

HOUSE BILL 1118

I4, D1

9lr2385

By: **Delegates Lee, Ali, Boteler, Bronrott, Cane, Carr, DeBoy, Dumais, Hecht, Howard, Kipke, McComas, McDonough, Robinson, Shewell, F. Turner, Valderrama, and Walkup**

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2009

CHAPTER _____

1 AN ACT concerning

2 ~~**Personal and Business Documents – Use in Judicial and Administrative**~~
3 ~~**Proceedings**~~

4 **Criminal Trial – Evidence – Account Records**

5 FOR the purpose of providing that certain personal and business documents are
6 admissible ~~as evidence and presumed to be authentic if a certain person testifies~~
7 ~~as to their authenticity in any judicial or administrative proceeding; and~~
8 ~~generally relating to the admissibility of documents as evidence in criminal~~
9 ~~trials without the presence or testimony of certain persons under certain~~
10 ~~circumstances; providing for certain procedures; and generally relating to the~~
11 ~~admissibility of certain personal and business documents in a criminal trial~~
12 ~~under certain circumstances.~~

13 ~~BY adding to~~
14 ~~Article – Commercial Law~~
15 ~~Section 24-101 to be under the new title “Title 24. Authentication of~~
16 ~~Documents”~~
17 ~~Annotated Code of Maryland~~
18 ~~(2005 Replacement Volume and 2008 Supplement)~~

19 BY adding to
20 Article – Courts and Judicial Proceedings
21 Section 10-106

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
 2 (2006 Replacement Volume and 2008 Supplement)

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

5 ~~Article – Commercial Law~~

6 ~~TITLE 24. AUTHENTICATION OF DOCUMENTS.~~

7 ~~24-101.~~

8 ~~THE FOLLOWING DOCUMENTS ARE ADMISSIBLE AS EVIDENCE AND~~
 9 ~~PRESUMED TO BE AUTHENTIC IF THE ACCOUNT HOLDER TESTIFIES TO THEIR~~
 10 ~~AUTHENTICITY IN ANY JUDICIAL OR ADMINISTRATIVE PROCEEDING.~~

11 Article – Courts and Judicial Proceedings

12 10-106.

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

15 (1) PERSONAL BANK, SAVINGS AND LOAN ASSOCIATION, AND
 16 CREDIT UNION RECORDS;

17 (2) BUSINESS BANK, SAVINGS AND LOAN ASSOCIATION, AND
 18 CREDIT UNION RECORDS;

19 (3) PERSONAL CREDIT OR DEBIT CARD REPORTS;

20 (4) BUSINESS CREDIT OR DEBIT CARD REPORTS;

21 (5) PERSONAL CREDIT OR DEBIT CARD STATEMENTS;

22 (6) BUSINESS CREDIT OR DEBIT CARD STATEMENTS;

23 (7) PERSONAL CREDIT OR DEBIT CARD NOTICES; AND

24 (8) BUSINESS CREDIT OR DEBIT CARD NOTICES.

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

26 (C) (1) (I) SUBJECT TO THE PROVISIONS OF THIS SECTION, AN
 27 ACCOUNT RECORD MAY BE AUTHENTICATED BY THE TESTIMONY OF A HOLDER
 28 OF THE ACCOUNT OR ANY OTHER PERSON WITH PERSONAL KNOWLEDGE OF THE

1 ACCOUNT, WITHOUT THE PRESENCE OR TESTIMONY OF THE CUSTODIAN OF THE
2 ACCOUNT RECORD, AND ADMITTED AS EVIDENCE IN A CRIMINAL TRIAL.

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

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

8 (I) IDENTIFYING THE ACCOUNT RECORD; AND

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

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

13 3. DESCRIBING THE ACCOUNT RECORD PROVIDED;
14 AND

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

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

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

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

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

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

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

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

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

14 **(4) FAILURE TO GIVE TIMELY AND PROPER NOTICE CONSTITUTES**
 15 **A WAIVER OF THE DEFENDANT’S RIGHT TO THE PRESENCE AND TESTIMONY OF**
 16 **THE CUSTODIAN OF THE ACCOUNT RECORD.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 18 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.