

FIRST REGULAR SESSION

# SENATE BILL NO. 200

99TH GENERAL ASSEMBLY

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Pre-filed December 13, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0885S.011

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Section A. Section 490.065, RSMo, is repealed and one new section  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

490.065. 1. In [any civil action,] **actions brought under chapter 451,**  
2 **452, 453, 454, or 455 or in actions adjudicated in juvenile courts under**  
3 **chapter 211 or in family courts under chapter 487 or in all proceedings**  
4 **before the probate division of the circuit court:**

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

9 [2.] (2) Testimony by such an expert witness in the form of an opinion  
10 or inference otherwise admissible is not objectionable because it embraces an  
11 ultimate issue to be decided by the trier of fact[.];

12 [3.] (3) The facts or data in a particular case upon which an expert bases  
13 an opinion or inference may be those perceived by or made known to him at or  
14 before the hearing and must be of a type reasonably relied upon by experts in the  
15 field in forming opinions or inferences upon the subject and must be otherwise  
16 reasonably reliable[.];

17 [4.] (4) If a reasonable foundation is laid, an expert may testify in terms  
18 of opinion or inference and give the reasons therefor without the use of  
19 hypothetical questions, unless the court believes the use of a hypothetical

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

20 question will make the expert's opinion more understandable or of greater  
21 assistance to the jury due to the particular facts of the case.

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

24 **(1) A witness who is qualified as an expert by knowledge, skill,**  
25 **experience, training, or education may testify in the form of an opinion**  
26 **or otherwise if:**

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

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

31 **(c) The testimony is the product of reliable principles and**  
32 **methods; and**

33 **(d) The expert has reliably applied the principles and methods**  
34 **to the facts of the case;**

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

44 **(3) (a) An opinion is not objectionable just because it embraces**  
45 **an ultimate issue;**

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

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

54 **3. In applying the provisions of this chapter, it is the intent of**  
55 **the legislature to uphold the rules of law expressed in Shelby County**  
56 **R-IV School District et al. v. Herman, 392 S.W.2d 609 (Mo. 1965), Casada**

57 v. Hamby Excavating Co., Inc., 575 S.W.2d 851 (Mo. App. 1978), Wood  
58 River Pipeline Co. v. Sommer, 757 S.W.2d 265 (Mo. App. E.D. 2007), and  
59 all cases citing, interpreting, applying, or following these cases  
60 regarding how an owner of real property, while not an expert, is  
61 competent to testify as to the reasonable market value of the owner's  
62 land.

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