

## **Rules of Evidence; Authentication and Exceptions; SB 122**

SB 122 amends various sections within the Kansas Rules of Evidence (Rules).

### ***Hearsay Evidence Exception—Business Records***

The bill amends an exception to the general prohibition on hearsay evidence for business records to replace a requirement that a judge find certain conditions regarding the records with a requirement that the conditions be shown by the testimony of the custodian or other qualified witness or by a certification that complies with self-authenticating certification provisions added elsewhere by the bill for certified domestic records of a regularly conducted activity or certified foreign records of a regularly conducted activity.

### ***Authentication of a Writing***

Currently, the Rules require authentication of a writing by certain means before it may be received in evidence and provide conditions under which certain documents that are at least 30 years old are sufficiently authenticated.

The bill replaces this provision with language requiring a proponent to produce evidence sufficient to support a finding that an item of evidence is what the proponent claims it is in order to satisfy the requirement of authenticating or identifying the item of evidence. The bill adds a non-exclusive list of examples, with explanations for each, of evidence that would satisfy the requirement.

These examples include:

- Testimony of a witness with knowledge;
- Nonexpert opinion about handwriting;
- Comparison by an expert witness or the trier of fact;
- Distinctive characteristics and the like;
- Opinion about a voice;
- Evidence about a telephone conversation;
- Evidence about public records;
- Evidence about ancient documents or data compilations;
- Evidence about a process or system; and
- Methods provided by a statute or rule.

### ***Authentication of Copies of Records***

The bill amends the section of the Rules governing authentication of copies of records to add a list of items of evidence that are self-authenticating and require no extrinsic evidence of authenticity in order to be admitted.

The list includes:

- Official publications;
- Newspapers and periodicals;
- Trade inscriptions and the like;
- Acknowledged documents;
- Commercial paper and related documents;
- Presumptions under law;
- Certified domestic records of a regularly conducted activity;
- Certified foreign records of a regularly conducted activity;
- Certified records generated by an electronic process or system; and
- Certified data copies from an electronic device, storage medium, or file.

The list also includes additional explanations of and requirements for certifying the above items of evidence.

### ***Original Document Required as Evidence; Exceptions***

The bill amends the section of the Rules setting forth the general rule that an original writing is the only evidence that may be offered to prove its contents, subject to certain exceptions. The bill rewords the general rule to provide clarity. Additionally, the bill adds language to include recordings and photographs in the general rule and in the remainder of the section.

The bill adds a provision stating a duplicate is admissible to the same extent as the original, unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

The bill adds a provision allowing the proponent to prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent is not required to account for the original.

The bill rewords a provision regarding determinations made by the judge and determinations made by the trier of fact or jury to clarify its organization and wording.

The bill adds definitions for "photograph," "original," and "duplicate" to this section.