

APPENDIX B

(NEW) Sec. 9-3A. Authentication of Business Entries

(a) Authentication of business entries by certification. The requirement of authentication as a condition precedent to admitting into evidence a business entry under Section 8-4 may be satisfied by sworn certification of the custodian of the record or other qualified witness attesting to the following:

(1) The affiant is the duly authorized custodian of the records or another qualified witness who has and is acting with authority to make the certification;

(2) The record was made in the regular course of business, that it was the regular course of such business to make such a record, and that it was made at the time of the act described in the report, or within a reasonable time thereafter, as required by General Statutes § 52-180;

(3) The information contained in the record was based on the entrant's own observation or on information of others whose business duty it was to transmit it to the entrant; and

(4) To the best of the certifying person's knowledge, after reasonable inquiry, the record or copy thereof is an accurate version of the record that is in the possession, custody, or control of the certifying person.

(b) Certification admissible. A certification made in compliance with subsection (a) is admissible evidence of the matters set forth therein. A party opposing admissibility of a record offered through a proper certification under subsection (a) bears the burden of showing that the record is not what it purports to be.

(c) Notice and opportunity to contest. A party intending to offer a record into evidence under this section must provide written notice of that intention to all adverse parties and must make the record and certification available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

COMMENTARY

(a) Authentication of business entries by certification. This provision offers a procedure by which parties can authenticate certain business records other than through the testimony of a foundation witness. The procedure is intended to help the parties determine in advance of the evidentiary proceeding whether there is a real dispute as to authenticity, and to increase the efficiency of the authentication process when there is not. The certification process, which has been adopted in some form in many other jurisdictions, will increase efficiency and reduce logistical burdens by limiting the need for a party to produce a witness at the evidentiary proceeding for the purpose of authenticating a business record. A proponent seeking to authenticate a business record under this section must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at the evidentiary proceeding. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then a sufficient showing of authenticity has not been made under this section.

Even without the certification procedure, parties often will stipulate to the authenticity of business records; use of that practice remains unaffected by this provision. More broadly, the certification process is provided as an alternative to other

means of authentication, and nothing herein is intended to prevent a party from authenticating a business record through witness testimony, or through a combination of certification and witness testimony.

(b) Certification admissible. The court makes the preliminary determination of whether the proponent has made a sufficient showing of authenticity, but the fact finder ultimately determines whether the evidence is what its proponent claims it to be. See commentary to Section 1-3 (b). Consequently, when a record is authenticated by means of certification, the certification itself must be admissible for consideration by the fact finder as part of its determination.

(c) Notice and opportunity to contest. The certification procedure is intended to increase the efficiency of the authentication process with respect to business records, but the procedure must not be used to curtail or impair a party's ability to test or contest the authenticity of such record. Section 9-3A (c) ensures that a party will have the opportunity to ascertain whether grounds exist to contest the accuracy or validity of a certification. Determining the precise timing and disclosure proceedings that are necessary to offer a fair opportunity to contest authentication will require balancing the efficiency sought to be achieved by the certification process with the rights of all parties to raise and litigate the issue when a good faith doubt may exist regarding the authenticity of a record.