

SENATE BILL 811

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By: **Senator Raskin**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Associations – Maryland Securities Act – Registration and**
3 **Filing Exemptions**

4 FOR the purpose of exempting a certain security issued by a certain business entity to
5 an individual purchaser who is a resident of the State from certain registration
6 and filing requirements under certain circumstances; requiring the Division of
7 Securities within the Office of the Attorney General to develop for the public a
8 document containing certain information regarding crowdfunding and publish
9 the document on the Web site of the Division on or before a certain date; and
10 generally relating to the Maryland Securities Act and registration and filing
11 exemptions.

12 BY repealing and reenacting, without amendments,
13 Article – Corporations and Associations
14 Section 11–101(a), (d), (k), (m), (p), and (r), 11–205, and 11–501
15 Annotated Code of Maryland
16 (2007 Replacement Volume and 2013 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Corporations and Associations
19 Section 11–601(15) and (16)
20 Annotated Code of Maryland
21 (2007 Replacement Volume and 2013 Supplement)

22 BY adding to
23 Article – Corporations and Associations
24 Section 11–601(16)
25 Annotated Code of Maryland
26 (2007 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Corporations and Associations**

4 11–101.

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

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

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

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

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

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

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

27 (r) (1) “Security” means any:

28 (i) Note;

29 (ii) Stock;

30 (iii) Treasury stock;

31 (iv) Bond;

32 (v) Debenture;

- 1 (vi) Evidence of indebtedness;
- 2 (vii) Certificate of interest or participation in any profit-sharing
3 agreement;
- 4 (viii) Collateral-trust certificate;
- 5 (ix) Preorganization certificate or subscription;
- 6 (x) Transferable share;
- 7 (xi) Investment contract;
- 8 (xii) Voting-trust certificate;
- 9 (xiii) Certificate of deposit for a security;
- 10 (xiv) Certificate of interest or participation in an oil, gas, or
11 mining title or lease or in payments out of production under the title or lease;
- 12 (xv) In general, any interest or instrument commonly known as a
13 “security”; or
- 14 (xvi) Certificate of interest or participation in, temporary or
15 interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
16 purchase any of the preceding.

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

20 11-205.

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

28 11-501.

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

- 30 (1) The security is registered under this title;

1 (2) The security or transaction is exempted under Subtitle 6 of this
2 title; or

3 (3) The security is a federal covered security.

4 11-601.

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

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

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

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

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

21 **(I) THE ISSUER'S NAME, ADDRESS, AND FORM OF**
22 **ORGANIZATION ARE SPECIFIED IN THE OFFER;**

23 **(II) THE CONSIDERATION PAID FOR THE NONEQUITY**
24 **SECURITY DOES NOT EXCEED \$100;**

25 **(III) THE ISSUER DOES NOT HAVE MORE THAN ONE**
26 **OFFERING FOR SECURITIES OPEN;**

27 **(IV) THE ISSUER'S TOTAL OFFERING FOR SECURITIES DOES**
28 **NOT EXCEED \$100,000;**

29 **(V) EACH DOCUMENT AND COMMUNICATION REGARDING**
30 **THE OFFER CONTAINS:**

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

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

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

12 **[(16)] (17)** Any security as to which the Commissioner by rule or order
13 finds that:

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

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

18 **SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 31,**
19 **2014, the Division of Securities within the Office of the Attorney General shall:**

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

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

24 **SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect**
25 **October 1, 2014.**