



To: Senate Committee on Judiciary

From: Travis R. Oller, DC
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Subject: SB 398; Requiring a proponent to demonstrate that it is more likely than not that certain specialized knowledge will help the trier of fact to understand evidence before certain qualified witnesses may testify.

Opponent Testimony

Chairwoman Warren and other members of this committee, I appreciate the opportunity to present written testimony in opposition to SB 398.

Thank you for the opportunity to submit testimony on behalf of the Kansas Chiropractic Association (KCA). KCA represents Doctors of Chiropractic across the state who provide conservative, non-surgical, and non-pharmacological care to Kansas patients. We respectfully submit testimony in opposition to Senate Bill 398.

SB 398 would amend K.S.A. 60-456 by requiring that, before expert testimony may be admitted, the party offering the testimony must demonstrate that it is “*more likely than not*” that the expert’s specialized knowledge will assist the trier of fact. While framed as a procedural change to the rules of evidence, this bill represents a substantive shift that would raise the threshold for admissibility of expert testimony in Kansas courts.

The most significant concern with SB 398 is that it undermines plaintiffs’ rights to fully and fairly present their claims, particularly in civil actions involving injury, healthcare, and professional standards of care. Plaintiffs already bear the burden of proof. Imposing an additional pre-trial evidentiary hurdle makes it more difficult for injured individuals to even reach a jury, regardless of the merits of their case.

This heightened standard disproportionately benefits defendants—especially insurers, large corporations, and institutional actors—who typically have greater financial resources and easier access to repeat expert witnesses. As a result, SB 398 would tilt the playing field away from injured Kansans seeking accountability.

Kansas courts have long recognized an important distinction between gatekeeping (determining whether testimony is relevant and reliable), and fact-finding (determining how persuasive that testimony is).

By requiring judges to determine whether expert testimony is “more likely than not” to assist the trier of fact, SB 398 risks collapsing that distinction. The proposed language invites courts to assess the *weight* and *persuasiveness* of expert testimony at the admissibility stage—functions traditionally reserved for juries after hearing competing evidence.

This represents a meaningful shift in Kansas civil procedure and raises concerns about premature judicial resolution of contested factual issues.

The phrase “more likely than not that the testimony will assist the trier of fact” is not defined in statute and has no clear limiting principles. This ambiguity invites inconsistent rulings across judicial districts, increased pre-trial litigation and evidentiary hearings, and greater uncertainty for litigants and practitioners.

Rather than streamlining litigation, SB 398 is likely to increase costs, delay proceedings, and generate avoidable appeals.

Many healthcare cases—including those involving chiropractic care—depend on expert testimony grounded in clinical judgment and real-world patient care, not solely academic or theoretical models. Doctors of Chiropractic often serve as expert witnesses based on years of hands-on experience treating musculoskeletal injuries, managing conservative care plans, and evaluating patient outcomes.

A heightened admissibility standard risks excluding clinically sound, directly relevant testimony simply because it does not conform to a rigid or insurer-preferred evidentiary framework. This would narrow the range of expert voices available to juries and diminish the value of practical healthcare expertise.

Meeting a higher admissibility threshold will require plaintiffs to incur additional costs—retaining multiple experts, conducting expanded pre-trial hearings, and building extensive evidentiary records before trial. These costs fall most heavily on injured patients, small businesses, rural Kansans, and individuals challenging well-funded defendants.

Justice should not depend on a party’s ability to finance increasingly complex expert battles.

Kansas courts already possess broad authority under existing law to exclude irrelevant, speculative, or unreliable expert testimony. There has been no showing that Kansas judges lack the tools needed to manage expert evidence or that current standards are failing to protect juries from improper testimony.

Absent evidence of a systemic problem, raising the admissibility bar risks excluding legitimate evidence without improving the fairness or integrity of the judicial process.

SB 398 would impede plaintiffs’ rights, shift fact-finding authority away from juries, disadvantage clinically experienced healthcare experts, increase litigation costs, and create uncertainty without addressing a demonstrated problem in Kansas law.

For these reasons, the Kansas Chiropractic Association respectfully urges the Committee to reject SB 398.

Respectfully submitted,
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