SENATE BILL 318

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                                                                          CF HB 378

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2017

CHAPTER _____

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; <u>altering the definition of "company" to include an entity that becomes duly</u>
8   <u>organized and existing under certain laws and for a certain purpose within a certain</u>
9   <u>time period; providing for the recapture of the credit under certain circumstances;</u>
10   making conforming changes; extending the termination date of the credit; providing
11   for the application of this Act; and generally relating to the cybersecurity investment
12   incentive tax credit.

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

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

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

3   **Article – Tax – General**

4 10–733.

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

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

9   **2.   "COMPANY" INCLUDES AN ENTITY THAT BECOMES**
10 **DULY ORGANIZED AND EXISTING UNDER THE LAWS OF ANY JURISDICTION FOR THE**
11 **PURPOSE OF CONDUCTING BUSINESS FOR PROFIT WITHIN 4 MONTHS OF RECEIVING**
12 **A QUALIFIED INVESTMENT.**

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

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

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

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

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

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

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

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

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

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

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

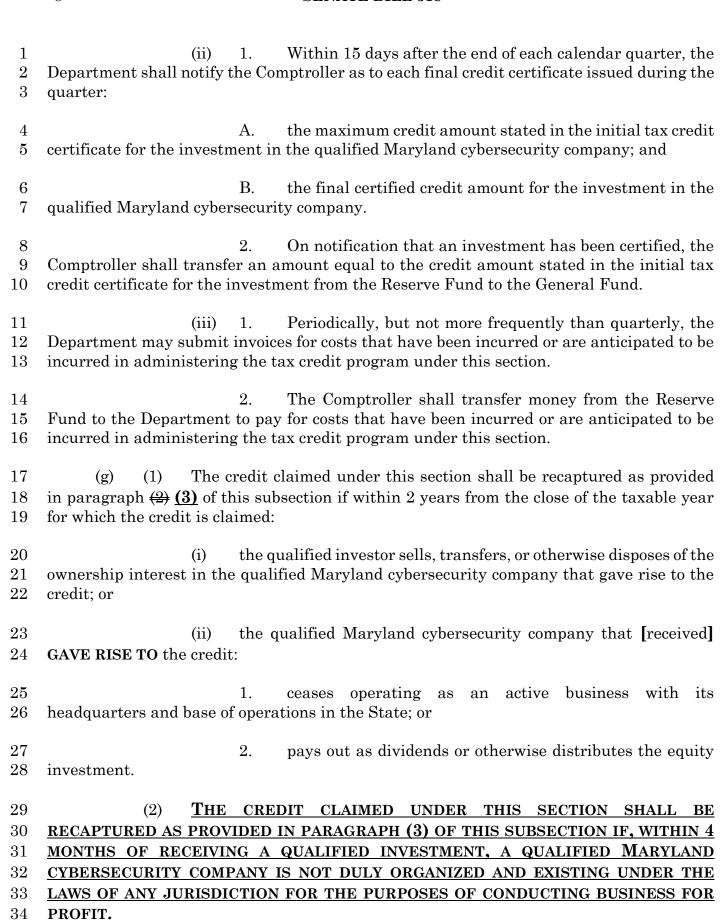12   (10)   "Secretary" means the Secretary of Commerce.

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

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

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

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

29   1.   evidence that the investor is:

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

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

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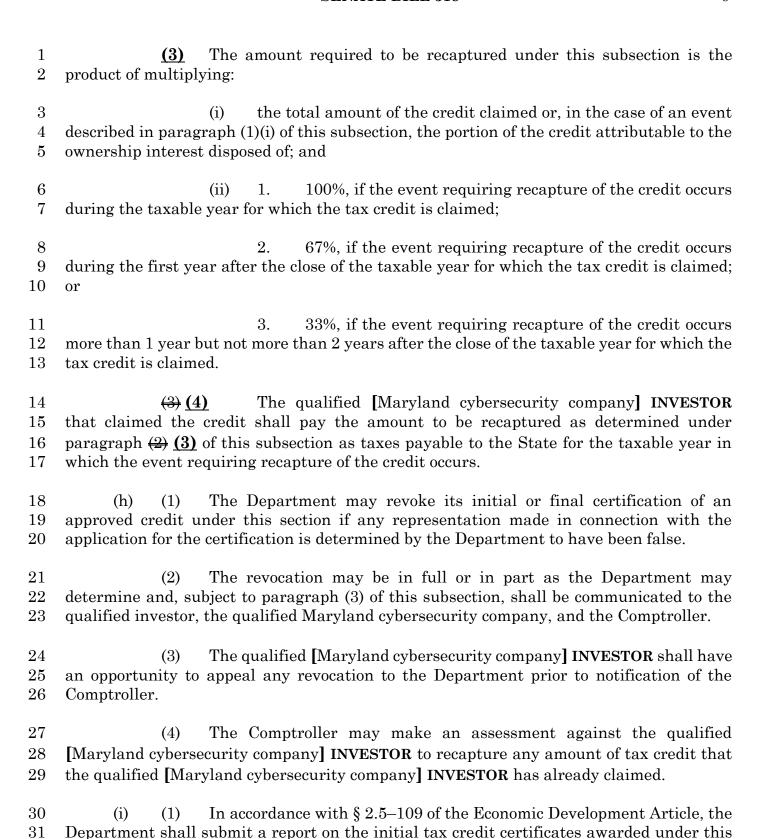35 indebtedness to, or grant from a state or any unit or subdivision of a state; **[**and

1   2.   any other information the Department may require.

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

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

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

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

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

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

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

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

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

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

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

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

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

26   **3.   ANY OTHER INFORMATION THE DEPARTMENT MAY**
27   **REQUIRE**.

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

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

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

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

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

8   **[**(4)**] (2)**   (i)   After the date on which the Department issues an initial
9 tax credit certificate under this section, a qualified investor shall have 30 calendar days to
10 make an investment in a qualified Maryland cybersecurity company under this section.

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

15   1.   the date of the investment;

16   2.   the amount invested;

17   3.   proof of the receipt of the invested funds by the qualified
18 Maryland cybersecurity company;

19   4.   a complete description of the nature of the ownership
20 interest in the equity of the qualified Maryland cybersecurity company acquired in
21 consideration of the investment; and

22   5.   any   reasonable   supporting   documentation   the
23 Department may require.

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

28   1.   the Department shall rescind the initial tax credit
29 certificate; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6   B.   the final certified credit amount for the investment in the
7 qualified Maryland cybersecurity company.

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

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

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

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

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

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

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

27   2.   pays out as dividends or otherwise distributes the equity
28 investment.

29   (2)   **THE   CREDIT   CLAIMED   UNDER   THIS   SECTION   SHALL   BE**
30 **RECAPTURED AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION IF, WITHIN 4**
31 **MONTHS   OF   RECEIVING   A   QUALIFIED   INVESTMENT,   A   QUALIFIED   MARYLAND**
32 **CYBERSECURITY COMPANY IS NOT DULY ORGANIZED AND EXISTING UNDER THE**
33 **LAWS OF ANY JURISDICTION FOR THE PURPOSES OF CONDUCTING BUSINESS FOR**
34 **PROFIT.**

1   **(3)**   The amount required to be recaptured under this subsection is the
2 product of multiplying:

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

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

8   2.   67%, if the event requiring recapture of the credit occurs
9 during the first year after the close of the taxable year for which the tax credit is claimed;
10 or

11   3.   33%, if the event requiring recapture of the credit occurs
12 more than 1 year but not more than 2 years after the close of the taxable year for which the
13 tax credit is claimed.

14   ~~(3)~~ **(4)**   The qualified **[**Maryland cybersecurity company**]** **INVESTOR**
15 that claimed the credit shall pay the amount to be recaptured as determined under
16 paragraph ~~(2)~~ **(3)** of this subsection as taxes payable to the State for the taxable year in
17 which the event requiring recapture of the credit occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20   **Chapter 390 of the Acts of 2013**

21   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
22 1, 2013, and shall be applicable to all taxable years beginning after December 31, 2013, but
23 before January 1, **[**2019**]** **2023**. This Act shall remain effective for a period of **[**6**]** **10** years
24 and, at the end of June 30, **[**2019**]** **2023** with no further action required by the General
25 Assembly, this Act shall be abrogated and of no further force and effect.

26   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
27 1, 2017, and shall be applicable to all initial tax credit certificates issued after June 30,
28 2017.