



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2892

Introduced 1/20/2006, by Sen. Kirk W. Dillard

#### 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 18780 WGH 54257 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.