

SAINT VINCENT AND THE GRENADINES
ELECTRONIC EVIDENCE ACT, 2004
ARRANGEMENT OF SECTIONS

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SAINT VINCENT AND THE GRENADINES

ACT NO. OF 2004

I ASSENT

[L.S.]

AN ACT to provide for the legal recognition of electronic records, admissibility in legal proceedings of evidence generated by computers or other similar devices; and for matters connected therewith.

[by Proclamation]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows:-

1. (1) This Act may be cited as the Electronic Evidence Act, 2004.

 (2) This Act shall come into operation on a day appointed by the Governor-General by Proclamation in the Gazette.

2. In this Act,

“data” means representations, in any form, of information or concepts;

“electronic record” means data that is recorded or stored on any medium in or by a computer or other similar device that can be read or perceived by a person or a computer system or other similar device. It includes a display, print out, tape recording or other input of data;

“electronic records system” includes the computer system or other similar device by or in which data is recorded, and any procedures related to the recording and preservation of electronic records;

“legal proceedings” means a civil, criminal or administrative proceedings in a court or before a tribunal, board or commission.

3. Nothing in the rules of evidence shall apply to deny the admissibility of an electronic record in evidence on the sole ground that

it is an electronic record.

4. (1) This Act does not modify any common law or statutory rule relating to the admissibility of records except the rules relating to authentication and best evidence.

(2) A court may have regard to evidence adduced under this Act in applying any common law or statutory rule relating to the admissibility of records.

5. The person seeking to introduce an electronic record in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be.

6. (1) In any legal proceeding, subject to subsection 7 (b), where the best evidence rule is applicable in respect of electronic records, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded and stored.

(2) In any legal proceeding, where an electronic record in the form of printout has been manifestly or consistently acted on, relied upon, or used as the record of the information recorded or stored on the printout, the printout is the record for the purposes of the best evidence rule.

7. In the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is presumed in any legal proceeding:

- (a) where evidence is adduced that supports a finding that at all material times the computer system or other similar device was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the integrity of the record was not affected by such circumstances, and there are no other reasonable grounds to doubt the integrity of the record;
- (b) where it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or
- (c) where it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record.

8. For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or preserved, having regard to the type of business or endeavour that used, recorded or preserved the electronic record and the nature and purpose of the electronic record.

9. The matters referred to in sections 6, 7 and 8 may be established by an affidavit given to the best of the deponent's knowledge or belief.

10. (1) A deponent of an affidavit referred to in section 9 that has been introduced in evidence may be cross examined as of right by a party who is adverse in interest to the party who has introduced the affidavit or who has caused the affidavit to be introduced.

(2) Any party to the proceedings may, with leave of the court, cross examine a person referred to in subsection 7 (c).

11. (1) Unless otherwise provided in any statute, an electronic record is admissible, subject to the discretion of the court, if the parties to the proceedings have expressly agreed at any time that its admissibility may not be disputed.

(2) Notwithstanding subsection (1), an agreement between the parties on admissibility of an electronic record does not render the record admissible in a criminal proceeding on behalf of the prosecution if at the time the agreement was made, the accused person or any of the persons accused in the proceeding was not represented by a barrister-at-law.

12. (1) Where a rule of evidence requires or provides for certain consequences if a document is not signed, an electronic signature satisfies that rule of law or avoids those consequences.

(2) An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person in order to proceed further with a transaction, to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.

13. The Evidence Act is amended:

(a) In section 2 by inserting in the definition of "document" after paragraph (c) the following new paragraph:

"(ca) any electronic record;"

(b) in section 34 by deleting the words "All proclamations, orders, rules, regulations, warrants, circulars, lists, assessment rolls, judgements, and all other records and writings whatsoever of a public character" and replacing them with the words "All proclamations, orders, rules, regulations, warrants, circulars, lists, assessment rolls, minutes, certificates, notices, requisitions, letters, judgements, and all other records including electronic records and writings whatsoever of a public character.";

(c) by repealing section 50;

(d) in section 51: by

- (i) in subsection (1) by repealing the numbers and word “47, 49 or 50” and substituting the numbers and word “47 or 49”;
- (ii) in subsection (2) by repealing the numbers and word “47, 49 or 50” and substituting the numbers and word “47 or 49”;
- (iii) in subsection (3) by repealing the numbers and word “47, 49 or 50” and substituting the numbers and word “47 or 49” and repealing paragraph (c);
- (iv) by repealing subsection (5);
- (e) in section 55 by:
 - (i) in subsection (1) by repealing the numbers and word “47, 49 or 50” and substituting the numbers and word “47 or 49”;
 - (ii) in subsection (2) by repealing paragraph (a) and substituting the following new paragraph:
 - “(a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give every other party to the proceedings such notice of his desire to do so and such particulars of or relating to the statement as may be specified in the rules, including particulars of such one or more of the persons concerned as mentioned in section 51 (3) (c) as the rules may, in any case, require; and”;
 - (iii) in subsection (3) by repealing the numbers and word “47 (1), 49 (1) and 50 (1)” in paragraphs (a) and (c) and substituting the numbers and word “47 (1) and 49 (1)”.

Passed in the House of Assembly this

day of

2004.

Clerk of the House of Assembly

OBJECTS AND REASONS

The object of this Bill is to provide parity for electronic records with other records by placing electronic transactions and their products or elements on par with those of more traditional existence such as written documents, handwritten signatures and cash. It is a necessary enactment to deal with the old problem of admissibility of evidence in a modern technological setting.

Dr. Hon. Ralph Gonsalves
Prime Minister, Minister of Finance,
Planning, Legal, Labour, Information,
Grenadines Affairs, Crown Lands, Surveys
and Postal Services