

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1118  
Judiciary

(Delegate Lee, *et al.*)

Judicial Proceedings

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**Criminal Trial - Evidence - Account Records**

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This bill allows certain personal and business financial documents to be admitted into evidence in a criminal trial without the presence or testimony of the custodian of the account record under certain circumstances. An account record may be authenticated by the testimony of the account holder or any other person with personal knowledge of the account. The bill only applies to personal and business (1) bank, savings and loan association, and credit union records; (2) credit or debit card reports; (3) credit or debit card statements; and (4) credit or debit card notices.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect State finances or operations.

**Local Effect:** The bill does not directly affect local finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** If the State offers the account record into evidence without the testimony of the custodian of the account record, the State, at least 30 days before the trial, must (1) notify the defendant or the defendant's attorney in writing of the State's intention; (2) deliver a copy of the account record to the defendant or the defendant's attorney; and (3) file a copy of the notice with the clerk of the court.

If the District Court is deprived of jurisdiction under circumstances where a defendant is entitled to, and demands, a jury trial, or the defendant appeals from the District Court to

the circuit court, the State is not required to provide a second notice to the defendant and is not required to file an additional notice with the clerk of the court.

If the defendant demands the custodian of the account record to be present and testify at trial, the defendant must notify the court and the State in writing at least 20 days before the trial. If the defendant provides timely and proper notice, the account record is inadmissible without the testimony of the custodian of the account record. However, 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.

**Current Law:** Documentary evidence must be relevant in order to be admissible in a judicial (or administrative) proceeding. Before a writing may be received in evidence, the writing must be authenticated by proof sufficient to support a finding that the writing is what its proponent claims. A writing may be authenticated by any evidence that serves to establish its authenticity, including the testimony of a witness with knowledge of the writing's authenticity, or by the admission of a party against whom the writing is offered. In general, a writing is not self-authenticating. (*See* Md. Rules 5-401, 5-901, 5-902.)

Although a document must be fully authenticated and relevant to be admitted as evidence, the document may be excluded if it violates the best evidence rule or the hearsay rule. A writing or record made in the ordinary course of a business activity is not excluded as hearsay if it was made at or near the time of the act or event, by a person with knowledge or transmitted by a person with knowledge, and it was the customary practice of that business to make and keep the writing or record. (*See* Md. Rule 5-803.)

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2009  
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