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SENATE BILL NO. 144

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on February 9, 2022)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact § 8.01-397 of the Code of Virginia, relating to admissibility of statements of person incapable of testifying.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-397 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-397. Person incapable of testifying; admissibility of statements (subdivision (b)(5) of Supreme Court Rule 2:804 derived from this section).

In an action by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony. In any such action, whether such adverse party testifies or not, all entries, memoranda, and declarations by the party so incapable of testifying made while he was capable, relevant to the matter in issue, may be received as evidence in all proceedings including without limitation those to which a person under a disability is a party. The phrase "from any cause" as used in this section shall not include situations in which the party who is incapable of testifying has rendered himself unable to testify by an intentional self-inflicted injury.

For the purposes of this section, and in addition to corroboration by any other competent evidence, an entry authored by an adverse or interested party contained in a business record may be competent evidence for corroboration of the testimony of an adverse or interested party. If authentication of the business record is not admitted in a request for admission, such business record shall be authenticated by a person other than the author of the entry who is not an adverse or interested party whose conduct is at issue in the allegations of the complaint all entries, memoranda, and declarations by the person so incapable of testifying made while he was capable, relevant to the matter in issue, shall not be excluded as hearsay.