

# SENATE BILL 310

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By: **The President (By Request – Administration) and Senators Bates, Cassilly, Eckardt, Edwards, Hershey, Jennings, Klausmeier, Mathias, Middleton, Norman, Ready, Reilly, Salling, Serafini, and Simonaire**

Introduced and read first time: January 22, 2018

Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **CyberMaryland Act of 2018**

3 FOR the purpose of allowing a subtraction modification under the State income tax for  
4 certain capital gain income realized on the disposition of an investment in a certain  
5 cybersecurity company; authorizing certain buyers of certain technology to claim a  
6 credit against the State income tax for certain costs incurred to purchase certain  
7 technology; providing that the credit may not exceed certain amounts under certain  
8 circumstances; authorizing the Department of Commerce, in consultation with the  
9 Maryland Technology Development Corporation, to establish a certain panel to  
10 assist the Department with certain determinations; authorizing certain qualified  
11 buyers to apply for the credit; requiring a qualified buyer to attach a certain  
12 certificate to the qualified buyer's income tax return; requiring the Secretary of  
13 Commerce to approve each application that qualifies for a credit; providing that for  
14 certain taxable years the total amount of credit certificates issued may not exceed  
15 certain amounts; providing for the revocation and recapture of a credit under certain  
16 circumstances; requiring the Department to make a certain report by a certain date  
17 each year; requiring the Department and the Comptroller jointly to adopt certain  
18 regulations; defining certain terms; providing for the application of this Act; and  
19 generally relating to State income tax incentives for companies in the cybersecurity  
20 industry.

21 BY repealing and reenacting, without amendments,  
22 Article – Tax – General  
23 Section 10–207(a)  
24 Annotated Code of Maryland  
25 (2016 Replacement Volume and 2017 Supplement)

26 BY adding to  
27 Article – Tax – General

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 10–207(gg) and 10–733.1  
2 Annotated Code of Maryland  
3 (2016 Replacement Volume and 2017 Supplement)

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

6 **Article – Tax – General**

7 10–207.

8 (a) To the extent included in federal adjusted gross income, the amounts under  
9 this section are subtracted from the federal adjusted gross income of a resident to determine  
10 Maryland adjusted gross income.

11 **(GG) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE**  
12 **MEANINGS INDICATED.**

13 **(II) “CYBERSECURITY COMPANY” MEANS A COMPANY THAT:**

14 **1. IS ORGANIZED FOR PROFIT AND IS ENGAGED**  
15 **PRIMARILY IN THE DEVELOPMENT OF INNOVATIVE AND PROPRIETARY**  
16 **CYBERSECURITY TECHNOLOGY; AND**

17 **2. MEETS THE FOLLOWING CRITERIA:**

18 **A. HAS ITS HEADQUARTERS AND BASE OF OPERATIONS**  
19 **IN THE STATE;**

20 **B. HAS BEEN IN ACTIVE BUSINESS NOT LONGER THAN 5**  
21 **YEARS;**

22 **C. HAS AN AGGREGATE CAPITALIZATION OF AT LEAST**  
23 **\$100,000;**

24 **D. OWNS OR HAS PROPERLY LICENSED ANY**  
25 **PROPRIETARY TECHNOLOGY;**

26 **E. HAS FEWER THAN 50 FULL–TIME EMPLOYEES;**

27 **F. DOES NOT HAVE ITS SECURITIES PUBLICLY TRADED**  
28 **ON ANY EXCHANGE;**

29 **G. IS IN GOOD STANDING;**

1           **H. IS CURRENT IN THE PAYMENT OF ALL TAX**  
2 **OBLIGATIONS TO THE STATE OR ANY UNIT OR SUBDIVISION OF THE STATE;**

3           **I. IS NOT IN DEFAULT UNDER THE TERMS OF ANY**  
4 **CONTRACT WITH, INDEBTEDNESS TO, OR GRANT FROM THE STATE OR ANY UNIT OR**  
5 **SUBDIVISION OF THE STATE; AND**

6           **J. MEETS ANY OTHER REASONABLE REQUIREMENTS OF**  
7 **THE DEPARTMENT OF COMMERCE EVIDENCING THAT THE COMPANY IS A GOING**  
8 **CONCERN PRIMARILY ENGAGED IN THE DEVELOPMENT OF INNOVATIVE AND**  
9 **PROPRIETARY CYBERSECURITY TECHNOLOGY.**

10           **(III) “CYBERSECURITY TECHNOLOGY” MEANS PRODUCTS OR**  
11 **GOODS INTENDED TO DETECT OR PREVENT ACTIVITY INTENDED TO RESULT IN**  
12 **UNAUTHORIZED ACCESS TO, EXFILTRATION OF, MANIPULATION OF, OR IMPAIRMENT**  
13 **TO THE INTEGRITY, CONFIDENTIALITY, OR AVAILABILITY OF AN INFORMATION**  
14 **SYSTEM OR INFORMATION STORED ON OR TRANSITING AN INFORMATION SYSTEM.**

15           **(IV) “LONG-TERM CAPITAL GAIN” HAS THE MEANING STATED IN**  
16 **§ 1222 OF THE INTERNAL REVENUE CODE.**

17           **(2) THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION**  
18 **INCLUDES THE AMOUNT OF LONG-TERM CAPITAL GAIN INCOME THAT IS REALIZED**  
19 **FROM THE SALE, TRANSFER, ASSIGNMENT, OR OTHER DISPOSITION OF AN**  
20 **INVESTMENT IN A CYBERSECURITY COMPANY.**

21 **10-733.1.**

22           **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
23 **INDICATED.**

24           **(2) “CYBERSECURITY BUSINESS” MEANS AN ENTITY ORGANIZED FOR**  
25 **PROFIT THAT IS ENGAGED PRIMARILY IN THE DEVELOPMENT OF INNOVATIVE AND**  
26 **PROPRIETARY CYBERSECURITY TECHNOLOGY.**

27           **(3) “CYBERSECURITY TECHNOLOGY” MEANS PRODUCTS OR GOODS**  
28 **INTENDED TO DETECT OR PREVENT ACTIVITY INTENDED TO RESULT IN**  
29 **UNAUTHORIZED ACCESS TO, EXFILTRATION OF, MANIPULATION OF, OR IMPAIRMENT**  
30 **TO THE INTEGRITY, CONFIDENTIALITY, OR AVAILABILITY OF AN INFORMATION**  
31 **SYSTEM OR INFORMATION STORED ON OR TRANSITING AN INFORMATION SYSTEM.**

32           **(4) “DEPARTMENT” MEANS THE DEPARTMENT OF COMMERCE.**

1           **(5) "PANEL" MEANS THE PANEL THAT THE DEPARTMENT MAY**  
2 **ESTABLISH UNDER SUBSECTION (C) OF THIS SECTION COMPOSED OF EXPERTS IN**  
3 **THE AREA OF CYBERSECURITY TECHNOLOGY.**

4           **(6) "QUALIFIED BUYER" MEANS ANY ENTITY THAT HAS LESS THAN 50**  
5 **EMPLOYEES IN THE STATE AND THAT IS REQUIRED TO FILE AN INCOME TAX RETURN**  
6 **IN THE STATE.**

7           **(7) "QUALIFIED SELLER" MEANS A CYBERSECURITY BUSINESS THAT:**

8                   **(I) HAS ITS HEADQUARTERS AND BASE OF OPERATIONS IN THE**  
9 **STATE;**

10                   **(II) HAS LESS THAN \$5,000,000 IN ANNUAL REVENUE;**

11                   **(III) OWNS OR HAS PROPERLY LICENSED ANY PROPRIETARY**  
12 **CYBERSECURITY TECHNOLOGY;**

13                   **(IV) IS IN GOOD STANDING;**

14                   **(V) IS CURRENT IN THE PAYMENT OF ALL TAX OBLIGATIONS TO**  
15 **THE STATE OR ANY UNIT OR SUBDIVISION OF THE STATE; AND**

16                   **(VI) IS NOT IN DEFAULT UNDER THE TERMS OF ANY CONTRACT**  
17 **WITH, INDEBTEDNESS TO, OR GRANT FROM THE STATE OR ANY UNIT OR**  
18 **SUBDIVISION OF THE STATE.**

19           **(B) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A**  
20 **QUALIFIED BUYER MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN**  
21 **AMOUNT EQUAL TO 50% OF THE COST INCURRED DURING THE TAXABLE YEAR TO**  
22 **PURCHASE CYBERSECURITY TECHNOLOGY FROM ONE OR MORE QUALIFIED**  
23 **SELLERS.**

24                   **(2) FOR ANY TAXABLE YEAR, THE CREDIT ALLOWED UNDER THIS**  
25 **SECTION MAY NOT EXCEED \$50,000 FOR EACH QUALIFIED BUYER.**

26                   **(3) FOR ANY TAXABLE YEAR, THE AGGREGATE CREDITS CLAIMED FOR**  
27 **CYBERSECURITY TECHNOLOGY PURCHASED FROM A SINGLE QUALIFIED SELLER**  
28 **MAY NOT EXCEED \$200,000.**

29           **(C) (1) THE DEPARTMENT, IN CONSULTATION WITH THE MARYLAND**  
30 **TECHNOLOGY DEVELOPMENT CORPORATION, MAY ESTABLISH A PANEL COMPOSED**

1 OF EXPERTS IN THE AREA OF CYBERSECURITY TECHNOLOGY.

2 (2) THE DEPARTMENT MAY ESTABLISH THE PANEL UNDER SERVICE  
3 CONTRACTS WITH INDEPENDENT REVIEWERS.

4 (3) THE PANEL SHALL ASSIST THE DEPARTMENT IN ITS  
5 DETERMINATION AS TO WHETHER A COMPANY IS A QUALIFIED SELLER.

6 (4) A MEMBER OF THE PANEL IS NOT ELIGIBLE TO RECEIVE ANY  
7 BENEFIT, DIRECT OR INDIRECT, FROM THE TAX CREDIT UNDER THIS SECTION.

8 (5) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
9 PARAGRAPH, DIVISION II OF THE STATE FINANCE AND PROCUREMENT ARTICLE  
10 DOES NOT APPLY TO A SERVICE THAT THE DEPARTMENT OBTAINS UNDER THIS  
11 SECTION.

12 (II) THE DEPARTMENT IS SUBJECT TO TITLE 12, SUBTITLE 4 OF  
13 THE STATE FINANCE AND PROCUREMENT ARTICLE FOR SERVICES THE  
14 DEPARTMENT OBTAINS UNDER THIS SECTION.

15 (D) (1) (I) A QUALIFIED BUYER ELIGIBLE FOR THE CREDIT UNDER  
16 THIS SECTION MAY APPLY TO THE DEPARTMENT FOR A CREDIT CERTIFICATE THAT  
17 STATES THE AMOUNT OF THE CREDIT THE QUALIFIED BUYER MAY CLAIM UNDER  
18 SUBSECTION (B) OF THIS SECTION.

19 (II) A QUALIFIED BUYER SHALL ATTACH THE CREDIT  
20 CERTIFICATE TO THE INCOME TAX RETURN ON WHICH THE QUALIFIED BUYER  
21 CLAIMS THE CREDIT UNDER SUBSECTION (B) OF THIS SECTION.

22 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE  
23 SECRETARY OF COMMERCE SHALL APPROVE EACH APPLICATION UNDER  
24 PARAGRAPH (1) OF THIS SUBSECTION THAT QUALIFIES FOR A CREDIT CERTIFICATE.

25 (3) THE TOTAL AMOUNT OF THE CREDIT CERTIFICATES APPROVED BY  
26 THE SECRETARY OF COMMERCE UNDER THIS SUBSECTION MAY NOT EXCEED:

27 (I) FOR TAXABLE YEAR 2018, \$2,000,000;

28 (II) FOR TAXABLE YEAR 2019, \$4,000,000;

29 (III) FOR TAXABLE YEAR 2020, \$6,000,000;

30 (IV) FOR TAXABLE YEAR 2021, \$8,000,000; AND

1 (V) FOR TAXABLE YEAR 2022 AND EACH TAXABLE YEAR  
2 THEREAFTER, \$10,000,000.

3 (E) (1) THE DEPARTMENT MAY REVOKE ITS CERTIFICATION OF A CREDIT  
4 UNDER THIS SECTION IF ANY REPRESENTATION MADE IN CONNECTION WITH THE  
5 APPLICATION FOR THE CERTIFICATION IS DETERMINED BY THE DEPARTMENT TO  
6 HAVE BEEN FALSE.

7 (2) THE REVOCATION MAY BE IN FULL OR IN PART AS THE  
8 DEPARTMENT MAY DETERMINE AND, SUBJECT TO PARAGRAPH (3) OF THIS  
9 SUBSECTION, SHALL BE COMMUNICATED TO THE QUALIFIED BUYER AND THE  
10 COMPTROLLER.

11 (3) THE QUALIFIED BUYER SHALL HAVE AN OPPORTUNITY TO APPEAL  
12 ANY REVOCATION TO THE DEPARTMENT BEFORE NOTIFICATION OF THE  
13 COMPTROLLER.

14 (4) THE COMPTROLLER MAY MAKE AN ASSESSMENT AGAINST THE  
15 QUALIFIED BUYER TO RECAPTURE ANY AMOUNT OF TAX CREDIT THAT THE  
16 QUALIFIED BUYER HAS ALREADY CLAIMED.

17 (F) (1) IN ACCORDANCE WITH § 2.5-109 OF THE ECONOMIC  
18 DEVELOPMENT ARTICLE, THE DEPARTMENT SHALL SUBMIT A REPORT ON THE  
19 CREDIT CERTIFICATES AWARDED UNDER THIS SECTION FOR THE CALENDAR YEAR.

20 (2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS  
21 SUBSECTION SHALL INCLUDE FOR EACH CREDIT CERTIFICATE AWARDED:

22 (I) THE NAMES OF THE QUALIFIED BUYER AND THE QUALIFIED  
23 SELLER AND THE AMOUNT OF THE CREDIT CERTIFICATE APPROVED FOR EACH  
24 QUALIFIED BUYER;

25 (II) THE NAME AND ADDRESS OF THE QUALIFIED BUYER THAT  
26 RECEIVED THE CREDIT UNDER THIS SECTION AND THE COUNTY WHERE THE  
27 QUALIFIED BUYER IS LOCATED; AND

28 (III) THE DATES OF RECEIPT AND APPROVAL BY THE  
29 DEPARTMENT OF ALL APPLICATIONS FOR CREDIT CERTIFICATES.

30 (3) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS  
31 SUBSECTION SHALL SUMMARIZE FOR THE CATEGORIES OF QUALIFIED BUYERS:

1                   **(I) THE TOTAL NUMBER OF APPLICANTS FOR CREDIT**  
2 **CERTIFICATES UNDER THIS SECTION IN EACH CALENDAR YEAR;**

3                   **(II) THE NUMBER OF APPLICATIONS FOR WHICH CREDIT**  
4 **CERTIFICATES WERE ISSUED IN EACH CALENDAR YEAR; AND**

5                   **(III) THE TOTAL CREDIT CERTIFICATES AUTHORIZED UNDER**  
6 **THIS SECTION FOR ALL CALENDAR YEARS UNDER THIS SECTION.**

7                   **(G) THE DEPARTMENT AND THE COMPTROLLER JOINTLY SHALL ADOPT**  
8 **REGULATIONS TO CARRY OUT THIS SECTION AND TO SPECIFY CRITERIA AND**  
9 **PROCEDURES FOR APPLICATION FOR, APPROVAL OF, AND MONITORING**  
10 **CONTINUING ELIGIBILITY FOR THE TAX CREDIT UNDER THIS SECTION.**

11                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
12 1, 2018, and shall be applicable to all taxable years beginning after December 31, 2017.