

## Chapter 112

## (Senate Bill 19)

AN ACT concerning

**Economic Development – Biotechnology Investment Incentive Tax Credit Program – Alterations *and Study***

FOR the purpose of altering eligibility for the Biotechnology Investment Incentive Tax Credit Program by altering the ~~definition~~ *definitions* of “*qualified investor*” and “*qualified Maryland biotechnology company*”; stating the purpose of the program; *prohibiting the Department of Commerce from issuing tax credit certificates to certain investors in certain biotechnology companies on or after a certain date*; altering the calculation of the tax credit under the program; altering the maximum percentage of the Maryland Biotechnology Investment Tax Credit Reserve Fund that a single qualified Maryland biotechnology company may receive in a fiscal year; *altering certain reporting requirements; requiring the Department to conduct, in consultation with certain parties, certain studies and to report to the General Assembly on or before a certain date*; providing for the application of this Act; and generally relating to the Biotechnology Investment Incentive Tax Credit Program.

BY repealing and reenacting, without amendments,

Article – Tax – General

Section 10–725(a)(1)

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section ~~10–725(a)(7)~~, *10–725(a)(6) and (7)*, (b), *(c)(3)*, (d)(1) and (2), ~~and (j)~~ *(h)(1), and (i)*

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

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

**Article – Tax – General**

10–725.

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

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

(ii) “Qualified investor” does not include:

1. a qualified pension plan, individual retirement account, or other qualified retirement plan under the Employee Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under such plans, or similar tax-favored plans or entities under the laws of other countries; OR

2. A FOUNDER OR CURRENT EMPLOYEE OF THE QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY, IF THE COMPANY HAS BEEN IN ACTIVE BUSINESS FOR MORE THAN 5 YEARS.

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

1. has its headquarters and base of operations in this State;
2. has fewer than 50 full-time employees;
3. [except as provided in subparagraph (ii) of this paragraph,] has been in active business no longer than 12 years;
4. does not have its securities publicly traded on any exchange; [and]
5. has been certified as a biotechnology company by the Department; AND

6. ~~HAS RECEIVED IN THE AGGREGATE NOT MORE THAN \$7,000,000 IN TAX CREDITS~~ THE QUALIFIED INVESTORS IN THE COMPANY HAVE NOT RECEIVED MORE THAN \$7,000,000 IN TAX CREDITS IN THE AGGREGATE UNDER THIS SECTION.

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

1. a company that has been in active business for up to 15 years if the Department determines that the company requires additional time to complete the process of regulatory approval;
2. a company that has been in active business no longer than 12 years from the date the company first received a qualified investment under this section; or
- 3.] a company that, within 2 months of the receipt of the investment, has met the requirements of subparagraph (i) of this paragraph.

(b) (1) **THE BIOTECHNOLOGY INVESTMENT INCENTIVE TAX CREDIT IS INTENDED TO FOSTER THE GROWTH OF MARYLAND'S BIOTECHNOLOGY INDUSTRY BY INCENTIVIZING INVESTMENT IN EARLY STAGE COMPANIES WITH THE GOAL OF INCREASING THE NUMBER OF COMPANIES DEVELOPING BIOTECHNOLOGIES IN MARYLAND, INCREASING OVERALL INVESTMENTS IN THE BIOTECHNOLOGY SECTOR, AND INCREASING THE NUMBER OF INDIVIDUAL INVESTORS ACTIVELY INVESTING IN MARYLAND'S LIFE SCIENCES COMPANIES.**

[(1)] (2) Subject to paragraphs [(2) and] (3) **AND (4)** of this subsection and subsections (d) and (e) of this section, for the taxable year in which an investment in a qualified Maryland biotechnology company is made, a qualified investor may claim a credit against the State income tax in an amount equal to the amount of tax credit stated in the final credit certificate approved by the Secretary for the investment as provided under this section.

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

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

(ii) for a company, in good standing and authorized or registered to do business in the State;

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

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

[(3)] (4) To be eligible for the tax credit described in paragraph [(1)] (2) of this subsection, the qualified investor may not, after making the proposed investment, own or control more than 25% of the equity interests in the qualified Maryland biotechnology company in which the investment is to be made.

(c) (3) (I) [The] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE Department shall:

[(i)] 1. approve all applications that qualify for credits under this section on a first-come, first-served basis; and

[(ii)] 2. within 30 days of receipt of an application, certify the amount of any approved tax credits to a qualified investor.

**(II) THE DEPARTMENT MAY NOT ISSUE ANY TAX CREDIT CERTIFICATES UNDER THIS SECTION AFTER JUNE 30, 2028.**

(d) (1) The tax credit allowed in an initial tax credit certificate issued under this section is:

(i) except as provided in item (ii) of this paragraph, ~~[50%]~~ **33%** of the investment in a qualified Maryland biotechnology company, not to exceed \$250,000; or

(ii) if a qualified Maryland biotechnology company is located in Allegany, Dorchester, Garrett, or Somerset counties, ~~[75%]~~ **50%** of the investment in the qualified Maryland biotechnology company, not to exceed \$500,000.

(2) During any fiscal year, the Secretary may not certify eligibility for tax credits for investments in a single qualified Maryland biotechnology company that in the aggregate exceed ~~[15%]~~ **10%** of the total appropriations to the Maryland Biotechnology Investment Tax Credit Reserve Fund for that fiscal year.

*(h) (1) In accordance with § 2.5–109 of the Economic Development Article, the Department shall report on:*

**(I) the initial tax credit certificates awarded under this section for the calendar year, INCLUDING THE NUMBER OF INITIAL TAX CREDIT CERTIFICATES AWARDED TO QUALIFIED INVESTORS FOR INVESTMENTS IN QUALIFIED MARYLAND BIOTECHNOLOGY COMPANIES THAT WERE NOT CERTIFIED BY THE DEPARTMENT IN THE PREVIOUS CALENDAR YEAR; AND**

**(II) FOR EACH QUALIFIED MARYLAND BIOTECHNOLOGY COMPANY THAT RECEIVES AN INVESTMENT FOR WHICH AN INITIAL TAX CREDIT CERTIFICATE IS AWARDED UNDER THIS SECTION FOR THE CALENDAR YEAR:**

**1. THE NUMBER OF YEARS THAT THE COMPANY HAS BEEN IN ACTIVE BUSINESS; AND**

**2. THE NUMBER OF YEARS THAT QUALIFIED INVESTORS IN THE COMPANY HAVE RECEIVED TAX CREDITS UNDER THIS SECTION.**

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

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1, 2021, the Department of Commerce, in consultation with qualified experts in the biotechnology industry, shall:

(1) (i) study the methods and criteria by which the Department might award tax credits under the Biotechnology Investment Incentive Tax Credit Program on a competitive basis; and

(ii) develop strategies to increase awards of tax credits under the Program to early-stage biotechnology companies; and

(2) report to the General Assembly, in accordance with § 2-1257 of the State Government Article, on its findings and recommendations.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2021, and shall be applicable to all initial credit certificates issued after June 30, 2021.

**Approved by the Governor, April 13, 2021.**