

FIRST REGULAR SESSION

HOUSE BILL NO. 499

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DEGROOT.

1109H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 490.660, 490.670, 490.680, and 490.692, RSMo, and to enact in lieu thereof three new sections relating to records of regularly conducted activity as evidence law.

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

Section A. Sections 490.660, 490.670, 490.680, and 490.692, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 490.660, 490.680, and 490.692, to read as follows:

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

490.680. A record of an act, **event**, condition, **opinion**, 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]~~ **diagnosis shall not be excluded by the rule against hearsay regardless of whether the declarant is available if:**

- (1) The record was made at or near the time by, or from information transmitted by, someone with knowledge;**
- (2) The record was kept in the course of a regularly conducted activity of a business organization, occupation, or calling, whether carried on for profit or not;**
- (3) Making the record was a regular practice of that activity;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

(4) The provisions of subdivisions (1) to (3) of this section are shown by the testimony of the custodian or another qualified witness or by a certification that complies with section 490.692 or with a statute permitting certification; and

(5) The opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

490.692. 1. Any records or copies of records reproduced in the ordinary course of business by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk imaging, or other process which ~~[accurately reproduces or forms a durable medium for so reproducing the original that would be admissible under sections 490.660 to 490.690]~~ **meets the requirements of subdivisions (1) to (3) of section 490.680** shall be admissible as a business record, subject to other substantive or procedural objections, in any court in this state upon the ~~[affidavit of the person who would otherwise provide the prerequisites of sections 490.660 to 490.690, that the records attached to the affidavit were kept as required by section 490.680]~~ **certification of the custodian or another qualified person that complies with a statute or a rule prescribed by the Missouri supreme court. Seven days before the trial or hearing, the proponent shall give an adverse party written notice of the intent to offer the record and shall make the record and certification available for inspection so that the party has a fair opportunity to challenge it.**

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

~~—————3.]~~ The affidavit permitted by this section may be in form and content substantially as follows:

THE STATE OF.....

COUNTY OF.....

AFFIDAVIT

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

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

I am the custodian of the records of Attached hereto are pages of records from These pages of records are kept by in the regular course of business, and it was the regular course of business of for an employee or representative of with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the record or to transmit information thereof to be included in such record; and the record was made

31 at or near the time ~~[of the act, event, condition, opinion or diagnosis]~~ **or reasonably soon**
 32 **thereafter.** The records attached hereto are the original or exact duplicates of the original.

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34 Affiant

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

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38 (Signed) **[(Seal)] Notary Public**
 39 **My Commission Expires:**

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2 ~~[490.670. The term "business" shall include every kind of business,~~
 3 ~~profession, occupation, calling or operation of institutions, whether carried on for~~
~~profit or not.]~~

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