

# COMPUTER EVIDENCE ACT 57 OF 1983

[ASSENTED TO 4 MAY 1983] [DATE OF COMMENCEMENT: 1 OCTOBER 1983]

(Afrikaans text signed by the State President)

as amended by

Computer Evidence Amendment Act 5 of 1992

## ACT

To provide for the admissibility in civil proceedings of evidence generated by computers; and for matters connected therewith.

### Section 1 Definitions

(1) In this Act, unless the context otherwise indicates-

'authenticated computer print-out' means a computer print-out accompanied by the authenticating affidavit which relates to it and by such supplementary affidavit or affidavits as may be required by section 2 in connection with the authenticating affidavit;

'authenticating affidavit' means an affidavit which authenticates a computer print-out in compliance with section 2;

'computer' means any device or apparatus, whether commonly called a computer or not, which by electronic, electro-mechanical, mechanical or other means is capable of receiving or absorbing data and instructions supplied to it, of processing such data according to mathematical or logical rules and in compliance with such instructions, of storing such data before or after such processing, and of producing information derived from such data as a result of such processing;

'computer print-out' means the documentary form in which information is produced by a computer or a copy or reproduction of it, and includes, whenever any information needs to be transcribed, translated or interpreted after its production by the computer in order that it may take a documentary form and be intelligible to the court, a transcription, translation or interpretation of it which is calculated to have that effect;

'information' includes any information expressed in or conveyed by letters, figures, characters, symbols, marks, perforations, patterns, pictures, diagrams, sounds or any other visible, audible or perceptible signals;

'processing' includes treating or, as the context may require, treatment by calculation, compilation, arrangement, sorting, comparison, analysis, synthesis, classification, selection, summarizing or consolidation;

'public institution' means any department of State, provincial administration, local authority as defined in section 1 of the Promotion of Local Government Affairs Act, 1983 (Act 91 of 1983), the Local Government Affairs Council established by section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act 84 of 1989), any financial institution as defined in section 1 of the Inspection of Financial Institutions Act, 1984, (Act 38 of 1984), the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act 13 of 1944), any mutual building society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act 24 of 1965), or any deposit-taking institution as defined in section 1 of the Deposit-taking Institutions Act, 1990 (Act 94 of 1990);

[Definition of 'public institution' substituted by s. 1 of Act 5 of 1992.]

'supplementary affidavit' means a supplementary affidavit required by section 2 (4) (b) or an affidavit which supplements an authenticating affidavit in compliance with section 2 (7).

(2) Whenever separate devices or apparatuses have been operated in combination or sequence to perform the functions of a computer, as described in the definition of 'computer' in subsection (1), such combination or sequence of devices or apparatuses shall be regarded for the purposes of this Act as a single computer.

## **Section 2** Authentication of computer print-outs

(1) Subject to the other provisions of this section, a computer print-out may be authenticated for the purposes of this Act by means of an affidavit which shall-

(a) identify the computer print-out in question and confirm that it is a computer print-out as defined in this Act which has been produced by a computer as likewise defined;

(b) identify such copy, reproduction, transcription, translation or interpretation of information produced by the computer as the computer print-out may comprise or contain, and confirm that it is a true copy, reproduction, transcription, translation or interpretation of such information;

(c) describe in general terms the nature, extent and sources of the data and instructions supplied to the computer, and the purpose and effect of the processing of the data by the computer;

(d) certify that the computer was-

(i) correctly and completely supplied with data and instructions appropriate to and sufficient for the purpose for which the information recorded in the computer print-out was produced;

(ii) unaffected in its operation by any malfunction, interference, disturbance or interruption which might have had a bearing on such information or its reliability;

(e) certify that no reason exists to doubt or suspect the truth or reliability of any information recorded in or result reflected by the computer print-out.

(2) It shall suffice for the purposes of subsection (1) if the descriptions required by paragraph (c) and the certifications required by paragraphs (d) and (e) are given to the best of the knowledge and belief of the deponent to the authenticating affidavit.

(3) The deponent to an authenticating affidavit shall be some person who is qualified to give the testimony it contains by reason of-

(a) his knowledge and experience of computers and of the particular system by which the computer in question was operated at all relevant times; and

(b) his examination of all relevant records and facts which are to be had concerning the operation of the computer and the data and instructions supplied to it.

(4) The records and facts examined by the deponent to an authenticating affidavit in order to qualify himself for the testimony it contains shall-

(a) be verified in such affidavit by him if, at the time when he so examined them, he had control of or access to them in the ordinary course of his business, employment, duties or activities;

(b) if he did not have such control or access, be verified in a supplementary affidavit by some other person who, at such time, had control of or access to them in the ordinary course of his business, employment, duties or activities.

(5) The records and facts referred to in subsection (4) shall be sufficiently verified for the purposes of that subsection if-

(a) the affidavit verifying them testifies that, to the best of the deponent's knowledge and belief, they comprise all the relevant records and facts which are to be had concerning the operation of the computer in question and the data and instructions supplied to it; and

(b) in the event provided for in paragraph (b) of that subsection, the supplementary affidavit establishes that they were all made available to the deponent to the authenticating affidavit for his examination.

(6) Subsections (3), (4) and (5) do not apply to an authenticating affidavit which-

(a) relates to a computer print-out of a public institution produced in the ordinary and regular course of the public institution's business or activities from data and instructions supplied to the computer in the ordinary and regular course of such business or activities; and

(b) is deposed to by an official or employee of the public institution who is qualified to and does certify that the computer print-out was so produced.

(7) An authenticating affidavit shall be supplemented by-

(a) such further affidavits as are necessary for substantial compliance with subsections (1) to (6) when that is not achieved without them;

(b) any additional affidavits the circumstances may require.

### **Section 3** Admissibility of authenticated computer print-outs

(1) In any civil proceedings an authenticated computer print-out shall be admissible on its production as evidence of any fact recorded in it of which direct oral evidence would be admissible.

(2) It shall suffice for the purposes of subsection (1) if an affidavit which accompanies the computer print-out in question as contemplated in the definition of 'authenticated computer print-out' in section 1 (1), on the face of it complies with the provisions of section 2 which apply to an affidavit of the nature in question.

### **Section 4** Evidential weight of authenticated computer print-outs

(1) An authenticated computer print-out shall have the evidential weight which the court in all the circumstances of the case attaches to it.

(2) In order to assess the evidential weight of an authenticated computer print-out, the court may-

(a) take account of anything contained in the authenticating affidavit or a supplementary affidavit;

(b) on the application of any party to the proceedings require the deponent to the authenticating affidavit or a supplementary affidavit or any other person to testify orally on any topic relevant to such question, whether or not any such affidavit covered it.

### **Section 5** Penalties for false or misleading testimony in affidavits

Any person deposing to an affidavit intended as an authenticating affidavit or a supplementary affidavit who gives testimony in it which is false or misleading in any material respect shall be-

(a) guilty of an offence, unless he proves that he gave such testimony honestly believing it to be true and having made such enquiries and undertaken such investigations as were possible and reasonably necessary in order to satisfy himself of its truth or, as the circumstances may require, that he gave such testimony without any intention to mislead and could not reasonably have foreseen that it would be misleading;

(b) liable on conviction to a fine or to imprisonment for a period not exceeding two years, or to both a fine and such imprisonment.

[Para. (b) substituted by s. 2 of Act 5 of 1992.]

### **Section 6** Short title and commencement

This Act shall be called the Computer Evidence Act, 1983, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.