

AMENDMENTS TO LB788

Introduced by Schumacher

1           1. Strike the original sections and insert the following  
2 new sections:

3           Section 1. Section 27-803, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

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

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

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

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

22           (4) A memorandum or record concerning a matter about  
23 which a witness once had knowledge but now has insufficient

1 recollection to enable him or her to testify fully and accurately,  
2 shown to have been made or adopted by the witness when the matter  
3 was fresh in his or her memory and to reflect that knowledge  
4 correctly. If admitted, the memorandum or record may be read into  
5 evidence but may not itself be received as an exhibit unless  
6 offered by an adverse party;

7 (5) (a) A memorandum, report, record, or data compilation,  
8 in any form, of acts, events, or conditions, other than opinions  
9 or diagnoses, made at or near the time of such acts, events, or  
10 conditions, in the course of a regularly conducted activity, if it  
11 was the regular course of such activity to make such memorandum,  
12 report, record, or data compilation at the time of such act, event,  
13 or condition, or within a reasonable time thereafter, as shown by  
14 the testimony of the custodian or other qualified witness unless  
15 the source of information or method or circumstances of preparation  
16 indicate lack of trustworthiness. The circumstances of the making  
17 of such memorandum, report, record, or data compilation, including  
18 lack of personal knowledge by the entrant or maker, may be shown to  
19 affect its weight.

20 (b) A memorandum, report, record, or data compilation, in  
21 any form, of acts, events, or conditions, other than opinions or  
22 diagnoses, that was received or acquired in the regular course of  
23 business by an entity from another entity and has been incorporated  
24 into and kept in the regular course of business of the receiving or  
25 acquiring entity; that the receiving or acquiring entity typically  
26 relies upon the accuracy of the contents of the memorandum, report,  
27 record, or data compilation; and that the circumstances otherwise

1 indicate the trustworthiness of the memorandum, report, record, or  
2 data compilation, as shown by the testimony of the custodian or  
3 other qualified witness. Subdivision (5)(b) of this section shall  
4 not apply in any criminal proceeding;

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

13           (7) Upon reasonable notice to the opposing party prior to  
14 trial, records, reports, statements, or data compilations made by  
15 a public official or agency of facts required to be observed and  
16 recorded pursuant to a duty imposed by law, unless the sources of  
17 information or the method or circumstances of the investigation are  
18 shown by the opposing party to indicate a lack of trustworthiness;

19           (8) Records or data compilations, in any form, of births,  
20 fetal deaths, deaths, or marriages, if the report thereof was made  
21 to a public office pursuant to requirements of law;

22           (9) To prove the absence of a record, report, statement,  
23 or data compilation, in any form, or the nonoccurrence or  
24 nonexistence of a matter of which a record, report, statement, or  
25 data compilation, in any form, was regularly made and preserved by  
26 a public office or agency, evidence in the form of a certification  
27 in accordance with section 27-902, or testimony, that diligent

1 search failed to disclose the record, report, statement, or data  
2 compilation or entry;

3 (10) Statements of births, marriages, divorces, deaths,  
4 legitimacy, ancestry, relationship by blood or marriage, or other  
5 similar facts of personal or family history, contained in a  
6 regularly kept record of a religious organization;

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

14 (12) Statements of births, marriages, divorces, deaths,  
15 legitimacy, ancestry, relationship by blood or marriage, or other  
16 similar facts of personal or family history contained in family  
17 Bibles, genealogies, charts, engravings on rings, inscriptions on  
18 family portraits, engravings on urns, crypts, or tombstones or the  
19 like;

20 (13) The record of a document purporting to establish or  
21 affect an interest in property, as proof of the content of the  
22 original recorded document and its execution and delivery by each  
23 person by whom it purports to have been executed, if the record is  
24 a record of a public office and an applicable statute authorized  
25 the recording of documents of that kind in that office;

26 (14) A statement contained in a document purporting to  
27 establish or affect an interest in property if the matter stated

1 was relevant to the purpose of the document, unless dealings with  
2 the property since the document was made have been inconsistent  
3 with the truth of the statement or the purport of the document;

4 (15) Statements in a document in existence thirty years  
5 or more whose authenticity is established;

6 (16) Market quotations, tabulations, lists, directories,  
7 or other published compilations, generally used and relied upon by  
8 the public or by persons in particular occupations;

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

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

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

27 (20) Reputation of a person's character among his or her

1 associates or in the community;

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

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

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

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