

BILL No. 12 of 2002

Friday 30th August, 2002

PARLIAMENT OFFICE
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Georgetown,
Guyana.

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The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 12 of 2002

EVIDENCE (AMENDMENT) BILL 2002

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 28 of the Principal Act.
3. Amendment of section 29 of the Principal Act.
4. Amendment of the Principal Act.
5. Application.

A BILL
Intituled

AN ACT to amend the Evidence Act.

A.D. 2002

Enacted by the Parliament of Guyana:-

Short title
Cap. 5:03

1. This Act, which amends the Evidence Act, may be cited as the Evidence (Amendment) Act, 2002.

Amendment
of section 29
of the
Principal
Act

2. Section 28(b) of the Principal Act is hereby amended by the deletion of the words beginning with the word "and" where it occurs for the first time and ending with the word "officer".

Amendment
of section 28
of the
Principal
Act

3. Section 29 of the Principal Act is hereby amended in the following respects -

- (a) by the re-numbering of section 29 as subsection (1);
- (b) by the insertion of the following subsection as subsection (2)-
 - (2) In subsection (1), "certified and legalised" means -
 - (a) that the procuration, power, or letter of attorney, contract, or agreement, or other instrument in writing is attested by the signature and seal of the diplomatic agent or consular officer before whom it is or purports to be, executed; and
 - (b) that the procuration, power, or letter of attorney, contract, or agreement, or other instrument in writing is attested by the signature and seal of the notary public before whom it is or purports to be, executed."

Amendment
of the
Principal
Act

4. The Principal Act is hereby amended by the substitution for sections 89 to 94 (inclusive) of the following sections as sections 89 to 94 -

"Interpretation.

89. In the next seven succeeding sections -

- (a) "computer" means any device or combination of devices used together or in succession for the purpose of storing and processing information;
- (b) "document" includes -
 - (i) books, maps, plans, graphs, drawings and photographs;
 - (ii) any disc, tape, sound track or other device in which sound or other data (not being visual

images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

- (iii) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
 - (iv) any photostatic copy or facsimile of a document, electronic mail from a computer or other similar device;
- (c) "proceedings" includes arbitrations and references;
- (d) "statement" includes any representation of fact, whether made in words or otherwise.

90.(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied -

Admissibility
of docu-
mentary
evidence as
to facts in
issue.

- (a) if the maker of the statement either -
- (i) had personal knowledge of the matters dealt with by statement; or
 - (ii) where the document in question is or forms part of a record, purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters:
and
- (b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Guyana and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case, it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence -

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the Court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purpose of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (4), the Court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the Court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

Documents
produced by
computers.

91.(1) In any civil proceedings, a statement contained in a document produced by a computer is admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown -

images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

- (iii) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
 - (iv) any photostatic copy or facsimile of a document, electronic mail from a computer or other similar device;
- (c) "proceedings" includes arbitrations and references;
- (d) "statement" includes any representation of fact, whether made in words or otherwise.

90.(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied -

Admissibility
of documentary
evidence as
to facts in
issue.

- (a) if the maker of the statement either -
 - (i) had personal knowledge of the matters dealt with by statement; or
 - (ii) where the document in question is or forms part of a record, purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters:
and
- (b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Guyana and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case, it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence -

- (a) notwithstanding that the maker of the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the Court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purpose of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (4), the Court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the Court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

Documents
produced by
computers.

91.(1) In any civil proceedings, a statement contained in a document produced by a computer is admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown -

- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store and process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person;
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
- (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(2) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate -

- (a) identifying the document containing the statement and describing the manner in which it was produced; and
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; and
- (c) dealing with any of the matters to which the conditions mentioned in subsection (1) relate, and purporting to be signed by a person occupying a responsible position with relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated therein; and for the purpose of this subsection it is sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(3) For the purpose of this section -

- (a) information is taken to be supplied to a computer if it is supplied thereto in any appropriate form

and whether it so supplied directly or (with or without human intervention) by means of any appropriate equipment; and

- (b) information is taken to be supplied to a computer where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities; and
- (c) a document is taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Admissibility
of certain
documents in
criminal
proceedings;
business
records.

92.(1) For the purposes of this section "business" includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise.

(2) In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as *prima facie* evidence of that fact if -

- (a) the document is, or forms part of, a record relating to any trade or business and compiled in the course of that trade or business from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and
- (b) the person who supplied the information recorded in the statement is called as a witness in the proceedings:

Provided that the condition that the person who supplied the information recorded in the statement shall be called as a witness need not be satisfied if he is dead, or outside Guyana, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he supplied.

(3) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the Court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner.

93.(1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by virtue of sections 90 to 94 (inclusive), regard shall be had to all the circumstances from which any inference may reasonably be drawn as to the accuracy or otherwise of the statement and in particular -

Weight to be attached to evidence.

- (a) in the case of a statement falling within section 91, to the question whether or not the matter which the information contained in the statement reproduces, or is derived from, was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the concurrence or existence of the facts dealt with therein, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts;
- (b) in the case of a statement falling within sections 90 and 92 to 94 (inclusive), to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by sections 90 to 94 (inclusive) shall not be treated as corroboration of the evidence given by the maker of the statement.

93A.(1) Subject to subsection (2), in any proceedings whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of

Proof of instrument to validity of which

attestation is necessary. being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive.

(2) Subsection (1) shall not apply to the proof of wills or other testamentary documents.

Presumptions as to documents twenty years old

93.B In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

Saving as the other provisions relating to evidence.

94. Nothing in last six preceding sections shall -

- (a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible; or
- (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not been passed."

Application.

5. The amendments effected to sections 28 and 29 of the Principal Act shall apply to any procuracy, power or letter of attorney, contract, or agreement, or other instrument in writing executed or purported to be executed on or after the commencement of the Evidence (Amendment) Act 2002.

EXPLANATORY MEMORANDUM

This Bill seeks to amend sections 28 and 29 of the Evidence Act, Cap. 5:03, to allow a notary public in any place outside the Commonwealth to attest under his hand and seal, any procuration, power or letter of attorney, contract or agreement, or other instrument in writing where such instrument is made or executed without being certified under the hand and seal of a diplomatic agent or consular officer of the Government of Guyana.

For six section sections 89 - 94 inclusive, in the Evidence Act, Cap. 5:03, this Bill substitutes eight new sections.

The Bill repeats substantially the old provisions of the Evidence Act adding new provisions thereto relating to admissibility of documentary evidence. Document is defined to include disc, tape, sound track or other device in which sound or data are embodied. The definition also includes any film, negative, tape or such other device or photostatic copy or facsimile of a document, electronic mail from a computer or other similar device.

The whole thrust of the new provision is to provide for the admissibility of documents produced by computers and also to make admissible documents coming under the new definition of the term document.

Doodnauth Singh,
Attorney General and Minister of Legal Affairs.