

AMENDMENTS TO LB935

Introduced by Judiciary.

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

3 **Sec. 10.** Section 27-804, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 27-804 (1) Unavailability as a witness includes situations in which
6 the declarant:

7 (a) Is exempted by ruling of the judge on the ground of privilege
8 from testifying concerning the subject matter of the declarant's his
9 statement; or

10 (b) Persists in refusing to testify concerning the subject matter of
11 the declarant's his statement despite an order of the judge to do so; or

12 (c) Testifies to lack of memory of the subject matter of the
13 declarant's his statement; or

14 (d) Is unable to be present or to testify at the hearing because of
15 death or then existing physical or mental illness or infirmity; or

16 (e) Is absent from the hearing and the proponent of the declarant's
17 his statement has been unable to procure the declarant's his attendance
18 by process or other reasonable means.

19 A declarant is not unavailable as a witness if the declarant's his
20 exemption, refusal, claim of lack of memory, inability, or absence is due
21 to the procurement or wrongdoing of the proponent of the declarant's his
22 statement for the purpose of preventing the declarant witness from
23 attending or testifying.

24 (2) Subject to the provisions of section 27-403, the following are
25 not excluded by the hearsay rule if the declarant is unavailable as a
26 witness:

27 (a) Testimony given as a witness at another hearing of the same or a

1 different proceeding, or in a deposition taken in compliance with law in
2 the course of the same or a different proceeding, at the instance of or
3 against a party with an opportunity to develop the testimony by direct,
4 cross, or redirect examination, with motive and interest similar to those
5 of the party against whom now offered;

6 (b) A statement made by a declarant while believing that the
7 declarant's ~~his~~ death was imminent, concerning the cause or circumstances
8 of what the declarant ~~he~~ believed to be the declarant's ~~his~~ impending
9 death;

10 (c) A statement which was at the time of its making so far contrary
11 to the declarant's pecuniary or proprietary interest, or so far tended to
12 subject the declarant ~~him~~ to civil or criminal liability or to render
13 invalid a claim by the declarant ~~him~~ against another, that a reasonable
14 person ~~man~~ in the declarant's ~~his~~ position would not have made the
15 statement unless such person ~~he~~ believed it to be true. A statement
16 tending to expose the declarant to criminal liability and offered to
17 exculpate the accused is not admissible unless corroborating
18 circumstances clearly indicate the trustworthiness of the statement;

19 (d)(i) A statement concerning the declarant's own birth, adoption,
20 marriage, divorce, legitimacy, relationship by blood, adoption, or
21 marriage, ancestry, or other similar fact of personal or family history,
22 even though declarant had no means of acquiring personal knowledge of the
23 matter stated; or (ii) a statement concerning the foregoing matters, and
24 death also, of another person, if the declarant was related to the other
25 by blood, adoption, or marriage or was so intimately associated with the
26 other's family as to be likely to have accurate information concerning
27 the matter declared; ~~or~~

28 (e) A statement offered against a party that wrongfully caused, or
29 intentionally aided another in wrongfully causing, the declarant's
30 unavailability as a witness, and did so intending that result; or

31 (f) (e) A statement not specifically covered by any of the foregoing

1 exceptions but having equivalent circumstantial guarantees of
2 trustworthiness, if the court determines that (i) the statement is
3 offered as evidence of a material fact, (ii) the statement is more
4 probative on the point for which it is offered than any other evidence
5 which the proponent can procure through reasonable efforts, and (iii) the
6 general purposes of these rules and the interests of justice will best be
7 served by admission of the statement into evidence. A statement may not
8 be admitted under this exception unless the proponent of it makes known
9 to the adverse party, sufficiently in advance of the trial or hearing to
10 provide the adverse party with a fair opportunity to prepare to meet it,
11 the proponent's his intention to offer the statement and the particulars
12 of it, including the name and address of the declarant.

13 **Sec. 45.** Sections 35, 36, and 37 of this act become operative on
14 July 1, 2026. Sections 19, 26, 27, 28, 29, 30, 31, 32, 34, 39, and 47 of
15 this act become operative on January 1, 2027. Sections 1, 2, 3, 4, 5, 6,
16 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 33,
17 38, 42, 43, 44, and 48 of this act become operative three calendar months
18 after the adjournment of this legislative session. The other sections of
19 this act become operative on their effective date.

20 **Sec. 46.** If any section in this act or any part of any section is
21 declared invalid or unconstitutional, the declaration shall not affect
22 the validity or constitutionality of the remaining portions.

23 **Sec. 47.** Original section 29-4315, Revised Statutes Cumulative
24 Supplement, 2024, and sections 28-358.01 and 42-927, Revised Statutes
25 Supplement, 2025, are repealed.

26 **Sec. 48.** Original sections 7-203, 25-824, 25-1802, 25-1804, 27-804,
27 29-2204.02, 29-2308, 29-4103, 42-371, 84-941.01, and 86-2,103, Reissue
28 Revised Statutes of Nebraska, sections 28-311.08 and 59-1608.04, Revised
29 Statutes Cumulative Supplement, 2024, and sections 26-102, 26-114,
30 28-101, 28-311.02, 28-311.04, 28-1205, and 28-1206, Revised Statutes
31 Supplement, 2025, are repealed.

1 **Sec. 49.** Original sections 43-1409 and 43-1412.01, Reissue Revised
2 Statutes of Nebraska, are repealed.

3 **Sec. 50.** Since an emergency exists, this act takes effect when
4 passed and approved according to law.