

By Senator Campbell

32-277-03

1                                   A bill to be entitled  
2           An act relating to rules of evidence; amending  
3           s. 90.104, F.S.; specifying circumstances in  
4           which claims of error relating to evidence  
5           admitted or excluded at trial are preserved for  
6           appeal; amending s. 90.803, F.S., relating to  
7           hearsay exceptions; amending conditions under  
8           which certain records of regularly conducted  
9           business activity are admissible; amending s.  
10          90.902, F.S.; providing for circumstances in  
11          which evidence accompanied by a certification  
12          or declaration made by a records custodian or  
13          another qualified person does not require  
14          extrinsic evidence of authenticity as a  
15          condition precedent to admissibility; providing  
16          an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20           Section 1. Subsection (1) of section 90.104, Florida  
21 Statutes, is amended to read:

22           90.104 Rulings on evidence.--

23           (1) A court may predicate error, set aside or reverse  
24 a judgment, or grant a new trial on the basis of admitted or  
25 excluded evidence when a substantial right of the party is  
26 adversely affected and:

27           (a) When the ruling is one admitting evidence, a  
28 timely objection or motion to strike appears on the record,  
29 stating the specific ground of objection if the specific  
30 ground was not apparent from the context; or

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1 (b) When the ruling is one excluding evidence, the  
2 substance of the evidence was made known to the court by offer  
3 of proof or was apparent from the context within which the  
4 questions were asked.

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6 If the court has made a definitive ruling on the record  
7 admitting or excluding evidence, either at or before trial, a  
8 party need not renew an objection or offer of proof to  
9 preserve a claim of error for appeal.

10 Section 2. Subsection (6) of section 90.803, Florida  
11 Statutes, is amended to read:

12 90.803 Hearsay exceptions; availability of declarant  
13 immaterial.--The provision of s. 90.802 to the contrary  
14 notwithstanding, the following are not inadmissible as  
15 evidence, even though the declarant is available as a witness:

16 (6) RECORDS OF REGULARLY CONDUCTED BUSINESS  
17 ACTIVITY.--

18 (a) A memorandum, report, record, or data compilation,  
19 in any form, of acts, events, conditions, opinion, or  
20 diagnosis, made at or near the time by, or from information  
21 transmitted by, a person with knowledge, if kept in the course  
22 of a regularly conducted business activity and if it was the  
23 regular practice of that business activity to make such  
24 memorandum, report, record, or data compilation, all as shown  
25 by the testimony of the custodian or other qualified witness,  
26 or as shown by a certification or declaration that complies  
27 with paragraph (c) and s. 90.902(11), unless the sources of  
28 information or other circumstances show lack of  
29 trustworthiness. The term "business" as used in this paragraph  
30 includes a business, institution, association, profession,  
31

1 occupation, and calling of every kind, whether or not  
2 conducted for profit.

3 (b) ~~No~~ Evidence in the form of an opinion or diagnosis  
4 is inadmissible ~~admissible~~ under paragraph (a) unless such  
5 opinion or diagnosis would be admissible under ss.  
6 90.701-90.705 if the person whose opinion is recorded were to  
7 testify to the opinion directly.

8 (c) A party intending to offer evidence under  
9 paragraph (a) by means of a certification or declaration shall  
10 serve reasonable written notice of that intention upon every  
11 other party and shall make the evidence available for  
12 inspection sufficiently in advance of its offer in evidence to  
13 provide to any other party a fair opportunity to challenge the  
14 admissibility of the evidence. If the evidence is maintained  
15 in a foreign country, the party intending to offer the  
16 evidence must provide written notice of that intention at the  
17 arraignment or as soon after the arraignment as is practicable  
18 or, in a civil case, 60 days before the trial. A motion  
19 opposing the admissibility of such evidence must be made by  
20 the opposing party and determined by the court before trial. A  
21 party's failure to file such a motion before trial constitutes  
22 a waiver of objection to the evidence, but the court for good  
23 cause shown may grant relief from the waiver.

24 Section 3. Subsection (11) is added to section 90.902,  
25 Florida Statutes, to read:

26 90.902 Self-authentication.--Extrinsic evidence of  
27 authenticity as a condition precedent to admissibility is not  
28 required for:

29 (11) An original or a duplicate of evidence that would  
30 be admissible under s. 90.803(6), which is maintained in a  
31 foreign country or domestic location and is accompanied by a

1 certification or declaration from the custodian of the records  
2 or another qualified person certifying or declaring that the  
3 record:

4 (a) Was made at or near the time of the occurrence of  
5 the matters set forth by, or from information transmitted by,  
6 a person having knowledge of those matters;

7 (b) Was kept in the course of the regularly conducted  
8 activity; and

9 (c) Was made as a regular practice in the course of  
10 the regularly conducted activity,

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12 provided that falsely making such a certification or  
13 declaration would subject the maker to criminal penalty under  
14 the laws of the foreign or domestic location in which the  
15 certification or declaration was signed.

16 Section 4. This act shall take effect July 1, 2003.

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19 SENATE SUMMARY

20 Provides that, if a trial court has made a definitive  
21 ruling on the record admitting or excluding evidence, a  
22 party need not renew an objection or offer of proof to  
23 preserve a claim of error for appeal. With respect to  
24 hearsay exceptions, provides that certain records of  
25 regularly conducted business activity are admissible when  
26 a records custodian or another qualified person provides  
27 a certification or declaration that attests to the  
28 authenticity of the records. Provides for circumstances  
29 in which evidence accompanied by a certification or  
30 declaration made by a records custodian or another  
31 qualified person does not require extrinsic evidence of  
authenticity as a condition precedent to admissibility of  
the evidence.