

Senate Bill No. 524

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

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

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

90.104 Rulings on evidence.—

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

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

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

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

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

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

(6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.—

(a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, 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 such memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or as shown by a certification or declaration that complies with paragraph (c) and s. 90.902(11), unless the sources of information or other circumstances show lack of trustworthiness. The term “business” as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

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

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

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

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

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

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

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

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

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

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

Approved by the Governor June 26, 2003.

Filed in Office Secretary of State June 26, 2003.