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1 A bill to be entitled

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

14  
15 Be It Enacted by the Legislature of the State of Florida:

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

19 90.104 Rulings on evidence.--

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

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

28 (b) When the ruling is one excluding evidence, the  
29 substance of the evidence was made known to the court by offer



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30 of proof or was apparent from the context within which the  
31 questions were asked.

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

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

39 90.803 Hearsay exceptions; availability of declarant  
40 immaterial.--The provision of s. 90.802 to the contrary  
41 notwithstanding, the following are not inadmissible as evidence,  
42 even though the declarant is available as a witness:

43 (6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.--

44 (a) A memorandum, report, record, or data compilation, in  
45 any form, of acts, events, conditions, opinion, or diagnosis,  
46 made at or near the time by, or from information transmitted by,  
47 a person with knowledge, if kept in the course of a regularly  
48 conducted business activity and if it was the regular practice  
49 of that business activity to make such memorandum, report,  
50 record, or data compilation, all as shown by the testimony of  
51 the custodian or other qualified witness, or as shown by a  
52 certification or declaration that complies with paragraph (c)  
53 and s. 90.902(11), unless the sources of information or other  
54 circumstances show lack of trustworthiness. The term "business"  
55 as used in this paragraph includes a business, institution,  
56 association, profession, occupation, and calling of every kind,  
57 whether or not conducted for profit.

58 (b) ~~No~~ Evidence in the form of an opinion or diagnosis is  
59 inadmissible ~~admissible~~ under paragraph (a) unless such opinion



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60 or diagnosis would be admissible under ss. 90.701-90.705 if the  
61 person whose opinion is recorded were to testify to the opinion  
62 directly.

63 (c) A party intending to offer evidence under paragraph  
64 (a) by means of a certification or declaration shall serve  
65 reasonable written notice of that intention upon every other  
66 party and shall make the evidence available for inspection  
67 sufficiently in advance of its offer in evidence to provide to  
68 any other party a fair opportunity to challenge the  
69 admissibility of the evidence. If the evidence is maintained in  
70 a foreign country, the party intending to offer the evidence  
71 must provide written notice of that intention at the arraignment  
72 or as soon after the arraignment as is practicable or, in a  
73 civil case, 60 days before the trial. A motion opposing the  
74 admissibility of such evidence must be made by the opposing  
75 party and determined by the court before trial. A party's  
76 failure to file such a motion before trial constitutes a waiver  
77 of objection to the evidence, but the court for good cause shown  
78 may grant relief from the waiver.

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

81 90.902 Self-authentication.--Extrinsic evidence of  
82 authenticity as a condition precedent to admissibility is not  
83 required for:

84 (11) An original or a duplicate of evidence that would be  
85 admissible under s. 90.803(6), which is maintained in a foreign  
86 country or domestic location and is accompanied by a  
87 certification or declaration from the custodian of the records  
88 or another qualified person certifying or declaring that the  
89 record:



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

93 (b) Was kept in the course of the regularly conducted  
94 activity; and

95 (c) Was made as a regular practice in the course of the  
96 regularly conducted activity, provided that falsely making such  
97 a certification or declaration would subject the maker to  
98 criminal penalty under the laws of the foreign or domestic  
99 location in which the certification or declaration was signed.

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