

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 57

Introduced by Lathrop, 12.

Read first time January 07, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Evidence Rules; to amend
- 2 section 27-803, Reissue Revised Statutes of Nebraska; to provide a
- 3 hearsay exception for present sense impressions; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 27-803, Reissue Revised Statutes of Nebraska, is
2 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) {1} 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) {2} 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) {3} Statements made for purposes of medical diagnosis or
18 treatment and describing medical history, or past or present symptoms,
19 pain, or sensations, or the inception or general character of the cause
20 or external source thereof insofar as reasonably pertinent to diagnosis
21 or treatment;

22 (5) {4} A memorandum or record concerning a matter about which a
23 witness once had knowledge but now has insufficient recollection to
24 enable him or her to testify fully and accurately, shown to have been
25 made or adopted by the witness when the matter was fresh in his or her
26 memory and to reflect that knowledge correctly. If admitted, the
27 memorandum or record may be read into evidence but may not itself be
28 received as an exhibit unless offered by an adverse party;

29 (6)(a) {5}(a) A memorandum, report, record, or data compilation, in
30 any form, of acts, events, or conditions, other than opinions or
31 diagnoses, made at or near the time of such acts, events, or conditions,

1 in the course of a regularly conducted activity, if it was the regular
2 course of 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 unless the source of information or method or
6 circumstances of preparation indicate lack of trustworthiness. The
7 circumstances of the making of such memorandum, report, record, or data
8 compilation, including lack of personal knowledge by the entrant or
9 maker, may be shown to affect its weight.

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

21 (7) ~~(6)~~ Evidence that a matter is not included in the memoranda,
22 reports, records, or data compilations, in any form, kept in accordance
23 with the provisions of subdivision (6) ~~(5)~~ of this section to prove the
24 nonoccurrence or nonexistence of the matter, if the matter was of a kind
25 of which a memorandum, report, record, or data compilation was regularly
26 made and preserved, unless the sources of information or other
27 circumstances indicate a lack of trustworthiness;

28 (8) ~~(7)~~ Upon reasonable notice to the opposing party prior to trial,
29 records, reports, statements, or data compilations made by a public
30 official or agency of facts required to be observed and recorded pursuant
31 to a duty imposed by law, unless the sources of information or the method

1 or circumstances of the investigation are shown by the opposing party to
2 indicate a lack of trustworthiness;

3 (9) ~~(8)~~ Records or data compilations, in any form, of births, fetal
4 deaths, deaths, or marriages, if the report thereof was made to a public
5 office pursuant to requirements of law;

6 (10) ~~(9)~~ To prove the absence of a record, report, statement, or
7 data compilation, in any form, or the nonoccurrence or nonexistence of a
8 matter of which a record, report, statement, or data compilation, in any
9 form, was regularly made and preserved by a public office or agency,
10 evidence in the form of a certification in accordance with section
11 27-902, or testimony, that diligent search failed to disclose the record,
12 report, statement, or data compilation or entry;

13 (11) ~~(10)~~ Statements of births, marriages, divorces, deaths,
14 legitimacy, ancestry, relationship by blood or marriage, or other similar
15 facts of personal or family history, contained in a regularly kept record
16 of a religious organization;

17 (12) ~~(11)~~ Statements of fact contained in a certificate that the
18 maker performed a marriage or other ceremony or administered a sacrament,
19 made by a member of the clergy, public official, or other person
20 authorized by the rules or practices of a religious organization or by
21 law to perform the act certified, and purporting to have been issued at
22 the time of the act or within a reasonable time thereafter;

23 (13) ~~(12)~~ Statements of births, marriages, divorces, deaths,
24 legitimacy, ancestry, relationship by blood or marriage, or other similar
25 facts of personal or family history contained in family Bibles,
26 genealogies, charts, engravings on rings, inscriptions on family
27 portraits, engravings on urns, crypts, or tombstones or the like;

28 (14) ~~(13)~~ The record of a document purporting to establish or affect
29 an interest in property, as proof of the content of the original recorded
30 document and its execution and delivery by each person by whom it
31 purports to have been executed, if the record is a record of a public

1 office and an applicable statute authorized the recording of documents of
2 that kind in that office;

3 (15) ~~(14)~~ A statement contained in a document purporting to
4 establish or affect an interest in property if the matter stated was
5 relevant to the purpose of the document, unless dealings with the
6 property since the document was made have been inconsistent with the
7 truth of the statement or the purport of the document;

8 (16) ~~(15)~~ Statements in a document in existence thirty years or more
9 whose authenticity is established;

10 (17) ~~(16)~~ Market quotations, tabulations, lists, directories, or
11 other published compilations, generally used and relied upon by the
12 public or by persons in particular occupations;

13 (18) ~~(17)~~ Statements contained in published treatises, periodicals,
14 or pamphlets on a subject of history, medicine, or other science or art,
15 established as a reliable authority by the testimony or admission of the
16 witness or by other expert testimony or by judicial notice, to the extent
17 called to the attention of an expert witness upon cross-examination or
18 relied upon by the expert witness in direct examination. If admitted, the
19 statements may be read into evidence but may not be received as exhibits;

20 (19) ~~(18)~~ Reputation among members of his or her family by blood,
21 adoption, or marriage, or among his or her associates, or in the
22 community, concerning a person's birth, adoption, marriage, divorce,
23 death, legitimacy, relationship by blood, adoption, or marriage,
24 ancestry, or other similar fact of his or her personal or family history;

25 (20) ~~(19)~~ Reputation in a community, arising before the controversy,
26 as to boundaries of or customs affecting lands in the community, and
27 reputation as to events of general history important to the community or
28 state or nation in which located;

29 (21) ~~(20)~~ Reputation of a person's character among his or her
30 associates or in the community;

31 (22) ~~(21)~~ Evidence of a final judgment, entered after a trial or

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

8 ~~(23)~~ ~~(22)~~ Judgments as proof of matters of personal, family, or
9 general history, or boundaries, essential to the judgment, if the same
10 would be provable by evidence of reputation; and

11 ~~(24)~~ ~~(23)~~ A statement not specifically covered by any of the
12 foregoing exceptions but having equivalent circumstantial guarantees of
13 trustworthiness, if the court determines that (a) the statement is
14 offered as evidence of a material fact, (b) the statement is more
15 probative on the point for which it is offered than any other evidence
16 which the proponent can procure through reasonable efforts, and (c) the
17 general purposes of these rules and the interests of justice will best be
18 served by admission of the statement into evidence. A statement may not
19 be admitted under this exception unless the proponent of it makes known
20 to the adverse party, sufficiently in advance of the trial or hearing to
21 provide the adverse party with a fair opportunity to prepare to meet it,
22 his or her intention to offer the statement and the particulars of it,
23 including the name and address of the declarant.

24 Sec. 2. Original section 27-803, Reissue Revised Statutes of
25 Nebraska, is repealed.