



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1965

Introduced 2/20/2009, 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.

LRB096 08748 AJ0 18880 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,

1 experience, training, or education may testify thereto in the  
2 form of an opinion or otherwise, if (a) the testimony is based  
3 upon sufficient facts or data, (b) the testimony is the product  
4 of reliable principles and methods, and (c) the witness has  
5 applied the principles and methods reliably to the facts of the  
6 case.

7 (735 ILCS 5/8-2803 new)

8 Sec. 8-2803. Bases of expert opinion testimony. The facts  
9 or data in the particular case upon which an expert bases an  
10 opinion or inference may be those perceived by or made known to  
11 the expert at or before the hearing. If of a type reasonably  
12 relied upon by experts in the particular field in forming  
13 opinions or inferences upon the subject, the facts or data need  
14 not be admissible in evidence in order for the opinion or  
15 inference to be admitted. Facts or data that are otherwise  
16 inadmissible shall not be disclosed to the jury by the  
17 proponent of the opinion or inference unless the court  
18 determines that their probative value in assisting the jury to  
19 evaluate the expert's opinion substantially outweighs their  
20 prejudicial effect.

21 (735 ILCS 5/8-2804 new)

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

23 (a) A witness qualified as an expert by knowledge, skill,  
24 experience, training, or education may only offer expert

1 testimony with respect to a particular field in which the  
2 expert is qualified.

3 (b) An expert witness may receive a reasonable and  
4 customary fee for the rendering of professional services,  
5 provided that the testimony of an expert witness shall not be  
6 admitted if any such compensation is contingent on the outcome  
7 of any claim or case with respect to which the testimony is  
8 being offered.

9 (735 ILCS 5/8-2805 new)

10 Sec. 8-2805. Mandatory pre-trial hearing. If the witness is  
11 testifying as an expert, then upon motion of a party, the court  
12 shall hold a pre-trial hearing to determine whether the witness  
13 qualifies as an expert and whether the expert's testimony  
14 satisfies the requirements of Sections 8-2802, 8-2803, and  
15 8-2804. The court shall allow sufficient time for a hearing and  
16 shall rule on the qualifications of the witness to testify as  
17 an expert and whether or not the testimony satisfies the  
18 requirements of Sections 8-2802, 8-2803, and 8-2804. Such  
19 hearing and ruling shall be completed no later than the final  
20 pre-trial hearing. The trial court's ruling shall set forth the  
21 findings of fact and conclusions of law upon which the order to  
22 admit or exclude expert evidence is based.

23 (735 ILCS 5/8-2806 new)

24 Sec. 8-2806. Mandatory pre-trial disclosure of expert

1 testimony.

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

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

22 (c) These disclosures shall be made at the times and in the  
23 sequence directed by the court. In the absence of other  
24 directions from the court or stipulation by the parties, the  
25 disclosures shall be made at least 90 days before the trial  
26 date or the date the case is to be ready for trial or, if the

1 evidence is intended solely to contradict or rebut evidence on  
2 the same subject matter identified by another party under  
3 paragraph (b), within 30 days after the disclosure made by the  
4 other party.

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

10 (735 ILCS 5/8-2807 new)

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

22 (735 ILCS 5/8-2808 new)

23 Sec. 8-2808. 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 Act; (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 5/8-2809 new)

14 Sec. 8-2809. Standard of review.

15 (a) As the proper construction of the expert evidence  
16 admissibility framework prescribed by this Act is a question of  
17 law, the reviewing court shall apply a de novo standard of  
18 review in determining whether the trial court fully applied the  
19 proper legal standard in considering the admissibility of  
20 expert evidence.

21 (b) As the application of this Act to determine the  
22 admissibility of expert testimony is a question of fact, the  
23 reviewing court shall apply an abuse of discretion standard in  
24 determining whether the trial court properly admitted or  
25 excluded particular expert evidence.

1 (735 ILCS 5/8-2810 new)

2 Sec. 8-2810. Application. This Part applies to all actions  
3 commenced on or after the effective date of this amendatory Act  
4 of the 96th 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 96th 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.