

# SENATE BILL 228

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By: **Senator Guzzone**

Introduced and read first time: January 19, 2018

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Cybersecurity Investment Incentive Tax Credit – Eligibility, Appropriation, and**  
3 **Sunset 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; altering the definition of “company” to include an entity that becomes duly  
8 organized and existing under certain laws and for a certain purpose within a certain  
9 time period; altering the appropriation to a certain special fund the Governor is  
10 required to include each fiscal year in the budget bill; providing for the recapture of  
11 the credit under certain circumstances; making conforming changes; extending the  
12 termination date of the credit; providing for the application of this Act; and generally  
13 relating to the cybersecurity investment incentive tax credit.

14 BY repealing and reenacting, with amendments,  
15 Article – Tax – General  
16 Section 10–733  
17 Annotated Code of Maryland  
18 (2016 Replacement Volume and 2017 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Chapter 390 of the Acts of the General Assembly of 2013  
21 Section 2

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

24 **Article – Tax – General**

25 10–733.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

5 2. **“COMPANY” INCLUDES AN ENTITY THAT BECOMES**  
6 **DULY ORGANIZED AND EXISTING UNDER THE LAWS OF ANY JURISDICTION FOR THE**  
7 **PURPOSE OF CONDUCTING BUSINESS FOR PROFIT WITHIN 4 MONTHS OF RECEIVING**  
8 **A QUALIFIED INVESTMENT.**

9 (ii) “Company” does not include a sole proprietorship.

10 (3) “Cybersecurity company” means a company organized for profit that is  
11 engaged primarily in the development of innovative and proprietary cybersecurity  
12 technology.

13 (4) “Cybersecurity technology” means products or goods intended to detect  
14 or prevent activity intended to result in unauthorized access to, exfiltration of,  
15 manipulation of, or impairment to the integrity, confidentiality, or availability of an  
16 information system or information stored on or transiting an information system.

17 (5) “Department” means the Department of Commerce.

18 (6) (i) “Investment” means the contribution of money in cash or cash  
19 equivalents expressed in United States dollars, at a risk of loss, to a qualified Maryland  
20 cybersecurity company in exchange for stock, a partnership or membership interest, or any  
21 other ownership interest in the equity of the qualified Maryland cybersecurity company,  
22 title to which ownership interest shall vest in the qualified investor.

23 (ii) “Investment” does not include debt.

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

27 (7) “Panel” means the panel that the Department may establish under  
28 subsection (e) of this section composed of experts in the area of cybersecurity technology.

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

32 (ii) “Qualified investor” does not include a qualified pension plan, an  
33 individual retirement account, or any other qualified retirement plan under the Employee  
34 Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under  
35 such plans, or similar tax-favored plans or entities under the laws of other countries.

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

5 (10) “Secretary” means the Secretary of Commerce.

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

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

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

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

22 1. evidence that the investor is:

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

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

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

29 2. any other information the Department may require.

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

1                   (2)           2.    [The application shall] evidence that the qualified  
2 Maryland cybersecurity company has satisfied the following minimum requirements for  
3 consideration as a qualified Maryland cybersecurity company:

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

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

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

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

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

10                  [(vi)] F.   has fewer than 50 full-time employees;

11                  [(vii)] G.   does not have its securities publicly traded on any  
12 exchange;

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

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

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

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

21                                   3.    **ANY OTHER INFORMATION THE DEPARTMENT MAY**  
22 **REQUIRE.**

23                   [(3)] (C)    (1)    The Department shall:

24                                   (i)    approve all applications that qualify for credits under this section  
25 on a first-come, first-served basis; and

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

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

29   2.    determine whether a cybersecurity company qualifies for

1 investments that are eligible for the tax credit under this section.

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

5           (ii) Within 10 calendar days after the date on which a qualified  
6 investor makes the investment, the qualified **[Maryland cybersecurity company]**  
7 **INVESTOR** shall provide to the Department notice and proof of the making of the  
8 investment, including:

9                           1. the date of the investment;

10                           2. the amount invested;

11                           3. proof of the receipt of the invested funds by the qualified  
12 Maryland cybersecurity company;

13                           4. a complete description of the nature of the ownership  
14 interest in the equity of the qualified Maryland cybersecurity company acquired in  
15 consideration of the investment; and

16                           5. any reasonable supporting documentation the  
17 Department may require.

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

22                           1. the Department shall rescind the initial tax credit  
23 certificate; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (iii) 1. Except as otherwise provided in this subparagraph, for  
5 any fiscal year, the Secretary may not issue initial tax credit certificates for credit amounts  
6 in the aggregate totaling more than the amount appropriated to the Reserve Fund for that  
7 fiscal year in the State budget as approved by the General Assembly, as reduced by the  
8 amount needed to pay the costs of administering the tax credit program under this section.

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

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

17 (iv) 1. Except as provided in subparagraph 2 of this  
18 subparagraph, for each fiscal year, the Governor shall include in the budget bill an  
19 appropriation of at least [~~\$2,000,000~~] **\$5,000,000** to the Reserve Fund.

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

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

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

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

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

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

35 B. the final certified credit amount for the investment in the  
36 qualified Maryland cybersecurity company.

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

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

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

10            (g)    (1)     The credit claimed under this section shall be recaptured as provided  
11     in paragraph ~~[(2)]~~ **(3)** of this subsection if within 2 years from the close of the taxable year  
12     for which the credit is claimed:

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

16                                (ii)    the qualified Maryland cybersecurity company that ~~[received]~~  
17     **GAVE RISE TO** the credit:

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

20                                2.     pays out as dividends or otherwise distributes the equity  
21     investment.

22            (2)     **THE CREDIT CLAIMED UNDER THIS SECTION SHALL BE**  
23     **RECAPTURED AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION IF, WITHIN 4**  
24     **MONTHS OF RECEIVING A QUALIFIED INVESTMENT, A QUALIFIED MARYLAND**  
25     **CYBERSECURITY COMPANY IS NOT DULY ORGANIZED AND EXISTING UNDER THE**  
26     **LAWS OF ANY JURISDICTION FOR THE PURPOSES OF CONDUCTING BUSINESS FOR**  
27     **PROFIT.**

28            (3)     The amount required to be recaptured under this subsection is the  
29     product of multiplying:

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

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



1                            2.     67%, if the event requiring recapture of the credit occurs  
2 during the first year after the close of the taxable year for which the tax credit is claimed;  
3 or

4                            3.     33%, if the event requiring recapture of the credit occurs  
5 more than 1 year but not more than 2 years after the close of the taxable year for which the  
6 tax credit is claimed.

7                            [(3)] (4)     The qualified [Maryland cybersecurity company] **INVESTOR**  
8 that claimed the credit shall pay the amount to be recaptured as determined under  
9 paragraph [(2)] (3) of this subsection as taxes payable to the State for the taxable year in  
10 which the event requiring recapture of the credit occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **Chapter 390 of the Acts of 2013**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
15 1, 2013, and shall be applicable to all taxable years beginning after December 31, 2013, but  
16 before January 1, [2019] **2023**. This Act shall remain effective for a period of [6] **10** years  
17 and, at the end of June 30, [2019] **2023**, with no further action required by the General  
18 Assembly, this Act shall be abrogated and of no further force and effect.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
20 1, 2018, and shall be applicable to all initial tax credit certificates issued after June 30,  
21 2018.