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## SENATE BILL NO. 220

Offered January 13, 2000

A *BILL to amend and reenact §§ 8.01-390 and 8.01-391 of the Code of Virginia, relating to records used as evidence.*

Patrons—Mims; Delegates: Howell and Johnson

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-390 and 8.01-391 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-390. Nonjudicial records as evidence.

A. Copies of records of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, other than those located in a clerk's office of a court, shall be received as prima facie evidence provided that such copies are authenticated to be true copies ~~both~~ *either* by the custodian thereof ~~and~~ *or* by the person to whom the custodian reports, ~~if they are different.~~

B. An affidavit signed by an officer deemed to have custody of such an official record, or by his deputy, stating that after a diligent search, no record or entry of such record is found to exist among the records in his office is admissible as evidence that his office has no such record or entry.

C. *Nothing in this section shall be construed to prevent a custodian or a person to whom the custodian reports from authenticating a copy of a record in conformance with the law of a different jurisdiction for its use in such jurisdiction when so requested.*

§ 8.01-391. Copies of originals as evidence.

A. Whenever the original of any official publication or other record has been filed in an action or introduced as evidence, the court may order the original to be returned to its custodian, retaining in its stead a copy thereof. The court may make any order to prevent the improper use of the original.

B. If any department, division, institution, agency, board, or commission of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, acting pursuant to the law of the respective jurisdiction or other proper authority, has copied any record made in the performance of its official duties, such copy shall be as admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy ~~both~~ *either* by the custodian of said record ~~and~~ *or* by the person to whom said custodian reports, if they are different, and is accompanied by a certificate that such ~~officer~~ *person* does in fact have the custody.

C. If any court or clerk's office of a court of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, has copied any record made in the performance of its official duties, such copy shall be admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy by a clerk or deputy clerk of such court.

D. If any business or member of a profession or calling in the regular course of business or activity has made any record or received or transmitted any document, and again in the regular course of business has caused any or all of such record or document to be copied, the copy shall be as admissible in evidence as the original, whether the original exists or not, provided that such copy is satisfactorily identified and authenticated as a true copy by a custodian of such record or by the person to whom said custodian reports, if they be different, and is accompanied by a certificate that said person does in fact have the custody. Copies in the regular course of business shall be deemed to include reproduction at a later time, if done in good faith and without intent to defraud. Copies in the regular course of business shall include items such as checks which are regularly copied before transmission to another person or bank, or records which are acted upon without receipt of the original when the original is retained by another party.

The original of which a copy has been made may be destroyed in the regular course of business unless its preservation is required by law, or its validity has been questioned.

E. The introduction in an action of a copy under this section neither precludes the introduction or admission of the original nor the introduction of a copy or the original in another action.

F. Copy, as used in this section, shall include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

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**60**       *G. Nothing in this section shall be construed to prevent a clerk, deputy clerk, custodian or person to*  
**61** *whom the custodian reports from authenticating a copy of a record in conformance with the law of a*  
**62** *different jurisdiction for its use in such jurisdiction when so requested.*