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## HOUSE BILL NO. 301

Offered January 8, 2014

Prefiled December 31, 2013

A BILL to amend and reenact § 8.01-391 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-390.3, relating to admissibility of business records.

Patron—Loupassi

Referred to Committee for Courts of Justice

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

**1. That § 8.01-391 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-390.3 as follows:**

**§ 8.01-390.3. Business records as evidence.**

A. In a 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. Reasonably in advance of the trial or hearing, 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. If the record is required to be disclosed as an exhibit by a pretrial order under Rule 1:18 of the Rules of Supreme Court of Virginia, the record and certification shall be provided to the other parties by the date specified in the pretrial order. 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(6) of Rule 2:803 of the Rules of Supreme Court of Virginia shall be made by witness testimony unless the objection is withdrawn.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. A certified business record that satisfies the requirements of this section shall be self-authenticating and requires no extrinsic evidence of authenticity.

D. 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.

**§ 8.01-391. Copies of originals as evidence (Supreme Court Rule 2:1005 derived from this section).**

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 either by the custodian of said record or by the person to whom said custodian reports, if they are different, and is accompanied by a certificate that such 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. Such identification and authentication may be made through witness testimony or a certificate by affidavit or by declaration pursuant to § 8.01-4.3, or a combination of witness testimony

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59 *and a certificate.* Copies in the regular course of business shall be deemed to include reproduction at a  
60 later time, if done in good faith and without intent to defraud. Copies in the regular course of business  
61 shall include items such as checks which are regularly copied before transmission to another person or  
62 bank, or records which are acted upon without receipt of the original when the original is retained by  
63 another party.

64 E. The original of which a copy has been made may be destroyed unless its preservation is required  
65 by law or its validity has been questioned.

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

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