

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas
83rd General Assembly
Regular Session, 2001

As Engrossed: S4/5/01

A Bill

SENATE BILL 905

By: Senator Riggs

For An Act To Be Entitled

AN ACT TO STIMULATE PRIVATE INVESTMENT IN
ARKANSAS BIOTECHNOLOGY ENTERPRISES, TO FOSTER THE
PRIVATE-PUBLIC PARTNERING NECESSARY TO BRING
LABORATORY TECHNOLOGIES DEVELOPED IN ARKANSAS
RESEARCH ENVIRONMENTS TO COMMERCIAL MARKETS, FOR
THE BENEFIT OF THE PEOPLE AND THE STATE OF
ARKANSAS; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO STIMULATE PRIVATE INVESTMENT
IN ARKANSAS BIOTECHNOLOGY ENTERPRISES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. (a)(1) As stated in the legislative findings of Arkansas Code 2-8-101 through 2-8-109, it remains true that agriculture and economic development are dependent on biotechnology, which affects every Arkansas farmer from the smallest tomato grower to the largest poultry producer.

(2) It is also still evident that technologies developed in Arkansas by private entrepreneurs as well as by state-supported institutions are being exported to other states for exploitation.

(3) Commercialization of biotechnology in Arkansas is required for the state's medical, agricultural, and other industries to remain competitive in the twenty-first (21st) century.

(b)(1) Arkansas Code 2-8-101 through 2-8-109 provides an array of Arkansas income tax credits for biotechnology enterprises' expenditures for

1 biotechnology facilities, for qualified research, and for employee training
2 and cooperative research projects involving state-supported institutions of
3 higher learning.

4 (2) However, few biotechnology enterprises, if any, have taken
5 advantage of the incentives, and small or start-up biotechnology companies
6 require substantial financing, often for more than five (5) years, during
7 which time no income is being generated to be offset by a tax credit.

8 (c)(1) Private investment capital for biotechnology enterprises is
9 relatively scarce in Arkansas.

10 (2) The private investment is crucial for the accumulation of
11 the funding and qualified personnel needed for the operation of biotechnology
12 enterprises in Arkansas.

13 (3) Some biotechnology enterprises in dire need of financing
14 have been forced to obtain funding elsewhere, and have therefore left
15 Arkansas.

16 (4) The Arkansas biotechnology industry is clearly at a
17 competitive disadvantage compared to biotechnology industry in other states,
18 and compared to other industries in Arkansas.

19 (d)(1) Arkansas voters overwhelmingly approved an initiative to
20 allocate a substantial portion of the Tobacco Settlement Fund to research,
21 most of which qualifies as biotechnology research.

22 (2) The amount of biotechnologies produced by Arkansas research
23 will therefore likely increase in the future.

24 (3) It is recognized that in order for Arkansas to truly capture
25 the full benefits of the technological development, there shall be private
26 enterprises, primarily, qualified personnel and funding, to upgrade the
27 research technologies to commercially valuable products and services
28 deliverable in commercial settings.

29 (e)(1) Agricultural biotechnology is now considered to be one of the
30 most important growth segments of the American economy in the near future.

31 (2) Recent advances in agricultural biotechnology hold great
32 promise for the ability of Arkansas and its citizens to capitalize upon its
33 agrarian economic base and nationally recognized research institutions; many
34 of these advances will allow farmers to become producers of value-added
35 products rather than commodities having relatively low profit margins.

36 (3) This act is intended to stimulate private investment in

1 Arkansas biotechnology enterprises, and to enhance the private-public
2 partnering necessary to extend laboratory technologies developed in Arkansas
3 research environments to commercial markets.

4 (f) The intent and purpose of this act is to stimulate private
5 investment in Arkansas biotechnology enterprises, especially those utilizing
6 technology developed in Arkansas, to create financing alternatives resulting
7 in more Arkansas technologies being commercialized by Arkansas enterprises
8 for the employment of Arkansas citizens and the betterment of Arkansas
9 industry.

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11 *SECTION 2. For purposes of this act:*

12 (1) "Qualified biotechnology enterprise" means a corporation,
13 partnership, limited liability company, sole proprietorship, or other entity
14 that is certified by the Arkansas Department of Economic Development pursuant
15 to Arkansas Code 2-8-108; and

16 (2)(A) "Qualified investment" means cash, depreciable assets, or
17 intellectual property transferred to a qualified biotechnology enterprise, in
18 exchange for shares of stock or other similar evidence or indicia of
19 membership equity interest in the enterprise.

20 (B) "Qualified investment" does not include the purchase of a
21 share of stock in a company if, on the date on which the share of stock is
22 purchased, the company has securities outstanding that are:

23 (i) Registered on a national securities exchange under
24 Section 12(b) of Title I of the Securities Exchange Act of 1934 as it exists
25 on January 1, 2001;

26 (ii) Registered or required to be registered under Section
27 12(g) of Title I of the Securities Exchange Act of 1934 as it exists on
28 January 1, 2001; or,

29 (iii) Required to be registered except for the exemptions
30 in Section 12(g)(2) of Title I of the Securities Exchange Act of 1934 as it
31 exists on January 1, 2001.

32
33 *SECTION 3. (a) A qualified biotechnology enterprise having unused*
34 biotechnology income tax credits allowable by Arkansas Code 2-8-103, 2-8-104
35 or 2-8-105, calculated, for the purpose of transfer, using tax year 2000 as
36 the base year rather than tax year 1996, or unused net operating loss

1 deductible pursuant to Arkansas Code 26-51-427, may transfer all or part of
2 the unused tax benefits to a recipient in exchange for financial assistance.

3 (b) Each of the unused tax benefits shall be freely transferable to
4 and by subsequent recipients for use by the recipients within three (3)
5 consecutive tax years immediately following the close of the credit year in
6 which the tax benefit originated, until fully expended.

7 (c) The financial assistance shall be used by the qualified
8 biotechnology enterprise to fund expenses incurred in connection with the
9 operation of the qualified biotechnology enterprise, including the expenses
10 incurred for acquiring or improving biotechnology facilities, as defined in
11 Arkansas Code 2-8-102, for conducting biotechnology research, as defined in
12 Arkansas Code 2-8-102, for conducting biotechnology business activities, as
13 provided in Arkansas Code 2-8-104, and for purchasing, licensing, developing,
14 or protecting intellectual property, as provided in Arkansas Code 2-8-105

15 (d)(1) The consideration exchanged for the tax benefits shall be in
16 the form of cash, credit actually given irrevocably against a bona fide pre-
17 existing account or debt, depreciable assets, and intellectual property
18 needed by the biotechnology company, or combinations of the above.

19 (2) The value of the depreciable assets or intellectual property
20 shall be the current fair market value as determined by a source selected by
21 the qualified biotechnology enterprise, the recipient and the Arkansas
22 Department of Economic Development.

23 (3) The department shall be responsible for:

24 (A) Certifying that the investment is a qualified
25 biotechnology investment in a qualified biotechnology enterprise;

26 (B) Certifying the value of all consideration exchanged
27 for the tax benefit(s); and

28 (C) Issuing a certificate of allowance to the taxpayer
29 specifying the amount of tax benefit allowed, and the expiration date of the
30 benefits.

31 (e)(1) Notwithstanding any provision of law, the amount of
32 consideration exchanged for the tax benefits shall be at least fifty percent
33 (50%) of the amount of tax benefit obtained by the taxpayer recipient in
34 exchange for the consideration.

35 (2) In the event of the bankruptcy or other insolvency of the
36 qualified biotechnology enterprise, the total consideration exchanged for the

1 tax benefits shall not exceed the amount required to pay all bona fide
2 liabilities of the biotechnology company owed for taxes, ordinary and
3 necessary business expenses, and equity debt.

4 (f) No credit shall be available to the qualified biotechnology
5 enterprise for reinvesting funds paid for tax benefits under this section.

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7 SECTION 4. Arkansas Code 26-51-427(1)(E)(ii), as follows:

8 In the case of qualified medical companies, as defined herein, or a
9 qualified biotechnology enterprise, a net operating loss for any taxable year
10 shall be a net operating loss carryover to each of the fifteen (15) taxable
11 years following the taxable year of the loss.

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13 SECTION 5. This act shall become effective on January 1, 2002.

14 /s/ Ri ggs
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