



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1437

Introduced 2/13/2019, by Sen. Jil Tracy

SYNOPSIS AS INTRODUCED:

735 ILCS 5/Art. VIII Pt. 29 heading new
735 ILCS 5/8-2901 new
735 ILCS 5/8-2902 new
735 ILCS 5/8-2903 new
735 ILCS 5/8-2904 new
735 ILCS 5/8-2905 new
735 ILCS 5/8-2906 new
735 ILCS 5/8-2907 new
735 ILCS 5/8-2908 new
735 ILCS 5/8-2909 new
735 ILCS 5/8-2910 new

Amends the Code of Civil Procedure. Provides limitations upon a non-expert's opinion or inference testimony. Sets forth requirements regarding: qualifications, testimony, disclosure, and compensation of expert witnesses; bases of expert opinion testimony; limitations on expert testimony; pretrial hearings and disclosures concerning expert witnesses; precedents to be followed in interpreting the new provisions; interlocutory appeals of rulings on the admissibility of expert evidence; standards to be followed by reviewing courts in determining the admissibility of expert testimony; and severability. Provides that the new provisions apply to actions commenced on or after the effective date of the amendatory Act and pending actions in which a trial has not been scheduled or in which a trial has been scheduled more than 90 days after the effective date of the amendatory Act. Effective immediately.

LRB101 06110 LNS 51131 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 Part 29 to Article VIII as follows:

6 (735 ILCS 5/Art. VIII Pt. 29 heading new)

7 Part 29. Expert Testimony

8 (735 ILCS 5/8-2901 new)

9 Sec. 8-2901. Opinion testimony by lay witnesses. If the
10 witness is not testifying as an expert, the testimony of the
11 witness in the form of opinions or inferences is limited to
12 those opinions or inferences which are (i) rationally based on
13 the perception of the witness; (ii) helpful to a clear
14 understanding of the testimony of the witness or the
15 determination of a fact in issue; and (iii) not based on
16 scientific, technical, or other specialized knowledge within
17 the scope of Section 8-2903 of this Code.

18 (735 ILCS 5/8-2902 new)

19 Sec. 8-2902. Testimony by experts. If scientific,
20 technical, or other specialized knowledge will assist the trier
21 of fact to understand the evidence or to determine a fact in

1 issue, a witness qualified as an expert by knowledge, skill,
2 experience, training, or education may testify in the form of
3 an opinion or otherwise, if (i) the testimony is based upon
4 sufficient facts or data; (ii) the testimony is the product of
5 reliable principles and methods; and (iii) the witness has
6 applied the principles and methods reliably to the facts of the
7 case.

8 (735 ILCS 5/8-2903 new)

9 Sec. 8-2903. Bases of expert opinion testimony. The facts
10 or data in the particular case upon which an expert bases an
11 opinion or inference may be those perceived by or made known to
12 the expert at or before the hearing. If of a type reasonably
13 relied upon by experts in the particular field in forming
14 opinions or inferences upon the subject, the facts or data need
15 not be admissible in evidence in order for the opinion or
16 inference to be admitted. Facts or data that are otherwise
17 inadmissible shall not be disclosed to the jury by the
18 proponent of the opinion or inference, unless the court
19 determines that the probative value in assisting the jury to
20 evaluate the expert's opinion substantially outweighs the
21 prejudicial effect.

22 (735 ILCS 5/8-2904 new)

23 Sec. 8-2904. Bars to expert testimony.

24 (a) A witness qualified as an expert by knowledge, skill,

1 experience, training, or education may offer expert testimony
2 only with respect to a particular field in which the expert is
3 qualified.

4 (b) An expert witness may receive a reasonable and
5 customary fee for the rendering of professional services;
6 however, the testimony of an expert witness shall not be
7 admitted if any compensation is contingent on the outcome of a
8 claim or case with respect to which the testimony is being
9 offered.

10 (735 ILCS 5/8-2905 new)

11 Sec. 8-2905. Mandatory pretrial hearing. If the witness is
12 testifying as an expert, then upon motion of a party, the court
13 shall hold a pretrial hearing to determine whether the witness
14 qualifies as an expert and whether the expert's testimony
15 satisfies the requirements of Sections 8-2902, 8-2903, and
16 8-2904 of this Code. The court shall allow sufficient time for
17 a hearing and shall rule on the qualifications of the witness
18 to testify as an expert and whether the testimony satisfies the
19 requirements of Sections 8-2902, 8-2903, and 8-2904 of this
20 Code. The hearing and ruling shall be completed no later than
21 the final pretrial hearing. The trial court's ruling shall set
22 forth the findings of fact and conclusions of law upon which
23 the order to admit or exclude expert evidence is based.

24 (735 ILCS 5/8-2906 new)

1 Sec. 8-2906. Mandatory pretrial disclosure of expert
2 testimony.

3 (a) Regardless of whether any party elects to request a
4 pretrial hearing under Section 8-2905 of this Code, each party
5 shall disclose to the other parties the identity of any person
6 who may be used at trial to present expert evidence.

7 (b) Except as otherwise stipulated or directed by the
8 court, disclosure under this Section shall, with respect to a
9 witness who is retained or specially employed to provide expert
10 testimony in the case or whose duties as an employee of the
11 party regularly involve giving expert testimony, be
12 accompanied by a written report prepared and signed by the
13 witness. The report shall contain a complete statement of all
14 opinions to be expressed and the basis and reasons for each;
15 the data or other information considered by the witness in
16 forming the opinions; any exhibits to be used as a summary of
17 or support for the opinions; the qualifications of the witness,
18 including a list of all publications authored by the witness
19 within the preceding 10 years; the compensation to be paid for
20 the study and testimony; and a listing of any other cases in
21 which the witness has testified as an expert at trial or by
22 deposition within the preceding 4 years.

23 (c) Disclosures under this Section shall be made at the
24 times and in the sequence directed by the court. In the absence
25 of other directions from the court or stipulation by the
26 parties, the disclosures shall be made at least 90 days before

1 the trial date or the date the case is to be ready for trial or,
2 if the evidence is intended solely to contradict or rebut
3 evidence on the same subject matter identified by another party
4 under subsection (b), within 30 days after the disclosure made
5 by the other party.

6 (d) A party may depose any person who has been identified
7 as an expert whose opinions may be presented at trial. If a
8 report from the expert is required under paragraph (b), the
9 deposition shall not be conducted until after the report is
10 provided.

11 (735 ILCS 5/8-2907 new)

12 Sec. 8-2907. Interpretation. In interpreting and applying
13 this Part, the courts of this State shall follow the opinions
14 of the United States Supreme Court in Daubert v. Merrell Dow
15 Pharmaceuticals, Inc., 509 U.S. 579 (1993), General Electric
16 Co. v. Joiner, 522 U.S. 136 (1997), Kumho Tire Co. Ltd. v.
17 Carmichael, 526 U.S. 137 (1999), Weisgram v. Marley, 528 U.S.
18 440 (2000), and their progeny; moreover, the courts of this
19 State may draw from other precedents applying the standards
20 announced by the United States Supreme Court in the foregoing
21 cases and binding in the federal courts of this State.

22 (735 ILCS 5/8-2908 new)

23 Sec. 8-2908. Interlocutory appeal. Interlocutory appeal of
24 a ruling on the admissibility of expert evidence shall be

1 available at the discretion of the appellate court. In deciding
2 whether to grant the interlocutory appeal, the court shall
3 consider whether: (i) the ruling involved any challenge to the
4 constitutionality of this Part; (ii) the ruling will help prove
5 or disprove criminal liability; or (iii) the ruling will help
6 establish civil liability at or above \$75,000, where the
7 testimony could be outcome-determinative for establishing
8 liability or determining damages. Neither a party's failure to
9 seek interlocutory appeal nor an appellate court's decision to
10 deny a motion for interlocutory appeal shall waive a party's
11 right to appeal a ruling on the admissibility of expert
12 evidence after an entry of judgment in the case.

13 (735 ILCS 5/8-2909 new)

14 Sec. 8-2909. Standard of review.

15 (a) The proper construction of the expert evidence
16 admissibility framework under this Part is a question of law;
17 therefore, the reviewing court shall apply a de novo standard
18 of review in determining whether the trial court fully applied
19 the proper legal standard in considering the admissibility of
20 expert evidence.

21 (b) The application of this Part to determine the
22 admissibility of expert testimony is a question of fact;
23 therefore, the reviewing court shall apply an abuse of
24 discretion standard in determining whether the trial court
25 properly admitted or excluded particular expert evidence.

1 (735 ILCS 5/8-2910 new)

2 Sec. 8-2910. Application. This Part applies to all actions
3 commenced on or after the effective date of this amendatory Act
4 of the 101st General Assembly and to all pending actions in
5 which trial has not been scheduled or in which trial has been
6 scheduled in excess of 90 days after the effective date of this
7 amendatory Act of the 101st General Assembly.

8 Section 97. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.