

SENATE BILL NO. 238

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURGER.

0404S.01I

KRISTINA MARTIN, Secretary

AN ACT

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

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Section A. Section 490.065, RSMo, is repealed and one new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

490.065. 1. In actions brought under chapter 451,
2 452, 453, 454, or 455 or in actions adjudicated in juvenile
3 courts under chapter 211 or in family courts under chapter
4 487, or in all proceedings before the probate division of
5 the circuit court, or in all actions or proceedings in which
6 there is no right to a jury trial:

7 (1) If scientific, technical or other specialized
8 knowledge will assist the trier of fact to understand the
9 evidence or to determine a fact in issue, a witness
10 qualified as an expert by knowledge, skill, experience,
11 training, or education may testify thereto in the form of an
12 opinion or otherwise;

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

17 (3) The facts or data in a particular case upon which
18 an expert bases an opinion or inference may be those

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 perceived by or made known to him at or before the hearing
20 and must be of a type reasonably relied upon by experts in
21 the field in forming opinions or inferences upon the subject
22 and must be otherwise reasonably reliable;

23 (4) If a reasonable foundation is laid, an expert may
24 testify in terms of opinion or inference and give the
25 reasons therefor without the use of hypothetical questions,
26 unless the court believes the use of a hypothetical question
27 will make the expert's opinion more understandable or of
28 greater assistance to the jury due to the particular facts
29 of the case.

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

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

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

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

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

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

46 (2) An expert may base an opinion on facts or data in
47 the case that the expert has been made aware of or
48 personally observed. If experts in the particular field
49 would reasonably rely on those kinds of facts or data in
50 forming an opinion on the subject, they need not be

51 admissible for the opinion to be admitted. But if the facts
52 or data would otherwise be inadmissible, the proponent of
53 the opinion may disclose them to the jury only if their
54 probative value in helping the jury evaluate the opinion
55 substantially outweighs their prejudicial effect;

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

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

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

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

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