

West's Florida Statutes Annotated  
Title VII. Evidence (Chapters 90-92)  
Chapter 90. Evidence Code (Refs & Annos)

## West's F.S.A. § 90.952

## 90.952. Requirement of originals

## Currentness

Except as otherwise provided by statute, an original writing, recording, or photograph is required in order to prove the contents of the writing, recording, or photograph.

**Credits**

Laws 1976, c. 76-237, § 1; Laws 1977, c. 77-174, § 1.

**Editors' Notes****LAW REVISION COUNCIL NOTE--1976**

This section, which is a restatement of the “best evidence” rule requiring the production of the original document to prove its contents, expands the rule to include the originals of writings, recordings, and photographs as defined in § 90.951(1) and (2). Apparently, this section restates the rule followed in Florida cases. *In re Mobilift Equipment, Inc.*, 415 F.2d 841 (5th Cir. 1969); *Firestone Service Stores v. Wynn*, 131 Fla. 94, 179 So. 175 (1938). Similar provisions are contained in the Model Code of Evid. Rule 602 (1942) and the *Calif. Evid. Code* § 1500.

This section is not applicable on each occasion that a photograph is introduced as evidence. If it were, only the original photograph would be admissible and oral testimony of the witness could be excluded. In most cases a photograph is used to illustrate the testimony of a witness. Normally, the witness identifies a photograph, videotape, or motion picture as being a correct representation of that which he observed or a scene with which he is familiar and adopts it as his own testimony. Since no effort is made to prove the contents, the rule is inapplicable. An original is required rather than permitting a witness to testify to what he saw or heard, in those few cases when the contents are sought to be proved, *e.g.*, a copyright infringement action based on a movie film or a defamation action.

Although the admissibility of X-rays under the “best evidence” rule has apparently never been ruled on directly by Florida courts, the implication is that such materials would be admissible and an expert would be permitted to testify as to what they show, etc. *State ex rel. Carter v. Call*, 64 Fla. 144, 59 So. 789 (1912); *Williamson Candy Co. v. Lewis*, 144 So.2d 522 (Fla.3rd Dist. 1962). Presumably, Florida follows the weight of authority in other jurisdictions requiring production of the original X-ray, if an expert is going to testify as to what the X-ray disclosed. *Daniels v. Iowa City*, 191 Iowa 811, 183 N.W. 415 (1921); *Patrick & Tillman v. Matkins*, 7 P.2d 414 (Okla. 1932). However, it should be noted that under § 90.704 the basis of an expert's testimony does not have to be admissible.

The reference in this section to the statutory exception for the production of the original refers to the numerous statutory provisions providing for the admissibility of photographic or microphotographic copies without regard to the status of the original. This reference alerts the user that the documentary evidence he is seeking to introduce may not require production of the original. Examples of this exception include *Fla. Stat.* § 92.35 (Uniform Photographic

Copies of Business and Public Records as Evidence Act), [Fla.Stat. § 230.331\(2\)](#) (district school records), and [Fla.Stat. § 658.11\(3\)](#) (banking and trust company records). A certificate of the secretary-treasurer of the Board of Dentistry as to the contents of certain records is made admissible by [Fla.Stat. § 466.28](#). Additional statutory provisions are included in the comment to [§ 90.953](#).

See [Fed.Rule Evid. 1002](#); [Calif.Evid.Code § 1550](#). For a general discussion of the application of this section, see Brown, *Authentication and Contents of Writings*, 1969 Law & Soc.Order 611; Note, *Authentication and the Best Evidence Rule Under the Federal Rules of Evidence*, 16 Wayne L.Rev. 195 (1969).

### [Notes of Decisions \(120\)](#)

West's F. S. A. § 90.952, FL ST § 90.952

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