



## 98TH GENERAL ASSEMBLY

### State of Illinois

#### 2013 and 2014

##### HB2221

by Rep. Dwight Kay

#### 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; 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; and severability. 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.

LRB098 05536 HEP 35573 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 only offer expert  
2 testimony with respect to a particular field in which the  
3 expert is qualified.

4 (b) An expert witness may receive a reasonable and  
5 customary fee for the rendering of professional services,  
6 provided that 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 pre-trial hearing. If the witness is  
12 testifying as an expert, then upon motion of a party, the court  
13 shall hold a pre-trial 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 pre-trial 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 pre-trial disclosure of expert  
2 testimony.

3       (a) Whether or not any party elects to request a pre-trial  
4 hearing under Section 8-2905 of this Code, each party shall  
5 disclose to the other parties the identity of any person who  
6 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 98th 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 98th 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.