

SENATE BILL 1151

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CF 8lr3922

By: **Senator King**

Introduced and read first time: February 19, 2018

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax – Biotechnology Investment Incentive Tax Credit – Alteration**

3 FOR the purpose of altering the definition of “qualified Maryland biotechnology company”
4 to repeal certain limitations on the period of time for which a company may have
5 been in active business for purposes of eligibility for the biotechnology tax credit;
6 declaring the intent of the General Assembly; altering a certain limitation on the
7 aggregate credits that the Secretary of Commerce may certify for investments in a
8 single company for any fiscal year; prohibiting the Secretary of Commerce from
9 certifying investments in a single company for which the aggregate credits certified
10 for investments in the company exceed a certain amount; providing for the
11 application of this Act; and generally relating to credits against the State income tax
12 for investments in biotechnology companies.

13 BY repealing and reenacting, with amendments,
14 Article – Tax – General
15 Section 10–725
16 Annotated Code of Maryland
17 (2016 Replacement Volume and 2017 Supplement)

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

20 **Article – Tax – General**

21 10–725.

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

23 (2) “Biotechnology company” means a company organized for profit that is
24 primarily engaged in, or within 2 months will be primarily engaged in, the research,
25 development, or commercialization of innovative and proprietary technology that

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 comprises, interacts with, or analyzes biological material including biomolecules (DNA,
2 RNA, or protein), cells, tissues, or organs.

3 (3) (i) “Company” means any entity of any form duly organized and
4 existing under the laws of any jurisdiction for the purpose of conducting business for profit.

5 (ii) “Company” does not include a sole proprietorship.

6 (4) “Department” means the Department of Commerce.

7 (5) (i) “Investment” means the contribution of money in cash or cash
8 equivalents expressed in United States dollars, at a risk of loss, to a qualified Maryland
9 biotechnology company in exchange for stock, a partnership or membership interest, or
10 other ownership interest in the equity of the qualified Maryland biotechnology company,
11 title to which ownership interest shall vest in the qualified investor.

12 (ii) “Investment” does not include debt.

13 (iii) For purposes of this section, an investment is at risk of loss when
14 its repayment entirely depends upon the success of the business operations of the qualified
15 company.

16 (6) (i) “Qualified investor” means any individual or entity that invests
17 at least \$25,000 in a qualified Maryland biotechnology company and that is required to file
18 an income tax return in any jurisdiction.

19 (ii) “Qualified investor” does not include a qualified pension plan,
20 individual retirement account, or other qualified retirement plan under the Employee
21 Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under
22 such plans, or similar tax-favored plans or entities under the laws of other countries.

23 (7) (i) “Qualified Maryland biotechnology company” means a
24 biotechnology company that:

25 1. has its headquarters and base of operations in this State;

26 2. has fewer than 50 full-time employees;

27 [3. except as provided in subparagraph (ii) of this paragraph,
28 has been in active business no longer than 12 years;]

29 [4.] 3. does not have its securities publicly traded on any
30 exchange; and

31 [5.] 4. has been certified as a biotechnology company by the
32 Department.

1 (ii) “Qualified Maryland biotechnology company” includes[:

2 1. a company that has been in active business for up to 15
3 years if the Department determines that the company requires additional time to complete
4 the process of regulatory approval;

5 2. a company that has been in active business no longer than
6 12 years from the date the company first received a qualified investment under this section;
7 or

8 3.] a company that, within 2 months of the receipt of the
9 investment, has met the requirements of subparagraph (i) of this paragraph.

10 (8) “Secretary” means the Secretary of Commerce.

11 **(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE CREDIT**
12 **ALLOWED UNDER THIS SECTION WILL ENCOURAGE AND INCENTIVIZE PRIVATE**
13 **SECTOR INVESTMENT IN MARYLAND BIOTECHNOLOGY COMPANIES AND THEREBY:**

14 **(1) EXPEDITE THE DEVELOPMENT AND COMMERCIALIZATION OF**
15 **NOVEL THERAPIES, TESTS, DEVICES, AND DIGITAL TECHNOLOGIES THAT CAN**
16 **IMPROVE HEALTH OUTCOMES FOR THE RESIDENTS OF THIS STATE AND OTHERS;**

17 **(2) FACILITATE LARGE-SCALE CLINICAL STUDIES TO DEMONSTRATE**
18 **THE SAFETY, EFFICACY, OR UTILITY OF THOSE THERAPIES, TESTS, DEVICES, AND**
19 **DIGITAL TECHNOLOGIES TO THE SATISFACTION OF INDUSTRY REGULATORS AND**
20 **PAYERS; AND**

21 **(3) STIMULATE ECONOMIC DEVELOPMENT AND HIGH-QUALITY JOB**
22 **GROWTH AND RETENTION IN THE STATE.**

23 **[(b)] (C)** (1) Subject to paragraphs (2) and (3) of this subsection and
24 subsections **[(d)] (E)** and **[(e)] (F)** of this section, for the taxable year in which an
25 investment in a qualified Maryland biotechnology company is made, a qualified investor
26 may claim a credit against the State income tax in an amount equal to the amount of tax
27 credit stated in the final credit certificate approved by the Secretary for the investment as
28 provided under this section.

29 (2) To be eligible for the tax credit described in paragraph (1) of this
30 subsection, the qualified investor shall be:

31 (i) for a company, duly organized and in good standing in the
32 jurisdiction under the laws under which it is organized;

33 (ii) for a company, in good standing and authorized or registered to

1 do business in the State;

2 (iii) current in the payment of all tax obligations to the State or any
3 unit or subdivision of the State; and

4 (iv) not in default under the terms of any contract with, indebtedness
5 to, or grant from the State or any unit or subdivision of the State.

6 (3) To be eligible for the tax credit described in paragraph (1) of this
7 subsection, the qualified investor may not, after making the proposed investment, own or
8 control more than 25% of the equity interests in the qualified Maryland biotechnology
9 company in which the investment is to be made.

10 **[(c)] (D)** (1) At least 30 days prior to making an investment in a qualified
11 Maryland biotechnology company for which a qualified investor would be eligible for an
12 initial tax credit certificate under subsection **[(b)] (C)** of this section, the qualified investor
13 shall submit an application to the Department.

14 (2) The application shall evidence that the qualified Maryland
15 biotechnology company is:

16 (i) in good standing;

17 (ii) current in the payment of all tax obligations to the State or any
18 unit or subdivision of the State; and

19 (iii) not in default under the terms of any contract with, indebtedness
20 to, or grant from the State or any unit or subdivision of the State.

21 (3) The Department shall:

22 (i) approve all applications that qualify for credits under this section
23 on a first-come, first-served basis; and

24 (ii) within 30 days of receipt of an application, certify the amount of
25 any approved tax credits to a qualified investor.

26 (4) (i) After the date on which the Department issues an initial tax
27 credit certificate under this section, a qualified investor shall have 30 calendar days to
28 make an investment in a qualified Maryland biotechnology company under this section.

29 (ii) Within 10 calendar days after the date on which a qualified
30 investor makes the investment, the qualified investor shall provide to the Department
31 notice and proof of the making of the investment, including:

32 1. the date of the investment;

- 1 2. the amount invested;
- 2 3. proof of the receipt of the invested funds by the qualified
3 Maryland biotechnology company;
- 4 4. a complete description of the nature of the ownership
5 interest in the equity of the qualified Maryland biotechnology company acquired in
6 consideration of the investment; and
- 7 5. any reasonable supporting documentation the
8 Department may require.

9 (iii) If a qualified investor does not provide the notice and proof of the
10 making of the investment required in subparagraph (ii) of this paragraph within 40
11 calendar days after the date on which the Department issues an initial tax credit certificate
12 under this section:

- 13 1. the Department shall rescind the initial tax credit
14 certificate; and
- 15 2. the credit amount allocated to the rescinded certificate
16 shall revert to the Maryland Biotechnology Investment Tax Credit Reserve Fund and shall
17 be available in the applicable fiscal year for allocation by the Department to other initial
18 tax credit certificates in accordance with the provisions of this section.

19 **[(d)] (E)** (1) The tax credit allowed in an initial tax credit certificate issued
20 under this section is:

- 21 (i) except as provided in item (ii) of this paragraph, 50% of the
22 investment in a qualified Maryland biotechnology company, not to exceed \$250,000; or
- 23 (ii) if a qualified Maryland biotechnology company is located in
24 Allegany, Dorchester, Garrett, or Somerset counties, 75% of the investment in the qualified
25 Maryland biotechnology company, not to exceed \$500,000.

26 (2) **[During any fiscal year, the] THE** Secretary may not certify eligibility
27 for tax credits for investments in a single qualified Maryland biotechnology company that:

28 **(I) DURING ANY FISCAL YEAR, in the aggregate exceed [15%] 10%**
29 of the total appropriations to the Maryland Biotechnology Investment Tax Credit Reserve
30 Fund for that fiscal year; **OR**

31 **(II) IN THE AGGREGATE EXCEED \$7,000,000 FOR ALL FISCAL**
32 **YEARS FOR WHICH THE MARYLAND BIOTECHNOLOGY COMPANY IS CERTIFIED AS**
33 **ELIGIBLE FOR TAX CREDITS.**

1 (3) If the tax credit allowed under this section in any taxable year exceeds
2 the total tax otherwise payable by the qualified investor for that taxable year, the qualified
3 investor may claim a refund in the amount of the excess.

4 [(e)] (F) (1) In this subsection, "Reserve Fund" means the Maryland
5 Biotechnology Investment Tax Credit Reserve Fund established under paragraph (2) of this
6 subsection.

7 (2) (i) There is a Biotechnology Investment Tax Credit Reserve Fund
8 which is a special continuing, nonlapsing fund that is not subject to § 7-302 of the State
9 Finance and Procurement Article.

10 (ii) The money in the Fund shall be invested and reinvested by the
11 Treasurer, and interest and earnings shall be credited to the General Fund.

12 (3) (i) Subject to the provisions of this subsection, the Secretary shall
13 issue an initial tax credit certificate for each approved investment in a qualified Maryland
14 biotechnology company eligible for a tax credit.

15 (ii) An initial tax credit certificate issued under this subsection shall
16 state the maximum amount of tax credit for which the qualified investor is eligible.

17 (iii) 1. Except as otherwise provided in this subparagraph, for
18 any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts
19 in the aggregate totaling more than the amount appropriated to the Reserve Fund for that
20 fiscal year in the State budget as approved by the General Assembly.

21 2. If the aggregate credit amounts under initial tax credit
22 certificates issued in a fiscal year total less than the amount appropriated to the Reserve
23 Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be
24 issued under initial tax credit certificates for the next fiscal year.

25 3. For any fiscal year, if funds are transferred from the
26 Reserve Fund under the authority of any provision of law other than under paragraph (4)
27 of this subsection, the maximum credit amounts in the aggregate for which the Secretary
28 may issue initial tax credit certificates shall be reduced by the amount transferred.

29 (iv) For each fiscal year, the Governor shall include in the budget bill
30 an appropriation to the Reserve Fund.

31 (v) Notwithstanding the provisions of § 7-213 of the State Finance
32 and Procurement Article, the Governor may not reduce an appropriation to the Reserve
33 Fund in the State budget as approved by the General Assembly.

34 (vi) Based on the actual amount of an investment made by a qualified
35 investor, the Secretary shall issue a final tax credit certificate to the qualified investor.

1 (4) (i) Except as provided in this paragraph, money appropriated to the
2 Reserve Fund shall remain in the Fund.

3 (ii) 1. Within 15 days after the end of each calendar quarter, the
4 Department shall notify the Comptroller as to each final credit certificate issued during the
5 quarter:

6 A. the maximum credit amount stated in the initial tax credit
7 certificate for the investment; and

8 B. the final certified credit amount for the investment.

9 2. On notification that an investment has been certified, the
10 Comptroller shall transfer an amount equal to the credit amount stated in the initial tax
11 credit certificate for the investment from the Reserve Fund to the General Fund.

12 **[(f)] (G)** (1) The credit claimed under this section shall be recaptured as
13 provided in paragraph (2) of this subsection if within 2 years from the close of the taxable
14 year for which the credit is claimed:

15 (i) the qualified investor sells, transfers, or otherwise disposes of the
16 ownership interest in the qualified Maryland biotechnology company that gave rise to the
17 credit; or

18 (ii) the qualified Maryland biotechnology company that gave rise to
19 the credit ceases operating as an active business with its headquarters and base of
20 operations in the State.

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

23 (i) the total amount of the credit claimed or, in the case of an event
24 described in paragraph (1)(i) of this subsection, the portion of the credit attributable to the
25 ownership interest disposed of; and

26 1. 100%, if the event requiring recapture of the credit occurs
27 during the taxable year for which the tax credit is claimed;

28 2. 67%, if the event requiring recapture of the credit occurs
29 during the first year after the close of the taxable year for which the tax credit is claimed;
30 or

31 3. 33%, if the event requiring recapture of the credit occurs
32 more than 1 year but not more than 2 years after the close of the taxable year for which the
33 tax credit is claimed.

34 (3) The qualified investor that claimed the credit shall pay the amount to

1 be recaptured as determined under paragraph (2) of this subsection as taxes payable to the
2 State for the taxable year in which the event requiring recapture of the credit occurs.

3 **[(g)] (H)** (1) The Department may revoke its initial or final certification of an
4 approved credit under this section if any representation in connection with the application
5 for the certification is determined by the Department to have been false when made.

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

9 (3) The qualified investor shall have an opportunity to appeal any
10 revocation to the Department prior to notification of the Comptroller.

11 (4) The Comptroller may make an assessment against the qualified
12 investor to recapture any amount of tax credit that the qualified investor has already
13 claimed.

14 **[(h)] (I)** (1) In accordance with § 2.5–109 of the Economic Development
15 Article, the Department shall report on the initial tax credit certificates awarded under
16 this section for the calendar year.

17 (2) The report required under paragraph (1) of this subsection shall include
18 for each initial tax credit certificate awarded:

19 (i) the name of the qualified investor and the amount of credit
20 awarded or allocated to each investor;

21 (ii) the name and address of the qualified Maryland biotechnology
22 company that received the investment giving rise to the credit under this section and the
23 county where the qualified Maryland biotechnology company is located; and

24 (iii) the dates of receipt and approval by the Department of all
25 applications for initial tax credit certificates.

26 (3) The report required under paragraph (1) of this subsection shall
27 summarize for the category of qualified investors:

28 (i) the total number of applicants for initial tax credit certificates
29 under this section in each calendar year;

30 (ii) the number of applications for which initial tax credit certificates
31 were issued in each calendar year; and

32 (iii) the total initial tax credit certificates authorized under this
33 section for all calendar years under this section.

1 **[(i)] (J)** The Department and the Comptroller jointly shall adopt regulations to
2 carry out the provisions of this section and to specify criteria and procedures for application
3 for, approval of, and monitoring continuing eligibility for the tax credit under this section.

4 **[(j)] (K)** If a company receives an investment under subsection **[(a)(7)(ii)3]**
5 **(A)(7)(II)** of this section and fails to satisfy the requirements for a qualified Maryland
6 biotechnology company within 2 months, the Department shall revoke any final tax credit
7 certificates that have been issued and recapture any tax credits already claimed by the
8 qualified investor.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
10 1, 2018, and shall be applicable to all initial credit certificates issued after June 30, 2018.