

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 458 (Delegate Bissett. *et al.*)

Judiciary

Evidence - Expert Witness Testimony

This bill requires a court to consider certain factors in determining whether to admit into evidence expert opinion testimony concerning a scientific, technical, or medical matter.

The bill also provides that the testimony of an expert witness who is otherwise qualified to testify may not be admitted if the witness is entitled to receive any compensation contingent on the outcome of the claim.

Fiscal Summary

State Effect: Indeterminate effect on the Judiciary's finances.

Local Effect: Indeterminate.

Small Business Effect: Indeterminate.

Fiscal Analysis

Background: Maryland currently follows the Frye doctrine, pursuant to which a court must determine that a scientific theory is “generally accepted within the relevant scientific community” in order for expert testimony about the theory to be admissible in evidence. Use of the Frye doctrine by federal courts was ended in 1993 by the Supreme Court in the case of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). This bill incorporates elements of the Daubert opinion, effectively providing for a more permissive standard for the admissibility of expert testimony. Under the bill, it would not be necessary for a theory about which expert testimony is offered to be generally accepted within the relevant scientific community. Rather, courts must determine whether the expert's opinion “necessarily follows from a scientific theory developed in accordance with the scientific method”; whether the

theory is generally accepted in the relevant scientific community is one factor bearing on that determination. Other factors that the bill requires courts to consider in determining whether a scientific theory has been developed in accordance with the scientific method are: (1) whether the scientific theory has been or is capable of being experimentally tested and, if so, the results of any experiments conducted; (2) whether the scientific theory and supporting experiments have been published in peer-reviewed literature; and (3) whether the experimental results have been replicated by different laboratories and researchers. A court must also determine that the expert opinion will assist the trier of fact to understand the evidence or to determine a fact in issue.

State Effect: The effect that this evidentiary change would have on the court system is uncertain. The effect could simply be the exchange of one evidentiary standard for another, resulting in no discernible change in the court's workload or caseload. On the other hand, to the extent that litigants (and/or their attorneys) consider the relaxation of the evidentiary standard to be significant enough to warrant filing a case that would not have been filed when the Frye doctrine prevailed, the bill could conceivably prompt an increase in the number of cases filed. The bill could also benefit defendants to the extent that their burden of producing expert testimony is eased. The inquiry that the bill requires courts to engage in could mean more work for courts, although courts already must inquire into certain matters under the Frye standard. Because the bill's impact on the court system would be largely dependent on litigants' perceptions and courts' applications of the new standard, the precise effect of the bill and any accompanying fiscal ramifications cannot be reliably estimated at this time.

An increase in the number of case filings would increase the workload of the circuit courts and the District Court. Consequently, court-related expenditures would increase. The State pays all expenses of the District Court, as well as the compensation for the judges and clerks' office employees of the circuit courts. District Court fee revenue, which goes to the State general fund, would also increase to the extent that case filings increase. The filing fee for a civil case in District Court is currently either \$5 or \$10, depending on the size of the case. Various other fees are also payable during the course of litigation, depending on the nature of the filings in a particular case.

The provision of the bill prohibiting expert witnesses from receiving contingency fees should not result in a significant change from current practice. Attorneys generally do not pay expert witnesses contingency fees, due to ethical considerations.

Local Effect: Expenditures associated with the circuit courts would increase to the extent that case filings increase. The counties and Baltimore City pay most operating and capital expenses of the circuit courts. Circuit court filing fee revenue, which is retained by the local

governments, would also increase. The filing fee for a civil case in circuit court is generally \$90. Various other fees are also payable during the course of litigation, depending on the nature of the filings in a particular case.

The precise impact of the bill on local government finances cannot be reliably estimated at this time.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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