

### ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations- includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

### ALEC's Corporate Board

--in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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### The Reliability in Expert Testimony Standards Act

[Title, enacting clause, et cetera]

Did you know the trade group for the gas industry was a corporate co-chair in 2011?

**Section 1. {Short Title.}** This Act may be known and cited as the Reliability in Expert Testimony Standards Act.

**Section 2. {FRE 701: Opinion Testimony by Lay Witnesses.}** If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of [Section 3].

**Section 3. {FRE 702: Testimony by Experts.}** If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if (a) the testimony is based upon sufficient facts or data, (b) the testimony is the product of reliable principles and methods, and (c) the witness has applied the principles and methods reliably to the facts of the case.

**Section 4. {FRE 703: Bases of Expert Opinion Testimony.}** The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

**Section 5. {Bars to Expert Testimony.}**

(A) A witness qualified as an expert by knowledge, skill, experience, training, or education may only offer expert testimony with respect to a particular field in which the expert is qualified.

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

**Section 6. {Mandatory Pre-trial Hearing.}** If the witness is testifying as an expert, then upon motion of a party, the court shall hold a pre-trial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of [Secs. 3-5]. The court shall allow sufficient time for a hearing and shall rule on the qualifications of the witness to testify as an expert and whether or not the testimony satisfies the requirements of [Secs. 3-5]. Such hearing and ruling shall be completed no later than the Final Pre-trial Hearing contemplated under [Insert relevant section from existing state law here]. The trial court's ruling shall set forth the findings of fact and conclusions of law upon which the order to admit or exclude expert evidence is based.

**Section 7. {FRCP 26(a)(2) and 26(b)(4)(A): Mandatory Pre-trial Disclosure of Expert Testimony.}**

(A) Whether or not any party elects to request a pre-trial hearing contemplated in [Section 6], all parties shall disclose to other parties the identity of any person who may be used at trial to present expert evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and

signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (B), within 30 days after the disclosure made by the other party.

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

**Section 8. {Interpretation.}** In interpreting and applying this Act, the courts of this state shall follow the opinions of the Supreme Court of the United States in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999), *Weisgram v. Marley*, 528 U.S. 440 (2000), and their progeny; moreover, the courts of this state may draw from other precedents binding in the federal courts of this state applying the standards announced by the Supreme Court of the United States in the foregoing cases.

**Section 9. {Interlocutory Appeal.} [OPTIONAL]** Interlocutory appeal of a ruling on the admissibility of expert evidence shall be available at the discretion of the appellate court. In deciding whether to grant the interlocutory appeal, the court shall consider whether: (i) the ruling involved any challenge to the constitutionality of this Act; (ii) the ruling will help prove or disprove criminal liability; or (iii) the ruling will help establish civil liability at or above \$75,000, where the testimony could be outcome-determinative for establishing liability or determining damages. Neither a party's failure to seek interlocutory appeal nor an appellate court's decision to deny a motion for interlocutory appeal shall waive a party's right to appeal a ruling on the admissibility of expert evidence after an entry of judgment in the case.

**Section 10. {Standard of Review.}**

(A) As the proper construction of the expert evidence admissibility framework prescribed by this Act is a question of law, the courts of appeals shall apply a de novo standard of review in determining whether the trial court fully applied the proper legal standard in considering the admissibility of expert evidence.

(B) As the application of this Act to determine the admissibility of expert testimony is a question of fact, the courts of appeals shall apply an abuse of discretion standard in determining whether the trial court properly admitted or excluded particular expert evidence.

**Section 11. {Severability Clause.}** The provisions of this Act are severable. If any portion of this Act is declared unconstitutional or the application of any part of this Act to any person or circumstance is held invalid, the remaining portions of the Act and their applicability to any person or circumstance shall remain valid and enforceable.

**Section 12. {Effective Date.}** This Act shall become effective upon enactment and shall apply to all actions commenced on or after the effective date and to all pending actions in which trial has not been scheduled or in which trial has been scheduled in excess of 90 days after the effective date.

*Originally adopted by the Civil Justice Task Force and approved by the ALEC Board of Directors as the "Common Sense Scientific & Technical Evidence Act" in 2000. Amended at the Spring Task Force Summit, April 30, 2005. Re-approved by the ALEC Board of Directors May, 2005.*

From CMD: This bill incorporates the federal *Daubert* rule regarding the use of expert testimony into state law, making the rule applicable to state courts. This bill is also part of the corporate "Civil Justice" or tort reform agenda. This "model" legislation attempts to have all states follow federal court decisions, favored by corporate defendants, that limit expert testimony and create rights to immediately appeal court rulings about who may testify as an expert.