



HB 2241

A Bad Bill in Four Parts

VOTE NO

What is Daubert?

In 1993, the US Supreme Court heard a lawsuit (*William Daubert v. Merrell Dow Pharmaceuticals, INC.*) involving two brain damaged children. Both of their mothers had taken an anti-nausea medication called "Bendectin."

The mothers claimed the medicine caused their children's birth defects. The court threw out the case because the evidence submitted by the experts for the families was based on laboratory tests and scientific studies that had not been published in any peer review magazines.

Prior to this case, any expert whose work was based on generally accepted science was allowed into court.

Part 1: No Class Actions for Consumer Fraud

The bill would, for all practical purposes, ban class actions for consumer fraud claims. The bill requirements are so high, it would be economically impossible to bring the claim. Each member of the class must be able to prove they would not have bought the defective product without seeing a specific commercial or hearing a specific statement. Then each member of the class must be able to prove the exact amount they lost. In other words, how much the product was "worth" compared to how much they paid. Do you still have the receipt for the last blender you bought? How much is a blender that doesn't blend worth? This bill would allow companies who commit fraud in little bites to get away without making their customers whole.

Part 2: Federal Preemption of the MMPA

The bill represents bad legislative policy because it voluntarily gives away State power to unelected federal regulators even over matters where Congress and federal agencies never intended such an infringement of the States' authority. If the section is passed, the unelected federal bureaucrats of the FTC will alone determine what constitutes lawful business conduct in Missouri.

Federal law is full of examples of the enactment of minimum federal standards which are additions to, not substitutions for, regulation under State law. The language will have the perverse effect of making such standards the only permissible standards in Missouri. The floor will turn into the ceiling.

Part 3: "Daubert" Expert Witness Standards

While the Daubert test focuses more on the publicity a particular expert has received, the Missouri test is focused on the training and experience of the experts and the reliability of their work. The current Missouri standard is a more reliable standard to impose when the main concern is the quality of the opinion being offered not the celebrity of the person offering it. Missouri has a very clear statute that determines which experts can testify at civil trials (490.065 RSMO). Current Missouri expert witness requirements are stricter than the Daubert requirements.

Part 4: Daubert in Medical Malpractice Affidavits

It is unreasonable to expect that a doctor must have been published in a peer review journal before he or she can diagnose an illness. If that were the case, should we not all ask to see our family physician's published works before believing we have strep? This is an unreasonable requirement that is designed simply to keep legitimate medical malpractice cases out of court.