SENATE BILL 318

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By: **The President (By Request – Administration) and Senators Bates, Cassilly, Eckardt, Edwards, Ferguson, Hough, Manno, Mathias, Norman, Ready, Rosapepe, Salling, and Serafini**
Introduced and read first time: January 20, 2017
Assigned to: Budget and Taxation

A BILL ENTITLED

1   AN ACT concerning

2   **Cybersecurity Investment Incentive Tax Credit – Eligibility and Sunset**
3   **Extension**

4   FOR the purpose of altering the eligibility criteria for the cybersecurity investment
5   incentive tax credit to provide the credit to a certain qualified investor in a certain
6   qualified Maryland cybersecurity company rather than providing the credit to the
7   company; making conforming changes; extending the termination date of the credit;
8   providing for the application of this Act; and generally relating to the cybersecurity
9   investment incentive tax credit.

10   BY repealing and reenacting, with amendments,
11   Article – Tax – General
12   Section 10–733
13   Annotated Code of Maryland
14   (2016 Replacement Volume)

15   BY repealing and reenacting, with amendments,
16   Chapter 390 of the Acts of the General Assembly of 2013
17   Section 2

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

20   **Article – Tax – General**

21   10–733.

22   (a)   (1)   In this section the following words have the meanings indicated.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
    [Brackets] indicate matter deleted from existing law.

1   (2)   (i)   "Company" means any entity of any form duly organized and
2 existing under the laws of any jurisdiction for the purpose of conducting business for profit.

3   (ii)   "Company" does not include a sole proprietorship.

4   (3)   "Cybersecurity company" means a company organized for profit that is
5 engaged primarily in the development of innovative and proprietary cybersecurity
6 technology.

7   (4)   "Cybersecurity technology" means products or goods intended to detect
8 or prevent activity intended to result in unauthorized access to, exfiltration of,
9 manipulation of, or impairment to the integrity, confidentiality, or availability of an
10 information system or information stored on or transiting an information system.

11   (5)   "Department" means the Department of Commerce.

12   (6)   (i)   "Investment" means the contribution of money in cash or cash
13 equivalents expressed in United States dollars, at a risk of loss, to a qualified Maryland
14 cybersecurity company in exchange for stock, a partnership or membership interest, or any
15 other ownership interest in the equity of the qualified Maryland cybersecurity company,
16 title to which ownership interest shall vest in the qualified investor.

17   (ii)   "Investment" does not include debt.

18   (iii)   For purposes of this section, an investment is at risk of loss when
19 repayment entirely depends on the success of the business operations of the qualified
20 company.

21   (7)   "Panel" means the panel that the Department may establish under
22 subsection (e) of this section composed of experts in the area of cybersecurity technology.

23   (8)   (i)   "Qualified investor" means any individual or entity that invests
24 at least $25,000 in a qualified Maryland cybersecurity company and that is required to file
25 an income tax return in any jurisdiction.

26   (ii)   "Qualified investor" does not include a qualified pension plan, an
27 individual retirement account, or any other qualified retirement plan under the Employee
28 Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under
29 such plans, or similar tax–favored plans or entities under the laws of other countries.

30   (9)   "Qualified Maryland cybersecurity company" means a cybersecurity
31 company that has met the criteria set forth in subsection **[**(c)(2)**](B)(2)** of this section **[**and
32 been determined under subsection (c)(3)(ii)2 of this section to qualify for the tax credit
33 under this section**]**.

34   (10)   "Secretary" means the Secretary of Commerce.

1   (b)   (1)   Subject to paragraph (2) of this subsection and subsections (d) and (f) of
2   this section, for the taxable year in which an investment in a qualified Maryland
3   cybersecurity company is made, a qualified **[**Maryland cybersecurity company**]** **INVESTOR**
4   may claim a credit against the State income tax in an amount equal to the amount of tax
5   credit stated in the final credit certificate approved by the Secretary for the investment as
6   provided under this section.

7   (2)   **[**For purposes of**]** **TO BE ELIGIBLE FOR** the tax credit described in
8   paragraph (1) of this subsection, the qualified investor:

9   (i)   may not, after making the proposed investment, own or control
10   more than 25% of the equity interests in the qualified Maryland cybersecurity company in
11   which the investment is made; and

12   (ii)   **AT LEAST 30 DAYS PRIOR TO MAKING AN INVESTMENT IN A**
13   **QUALIFIED MARYLAND CYBERSECURITY COMPANY FOR WHICH THE QUALIFIED**
14   **INVESTOR WOULD BE ELIGIBLE FOR AN INITIAL TAX CREDIT CERTIFICATE UNDER**
15   **THIS SUBSECTION,** shall submit an application to the Department containing the
16   following:

17   1.   evidence that the investor is:

18   A.   if a company, duly organized and in good standing in the
19   jurisdiction under the laws under which it is organized;

20   B.   current in the payment of all tax obligations to a state or
21   any unit or subdivision of a state; and

22   C.   not in default under the terms of any contract with,
23   indebtedness to, or grant from a state or any unit or subdivision of a state; **[**and

24   2.   any other information the Department may require.

25   (c)   (1)   At least 30 days prior to receiving an investment in a qualified
26   Maryland cybersecurity company for which a qualified Maryland cybersecurity company
27   would be eligible for an initial tax credit certificate, the qualified Maryland cybersecurity
28   company shall submit an application to the Department.

29   (2)   The application shall**]** **2.** evidence that the qualified Maryland
30   cybersecurity company has satisfied the following minimum requirements for consideration
31   as a qualified Maryland cybersecurity company:

32   **[**(i)**]** **A.**   has its headquarters and base of operations in this State;

33   **[**(ii)**]** **B.**   has not participated in the tax credit program under this
34   section for more than 1 prior fiscal year;

1   **[**(iii)**] C.**   has been in active business no longer than 5 years;

2   **[**(iv)**] D.**   has an aggregate capitalization of at least $100,000;

3   **[**(v)**] E.**   owns or has properly licensed any proprietary technology;

4   **[**(vi)**] F.**   has fewer than 50 full–time employees;

5   **[**(vii)**] G.**   does not have its securities publicly traded on any
6   exchange;

7   **[**(viii)**] H.**   is in good standing;

8   **[**(ix)**] I.**   is current in the payment of all tax obligations to the State
9   or any unit or subdivision of the State;

10   **[**(x)**]   J.**   is not in default under the terms of any contract with,
11 indebtedness to, or grant from the State or any unit or subdivision of the State; and

12   **[**(xi)**] K.**   meets   any   other   reasonable   requirements   of   the
13 Department evidencing that the company is a going concern primarily engaged in the
14 development of innovative and proprietary cybersecurity technology**; AND**

15   **3.**   **ANY OTHER INFORMATION THE DEPARTMENT MAY**
16 **REQUIRE**.

17   **[**(3)**](C)(1)**   The Department shall:

18   (i)   approve all applications that qualify for credits under this section
19 on a first–come, first–served basis; and

20   (ii)   within 30 calendar days of receipt of an application:

21   1.   certify the amount of any approved tax credits to a
22 qualified **[**Maryland cybersecurity company**] INVESTOR**; and

23   2.   determine whether a cybersecurity company qualifies for
24 investments that are eligible for the tax credit under this section.

25   **[**(4)**](2)**   (i)   After the date on which the Department issues an initial
26 tax credit certificate under this section, a qualified investor shall have 30 calendar days to
27 make an investment in a qualified Maryland cybersecurity company under this section.

28   (ii)   Within 10 calendar days after the date on which a qualified
29 investor   makes   the   investment,   the   qualified   **[**Maryland   cybersecurity   company**]**

1 **INVESTOR** shall provide to the Department notice and proof of the making of the
2 investment, including:

3   1.   the date of the investment;

4   2.   the amount invested;

5   3.   proof of the receipt of the invested funds by the qualified
6 Maryland cybersecurity company;

7   4.   a complete description of the nature of the ownership
8 interest in the equity of the qualified Maryland cybersecurity company acquired in
9 consideration of the investment; and

10   5.   any reasonable supporting documentation the
11 Department may require.

12   (iii)   If a qualified **[**Maryland cybersecurity company**]** **INVESTOR** does
13 not provide the notice and proof of the making of the investment required in subparagraph
14 (ii) of this paragraph within 40 calendar days after the date on which the Department
15 issues an initial tax credit certificate under this section:

16   1.   the Department shall rescind the initial tax credit
17 certificate; and

18   2.   the credit amount allocated to the rescinded certificate
19 shall revert to the Maryland Cybersecurity Investment Tax Credit Reserve Fund and shall
20 be available in the applicable fiscal year for allocation by the Department to other initial
21 tax credit certificates in accordance with the provisions of this section.

22   (d)   (1)   The tax credit allowed in an initial tax credit certificate issued under
23 this section is:

24   (i)   except as provided in item (ii) of this paragraph, 33% of the
25 investment in a qualified Maryland cybersecurity company, not to exceed $250,000; or

26   (ii)   if a qualified Maryland cybersecurity company is located in
27 Allegany County, Dorchester County, Garrett County, or Somerset County, 50% of the
28 investment in the qualified Maryland cybersecurity company, not to exceed $500,000.

29   (2)   During any fiscal year, the Secretary may not certify eligibility for tax
30 credits for investments in a single qualified Maryland cybersecurity company that in the
31 aggregate exceed 15% of the total appropriations to the Maryland Cybersecurity
32 Investment Tax Credit Reserve Fund for that fiscal year.

1   (3)   If the credit allowed under this section in any taxable year exceeds the
2   State income tax for that taxable year, an individual or a corporation may claim a refund
3   in the amount of the excess.

4   (e)   (1)   The Department may establish a panel composed of experts in the area
5   of cybersecurity technology.

6   (2)   The Department may establish the panel under service contracts with
7   independent reviewers.

8   (3)   The panel shall assist the Department in its determination as to
9   whether a company is a qualified Maryland cybersecurity company.

10   (4)   A member of the panel is not eligible to receive any benefit, direct or
11   indirect, from the tax credit under this section.

12   (5)   (i)   Except as provided in subparagraph (ii) of this paragraph,
13   Division II of the State Finance and Procurement Article does not apply to a service that
14   the Department obtains under this section.

15   (ii)   The Department is subject to Title 12, Subtitle 4 of the State
16   Finance and Procurement Article for services the Department obtains under this section.

17   (f)   (1)   In this subsection, "Reserve Fund" means the Maryland Cybersecurity
18   Investment Tax Credit Reserve Fund established under paragraph (2) of this subsection.

19   (2)   (i)   There is a Maryland Cybersecurity Investment Tax Credit
20   Reserve Fund which is a special continuing, nonlapsing fund that is not subject to § 7–302
21   of the State Finance and Procurement Article.

22   (ii)   The money in the Reserve Fund shall be invested and reinvested
23   by the Treasurer, and interest and earnings shall be credited to the General Fund.

24   (iii)   The money in the Reserve Fund may be used by the Department
25   to pay the costs of administering the tax credit program under this section.

26   (3)   (i)   Subject to the provisions of this subsection, the Secretary shall
27   issue an initial tax credit certificate to a qualified [Maryland cybersecurity company]
28   **INVESTOR** for each approved investment in a qualified Maryland cybersecurity company
29   eligible for a tax credit.

30   (ii)   An initial tax credit certificate issued under this subsection shall
31   state the maximum amount of tax credit for which the qualified [Maryland cybersecurity
32   company] **INVESTOR** is eligible.

33   (iii)   1.   Except as otherwise provided in this subparagraph, for
34   any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts

1   in the aggregate totaling more than the amount appropriated to the Reserve Fund for that
2   fiscal year in the State budget as approved by the General Assembly, as reduced by the
3   amount needed to pay the costs of administering the tax credit program under this section.

4   2.   If the aggregate credit amounts under initial tax credit
5   certificates issued in a fiscal year total less than the amount appropriated to the Reserve
6   Fund for that fiscal year, any excess amount shall remain in the Reserve Fund and may be
7   issued under initial tax credit certificates for the next fiscal year.

8   3.   For any fiscal year, if funds are transferred from the
9   Reserve Fund under the authority of any provision of law other than under paragraph (4)
10 of this subsection, the maximum credit amounts in the aggregate for which the Secretary
11 may issue initial tax credit certificates shall be reduced by the amount transferred.

12   (iv)   1.   Except as provided in subsubparagraph 2 of this
13 subparagraph, for each fiscal year, the Governor shall include in the budget bill an
14 appropriation of at least $2,000,000 to the Reserve Fund.

15   2.   In fiscal year 2016, the Governor shall include in the
16 budget bill an appropriation of at least $1,500,000 to the Reserve Fund.

17   (v)   Notwithstanding the provisions of § 7–213 of the State Finance
18 and Procurement Article, the Governor may not reduce an appropriation to the Reserve
19 Fund in the State budget as approved by the General Assembly.

20   (vi)   Based on the actual amount of an investment made by a qualified
21 investor, the Secretary shall issue a final tax credit certificate to the qualified **[**Maryland
22 cybersecurity company**]** **INVESTOR**.

23   (4)   (i)   Except as otherwise provided in this paragraph, money
24 appropriated to the Reserve Fund shall remain in the Reserve Fund.

25   (ii)   1.   Within 15 days after the end of each calendar quarter, the
26 Department shall notify the Comptroller as to each final credit certificate issued during the
27 quarter:

28   A.   the maximum credit amount stated in the initial tax credit
29 certificate for the investment in the qualified Maryland cybersecurity company; and

30   B.   the final certified credit amount for the investment in the
31 qualified Maryland cybersecurity company.

32   2.   On notification that an investment has been certified, the
33 Comptroller shall transfer an amount equal to the credit amount stated in the initial tax
34 credit certificate for the investment from the Reserve Fund to the General Fund.

1   (iii)   1.   Periodically, but not more frequently than quarterly, the
2   Department may submit invoices for costs that have been incurred or are anticipated to be
3   incurred in administering the tax credit program under this section.

4   2.   The Comptroller shall transfer money from the Reserve
5   Fund to the Department to pay for costs that have been incurred or are anticipated to be
6   incurred in administering the tax credit program under this section.

7   (g)   (1)   The credit claimed under this section shall be recaptured as provided
8   in paragraph (2) of this subsection if within 2 years from the close of the taxable year for
9   which the credit is claimed:

10   (i)   the qualified investor sells, transfers, or otherwise disposes of the
11   ownership interest in the qualified Maryland cybersecurity company that gave rise to the
12   credit; or

13   (ii)   the qualified Maryland cybersecurity company that **[**received**]**
14   **GAVE RISE TO** the credit:

15   1.   ceases   operating   as   an   active   business   with   its
16   headquarters and base of operations in the State; or

17   2.   pays out as dividends or otherwise distributes the equity
18   investment.

19   (2)   The amount required to be recaptured under this subsection is the
20   product of multiplying:

21   (i)   the total amount of the credit claimed or, in the case of an event
22   described in paragraph (1)(i) of this subsection, the portion of the credit attributable to the
23   ownership interest disposed of; and

24   (ii)   1.   100%, if the event requiring recapture of the credit occurs
25   during the taxable year for which the tax credit is claimed;

26   2.   67%, if the event requiring recapture of the credit occurs
27   during the first year after the close of the taxable year for which the tax credit is claimed;
28   or

29   3.   33%, if the event requiring recapture of the credit occurs
30   more than 1 year but not more than 2 years after the close of the taxable year for which the
31   tax credit is claimed.

32   (3)   The qualified **[**Maryland cybersecurity company**]** **INVESTOR** that
33   claimed the credit shall pay the amount to be recaptured as determined under paragraph
34   (2) of this subsection as taxes payable to the State for the taxable year in which the event
35   requiring recapture of the credit occurs.

1 (h) (1) The Department may revoke its initial or final certification of an
2 approved credit under this section if any representation made in connection with the
3 application for the certification is determined by the Department to have been false.

4   (2) The revocation may be in full or in part as the Department may
5 determine and, subject to paragraph (3) of this subsection, shall be communicated to the
6 qualified investor, the qualified Maryland cybersecurity company, and the Comptroller.

7   (3) The qualified **[**Maryland cybersecurity company**]** **INVESTOR** shall have
8 an opportunity to appeal any revocation to the Department prior to notification of the
9 Comptroller.

10   (4) The Comptroller may make an assessment against the qualified
11 **[**Maryland cybersecurity company**]** **INVESTOR** to recapture any amount of tax credit that
12 the qualified **[**Maryland cybersecurity company**]** **INVESTOR** has already claimed.

13 (i) (1) In accordance with § 2.5–109 of the Economic Development Article, the
14 Department shall submit a report on the initial tax credit certificates awarded under this
15 section for the calendar year.

16   (2) The report required under paragraph (1) of this subsection shall include
17 for each initial tax credit certificate awarded:

18   (i) the name of the qualified investor and the amount of credit
19 awarded or allocated to each qualified **[**Maryland cybersecurity company**]** **INVESTOR**;

20   (ii) the name and address of the qualified Maryland cybersecurity
21 company that received **THE INVESTMENT GIVING RISE TO** the credit under this section
22 and the county where the qualified Maryland cybersecurity company is located; and

23   (iii) the dates of receipt and approval by the Department of all
24 applications for initial tax credit certificates.

25   (3) The report required under paragraph (1) of this subsection shall
26 summarize for the categories of qualified investors **[**and qualified Maryland cybersecurity
27 companies**]**:

28   (i) the total number of applicants for initial tax credit certificates
29 under this section in each calendar year;

30   (ii) the number of applications for which initial tax credit certificates
31 were issued in each calendar year; and

32   (iii) the total initial tax credit certificates authorized under this
33 section for all calendar years under this section.

1   (j)   The Department and the Comptroller jointly shall adopt regulations to carry
2 out the provisions of this section and to specify criteria and procedures for application for,
3 approval of, and monitoring continuing eligibility for the tax credit under this section.

4   **Chapter 390 of the Acts of 2013**

5   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
6 1, 2013, and shall be applicable to all taxable years beginning after December 31, 2013, but
7 before January 1, **[**2019**] 2023**. This Act shall remain effective for a period of **[**6**] 10** years
8 and, at the end of June 30, **[**2019**] 2023** with no further action required by the General
9 Assembly, this Act shall be abrogated and of no further force and effect.

10   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
11 1, 2017, and shall be applicable to all initial tax credit certificates issued after June 30,
12 2017.