

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.