

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 789

Introduced by Bosn, 25.

Read first time January 07, 2026

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Nebraska Evidence Rules; to amend
- 2 section 27-804, Reissue Revised Statutes of Nebraska; to provide for
- 3 an exclusion from the hearsay rule for a statement offered against a
- 4 party that wrongfully caused the declarant's unavailability; to
- 5 harmonize provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 27-804, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 27-804 (1) Unavailability as a witness includes situations in which
4 the declarant:

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

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

10 (c) Testifies to lack of memory of the subject matter of the
11 declarant's ~~his~~ statement; or

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

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

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

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

25 (a) Testimony given as a witness at another hearing of the same or a
26 different proceeding, or in a deposition taken in compliance with law in
27 the course of the same or a different proceeding, at the instance of or
28 against a party with an opportunity to develop the testimony by direct,
29 cross, or redirect examination, with motive and interest similar to those
30 of the party against whom now offered;

31 (b) A statement made by a declarant while believing that the

1 declarant's ~~his~~ death was imminent, concerning the cause or circumstances
2 of what the declarant ~~he~~ believed to be the declarant's ~~his~~ impending
3 death;

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

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

22 (e) A statement offered against a party that wrongfully caused, or
23 acquiesced in wrongfully causing, the declarant's unavailability as a
24 witness, and did so intending that result; or

25 (f) {e} A statement not specifically covered by any of the foregoing
26 exceptions but having equivalent circumstantial guarantees of
27 trustworthiness, if the court determines that (i) the statement is
28 offered as evidence of a material fact, (ii) the statement is more
29 probative on the point for which it is offered than any other evidence
30 which the proponent can procure through reasonable efforts, and (iii) the
31 general purposes of these rules and the interests of justice will best be

1 served by admission of the statement into evidence. A statement may not
2 be admitted under this exception unless the proponent of it makes known
3 to the adverse party, sufficiently in advance of the trial or hearing to
4 provide the adverse party with a fair opportunity to prepare to meet it,
5 the proponent's ~~his~~ intention to offer the statement and the particulars
6 of it, including the name and address of the declarant.

7 **Sec. 2.** Original section 27-804, Reissue Revised Statutes of
8 Nebraska, is repealed.