

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 407
Judiciary

(Delegate Niemann, *et al.*)

Commercial Law - Personal and Business Documents - Authentication

This bill provides that specified personal and business 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.

Fiscal Summary

State Effect: None. The change would not directly affect governmental finances. Potential operational efficiencies for the District Court due to decreased court time needed to admit the evidence affected by this bill.

Local Effect: None. The change would not directly affect local finances. Potential operational efficiencies for circuit courts due to decreased court time needed to admit the evidence affected by this bill.

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. In order 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 this 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 in order 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; and
- certified records of regularly conducted business activity.

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.

State Expenditures: Changing the criteria for admissibility of these personal and business records would not directly affect State finances. Under the bill, testimony of the custodian of the records affected by this bill will no longer be needed to admit these documents. Testimony by the account holder will be sufficient to authenticate these documents. Therefore, the District Court may experience operational efficiencies due to decreased court time needed to introduce this evidence.

Local Expenditures: For the reasons stated above, the changes in this bill would not directly affect local finances, but may result in operational efficiencies for circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), *Evidence* (Second Edition), Mueller and Kirkpatrick, 1999; Department of Legislative Services

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