



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4983

Introduced 1/20/2006, by Rep. Renee Kosel

SYNOPSIS AS INTRODUCED:

735 ILCS 5/Art. VIII Pt. 28 heading new
735 ILCS 5/8-2801 new
735 ILCS 5/8-2802 new
735 ILCS 5/8-2803 new
735 ILCS 5/8-2804 new
735 ILCS 5/8-2805 new
735 ILCS 5/8-2806 new
735 ILCS 5/8-2807 new
735 ILCS 5/8-2808 new
735 ILCS 5/8-2809 new
735 ILCS 5/8-2810 new

Amends the Code of Civil Procedure. Provides that a non-expert's opinion or inference testimony is limited to opinions or inferences that are rationally based on his or her perception, helpful to a clear understanding of his or her testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge. Sets forth requirements regarding: qualifications, testimony, disclosure, and compensation of expert witnesses; bases of expert opinion testimony; limitations on expert testimony; pre-trial 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; severability; and other matters. Applies 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.

LRB094 18983 WGH 54455 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 28 to Article VIII as follows:

6 (735 ILCS 5/Art. VIII Pt. 28 heading new)

7 Part 28. Reliability in Expert Testimony Standards

8 (735 ILCS 5/8-2801 new)

9 Sec. 8-2801. Opinion testimony by lay witnesses. If the
10 witness is not testifying as an expert, the witness' testimony
11 in the form of opinions or inferences is limited to those
12 opinions or inferences which are (a) rationally based on the
13 perception of the witness, (b) helpful to a clear understanding
14 of the witness' testimony or the determination of a fact in
15 issue, and (c) not based on scientific, technical, or other
16 specialized knowledge within the scope of Section 8-2803.

17 (735 ILCS 5/8-2802 new)

18 Sec. 8-2802. Testimony by experts. If scientific,
19 technical, or other specialized knowledge will assist the trier
20 of fact to understand the evidence or to determine a fact in
21 issue, a witness qualified as an expert by knowledge, skill,
22 experience, training, or education may testify thereto in the
23 form of an opinion or otherwise, if (a) the testimony is based
24 upon sufficient facts or data, (b) the testimony is the product
25 of reliable principles and methods, and (c) the witness has
26 applied the principles and methods reliably to the facts of the
27 case.

28 (735 ILCS 5/8-2803 new)

29 Sec. 8-2803. Bases of expert opinion testimony. The facts

1 or data in the particular case upon which an expert bases an
2 opinion or inference may be those perceived by or made known to
3 the expert at or before the hearing. If of a type reasonably
4 relied upon by experts in the particular field in forming
5 opinions or inferences upon the subject, the facts or data need
6 not be admissible in evidence in order for the opinion or
7 inference to be admitted. Facts or data that are otherwise
8 inadmissible shall not be disclosed to the jury by the
9 proponent of the opinion or inference unless the court
10 determines that their probative value in assisting the jury to
11 evaluate the expert's opinion substantially outweighs their
12 prejudicial effect.

13 (735 ILCS 5/8-2804 new)

14 Sec. 8-2804. Bars to expert testimony.

15 (a) A witness qualified as an expert by knowledge, skill,
16 experience, training, or education may only offer expert
17 testimony with respect to a particular field in which the
18 expert is qualified.

19 (b) An expert witness may receive a reasonable and
20 customary fee for the rendering of professional services,
21 provided that the testimony of an expert witness shall not be
22 admitted if any such compensation is contingent on the outcome
23 of any claim or case with respect to which the testimony is
24 being offered.

25 (735 ILCS 5/8-2805 new)

26 Sec. 8-2805. Mandatory pre-trial hearing. If the witness is
27 testifying as an expert, then upon motion of a party, the court
28 shall hold a pre-trial hearing to determine whether the witness
29 qualifies as an expert and whether the expert's testimony
30 satisfies the requirements of Sections 8-2802, 8-2803, and
31 8-2804. The court shall allow sufficient time for a hearing and
32 shall rule on the qualifications of the witness to testify as
33 an expert and whether or not the testimony satisfies the
34 requirements of Sections 8-2802, 8-2803, and 8-2804. Such

1 hearing and ruling shall be completed no later than the final
2 pre-trial hearing. The trial court's ruling shall set forth the
3 findings of fact and conclusions of law upon which the order to
4 admit or exclude expert evidence is based.

5 (735 ILCS 5/8-2806 new)

6 Sec. 8-2806. Mandatory pre-trial disclosure of expert
7 testimony.

8 (a) Whether or not any party elects to request a pre-trial
9 hearing contemplated in Section 8-2805, all parties shall
10 disclose to other parties the identity of any person who may be
11 used at trial to present expert evidence.

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

28 (c) These disclosures shall be made at the times and in the
29 sequence directed by the court. In the absence of other
30 directions from the court or stipulation by the parties, the
31 disclosures shall be made at least 90 days before the trial
32 date or the date the case is to be ready for trial or, if the
33 evidence is intended solely to contradict or rebut evidence on
34 the same subject matter identified by another party under
35 paragraph (b), within 30 days after the disclosure made by the

1 other party.

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

7 (735 ILCS 5/8-2807 new)

8 Sec. 8-2807. Interpretation. In interpreting and applying
9 this Act, the courts of this State shall follow the opinions of
10 the Supreme Court of the United States in Daubert v. Merrell
11 Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), General
12 Electric Co. v. Joiner, 522 U.S. 136 (1997), Kumho Tire Co.
13 Ltd. v. Carmichael, 526 U.S. 137 (1999), Weisgram v. Marley,
14 528 U.S. 440 (2000), and their progeny; moreover, the courts of
15 this State may draw from other precedents binding in the
16 federal courts of this State applying the standards announced
17 by the Supreme Court of the United States in the foregoing
18 cases.

19 (735 ILCS 5/8-2808 new)

20 Sec. 8-2808. Interlocutory appeal. Interlocutory appeal of
21 a ruling on the admissibility of expert evidence shall be
22 available at the discretion of the appellate court. In deciding
23 whether to grant the interlocutory appeal, the court shall
24 consider whether: (i) the ruling involved any challenge to the
25 constitutionality of this Act; (ii) the ruling will help prove
26 or disprove criminal liability; or (iii) the ruling will help
27 establish civil liability at or above \$75,000, where the
28 testimony could be outcome-determinative for establishing
29 liability or determining damages. Neither a party's failure to
30 seek interlocutory appeal nor an appellate court's decision to
31 deny a motion for interlocutory appeal shall waive a party's
32 right to appeal a ruling on the admissibility of expert
33 evidence after an entry of judgment in the case.

1 (735 ILCS 5/8-2809 new)

2 Sec. 8-2809. Standard of review.

3 (a) As the proper construction of the expert evidence
4 admissibility framework prescribed by this Act is a question of
5 law, the reviewing court shall apply a de novo standard of
6 review in determining whether the trial court fully applied the
7 proper legal standard in considering the admissibility of
8 expert evidence.

9 (b) As the application of this Act to determine the
10 admissibility of expert testimony is a question of fact, the
11 reviewing court shall apply an abuse of discretion standard in
12 determining whether the trial court properly admitted or
13 excluded particular expert evidence.

14 (735 ILCS 5/8-2810 new)

15 Sec. 8-2810. Application. This Part applies to all actions
16 commenced on or after the effective date of this amendatory Act
17 of the 94th General Assembly and to all pending actions in
18 which trial has not been scheduled or in which trial has been
19 scheduled in excess of 90 days after the effective date of this
20 amendatory Act of the 94th General Assembly.

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.