

TITLE 9
EVIDENCE

CHAPTER 4
PRIVATE WRITINGS

9-401. PUBLIC AND PRIVATE SEALS. A public seal in this state is a stamp or impression, made by a public officer with an instrument provided by law, to attest the execution of an official or public document, upon the paper or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign made in another state or territory or foreign country, and there recognized as a seal, must be so regarded in this state.

[(9-401) C.C.P. 1881, sec. 922; R.S., R.C., & C.L., sec. 5989; C.S., sec. 7960; I.C.A., sec. 16-401.]

9-402. HISTORICAL WORKS -- BOOKS OF SCIENCE OR ART -- PUBLISHED MAPS OR CHARTS -- EFFECT AS EVIDENCE. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are prima facie evidence of facts of general notoriety and interest.

[(9-402) C.C.P. 1881, sec. 923; R.S., R.C., & C.L., sec. 5990; C.S., sec. 7961; I.C.A., sec. 16-402.]

9-403. NOTICE TO PRODUCE WRITING -- PROOF UPON FAILURE TO PRODUCE -- WHEN NOTICE NOT NECESSARY. If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

[(9-403) C.C.P. 1881, sec. 924; R.S., R.C., & C.L., sec. 5991; C.S., sec. 7962; I.C.A., sec. 16-403.]

9-404. WRITING NEED NOT BE INTRODUCED. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

[(9-404) C.C.P. 1881, sec. 925; R.S., R.C., & C.L., sec. 5992; C.S., sec. 7963; I.C.A., sec. 16-404.]

9-405. PROOF OF WRITINGS. Any writing may be proved either:

1. By any one who saw the writing executed; or
2. By evidence of the genuineness of the handwriting of the maker; or
3. By a subscribing witness.

[(9-405) C.C.P. 1881, sec. 926; R.S., R.C., & C.L., sec. 5993; C.S., sec. 7964; I.C.A., sec. 16-405.]

9-406. DENIAL BY SUBSCRIBING WITNESS -- PROOF BY OTHER EVIDENCE. If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

[(9-406) C.C.P. 1881, sec. 927; R.S., R.C., & C.L., sec. 5994; C.S., sec. 7965; I.C.A., sec. 16-406.]

9-407. EVIDENCE OF ADMISSION OF EXECUTION. Where, however, evidence is given that the party against whom the writing is offered, has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

[(9-407) C.C.P. 1881, sec. 928; R.S., R.C., & C.L., sec. 5995; C.S., sec. 7966; I.C.A., sec. 16-407.]

9-408. ENTRIES MADE BY DECEDENT -- WHEN ADMISSIBLE. The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as prima facie evidence of the facts stated therein, in the following cases:

1. When the entry was made against the interest of the person making it.
2. When it was made in the professional capacity, and in the ordinary course of professional conduct.
3. When it was made in the performance of a duty specially enjoined by law.

[(9-408) C.C.P. 1881, sec. 929; R.S., R.C., & C.L., sec. 5996; C.S., sec. 7967; I.C.A., sec. 16-408.]

9-409. ACKNOWLEDGMENT OF PRIVATE WRITINGS. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is prima facie evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

[(9-409) C.C.P. 1881, sec. 930; R.S., R.C., & C.L., sec. 5997; C.S., sec. 7968; I.C.A., sec. 16-409.]

9-410. INSTRUMENTS AFFECTING REALTY -- CERTIFIED COPIES OF RECORD -- ADMISSIBILITY. Every instrument conveying or affecting real property, acknowledged or proved, and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence in an action or proceeding, without further proof; and a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, on proof, by affidavit or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

[(9-410) C.C.P. 1881, sec. 931; R.S., R.C., & C.L., sec. 5998; C.S., sec. 7969; I.C.A., sec. 16-410.]

9-411. SECONDARY EVIDENCE OF WRITINGS -- WHEN ADMISSIBLE. There can be no evidence of the contents of a writing other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made.

2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice.

3. When the original is a record or other document in the custody of a public officer.

4. When the original has been recorded, and a certified copy of the record is made evidence by this code or other statutes.

5. When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

6. When the original consists of medical charts or records of hospitals licensed in this state, and the provisions of section [9-420](#), Idaho Code, have been followed.

In the cases mentioned in subdivisions 3, 4 and 6, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions 1 and 2, either a copy or oral evidence of the contents.

[(9-411) C.C.P. 1881, sec. 932; R.S., R.C., & C.L., sec. 5999; C.S., sec. 7970; I.C.A., sec. 16-411; am. 1971, ch. 47, sec. 1, p. 100.]

9-412. EXEMPLAR. Whenever the genuineness of a writing is at issue, any writing admitted or proved to be genuine is competent evidence as an exemplar for the purpose of comparison with the disputed writing: provided, that such writing so admitted or proved to be genuine shall in no way refer or relate to any matter then in issue.

[(9-412) R.C., sec. 6000, as added by 1915, ch. 154, sec. 1, p. 335; reen. C.L., sec. 6000; C.S., sec. 7971; I.C.A., sec. 16-412.]

9-413. BUSINESS RECORDS AS EVIDENCE ACT -- TERM DEFINED. The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

[9-413, added 1939, ch. 106, sec. 1, p. 175.]

9-414. BUSINESS RECORDS -- WHEN COMPETENT EVIDENCE. A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to the identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

[9-414, added 1939, ch. 106, sec. 2, p. 175.]

9-415. BUSINESS RECORDS -- UNIFORMITY OF INTERPRETATION OF ACT. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[9-415, added 1939, ch. 106, sec. 3, p. 175.]

9-416. BUSINESS RECORDS -- SHORT TITLE OF ACT. This act may be cited as the Uniform Business Records as Evidence Act.

[9-416, added 1939, ch. 106, sec. 4, p. 175.]

9-417. ADMISSIBILITY OF REPRODUCED RECORDS IN EVIDENCE. If any business, institution, or member of a profession or calling, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, optical imaging, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity and the principal or true owner has not authorized destruction or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

[9-417, added 1951, ch. 173, sec. 1, p. 368; am. 1995, ch. 39, sec. 1, p. 59.]

9-418. INTERPRETATION. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[9-418, added 1951, ch. 173, sec. 2, p. 368.]

9-419. SHORT TITLE. This law may be cited as the Uniform Photographic Copies of Business Records as Evidence Act.

[9-419, added 1951, ch. 173, sec. 3, p. 368.]

9-420. PROOF OF HOSPITAL MEDICAL CHARTS OR RECORDS BY CERTIFIED COPY AND COMPLIANCE WITH SUBPOENA DUCES TECUM FOR PRODUCTION THEREOF. 1. Medical charts or records of hospitals licensed in this state may be proved as to foundation, identity and authenticity by use of a legible and durable copy, certified upon verification by an employee of the hospital charged with the responsibility of being custodian of the originals thereof and empowered by said hospital to make such verified certifications. Said copy may be used in any proceeding in lieu of the original which, however, the hospital shall hold available during the pendency of the cause or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record. A hospital wishing to avail itself of this section shall at any time prior to the time for proof of said charts and records, place on file with the clerk of the court or with the other body or agency conducting the proceeding a certified copy of a resolution of the governing board of such hospital, authorizing and identifying such employee.

2. When a subpoena duces tecum is served upon any employee of such a hospital, and requires the production of any such medical charts or records at trial, deposition or any other proceeding, it is sufficient compliance therewith if a hospital employee charged with the responsibility of being custodian of the originals thereof promptly notifies the party causing service of the subpoena, or his attorney of record, together with all other parties to the proceeding in which the subpoena was issued and of which parties he has reasonable notice, or their attorneys of record, of the hospital's election to proceed under the provisions hereof and of the estimated actual and reasonable expenses of reproducing such charts or records. Following such notification, the hospital employee charged with custodian responsibility for the original charts or records specified in the subpoena shall hold the same available at the hospital, and upon payment to the hospital of said estimated reproduction expenses shall promptly deliver, by mail or otherwise, a true, legible and durable copy of all medical charts or records specified in such subpoena, certified upon his verification, to the clerk of the court before which said proceeding is pending, or to the officer, body or tribunal before which said proceeding is pending if it be not before a court of this state. Such copies shall be delivered after being separately inclosed and sealed in an inner envelope or wrapper, with the title and number of the action, cause or proceeding, the name of such hospital, the name of the hospital employee making such certification and verification and the date of the subpoena clearly inscribed thereon, and the sealed envelope or wrapper shall then be inclosed and sealed in an outer envelope or wrapper, and delivered as aforesaid.

If the hospital has none of the charts or records specified in the subpoena, or only part thereof, an employee having custodial responsibility for original hospital charts or records shall so state in an affidavit and following notice and payment of expenses as hereinabove provided shall hold available such original charts or records as are in the hospital's custody and specified in the subpoena and shall deliver copies thereof certified upon his verification together with said affidavit, in the manner hereinabove provided.

3. The personal attendance of the hospital employee having custodial responsibility for the original charts or records specified in the subpoena is required if the subpoena contains a clause providing substantially as follows: "The personal attendance of a hospital employee having custodial responsibility for the original charts or records specified herein is required by this subpoena. The procedure outlined in section [9-420](#), Idaho Code, shall not be sufficient compliance herewith." If the subpoena duces tecum requires the attendance of a hospital employee in the above manner, said requirement shall be deemed satisfied by the personal attendance of any hospital employee whose name has been lodged with the court or other body as provided in subsection 1 of this section. If personal attendance of a witness is required in the manner herein provided, the hospital may nevertheless elect to substitute true, legible and durable copies of the charts or records specified in the subpoena duces tecum by the giving of a notice of such election in the manner hereinabove set forth, in which case payment to the hospital of the actual and reasonable expenses of duplication of such charts or records by any party to the proceeding in which the subpoena was issued, or such party's attorney of record, shall be a condition precedent to the personal attendance of any person pursuant to said subpoena, unless

otherwise ordered by the court or other body before which said proceeding is pending.

4. Any patient whose medical records or charts are thus copied and delivered, any person acting on his behalf, the hospital having custody of such records, or any physician, nurse or other person responsible for entries on such charts or records shall have standing to apply to the court or other body before which the cause or proceeding is pending for a protective order denying, restricting or otherwise limiting access and use of such copies or original charts and records. Such patients, persons, hospitals, physicians or nurses who are not parties to the cause or proceeding and who wish to apply for a protective order may petition to intervene in the cause or proceeding and simultaneously apply for such a protective order.

[I.C., sec. 9-420, as added by 1971, ch. 47, sec. 2, p. 100.]

9-421. TAKEN OR CONVERTED MERCHANDISE -- EVIDENCE. In any civil action for a violation of the shoplifting laws of Idaho, photographs of the goods or merchandise alleged to have been taken or converted shall be deemed competent evidence of such goods or merchandise and shall be admissible in any proceeding, hearing or trial to the same extent as if such goods and merchandise had been introduced as evidence. Such photographs shall bear a written description of the goods or merchandise alleged to have been taken or converted, the name of the owner of such goods or merchandise, or the store or establishment wherein the alleged violation occurred, the name of the accused, the name of a peace officer, the date of the photograph and the name of the photographer. Such writing shall be made under oath by a peace officer, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged violation occurred.

[9-421, added 1980, ch. 244, sec. 1, p. 564.]