

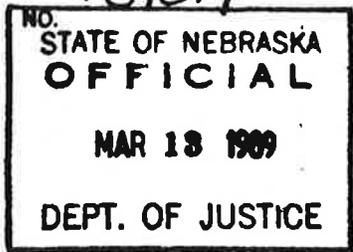
Linda Willard

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2662 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

#89014



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: March 9, 1989

SUBJECT: LB 281

REQUESTED BY: Senator Howard A. Lamb
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
David Edward Cygan, Assistant Attorney General

We are in receipt of your letter requesting our counsel regarding any possible conflict of LB 281 with the current rules of evidence. LB 281 proposes that certificates of conviction for traffic infractions be afforded the status of "self-authenticating" for purposes of points assessment and license revocations. We note that the current Rules of Evidence as enacted by the Nebraska Legislature state that the following are self-authenticating for evidentiary purposes.

(1) A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution;

(2) A document purporting to bear the signature in his official capacity of an officer or employee of any entity included in subdivision (1) of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine;

(3) A document purporting to be executed or attested in his official capacity by a person authorized by the laws of a foreign country to make the execution

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| Denise E. Frost | | | | |

or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (a) of the executing or attesting person, or (b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution of attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the judge may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification;

(4) A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subdivision (1), (2) or (3) of this section or comply with any Act of Congress or the Legislature or rule adopted by the Supreme Court of Nebraska which are not in conflict with laws governing such matters;

(5) Books, pamphlets, or other publications purporting to be issued by public authority;

(6) Printed materials purporting to be newspapers or periodicals;

(7) Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control or origin;

(8) Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments;

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(9) Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law; or

(10) Any signature, document, or other matter declared by Act of Congress and the laws of the State of Nebraska to be presumptively or prima facie genuine or authentic. Neb.Rev.Stat. §27-903.

The reason for the requirement that evidentiary documents are authenticated is best set forth by McCormick, Evidence 2d 557-558.

The concept of self-authentication, previously recognized by statute in the case of the certain relatively limited classes of writings noted above, is given an expanded ambit of operation by . . . Rules of Evidence for United States District Courts and Magistrates. . . . Rule 902 accords prima facie authenticity not only to those types of writings such as acknowledged writings and public records which have commonly enjoyed such treatment by statute but also to various other types of writings not previously so favored. Among these new classes of self-authenticating writings are included books, pamphlets and other publications issued by public authority, newspapers and periodicals, and trade inscriptions and labels indicating ownership, control or origin. Presumptive authenticity, as envisioned by the . . . rule, does not preclude evidentiary challenge of the genuineness of the offered writing, but simply serves to obviate the necessity of preliminary authentication by the proponent to secure admission. This common sense approach is long overdue and might well be extended to apply to all writings purporting to have a connection with the party against whom offered. The suggestion rests not only upon the proposition that the overwhelming majority of such writings will be genuine, but in addition on the superior position of the adversary to demonstrate through evidence that the purported connection of a writing with him is attributable to fraud or mistake.

The nature of documents that are "self-authenticating" are documents which have evidenced their own trustworthiness for introduction to the court by their own nature, especially when the documents "genuineness" can be easily ascertained. Further, because the proposed "self-authenticating" document operates as a rebuttable presumption in a civil proceeding, there are no due process violations. The opponent to the document can still attack the evidence if he or she considers it fraudulent or mistaken.

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If the authenticity of the document can be easily ascertained then it becomes a waste of the court's time to require the keeper or the originator of the document to appear and recite the litany of foundation necessary for the introduction of the document. Since no additional information could be obtained from this testimony, the principles of judicial economy would request that the litany of foundation be omitted. Therefore, in answer to your request, we note that LB 281 does not violate any current evidence provisions nor the Due Process clause of the Fourteenth Amendment.

You have further requested our counsel in regard to the difference between a record certified by the clerk of the court and a record certified by the judge of the court. In the case of a record of conviction, the former is merely a certified copy of a record of the court. The latter, however, is a certified copy of a judgment.

Sincerely,

ROBERT M. SPIRE
Attorney General



David Edward Cygan
Assistant Attorney General

32-90-2

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:



Attorney General