

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 151

Introduced by Seiler, 33.

Read first time January 11, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Evidence Rules; to amend section
2 27-803, Reissue Revised Statutes of Nebraska; to provide
3 a hearsay exception for certain documents and data kept
4 in the regular course of business; to repeal the original
5 section; and to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

20 (4) A memorandum or record concerning a matter about
21 which a witness once had knowledge but now has insufficient
22 recollection to enable him or her to testify fully and accurately,
23 shown to have been made or adopted by the witness when the matter was
24 fresh in his or her memory and to reflect that knowledge correctly.
25 If admitted, the memorandum or record may be read into evidence but

1 may not itself be received as an exhibit unless offered by an adverse
2 party;

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

16 (6) A memorandum, report, record, or data compilation, in
17 any form, of acts, events, or conditions, other than opinions or
18 diagnoses, that was received or acquired by an entity from another
19 entity and has been incorporated into and kept in the regular course
20 of business of the receiving or acquiring entity; that the receiving
21 or acquiring entity typically relies upon the accuracy of the
22 contents of the memorandum, report, record, or data compilation; and
23 that the circumstances otherwise indicate the trustworthiness of the
24 memorandum, report, record, or data compilation, as shown by the
25 testimony of the custodian or other qualified witness;

1 ~~(6)~~—(7) Evidence that a matter is not included in the
2 memoranda, reports, records, or data compilations, in any form, kept
3 in accordance with the provisions of subdivision (5) or (6) of this
4 section to prove the nonoccurrence or nonexistence of the matter, if
5 the matter was of a kind of which a memorandum, report, record, or
6 data compilation was regularly made and preserved, unless the sources
7 of information or other circumstances indicate a lack of
8 trustworthiness;

9 ~~(7)~~—(8) Upon reasonable notice to the opposing party
10 prior to trial, records, reports, statements, or data compilations
11 made by a public official or agency of facts required to be observed
12 and recorded pursuant to a duty imposed by law, unless the sources of
13 information or the method or circumstances of the investigation are
14 shown by the opposing party to indicate a lack of trustworthiness;

15 ~~(8)~~—(9) Records or data compilations, in any form, of
16 births, fetal deaths, deaths, or marriages, if the report thereof was
17 made to a public office pursuant to requirements of law;

18 ~~(9)~~—(10) To prove the absence of a record, report,
19 statement, or data compilation, in any form, or the nonoccurrence or
20 nonexistence of a matter of which a record, report, statement, or
21 data compilation, in any form, was regularly made and preserved by a
22 public office or agency, evidence in the form of a certification in
23 accordance with section 27-902, or testimony, that diligent search
24 failed to disclose the record, report, statement, or data compilation
25 or entry;

1 ~~(10)~~(11) Statements of births, marriages, divorces,
2 deaths, legitimacy, ancestry, relationship by blood or marriage, or
3 other similar facts of personal or family history, contained in a
4 regularly kept record of a religious organization;

5 ~~(11)~~(12) Statements of fact contained in a certificate
6 that the maker performed a marriage or other ceremony or administered
7 a sacrament, made by a member of the clergy, public official, or
8 other person authorized by the rules or practices of a religious
9 organization or by law to perform the act certified, and purporting
10 to have been issued at the time of the act or within a reasonable
11 time thereafter;

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

18 ~~(13)~~(14) The record of a document purporting to
19 establish or affect an interest in property, as proof of the content
20 of the original recorded document and its execution and delivery by
21 each person by whom it purports to have been executed, if the record
22 is a record of a public office and an applicable statute authorized
23 the recording of documents of that kind in that office;

24 ~~(14)~~(15) A statement contained in a document purporting
25 to establish or affect an interest in property if the matter stated

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

4 ~~(15)~~—(16) Statements in a document in existence thirty
5 years or more whose authenticity is established;

6 ~~(16)~~—(17) Market quotations, tabulations, lists,
7 directories, or other published compilations, generally used and
8 relied upon by the public or by persons in particular occupations;

9 ~~(17)~~—(18) Statements contained in published treatises,
10 periodicals, or pamphlets on a subject of history, medicine, or other
11 science or art, established as a reliable authority by the testimony
12 or admission of the witness or by other expert testimony or by
13 judicial notice, to the extent called to the attention of an expert
14 witness upon cross-examination or relied upon by the expert witness
15 in direct examination. If admitted, the statements may be read into
16 evidence but may not be received as exhibits;

17 ~~(18)~~—(19) Reputation among members of his or her family
18 by 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)~~—(20) Reputation in a community, arising before the
24 controversy, as to boundaries of or customs affecting lands in the
25 community, and reputation as to events of general history important

1 to the community or state or nation in which located;

2 ~~(20)~~ (21) Reputation of a person's character among his or
3 her associates or in the community;

4 ~~(21)~~ (22) Evidence of a final judgment, entered after a
5 trial or upon a plea of guilty (but not upon a plea of nolo
6 contendere), adjudging a person guilty of a crime punishable by death
7 or imprisonment in excess of one year, to prove any fact essential to
8 sustain the judgment, but not including, when offered by the
9 government in a criminal prosecution for purposes other than
10 impeachment, judgments against a person other than the accused. The
11 pendency of an appeal may be shown but does not affect admissibility;

12 ~~(22)~~ (23) Judgments as proof of matters of personal,
13 family, or general history, or boundaries, essential to the judgment,
14 if the same would be provable by evidence of reputation; and

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

1 adverse party with a fair opportunity to prepare to meet it, his or
2 her intention to offer the statement and the particulars of it,
3 including the name and address of the declarant.

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

6 Sec. 3. Since an emergency exists, this act takes effect
7 when passed and approved according to law.