Rule 236. Admission of Business Records in Evidence

(a) Any writing or record, whether in the form of any entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility. The term "business," as used in this rule, includes business, profession, occupation, and calling of every kind.

(b) Although police accident reports may otherwise be admissible in evidence under the law, subsection (a) of this rule does not allow such writings to be admitted as a record or memorandum made in the regular course of business.

Amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992.

Committee Comments

Paragraph (a)

Paragraph (a) of this rule is a revision without change in substance of subsection 1732(a) of title 28 of the United States Code, generally known as the Federal Business Records Act. This act reflects the modern approach to the admissibility of business records as evidence.

As early as the 1600's the common law had developed as an exception to the hearsay rule the practice of admitting shopbooks in evidence, whether kept by the party himself or a clerk, and whether the entrant was living or dead. The custom was abused, however, and was restricted by statute in 1609. Colonial practice in this country adopted the limitations on the exception, and these historical boundaries have continued to restrict the admission of business records in many States until modern times. (5 Wigmore, Evidence 346, 347-61 (3d ed. 1940).) "The gross result," Professor Wigmore declares, "is a mass of technicalities which serve no useful purpose in getting at the truth." 5 Wigmore, Evidence 346, 361 (3d ed. 1940).

In 1927 the Commonwealth Fund of New York appointed a committee of experts to restate the law in the form of a single rule, broad and flexible enough to correspond to contemporary business practices, while safeguarding fundamental requirements. The result was a model act similar in substance to paragraph (a) of Rule 236. In 1936 the National Conference of Commissioners on Uniform State Laws approved a recommended uniform act on business records, which revised the 1927 rule. On the basis of this revised proposal, Congress adopted subsection 1732(a) of title 28 of the United States Code on June 20, 1936.

In Illinois, the trend has been similar. In *People v. Small*, 319 Ill. 437, 477, 150 N.E. 435 (1926), the Supreme Court held bank records admissible on the basis of a foundation laid by the officers in charge of the records, stating, "The business of this great commercial country is transacted on records kept in the usual course of business and vouched for by the supervising officer, and such evidence ought to be competent in a court of justice. Modern authority sustains

this view."

The municipal court of Chicago adopted the principles of the rule prepared by the Commonwealth Fund of New York as Municipal Court Rule 70. Later the municipal court modified the rule by following the language of 28 U.S.C. §1732(a). In *Secco v. Chicago Transit Authority*, 6 Ill. App. 2d 266, 269-70, 127 N.E.2d 266 (1955), Rule 70 was held valid, with the following comments (6 Ill. App. 2d 266, 269-70):

> "Rule 70's general purpose is to liberalize the rules of evidence pertaining to regular business entries. (*Bell v. Bankers Life & Casualty Co.*, 327 Ill. App. 321 (1945).) Abandoned are the anachronisms of an older day whose influence is felt even today in many of those jurisdictions which have legislatively adopted Rule 70. It was intended to make unnecessary the original entrants' production at the trial because of their numbers or anonymity, or for reasons which made their production impracticable. It was also intended to make unnecessary the production of the original entrant although he alone and without the aid of others made the entries. The routine character of a business is reflected in its records accumulating instance upon instance of some particular transaction or event, and because of this it was felt that the original entrant would have no present recollection of the various details lost within the mass of recorded entries. *** It was intended to be sufficient, if the custodian of the records or some person familiar with the business and its mode of operation, would testify at the trial as to the manner in which the record was prepared, the objective being that the principle of an absent witness' unavailability should not be applied with identical logical narrowness of an earlier day, and to bring it nearer to standards accepted in reasonable action outside the courts. 5 Wigmore on Evidence (3d ed. 1940) p. 391."

The language of paragraph (a) of Rule 236 is that of the Federal statute and Chicago municipal court rule with only minor language changes. The committee believes that it is desirable to retain this often-interpreted language without substantial change in the interest of having established judicial construction to work with.

A portion of the Federal statute (28 U.S.C. §1732(b)) is a provision permitting the retention of microfilm records in lieu of the originals, which is a desirable complement to the Business Records Act. However, it is not included in Rule 236 because this subject is already covered by the Evidence Act (Ill. Rev. Stat. 1965, ch. 51, par. 3).

Paragraph (b)

Paragraph (b) of Rule 236 provides that the law governing admissibility of police accident reports is not affected by this rule. The rule was amended in 1992 to allow medical records to be treated as any other business record under paragraph (a).