

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH60654-RK-10 (01/09)

Short Title: Revise Authentication Rules/Evidence. (Public)

Sponsors: Representative Moore.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE AUTHENTICATION RULES OF THE NORTH
CAROLINA RULES OF EVIDENCE TO THE FEDERAL RULES OF
EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8C-1, Rule 803 reads as rewritten:

"Rule 803. Hearsay exceptions; availability of declarant immaterial.

...

(6) Records of Regularly Conducted Activity. – 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 the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

...."

SECTION 2. G.S. 8C-1, Rule 902 reads as rewritten:

"Rule 902. Self-authentication.

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

1 ...
2 (11) Certified domestic records of regularly conducted activity. – The
3 original or a duplicate of a domestic record of regularly conducted
4 activity that would be admissible under Rule 803(6), if accompanied
5 by a written declaration of its custodian or other qualified person,
6 certifying that the record:

7 a. Was made at or near the time of the occurrence of the matters
8 set forth by, or from information transmitted by, a person with
9 knowledge of those matters;

10 b. Was kept in the course of the regularly conducted activity; and

11 c. Was made by the regularly conducted activity as a regular
12 practice.

13 The declaration must be signed in a manner that, if falsely made,
14 would subject the maker to criminal penalty under the laws of the state
15 where the declaration is signed. A party intending to offer a record into
16 evidence under this provision must provide written notice of that
17 intention to all adverse parties and must make the record and
18 declaration available for inspection sufficiently in advance of the offer
19 into evidence to provide an adverse party with a fair opportunity to
20 challenge it.

21 (12) Certified foreign records of regularly conducted activity. – In a civil
22 case, the original or a duplicate of a foreign record of regularly
23 conducted activity that would be admissible under Rule 803(6), if
24 accompanied by a written declaration by its custodian or other
25 qualified person certifying that the record:

26 a. Was made at or near the time of the occurrence of the matters
27 set forth by, or from information transmitted by, a person with
28 knowledge of those matters;

29 b. Was kept in the course of the regularly conducted activity; and

30 c. Was made by the regularly conducted activity as a regular
31 practice.

32 The declaration must be signed in a manner that, if falsely made,
33 would subject the maker to criminal penalty under the laws of the
34 country where the declaration is signed. A party intending to offer a
35 record into evidence under this provision must provide written notice
36 of that intention to all adverse parties and must make the record and
37 declaration available for inspection sufficiently in advance of the offer
38 into evidence to provide an adverse party with a fair opportunity to
39 challenge it."

40 **SECTION 3.** There is appropriated from the General Fund to the
41 Administrative Office of the Courts the sum of twenty thousand dollars (\$20,000) for
42 the 2006-2007 fiscal year to implement the provisions of this act.

43 **SECTION 4.** This act becomes effective October 1, 2006, and applies to
44 trials or hearings commencing on or after that date.