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SENATE BILL NO. 386

Offered January 13, 2016

Prefiled January 11, 2016

A *BILL to amend and reenact § 8.01-390.3 of the Code of Virginia, relating to business records as evidence.*

Patron—Surovell

Referred to Committee for Courts of Justice**Be it enacted by the General Assembly of Virginia:****1. That § 8.01-390.3 of the Code of Virginia is amended and reenacted as follows:****§ 8.01-390.3. Business records as evidence.**

A. In any civil proceeding where a business record is material and otherwise admissible, authentication of the record and the foundation required by subdivision (6) of Rule 2:803 of the Rules of Supreme Court of Virginia may be laid by (i) witness testimony, (ii) a certification of the authenticity of and foundation for the record made by the custodian of such record or other qualified witness either by affidavit or by declaration pursuant to § 8.01-4.3, or (iii) a combination of witness testimony and a certification.

B. The proponent of a business record shall (i) give written notice to all other parties if a certification under this section will be relied upon in whole or in part in authenticating and laying the foundation for admission of such record and (ii) provide a copy of the record and the certification to all other parties, so that all parties have a fair opportunity to challenge the record and certification. The notice and copy of the record and certification shall be provided no later than ~~15~~ 30 days in advance of the trial or hearing, unless an order of the court specifies a different time. Objections shall be made within ~~five~~ 21 days thereafter, unless an order of the court specifies a different time. If any party timely objects to reliance upon the certification, the authentication and foundation required by subdivision (6) of Rule 2:803 of the Rules of Supreme Court of Virginia shall be made by witness testimony unless the objection is withdrawn.

C. *If a pro se party receives written notice and a copy of the record and certification by a proponent of a business record, pursuant to subsection B, and subsequently retains counsel before trial or hearing, such counsel may file any objections within five days of entering an appearance, provided that such appearance is entered at least 15 days before trial. Where written notice and certification pursuant to subsection B is provided to a pro se defendant, such written notice shall be ineffective unless the notice provides the following additional language, contained on the first page of the notice and in type at least as large and legible as the body of the remainder of the written notice and certification:*

" THIS IS AN ATTEMPT BY THE PLAINTIFF TO INTRODUCE BUSINESS RECORDS AT TRIAL WITHOUT CALLING A WITNESS TO TESTIFY. YOU HAVE THE RIGHT TO FILE AN OBJECTION WITHIN 21 DAYS."

D. A certified business record that satisfies the requirements of this section shall be self-authenticating and requires no extrinsic evidence of authenticity.

~~D.~~ E. A copy of a business record may be offered in lieu of an original upon satisfaction of the requirements of subsection D of § 8.01-391 by witness testimony, a certification, or a combination of testimony and a certification.

INTRODUCED

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