

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 494

Introduced by Dungan, 26.

Read first time January 17, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Evidence Rules; to amend
2 section 27-902, Reissue Revised Statutes of Nebraska, and section
3 27-803, Revised Statutes Cumulative Supplement, 2022; to change
4 provisions relating to the business records hearsay exception and
5 provide additional self-authenticating items of evidence; and to
6 repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 27-803, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 27-803 Subject to the provisions of section 27-403, the following
4 are not excluded by the hearsay rule, even though the declarant is
5 available as a witness:

6 (1) A statement describing or explaining an event or condition, made
7 while or immediately after the declarant perceived it;

8 (2) A statement relating to a startling event or condition made
9 while the declarant was under the stress of excitement caused by the
10 event or condition;

11 (3) A statement of the declarant's then existing state of mind,
12 emotion, sensation, or physical condition (such as intent, plan, motive,
13 design, mental feeling, pain, and bodily health), but not including a
14 statement of memory or belief to prove the fact remembered or believed
15 unless it relates to the execution, revocation, identification, or terms
16 of declarant's will;

17 (4) Statements made for purposes of medical diagnosis or treatment
18 and describing medical history, or past or present symptoms, pain, or
19 sensations, or the inception or general character of the cause or
20 external source thereof insofar as reasonably pertinent to diagnosis or
21 treatment;

22 (5) A memorandum or record concerning a matter about which a witness
23 once had knowledge but now has insufficient recollection to enable him or
24 her to testify fully and accurately, shown to have been made or adopted
25 by the witness when the matter was fresh in his or her memory and to
26 reflect that knowledge correctly. If admitted, the memorandum or record
27 may be read into evidence but may not itself be received as an exhibit
28 unless offered by an adverse party;

29 (6)(a) A memorandum, report, record, or data compilation, in any
30 form, of acts, events, or conditions, other than opinions or diagnoses,
31 made at or near the time of such acts, events, or conditions, in the

1 course of a regularly conducted activity, if it was the regular course of
2 such activity to make such memorandum, report, record, or data
3 compilation at the time of such act, event, or condition, or within a
4 reasonable time thereafter, as shown by the testimony of the custodian or
5 other qualified witness or by a certification that complies with
6 subdivision (11) or (12) of section 27-902 or with a statute permitting
7 certification, unless the source of information or method or
8 circumstances of preparation indicate lack of trustworthiness. The
9 circumstances of the making of such memorandum, report, record, or data
10 compilation, including lack of personal knowledge by the entrant or
11 maker, may be shown to affect its weight.

12 (b) A memorandum, report, record, or data compilation, in any form,
13 of acts, events, or conditions, other than opinions or diagnoses, that
14 was received or acquired in the regular course of business by an entity
15 from another entity and has been incorporated into and kept in the
16 regular course of business of the receiving or acquiring entity; that the
17 receiving or acquiring entity typically relies upon the accuracy of the
18 contents of the memorandum, report, record, or data compilation; and that
19 the circumstances otherwise indicate the trustworthiness of the
20 memorandum, report, record, or data compilation, as shown by the
21 testimony of the custodian or other qualified witness. Subdivision (6)(b)
22 of this section shall not apply in any criminal proceeding;

23 (7) Evidence that a matter is not included in the memoranda,
24 reports, records, or data compilations, in any form, kept in accordance
25 with the provisions of subdivision (6) of this section to prove the
26 nonoccurrence or nonexistence of the matter, if the matter was of a kind
27 of which a memorandum, report, record, or data compilation was regularly
28 made and preserved, unless the sources of information or other
29 circumstances indicate a lack of trustworthiness;

30 (8) Upon reasonable notice to the opposing party prior to trial,
31 records, reports, statements, or data compilations made by a public

1 official or agency of facts required to be observed and recorded pursuant
2 to a duty imposed by law, unless the sources of information or the method
3 or circumstances of the investigation are shown by the opposing party to
4 indicate a lack of trustworthiness;

5 (9) Records or data compilations, in any form, of births, fetal
6 deaths, deaths, or marriages, if the report thereof was made to a public
7 office pursuant to requirements of law;

8 (10) To prove the absence of a record, report, statement, or data
9 compilation, in any form, or the nonoccurrence or nonexistence of a
10 matter of which a record, report, statement, or data compilation, in any
11 form, was regularly made and preserved by a public office or agency,
12 evidence in the form of a certification in accordance with section
13 27-902, or testimony, that diligent search failed to disclose the record,
14 report, statement, or data compilation or entry;

15 (11) Statements of births, marriages, divorces, deaths, legitimacy,
16 ancestry, relationship by blood or marriage, or other similar facts of
17 personal or family history, contained in a regularly kept record of a
18 religious organization;

19 (12) Statements of fact contained in a certificate that the maker
20 performed a marriage or other ceremony or administered a sacrament, made
21 by a member of the clergy, public official, or other person authorized by
22 the rules or practices of a religious organization or by law to perform
23 the act certified, and purporting to have been issued at the time of the
24 act or within a reasonable time thereafter;

25 (13) Statements of births, marriages, divorces, deaths, legitimacy,
26 ancestry, relationship by blood or marriage, or other similar facts of
27 personal or family history contained in family Bibles, genealogies,
28 charts, engravings on rings, inscriptions on family portraits, engravings
29 on urns, crypts, or tombstones or the like;

30 (14) The record of a document purporting to establish or affect an
31 interest in property, as proof of the content of the original recorded

1 document and its execution and delivery by each person by whom it
2 purports to have been executed, if the record is a record of a public
3 office and an applicable statute authorized the recording of documents of
4 that kind in that office;

5 (15) A statement contained in a document purporting to establish or
6 affect an interest in property if the matter stated was relevant to the
7 purpose of the document, unless dealings with the property since the
8 document was made have been inconsistent with the truth of the statement
9 or the purport of the document;

10 (16) Statements in a document in existence thirty years or more
11 whose authenticity is established;

12 (17) Market quotations, tabulations, lists, directories, or other
13 published compilations, generally used and relied upon by the public or
14 by persons in particular occupations;

15 (18) Statements contained in published treatises, periodicals, or
16 pamphlets on a subject of history, medicine, or other science or art,
17 established as a reliable authority by the testimony or admission of the
18 witness or by other expert testimony or by judicial notice, to the extent
19 called to the attention of an expert witness upon cross-examination or
20 relied upon by the expert witness in direct examination. If admitted, the
21 statements may be read into evidence but may not be received as exhibits;

22 (19) Reputation among members of his or her family by blood,
23 adoption, or marriage, or among his or her associates, or in the
24 community, concerning a person's birth, adoption, marriage, divorce,
25 death, legitimacy, relationship by blood, adoption, or marriage,
26 ancestry, or other similar fact of his or her personal or family history;

27 (20) Reputation in a community, arising before the controversy, as
28 to boundaries of or customs affecting lands in the community, and
29 reputation as to events of general history important to the community or
30 state or nation in which located;

31 (21) Reputation of a person's character among his or her associates

1 or in the community;

2 (22) Evidence of a final judgment, entered after a trial or upon a
3 plea of guilty (but not upon a plea of nolo contendere), adjudging a
4 person guilty of a crime punishable by death or imprisonment in excess of
5 one year, to prove any fact essential to sustain the judgment, but not
6 including, when offered by the government in a criminal prosecution for
7 purposes other than impeachment, judgments against a person other than
8 the accused. The pendency of an appeal may be shown but does not affect
9 admissibility;

10 (23) Judgments as proof of matters of personal, family, or general
11 history, or boundaries, essential to the judgment, if the same would be
12 provable by evidence of reputation; and

13 (24) A statement not specifically covered by any of the foregoing
14 exceptions but having equivalent circumstantial guarantees of
15 trustworthiness, if the court determines that (a) the statement is
16 offered as evidence of a material fact, (b) the statement is more
17 probative on the point for which it is offered than any other evidence
18 which the proponent can procure through reasonable efforts, and (c) the
19 general purposes of these rules and the interests of justice will best be
20 served by admission of the statement into evidence. A statement may not
21 be admitted under this exception unless the proponent of it makes known
22 to the adverse party, sufficiently in advance of the trial or hearing to
23 provide the adverse party with a fair opportunity to prepare to meet it,
24 his or her intention to offer the statement and the particulars of it,
25 including the name and address of the declarant.

26 Sec. 2. Section 27-902, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 27-902 Extrinsic evidence of authenticity as a condition precedent
29 to admissibility is not required with respect to the following:

30 (1) A document bearing a seal purporting to be that of the United
31 States, or of any state, district, commonwealth, territory, or insular

1 possession thereof, or the Panama Canal Zone or the Trust Territory of
2 the Pacific Islands, or of a political subdivision, department, officer,
3 or agency thereof, and a signature purporting to be an attestation or
4 execution;

5 (2) A document purporting to bear the signature in his or her
6 official capacity of an officer or employee of any entity included in
7 subdivision (1) of this section, having no seal, if a public officer
8 having a seal and having official duties in the district or political
9 subdivision of the officer or employee certifies under seal that the
10 signer has the official capacity and that the signature is genuine;

11 (3) A document purporting to be executed or attested in his or her
12 official capacity by a person authorized by the laws of a foreign country
13 to make the execution or attestation, and accompanied by a final
14 certification as to the genuineness of the signature and official
15 position (a) of the executing or attesting person, or (b) of any foreign
16 official whose certificate of genuineness of signature and official
17 position relates to the execution or attestation or is in a chain of
18 certificates of genuineness of signature and official position relating
19 to the execution or attestation. A final certification may be made by a
20 secretary of embassy or legation, consul general, consul, vice consul, or
21 consular agent of the United States, or a diplomatic or consular official
22 of the foreign country assigned or accredited to the United States. If
23 reasonable opportunity has been given to all parties to investigate the
24 authenticity and accuracy of official documents, the judge may, for good
25 cause shown, order that they be treated as presumptively authentic
26 without final certification or permit them to be evidenced by an attested
27 summary with or without final certification;

28 (4) A copy of an official record or report or entry therein, or of a
29 document authorized by law to be recorded or filed and actually recorded
30 or filed in a public office, including data compilations in any form,
31 certified as correct by the custodian or other person authorized to make

1 the certification, by certificate complying with subdivision (1), (2), or
2 (3) of this section or complying with any Act of Congress or the
3 Legislature or rule adopted by the Supreme Court of Nebraska which are
4 not in conflict with laws governing such matters;

5 (5) Books, pamphlets, or other publications purporting to be issued
6 by public authority;

7 (6) Printed materials purporting to be newspapers or periodicals;

8 (7) Inscriptions, signs, tags, or labels purporting to have been
9 affixed in the course of business and indicating ownership, control, or
10 origin;

11 (8) Documents accompanied by a certificate of acknowledgment
12 executed in the manner provided by law by a notary public or other
13 officer authorized by law to take acknowledgments;

14 (9) Commercial paper, signatures thereon, and documents relating
15 thereto to the extent provided by general commercial law; ~~or~~

16 (10) Any signature, document, or other matter declared by Act of
17 Congress and the laws of the State of Nebraska to be presumptively or
18 prima facie genuine or authentic; -

19 (11)(a) The original or a copy of a domestic record that meets the
20 requirements of subdivision (6) of section 27-803, as shown by a
21 certification of the custodian or another qualified person that complies
22 with the following form or that contains substantially the same
23 information:

24 CERTIFICATION OF BUSINESS RECORD

25 I, (name), hereby certify that:

26 1. I am the (title or position)
27 for (name of entity) and am qualified to administer
28 the records for (name of entity);

29 2. The attached (number) pages are true and accurate copies of
30 records made at or near the time of the occurrence of the matters set
31 forth therein; by or from a person with knowledge of these matters; were

1 kept in the course of the regularly conducted activity
2 of (name of entity); and it was and is the regular
3 practice of (name of entity) to keep and maintain such
4 records; and

5 3. The attached pages are: (description of
6 record, e.g., sales records for tax year 2020).

7 I declare under penalty of perjury that the foregoing is true and
8 correct.

9 Date: Signature

10 Print Name

11 Title/Position

12 (b) Before the trial or hearing, the proponent must give an adverse
13 party reasonable written notice of the intent to offer the record and
14 must make the record and certification available for inspection so that
15 the party has a fair opportunity to challenge them on the ground that the
16 sources of information or the method or circumstances of preparation
17 indicate a lack of trustworthiness;

18 (12) In a civil case, the original or a copy of a foreign record
19 that meets the requirements of subdivision (11)(a) of this section,
20 modified as follows: The certification must be signed in a manner that,
21 if falsely made, would subject the maker to a criminal penalty in the
22 country where the certification is signed. The proponent must also meet
23 the notice requirements of subdivision (11)(b) of this section;

24 (13) A record generated by an electronic process or system that
25 produces an accurate result, as shown by a certification of a qualified
26 person that complies with the certification requirements of subdivision
27 (11)(a) or (12) of this section. The proponent must also meet the notice
28 requirements of subdivision (11)(b) of this section; or

29 (14) Data copied from an electronic device, storage medium, or file,
30 if authenticated by a process of digital identification, as shown by a
31 certification of a qualified person that complies with the certification

1 requirements of subdivision (11)(a) or (12) of this section. The
2 proponent must also meet the notice requirements of subdivision (11)(b)
3 of this section.

4 Sec. 3. Original section 27-902, Reissue Revised Statutes of
5 Nebraska, and section 27-803, Revised Statutes Cumulative Supplement,
6 2022, are repealed.