

HB1118/332212/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 1118
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike in their entirety lines 2 and 3, and substitute “Criminal Trial – Evidence – Account Records”; and strike beginning with “as” in line 5 down through “evidence” in line 7 and substitute “in criminal trials without the presence or testimony of certain persons under certain circumstances; providing for certain procedures; and generally relating to the admissibility of certain personal and business documents in a criminal trial under certain circumstances”.

AMENDMENT NO. 2

On page 1, strike in their entirety lines 8 through 13, inclusive, and substitute:

“BY adding to

Article - Courts and Judicial Proceedings

Section 10-106

Annotated Code of Maryland

(2006 Replacement Volume and 2008 Supplement)”.

AMENDMENT NO. 3

On page 1, strike in their entirety lines 16 through 21, inclusive, and substitute:

“Article – Courts and Judicial Proceedings

10-106.

(A) THIS SECTION APPLIES ONLY TO THE FOLLOWING PERSONAL OR BUSINESS ACCOUNT RECORDS:”.

(Over)

AMENDMENT NO. 4

On page 2, in lines 1 and 2, in each instance, after “BANK” insert “, SAVINGS AND LOAN ASSOCIATION, AND CREDIT UNION”; and in lines 3, 4, 5, 6, 7, and 8, in each instance, after “CREDIT” insert “OR DEBIT”.

AMENDMENT NO. 5

On page 2, after line 8, insert:

“(B) THIS SECTION APPLIES ONLY TO A CRIMINAL TRIAL.

(C) (1) (I) SUBJECT TO THE PROVISIONS OF THIS SECTION, AN ACCOUNT RECORD MAY BE AUTHENTICATED BY THE TESTIMONY OF A HOLDER OF THE ACCOUNT OR ANY OTHER PERSON WITH PERSONAL KNOWLEDGE OF THE ACCOUNT, WITHOUT THE PRESENCE OR TESTIMONY OF THE CUSTODIAN OF THE ACCOUNT RECORD, AND ADMITTED AS EVIDENCE IN A CRIMINAL TRIAL.

(II) A FINDER OF FACT MAY ATTACH WHATEVER WEIGHT TO THE TESTIMONY CONCERNING AN ACCOUNT RECORD THAT THE FINDER OF FACT DEEMS APPROPRIATE.

(2) THE ACCOUNT RECORD SHALL BE ADMITTED UNDER THIS SECTION ON TESTIMONY:

(I) IDENTIFYING THE ACCOUNT RECORD; AND

(II) 1. IDENTIFYING THE PROVIDER OF THE ACCOUNT DOCUMENT;

2. EXPLAINING THE CIRCUMSTANCES SURROUNDING THE RECEIPT OF THE ACCOUNT RECORD;

3. DESCRIBING THE ACCOUNT RECORD PROVIDED;
AND

4. STATING FACTS ESTABLISHING THE RELEVANCE OF THE ACCOUNT RECORD TO THE CRIMINAL TRIAL.

(D) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IF THE STATE DECIDES TO OFFER THE ACCOUNT RECORD WITHOUT THE TESTIMONY OF THE CUSTODIAN OF THE ACCOUNT RECORD, THE STATE, AT LEAST 30 DAYS BEFORE TRIAL, SHALL:

(I) NOTIFY IN WRITING THE DEFENDANT OR THE DEFENDANT'S ATTORNEY OF THE STATE'S INTENTION;

(II) DELIVER TO THE DEFENDANT OR THE DEFENDANT'S ATTORNEY A COPY OF THE ACCOUNT RECORD TO BE OFFERED; AND

(III) FILE A COPY OF THE NOTICE WITH THE CLERK OF THE COURT.

(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, IF THE DISTRICT COURT IS DEPRIVED OF JURISDICTION UNDER CIRCUMSTANCES IN WHICH A DEFENDANT IS ENTITLED TO AND DEMANDS A JURY TRIAL, OR APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT, THE STATE IS NOT REQUIRED TO PROVIDE A SECOND NOTICE TO THE DEFENDANT OR FILE A SECOND NOTICE WITH THE CLERK OF THE COURT.

(3) (I) IF THE DEFENDANT DEMANDS THE CUSTODIAN OF THE ACCOUNT RECORD TO BE PRESENT AND TESTIFY AT TRIAL, THE DEFENDANT SHALL NOTIFY THE COURT AND THE STATE IN WRITING NO LATER THAN 20 DAYS BEFORE TRIAL.

(II) IF THE DISTRICT COURT IS DEPRIVED OF JURISDICTION UNDER CIRCUMSTANCES IN WHICH A DEFENDANT IS ENTITLED TO AND DEMANDS A JURY TRIAL, OR APPEALS FROM THE DISTRICT COURT TO A CIRCUIT COURT, THE DEFENDANT SHALL NOTIFY THE CIRCUIT COURT AND THE STATE IN WRITING NO LATER THAN 20 DAYS BEFORE TRIAL.

(III) IF THE TIMELY AND PROPER NOTICE REQUIRED UNDER THIS PARAGRAPH IS PROVIDED BY THE DEFENDANT, THE ACCOUNT RECORD IS INADMISSIBLE WITHOUT THE TESTIMONY OF THE CUSTODIAN OF THE ACCOUNT RECORD.

(4) FAILURE TO GIVE TIMELY AND PROPER NOTICE CONSTITUTES A WAIVER OF THE DEFENDANT'S RIGHT TO THE PRESENCE AND TESTIMONY OF THE CUSTODIAN OF THE ACCOUNT RECORD."