



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**EVIDENCE (SPECIAL PROVISIONS)
ACT, No. 14 OF 1995**

[Certified on 31st July, 1995]

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Evidence (Special Provisions)

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L.D.—O. 63/94

AN ACT TO PROVIDE FOR THE ADMISSIBILITY OF AUDIO VISUAL RECORDINGS, AND OF INFORMATION CONTAINED IN STATEMENTS PRODUCED BY COMPUTERS IN CIVIL AND CRIMINAL PROCEEDINGS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Evidence (Special Provisions) Act, No. 14 of 1995.

Short title.

2. Notwithstanding anything contained to the contrary in the Evidence Ordinance or any other written law the provisions of this Act shall be applicable in respect of any matter provided for herein.

Application.

3. (1) For the determination of any matter arising out of the application of the provisions of this Act or incidental thereto and not provided for in this Act, the provisions of the Evidence Ordinance or any other law shall, where appropriate, and with suitable adaptations as the justice of the case may require, be adopted and applied.

**Casus
Omissus.**

(2) For the purpose of applying the provisions of the Evidence Ordinance or other law for the determination of any matter not provided for in this Act, the provisions relating to documents or governing a like matter in the Evidence Ordinance or such other law shall with such suitable adaptations as the interests of justice may require, be adopted and applied in the case of a recording, reproduction, statement or other evidence admissible under this Act.

(3) Where it is not appropriate or practical to adapt and apply the provisions of the Evidence Ordinance or other law as aforesaid for the determination of any matter not provided for in this Act, the court may in the exercise of its inherent power, determine such matter by making such order as the interests of justice may require.

PART I

CONTEMPORANEOUS RECORDINGS

4. (1) In any proceeding where direct oral evidence of a fact would be admissible, any contemporaneous recording or reproduction thereof, tending to establish that fact shall be admissible as evidence of that fact, if it is shown that—

**Contemporaneous
recordings.**

(a) the recording or reproduction was made by the use of electronic or mechanical means;

- (b) subject to subsection (3) of this section, the recording or reproduction is capable of being played, replayed, displayed or reproduced in such a manner as to make it capable of being perceived by the senses ;
- (c) at all times material to the making of the recording or reproduction the machine or device used in making the recording or reproduction, as the case may be, was operating properly, or if it was not, any respect in which it was not operating properly or out of operation, was not of such a nature as to affect the accuracy of the recording or reproduction ;
- (d) the recording or reproduction was not altered or tampered with in any manner whatsoever during or after the making of such recording or reproduction, or that it was kept in safe custody at all material times, during or after the making of such recording or reproduction and that sufficient precautions were taken to prevent the possibility of such recording or reproduction being altered or tampered with, during the period in which it was in such custody.

(2) If the conditions set out in subsection (1) are satisfied, the recording or reproduction shall be admissible in evidence of the fact recorded or reproduced, whether or not such fact was witnessed by any person.

(3) Where any recording or reproduction referred to in subsection (1)—

- (a) cannot be played, replayed, displayed or reproduced in such a manner so as to make it capable of being perceived by the senses ; or
- (b) is capable of being so perceived but is unintelligible to a person not conversant in a specific science ; or
- (c) is of such nature that it is not convenient to perceive and receive in evidence, in its original form,

the court may admit in evidence a transcript, translation, conversion or transformation, as the case may be, of such recording or reproduction which is intelligible and is capable of being perceived by the senses.

(4) A recording or reproduction shall be taken to have been made by the use of electronic or mechanical means, whether it was made by a single machine or device or by

several machines or devices or by different machines or devices, in any combination, with or without the aid of any appropriate equipment or human intervention.

(5) Where evidence is admissible under the preceding provisions of this section, a duplicate of such evidence shall be admissible in the same manner and to the same extent as the source from which the duplicate is made.

PART II

COMPUTER EVIDENCE

5. (1) In any proceeding where direct oral evidence of a fact would be admissible, any information contained in any statement produced by a computer and tending to establish that fact shall be admissible as evidence of that fact, if it is shown that—

Computer
evidence.

(a) subject to subsection (2), the statement in the form that it was produced, or the form in which it is reproduced, is capable of being perceived by the senses;

(b) at all material times the computer producing the statement was operating properly or, if it was not, any respect in which it was not operating properly or out of operation, was not of such a nature as to affect the production of the statement or the accuracy of the information contained therein;

(c) the information supplied to the computer was accurate and the information contained in the statement reproduces or is derived from, the information so supplied to the computer:

Provided that where information contained in the statement is shown to have been produced by the computer over a period during which the computer was used regularly to store or process information for the purpose of any activity carried on regularly over that period, it shall be sufficient to show that—

(a) during the said period there was regularly supplied to the computer, in the ordinary course of such activity, information of the kind contained in the statement or of the kind from which the information so contained is derived; and

(b) the information contained in the statement reproduces, or is derived from, information regularly supplied to the computer in the ordinary course of such activity.

(2) Where any statement referred to in subsection (1)—

(a) cannot be played, displayed or reproduced in such a manner so as to make it capable of being perceived by the senses ;

(b) is capable of being so perceived but is unintelligible to a person not conversant in a specific science ; or

(c) is of such a nature that it is not convenient to perceive and receive in evidence, in its original form,

the court may admit in evidence a transcript, translation, conversion or transformation, as the case may be, of such statement which is intelligible and is capable of being perceived by the senses.

(3) Where evidence is admissible under the preceding provisions of this section a duplicate of such evidence shall be admissible in the same manner and to the same extent as the source from which the duplicate is made.

(4) (a) Information contained in a statement shall be taken to have been produced by a computer, if such statement was produced by a single computer or several computers or any combination of computers or different computers operating in succession in any order, and all the computers used to produce the statement shall be treated, for the purpose of this Act, as constituting a single computer and any reference to a computer in this Act, shall be construed accordingly.

(b) A statement shall be taken to have been produced by a computer whether it was produced by it directly, with or without human intervention, or by means of any appropriate equipment.

(c) Information shall be taken to be supplied to a computer, if it is supplied thereto in any appropriate form, whether it is so supplied directly, with or without human intervention, or by means of any appropriate equipment.

(d) Information shall be taken to be derived or reproduced from information supplied to a computer, if such information is derived or reproduced by calculation, comparison or by any other process of which the computer is capable of.

(e) Where in the course of activities carried on by any person, information is supplied to a computer with a view to its being stored or processed for the purpose of those activities, by a computer operated otherwise than in the course of those activities, that information, if duly supplied to the computer, shall be taken to be supplied to it in the course of those activities.

PART III

GENERAL PROVISIONS

6. (1) Where any party proposes to tender any evidence under section 4 or 5 of this Act in any proceeding, an affidavit dealing with any of the following matters, that is—

**Affidavit
evidence.**

(a) if such evidence consists of a recording or reproduction, that it is a contemporaneous recording of a fact sought to be proved in such proceeding or a reproduction thereof, and that the recording or reproduction satisfies the conditions set out in paragraphs (a), (b), (c) and (d) of subsection (1) of section 4;

(b) if such evidence consists of a transcript, translation, conversion or transformation, as the case may be, of a recording or reproduction, that such recording or reproduction satisfies any of the conditions set out in subsection (3) of section 4;

(c) if such evidence consists of a duplicate as provided for in subsection (5) of section 4, that such duplicate is authentic and has been produced by a duplicating process;

(d) if such evidence consists of information contained in any statement produced by a computer, that such statement was produced by a computer and that the conditions set out in paragraphs (a), (b) and (c) of subsection (1) of section 5 have been satisfied in respect of such statement and computer;

(e) if such evidence consists of a transcript, translation, conversion or transformation, as the case may be, of a statement produced by a computer, that such statement satisfies any of the conditions set out in subsection (2) of section 5;

(f) if such evidence consists of the duplicate as provided for in subsection (3) of section 5, that such duplicate is authentic and has been produced by a duplicating machine,

and purporting to be made by a person occupying a responsible position in relation to the operation of the relevant machine, device or computer or the management of the relevant activity, whichever is the case, shall be admissible in evidence without calling such person as a witness and shall be evidence of the matters stated therein.

(2) For the purpose of this section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it:

Provided however the court may on application by the opposing party or of its own motion, examine the maker of the affidavit, and or any other person said to be acquainted with any of the matters set out in the affidavit, in open court touching any of the matters set out in the affidavit or any other relevant matter that may be connected with, or incidental thereto.

NOTICE, ACCESS AND INSPECTION

Notice
to have
access to
inspect.

7. (1) The following provisions shall apply where any party to a proceeding proposes to tender any evidence under section 4 or 5, in such proceeding—

(a) the party proposing to tender such evidence shall, not later than forty-five days before the date fixed for inquiry or trial file, or cause to be filed, in court, after notice to the opposing party, a list of such evidence as is proposed to be tendered by that party, together with a copy of such evidence or such particulars thereof as is sufficient to enable the party to understand the nature of the evidence;

(b) any party to whom a notice has been given under the preceding provision may, within fifteen days of the receipt or such notice apply to the party giving such notice, to be permitted access to, and to inspect—

(i) the evidence sought to be produced;

(ii) the machine, device or computer, as the case may be, used to produce the evidence;

(iii) any records relating to the production of the evidence or the system used in such production ;

(c) upon receipt of the application to be permitted access to, and to inspect such evidence, machine, device, computer, records or system, the party proposing to tender such evidence shall, within reasonable time, but not later than fifteen days after the receipt of the application, comply with the request and provide a reasonable opportunity to the party applying or his agents or nominees, to have access to, and inspect, such evidence, machine, device, computer, records or systems, as is mentioned in the application ;

(d) where the party proposing to tender such evidence is unable to comply, or does not comply with, the application for access and inspection, or where the parties are unable to agree on any matter relating to the notice or the application for access and inspection or the manner and extent of the inspection, the court may on application made by either party, make such order or give such direction, as the interests of justice may require.

(2) Save as provided for in sections 8 and 9 where any party proposing to tender any evidence under the provisions of this Act, fails to give notice as aforesaid, or upon application being made for access and inspection, fails to provide a reasonable opportunity therefor, or fails to comply with any order or direction given by court under paragraph (a), such party shall not be permitted to tender such evidence in respect of which the failure was occasioned.

ADMISSIONS

8. (1) In any proceeding it shall not be necessary for any party to tender any evidence of any fact which is admitted by the opposing party.

Admissions.

(2) In any proceeding where it is proposed to tender any evidence under any provision of this Act to establish a fact, it shall not be necessary for the party tendering such evidence to show that the conditions set out in the preceding provisions of this Act relating to the admissibility of such evidence have been satisfied, if the conditions relating to admissibility are not in dispute.

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Act, No. 14 of 1995**

(3) Where in any proceeding, a party to such proceeding tenders any evidence under this Act to establish a fact, and it is shown that such fact was within the knowledge of the opposing party but not admitted by him in such proceeding, the court shall award to the party tendering such evidence, the total costs incurred by him in tendering such evidence (in addition to any other costs that may be awarded to such party in such proceeding), whether or not the final judgment or order in such proceedings is in favour of such party.

Presumptions.

9. The court may presume the accuracy of any recording, reproduction or statement produced by, or by the use of, a machine, device or computer which is in common use and where the court draws such presumption with respect to any recording, reproduction or statement, and in the absence of any evidence to the contrary, it shall not be necessary for any party proposing to tender such recording, reproduction or statement in evidence to show that the conditions set out in the preceding provisions of this Act, relating to the admissibility of such recording, reproduction or statement have been satisfied.

Offences.

10. (1) Where any person in an affidavit tendered in evidence in any proceeding by virtue of section 6, wilfully makes a statement which he knows or believes to be false, or does not believe to be true, he shall be guilty of an offence under this Act and shall on conviction, after summary trial before a Magistrate be liable to imprisonment of either description for a term not exceeding ten years and to a fine.

(2) Nothing in this section shall be read or construed as derogating from, or limiting, the powers of any court to punish for contempt of itself or of any other court.

Sinhala text to prevail in case of inconsistency.

11. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**PART IV
INTERPRETATION**

Interpretation.

12. In this Act, unless the context other requires—

“computer” means any device the functions of which includes the storing and processing of information;

“duplicate” means a counterpart, produced by the same impression as the original, or from the same matrix or by means of photography (including enlargements, reductions, and miniatures), or by electronic, mechanical or chemical reproduction or re-recording, or by other equivalent techniques which accurately reproduces the original;

“original” in relation to a recording or reproduction or statement produced by a computer, means the recording or reproduction or the statement itself or any transcript, translation, conversion, transformation or duplicate thereof intended to have the same effect by a person executing or issuing it; and includes in relation to an audio or visual recording, the negative or any print therefrom, and in relation to a statement produced by a computer, the printout or other output readable by sight or audible by ear;

“statement” includes any representation of fact whether made in words or otherwise.

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