

SECOND REGULAR SESSION

# HOUSE BILL NO. 1505

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES RICHARDSON (Sponsor) AND ELMER (Co-sponsor).

5031L.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 490.660, 490.670, 490.680, 490.690, and 490.692, RSMo, and to enact in lieu thereof five new sections relating to the records of regularly conducted activity as evidence law.

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

Section A. Sections 490.660, 490.670, 490.680, 490.690, and 490.692, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 490.660, 490.670,  
3 490.680, 490.690, and 490.692, to read as follows:

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

490.670. The term "business" [shall include every kind of business, profession,  
2 occupation, calling or operation of institutions, whether carried on for profit or not] **includes**  
3 **business, institution, association, profession, occupation, and calling of every kind, whether**  
4 **or not conducted for profit.**

490.680. [A record of an act, condition or event, shall, insofar as relevant, be competent  
2 evidence if the custodian or other qualified witness testifies to its identity and the mode of its  
3 preparation, and if it was made in the regular course of business, at or near the time of the act,  
4 condition or event, and if, in the opinion of the court, the sources of information, method and  
5 time of preparation were such as to justify its admission.] **The following is not excluded by**  
6 **any hearsay rule, even though the declarant is available as a witness: a memorandum,**  
7 **report, record, or data compilation, in any form, of acts, events, conditions, opinions, or**  
8 **diagnoses made at or near the time by or from information transmitted by a person with**  
9 **knowledge if kept in the course of a regularly conducted business activity and if it was the**

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.

10 **regular practice of such business activity to make the memorandum, report, record, or**  
11 **data compilation, all as shown by the custodian of or other qualified witness or by**  
12 **certification that complies with section 490.692, unless the source of information or the**  
13 **method or circumstances of preparation indicate a lack of trustworthiness.**

490.690. Sections 490.660 to 490.690 shall be so interpreted and construed as to  
2 effectuate its general purpose to make uniform the law of those states [which enact it] **with such**  
3 **laws or rules of evidence regarding the admissibility of third-party business records.**

490.692. 1. [Any records or copies of records reproduced in the ordinary course of  
2 business by any photographic, photostatic, microfilm, microcard, miniature photographic, optical  
3 disk imaging, or other process which accurately reproduces or forms a durable medium for so  
4 reproducing the original that would be admissible under sections 490.660 to 490.690 shall be  
5 admissible as a business record, subject to other substantive or procedural objections, in any  
6 court in this state upon the affidavit of the person who would otherwise provide the prerequisites  
7 of sections 490.660 to 490.690, that the records attached to the affidavit were kept as required  
8 by section 490.680.

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

12 3. The affidavit permitted by this section may be in form and content substantially as  
13 follows: THE STATE OF..... COUNTY  
14 OF..... AFFIDAVIT

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

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

19 I am the custodian of the records of ..... . Attached hereto are ..... pages of records  
20 from ..... . These ..... pages of records are kept by ..... in the regular course of  
21 business, and it was the regular course of business of ..... for an employee or representative  
22 of ..... with knowledge of the act, event, condition, opinion, or diagnosis recorded to make the  
23 record or to transmit information thereof to be included in such record; and the record was made  
24 at or near the time of the act, event, condition, opinion or diagnosis. The records attached hereto  
25 are the original or exact duplicates of the original.

26 .....

27 Affiant

28           In witness whereof I have hereunto subscribed my name and affixed my official seal this  
 29 ..... day of ....., 20... . .....  
 30 ..... (Signed)

31           (Seal)] **Extrinsic evidence of authenticity as a condition precedent to admissibility**  
 32 **is not required with respect to the original or duplicate of a record of regularly conducted**  
 33 **activity if accompanied by a written certification of its custodian or other qualified person**  
 34 **that the record was:**

35           **(1) Made at or near the time of the occurrence of the matters set forth by or from**  
 36 **information transmitted by a person with knowledge of such matters;**

37           **(2) Kept in the course of the regularly conducted activity; and**

38           **(3) Made by the regularly conducted activity as a regular practice.**

39           **2. As used in this section, the term "certification" means:**

40           **(1) With respect to a domestic record, a written declaration under oath subject to**  
 41 **the penalty of perjury; and**

42           **(2) With respect to a record maintained or located in a foreign country, a written**  
 43 **declaration signed in a country which, if falsely made, would subject the maker to criminal**  
 44 **penalty under the laws of such country.**

45           **3. Any party intending to offer a record into evidence under this section shall**  
 46 **provide written notice of such intention to all adverse parties and shall make the record**  
 47 **and certification available for inspection sufficiently in advance of an offer of such record**  
 48 **into evidence to provide an adverse party with a fair opportunity to challenge such record.**

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