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## EVIDENCE Best Evidence Rule: Revise Georgia Best Evidence Rule Relating to Admissibility of Reproduction Made in the Regular Course of Business

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## EVIDENCE

### *Best Evidence Rule: Revise Georgia Best Evidence Rule Relating to Admissibility of Reproductions Made in the Regular Course of Business*

**CODE SECTION:** O.C.G.A. § 24-5-26 (amended)  
**BILL NUMBER:** SB 244  
**ACT NUMBER:** 519  
**SUMMARY:** The Act changes the requirements of the Georgia Best Evidence Rule relating to the admissibility of reproductions made in the regular course of business. The Act expands the scope of the rule by deleting the requirements that the image be “nonerasable” and that the reproduction be a permanent preservation of the original. The Act further amends the original Code section by providing that the original need not be accounted for only if the reproduction accurately reproduces or forms a “durable medium” for reproducing the original document.  
**EFFECTIVE DATE:** July 1, 1993

#### *History*

Georgia has long recognized the business records exception to the Best Evidence Rule whereby copies of business records are admissible as though they were the originals.<sup>1</sup> Traditionally, Georgia courts have required that the reproduction submitted for evidence be made “in the regular course of business” so that such reproductions were admissible without even accounting for the original or its whereabouts.<sup>2</sup> In 1991, the Georgia General Assembly amended Code section 24-5-26 to include “[a]ny . . . nonerasable optical image.”<sup>3</sup>

The new language was added to provide for the admissibility of microfilm and microfiche, especially those of old courthouse records which were too fragile to be handled without damaging them.<sup>4</sup>

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1. O.C.G.A. § 24-5-26 (1950); *Beene v. State*, 415 S.E.2d 545 (Ga. Ct. App. 1992); *Hendricks v. State*, 368 S.E.2d 181 (Ga. Ct. App. 1988).

2. *Knudsen v. Duffee-Freeman, Inc.*, 99 S.E.2d 370 (Ga. Ct. App. 1957).

3. 1991 Ga. Laws 787 (formerly found at O.C.G.A. § 24-5-26 (1991)).

4. Telephone Interview with Sen. Sonny Perdue, Senate District No. 18 (June 3, 1993) [hereinafter *Perdue Interview*]. Sen. Perdue explained that local courthouses had difficulty with court records being handled when they were fragile due to age. *Id.* The records were placed on microfilm and microfiche so that they could be reproduced for use by the courts. *Id.*

Microfilm and microfiche had been held admissible by Georgia courts prior to the introduction of the bill, but the support of statutory language solidified their admissibility.<sup>5</sup>

### *SB 244*

The Act amends the business records exception to the Georgia Best Evidence Rule by changing the requirements set forth in Code section 24-5-26.<sup>6</sup> This section provides for the admissibility into evidence of reproductions of business records where such reproductions are made "in the regular course of business" and are of a certain quality, specifically, any type of optical image reproduction, including, but not limited to, photographs, microfilms, and photocopies.<sup>7</sup>

The availability of the original does not affect admissibility under the Code section, except that the reproduction must be sufficiently accurate or constitute a medium for reproducing the original.<sup>8</sup> In cases where the reproduction is a facsimile or enlargement, the original must be available to the court upon request.<sup>9</sup>

The Act adds a new aspect to the Code section by requiring that the reproduction "accurately reproduce or form a durable medium for reproducing the original" for the reproduction itself to be admissible without accounting for the original.<sup>10</sup> Microfilm and microfiche would fit this description.<sup>11</sup>

The Act also deletes certain language from the previous Code section to broaden the scope of its application: the language "or nonerasable optical image" is replaced by "or optical image,"<sup>12</sup> thereby including within the exception's reach an erasable reproduction. Consistent with this change is the deletion of the requirement that the reproduction be permanent.<sup>13</sup> The reason for this deletion seems to be to accommodate the wider or broader admissibility of computer-generated evidence which is by its nature not permanent or nonerasable, but nevertheless is the only mode for reproducing data stored on computer.<sup>14</sup>

5. *Id.*; see, e.g., *Speir v. Nicholson*, 414 S.E.2d 533 (Ga. Ct. App. 1992) (holding that microfiche is admissible as evidence).

6. O.C.G.A. § 24-5-26 (Supp. 1993).

7. *Id.*; see also 1945-47 Op. Att'y Gen. p. 286; 1973 Op. Att'y Gen. 73-91.

8. O.C.G.A. § 24-5-26 (Supp. 1993).

9. *Id.*

10. *Id.*

11. Perdue Interview, *supra* note 4. This proposition is supported by decisions of the Georgia Attorney General. 1973 Op. Att'y Gen. No. 73-91.

12. O.C.G.A. § 24-5-26 (Supp. 1993).

13. Compare *id.* with 1991 Ga. Laws 787 (formerly found at O.C.G.A. § 24-5-26 (1991)).

14. Although Sen. Perdue denies that the legislation was enacted to provide for the admissibility of computer-generated evidence, he did not refute the possibility that the

After SB 244 was passed in the Senate, two members of the House attempted to add a section to the bill regarding the creation of a "psychotherapist-patient privilege" in Georgia.<sup>15</sup> The proposed amendment gave "privileged" status to communications between a patient and any person acting under the direction of a licensed psychiatrist.<sup>16</sup>

The motivation behind the amendment arose from concerns of local hospitals regarding conversations which mental patients were having with staff members such as nurses who administered care basic to psychiatric treatment. However, not all of the staff of the hospital was under the direction of the attending psychiatric physician.<sup>17</sup> Psychiatric patients and hospital staff were being subpoenaed to testify regarding these conversations, many of which contained incriminating or confidential information.<sup>18</sup> However, the amendment was dropped.<sup>19</sup>

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admissibility of such evidence may be affected by the Act. Perdue Interview, *supra* note 4. See generally Gordon H. Miller, *The Admissibility of Computer-Generated Evidence in Georgia*, 18 GA. ST. B.J. 137 (1982).

15. SB 244 (HFA), 1993 Ga. Gen. Assem.

16. *Id.*

17. Telephone Interview with Rep. John W. Hammond, House District No. 32 (June 2, 1993).

18. *Id.* Rep. Hammond explained that many patients were unable to distinguish between a hospital staff worker and a worker under the direction of the attending physician. *Id.* This legislation was notable because it gave a communication privilege to those considered to be most vulnerable and least likely to be aware of their rights. *Id.*

19. SB 244 (HFA), 1993 Ga. Gen. Assem. Rep. Hammond explained that the amendment was not considered germane to the best evidence portion of the bill, and members of the Trial Lawyers' lobby were unhappy with the amendment as they wanted to be sure that the protected communication was between only the patient and the staff of the attending physician, and not any person who communicated with the patient during the course of treatment. *Id.*