

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: S2/11/97 S2/25/97 S2/28/97 H3/21/97

## A Bill

SENATE BILL 322

5 By: Senator Smith  
6 By: Representative Courtway  
7

### For An Act To Be Entitled

9 "THE ARKANSAS BIOTECHNOLOGY DEVELOPMENT AND TRAINING ACT  
10 OF 1997; AND FOR OTHER PURPOSES."  
11

### Subtitle

13 "AN ACT TO PROVIDE FOR AGRICULTURAL AND  
14 ECONOMIC DEVELOPMENT THROUGH  
15 BIOTECHNOLOGY; AND FOR OTHER PURPOSES."  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. (a) Agriculture and economic development are dependent on  
20 biotechnology, which affects every Arkansas farmer from the smallest tomato  
21 grower to the largest poultry producer. Furthermore, intellectual property  
22 developed at Arkansas's state-supported colleges and universities is being  
23 exported to other states for exploitation. Development of biotechnology in  
24 Arkansas is required for the state's medical, agricultural, and other  
25 industries to remain competitive in the twenty-first century.

26 (b) Biotechnology develops uses of biochemistry, molecular biology,  
27 genetics, and bioengineering to meet the needs of agriculture, aquaculture,  
28 forestry, and environmental industries, as well as developing products useful  
29 for modern medicine and pharmaceuticals. Biotechnology provides high-paying  
30 jobs and develops high value-added products, which require an educated  
31 workforce with advanced technical skills. Moreover, the growth of the  
32 biotechnology industry in agriculture and other areas will enable Arkansas to  
33 maintain a competitive advantage in the marketplace.

34 (c) The General Assembly finds that the biotechnology industry is at a  
35 competitive disadvantage compared to other industries in Arkansas. The  
36 biotechnology industry takes a longer period than other companies between

1 research, product development, and marketing. Therefore, it is determined and  
2 declared that research, development and education in biotechnology are within  
3 the public interest.

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5 SECTION 2. For the purposes of this act:

6 (1) "Biotechnology" means the uses of biochemistry, molecular biology,  
7 genetics, and bioengineering to meet the needs of agriculture, aquaculture,  
8 forestry and environmental industries, as well as developing products useful  
9 for modern medicine, veterinary science, and pharmaceuticals.

10 (2) 'Cost' means expenditures on or after the tax year beginning  
11 January 1, 1997:

12 (A) In the case of biotechnology facilities, all activities and cost  
13 associated with site, construction, expansion, improvement, renovation, or  
14 purchase of such facilities, including costs incurred in the purchase and  
15 installation of equipment, and support infrastructure;

16 (B) For the purpose of 'Higher Education Partnerships,' costs and  
17 expenses of conducting qualified research through a cooperative research  
18 project with one or more state-supported institutions of higher education in  
19 Arkansas for the conduct of qualified research;

20 (C) For the purpose of 'Training,' costs shall be limited to:

21 (i) A six-month period of training at the facility; or

22 (ii) The cost of tuition, books and fees for a program of secondary,  
23 undergraduate or post-graduate education in an accredited institution of  
24 higher learning.

25 (iii) The costs associated with subdivisions (C)(i) and (C)(ii)  
26 eligible for the income tax credit shall not include salaries and wages of the  
27 employees being trained. Total costs for training shall not exceed ten  
28 thousand dollars (\$10,000) per employee;

29 (D) In the case of transfer of title or finance lease, the amount of  
30 the purchase price; or

31 (E) In the case of a lease which is not a finance lease but which  
32 otherwise qualifies as a purchase under this section, the amount of the lease  
33 payments due to be paid during the term of the lease after deducting any  
34 portion of the lease payments attributable to interest, insurance and taxes.

35 (3) "Finance lease" means a lease agreement which is treated as a  
36 purchase by a lessee for Arkansas income tax purposes.

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2 (4) 'Higher Education Partnerships' means any cooperative research  
3 project defined by terms of a written agreement whereby companies engaged in  
4 the business of biotechnology contract with state-supported institutions of  
5 higher learning in Arkansas for the conduct of qualified research.

6 (5) "Intellectual property" means patents, trade secrets, copyrights and  
7 trademarks used in biotechnology.

8 (6) "Purchase" means a transaction under which title to an item is  
9 transferred for consideration or a lease contract for a period of at least  
10 three (3) years regardless of whether title to the item is transferred at the  
11 end of such period.

12 (7) 'Qualified Research' means scientific research and development in  
13 the field of biotechnology, including experimental or laboratory activity to  
14 develop new products, improve existing products, or develop new uses of  
15 products, but only to the extent that activity is conducted in Arkansas, or is  
16 required by federal regulatory authorities to be conducted elsewhere. It  
17 shall be performed primarily under laboratory, clinical, or field experimental  
18 conditions for the purpose of reducing a concept or idea to practice, or to  
19 advance a concept or idea or improvement thereon to the point of practical  
20 application. Qualified research does not include tests or inspection of  
21 materials or products for quality control, efficiency surveys, management  
22 studies, or other market research, or any other ordinary and necessary  
23 expenses of conducting business.

24 (8) 'Training' means employer-paid training within Arkansas that is  
25 necessary to prepare employees to work in biotechnology.

26 (9) 'Base year qualified research costs' means the costs of qualified  
27 research for the 1996 tax year. For any new taxpayer or taxpayer not required  
28 to file an Arkansas tax return in 1996, the base year qualified research costs  
29 shall be zero dollars (\$0).

30 (10) 'Credit year' means the tax year in which costs are incurred.

31 (11) 'Biotechnology Facilities' means facilities and equipment required  
32 to carry out Qualified Research.

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34 SECTION 3. (a) There shall be allowed a credit against the income tax  
35 imposed by Arkansas Code § 26-51-101 et. seq. in an amount as determined in  
36 subsection (b) of this section for any Arkansas taxpayer for the cost of

1 biotechnology facilities.

2 (b) The amount of the credit allowed shall be equal to five percent  
3 (5%) of the cost of such facility.

4 (c) The cost of service contracts, sales tax and acquisition of  
5 undeveloped land shall not be included in determining the amount of the  
6 credit.

7 (d) No income tax credit shall be claimed by any taxpayer for any  
8 facility or equipment which is in use on the effective date of this act, or  
9 for which a tax credit was previously claimed by any other taxpayer for any  
10 other tax year. Provided, however, that the provisions of this subdivision  
11 shall not apply if any entity is sold and the entity is entitled to an income  
12 tax credit under this act.

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14 SECTION 4. (a) There shall be allowed a credit against the income tax  
15 imposed by Arkansas Code § 26-51-101, et. seq. in an amount as determined in  
16 subsection (b) for any Arkansas taxpayer engaged in the business of  
17 biotechnology for the cost of:

18 (1) training of employees; or

19 (2) Higher Education Partnerships.

20 (b) The amount of the credit allowed shall be equal to thirty percent  
21 (30%) of the cost of employee training or of the Higher Education  
22 Partnerships.

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24 SECTION 5. (a) There shall be allowed a credit against the income tax  
25 imposed by Arkansas Code § 26-51-101, et. seq. in an amount as determined in  
26 subsection (b) of this section for any Arkansas taxpayer engaged in the  
27 business of biotechnology for the cost of qualified research in biotechnology,  
28 including, but not limited to, the cost of purchasing, licensing, developing,  
29 or protecting intellectual property.

30 (b) The amount of the credit allowed shall be twenty percent (20%) of  
31 the amount that the cost of qualified research exceeds the cost of such  
32 research in the base year.

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34 SECTION 6. (a) The income tax credits provided herein shall be used to  
35 offset the first fifty thousand dollars (\$50,000) of income tax liability  
36 arising during the credit year, and fifty percent (50%) of any remaining

1 income tax liability for the year. Any unused credit may be carried forward  
2 for a maximum of nine (9) taxable years after the credit year in which the  
3 credit originated.

4 (b) The taxpayer shall refund the amount of the income tax credit  
5 determined by subsection (c) of this section if, within nine (9) years of the  
6 taxable year for which the credit is originated:

7 (A) The biotechnology facility ceases to be used or operated in the  
8 manner required by this section; and

9 (B) The Arkansas Industrial Development Commission and the Department  
10 of Finance and Administration find that the taxpayer has ceased to qualify for  
11 tax credits under the provisions of this act.

12 (c)(1) In the event it is determined that any taxpayer receiving the  
13 benefits under this act has failed to comply with the conditions contained  
14 herein, that taxpayer shall be liable for the payment of such additional  
15 income taxes as may be due after the income tax credits provided for in this  
16 act are disallowed, plus penalty and interest.

17 (2) In accordance with Arkansas Code 26-18-208(2)(B), there shall be  
18 added to the original tax due a penalty of one percent (1%) of the additional  
19 tax due for not more than one (1) month, with an additional one percent (1%)  
20 for each additional month or fraction thereof, from the original due date of  
21 the tax year in questions until date of payment not to exceed thirty-five  
22 percent (35%) in the aggregate.

23 (3) In accordance with Arkansas Code 26-18-508, interest shall be  
24 assessed at ten percent (10%) per annum from the date the original tax would  
25 have been due until date of payment.

26 (d) A taxpayer who receives a credit under this act for the purchase of  
27 machinery or equipment shall not be entitled to claim any other state or local  
28 tax credit or deduction based on the purchase of the machinery or equipment,  
29 except the deduction for normal depreciation.

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31 SECTION 7. (a) Under this act in the case of a proprietorship,  
32 partnership, or S Corporation, the amount of credit determined shall be  
33 apportioned to each proprietor, partner, or S Corporation shareholder in  
34 proportion to the amount of income from the entity which the proprietor,  
35 partner, or S Corporation shareholder is required to include as gross income.

36 (b) In the case of an estate or trust:

1       (1) The amount of the credit determined for any taxable year shall be  
2 apportioned between the estate or trust and the beneficiaries on the basis of  
3 the income of the estate or trust allocable to each; and

4       (2) Any beneficiary to whom any amount has been apportioned under this  
5 subsection shall be allowed, subject to limitations contained in this act, to  
6 a credit under this act for that amount.

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8       SECTION 8. (a) To claim the benefits of this act, a taxpayer must  
9 obtain certification from the Director of the Arkansas Industrial Development  
10 Commission certifying to the Revenue Division of the Department of Finance and  
11 Administration that the taxpayer is engaged in qualified research in  
12 biotechnology.

13       (b) The Arkansas Industrial Development Commission, or its successor,  
14 shall promulgate regulations as necessary to administer this act. These rules  
15 or regulations may include, but are not limited to, the establishment of  
16 technical specifications and requirements for information and documentation  
17 for taxpayers seeking a credit under this act.

18       (c) In order to determine eligibility for the credit or to insure that  
19 the facility or equipment is being utilized in the required manner, each  
20 agency shall have the right to inspect facilities and records of a taxpayer  
21 requesting or receiving a credit under this act.

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23       SECTION 9. All provisions of this act of a general and permanent nature  
24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
25 Revision Commission shall incorporate the same in the Code.

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27       SECTION 10. If any provision of this act or the application thereof to  
28 any person or circumstance is held invalid, such invalidity shall not affect  
29 other provisions or applications of the act which can be given effect without  
30 the invalid provision or application, and to this end the provisions of this  
31 act are declared to be severable.

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33       SECTION 11. All laws and parts of laws in conflict with this act are  
34 hereby repealed.

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36       SECTION 12. It is hereby found and determined by the General Assembly

1 of this State that unemployment, underemployment, and economic under-  
2 development have reached intolerable levels, and that the State as a whole has  
3 been unable to compete in the area of biotechnology and that the incentives  
4 under this Act are critical to the economic development of Arkansas.  
5 Therefore, an emergency is declared to exist and this act being immediately  
6 necessary for the preservation of the public peace, health and safety shall  
7 become effective for taxable year beginning on and after January 1, 1997.

8 /s/Smith et al

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