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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 9, 2021
Subject: Bill Brief for SB 122

Senate Bill 122 modifies certain rules of evidence in the code of civil procedure related to authentication of records and documents.

Section 1 amends K.S.A. 60-460, a statute that makes hearsay evidence inadmissible and lists various exceptions to the rule. The bill amends subsection (m) related to business records. Current law requires the judge to find certain conditions about the records and the bill adds a provision that permits a custodian or other qualified witness to certify certain records and permits a certification under K.S.A. 60-465(b)(7) or (8), which is amended in Section 3 of the bill.

Section 2 amends K.S.A. 60-464, a statute requiring authentication of a writing before it may be received in evidence. Current law applies only to writings and provides that “[a]uthentication may be by evidence sufficient to sustain a finding of its authenticity or by any other means provided by law.” The bill amends subsection (a) to apply to other items of evidence and provide that authentication requires a proponent to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Subsection (b) then provides a nonexclusive list of 10 examples of evidence that satisfies the requirement.

Section 3 amends K.S.A. 60-465, a statute concerning authentication of copies of official records. Current law provides four categories of public documents and records that can be authenticated and admissible without extrinsic evidence of authenticity, which the bill preserves as subsection (a). The bill adds a new subsection (b) that provides 10 other items of evidence that are self-authenticating and require no extrinsic evidence of authenticity in order to be admitted.

Section 4 amends K.S.A. 60-467, a statute that makes an original document required for proving the content of a writing and provides exceptions to the rule. Most of the current law is preserved and moved to subsections (c), (d), and (g). The bill adds recordings and photographs to the statute and clarifies the rule in subsection (a) that an original writing, recording or photograph

is required in order to prove its content unless the rules of evidence or a statute provides otherwise. New subsection (b) provides that “[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.” New subsection (e) provides for proving the content of a writing, record or photograph by the testimony, deposition or written statement of the party against whom the evidence is offered, without accounting for the original. New subsection (f) is similar to current law subsection (b), clarifying the role of the judge and the jury regarding the content of a writing, record or photograph. Finally, new subsection (h) provides definitions to be used in the section.