
By: **The Speaker (By Request - Administration) and Delegate Feldman**

Introduced and read first time: February 20, 2006

Assigned to: Rules and Executive Nominations

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 the
7 credit that may be claimed by certain persons; repealing a provision making the
8 credit refundable under certain circumstances; imposing certain limits on the
9 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 credit may be
12 carried forward to certain taxable years; altering certain provisions providing
13 for the recapture of the credit under certain circumstances; requiring certain
14 persons to submit certain information to the Department of Business and
15 Economic Development to remain eligible to claim the credit; requiring certain
16 regulations to provide for allocation of certain available credit under certain
17 circumstances; altering certain definitions; and generally relating to a certain
18 tax credit for certain investments in certain technology businesses in the State.

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

24 BY repealing
25 Article - Tax - General
26 Section 10-725(f)
27 Annotated Code of Maryland
28 (2004 Replacement Volume and 2005 Supplement)

29 BY adding to
30 Article - Tax - General
31 Section 10-725(f)

1 Annotated Code of Maryland
2 (2004 Replacement Volume and 2005 Supplement)

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

5 **Article - Tax - General**

6 10-725.

7 (a) (1) In this section the following words have the meanings indicated.

8 (2) "Biotechnology company" means a company organized for profit that
9 is primarily engaged in the research, development, or commercialization of innovative
10 and proprietary technology that comprises, interacts with, or analyzes biological
11 material including biomolecules (DNA, RNA, or protein), cells, tissues, or organs.

12 (3) "Department" means the Department of Business and Economic
13 Development.

14 (4) (i) "Investment" means the [contribution of property] PROVISION
15 OF FUNDS, at a risk of loss, to a qualified [company in exchange for stock, a
16 partnership interest, or other ownership interest in the qualified company]
17 MARYLAND BIOTECHNOLOGY COMPANY TO FINANCE THE OPERATIONS OR A
18 PORTION OF THE OPERATIONS OF THE QUALIFIED MARYLAND BIOTECHNOLOGY
19 COMPANY.

20 (ii) For purposes of this section, an investment is at risk of loss
21 when its repayment entirely depends upon the success of the business operations of
22 the qualified MARYLAND BIOTECHNOLOGY company.

23 (5) (I) "Qualified investor" means an investor that is:

24 [(i)] 1. an individual that invests at least \$25,000 in a qualified
25 Maryland biotechnology company; or

26 [(ii)] 2. a corporation CERTIFIED BY THE DEPARTMENT that
27 invests at least \$250,000 in a qualified Maryland biotechnology company.

28 (II) "QUALIFIED INVESTOR" DOES NOT INCLUDE:

29 1. AN OFFICER, DIRECTOR, OR MANAGER OF THE QUALIFIED
30 MARYLAND BIOTECHNOLOGY COMPANY;

31 2. AN INDIVIDUAL OR CORPORATION THAT, DIRECTLY OR
32 INDIRECTLY, HOLDS OR CONTROLS AN OWNERSHIP INTEREST OF 25% OR MORE IN
33 THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY; OR

1 3. A PERSON RELATED, WITHIN THE MEANING OF § 267(B) OF
2 THE INTERNAL REVENUE CODE, TO AN INDIVIDUAL OR CORPORATION DESCRIBED IN
3 ITEM 1 OR 2 OF THIS SUBPARAGRAPH.

4 (6) "Qualified Maryland biotechnology company" means a biotechnology
5 company that:

6 (i) has its headquarters and base of operations in this State;

7 (ii) has fewer than 50 full-time employees;

8 (iii) has been in active business no longer than 10 years; and

9 (iv) has been certified as a biotechnology company by the
10 Department.

11 (7) "Qualified Maryland venture capital firm" means an entity that:

12 (i) is organized for the purpose of investing funds in privately held
13 companies engaged in the research, development, or commercialization of innovative
14 and proprietary technology;

15 (ii) has at least two principals that each have at least 5 years of
16 venture capital experience; AND

17 (iii) has at least 1 year of experience investing in biotechnology or
18 biopharmaceutical companies[]; and

19 (iv) has its principal place of operations in this State].

20 (b) (1) Subject to PARAGRAPH (2) OF THIS SUBSECTION AND subsections (d)
21 and (e) of this section, a qualified investor or a qualified Maryland venture capital
22 firm may claim a credit against the State income tax in an amount equal to the final
23 credit certificate approved by the Secretary for an investment in a qualified Maryland
24 biotechnology company as provided under this section. THE CREDITS AUTHORIZED BY
25 THIS SECTION ARE EARNED AND VESTED AT THE TIME OF THE INVESTMENT IN THE
26 QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY BY A QUALIFIED INVESTOR OR
27 QUALIFIED MARYLAND VENTURE CAPITAL FIRM. IN THE CASE OF A QUALIFIED
28 MARYLAND VENTURE CAPITAL FIRM THAT IS A PARTNERSHIP, LIMITED LIABILITY
29 COMPANY, OR ANY OTHER PASS-THROUGH ENTITY, ANY CREDITS CLAIMED BY THE
30 QUALIFIED MARYLAND VENTURE CAPITAL FIRM UNDER THIS SUBSECTION SHALL
31 BE ALLOCATED TO THE PARTNERS OR MEMBERS OF THE FIRM IN ACCORDANCE WITH
32 THE ORGANIZATION DOCUMENTS OF FIRM AND CLAIMED DIRECTLY BY THE
33 PARTNERS OR MEMBERS.

34 (2) TO BE ELIGIBLE FOR THE TAX CREDIT DESCRIBED IN PARAGRAPH (1)
35 OF THIS SUBSECTION, THE PROSPECTIVE INVESTOR MAY NOT, AFTER MAKING THE
36 PROPOSED INVESTMENT, OWN OR CONTROL MORE THAN 20% OF THE QUALIFIED
37 MARYLAND BIOTECHNOLOGY COMPANY IN WHICH THE INVESTMENT IS TO BE MADE.

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

4 (i) [\$50,000] THE LESSER OF \$100,000 OR 10% OF THE TOTAL
5 APPROPRIATIONS TO THE RESERVE FUND FOR THAT FISCAL YEAR, for a qualified
6 investor that is an individual;

7 (ii) [\$250,000] THE LESSER OF \$500,000 OR 20% OF THE TOTAL
8 APPROPRIATIONS TO THE RESERVE FUND FOR THAT FISCAL YEAR, for a qualified
9 investor that is a corporation; or

10 (iii) [\$250,000] THE LESSER OF \$1,000,000 OR 20% OF THE TOTAL
11 APPROPRIATIONS TO THE RESERVE FUND FOR THAT FISCAL YEAR, for a qualified
12 Maryland venture capital firm.

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

20 (I) \$2,000,000; OR

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

23 (3) THE TAX CREDIT MAY BE CLAIMED:

24 (I) BEGINNING IN THE SECOND TAXABLE YEAR AFTER THE
25 TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE;

26 (II) AT THE RATE OF ONE-THIRD OF THE TOTAL AMOUNT OF THE
27 TAX CREDIT PER TAXABLE YEAR; AND

28 (III) FOR A PERIOD OF 3 YEARS.

29 (4) IF THE TAX CREDIT ALLOWED FOR ANY TAXABLE YEAR EXCEEDS
30 THE TOTAL TAX OTHERWISE DUE FROM THE QUALIFIED INVESTOR OR QUALIFIED
31 MARYLAND VENTURE CAPITAL FIRM FOR THAT TAXABLE YEAR, THE QUALIFIED
32 INVESTOR OR QUALIFIED MARYLAND VENTURE CAPITAL FIRM MAY APPLY THE
33 EXCESS AS A TAX CREDIT FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

34 (I) THE FULL AMOUNT OF THE EXCESS TAX CREDIT BEING USED;
35 OR

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

1 (5) (I) AGGREGATE INVESTMENTS BY ANY ONE QUALIFIED INVESTOR
2 OR QUALIFIED VENTURE CAPITAL FIRM MAY NOT ACCOUNT FOR MORE THAN THE
3 GREATER OF \$2,000,000 OR 20% OF THE TOTAL CREDITS APPROVED BY THE
4 DEPARTMENT IN ANY FISCAL YEAR.

5 (II) THE DEPARTMENT MAY ALLOCATE ADDITIONAL
6 UNSUBSCRIBED CREDITS TO ANY ONE QUALIFIED INVESTOR OR QUALIFIED
7 VENTURE CHARTER FIRM AS PRESCRIBED BY REGULATION.

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

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

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

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

19 2. 67%, if the disposition occurs during the first year after
20 the close of the taxable year for which the tax credit is approved; or

21 3. 33%, if the disposition occurs more than 1 year but not
22 more than 2 years after the close of the taxable year for which the tax credit is
23 approved.

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

28 (F) UNTIL THE TAXABLE YEAR AFTER THE ENTIRE AMOUNT OF THE CREDIT
29 ALLOCATED TO THE QUALIFIED INVESTOR OR QUALIFIED MARYLAND VENTURE
30 CAPITAL FIRM HAS BEEN CLAIMED, THE CREDIT EARNED UNDER THIS SECTION MAY
31 BE SUBJECT TO RECAPTURE BY THE DEPARTMENT IF THE QUALIFIED INVESTOR OR
32 QUALIFIED MARYLAND VENTURE CAPITAL FIRM FAILS TO SUBMIT TO THE
33 DEPARTMENT INFORMATION WITH RESPECT TO AN INVESTMENT AND REGARDING
34 THE CONTINUING OPERATIONS OF THE QUALIFIED MARYLAND BIOTECHNOLOGY
35 COMPANY.

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

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

1 (I) QUALIFIED INVESTORS AND QUALIFIED MARYLAND VENTURE
2 CAPITAL FIRMS WHO APPLY AT THE SAME TIME, AS IN A SYNDICATION, AND ARE
3 TOGETHER ELIGIBLE FOR AN AMOUNT OF TAX CREDIT THAT EXCEEDS THE AMOUNT
4 OF THE APPROPRIATIONS TO THE RESERVE FUND FOR THAT FISCAL YEAR; AND

5 (II) THE TAX CREDIT BECOMES AVAILABLE BECAUSE AN
6 APPLICANT IS NO LONGER ELIGIBLE FOR THE CREDITS FOR WHICH THE APPLICANT
7 WAS CERTIFIED.

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