

## Chapter 557

(Senate Bill 811)

AN ACT concerning

### **Corporations and Associations – Maryland Securities Act – Registration and Filing Exemptions**

FOR the purpose of exempting a certain security issued by ~~a certain business entity to an individual purchaser who is a resident~~ an entity formed, organized, or existing under the laws of the State from certain registration and filing requirements under certain circumstances; ~~requiring the Division of Securities within the Office of the Attorney General to develop for the public a document containing certain information regarding crowdfunding and publish the document on the Web site of the Division on or before a certain date~~ requiring a person required to submit a filing in accordance with a certain exemption to pay a certain fee for each filing; and generally relating to the Maryland Securities Act and registration and filing exemptions.

BY repealing and reenacting, without amendments,  
Article – Corporations and Associations  
Section 11-101(a), (d), (k), (m), (p), and (r), 11-205, and 11-501  
Annotated Code of Maryland  
(2007 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,  
Article – Corporations and Associations  
Section 11-506 and 11-601(15) and (16)  
Annotated Code of Maryland  
(2007 Replacement Volume and 2013 Supplement)

BY adding to  
Article – Corporations and Associations  
Section 11-601(16)  
Annotated Code of Maryland  
(2007 Replacement Volume and 2013 Supplement)

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

#### **Article – Corporations and Associations**

11-101.

(a) In this title, unless the context requires otherwise, the following words have the meanings indicated.

(d) “Commissioner” means the Securities Commissioner of the Division of Securities.

(k) “Issuer” means any person who issues or proposes to issue a security, except that:

(1) With respect to certificates of deposit, voting–trust certificates, or collateral–trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term “issuer” means the person performing the acts and assuming the duties of depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued; and

(2) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under the titles or leases, there is not considered to be any “issuer”.

(m) “Offer” or “offer to sell”, except as provided in § 11–102(a) of this subtitle, includes every attempt or offer to dispose of or solicitation of an offer to buy, a security or interest in a security for value.

(p) “Sale” or “sell”, except as provided in § 11–102(a) of this subtitle, includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(r) (1) “Security” means any:

(i) Note;

(ii) Stock;

(iii) Treasury stock;

(iv) Bond;

(v) Debenture;

(vi) Evidence of indebtedness;

(vii) Certificate of interest or participation in any profit–sharing agreement;

- (viii) Collateral–trust certificate;
- (ix) Preorganization certificate or subscription;
- (x) Transferable share;
- (xi) Investment contract;
- (xii) Voting–trust certificate;
- (xiii) Certificate of deposit for a security;
- (xiv) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease;
- (xv) In general, any interest or instrument commonly known as a “security”; or
- (xvi) Certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the preceding.

(2) “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum, periodically for life, or some other specified period.

11–205.

The Commissioner by rule or order may require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication, whether communicated in hard copy, electronic means, or otherwise, addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted by Subtitle 6 of this title or the security is a federal covered security or the transaction is with respect to a federal covered security.

11–501.

A person may not offer or sell any security in this State unless:

- (1) The security is registered under this title;
- (2) The security or transaction is exempted under Subtitle 6 of this title; or
- (3) The security is a federal covered security.

11-506.

(a) Except as provided in § 11-510.1 of this subtitle, a person filing an application to register securities shall pay a fee of 0.1 percent of the maximum aggregate offering price at which the securities are to be offered in this State, but the fee may not be less than \$500 or more than \$1,500.

(b) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A person required to submit a filing in accordance with an exemption granted under this title shall pay a fee of \$400 for each filing.

(2) A PERSON REQUIRED TO SUBMIT A FILING IN ACCORDANCE WITH THE EXEMPTION GRANTED UNDER § 11-601(16) OF THIS TITLE SHALL PAY A FEE OF \$100 FOR EACH FILING.

[(2)] (3) A person required to submit a notice of the offer or sale of federal covered securities under § 11-503.1(c) of this subtitle shall pay a fee of \$100 for each filing.

(c) The Commissioner shall retain the fee, if:

(1) An application to register securities is withdrawn before the effective date;

(2) A notice of the offer or sale of a federal covered security is withdrawn; or

(3) A preeffective stop order is entered under §§ 11-511 through 11-513 of this subtitle.

11-601.

The following securities are exempted from §§ 11-205 and 11-501 of this title:

(15) (i) A note, bond, or other evidence of indebtedness issued to the United States or an agency or instrumentality of the United States by a cooperative, as defined in § 5-601 of this article, or by a foreign corporation doing business in the State under Title 5, Subtitle 6 of this article;

(ii) A mortgage, deed of trust, or other instrument executed to secure a note, bond, or other evidence of indebtedness described in item (i) of this item; and

(iii) A membership certificate issued by a cooperative, as defined in § 5-601 of this article, or by a foreign corporation doing business in the State under Title 5, Subtitle 6 of this article; [and]

~~(16) ANY NONEQUITY SECURITY ISSUED BY A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP, OR OTHER LEGAL ENTITY FORMED, ORGANIZED, OR EXISTING UNDER THE LAWS OF THE STATE TO AN INDIVIDUAL PURCHASER WHO IS A RESIDENT OF THE STATE IF:~~

~~(i) THE ISSUER'S NAME, ADDRESS, AND FORM OF ORGANIZATION ARE SPECIFIED IN THE OFFER;~~

~~(ii) THE CONSIDERATION PAID FOR THE NONEQUITY SECURITY DOES NOT EXCEED \$100;~~

~~(iii) THE ISSUER DOES NOT HAVE MORE THAN ONE OFFERING FOR SECURITIES OPEN;~~

~~(iv) THE ISSUER'S TOTAL OFFERING FOR SECURITIES DOES NOT EXCEED \$100,000;~~

~~(v) EACH DOCUMENT AND COMMUNICATION REGARDING THE OFFER CONTAINS:~~

~~1. AN INTERNET LINK TO A DOCUMENT PREPARED BY THE DIVISION OF SECURITIES THAT EXPLAINS CROWDFUNDING AND CROWDFUNDING RISKS; AND~~

~~2. A DISCLAIMER CLEARLY STATING THAT THE PURCHASER MAY LOSE THE ENTIRE AMOUNT PAID FOR THE NONEQUITY SECURITY AND THE PURCHASER SHOULD CAREFULLY EVALUATE EACH ISSUER'S TRUSTWORTHINESS; AND~~

~~(vi) WITHIN 10 DAYS AFTER THE ISSUER HAS SOLD 25 NONEQUITY SECURITIES UNDER THIS EXEMPTION, THE ISSUER NOTIFIES THE COMMISSIONER IN WRITING THAT THE ISSUER IS SELLING NONEQUITY SECURITIES TO PURCHASERS IN THE STATE; AND~~

(16) TO THE EXTENT THE COMMISSIONER BY RULE OR ORDER MAY PERMIT, ANY SECURITY ISSUED BY AN ENTITY FORMED, ORGANIZED, OR EXISTING UNDER THE LAWS OF THE STATE IF:

**(I) THE OFFERING OF THE SECURITY IS CONDUCTED IN ACCORDANCE WITH § 3(A)(11) OF THE SECURITIES ACT OF 1933 AND RULE 147 ADOPTED UNDER THE SECURITIES ACT OF 1933;**

**(II) THE OFFER AND SALE OF THE SECURITY ARE MADE ONLY TO RESIDENTS OF THE STATE;**

**(III) THE AGGREGATE PRICE OF SECURITIES IN AN OFFERING UNDER THIS ITEM DOES NOT EXCEED \$100,000;**

**(IV) THE TOTAL CONSIDERATION PAID BY ANY PURCHASER OF SECURITIES IN AN OFFERING UNDER THIS ITEM DOES NOT EXCEED \$100;**

**(V) NO COMMISSION OR OTHER REMUNERATION IS PAID IN CONNECTION WITH AN OFFERING OF SECURITIES UNDER THIS ITEM TO ANY PERSON WHO IS NOT REGISTERED AS REQUIRED UNDER THIS TITLE;**

**(VI) NEITHER THE ISSUER NOR ANY OF ITS RELATED PERSONS IS SUBJECT TO A DISQUALIFICATION AS DEFINED BY THE COMMISSIONER BY RULE OR ORDER; AND**

**(VII) THE SECURITY IS SOLD IN AN OFFERING CONDUCTED IN COMPLIANCE WITH ANY CONDITIONS ESTABLISHED BY RULE OR ORDER OF THE COMMISSIONER, WHICH MAY INCLUDE:**

- 1. RESTRICTIONS ON THE NATURE OF THE ISSUER;**
- 2. LIMITATIONS ON THE NUMBER AND MANNER OF OFFERINGS;**
- 3. REQUIRED DISCLOSURES TO INVESTORS, INCLUDING RISK FACTORS RELATED TO THE ISSUER AND THE OFFERING; AND**
- 4. REQUIRED FILING WITH THE COMMISSIONER OF NOTICES AND OTHER MATERIALS RELATED TO THE OFFERING; AND**

**[(16)] (17)** Any security as to which the Commissioner by rule or order finds that:

(i) Compliance with §§ 11–205 and 11–501 of this title is not necessary or appropriate for the protection of investors; and

(ii) The exemption is consistent with the public interest and within the purposes fairly intended by the policy and provisions of this title.

~~SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 31, 2014, the Division of Securities within the Office of the Attorney General shall:~~

~~(1) develop for the public a simple document explaining crowdfunding, crowdfunding risks, and methods of minimizing crowdfunding risks; and~~

~~(2) publish the document in item (1) of this section on the Division's Web site.~~

SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.

**Approved by the Governor, May 15, 2014.**