

SECOND REGULAR SESSION

SENATE BILL NO. 909

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS CUNNINGHAM, MUNZLINGER, DEMPSEY AND WASSON.

Read 1st time March 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

6112S.011

AN ACT

To repeal sections 490.660, 490.670, 490.680, 490.690, and 490.692, RSMo, and to enact in lieu thereof five new sections relating to records of regularly conducted activity.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 490.660, 490.670, 490.680, 490.690, and 490.692, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 490.660, 490.670, 490.680, 490.690, and 490.692, to read as follows:

490.660. Sections 490.660 to [490.690] **490.692** may be cited as "The [Uniform Business] Records [as Evidence Law] of Regularly Conducted Activity".

490.670. The term "business" shall include [every kind of] business, **institution, association,** profession, occupation, **and** calling [or operation of institutions,] **of every kind,** whether [carried on] **or not conducted** for profit [or not].

490.680. [A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.] **The following is not excluded by any hearsay rule, even though the declarant is available as a witness: a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses made at or near the time by or from information transmitted by a person with knowledge if kept in**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

11 **the course of a regularly conducted business activity and if it was the**
 12 **regular practice of that business activity to make the memorandum,**
 13 **report, record, or data compilation, all as shown by the testimony of the**
 14 **custodian or other qualified witness or by certification that complies**
 15 **with section 490.692 or a statute permitting certification, unless the**
 16 **source of information or the method or circumstances of preparation**
 17 **indicate a lack of trustworthiness.**

490.690. Sections 490.660 to [490.690] **490.692** shall be so interpreted
 2 and construed as to effectuate its general purpose to make uniform the law of
 3 those states [which enact it] **with such laws or rules of evidence regarding**
 4 **the admissibility of third-party business records.**

490.692. 1. [Any records or copies of records reproduced in the ordinary
 2 course of business by any photographic, photostatic, microfilm, microcard,
 3 miniature photographic, optical disk imaging, or other process which accurately
 4 reproduces or forms a durable medium for so reproducing the original that would
 5 be admissible under sections 490.660 to 490.690 shall be admissible as a business
 6 record, subject to other substantive or procedural objections, in any court in this
 7 state upon the affidavit of the person who would otherwise provide the
 8 prerequisites of sections 490.660 to 490.690, that the records attached to the
 9 affidavit were kept as required by section 490.680.

10 2. No party shall be permitted to offer such business records into evidence
 11 pursuant to this section unless all other parties to the action have been served
 12 with copies of such records and such affidavit at least seven days prior to the day
 13 upon which trial of the cause commences.

14 3. The affidavit permitted by this section may be in form and content
 15 substantially as follows:

16 THE STATE OF
 17 COUNTY OF

18 **AFFIDAVIT**

19 Before me, the undersigned authority, personally appeared, who,
 20 being by me duly sworn, deposed as follows:

21 My name is, I am of sound mind, capable of making this affidavit,
 22 and personally acquainted with the facts herein stated:

23 I am the custodian of the records of Attached hereto are
 24 pages of records from These pages of records are kept by
 25 in the regular course of business, and it was the regular course of business of

26 for an employee or representative of with knowledge of the act, event,
27 condition, opinion, or diagnosis recorded to make the record or to transmit
28 information thereof to be included in such record; and the record was made at or
29 near the time of the act, event, condition, opinion or diagnosis. The records
30 attached hereto are the original or exact duplicates of the original.

31

32 Affiant

33 In witness whereof I have hereunto subscribed my name and affixed my
34 official seal this day of, 20... .

35

36 (Signed) (Seal)] **Extrinsic**

37 **evidence of authenticity as a condition precedent to admissibility is not**
38 **required with respect to the original or duplicate of a record of**
39 **regularly conducted business activity if accompanied by a written**
40 **certification of its custodian or other qualified person that the record**
41 **was:**

42 **(1) Made at or near the time of the occurrence of the matters set**
43 **forth, by or from information transmitted by a person with knowledge**
44 **of such matters;**

45 **(2) Kept in the course of the regularly conducted business**
46 **activity; and**

47 **(3) Made by the regularly conducted business activity as a**
48 **regular practice.**

49 **2. As used in this section, the term "certification" means:**

50 **(1) With respect to a domestic record, a written declaration**
51 **under oath subject to the penalty of perjury; and**

52 **(2) With respect to a record maintained or located in a foreign**
53 **country, a written declaration signed in a country which, if falsely**
54 **made, would subject the maker to criminal penalty under the laws of**
55 **such country.**

56 **3. Any party intending to offer a record into evidence under this**
57 **section shall provide written notice of such intention to all adverse**
58 **parties and shall make the record and certification available for**
59 **inspection sufficiently in advance of an offer of such record into**
60 **evidence to provide an adverse party with a fair opportunity to**
61 **challenge such record.**

62 **4. No party shall be permitted to offer such business records into**

63 evidence under this section unless all other parties to the action have
64 been served with copies of such records and such affidavit at least
65 seven days prior to the day upon which trial of the cause commences.

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Bill

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