

HOUSE BILL No. 2766

By Committee on Judiciary

2-5

9 AN ACT concerning the code for civil procedure; relating to evidence;
10 expert and other testimony; amending K.S.A. 60-456 and 60-457 and
11 repealing the existing sections; also repealing K.S.A. 60-458.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-456 is hereby amended to read as follows: 60-
15 456. (a) If the witness is not testifying as an expert ~~his or her~~, *the* testimony
16 in the form of opinions or inferences is limited to such opinions or infer-
17 ences as the judge finds (a) may be rationally based on the perception of
18 the witness and (b) are helpful to a clearer understanding of ~~his or her~~
19 *the testimony of the witness.*

20 (b) ~~If the witness is testifying as an expert, testimony of the witness~~
21 ~~in the form of opinions or inferences is limited to such opinions as the~~
22 ~~judge finds are (1) based on facts or data perceived by or personally known~~
23 ~~or made known to the witness at the hearing and (2) within the scope of~~
24 ~~the special knowledge, skill, experience or training possessed by the wit-~~
25 ~~ness. If scientific, technical or other specialized knowledge will assist the~~
26 ~~trier of fact to understand the evidence or to determine a fact in issue, a~~
27 ~~witness qualified as an expert by knowledge, skill, experience, training or~~
28 ~~education may testify thereto in the form of an opinion or otherwise if (1)~~
29 ~~the testimony is based upon sufficient facts or data, (2) the testimony is~~
30 ~~the product of reliable principles and methods and (3) the witness has~~
31 ~~applied the principles and methods reliably to the facts of the case.~~

32 (c) Unless the judge excludes the testimony ~~he or she~~, *the judge* shall
33 be deemed to have made the finding requisite to its admission.

34 (d) Testimony in the form of opinions or inferences otherwise ad-
35 missible under this article is not objectionable because it embraces the
36 ultimate issue or issues to be decided by the trier of the fact.

37 Sec. 2. K.S.A. 60-457 is hereby amended to read as follows: 60-457.

38 (a) *If a witness is not testifying as an expert, then the judge may require*
39 *that a witness before testifying in terms of opinion or inference be first*
40 *examined concerning the data upon which the opinion or inference is*
41 *founded.*

42 (b) *If a witness is testifying as an expert, then upon motion of a party,*
43 *the court may hold a pretrial hearing to determine whether the witness*

1 *qualifies as an expert and whether the expert's testimony satisfies the*
2 *requirements of subsection (b) of K.S.A. 60-456, and amendments thereto.*
3 *The court shall allow sufficient time for a hearing. The court shall rule on*
4 *the qualifications of the witness to testify as an expert and whether or not*
5 *the testimony satisfies the requirements of subsection (b) of K.S.A. 60-*
6 *456, and amendments thereto. Such hearing and ruling shall be completed*
7 *no later than the final pretrial conference contemplated under subsection*
8 *(d) of K.S.A. 60-216, and amendments thereto.*

9 New Sec. 3. The facts or data in the particular case upon which an
10 expert bases an opinion or inference may be those perceived by or made
11 known to the expert at or before the hearing or trial. If of a type reason-
12 ably relied upon by experts in the particular field in forming opinions or
13 inferences upon the subject, the facts or data need not be admissible into
14 evidence in order for the opinion or inference to be admitted. Facts or
15 data that are otherwise inadmissible shall not be disclosed to the jury by
16 the proponent of the opinion or inference unless the court determines
17 that their probative value in assisting the jury to evaluate the expert's
18 opinion substantially outweighs the prejudicial effect.

19 Sec. 4. K.S.A. 60-456, 60-457 and 60-458 are hereby repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.