

SECOND REGULAR SESSION

# HOUSE BILL NO. 2255

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOVIS.

4954H.01I

JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal section 490.065, RSMo, and to enact in lieu thereof one new section relating to expert witnesses.

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

Section A. Section 490.065, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 490.065, to read as follows:

490.065. 1. In actions brought under chapter 451, 452, 453, 454, or 455 or in actions adjudicated in juvenile courts under chapter 211 or in family courts under chapter 487, or in all proceedings before the probate division of the circuit court, or in all actions or proceedings in which there is no right to a jury trial:

(1) 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;

(2) Testimony by such an expert witness in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact;

(3) The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable;

(4) If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, unless the

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.

18 court believes the use of a hypothetical question will make the expert's opinion more  
19 understandable or of greater assistance to the jury due to the particular facts of the case.

20 2. In all actions except those to which subsection 1 of this section applies:

21 (1) A witness who is qualified as an expert by knowledge, skill, experience, training,  
22 or education may testify in the form of an opinion or otherwise if **the proponent**  
23 **demonstrates to the court that it is more likely than not that:**

24 (a) The expert's scientific, technical, or other specialized knowledge will help the trier  
25 of fact to understand the evidence or to determine a fact in issue;

26 (b) The testimony is based on sufficient facts or data;

27 (c) The testimony is the product of reliable principles and methods; and

28 (d) The ~~[expert has reliably applied]~~ **expert's opinion reflects a reliable application**  
29 **of the principles and methods to the facts of the case;**

30 (2) An expert may base an opinion on facts or data in the case that the expert has been  
31 made aware of or personally observed. If experts in the particular field would reasonably rely  
32 on those kinds of facts or data in forming an opinion on the subject, they need not be  
33 admissible for the opinion to be admitted. But if the facts or data would otherwise be  
34 inadmissible, the proponent of the opinion may disclose them to the jury only if their  
35 probative value in helping the jury evaluate the opinion substantially outweighs their  
36 prejudicial effect;

37 (3) (a) An opinion is not objectionable just because it embraces an ultimate issue.

38 (b) In a criminal case, an expert witness shall not state an opinion about whether the  
39 defendant did or did not have a mental state or condition that constitutes an element of the  
40 crime charged or of a defense. Those matters are for the trier of fact alone;

41 (4) Unless the court orders otherwise, an expert may state an opinion and give the  
42 reasons for it without first testifying to the underlying facts or data. But the expert may be  
43 required to disclose those facts or data on cross-examination.

44 3. The provisions of this section shall not prevent a person, partnership, association,  
45 or corporation, as owner, from testifying as to the reasonable market value of the owner's  
46 land.