

SENATE BILL 976

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By: **Chair, Budget and Taxation Committee (By Request – Departmental – Business and Economic Development)**

Introduced and read first time: March 1, 2007

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of altering certain eligibility criteria and requirements for claiming a
5 certain State income tax credit for certain investments in certain technology
6 businesses; limiting the aggregate credits that may be certified for investments
7 in a single company for any fiscal year to a certain percentage of the total
8 appropriation to a certain reserve fund for that fiscal year; altering the method
9 of claiming the credit; defining certain terms; authorizing certain regulations;
10 providing for the application of this Act; and generally relating to certain tax
11 credits for investments in certain technology businesses in the State.

12 BY repealing and reenacting, with amendments,
13 Article – Tax – General
14 Section 10–725(a), (b), (c), (d), (f), (g), and (i)
15 Annotated Code of Maryland
16 (2004 Replacement Volume and 2006 Supplement)

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

19 **Article – Tax – General**

20 10–725.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (2) “Biotechnology company” means a company organized for profit
3 that is primarily engaged in the research, development, or commercialization of
4 innovative and proprietary technology that comprises, interacts with, or analyzes
5 biological material including biomolecules (DNA, RNA, or protein), cells, tissues, or
6 organs.

7 (3) (I) **“COMPANY” MEANS ANY ENTITY OF ANY FORM DULY**
8 **ORGANIZED AND EXISTING UNDER THE LAWS OF ANY JURISDICTION FOR THE**
9 **PURPOSE OF CONDUCTING BUSINESS FOR PROFIT.**

10 (II) **“COMPANY” DOES NOT INCLUDE A SOLE**
11 **PROPRIETORSHIP.**

12 [(3)] (4) “Department” means the Department of Business and
13 Economic Development.

14 [(4)] (5) (i) “Investment” means the contribution of [property]
15 **MONEY IN CASH OR CASH EQUIVALENTS EXPRESSED IN UNITED STATES**
16 **DOLLARS**, at a risk of loss, to a [qualified company] **QUALIFIED MARYLAND**
17 **BIOTECHNOLOGY COMPANY** in exchange for stock, a partnership **OR MEMBERSHIP**
18 interest, or other ownership interest in the [qualified company] **EQUITY OF THE**
19 **QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY, TITLE TO WHICH**
20 **OWNERSHIP INTEREST SHALL VEST IN THE QUALIFIED INVESTOR.**

21 (II) **“INVESTMENT” DOES NOT INCLUDE DEBT OR DEBT**
22 **SECURITIES CONVERTIBLE INTO STOCK OR OTHER EQUITY INTERESTS.**

23 [(ii)] (III) For purposes of this section, an investment is at risk
24 of loss when its repayment entirely depends upon the success of the business
25 operations of the qualified company.

26 [(5)] (6) (I) “Qualified investor” means an investor that is:

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

29 [(ii)] 2. a [corporation] **COMPANY** that invests at least
30 \$250,000 in a qualified Maryland biotechnology company.

1 **(II) “QUALIFIED INVESTOR” DOES NOT INCLUDE A**
2 **QUALIFIED PENSION PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER**
3 **QUALIFIED RETIREMENT PLAN UNDER THE EMPLOYEE RETIREMENT INCOME**
4 **SECURITY ACT OF 1974, AS AMENDED, OR FIDUCIARIES OR CUSTODIANS UNDER**
5 **THOSE PLANS, OR SIMILAR TAX-FAVORED PLANS OR ENTITIES UNDER THE LAWS**
6 **OF OTHER COUNTRIES.**

7 **[(6)] (7) “Qualified Maryland biotechnology company” means a**
8 **biotechnology company that:**

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

10 (ii) has fewer than 50 full time employees;

11 (iii) [has been in active business no longer than 10 years; and]
12 **HAS BEEN IN EXISTENCE UNDER THE LAWS OF THE JURISDICTION IN WHICH IT**
13 **IS ORGANIZED FOR NOT LONGER THAN 6 YEARS, INCLUDING THE TIME OF**
14 **EXISTENCE OF ANY ENTITY THAT IS A DIRECT OR INDIRECT ORGANIZATIONAL**
15 **PREDECESSOR OF THE COMPANY BY WAY OF MERGER, CONSOLIDATION,**
16 **SPIN-OFF, REINCORPORATION, OR ANY OTHER FORM OF REORGANIZATION OR**
17 **COMBINATION;**

18 **(IV) DOES NOT HAVE ITS SECURITIES PUBLICLY TRADED ON**
19 **ANY EXCHANGE; AND**

20 **[(iv)] (V) has been certified as a biotechnology company by the**
21 **Department.**

22 **[(7) “Qualified Maryland venture capital firm” means an entity that:**

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

26 (ii) has at least two principals that each have at least 5 years of
27 venture capital experience;

28 (iii) has at least 1 year of experience investing in biotechnology
29 or biopharmaceutical companies; and

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

1 (b) **(1)** Subject to **PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AND**
2 subsections (d) and (e) of this section, a qualified investor [or a qualified Maryland
3 venture capital firm] may claim a credit against the State income tax in an amount
4 equal to the **AMOUNT OF TAX CREDIT STATED IN THE** final credit certificate
5 approved by the Secretary for an investment in a qualified Maryland biotechnology
6 company as provided under this section.

7 **(2) TO BE ELIGIBLE FOR THE TAX CREDIT DESCRIBED IN**
8 **PARAGRAPH (1) OF THIS SUBSECTION:**

9 **(I) A QUALIFIED INVESTOR SHALL BE:**

10 **1. CURRENT IN THE PAYMENT OF ALL TAX**
11 **OBLIGATIONS TO THE STATE OR ANY UNIT OR SUBDIVISION OF THE STATE; AND**

12 **2. NOT IN DEFAULT UNDER THE TERMS OF ANY**
13 **CONTRACT WITH, INDEBTEDNESS TO, OR GRANT FROM, THE STATE OR ANY UNIT**
14 **OR SUBDIVISION OF THE STATE; AND**

15 **(II) A QUALIFIED INVESTOR THAT IS A COMPANY SHALL BE:**

16 **1. DULY ORGANIZED AND IN GOOD STANDING IN THE**
17 **JURISDICTION UNDER THE LAWS OF WHICH IT IS ORGANIZED; AND**

18 **2. IN GOOD STANDING AND AUTHORIZED OR**
19 **REGISTERED TO DO BUSINESS IN THE STATE.**

20 **(3) TO BE ELIGIBLE FOR THE TAX CREDIT DESCRIBED IN**
21 **PARAGRAPH (1) OF THIS SUBSECTION, THE QUALIFIED INVESTOR MAY NOT:**

22 **(I) AFTER MAKING THE PROPOSED INVESTMENT, OWN OR**
23 **CONTROL MORE THAN 25% OF THE EQUITY INTERESTS IN THE QUALIFIED**
24 **MARYLAND BIOTECHNOLOGY COMPANY IN WHICH THE INVESTMENT IS TO BE**
25 **MADE; OR**

26 **(II) BEFORE MAKING THE PROPOSED INVESTMENT, BE:**

27 **1. A FOUNDER, SHAREHOLDER, PRINCIPAL,**
28 **DIRECTOR, OFFICER, MEMBER, OR GENERAL PARTNER OF, OR OWNER OF AN**

1 **EQUITY INTEREST IN, THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY;**
2 **OR**

3 **2. A PARENT, SPOUSE, OR CHILD OF ANY PERSON**
4 **DESCRIBED IN ITEM 1 OF THIS ITEM.**

5 (c) (1) At least 30 days prior to making an investment in a qualified
6 Maryland biotechnology company for which a qualified investor [or qualified Maryland
7 venture capital firm] would be eligible for an initial tax credit certificate under
8 subsection (b) of this section, the qualified investor [or qualified Maryland venture
9 capital firm] shall submit an application to the Department.

10 (2) The Department shall:

11 (i) approve all applications that qualify for credits under this
12 section on a first come first served basis; and

13 (ii) within 30 days of receipt of an application, certify the
14 amount of any approved tax credits to a qualified investor [or qualified Maryland
15 venture capital firm].

16 (3) (i) After the **DATE ON WHICH THE** Department [has issued]
17 **ISSUES** an initial tax credit certificate under this section, a qualified investor [or
18 qualified Maryland venture capital firm] shall have 30 **CALENDAR** days to make an
19 investment in a qualified Maryland biotechnology company under this section.

20 (ii) Within 10 [days of making an investment in a qualified
21 Maryland biotechnology company, a] **CALENDAR DAYS AFTER THE DATE ON WHICH**
22 **A QUALIFIED INVESTOR MAKES THE INVESTMENT, THE** qualified investor [or
23 qualified Maryland venture capital firm] shall provide **TO THE DEPARTMENT** notice
24 [to the Department] **AND PROOF OF THE MAKING OF THE INVESTMENT,**
25 **INCLUDING:**

26 **1. THE DATE OF THE INVESTMENT;**

27 **2. THE AMOUNT INVESTED;**

28 **3. PROOF OF THE RECEIPT OF THE INVESTED FUNDS**
29 **BY THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY;**

1 **4. A COMPLETE DESCRIPTION OF THE NATURE OF**
2 **THE OWNERSHIP INTEREST IN THE EQUITY OF THE QUALIFIED MARYLAND**
3 **BIOTECHNOLOGY COMPANY ACQUIRED IN CONSIDERATION OF THE**
4 **INVESTMENT;**

5 **5. PROOF THAT TITLE TO THAT OWNERSHIP**
6 **INTEREST WILL HAVE VESTED IN THE QUALIFIED INVESTOR; AND**

7 **6. ANY SUPPORTING DOCUMENTATION THE**
8 **DEPARTMENT MAY REQUIRE.**

9 (iii) If a qualified investor [or qualified Maryland venture capital
10 firm] does not provide the notice **AND PROOF OF THE MAKING OF THE INVESTMENT**
11 required in subparagraph (ii) of this paragraph within [30 days] **40 CALENDAR DAYS**
12 after the [issuance of] **DATE ON WHICH THE DEPARTMENT ISSUES** an initial tax
13 credit certificate under this section[,]:

14 **1. the Department shall rescind the INITIAL TAX**
15 **CREDIT certificate; AND**

16 **2. THE CREDIT AMOUNT ALLOCATED TO THE**
17 **RESCINDED CERTIFICATE SHALL REVERT TO THE BIOTECHNOLOGY**
18 **INVESTMENT TAX CREDIT RESERVE FUND AND SHALL BE AVAILABLE IN THE**
19 **APPLICABLE FISCAL YEAR FOR ALLOCATION BY THE DEPARTMENT TO OTHER**
20 **INITIAL TAX CREDIT CERTIFICATES IN ACCORDANCE WITH THE PROVISIONS OF**
21 **THIS SECTION.**

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

25 (i) \$50,000 for a qualified investor that is an individual; **OR**

26 (ii) \$250,000 for a qualified investor that is a [corporation]
27 **COMPANY [; or**

28 (iii) \$250,000 for a qualified Maryland venture capital firm].

29 **(2) DURING ANY FISCAL YEAR, THE SECRETARY MAY NOT**
30 **CERTIFY ELIGIBILITY FOR TAX CREDITS FOR INVESTMENTS IN A SINGLE**

1 **QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY THAT IN THE AGGREGATE**
2 **EXCEED 15% OF THE TOTAL APPROPRIATIONS TO THE RESERVE FUND FOR**
3 **THAT FISCAL YEAR.**

4 **(3) THE TAX CREDIT MAY BE CLAIMED:**

5 **(I) AT THE RATE OF ONE-HALF OF THE TOTAL AMOUNT OF**
6 **THE TAX CREDIT PER TAXABLE YEAR;**

7 **(II) IN 2 SUCCESSIVE TAXABLE YEARS OF THE QUALIFIED**
8 **INVESTOR; AND**

9 **(III) BEGINNING IN THE SECOND TAXABLE YEAR AFTER THE**
10 **TAXABLE YEAR IN WHICH THE INVESTMENT WAS MADE.**

11 **[(2)] (4) [If] SUBJECT TO THE LIMITATIONS SET FORTH IN**
12 **PARAGRAPH (3) OF THIS SUBSECTION, IF** the tax credit allowed under this section
13 in any taxable year exceeds the total tax otherwise payable by the qualified investor
14 [or qualified Maryland venture capital firm] for that taxable year, the qualified
15 investor [or qualified Maryland venture capital firm] may claim a refund in the
16 amount of the excess.

17 (f) [(1) The credit claimed under this section shall be recaptured as
18 provided in paragraph (2) of this subsection if, within 2 years from the close of the
19 taxable year in which the credit is approved, the qualified investor sells, transfers, or
20 otherwise disposes 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 subsection is the
23 product of multiplying:

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

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

28 2. 67%, if the disposition occurs during the first year
29 after the close of the taxable year for which the tax credit is approved; or

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

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

8 **(1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
9 **SUBSECTION, IF, BEFORE THE END OF THE SECOND TAXABLE YEAR AFTER THE**
10 **TAXABLE YEAR IN WHICH THE INVESTMENT IS MADE, THE QUALIFIED INVESTOR**
11 **SELLS, TRANSFERS, OR OTHERWISE DISPOSES OF ANY OF ITS OWNERSHIP**
12 **INTEREST IN THE EQUITY OF THE QUALIFIED MARYLAND BIOTECHNOLOGY**
13 **COMPANY ACQUIRED IN CONSIDERATION OF THE INVESTMENT:**

14 **(I) THE QUALIFIED INVESTOR SHALL FORFEIT ALL OF THE**
15 **UNCLAIMED TAX CREDIT OUTSTANDING AT THE DATE OF THE SALE, TRANSFER,**
16 **OR OTHER DISPOSITION OF THE OWNERSHIP INTEREST; AND**

17 **(II) ANY AMOUNT OF TAX CREDIT CLAIMED BEFORE THE**
18 **SALE, TRANSFER, OR OTHER DISPOSITION SHALL BE RECAPTURED AS**
19 **PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION.**

20 **(2) ANY AMOUNT OF TAX CREDIT THAT IS SUBJECT TO**
21 **RECAPTURE UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE COLLECTED**
22 **FROM THE QUALIFIED INVESTOR AS:**

23 **(I) TAXES PAYABLE TO THE STATE FOR THE TAXABLE YEAR**
24 **IN WHICH THE SALE, DISPOSITION, OR OTHER TRANSFER DESCRIBED UNDER**
25 **PARAGRAPH (1) OF THIS SUBSECTION OCCURS; OR**

26 **(II) AN ASSESSMENT BY THE COMPTROLLER AGAINST THE**
27 **QUALIFIED INVESTOR.**

28 **(3) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO:**

29 **(I) A TRANSFER OF THE OWNERSHIP INTEREST IN THE**
30 **EQUITY OF THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY BY TESTATE**

1 OR INTESTATE SUCCESSION, OR UNDER THE TERMS OF AN INTERVIVOS TRUST,
2 BY REASON OF THE DEATH OF THE QUALIFIED INVESTOR; OR

3 (II) A TRANSFER OF THE OWNERSHIP INTEREST IN THE
4 EQUITY OF THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY IN
5 EXCHANGE SOLELY FOR THE SECURITIES OF AN ENTITY ACQUIRING AN
6 INTEREST AMOUNTING TO 80% OR MORE OF THE OUTSTANDING EQUITY
7 INTERESTS IN THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY.

8 (4) IF THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY
9 CEASES TO OPERATE AS AN ACTIVE BUSINESS AS DETERMINED BY THE
10 DEPARTMENT, AT ANY TIME BEFORE THE END OF THE SECOND TAXABLE YEAR
11 AFTER THE TAXABLE YEAR IN WHICH THE INVESTMENT IS MADE, THE
12 QUALIFIED INVESTOR SHALL FORFEIT ALL OF THE UNCLAIMED TAX CREDIT
13 OUTSTANDING AT THE DATE ON WHICH THE DEPARTMENT DETERMINES THAT
14 THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY CEASED TO OPERATE
15 AS AN ACTIVE BUSINESS.

16 (5) TO REMAIN ELIGIBLE TO CLAIM THE TAX CREDIT, THE
17 QUALIFIED INVESTOR MUST SUBMIT TO THE DEPARTMENT THE FOLLOWING
18 DOCUMENTATION, BEGINNING IN THE TAXABLE YEAR IN WHICH THE
19 INVESTMENT IS MADE UNTIL THE END OF THE TAXABLE YEAR IN WHICH THE
20 ENTIRE AMOUNT OF THE CREDIT HAS BEEN CLAIMED, IN FORM AND SUBSTANCE
21 SATISFACTORY TO THE DEPARTMENT:

22 (I) EVIDENCE THAT THE QUALIFIED MARYLAND
23 BIOTECHNOLOGY COMPANY IS STILL OPERATING AS AN ACTIVE BUSINESS, TO
24 BE RECEIVED BY THE DEPARTMENT ANNUALLY, BY A DATE TO BE PRESCRIBED
25 BY THE DEPARTMENT;

26 (II) EVIDENCE THAT THE QUALIFIED INVESTOR CONTINUES
27 TO HOLD THE EQUITY OWNERSHIP INTEREST IN THE QUALIFIED MARYLAND
28 BIOTECHNOLOGY COMPANY ACQUIRED IN CONSIDERATION OF THE
29 INVESTMENT, TO BE RECEIVED BY THE DEPARTMENT ANNUALLY, BY A DATE TO
30 BE PRESCRIBED BY THE DEPARTMENT; AND

31 (III) IMMEDIATE NOTICE OF ANY INFORMATION RECEIVED
32 BY THE QUALIFIED INVESTOR INDICATING THAT THE QUALIFIED MARYLAND
33 BIOTECHNOLOGY COMPANY HAS CEASED OPERATING AS AN ACTIVE BUSINESS.

1 (g) (1) The Department may revoke its **INITIAL OR FINAL** certification of
2 an approved credit under this section if any representation in connection with the
3 application for the certification [proves] **IS DETERMINED BY THE DEPARTMENT** to
4 have been false when made.

5 (2) The revocation may be in full or in part as the Department may
6 determine and, subject to paragraph (3) of this subsection, shall be communicated to
7 the qualified investor[, the qualified Maryland venture capital firm,] and the
8 Comptroller.

9 (3) The qualified investor [or a qualified Maryland venture capital
10 firm] shall have an opportunity to appeal any revocation to the [Department]
11 **SECRETARY** prior to notification of the Comptroller.

12 (4) The Comptroller may make an assessment against the qualified
13 investor [or a qualified Maryland venture capital firm] to recapture any amount of tax
14 credit that the qualified investor or a qualified Maryland venture capital firm has
15 already claimed.

16 (i) The Department and the Comptroller jointly shall adopt regulations to
17 carry out the provisions of this section **AND TO SPECIFY CRITERIA AND**
18 **PROCEDURES FOR APPLICATION FOR, APPROVAL OF, AND MONITORING**
19 **CONTINUING ELIGIBILITY FOR, THE TAX CREDIT UNDER THIS SECTION.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 July 1, 2007, and shall be applicable to all taxable years beginning after December 31,
22 2007.