

# HOUSE BILL 1365

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By: **Delegates Schuh, Barve, and Costa**

Introduced and read first time: February 10, 2014

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Associations – Securities – Maryland Small Business**  
3 **Funding Act**

4 FOR the purpose of exempting a certain security issued to a resident of the State by a  
5 certain business entity from certain registration and filing requirements under  
6 certain circumstances; exempting a certain Web site that is used to facilitate the  
7 sale of a certain security from certain registration and filing requirements  
8 under certain circumstances; requiring the Division of Securities within the  
9 Office of the Attorney General to inspect and review certain Web sites under  
10 certain circumstances; requiring a certain issuer, before using a Web site to  
11 offer to sell a security, to provide to the Division and the operator of the Web  
12 site certain documentation; requiring a certain issuer to obtain certain  
13 documentation from certain purchasers of securities; requiring the operator of a  
14 certain Web site to provide to the Division certain documentation and  
15 information under certain circumstances; requiring a certain issuer and the  
16 operator of a certain Web site to maintain certain records and provide access to  
17 certain records under certain circumstances; requiring a financial institution to  
18 hold a certain payment for the purchase of a security under certain  
19 circumstances; requiring the financial institution to notify the Division of the  
20 receipt of certain payments and provide certain information to the Division;  
21 providing that certain information is confidential and is deemed to be a trade  
22 secret; authorizing a certain notice to be submitted to the Division in writing or  
23 in electronic form; requiring the notice to contain certain information and  
24 include copies of certain documents; requiring an issuer of certain securities to  
25 provide a quarterly report to certain purchasers; requiring the report to be sent  
26 in a certain manner within a certain time period; requiring the report to include  
27 certain information; prohibiting the issuer from charging a fee for the  
28 production or provision of the report; providing for the application of certain  
29 provisions of this Act; defining certain terms; making certain conforming  
30 changes; and generally relating to securities and registration and filing  
31 exemptions.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,  
2 Article – Corporations and Associations  
3 Section 11–101(a), (d), (k), (m), (p), and (r)  
4 Annotated Code of Maryland  
5 (2007 Replacement Volume and 2013 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – Corporations and Associations  
8 Section 11–205, 11–401(a), and 11–501  
9 Annotated Code of Maryland  
10 (2007 Replacement Volume and 2013 Supplement)

11 BY adding to  
12 Article – Corporations and Associations  
13 Section 11–901 through 11–907 to be under the new subtitle “Subtitle 9. Filing  
14 and Registration Exemptions for Small Business Funding”  
15 Annotated Code of Maryland  
16 (2007 Replacement Volume and 2013 Supplement)

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

19 **Article – Corporations and Associations**

20 11–101.

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

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

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

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

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

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

4 (p) "Sale" or "sell", except as provided in § 11-102(a) of this subtitle, includes  
5 every contract of sale of, contract to sell, or disposition of a security or interest in a  
6 security for value.

7 (r) (1) "Security" means any:

8 (i) Note;

9 (ii) Stock;

10 (iii) Treasury stock;

11 (iv) Bond;

12 (v) Debenture;

13 (vi) Evidence of indebtedness;

14 (vii) Certificate of interest or participation in any profit-sharing  
15 agreement;

16 (viii) Collateral-trust certificate;

17 (ix) Preorganization certificate or subscription;

18 (x) Transferable share;

19 (xi) Investment contract;

20 (xii) Voting-trust certificate;

21 (xiii) Certificate of deposit for a security;

22 (xiv) Certificate of interest or participation in an oil, gas, or  
23 mining title or lease or in payments out of production under the title or lease;

24 (xv) In general, any interest or instrument commonly known as a  
25 "security"; or

26 (xvi) Certificate of interest or participation in, temporary or  
27 interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or  
28 purchase any of the preceding.



1           **(C) “FINANCIAL INSTITUTION” HAS THE MEANING STATED IN § 1-101**  
2 **OF THE FINANCIAL INSTITUTIONS ARTICLE.**

3 **11-902.**

4           **THIS SUBTITLE APPLIES TO ANY SECURITY ISSUED TO A RESIDENT OF THE**  
5 **STATE BY A BUSINESS ENTITY.**

6 **11-903.**

7           **SUBJECT TO § 11-905 OF THIS SUBTITLE, A SECURITY IS EXEMPTED FROM**  
8 **§§ 11-205 AND 11-501 OF THIS TITLE IF:**

9           **(1) THE ISSUER, EITHER BEFORE OR AS A RESULT OF THE**  
10 **OFFERING, IS NOT:**

11                   **(I) AN INVESTMENT COMPANY AS DEFINED IN § 3 OF THE**  
12 **INVESTMENT COMPANY ACT OF 1940; OR**

13                   **(II) SUBJECT TO THE REPORTING REQUIREMENTS OF § 13**  
14 **OR § 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934;**

15           **(2) THE ISSUER ENTERS INTO AN ESCROW AGREEMENT WITH A**  
16 **FINANCIAL INSTITUTION LOCATED IN THE STATE THAT SPECIFIES THAT:**

17                   **(I) THE FINANCIAL INSTITUTION WILL RELEASE ALL**  
18 **OFFERING PROCEEDS TO THE ISSUER ONLY WHEN THE AGGREGATE CAPITAL**  
19 **RAISED IS AT LEAST THE MINIMUM TARGET OFFERING AMOUNT SPECIFIED IN**  
20 **THE ISSUER’S BUSINESS PLAN; AND**

21                   **(II) A PURCHASER MAY CANCEL THE PURCHASER’S**  
22 **COMMITMENT TO PURCHASE A SECURITY IF THE TARGET OFFERING AMOUNT IS**  
23 **NOT RAISED BEFORE THE DATE SPECIFIED IN THE DISCLOSURE STATEMENT;**

24           **(3) THE TOTAL OF ALL CASH AND CONSIDERATION PAID FOR THE**  
25 **SECURITY DOES NOT EXCEED:**

26                   **(I) IF THE ISSUER HAS NOT UNDERGONE OR PROVIDED**  
27 **DOCUMENTATION OF A FINANCIAL AUDIT THAT APPLIED GENERALLY ACCEPTED**  
28 **ACCOUNTING PRINCIPLES WITHIN THE 12-MONTH PERIOD IMMEDIATELY**  
29 **PRECEDING THE FIRST OFFER OR SALE OF A SECURITY UNDER THIS SUBTITLE,**  
30 **\$1,000,000, INCLUDING THE AGGREGATE AMOUNT THE ISSUER RECEIVED FOR**  
31 **ALL SALES OF SECURITIES WITHIN THE 12-MONTH PERIOD IMMEDIATELY**

1 PRECEDING THE FIRST OFFER OR SALE OF A SECURITY UNDER THIS SUBTITLE;  
2 OR

3 (II) IF THE ISSUER HAS UNDERGONE AND PROVIDED  
4 DOCUMENTATION OF A FINANCIAL AUDIT THAT APPLIED GENERALLY ACCEPTED  
5 ACCOUNTING PRINCIPLES WITHIN THE 12-MONTH PERIOD IMMEDIATELY  
6 PRECEDING THE FIRST OFFER OR SALE OF A SECURITY UNDER THIS SUBTITLE,  
7 \$2,000,000, INCLUDING THE AGGREGATE AMOUNT THE ISSUER RECEIVED FOR  
8 ALL SALES OF SECURITIES WITHIN THE 12-MONTH PERIOD IMMEDIATELY  
9 PRECEDING THE FIRST OFFER OR SALE OF A SECURITY UNDER THIS SUBTITLE;

10 (4) THE ISSUER HAS NOT ACCEPTED MORE THAN \$2,000 FROM  
11 ANY SINGLE PURCHASER WHO IS NOT AN ACCREDITED INVESTOR AS DEFINED IN  
12 17 C.F.R. § 230.501;

13 (5) NOT MORE THAN 15 DAYS AFTER THE SALE OF A SECURITY  
14 UNDER THIS SUBTITLE, THE ISSUER SUBMITS TO THE DIVISION THE NOTICE  
15 REQUIRED UNDER § 11-906 OF THIS SUBTITLE; AND

16 (6) THE ISSUER:

17 (I) INFORMS EACH PURCHASER THAT THE SECURITIES  
18 BEING OFFERED:

19 1. HAVE NOT BEEN REGISTERED UNDER FEDERAL  
20 OR STATE SECURITIES LAWS; AND

21 2. ARE SUBJECT TO LIMITATIONS ON RESALE; AND

22 (II) DISPLAYS A NOTICE CONSPICUOUSLY ON THE COVER  
23 PAGE OF THE DISCLOSURE DOCUMENT FOR THE SALE OF A SECURITY THAT  
24 INCLUDES THE FOLLOWING STATEMENT:

25 "IN MAKING INVESTMENT DECISIONS, INVESTORS MUST RELY ON THEIR  
26 OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING,  
27 INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT  
28 BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR  
29 REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES  
30 HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF  
31 THIS DOCUMENT. MAKING ANY REPRESENTATION TO THE CONTRARY IS A  
32 CRIMINAL OFFENSE.

1       **THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON**  
2 **TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD**  
3 **EXCEPT AS PERMITTED UNDER SEC RULE 147, 17 C.F.R. § 230.147(E) AND**  
4 **APPLICABLE STATE SECURITIES LAWS. INVESTORS SHOULD BE AWARE THAT**  
5 **THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT**  
6 **FOR AN INDEFINITE PERIOD OF TIME.”.**

7 **11-904.**

8       **SUBJECT TO § 11-905 OF THIS SUBTITLE, A WEB SITE THAT IS USED TO**  
9 **FACILITATE THE SALE OF A SECURITY UNDER THIS SUBTITLE IS EXEMPTED**  
10 **FROM § 11-401 OF THIS TITLE IF THE WEB SITE AND THE OPERATOR OF THE**  
11 **WEB SITE DO NOT:**

12               **(1) OFFER INVESTMENT ADVICE OR RECOMMENDATIONS;**

13               **(2) SOLICIT PURCHASES, SALES, OR OFFERS TO BUY THE**  
14 **SECURITIES OFFERED OR DISPLAYED ON THE WEB SITE;**

15               **(3) COMPENSATE EMPLOYEES, AGENTS, OR OTHER PERSONS:**

16                       **(I) FOR THE SOLICITATION OF THE SALE OF SECURITIES**  
17 **DISPLAYED OR REFERENCED ON THE WEB SITE; OR**

18                       **(II) BASED ON THE SALE OF SECURITIES DISPLAYED OR**  
19 **REFERENCED ON THE WEB SITE;**

20               **(4) HOLD, MANAGE, POSSESS, OR OTHERWISE HANDLE**  
21 **PURCHASER FUNDS OR SECURITIES; AND**

22               **(5) ENGAGE IN OTHER ACTIVITIES THAT THE COMMISSIONER**  
23 **FINDS INAPPROPRIATE.**

24 **11-905.**

25               **(A) THIS SECTION APPLIES A TRANSACTION IN WHICH A WEB SITE IS**  
26 **USED TO FACILITATE THE SALE OF A SECURITY UNDER THIS SUBTITLE.**

27               **(B) THE DIVISION SHALL INSPECT AND REVIEW EACH WEB SITE BEING**  
28 **USED TO FACILITATE THE SALE OF A SECURITY UNDER THIS SUBTITLE.**

29               **(C) AN ISSUER:**

1           **(1) BEFORE USING A WEB SITE TO OFFER TO SELL A SECURITY,**  
2 **SHALL PROVIDE TO THE DIVISION AND THE OPERATOR OF THE WEB SITE USED**  
3 **TO FACILITATE THE SALE DOCUMENTATION THAT THE ISSUER IS A BUSINESS**  
4 **ENTITY AUTHORIZED TO DO BUSINESS UNDER THE LAWS OF THE STATE; AND**

5           **(2) SHALL OBTAIN FROM EACH PURCHASER OF A SECURITY**  
6 **DOCUMENTATION THAT THE PURCHASER IS A RESIDENT OF MARYLAND AND, IF**  
7 **APPLICABLE, AN ACCREDITED INVESTOR.**

8           **(D) THE OPERATOR OF A WEB SITE USED TO FACILITATE THE SALE OF**  
9 **SECURITIES UNDER THIS SUBTITLE SHALL PROVIDE TO THE DIVISION:**

10           **(1) DOCUMENTATION THAT:**

11                   **(I) THE OPERATOR IS A BUSINESS ENTITY;**

12                   **(II) THE OPERATOR IS AUTHORIZED TO DO BUSINESS IN**  
13 **THE STATE; AND**

14                   **(III) THE WEB SITE IS BEING USED TO OFFER AND SELL**  
15 **SECURITIES IN ACCORDANCE WITH THIS SUBTITLE;**

16           **(2) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE**  
17 **OPERATOR; AND**

18           **(3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE**  
19 **ISSUER OF THE SECURITIES.**

20           **(E) THE ISSUER AND THE OPERATOR OF THE WEB SITE SHALL:**

21                   **(1) MAINTAIN RECORDS OF THE OFFERS AND SALES OF**  
22 **SECURITIES FACILITATED THROUGH THE WEB SITE; AND**

23                   **(2) ON REQUEST BY THE DIVISION, PROVIDE ACCESS TO THE**  
24 **RECORDS RELATING TO THE OFFERS AND SALES OF SECURITIES FACILITATED**  
25 **THROUGH THE WEB SITE.**

26           **(F) (1) A FINANCIAL INSTITUTION SHALL HOLD EACH PAYMENT FOR**  
27 **THE PURCHASE OF A SECURITY FACILITATED THROUGH A WEB SITE.**

28                   **(2) ON RECEIPT OF A PAYMENT FOR A SECURITY, THE FINANCIAL**  
29 **INSTITUTION SHALL:**



1                   **(I) NOTIFY THE DIVISION OF THE RECEIPT OF THE**  
2 **PAYMENT; AND**

3                   **(II) PROVIDE TO THE DIVISION THE NAME AND ADDRESS OF**  
4 **THE PURCHASER OF THE SECURITY.**

5                   **(3) ANY INFORMATION RETAINED BY A FINANCIAL INSTITUTION**  
6 **OR THE DIVISION UNDER THIS SUBSECTION IS CONFIDENTIAL AND IS DEEMED**  
7 **TO BE A TRADE SECRET.**

8 **11-906.**

9                   **(A) A NOTICE TO THE DIVISION UNDER § 11-903(5) OF THIS SUBTITLE**  
10 **MAY BE SUBMITTED IN WRITING OR ELECTRONIC FORM.**

11                   **(B) THE NOTICE SHALL CONTAIN:**

12                   **(1) A STATEMENT THAT THE ISSUER WILL BE CONDUCTING AN**  
13 **OFFERING UNDER THIS SUBTITLE;**

14                   **(2) A DESCRIPTION OF THE BUSINESS ENTITY ISSUING THE**  
15 **SECURITY, INCLUDING THE STRUCTURE, HISTORY, AND BUSINESS PLAN OF THE**  
16 **BUSINESS ENTITY;**

17                   **(3) THE INTENDED USE OF THE OFFERING PROCEEDS;**

18                   **(4) THE NAMES AND TITLES OF THE OFFICERS OF THE BUSINESS**  
19 **ENTITY;**

20                   **(5) THE TERMS AND CONDITIONS OF THE SECURITIES BEING**  
21 **OFFERED;**

22                   **(6) THE TERMS AND CONDITIONS OF EACH OUTSTANDING**  
23 **SECURITY OF THE BUSINESS ENTITY;**

24                   **(7) THE NAME OF EACH PERSON WHO WILL BE OFFERING AND**  
25 **SELLING THE SECURITIES, INCLUDING THE NAME OF EACH OPERATOR OF A**  
26 **WEB SITE THAT WILL BE USED TO FACILITATE THE SALE OF THE SECURITIES;**

27                   **(8) A DESCRIPTION OF ANY LEGAL PROCEEDINGS INVOLVING THE**  
28 **BUSINESS ENTITY; AND**

1           **(9) ANY OTHER MATERIAL INFORMATION THAT MAY MAKE ANY**  
2 **REPRESENTATIONS ABOUT THE BUSINESS ENTITY OR SALE MISLEADING OR**  
3 **INCOMPLETE.**

4           **(C) THE NOTICE SHALL INCLUDE A COPY OF:**

5                 **(1) THE DISCLOSURE STATEMENT THAT THE ISSUER WILL**  
6 **PROVIDE TO INVESTORS IN CONNECTION WITH THE OFFERING; AND**

7                 **(2) THE ESCROW AGREEMENT BETWEEN THE ISSUER AND A**  
8 **FINANCIAL INSTITUTION LOCATED IN THE STATE IN WHICH PAYMENTS FOR THE**  
9 **SECURITIES SOLD IN THE OFFERING WILL BE DEPOSITED.**

10 **11-907.**

11           **(A) AN ISSUER OF A SECURITY UNDER THIS SUBTITLE SHALL PROVIDE A**  
12 **QUARTERLY REPORT TO THE PURCHASER OF THE SECURITY.**

13           **(B) A REPORT UNDER THIS SECTION SHALL BE SENT BY ELECTRONIC**  
14 **MAIL OR FIRST-CLASS MAIL TO THE PURCHASER NO MORE THAN 45 DAYS AFTER**  
15 **THE END OF A REPORTING QUARTER.**

16           **(C) THE REPORT SHALL INCLUDE:**

17                 **(1) THE COMPENSATION OF EACH DIRECTOR AND EXECUTIVE**  
18 **OFFICER OF THE ISSUER FOR THE LAST YEAR, INCLUDING CASH COMPENSATION**  
19 **EARNED SINCE THE PREVIOUS QUARTERLY REPORT; AND**

20                 **(2) AN ANALYSIS OF THE BUSINESS OPERATION AND FINANCIAL**  
21 **CONDITION OF THE ISSUER THAT IS WRITTEN BY MANAGEMENT.**

22           **(D) THE ISSUER MAY NOT CHARGE A FEE TO THE PURCHASER FOR THE**  
23 **PRODUCTION OR PROVISION OF THE REPORT.**

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