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By: **The Speaker (By Request - Administration) and Delegates Aumann, Bartlett, Bates, Boteler, Cardin, Cluster, Cryor, Donoghue, Eckardt, Edwards, Elliott, Elmore, Frank, Gilleland, Haddaway, Hogan, Impallaria, Jameson, Jennings, Kach, Kelly, Kirk, Kohl, Krebs, Mayer, McComas, McConkey, McDonough, McKee, Miller, Morhaim, Myers, O'Donnell, Parrott, Petzold, Quinter, Shank, Shewell, Smigiel, Stocksdale, Taylor, Trueschler, Weir, Weldon, and Zirkin**

Introduced and read first time: January 25, 2006

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Business and Economic Development - Biotechnology Investment Incentive**  
3 **Act**

4 FOR the purpose of altering a certain credit allowed against the State income tax for  
5 certain investments in certain technology businesses; imposing certain  
6 eligibility restrictions for the credit; altering certain limits on the amount of  
7 credits that may be claimed by certain persons; repealing a provision making  
8 the credit refundable under certain circumstances; imposing certain limits on  
9 the amount of credits the Secretary of Business and Economic Development may  
10 certify for investments in a single business; providing that the credit may be  
11 claimed over a certain period; providing that certain unused credits may be  
12 carried forward to certain taxable years; repealing certain provisions providing  
13 for the recapture of the credit under certain circumstances; requiring certain  
14 persons to submit certain documentation, notices, and tax returns to the  
15 Department of Business and Economic Development to remain eligible to claim  
16 the credit; providing for the forfeiture of certain unclaimed credit under certain  
17 circumstances; requiring certain regulations to provide for allocation of certain  
18 available credit under certain circumstances; and generally relating to a certain  
19 tax credit for certain investments in certain technology businesses in the State.

20 BY repealing and reenacting, with amendments,  
21 Article - Tax - General  
22 Section 10-725(b), (d), and (i)  
23 Annotated Code of Maryland  
24 (2004 Replacement Volume and 2005 Supplement)

25 BY repealing  
26 Article - Tax - General

1 Section 10-725(f)  
2 Annotated Code of Maryland  
3 (2004 Replacement Volume and 2005 Supplement)

4 BY adding to  
5 Article - Tax - General  
6 Section 10-725(f)  
7 Annotated Code of Maryland  
8 (2004 Replacement Volume and 2005 Supplement)

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

11 **Article - Tax - General**

12 10-725.

13 (b) (1) Subject to PARAGRAPH (2) OF THIS SUBSECTION AND subsections (d)  
14 and (e) of this section, a qualified investor or a qualified Maryland venture capital  
15 firm may claim a credit against the State income tax in an amount equal to the final  
16 credit certificate approved by the Secretary for an investment in a qualified Maryland  
17 biotechnology company as provided under this section.

18 (2) TO BE ELIGIBLE FOR THE TAX CREDIT DESCRIBED IN PARAGRAPH (1)  
19 OF THIS SUBSECTION, THE PROSPECTIVE INVESTOR MUST NOT:

20 (I) AFTER MAKING THE PROPOSED INVESTMENT, OWN OR  
21 CONTROL MORE THAN 20% OF THE QUALIFIED MARYLAND BIOTECHNOLOGY  
22 COMPANY INTO WHICH THE INVESTMENT IS TO BE MADE; OR

23 (II) BE A FOUNDER, PRINCIPAL, DIRECTOR, OFFICER, MEMBER OF,  
24 OR GENERAL PARTNER IN, THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY.

25 (d) (1) The tax credit allowed in an initial tax credit certificate issued under  
26 this section is 50% of the investment in a qualified Maryland biotechnology company,  
27 not to exceed:

28 (i) [\$50,000] 10% OF THE TOTAL APPROPRIATIONS TO THE  
29 RESERVE FUND FOR THAT FISCAL YEAR, for a qualified investor that is an individual;

30 (ii) [\$250,000] 20% OF THE TOTAL APPROPRIATIONS TO THE  
31 RESERVE FUND FOR THAT FISCAL YEAR, for a qualified investor that is a corporation;  
32 or

33 (iii) [\$250,000] 20% OF THE TOTAL APPROPRIATIONS TO THE  
34 RESERVE FUND FOR THAT FISCAL YEAR, for a qualified Maryland venture capital  
35 firm.

1           (2)     [If the tax credit allowed under this section in any taxable year  
2 exceeds the total tax otherwise payable by the qualified investor or qualified  
3 Maryland venture capital firm for that taxable year, the qualified investor or  
4 qualified Maryland venture capital firm may claim a refund in the amount of the  
5 excess] DURING ANY FISCAL YEAR, THE SECRETARY MAY NOT CERTIFY ELIGIBILITY  
6 FOR TAX CREDITS FOR INVESTMENTS IN A SINGLE QUALIFIED MARYLAND  
7 BIOTECHNOLOGY COMPANY THAT IN THE AGGREGATE EXCEED THE LESSER OF:

8           (I)     \$2,000,000; OR

9           (II)    20% OF THE TOTAL APPROPRIATIONS TO THE RESERVE FUND  
10 FOR THAT FISCAL YEAR.

11          (3)     THE TAX CREDIT MAY BE CLAIMED:

12           (I)     AT THE RATE OF ONE-THIRD OF THE TOTAL AMOUNT OF THE  
13 TAX CREDIT PER TAXABLE YEAR;

14           (II)    FOR A PERIOD OF 3 YEARS; AND

15           (III)   BEGINNING IN THE THIRD TAXABLE YEAR AFTER THE TAXABLE  
16 YEAR IN WHICH THE INVESTMENT WAS MADE.

17          (4)     IF THE TAX CREDIT ALLOWED FOR ANY TAXABLE YEAR EXCEEDS  
18 THE TOTAL TAX OTHERWISE DUE FROM THE QUALIFIED INVESTOR OR QUALIFIED  
19 MARYLAND VENTURE CAPITAL FIRM FOR THAT TAXABLE YEAR, THE QUALIFIED  
20 INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM MAY APPLY THE  
21 EXCESS AS A TAX CREDIT FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

22           (I)     THE FULL AMOUNT OF THE EXCESS TAX CREDIT BEING USED;  
23 OR

24           (II)    THE EXPIRATION OF THE EIGHTH TAXABLE YEAR AFTER THE  
25 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.

26     [(f)   (1)     The credit claimed under this section shall be recaptured as provided  
27 in paragraph (2) of this subsection if, within 2 years from the close of the taxable year  
28 in which the credit is approved, the qualified investor sells, transfers, or otherwise  
29 disposes of the ownership interest in the qualified Maryland biotechnology company  
30 that gave rise to the credit.

31           (2)     The amount required to be recaptured under this subsection is the  
32 product of multiplying:

33           (i)     the portion of the credit attributable to the ownership interest  
34 disposed of as described in paragraph (1) of this subsection; and

35           (ii)    1.     100%, if the disposition occurs during the taxable year in  
36 which the tax credit is approved;

1                                    2.            67%, if the disposition occurs during the first year after  
2 the close of the taxable year for which the tax credit is approved; or

3                                    3.            33%, if the disposition occurs more than 1 year but not  
4 more than 2 years after the close of the taxable year for which the tax credit is  
5 approved.

6                    (3)            The qualified investor or a qualified Maryland venture capital firm  
7 that claimed the credit shall pay the amount to be recaptured as determined under  
8 paragraph (2) of this subsection as taxes payable to the State for the taxable year in  
9 which the disposition described under paragraph (1) of this subsection occurs.]

10    (F)        (1)            TO REMAIN ELIGIBLE TO CLAIM THE TAX CREDIT, THE QUALIFIED  
11 INVESTOR OR A QUALIFIED MARYLAND VENTURE CAPITAL FIRM MUST SUBMIT TO  
12 THE DEPARTMENT, UNTIL THE TAXABLE YEAR AFTER THE ENTIRE AMOUNT OF THE  
13 CREDIT THAT IS ELIGIBLE TO BE CLAIMED HAS BEEN CLAIMED:

14                    (I)            BEGINNING IN THE TAXABLE YEAR IN WHICH THE  
15 INVESTMENT IS MADE, ANNUAL DOCUMENTATION SATISFACTORY TO THE  
16 DEPARTMENT THAT THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY IS  
17 STILL OPERATING AS AN ACTIVE BUSINESS, TO BE RECEIVED BY THE DEPARTMENT  
18 ON OR BEFORE JUNE 30 OF EACH YEAR;

19                    (II)          IMMEDIATE NOTICE OF ANY INFORMATION RECEIVED BY THE  
20 QUALIFIED INVESTOR OR THE QUALIFIED MARYLAND VENTURE CAPITAL FIRM  
21 INDICATING THAT THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY HAS  
22 CEASED OPERATING AS AN ACTIVE BUSINESS; AND

23                    (III)        A COPY OF ANY TAX RETURN ON WHICH ANY PORTION OF THE  
24 TAX CREDIT IS CLAIMED.

25                    (2)            IF THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY CEASES  
26 OPERATING AS AN ACTIVE BUSINESS, THE QUALIFIED INVESTOR OR THE QUALIFIED  
27 MARYLAND VENTURE CAPITAL FIRM SHALL FORFEIT ALL UNCLAIMED PORTIONS OF  
28 THE TAX CREDIT.

29    (i)        (1)            The Department and the Comptroller jointly shall adopt regulations  
30 to carry out the provisions of this section.

31                    (2)            THE REGULATIONS SHALL PROVIDE FOR A PROCESS TO ALLOCATE  
32 THE AVAILABLE TAX CREDIT IN A FISCAL YEAR WHEN:

33                    (I)            QUALIFIED INVESTORS AND QUALIFIED MARYLAND VENTURE  
34 CAPITAL FIRMS WHO APPLY AT THE SAME TIME, FOR EXAMPLE IN A SYNDICATION,  
35 AND ARE TOGETHER ELIGIBLE FOR AN AMOUNT OF TAX CREDIT THAT EXCEEDS THE  
36 AMOUNT OF THE APPROPRIATIONS TO THE RESERVE FUND FOR THAT FISCAL; AND

37                    (II)        TAX CREDITS BECOME AVAILABLE BECAUSE AN APPLICANT IS  
38 NO LONGER ELIGIBLE FOR THE CREDITS FOR WHICH THE APPLICANT WAS  
39 CERTIFIED.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
2 effect July 1, 2006.