

FIRST REGULAR SESSION

# HOUSE BILL NO. 1021

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE STEVENSON.

Read 1st time March 1, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2537L.01I

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### AN ACT

To amend chapter 490, RSMo, by adding thereto one new section relating to the reliability of expert witness testimony.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 490, RSMo, is amended by adding thereto one new section, to be known as section 490.066, to read as follows:

**490.066. 1. This act may be known and cited as the "Reliability in Expert Testimony Standards Act".**

**2. If a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:**

**(1) Rationally based on the perception of the witness;**

**(2) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and**

**(3) Not based on scientific, technical, or other specialized knowledge within the scope of subsection 3 of this section.**

**3. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:**

**(1) The testimony is based upon sufficient facts or data;**

**(2) The testimony is the product of reliable principles and methods; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           **(3) The witness has applied the principles and methods reliably to the facts of the**  
17 **case.**

18           **4. The facts or data in the particular case upon which an expert bases an opinion**  
19 **or inference may be those perceived by or made known to the expert at or before the**  
20 **hearing. If of a type reasonably relied upon by experts in the particular field in forming**  
21 **opinions or inferences upon the subject, the facts or data need not be admissible in**  
22 **evidence in order for the opinion or inference to be admitted. Facts or data that are**  
23 **otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion**  
24 **or inference unless the court determines that their probative value in assisting the jury to**  
25 **evaluate the expert's testimony substantially outweighs their prejudicial effect.**

26           **5. A witness qualified as an expert by knowledge, skill, experience, training, or**  
27 **education may only offer expert testimony with respect to a particular field in which the**  
28 **expert is qualified. An expert witness may receive a reasonable and customary fee for the**  
29 **rendering of professional services, provided that the testimony of an expert witness shall**  
30 **not be admitted if any such compensation is contingent on the outcome of any claim or case**  
31 **with respect to which the testimony is being offered.**

32           **6. If the witness is testifying as an expert, then upon motion of a party, the court**  
33 **shall hold a pre-trial hearing to determine whether the witness qualifies as an expert and**  
34 **whether the expert's testimony satisfies the requirements of subsections 3 to 5 of this**  
35 **section. The court shall allow sufficient time for a hearing and shall rule on the**  
36 **qualifications of the witness to testify as an expert and whether or not the testimony**  
37 **satisfies the requirements of subsections 3 to 5 of this section. Such hearing and ruling**  
38 **shall be completed no later than the final pretrial hearing. The trial court's ruling shall**  
39 **set forth the findings of fact and conclusions of law upon which the order to admit or**  
40 **exclude expert evidence is based.**

41           **7. (1) Whether or not any party elects to request a pretrial hearing as described**  
42 **in subsection 6 of this section, all parties shall disclose to other parties the identity of any**  
43 **person who may be used at trial to present expert evidence.**

44           **(2) Except as otherwise stipulated or directed by the court, this disclosure shall,**  
45 **with respect to a witness who is retained or specially employed to provide expert testimony**  
46 **in the case or whose duties as an employee of the party regularly involve giving expert**  
47 **testimony, be accompanied by a written report prepared and signed by the witness. The**  
48 **report shall contain a complete statement of all opinions to be expressed and the basis and**  
49 **reasons therefor; the data or other information considered by the witness in forming the**  
50 **opinions; any exhibits to be used as a summary of or support for the opinions, the**  
51 **qualifications of the witness, including a list of all publications authored by the witness**

52 within the preceding ten years; the compensation to be paid for the study and testimony;  
53 and a listing of any other cases in which the witness has testified as an expert at trial or by  
54 deposition within the preceding four years.

55 (3) These disclosures shall be made at the times and in the sequence directed by the  
56 court. In the absence of other directions from the court or stipulation by the parties, the  
57 disclosures shall be made at least ninety days before the trial or the date the case is to be  
58 ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the  
59 same subject matter identified by another party under subdivision (2) of this subsection,  
60 within thirty days after the disclosure made by the other party.

61 (4) A party may depose any person who has been identified as an expert whose  
62 opinions may be presented at trial. If a report from the expert is required under  
63 subdivision (2) of this subsection, the deposition shall not be conducted until after the  
64 report is provided.

65 8. In interpreting and applying this section, the courts of this state shall follow the  
66 opinions of the Supreme Court of the United States in *Daubert v. Merrell Dow*  
67 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136  
68 (1997), *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999), *Weisgram v. Marley*, 528  
69 U.S. 440 (2000), and their progeny; moreover, the courts of this state may draw from other  
70 precedents binding in the federal courts of this state applying the standards announced by  
71 the Supreme Court of the United States in the aforementioned cases.

72 9. Interlocutory appeal of a ruling on the admissibility of expert evidence shall be  
73 available at the discretion of the appellate court. In deciding whether to grant the  
74 interlocutory appeal, the court shall consider whether:

75 (1) The ruling involved any challenge to the constitutionality of this section;

76 (2) The ruling will help prove or disprove criminal liability; or

77 (3) The ruling will help establish civil liability at or above seventy-five thousand  
78 dollars, where the testimony could be outcome-determinative for establishing liability or  
79 determining damages. Neither a party's failure to seek interlocutory appeal nor an  
80 appellate court's decision to deny a motion for interlocutory appeal shall waive a party's  
81 right to appeal a ruling on the admissibility of expert evidence after an entry of judgment  
82 in the case.

83 10. As the proper construction of the expert evidence admissibility framework  
84 prescribed by this section is a question of law, the courts of appeals shall apply a de novo  
85 standard of review in determining whether the trial court fully applied the proper legal  
86 standard in considering the admissibility of expert evidence. As the application of this  
87 section to determine the admissibility of expert testimony is a question of fact, the courts

88 of appeals shall apply an abuse of discretion standard in determining whether the trial  
89 court properly admitted or excluded particular expert evidence.

90       **11. The provisions of this section are severable. If any portion of this section is**  
91 **declared unconstitutional or the application of any part of this section to any person or**  
92 **circumstance is held invalid, the remaining portions of this section and their applicability**  
93 **to any person or circumstance shall remain valid and enforceable.**

94       **12. This section shall apply to all actions commenced on or after August 28, 2007,**  
95 **and to all pending actions in which the trial has not been scheduled or in which trial has**  
96 **been scheduled in excess of ninety days after August 28, 2007.**

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