

A BILL

FOR

AN ACT TO AMEND THE EVIDENCE ACT CAP E14 LAWS OF THE FEDERATION OF NIGERIA 2004.

Sponsored by SENATOR SOLA AKINYEDE (Ekiti South)

[

]

Commence-
ment

BE IT ENACTED By the National Assembly of the Federal Republic of Nigeria as follows:

1. The Evidence Act (hereinafter referred to as “**the Principal Act**”) is hereby amended as set out in this Act.

Interpretation:

2. The Interpretation of “bankers’ books” in the Principal Act is amended by inserting the words “electronic records, writings and recordings and all other books and documents” after the word “books” as follows:

Amendment
of Sect. 2 (1)

“**bankers’ books**” – the expressions relating to bankers’ books include ledgers, day books, cash books, account books, **electronic records, writings and recordings** and all other books and **documents** used in the ordinary business of a bank.

3. The Interpretation of “document” in the Principal Act is amended by inserting the words “electronic document or electronic records” after the word “photograph” as follows:

“**Document**” includes books, maps, plans, drawings, photographs, **electronic documents or electronic records** and any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means intended to be used or which may be used for the purpose of recording that matter.

4. The Principal Act is amended by adding the following under the Interpretation Section:

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

“**Duplicate**” A duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

“**Electronic record**” means data that is recorded or stored on any medium in or by a computer system, mobile phones or other similar device and that can be read or perceived by a person or by a computer system or other similar device. It includes a display, printout or other output of that data.

“Electronic record system” includes the computer system, mobile phones or other similar device by or in which data is recorded or stored, and any procedure related to the recording and preservation of electronic records.

“Legal proceeding” means a civil, criminal or administrative proceeding in a court or before a Tribunal, Board or Commission.

“Original” An original of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An “original” of a photograph includes the negative or any print therefrom. If data is stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an “original”.

“Photographs” include still photographs, X-ray films, video tapes, and motion pictures.

“Writing and Recordings” consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

5. Amendment of Section 94(1)

Primary evidence

Section 94(1) of the Principal Act is amended by substituting the words “document itself” with the word “original” as follows:

94(1) Primary evidence means the **original** produced for the inspection of the court.

6. Introduction of a New Part XIV – Electronic Evidence

The Principal Act is amended by inserting the following new PART and SECTIONS that is: **PART XIV – ELECTRONIC EVIDENCE**

General Admissibility

231. 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.

Scope of the Act

232. (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.

Authentication

233. 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.

Application of Best Evidence Rule

234. (1) In any legal proceeding, subject to subsection (2) of this section where the best evidence rule is applicable in respect of electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded or stored.

(2) In any legal proceeding, where an electronic record in the form of a 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.

Presumption
Of Integrity

235. 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.

Standards

236. 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.

Proof by
Affidavit

237. The matters referred to in section 234, 235 and 236 may be established by an affidavit given to the best of the deponent's knowledge or belief.

Cross
Examination

238. (1) A deponent of an affidavit referred to in section 237 that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or 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 235 (c).

Agreement on
Admissibility
of Electronic
Records

239.(1) Unless otherwise provided in any other 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 the provision of sub – section (1) of this section, an agreement between the parties on the 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 lawyer.

Admissibility
of Electronic
Signature

240. (1) Where a rule of evidence requires a signature, 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.

Short
Title

(3) This Act may be cited as the Evidence Act (Amendment) BILL, 2009.

EXPLANATORY MEMORANDUM

This Act seeks to amend the Evidence Act Cap E14 Laws of the Federation of Nigeria 2004 in order to update it and bring it in line with the reality of the advancement in the area of electronic and computer technology.