Alabama

In Alabama, the *Daubert* admissibility criteria is only applied to "scientific" experts and evidence. Ala. R. Evid. 702(b); *Mazda Motor Corp. v. Hurst,* 261 So. 3d 167 (Ala. 2017). Otherwise, "[i]f technical [or] other specialized knowledge will assist the trier of fact to understand 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." Ala. R. Evid. 702(a).

Also received the following:
We apply *Daubert*, in part, through Rule 702 of the Alabama Rules of Evidence. Subsection (b) details cases where the *Daubert* standard does not apply. The *Daubert* standard does not apply to domestic relations cases, child-support cases, juvenile cases or cases in the probate courts, and in criminal actions, the *Daubert* standard applies "only to non-juvenile felony proceedings." In short, *Daubert* applies to scientific experts.

Alabama's change was done through statute and not case law. However, here is a recent case that we often use to establish Alabama's interpretation of the Rules of Evidence regarding expert opinion. *Mazda Motor Corp. v. Hurst*, 261 So. 3d 167 (Ala. 2017).

Amendments to § 12-21-160, Ala. Code (1975), and Rule 702 of the Alabama Rules of Evidence adopt a *Daubert-based* admissibility standard for determining the admissibility of scientific evidence. The Alabama Legislature acted first when it passed Act No. 2011-629 which amended § 12-21-160, Ala. Code (1975). Thereafter, on November 29, 2011, the Alabama Supreme Court amended Rule 702 of the Alabama Rules of Evidence to make the evidence rule "consistent" with § 12-21-160. Both amendments became effective January 1, 2012.

The current rule is as follows:

Rule 702.Testimony by Experts

(a) 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.

(b) In addition to the requirements in section (a), expert testimony based on a scientific theory, principle, methodology, or procedure is admissible only if:

(1) The testimony is based on sufficient facts or data;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case.

The provisions of this section (b) shall apply to all civil state-court actions commenced on or after January 1, 2012. In criminal actions, this section shall apply only to non-juvenile felony proceedings in which the defendant was arrested on the charge or charges that are the subject of the proceedings on or after January 1, 2012. The provisions of this section (b) shall not apply to domestic-relations cases, child-support cases, juvenile cases, or cases in the probate court. Even, however, in the cases and proceedings in which this section (b)

> does not apply, expert testimony relating to DNA analysis shall continue to be admissible under *Ala. Code.* 1975, § 36-18-30.
> **(c)** Nothing in this rule is intended to modify, supersede, or amend any provisions of the Alabama Medical Liability Act of 1987 or the Alabama Medical Liability Act of 1996, or any judicial interpretation of those acts.

Alaska

The Alaska Supreme Court adopted the *Daubert* standard in 1999 and has followed it since. *See State v. Coon*, 974 P.2d 386, 393 (Alaska 1999).

Arizona

Arizona adopted *Daubert* and amended Arizona Rule of Evidence 702 to mirror the federal counterpart.

Arkansas

Follows *Daubert*. *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Foote*, 14 S.W.3d 512 (Ark. 2000) (Adopted Daubert standard); *See also* Arkansas Rules of Evidence 401, 402, and 702; *Prater v. State*, 307 Ark. 180, 820 S.W.2d 429 (1991)

California

California does not follow *Daubert*. Instead, courts follow the "general acceptance test," otherwise referred to as the *Kelly-Frye* standard. *Frye v. United States*, 293 F. 1013 (1923) and *People v. Kelly*, 17 Cal 3d 24 (1976). A court's gatekeeper-ability is limited to ensuring the foundation of opinions are the type reasonably relied upon by experts in the field. *See Sargon Enterprises v. University of Southern California*, 55 Cal 4th 747, 772 (2012); *see also People v. Azcona* (2020), 58 Cal. App. 5th 504, 511.

Colorado

In Colorado, expert testimony is governed by C.R.E. 702 and *People v. Shreck*, 22 P.3d 68, 77-78 (Colo. 2001), focusing on witness qualifications, reliability of the opinions and scientific principles, and usefulness to the jury. It is similar to Daubert.

Under C.R.E. 702, "[i]f 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." *See People v. Shreck*, 22 P.3d 68, 70 (Colo. 2001). C.R.E. 702 imposes upon a trial court the duty to act as "evidentiary gatekeeper" to assure that scientific evidence and expert testimony is sufficiently reliable and relevant. *Shreck*, 22 P.3d at 74.

The Colorado Supreme Court explained in *Shreck* that to fulfill its gatekeeping duties, a trial court should conduct an inquiry considering the "totality of the circumstances of the case." *Id.* at 77. The Court declined to adopt "any particular set of factors" for determining reliability. *Shreck*, 22 P.3d at 77 (quoting *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 592-93 (1993)).

Expert testimony is admissible under C.R.E. 702 only when (1) the principles at issue are *reasonably reliable*; (2) the witness is qualified to opine on such principles; and (3) the testimony will be *useful to the jury*. *Shreck*, 22 P.3d at 79. The state court may consider *Daubert* factors involving reliability.

Connecticut

Adopted the *Daubert* standard in *State v. Porter*, 698 A.2d 739 (Conn. 1997) ("Accordingtly, we conclude that the *Daubert* approach should govern the admissibility of scientific evidence in Connecticut."). The Connecticut Supreme Court also held "that the validity of the methodologies underlying proffered scientific evidence should be considered in determining the admissibility of such evidence, as well as in determining its weight. Accordingly, we also conclude that it is proper for a trial judge to serve a gatekeeper function." *Id.* at 747.

Delaware

Follows *Daubert*. *See* D.R.E. 702.

Florida

Florida follows *Daubert*. *See* Fla.Stat. §§90.702 and 90.704. However, this is a very recent development. For several years, there was confusion as to whether Florida would follow the *Daubert* or *Frye* standards, following the legislatures enactment of a *Daubert* standard, which was of questionable constitutional validity. However, the issue was finally resolved in 2019 when the Florida Supreme Court definitively adopted the *Daubert* standard. See *In re Amendments to Florida Evidence Code*, 278 So.3d 551 (Fla. 2019).

In December 2020, in one of the first *Daubert* cases, one district court announced that the *Daubert* factors are neither necessarily nor exclusively applicable to all experts in every case. See *Walker v. State*, 2020 WL 7239587 (Fla. 4th DCA Dec. 9, 2020). The court held that the *Daubert* test is flexible, and that the factors in *Daubert* are to be considered by the judge, but "do not constitute a 'definitive checklist or test.'" *Id.* at *3 (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999)).

Georgia

In non-medical malpractice civil cases, Georgia is a *Daubert* jurisdiction. In medical malpractice cases, Georgia employs a modified *Daubert* standard. Both at are found at O.C.G.A. § 24-7-702, which states:

(a) Except as provided in Code Section 22-1-14 [which allows lay testimony dealing with valuation of property in eminent domain cases] and in subsection (g) of this Code section, the provisions of this Code section shall apply in all civil proceedings. The opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses.

(b) 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:

(1) The testimony is based upon sufficient facts or data;

(2) The testimony is the product of reliable principles and methods; and

(3) The witness has applied the principles and methods reliably to the facts of the case which have been or will be admitted into evidence before the trier of fact.

(c) Notwithstanding the provisions of subsection (b) of this Code section and any other provision of law which might be construed to the contrary, in professional malpractice actions, the opinions of an expert, who is otherwise qualified as to the acceptable standard of conduct of the professional whose conduct is at issue, shall be admissible only if, at the time the act or omission is alleged to have occurred, such expert:

(1) Was licensed by an appropriate regulatory agency to practice his or her profession in the state in which such expert was practicing or teaching in the profession at such time; and

(2) In the case of a medical malpractice action, had actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(A) The active practice of such area of specialty of his or her profession for at least three of the last five years, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in performing the procedure, diagnosing the condition, or rendering the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; or

(B) The teaching of his or her profession for at least three of the last five years as an employed member of the faculty of an educational institution accredited in the teaching of such profession, with sufficient frequency to establish an appropriate level of knowledge, as determined by the judge, in teaching others how to perform the procedure, diagnose the condition, or render the treatment which is alleged to have been performed or rendered negligently by the defendant whose conduct is at issue; and

(C) Except as provided in subparagraph (D) of this paragraph:

(i) Is a member of the same profession;

(ii) Is a medical doctor testifying as to the standard of care of a defendant who is a doctor of osteopathy; or

(iii) Is a doctor of osteopathy testifying as to the standard of care of a defendant who is a medical doctor; and

(D) Notwithstanding any other provision of this Code section, an expert who is a physician and, as a result of having, during at least three of the last five years immediately preceding the time the act or omission is alleged to have occurred, supervised, taught, or instructed nurses, nurse practitioners, certified registered nurse anesthetists, nurse midwives, physician assistants, physical therapists, occupational therapists, or medical support staff, has knowledge of the standard of care of that health care provider under the circumstances at issue shall be competent to testify as to the standard of that health care provider. However, a nurse, nurse practitioner, certified registered nurse anesthetist, nurse midwife, physician

assistant, physical therapist, occupational therapist, or medical support staff shall not be competent to testify as to the standard of care of a physician.

(d) Upon motion of a party, the court may hold a pretrial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of subsections (a) and (b) of this Code section. Such hearing and ruling shall be completed no later than the final pretrial conference contemplated under Code Section 9-11-16.

(e) An affiant shall meet the requirements of this Code section in order to be deemed qualified to testify as an expert by means of the affidavit required under Code Section 9-11-9.1.

(f) It is the intent of the legislature that, in all civil proceedings, the courts of the State of Georgia not be viewed as open to expert evidence that would not be admissible in other states. Therefore, in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court 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); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.

(g) This Code section shall not be strictly applied in proceedings conducted pursuant to Chapter 9 of Title 34 [workers' compensation proceedings] or in administrative proceedings conducted pursuant to Chapter 13 of Title 50.

The two "seminal" cases in Georgia on the statute are *HNTB Ga., Inc. v. Hamilton-King*, 287 Ga. 641, 697 S.E.2d 770 (2010) (addressing the former O.C.G.A. § 24-9-67.1, which is now codified at O.C.G.A. § 24-7-702), and
Scapa Dryer Fabrics, Inc. v. Knight, 299 Ga. 286, 788 S.E.2d 421 (2016). Given subsection (f), however, the trial courts often turn to analogous federal cases that have a similar exert or issue.

<u>Hawaii</u>

Hawaii does not require courts to follow the *Daubert* test, but instead uses it as part of a larger analysis for expert witness testimony. *In re Doe*, 981 P.2d 723 (Haw. Ct. App. 1999). Main test for admissibility is a two-part analysis: 1) the court has to ensure that the expert's testimony "will assist the trier of fact to understand the evidence or determine a fact in issue." *Id.* 2) "any inferences or opinions must be the product of an explicable and reliable system of analysis." The Court must ensure that expert testimony is "(1) relevant and (2) reliable." *Id. Daubert* test is used to help analyze the relevance and reliability of expert testimony, but its factors are not binding in Hawaii. *Id.* Courts here should consider whether the expert's testimony has been tested, "subjected to peer review and publication," the "rate of error," and whether it has been generally accepted in the "relevant scientific community." *Id.*

<u>Idaho</u>

Idaho does not follow *Daubert* or *Frye*. Instead, Idaho applies its own Rules of Evidence 702 and 703 to determine the admissibility of an expert's opinions. *Nield v. Pocatello Health Servs.* (2014), 156 Idaho 802, 850, 332 P.3d 714, 762. Under those rules, an expert must be "qualified." I.R.E. 702. A qualified expert needs "practical experience or special knowledge," but formal training is not required. *Weeks v. E. Idaho Health Servs.* (2007), 143 Idaho 834, 837, 153 P.3d 1180, 1183

Illinois

Illinois follows the *Frye* standard. *Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 77 (2002). This standard "dictates that scientific evidence is only admissible at trial if the methodology or scientific principle upon which the opinion is based is 'sufficiently established to have gained general acceptance in the particular field in which it belongs.'" *Donaldson*, 199 Ill. 2d at 77. This fact is further confirmed by Illinois Rules of Evidence 702.

Indiana

Indiana generally follows *Daubert*. However, they do not consider *Daubert* controlling. Rather, they treat *Daubert* as providing factors that the court may consider as helpful in determining reliability under Indiana Rule of Evidence 702(b). See *Alsheik v. Guerrero*, 956 N.E.2d 1115 (Ind. App. 2011).

Indiana Rule of Evidence 702(b) provides: "[e]xpert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles."

Iowa

Follows modified *Daubert* applied in civil and criminal cases, and while courts are strongly encouraged to apply Daubert, they are not required to do so. *See In re Detention of Rafferty*, 2002 WL 31113930 (Iowa App., 2002); See also *Ganrud v. Smith*, 206 N.W.2d 311 (Iowa 1973) ("Expert testimony is not admissible unless the witness is shown to be qualified and the facts upon which he bases his opinion are sufficient to enable a witness so qualified to express an opinion which is more than a mere conjecture. [] It is not enough that a witness be generally qualified in a certain area, he must also be qualified to answer the particular question propounded."). Adopted Daubert factors into analysis.

Kansas

Prior to 2014, Kansas followed *Frye.* In 2014, Kansas modified K.S.A. §§ 60-456, 60-457, 60-458 to mirror the Federal Rules and the standards set out in *Daubert.*

Kentucky

Kentucky applies the Daubert standard. See KRE 702 (2007). The 2007 amendment to Kentucky Rule of Evidence, Rule 702, tracks the language of the Federal Rules and was intended to codify *Daubert* and *Kumho Tire*. Prior to the legislative adoption, the Kentucky Supreme Court had judicially adopted the *Daubert* standard in *Goodyear Tire & Rubber Co. v. Thompson*, 11 SW3d 575 (Ky. 2000).

Louisiana

In 1993, in *State v. Foret,* 628 So. 2d 1116 (La. 1993), the Louisiana Supreme Court adopted *Daubert's* principles for the admission of expert testimony under La. Code. Evid. 702. Below is a quote from 49 LYLR 79

An analysis of Louisiana reported decisions reveals that Louisiana courts have largely used three approaches when determining the admissibility of expert testimony. The approach taken differs depending on the whether the expert testimony introduced is based on scientific knowledge, technical or ***98** specialized knowledge, or whether the expert's experience alone is the basis of the expert's reliability. First, in examining the admissibility of the testimony of scientific experts, Louisiana courts have for the most part consistently applied the Daubert reliability factors. This approach is illustrated by the courts' analysis of DNA evidence.[113] Second, when Louisiana courts examine the testimony of non-scientific experts whose opinions are based in part on a methodology, such as experts in accident reconstruction or safety experts, the courts occasionally concentrate on the expert's experience, knowledge, and relevant reliability factors. On other occasions, the courts relied solely on the expert's qualifications and experience in making the reliability determination. Finally, when the expert's experience alone is the basis of the expert's reliability, Louisiana courts generally do not consider any reliability factors at all. The admissibility of the testimony of experienced narcotics officers is an example of this approach. This section of the article discusses these various approaches.[114]

Maine

Maine has not adopted Daubert or Frye. Maine uses a test that is similar to Daubert. *See State v. Williams*, 388 A.2d 500 (Me. 1978). Since *Williams*, the Frye standard of "general acceptance in the scientific community" is no longer available as an exclusionary tool.

"A proponent of expert testimony must establish that (1) the testimony is relevant pursuant to M.R. Evid. 401, and (2) it will assist the trier of fact in understanding the evidence in determining a fact in issue." *Searles v. Fleetwood Homes of Pennsylvania, Inc.*, 878 A.2d 509 (Me. 2005) (citing *State v. Williams*, 388 A.2d 500, 504 (Me. 1978)).

"Indicia of scientific reliability may include the following: whether any studies tendered in support of the testimony are based on facts similar to those at issue, *In re Sarah C.*, 2004 ME 152, P13, 864 A.2d at 165; whether the hypothesis of the testimony has been subject to peer review, id.; whether an expert's conclusion has been tailored to the facts of the case, id.; whether any other experts attest to the reliability of the testimony, *State v. Irving*, 2003 ME 31, P14, 818 A.2d 204, 208; the nature of the expert's qualifications, id.; and, if a causal relationship is asserted, whether there is a scientific basis for determining that such a relationship exists, *State v. Black*, 537 A.2d 1154, 1157 (Me. 1988)." *Id.*

Maryland

Maryland, in August 2020, officially adopted the Daubert standard in *Rochkind v. Stevenson*, 471 Md. 1, 236 A.3d 630 (2020). Maryland adopted the five Daubert factors to be persuasive in

interpreting Rule 5-702. In addition, Maryland also found five additional factors to be considered in determining whether expert testimony is sufficiently reliable. These factors include:
(6) whether experts are proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying;

(7) whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;

(8) whether the expert has adequately accounted for obvious alternative explanations;

(9) whether the expert is being as careful as he [or she] would be in his [or her] regular professional work outside his [or her] paid litigation consulting; and

(10) whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

Id. (citing Fed. R. Evid. 702 Advisory Committee Note (cleaned up)).

Massachusetts

In Massachusetts, *Commonwealth v. Lanigan*, 641 N.E.2d 1342 (Mass. 1994) adopted the Daubert factors. "We accept the basic reasoning of the Daubert opinion because it is consistent with our test of demonstrated reliability. We suspect that general acceptance in the relevant scientific community will continue to be the significant, and often the only, issue. We accept the idea, however, that a proponent of scientific opinion evidence may demonstrate the reliability or validity of the underlying scientific theory or process by some other means, that is, without establishing general acceptance." *Id.* at 1349.

Michigan

Michigan had adopted Daubert, *see* MRE § 702, but has since modified it by statute. *See* MCL § 600.2955(1)(a)-(g). The Court must consider eight factors before ruling upon the admissibility of expert testimony. These requirements make it more difficult to introduce expert testimony.

Minnesota

Uses a hybrid standard; the Frye-Mack standard. *State v. Mack,* 292 N.W.2d 764 (Minn. 1980) (Held that the expert's technique must be based on a foundation that is "scientifically reliable."). Hybrid standard using *State v. Mack* and *Frye v. United States.* To be admitted, testimony must (1) involve technique which has gained general acceptance in the scientific community, and (2) the testing must be done properly. An advisory committee is considering whether the Minnesota Supreme Court should replace the state's version of the *Frye* standard with the *Daubert* test.

***

The state of Minnesota has expressly rejected the *Daubert* standard and instead, continues to apply the *Frye-Mack* test for determining the admissibility of scientific expert evidence.
If testimony is based upon expertise grounded in something other than science, trial courts have wide discretion, limited only by a requirement that the testimony be helpful to the jury. Minn. R. Evid. 702 (expert testimony is generally admissible if: (1) it assists the trier of fact and (2) the witness is a qualified expert in a given subject to justify testimony in the form of an opinion). However, if the opinion or evidence involves a scientific test, Minnesota courts apply the *Frye-Mack* standard. *Goeb v. Tharaldson*, 615 N.W.2d 800, 810 (Minn. 2000); *State v. Hull*, 788 N.W.2d 91, (Minn. 2010). The *Frye-Mack* standard has two requirements: (1) the witness testimony must first "be generally accepted in the relevant scientific community," and (2) "the particular evidence derived from that test must have a foundation that is scientifically reliable." *Goeb*, 615 N.W.2d at 810; *Poppler v. Wright Hennepin Co-op Elec. Ass'n*, 834 N.W.2d 527, 540 (Minn. Ct. App. 2013).

<u>Leading Case:</u>
Goeb v. Tharaldson, 615 N.W.2d 800 (Minn. 2000)

- In *Goeb v. Tharaldson*, the tenants of a rental property that had been treated with an insecticide brought a products liability claim against the insecticide manufacturer. *Id.* at 805. Plaintiffs alleged that they and their minor son were injured by exposure to the insecticide. *Id.* at 803. The district court excluded plaintiffs' experts applying <u>both</u> the *Frye-Mack* and *Daubert* standards. The decision was affirmed by the Minnesota Court of Appeals. Review was accepted by the Minnesota Supreme Court for purposes of considering "whether Minnesota should abandon [*Frye-Mack* in favor of *Daubert*]." *Id*. at 808. The court expressly "reaffirm[ed Minnesota's] adherence to the *Frye-Mack* standard and reject[ed] *Daubert*." *Id*. at 814. The court then went on to determine that the methodologies used by an expert witness in finding that the tenants suffered harm as a result of the insecticide exposure were foundationally unreliable, and thus, the expert's testimony was inadmissible. *Id.* at 808. The court found that "where the expert did not review all pre-exposure medical records and primarily relied on oral history provided by the tenants, did not explain normal results of post-exposure medical tests, and did not point to any independent validation of her methodology," her opinion failed the *Frye-Mack* test/standard. *Id.* at 815-816.

<u>Mississippi</u>

Mississippi applies the standard set forth in *Daubert* as modified in *Kumho Tire*. See *Mississippi Transportation Commission v. McLemore*, 863 So.2d 31 (Miss. 2003). The MS Supreme Court explained the standard, as follows:

> Thus, to summarize, the analytical framework provided by the modified *Daubert* standard requires the trial court to perform a two-pronged inquiry in determining whether expert testimony is admissible under Rule 702. *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 244 (5th Cir.2002). The modified *Daubert* rule is not limited to scientific expert testimony—rather, the rule applies equally to all types of expert testimony. *Kumho Tire*, 526 U.S. at 147, 119 S.Ct. 1167. First, the court must determine that the expert testimony is relevant—that is, the requirement that the

> testimony must " 'assist the trier of fact' means the evidence must be relevant." *Mathis v. Exxon Corp.*, 302 F.3d 448, 460 (5th Cir.2002) (citing Fed.R.Evid. 702). Next, the trial court must determine whether the proffered testimony is reliable. *Pipitone*, 288 F.3d at 244. Depending on the circumstances of the particular case, many factors may be relevant in determining reliability, and the Daubert analysis is a flexible one. *Id.* Daubert provides "an illustrative, but not an exhaustive, list of factors" that trial courts may use in assessing the reliability of expert testimony. *Id.*

Also, MRCP 702 and the comments thereto explain that by the 2003 amendment of Rule 702, the Supreme Court clearly recognizes the gate keeping responsibility of the trial court to determine whether the expert testimony is relevant and reliable. This follows the 2000 adoption of a like amendment to Fed. R. Evid., 702 adopted in response to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

It is important to note that Rule 702 does not relax the traditional standards for determining that the witness is indeed qualified to speak an opinion on a matter within a purported field of knowledge, and that the factors mentioned in Daubert do not constitute an exclusive list of those to be considered in making the determination; Daubert's "list of factors was meant to be helpful, not definitive." Kumho, 526 U.S. at 151. See also *Pepitone v. Biomatrix, Inc*. 288 F. 3d 239 (5th Cir. 2002).

Missouri

Missouri does apply the *Daubert* standard. In 2017, the legislature codified the standard at RSMo. §490.065. *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 669 (Mo.App.E.D. 2020) recognized this and provided an analysis of the gatekeeping function, described the test to apply and what authority is controlling on the issue.

Montana

Montana's Rule of Evidence 702 mirrors the pre-*Daubert* federal rule. See M.R.Evid. 702. Since federal rule was amended to incorporate *Daubert*, the Montana Supreme Court has moved toward *Daubert* but has sent mixed signals as to when a *Daubert* challenge is appropriate. Generally, courts "should construe liberally the rules of evidence so as to admit all relevant expert testimony.'" *McClue v. Safeco Ins. Co.*, 2015 MT 222, ¶ 23, 380 Mont. 204, 354 P.3d 604 (*quoting Beehler v. E. Radiological Assocs., P.C.*, 2012 MT 260, ¶ 23, 367 Mont. 21, 289 P.3d 131. When novel scientific evidence" is involved, *Daubert* may come into play. *See State v. Cline* (1996), 275 Mont. 46, 909 P.2d 1171, 1177 (*citing State v. Weeks* (1995), 270 Mont. 63, 891 P.2d 477 and *State v. Moore* (1994), 268 Mont. 20, 41, 885 P.2d 457, 470).

Nebraska

Follows *Daubert. Schafersman v. Agland Coop.*, 631 N.W.2d 862 (Neb. 2001) (adopted Daubert standard, finding that Courts would have to start applying the standard beginning Oct. 1, 2001).

Nevada

In Nevada, *Daubert* is persuasive, but courts are not required to follow a "mechanical application of its factors[.]" *Higgs v. State* (2010), 126 Nev. 1, 16, 222 P.3d 648, 658.

New Hampshire

Baker Valley Lumber, Inc. v. Ingersoll-Rand Co., 813 A.2d 409 (N.H. 2002) adopted the Daubert standard to New Hampshire Rule of Evidence 702.

New Jersey

The New Jersey Supreme Court has adopted Daubert factors, but has stopped short of declaring New Jersey to be a Daubert state. *In re Accutane*, 191 A.3d 560 (NJ 2018). The trial court must "assess both the methodology used by the expert to arrive at an opinion and the underlying data used in the formation of the opinion." *Id.* at 593.

New Mexico

New Mexico uses the *Daubert* standard when analyzing the reliability of scientific expert testimony. *State v. Alberico*, 861 P2d 192 (N.M. 1993). However, New Mexico does not follow the standard for nonscientific testimony. 11-702 NMRA Advisory committee's comment.

New York

New York uses the Frye standard, which was reinforced in *People v. Wesley*, 633 N.E.2d 451 (N.Y. 1994).

North Carolina

North Carolina follows *Daubert*. *State v. McGrady*, 787 S.E.2d 1 (N.C. 2016); also North Carolina Rules of Evidence, Rule 702.

North Dakota

Follows N.D. R. Evid. 702. *State v. Hernandez*, 707 N.W.2d 449 (N.D. 2005) (N.D. R. Evid. 702 more liberal than Federal Rule of Evidence 702). *Daubert* rejected. Court determines that method of proof is reliable as an area for expert testimony, then whether the witness is qualified as an expert to apply this method. It is not necessary that an expert be experienced with the identical subject matter at issue or be a specialist, licensed, or even engaged in a specific profession. *Hernandez* stated that North Dakota never has explicitly adopted *Daubert* or *Kumho Tire*; expert admissibility instead is governed by North Dakota Rule of Evidence 702.

Ohio

Ohio follows *Daubert*. See *State v. Martens*, 629 N.E.2d 462 (3d Dist. Mercer County 1993).

Oklahoma

In *Taylor v. State*, the Oklahoma Court of Criminal Appeals adopted *Daubert* and rejected the *Frye* for novel scientific evidence in state criminal proceedings. In 2003, in *Christian v. Gray*,18 the Oklahoma Supreme Court adopted *Daubert* and *Kumho* for application in Oklahoma state civil actions.

In 2013, the Oklahoma Legislature amended 21 O.S. §2702 governing expert witnesses to reflect the language in the 2000 FRE 702 (and therefore *Daubert*).37 Since federal court decisions can have persuasive value "when they construe federal evidence rules with language substantially similar to that in [Oklahoma] evidence statutes," a sampling of 10th Circuit cases discussing *Daubert* since the early 2000s is instructive.

Oregon

In Oregon, *Daubert* is instructive, but not determinative. . *State v. O'Key*, 321 Or. 285, 899 P.2d 663 (1995). Trial courts may look to the *Daubert* factors, factors set out in *State v. Brown* (1984), 297 Or. 404, 687 P.2d 751, and other factors. *Id*. "What is important is not lockstep affirmative findings as to each factor, but analysis of each factor by the court in reaching its decision on the probative value of the evidence to the text of the note under OEC 401 and OEC 702." *Brown*, 687 P.2d at 759-760.

Pennsylvania

Pennsylvania has adopted the Frye standard. Pa.R.E. 702(c) applies the "general acceptance" test for the admissibility of scientific, technical, or other specialized knowledge testimony. *See Snizavich v. Rohm and Haas Co.*, 2013 Pa. Super. 315 (Pa. Super. 2010).

Rhode Island

Rhode Island has adopted the Daubert standard in RI R.Evid. Art. VII, Rule 702.

South Carolina

In short, we say that we do not follow Daubert, however, it turns out to be a very similar standard, though in practice not nearly as strictly enforced.

The admissibility of expert testimony is governed by Rule 702, SCRE, which provides:

> 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.

The trial court must make three key preliminary findings which are fundamental to Rule 702, SCRE, before the jury may consider expert testimony:

1. **Subject Matter** – "The trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010).

2. **Qualification** – "While the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter." *Id.*

3. **Reliability** – "Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable." *Id*.
   Regarding the "reliability" factors, South Carolina has not adopted *Daubert*. Instead, South Carolina applies a test derived from *State v. Jones*, a state court decision which, as it turns out, is not that different from *Daubert*:

   > In considering the admissibility of scientific evidence under the *Jones* standard, the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.
   > *State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999).

These non-exclusive factors apply only to scientific expert testimony – they "serve no useful analytical purpose when evaluating nonscientific expert testimony." *See State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 688 (2009).

<u>South Dakota</u>

Follows Daubert. *State v. Hofer*, 512 N.W.2d 482 (S.D. 1994) (Adopted Daubert standard).

***

The state of South Dakota applies the *Daubert* standard for determining the admissibility of scientific and other expert evidence.

The Supreme Court of South Dakota held after the adoption of the *Daubert* standard, general acceptance in the scientific community is no longer required for the admissibility of expert testimony; the trial judge must simply determine "that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Kuper v. Lincoln-Union Elec. Co.*, 557 N.W.2d 748, 760 (S.D. 1996); SDCL § 19-19-702. Under the *Daubert* standard, the court must determine whether: "(1) the theory or technique in question can be and has been tested, (2) it has been subjected to peer review and publication, (3) its known or potential error rate and the existence and maintenance of standards controlling its operation, and (4) it has attracted widespread acceptance within a relevant scientific community." *State v. Lemler*, 774 N.W.2d 272 (S.D. 2009).

Leading Case(s):
State v. Hofer, 512 N.W.2d 482 (S.D. 1994) (the state Supreme Court held that *Daubert* had overturned *Frye* and would be the test applied)
Burley v. Kytec Innovative Sports Equipment, Inc., 737 N.W.2d 397, 405 (S.D. 2007)

- In *Burley v. Kytec Innovative Sports Equipment, Inc.*, a high school athlete injured while using a sports training product brought a products liability claim against the product manufacturer. *Id.* at 400. The Supreme Court of South Dakota held that the trial court abused its discretion when it excluded expert testimony based on an incorrect finding that the expert was not qualified. *Id.* at 405. The court held that the expert's inexperience as a litigation witness and unfamiliarity with inapplicable warning standards should not have been used to determine his qualifications. *Id.* Instead, the court determined that the expert's “considerable experience in the evaluation of instructions and warnings” and the fact that he “reviewed the depositions … and then tested the [product] using [the company's] instructions,” satisfied the *Daubert* test. *Id.* at 405-406.

Tennessee

Generally follows *Daubert*. See Tenn. R. Evid. 702.

Texas

The Supreme Court of Texas adopted the *Daubert* standard in *E.I. du Pont de Nemours and Co., Inc. v. Robinson*, 923 S.W.2d 549 (1995), holding that the proponent of expert testimony must show the testimony is relevant to the issues in the case and based upon a reliable foundation. The Court clarified in *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713 (Tex.1998) that the *Daubert* standard applies to all expert testimony (and not just scientific testimony).

Also provided by another firm:
Yes – Texas has adopted Daubert. Admissibility is a preliminary question determined by the trial court. The trial court assumes a mandatory “gatekeeping” role described in the Daubert and adopted by the Texas Supreme Court in E.I. du Pont de Nemours & Co. v. Robinson, 923 S.W.2d 549 (Tex. 1995). Prior to introducing expert testimony to a jury, a trial court must first determine (1) whether a witness is qualified to offer expert testimony; (2) whether the testimony offered is relevant; and (3) whether the testimony is sufficiently reliable. Robinson, 923 S.W.2d at 556–57.

Utah

Utah follows a modified *Daubert* standard. *See Taylor v. University of Utah*, 466 P.3d 124 (Utah 2020). “Utah Rule of Evidence 702 ‘assigns to trial judges a gatekeeper’ responsibility to screen out unreliable expert testimony.’” *Id*. at ¶16 (*quoting* Utah R. Evid. 702 advisory committee notes). The expert must be qualified. Utah R. Evid. 702(a). The proffering party must “make a ‘threshold showing that the principles or methods that are underlying in the testimony’ are ‘reliable,’ ‘based upon sufficient facts or data,’ and ‘have been reliably applied to the facts.’” *Taylor* at ¶ 16 (*quoting* Utah R. Evid. Rule 702 (b)). The proffering party has met the required “‘threshold showing’ if the ‘underlying principles or methods, including the sufficiency

of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community."'" *Id*. (*citing* Utah R. Evid. Rule 702(c)).

Utah's Rule 702 differs from its current federal counterpart in that it only requires a "threshold showing" – "abasic foundational showing of indicia or reliability for the testimony to be admissible, not that the opinion is indisputably correct." Utah R. Evid. 702 advisory committee's note; *see also Gunn Hill Dairy Props., LLC*, 269 P.3d 980, ¶ 33 (Utah App. 2012).

<u>Vermont</u>

Vermont follows Daubert. The Vermont Supreme Court held that "[s]imilar principles should apply here because Vermont's rules are essentially identical to the federal ones on admissibility of scientific evidence." *State v. Brooks*, 643 A.2d 226, 229 (1993).

<u>Virginia</u>

Follows neither *Daubert* nor *Frye*. Instead, in Virginia expert testimony is only subject to basic requirements, including that it be based on an "adequate foundation" and that it will assist the trier of fact. *See* Va. Code. Ann. 8.01-407.

<u>Washington</u>

Washington state does not use the *Daubert* approach to determine admissibility of expert opinion testimony. *State v. Copeland*, 130 Wash. 2d. 244, 259, 922 P. 2d 1304 (1996). Washington follows the *Frye* standard expressed in *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923). *See Copeland*, 130 Wash.2d at 259, 922 P.2d at 1314.

Under *Frye*, Washington courts evaluate two factors: (1) whether the underlying theory is generally accepted in the scientific community, and (2) whether there are techniques, experiments or studies utilizing the theory which are capable of producing reliable results. *Anderson v. Akzo Nobel Coatings, Inc.,* 172 Wash. 2d 593, 260 P.3d 857 (2011).

"The relevant scientific community must generally accept both 'the underlying theory' and the 'techniques, experiments, or studies' applying that theory. … The techniques, experiments, or studies must be 'capable of producing reliable results.' … The scientific community does not have to be unanimous; the court should exclude the expert's opinion only '[i]f there is a significant dispute among qualified scientists.' … '[T]he application of accepted techniques to reach novel conclusions does not raise *Frye* concerns.'… '*Frye* does not require every deduction drawn from generally accepted theories to be generally accepted.' … 'Other evidentiary requirements provide additional protections from deductions that are mere speculation.'" *L.M. by & through Dussault v. Hamilton*, 193 Wash. 2d 113, 128–29, 436 P.3d 803, 811 (2019) (internal citations omitted).

<u>West Virginia</u>

West Virginia generally applies a modified *Daubert*, knows as *Daubert/Wilt*.

In *Wilt v. Buracker*, the Supreme Court of Appeals of West Virginia indicated that "we believe that *Daubert* is directed at situations where the scientific or technical basis for the expert testimony cannot be judicially noticed and a hearing must be held to determine its reliability. We conclude that *Daubert*'s analysis of Federal Rule 702 should be followed in analyzing the admissibility of expert testimony under Rule 702 of the West Virginia Rules of Evidence. The trial court's initial inquiry must consider whether the testimony is based on an assertion or inference derived from scientific methodology. Moreover, the testimony must be relevant to a fact at issue. Further assessment should then be made in regard to the expert testimony's reliability by considering its underlying scientific methodology and reasoning. This includes an assessment of (a) whether the scientific theory and its conclusion can be and have been tested; (b) whether the scientific theory has been subjected to peer review and publication; (c) whether the scientific theory's actual or potential rate of error is known; and (d) whether the scientific theory is generally accepted within the scientific community." Syl. Pt. 2, *Wilt v. Buracker*, 191 W. Va. 39, 443 S.E.2d 196 (1993). *Wilt* has been cited as recently as March 23, 2020 as the authority for evaluating proffered expert testimony in West Virginia. *See State v. Miles*, No. 18-0043, 2020 WL 1487801 *3-4 (W. Va. Mar. 23, 2020).

The standard has been coined the *Daubert/Wilt* standard in Syl. Pt. 3, *Gentry v. Magnum*, 195 W. Va. 512, 466 S.E.2d 171 (1995). So far, the *Daubert/Wilt* test is only triggered if the testimony deals with "scientific knowledge," which has been defined as "an inference or assertion [that] must be derived by the scientific method." Syl. Pt. 6, *Gentry v. Magnum*, 195 W. Va. 512, 466 S.E.2d 171 (1995).

"To date, this Court has declined to adopt the current federal practice, as expressed in *Kumho,* of applying the *Daubert/Wilt* gatekeeper function to expert testimony based upon technical or other specialized knowledge. *See, e.g., West Virginia Div. of Highways v. Butler,* 205 W.Va. 146, 151–52 n. 4, 516 S.E.2d 769, 774–75 n. 4 (1999) ("We decline to adopt the *Kumho* analysis in this case."). At this time, the majority declines to expressly address whether we will adopt the new federal procedure regarding expert testimony." *Watson v. Inco Alloys Intern., Inc.*, 209 W. Va. 234, 545 S.E.2d 294, n.11 (2001). In *Watson*, the Court determined that the proper analysis for proffered non-scientific expert testimony is conducted pursuant to Rule 702 of the West Virginia Rules of Evidence.

The Court declined to adopt *Kumho* as recently as 2016 in *Anstey v. Ballard*, 237 W. Va. 411, 787 S.E.2d 864, n. 58 (2016) (stating that "[e]ven today, the admissibility of the State's expert testimony would be assessed under Rule 702 of the West Virginia Rules of Evidence as evidence based on technical or specialized knowledge—and not under *Daubert/Wilt*.").

<u>Wisconsin</u>

Follows *Daubert.* Wis. Stat. § 907.02(1). A court's admission of actuarial tests was proper because the tests were routinely published, had undergone widespread review and criticism, and were commonly used to predict recidivism rates of sex offenders. The court made the threshold determination of the reliability of the tests. *In re Commitment of Jones*, 911 N.W.2d 97 (Wis. 2018).

Wyoming

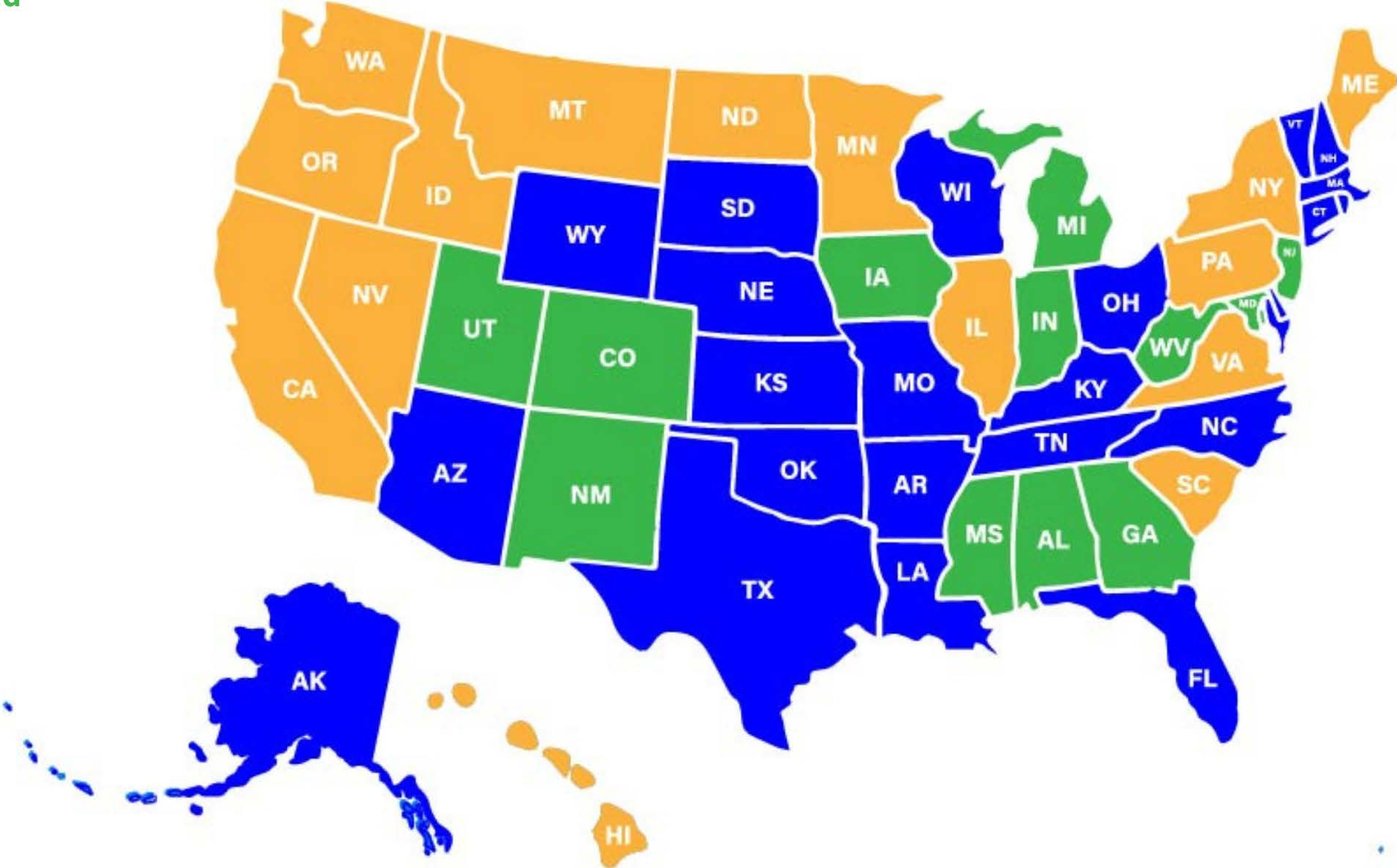
The state of Wyoming adopted the *Daubert* test for admissibility of expert witness testimony in 1999. *Bunting v. Jamieson* (Wyo. 1999), 984 P.2d 467, 470.

Daubert Standard

Yes

No

Modified



ALFA International
The Global Legal Network
Local Relationships Worldwide

ALFA International
The Global Legal Network
Local Relationships Worldwide

2021 PRODUCT LIABILITY & COMPLEX TORTS PRACTICE GROUP PRODUCT LIABILITY QUICK REFERENCE GUIDE[1]

STATE	STATUTE OF LIMITATIONS/ REPOSE[2]	LIABILITY STANDARDS[3]	FAULT ALLOCATION	NON-ECON CAPS AND LIMITS ON ACTUAL DAMAGES	PUNITIVES Y/N AND LIMITS	HEEDING PRESUMPTION APPLIED?	INNOCENT SELLER STATUTE	JOINT & SEVERAL LIABILITY	AVAILABLE DEFENSES[4]	DAUBERT STANDARD
AL	2-PI,WD	N, W, O (AEMLD)	Pure contributory	WD-Purely Punitive	Yes, PI limit	No	Yes	Yes	AR, P, LI, AL, SU, M, GS, S	M
AK	2-PI,WD; DR; 10-SOR	N, SL, CE, W	Pure comparative	Non-econ cap	Yes (limits)	No	No	No	AR, M, AL, LI, S, SA, AD	Y
AZ	2-PI,WD	N, SL, W, O	Pure comparative	No	Yes	Yes, vanishing presumption	Indemnity statute	No	M, AL, LI, IU, SA, P, S, AD, SU	Y
AR	3-PI,WD	N, SL, W	Modified comparative	No	Yes	Yes	No	No, unless "in concert"	GS, GC, LI	Y
CA	2-PI,WD; DR; 4/10-SOR	N, SL, CE, W, O	Pure comparative	Yes	Yes	No	No	Yes, for econ.	AR, M, GC, AL, LI, IU, SA, GC, P, GS, S, AD, SU	N
CO	2-PI,WD; DR;10-SOR	N, SL, W	Pure comparative	Non-econ cap	Yes (limits)	Yes	Yes	No	AR, M, AL, LI, IU, SA, P, GS, S, AD	M
CT	3-PI,WD; DR; 10-SOR	N, SL, W, O	Pure comparative	No	No	No	No	Yes	AR, M, AL, LI, IU, SA, GC, P, SU	Y
DE	2-PI,WD; 6-SOR	N, W	Modified comparative	No	Yes	No	Yes	Yes	AR, M, A, LI, IU, P, SU	Y
DC	3-PI; 1-WD; DR	N, SL, W	Pure contributory, except strict liability	No	Yes	Yes	No	Yes	AR, M, AL, LI, SA, GC, P, SU	Y
FL	4-PI; 12-SOR	SL	Pure comparative	Paid meds	Yes (limits)	No	Yes	No	AR, M, LI, IU, SA, P, S, GC, GS	Y
GA	2-PI,WD; DR; 10-SOR	N, SL, W	Modified comparative	No	Yes (limits)	Unresolved	No	No	AR, M, AL, LI, SA, GS, P, SU	M
HI	2-PI,WD; DR	N, SL	Modified comparative (pure for strict liability)	No	Yes	No	No	No	M, GC, AL, IU	N
ID	2-PI,WD; 10-SOR	N, SL, W	Modified comparative	Non-econ cap	Yes (limits)	Limited	Yes	No	AR, M, AL, LI, IU, SA, P, AD, S, SU	N
IL	2-PI,WD; DR; 12-SOR	N, SL, W	Modified comparative	No	Yes	No	Yes	Yes	AR, M, AL, LI, IU, SA, GC, P, GS, SU	N
IN	2-PI,WD; DR; 10-SOR	N, SL, W	Modified comparative	No	Yes (limits)	Yes	No	No	AR, M, AL, LI, SA, GC, P, GS, SU	M
IA	2-PI,WD; DR; 15-SOR	N, SL, W	Modified comparative	No	Yes	No	Yes	Yes, if ≥ 50%	AR, M, AL, SA, P, S	M
KS	2-PI,WD; DR; 10-SOR	N, SL, W	Modified comparative	Yes	Yes (limits)	Yes	Yes	No	SU, P, M, AL, LI, IU, GS, AR	Y
KY	1- PI,WD; DR	N, SL, W	Pure comparative	No	Yes	Yes	Yes	No	M, AL, LI, IU, SA, GC, P, GS, S, AD, SU	Y
LA	1-PI,WD; DR	O	Pure comparative	No	No	No	Yes	Yes	AR, M, AL, LI, IU, SA, P, AD, SU	Y
ME	6-PI; 2-WD	N, SL, W, O	Modified comparative	Yes	Yes	No	No	Y	AR, M, AL, LI, SA, GC, SU	N
MD	3-PI,WD; DR	N, SL, W	Pure contributory, except strict liability	Non-econ cap	Yes	Yes	Yes	Yes	AR, M, AL, LI, SA, P, SU	M
MA	3-PI,WD; DR; 7-SOR	N	Modified comparative	No	Yes	Yes	No	Yes	AR, M, AL, LI, IU, SA, P, AD, SU	Y
MI	3-PI,WD; 6/10-SOR	N, W	Pure comparative	Non-econ cap	No	No	Yes	No	AR, M, AL, SA, P,GS, S, AD, SU	M
MN	6-PI; 3-WD (4-strict liability)	N, SL, W	Modified comparative	No	Yes	No	Yes	Yes, if > 50%	AR, M, AL, LI, IU, SA, P, GS, AD, SU	N
MS	3-PI,WD; DR	N, SL, W	Pure comparative	Yes	Yes (limits)	Yes	Yes	No	AR, M, AL, LI, IU, SA, P, AD, SU	M

[1] This Guide concerns product liability actions involving personal injury, and does not address property damage claims. There are exceptions to many of the statutes and concepts noted in this chart and it is not intended to be comprehensive.
[2] PI - Personal Injury; WD - Wrongful Death; DR - Discovery rule applies; SOR - Statute of Repose
[3] N – Negligence; SL – Strict Liability; CE – Consumer Expectation; W – Warranty; O – Other
[4] AR - Assumption of Risk; M - Misuse; AL - Alteration; LI - Learned Intermediary; IU - Inherently Unsafe Products; SA - State of the Art; GC - Government Contractor Defense; P - Preemption; GS - Compliance with Government Standards; S - Seatbelts; AD - Alcohol/drugs; SU - Sophisticated User

STATE	STATUTE OF LIMITATIONS/ REPOSE[2]	LIABILITY STANDARDS[3]	FAULT ALLOCATION	NON-ECON CAPS AND LIMITS ON ACTUAL DAMAGES	PUNITIVES Y/N AND LIMITS	HEEDING PRESUMPTION APPLIED?	INNOCENT SELLER STATUTE	JOINT & SEVERAL LIABILITY	AVAILABLE DEFENSES[4]	DAUBERT STANDARD
MO	5-PI; 3-WD-3; DR	N, SL, W	Pure comparative	No	Yes	Yes	Yes	Yes	AR, M, AL, LI, IU, SA, GC, P, AD, SU	Y
MT	3-PI,WD; DR	N, SL, W	Modified comparative	No	Yes (limits)	No	No (upstream indem.)	Yes, if ≥ 51%	AR, M, AL, LI, IU, SA, GC, P, AD, SU	N
NE	4-PI,WD;10-SOR	N, SL, W	Modified comparative	No	No	Yes	Yes	Yes	AR, SA, M, LI, IU, P, SU, AL	Y
NV	2-PI,WD; DR	N, SL, W	Modified comparative	No	Yes (limits)	No	No	Yes	AR, M, AL, LI, IU, SA, GC, P, GS, AD	N
NH	3-PI,WD; DR; 8-SOR (construction)	N, SL, W	Modified comparative	No	No	No	No	Yes, if > 50%	AR, M, AL, LI, SA, P	Y
NJ	2-PI,WD; DR; 10-SOR	SL, CE, W	Modified comparative	Yes	Yes (limits)	Yes, rebuttable	Yes	Yes, if ≥ 60 %	AR, M, AL, LI, IU, SA, GC, P, S, AD, SU	M
NM	3-From injury	N, SL, W	Pure comparative	No	Yes	No	No	Yes, in chain of distribution	AR, M, AL, LI, SA, SU, P	M
NY	3-PI; 2-WD; DR (toxic substances)	N, SL, W	Pure comparative	No	Yes	Unresolved	No	Yes (w/exceptions)	AR, M, AL, LI, IU, SA, GC, P, GS, S, AD, SU	N
NC	3-PI, 2-WD,4-UCC, UDTP, 12-SOR	N, W	Pure contributory	Yes (paid/incurred medical expenses)	Yes (limits)	No	Yes	Yes	AR, M, AL, LI, P, SU	Y
ND	6-PI; 2-WD, DR	N, SL, W	Modified comparative	No	Yes (limits)	Yes	Yes	No	AR, M, AL, GS	N
OH	2-PI; WD; DR; 10-SOR	SL	Modified comparative	Yes (with exceptions)	Yes	Yes	Yes	Yes	AR unforeseeable M, AL, LI, IU, SU	Y
OK	2-PI,WD; DR; 10-SOR	N	Modified comparative	Yes (with exceptions)	Yes (limits)	Yes	Yes	Several only	AR, M, AL, LI, IU, SA, GC, P, AD, SU	Y
OR	2-PI; 3-WD; DR 10-SOR	N, SL, W	Modified comparative	Yes (with exceptions)	Yes	No	No (upstream indem.)	Several only (w/ exceptions)	M, AL, LI, IU, SA, P, GS, S	N
PA	2-PI,WD; DR	SL, W	Modified comparative	No	Yes	Yes	No	Yes, if ≥ 60 %	AR, M, AL, LI, GC, P, SU	N
RI	3-PI,WD; DR	N, SL, W	Pure comparative	No	Yes	Yes	No	Yes	AR, M, A, LI, GC, P, SU	Y
SC	3-PI,WD;DR; 8-SOR (improvements)	N, SL, W	Modified comparative	No	Yes (qualified limits)	No	No	Yes, if ≥ 50%	AR, M, AL, LI, IU, SA, P, SU	N
SD	3-PI,WD; DR	N, SL, W	Modified comparative	No	Yes	No	Yes	Yes	AR, M, AL, SA, P	Y
TN	1-PI,WD; 3-PD; 4-BOW; DR; 10-SOR	N, SL, W	Modified comparative	Yes	Yes (limits)	No	Yes	Limited	M, AL, LI, SA, GS, S, AD	Y
TX	2-PI,WD; DR; 15-SOR	N, SL, W	Modified comparative	Yes	Yes (limits)	Limited	Yes	Yes, if > 50%	AR, M, AL, LI, IU, SA, GC, P, GS, S, AD, SU	Y
UT	2- PI,WD	N, SL, W	Modified comparative	No	Yes	Yes	Yes	No	AR, M, AL, LI, IU, SA, P, GS, SU	M
VT	3-PI; 2-WD; DR; 4-UCC Warranty	N, SL, W	Modified comparative	No	Yes	Yes	No	Yes	AR, P, M, AL, LI, IU, SA, GC, GS, AD	Y
VA	2-PL,WD; DR	N, W	Pure contributory	No	Yes (limits)	Yes	No	Yes	AR, M, AL, LI, P, SU	N
WA	3- PI,WD	N, SL, W	Pure comparative	No	No	Yes	Yes (w/exceptions)	Several only (w/ exceptions)	AR, M/AL, LI, GS, SA, P, GC, S, AD, LI	N
WV	2-PI,WD; DR	N, SL, W	Modified comparative	No	Yes (limits)	No	No	Several only (w/ exceptions)	AR, M, AL, LI, IU, SA, GC, P, GS, S, SU	M
WI	3- PI w/DR; 3-WD, 15- SOR	N, SL, O	Modified comparative	Yes	Yes (limits)	No	Yes	Yes, if > 50%	AD, AL, AR (contrib) IU, M, P S, SA, SU	Y
WY	4-PI/SL; 2-WD; 10-SOR	N, SL, W	Pure comparative	No	Yes	Limited	No	No	AR, M, AL, LI, IU, SA, GC, P, GS, S, AD, SU	Y
Canada, common law	2-PI,WD; DR	N, SL, W	Pure contributory	Yes	Yes (limits)	No	Varies by Province	Yes	AR, M, AL, LI, IU, SA, GS, S, AD	
	Important Caveat/Distinction:	▪ Laws vary by province. This is a generalization of the law in the common law provinces. Aside from the province of Quebec, all provinces follow the common law. Quebec follows the civil code; laws can be substantially different under the civil code.								