

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 458 (Delegate Niemann)
Judiciary

Personal and Business Documents - Evidence

This bill authorizes specified personal and business documents to be admissible as evidence and presumed to be authentic if the account holder testifies as to their authenticity in any judicial or administrative proceeding.

Fiscal Summary

State Effect: The bill does not directly affect governmental finances. Potential operational efficiencies for the District Court due to decreased court time needed to admit the evidence affected by the bill and fewer contested hearings.

Local Effect: The bill does not directly affect local finances. Potential operational efficiencies for circuit courts due to decreased court time needed to admit the evidence affected by the bill and fewer contested hearings.

Small Business Effect: None.

Analysis

Bill Summary: The following documents are admissible as evidence and presumed to be authentic if the account holder testifies as to their authenticity in any judicial or administrative proceeding:

- personal and business bank records;
- personal and business credit card reports;
- personal and business credit card statements; and
- personal and business credit card notices.

Current Law: Nontestimonial evidence that does not qualify as being self-authenticating cannot be accepted at face value at trial. To be admitted, such evidence must be authenticated through extrinsic evidence. If the evidence is not authenticated, its contents cannot be revealed and it cannot be shown to a jury. Evidence overcomes the authentication hurdle to admissibility if there is extrinsic evidence sufficient to support a finding that the matter in question is what its proponent claims.

One example of authentication is testimony of a witness with knowledge that the offered evidence is what it is claimed to be. With respect to the records affected by the bill, the “witness with knowledge” would be the custodian of the records at the business (*e.g.*, credit reporting agency, bank, etc.), not the account holder.

The following documents do not need to be authenticated to be admitted into evidence:

- domestic public documents under seal;
- domestic public documents not under seal, under certain conditions;
- foreign public documents;
- certified copies of public records;
- official publications;
- newspapers and periodicals;
- trade inscriptions;
- documents accompanied by a certificate of acknowledgment;
- documents designated as self-authenticating under commercial law;
- any signature, document, or other matter designated as self-authenticating by applicable statute or treaty;
- items as to which required objections are not made; and
- certified records of regularly conducted business activity.

In general, the original or a duplicate of a record of regularly conducted business activity is considered self-authenticating if a custodian or another qualified individual certifies that the record (1) was made, at or near the time of the occurrence of the matters set forth, by a person with knowledge of those matters; (2) is made and kept in the regular course of business; and (3) is made and kept as a regular practice. The proponent of these records must make the intention to offer them as evidence known to the adverse party and make the evidence available for inspection by the adverse party sufficiently in advance for the adverse party to have a fair opportunity to challenge it.

Background: The bill is one of the measures recommended by the Task Force to Study Identity Theft. The task force was created by Chapters 241 and 242 of 2005 (HB 818/SB 43) and extended by Chapters 9 and 10 of 2007 (SB 70/HB 26). Among other things, the task force was directed to (1) study the problems associated with identity theft in Maryland, including the adequacy of current Maryland law in deterring identity theft; (2) consult with relevant State and federal agencies and other experts on identity theft; and (3) make recommendations regarding possible remedies to identity theft, including statutory changes.

The task force met six times between November 15, 2006, and December 6, 2007, and heard from law enforcement agencies, bank security officers, citizens, credit card companies, and consumer advocates about the prevalence of identity theft and ways in which the crime could be prevented. The task force received several recommendations, particularly from State's Attorneys for reform of the rules of evidence to improve prosecution of identity fraud cases.

The Consumer Sentinel Network, a consortium of national and international law enforcement and private security entities, released the *Consumer Sentinel Network Data Book* for calendar 2011. In calendar 2011, the Federal Trade Commission (FTC) received 279,156 identity theft complaints. In calendar 2010, the number of identity theft complaints was 251,105. In Maryland, residents reported 4,980 instances of identity theft in 2011, or 86.3 complaints per 100,000 population, ranking Maryland ninth in the nation for identity theft. In a shift from the last several years, the most common type of identity theft was government documents or benefits fraud in Maryland, which comprised 33% of all complaints. The second most prevalent type of identity fraud involved phone and utilities fraud and represented 13% of all complaints.

Any business that retains consumer records is required by Maryland law to notify a consumer who is a resident of Maryland if his or her information is compromised. The business is also required to notify the Office of the Attorney General. According to the Office of the Attorney General, there were 218 security breaches in fiscal 2012.

Additional Information

Prior Introductions: A similar bill, HB 1107 of 2008, received an unfavorable report from the House Judiciary Committee. Its cross file, SB 327, was amended in the Senate Judicial Proceedings Committee but received an unfavorable report from the House Judiciary Committee. HB 407 of 2006 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Federal Trade Commission, Department of Legislative Services

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mlm/kdm

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