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By: **Delegates Brown, Benson, Moe, and Hill**  
Introduced and read first time: January 25, 1999  
Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Securities - Exemptions - Sales to Accredited Investors**

3 FOR the purpose of creating an exemption from certain filing and registration  
4 requirements under the Maryland Securities Act for certain offers or sales of  
5 securities to accredited investors.

6 BY repealing and reenacting, with amendments,  
7 Article - Corporations and Associations  
8 Section 11-602  
9 Annotated Code of Maryland  
10 (1993 Replacement Volume and 1998 Supplement)

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

13 **Article - Corporations and Associations**

14 11-602.

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

16 (1) Any isolated nonissuer transaction, whether effected through a  
17 broker-dealer or not;

18 (2) Any nonissuer distribution of an outstanding security if:

19 (i) A recognized securities manual contains the names of the  
20 officers and directors of the issuer, a balance sheet of the issuer as of a date within 18  
21 months, and a profit and loss statement for either the fiscal year preceding that date  
22 or the most recent year of operations; or

23 (ii) The security has a fixed maturity or a fixed interest or dividend  
24 provision and there has been no default during the current fiscal year or within the  
25 three preceding fiscal years, or during the existence of the issuer and any predecessor  
26 if less than three years, in the payment of principal, interest, or dividends on the  
27 security;

1 (3) Any nonissuer transaction effected by or through a registered  
2 broker-dealer under an unsolicited order or offer to buy, but the Commissioner by  
3 rule may require that:

4 (i) The customer acknowledge on a specified form that the sale was  
5 unsolicited; and

6 (ii) A signed copy of each form be preserved by the broker-dealer  
7 for a specified period;

8 (4) Any transaction:

9 (i) Between the issuer or other person on whose behalf the offering  
10 is made and an underwriter; or

11 (ii) Among underwriters;

12 (5) Any transaction in a bond or other evidence of indebtedness secured  
13 by a real or chattel mortgage, deed of trust, or agreement for the sale of real estate or  
14 chattels, if the entire mortgage, deed of trust, or agreement, together with all the  
15 bonds or other evidences of indebtedness secured by it, is offered and sold as a unit;

16 (6) Any transaction by a personal representative, sheriff, marshal,  
17 receiver, trustee in bankruptcy, guardian, or conservator;

18 (7) Any transaction executed by a bona fide pledgee without any purpose  
19 of evading this title;

20 (8) Any offer or sale to an investment company as defined in the  
21 Investment Company Act of 1940, an investment adviser with assets under  
22 management of not less than \$1,000,000, a broker-dealer, bank, trust company,  
23 savings and loan association, insurance company, employee benefit plan with assets  
24 of not less than \$1,000,000, or governmental agency or instrumentality, whether  
25 acting for itself or as a trustee or a fiduciary with investment control, or other  
26 institutional investor as designated by rule or order of the Commissioner;

27 (9) To the extent the Commissioner by rule or order permits, any offer or  
28 sale in a transaction involving the sale by an issuer to not more than 35 persons,  
29 other than those designated in item (8) of this section, in this State during any period  
30 of 12 consecutive months, whether or not the seller or any purchaser is then present  
31 in this State, if the seller reasonably believes that all the purchasers in this State,  
32 other than those designated in item (8) of this section, are purchasing for investment,  
33 and if the securities have not been offered to the general public by advertisement or  
34 general solicitation but the Commissioner by rule or order, as to any security or  
35 transaction or any type of security or transaction, may withdraw or further condition  
36 this exemption, increase or decrease the number of purchasers permitted, or waive  
37 the condition relating to their investment intent;

38 (10) Any offer or sale of a preorganization certificate or subscription if:

1 (i) No commission or other remuneration is paid or given directly  
2 or indirectly for soliciting any prospective subscriber;

3 (ii) The number of subscribers does not exceed ten; and

4 (iii) No payment is made by any subscriber;

5 (11) Any transaction under an offer to existing security holders of the  
6 issuer, including persons who at the time of the transaction are holders of convertible  
7 securities, nontransferable warrants, or transferable warrants exercisable within not  
8 more than 90 days of their issuance, if:

9 (i) No commission or other remuneration, other than a stand-by  
10 commission, is paid or given directly or indirectly for soliciting any security holder in  
11 this State; or

12 (ii) The issuer first files a notice specifying the terms of the offer  
13 and the Commissioner does not by order disallow the exemption within the next five  
14 full business days;

15 (12) (i) Any offer, but not a sale, of a security for which a registration  
16 statement has been filed under both this title and the Securities Act of 1933 if a stop  
17 order or refusal order is not in effect and a public proceeding or examination looking  
18 toward such an order is not pending under either this title or the Securities Act of  
19 1933;

20 (ii) Any offer, but not a sale, of a security for which a registration  
21 statement has been filed under this title if a stop order or refusal order is not in effect  
22 and a public proceeding or examination looking toward such an order is not pending,  
23 and if the offeror complies with § 11-502(c) or § 11-504(d) of this title;

24 (13) Any offer or sale of a security by or through a registered  
25 broker-dealer if:

26 (i) The offer or sale is not directly or indirectly for the benefit of the  
27 issuer or a person who is known or who reasonably should be known to the  
28 broker-dealer to be the record or beneficial owner of 10 percent or more of the  
29 outstanding voting securities of the issuer;

30 (ii) The security is not part of an unsold allotment or subscription  
31 taken by a participant in a distribution directly or indirectly for the benefit of the  
32 issuer or a person who is known or who reasonably should be known to the  
33 broker-dealer to be the record or beneficial owner of 10 percent or more of the  
34 outstanding voting securities of the issuer; and

35 (iii) An administrative stop order or similar order or permanent or  
36 temporary injunction of any court of competent jurisdiction is not in effect under this  
37 title or under any federal or State act against the offering or sale of the security or  
38 any security of the same class;

1           (14) Any sale of securities to an employee stock ownership plan trust, as  
2 defined in the Internal Revenue Code, any accrual of interests of participants in the  
3 plan, and any distribution made under the plan to participants or beneficiaries of the  
4 plan;

5           (15) To the extent permitted by rule or order of the Commissioner, any  
6 offer or sale within this State by an issuer now or hereafter exempted from Section 5  
7 of the Securities Act of 1933 by virtue of a rule or regulation adopted by the United  
8 States Securities and Exchange Commission under Section 3(b) or Section 4(2) of that  
9 Act; if the issuer files with the Commissioner a notice of intent to claim exemption  
10 under this paragraph, at such time or times, in such form, and containing such  
11 information as the Commissioner determines;

12           (16) Any offer or sale of units of fractional undivided interests in a unit  
13 investment trust registered under the Investment Company Act of 1940 if:

14                   (i) The units have been the subject of a previously effective  
15 registration statement under this title or were exempt from registration;

16                   (ii) The units are offered or sold by a broker-dealer registered  
17 under this title; and

18                   (iii) The broker-dealer is a sponsor or depositor of the unit  
19 investment trust or is an affiliate of the sponsor or depositor; [and]

20           (17) Any transaction as to which the Commissioner by rule or order finds  
21 that:

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

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

26           (18) ANY OFFER OR SALE OF A SECURITY THAT FALLS UNDER THE  
27 ACCREDITED INVESTOR EXEMPTION, AS DEFINED BY RULE OR ORDER OF THE  
28 COMMISSIONER OR BY REGULATION.

29   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 1999.