

Regular Session, 2013

HOUSE BILL NO. 293

BY REPRESENTATIVE FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EVIDENCE: Allows certain certified records to be used as evidence

1 AN ACT

2 To amend and reenact Code of Evidence Article 803(6) and to enact Code of Evidence
3 Article 902(11), relative to evidence; to provide for the admissibility of certain
4 records; to provide for requirements for admissibility; to provide for definitions; to
5 provide for self-authenticated records; to provide for objections; to provide for
6 procedures for the hearing of objections; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Evidence Article 803(6) is hereby amended and reenacted and
9 Code of Evidence Article 902(11) is hereby enacted to read as follows:

10 Art. 803. Hearsay exceptions; availability of declarant immaterial

11 The following are not excluded by the hearsay rule, even though the declarant
12 is available as a witness:

13 * * *

14 (6) Records of regularly conducted business activity. A memorandum,
15 report, record, or data compilation, in any form, including but not limited to that
16 which is stored by the use of an optical disk imaging system, of acts, events,
17 conditions, opinions, or diagnoses, made at or near the time by, or from information
18 transmitted by, a person with knowledge, if made and kept in the course of a
19 regularly conducted business activity, and if it was the regular practice of that
20 business activity to make and to keep the memorandum, report, record, or data

1 compilation, all as shown by the testimony of the custodian or other qualified witness
 2 or self-authenticated pursuant to Article 902(11), unless the source of information
 3 or the method or circumstances of preparation indicate lack of trustworthiness. This
 4 exception is inapplicable unless the recorded information was furnished to the
 5 business either by a person who was routinely acting for the business in reporting the
 6 information or in circumstances under which the statement would not be excluded
 7 by the hearsay rule. The term "business" as used in this Paragraph includes business,
 8 institution, association, profession, occupation, and calling of every kind, whether
 9 or not conducted for profit. Public records and reports which are specifically
 10 excluded from the public records exception by Article 803(8)(b) shall not qualify as
 11 an exception to the hearsay rule under this Paragraph.

12 * * *

13 Art. 902. Self-authentication

14 Extrinsic evidence of authenticity as a condition precedent to admissibility
 15 is not required with respect to the following:

16 * * *

17 (11) Certified records of regularly conducted activities.

18 (a) The records of a regularly conducted activity, within the scope of Article
 19 803(6), about which a certificate of the custodian or other qualified witness shows
 20 all of the following:

21 (i) The first hand knowledge of that person about the making, maintenance,
 22 and storage of the records.

23 (ii) Evidence that the records are authentic as required by Article 901(A) and
 24 comply with Chapter X of this Code.

25 (iii) That the records were (aa) made at or near the time of the occurrence of
 26 the matters set forth by, or from information transmitted by, a person with
 27 knowledge of those matters; (bb) kept in the course of the regularly conducted
 28 activity; and (cc) made by the regularly conducted activity as a regular practice.

1 Such records are not self-authenticating if the sources of information or the method
2 or circumstances of preparation indicate lack of trustworthiness.

3 (b) As used in this Paragraph, "certificate" means, (i) with respect to a
4 domestic record, a written declaration under oath or attestation subject to the penalty
5 of perjury; and, (ii) with respect to records maintained or located in a foreign
6 country, a written declaration signed in a foreign country which, if falsely made,
7 would subject the maker to criminal penalty under the laws of that country. A
8 certificate relating to a foreign record must be accompanied by a final certification
9 as to the genuineness of the signature and the position in the regularly conducted
10 activity of the executing individual as is required for certification of Foreign Public
11 Documents by Paragraph (3) of this Article.

12 (c)(i) Records so certified will be self-authenticating only if the proponent
13 gives written notice to adverse parties of the intent to offer the records as self-
14 authenticating under this Article and provides a copy of the records and of the
15 authenticating certificate. Such notice must be given sufficiently in advance of the
16 trial or hearing at which they will be offered to provide the adverse party a fair
17 opportunity to consider the offer and state any objections.

18 (ii) Objections will be waived unless, within fifteen days after receiving the
19 notice, the objector serves written specific objections, obtains agreement of the
20 proponent, or moves the court to increase the time in which to object.

21 (iii) The proponent will be responsible for scheduling a hearing on any
22 objections, and the court shall hear and decide such objections before the trial or
23 hearing at which they will be offered.

24 (iv) If in a civil case, on motion by the proponent after the trial or hearing,
25 the court determines that the objections raised no genuine questions and were made
26 without arguable good cause, the expenses incurred by the proponent in presenting
27 the evidence necessary to secure admission of the records shall be assessed against
28 the objecting party and attorney.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Foil

HB No. 293

Abstract: Provides for the admissibility into evidence of records of regularly conducted business activities.

Present law (C.E. Art. 803) provides exceptions to the general rule prohibiting hearsay evidence, which exceptions include certain memoranda, reports, and other records of regularly conducted activities provided that it is the regular practice of that business activity to make and to keep the business records, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Proposed law retains present law and extends the business record exception to records that are self-authenticated pursuant to proposed law (Art. 902(11)).

Present law (C.E. Art. 902) provides that extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to certain documents, including certain public documents, official publications, newspapers and periodicals, trade inscriptions, authentic acts, acknowledged acts, commercial paper, and labor reports.

Proposed law retains present law and includes certified records of regularly conducted activities if a certificate of the custodian or other qualified witness shows the first hand knowledge of that person about the making, maintenance, and storage of the records, evidence that the records are authentic as required by present law, that the records were: (1) made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (2) kept in the course of the regularly conducted activity; and (3) made by the regularly conducted activity as a regular practice.

Proposed law provides that such records are not self-authenticating if the sources of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Proposed law provides that records certified pursuant to proposed law will be self-authenticating only if the proponent gives written notice in advance of trial to adverse parties of the intent to offer the records as self-authenticating and provides a copy of the records and of the authenticating certificate. Defines "certificate".

Proposed law provides that objections will be waived unless, within 15 days after receiving the notice, the objector serves written specific objections, obtains agreement of the proponent, or moves the court to increase the time in which to object.

Proposed law provides that the proponent will be responsible for scheduling a hearing on any objections, and the court shall hear and decide such objections before the trial or hearing at which they will be offered.

Proposed law requires the court to assess against the objecting party and his attorney all expenses incurred by the proponent of the evidence if, on motion by the proponent after the

trial or hearing, the court determines that the objections raised no genuine questions and were made without arguable good cause.

(Amends C.E. Art. 803(6); Adds C.E. Art. 902(11))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added provision to require written notice to adverse parties relative to offering self-authenticating records.