Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.
Irrespective of whether an objection is made pursuant to CPLR 3122-a(c) to an offer of business records of a non-party by certification, current CPLR 3122-a does not preclude a party from serving a testimonial subpoena upon such a non-party’s custodian of records (or otherwise seek to take such custodian’s testimony if they are beyond the reach of a New York subpoena). Yet, by virtue of the inherent advantages of its more streamlined procedure for non-controversial documents, the proponents of the original legislation hoped that litigants would embrace the certification process in the interest of increased ease and reduced expense, and it is now used regularly by parties to civil litigation.

The proposed amendment arises from a notable limitation in the current statute, which permits the introduction of certified business records only when they are obtained pursuant to subpoena. If a non-party’s business records are acquired voluntarily or otherwise, CPLR 3122-a cannot be employed; this limitation may be of particular concern when the custodian of the documents is beyond the subpoena jurisdiction of our courts. This legislation addresses this gap by extending the statutory certification procedure to documents obtained without a subpoena. In all other respects, the operation of the statute remains unchanged.

For the reasons stated above, the Section urges gubernatorial APPROVAL this Legislation.

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