING RISE TO THE  
31 CREDIT UNDER THIS SECTION AND THE COUNTY WHERE THE QUALIFIED MARYLAND  
32 BIOTECHNOLOGY COMPANY IS LOCATED; AND

33 (III) THE DATES OF RECEIPT AND APPROVAL BY THE ~~DIRECTOR~~  
34 DEPARTMENT OF ALL APPLICATIONS REGARDING THE CREDIT, INCLUDING  
35 APPLICATIONS FOR INITIAL TAX CREDIT CERTIFICATES.

36 (3) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS  
37 SUBSECTION SHALL SUMMARIZE FOR THE CATEGORY OF QUALIFIED INVESTORS  
38 AND QUALIFIED MARYLAND VENTURE CAPITAL FIRMS:

39 (I) THE TOTAL NUMBER OF APPLICANTS FOR ~~CREDITS~~ INITIAL TAX  
40 CREDIT CERTIFICATES UNDER THIS SECTION IN EACH CALENDAR YEAR;

1 (II) THE NUMBER OF APPLICATIONS WHICH A TAX CREDIT WAS  
2 ~~CERTIFIED FOR WHICH INITIAL TAX CREDIT CERTIFICATES WERE ISSUED~~ IN EACH  
3 CALENDAR YEAR; AND

4 (III) THE TOTAL ~~CREDITS~~ INITIAL TAX CREDIT CERTIFICATES  
5 AUTHORIZED UNDER THIS SECTION FOR ALL CALENDAR YEARS UNDER THIS  
6 SECTION.

7 ~~(M)~~ (I) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT  
8 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

9 **~~Article—Insurance~~**

10 ~~6-121.~~

11 ~~AN INSURER MAY CLAIM A CREDIT AGAINST THE PREMIUM TAX FOR~~  
12 ~~INVESTMENTS IN A QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY OR~~  
13 ~~QUALIFIED MARYLAND VENTURE CAPITAL FIRM AS PROVIDED UNDER § 10-725 OF~~  
14 ~~THE TAX GENERAL ARTICLE.~~

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 July 1, 2005, and shall be applicable to all taxable years beginning after December 31,  
17 2004.