

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4 By: Representative Wren

# A Bill

HOUSE BILL 1952

## For An Act To Be Entitled

8 "AN ACT TO AMEND CHAPTER 53 OF TITLE 5 OF THE ARKANSAS  
9 CODE OF 1987, ANNOTATED, TO ADD A NEW SUBCHAPTER 2 TO  
10 PRESCRIBE THE CRIMINAL CONDUCT OF EXPERT WITNESS FRAUD AND  
11 FALSE SWEARING AND TO PROVIDE FOR PENALTIES; AND FOR OTHER  
12 PURPOSES."

## Subtitle

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15 "TO PRESCRIBE THE CRIMINAL CONDUCT OF  
16 EXPERT WITNESS FRAUD AND FALSE SWEARING  
17 AND TO PROVIDE FOR PENALTIES."

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Title 5, Chapter 53, of the Arkansas Code of 1987,  
22 Annotated, is amended to add a new Subchapter 2 to read as follows:

### "Subchapter 2 - Expert Witness Fraud

#### 5-53-201. Definitions.

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24  
25 (a) As used in this subchapter, unless the context otherwise requires:

26 (1)(A) False material statement means any false statement,  
27 regardless of its admissibility under the rules of evidence, which affects or  
28 could affect the course or outcome of an official proceeding or the action or  
29 decision of a public servant in the performance of any governmental function.

30 (B) Whether a false statement is material in a given  
31 factual situation is a question of law;

32 (2)(A) Oath means swearing, affirming, and every other mode  
33 authorized by law of attesting to the truth of that which is stated.

34 (B) Written statements shall be treated as if made under  
35 oath if:

36 (i) The statement was made on or pursuant to a form

1 bearing notice, authorized by law, to the effect that a false statement made  
 2 pursuant thereto is punishable; or

3 (ii) The statement recites that it was made under  
 4 oath, and the declarant was aware of such recitation at the time he signed the  
 5 statement and intended that the statement should be considered a sworn  
 6 statement; or

7 (iii) The statement is made, used, or offered with  
 8 the purpose that it be accepted as compliance with a statute, rule, or  
 9 regulation which requires a statement under oath or other like form of  
 10 attestation to the truth of the matter contained in the statement;

11 (3) Official proceeding means a proceeding heard before any  
 12 legislative, judicial, administrative, or other government agency or official  
 13 authorized to hear evidence under oath, including any referee, hearing  
 14 examiner, commissioner, notary, or other person taking testimony or  
 15 depositions in any such proceedings.

16 (4) Testimony includes oral or written statements, documents, or  
 17 any other material that is or could be offered by an expert witness in an  
 18 official proceeding;

19 (5) Expert witness means:

20 (A) Any person with scientific, technical or specialized  
 21 knowledge who will testify in any official proceeding to assist in the  
 22 understanding of evidence or to determine facts at issue and who may be  
 23 qualified by knowledge, skill, experience, training, or education; and

24 (B) whose attendance to give testimony at an official proceeding  
 25 has been ordered by any process or is holding or plans to hold himself  
 26 available to give testimony at an official proceeding.

27 (b) A person is an expert witness for the purpose of this subchapter  
 28 if he is recognized as an expert by his testimony that is sought or offered by  
 29 personal attendance at the official proceedings or at a deposition or in an  
 30 affidavit.

31 5-53-202. Expert witness fraud.

32 (a) A person commits expert witness fraud if in any official proceeding  
 33 he makes a false material statement, knowing it has no basis in scientific  
 34 fact or knowing it is not testable, falsifiable, or refutable, under an oath  
 35 required or authorized by law.

36 (b) Lack of knowledge of the materiality of the statement is not a

1 defense to a charge of expert witness fraud.

2 (c) Expert witness fraud is a Class D felony.

3 5-53-203. False swearing by expert witnesses.

4 (a) A person commits false swearing if other than in an official  
 5 proceeding he makes a false material statement, knowing it has no basis in  
 6 scientific fact or knowing it is not testable, falsifiable, or refutable,  
 7 under an oath required or authorized by law.

8 (b) Lack of knowledge of the materiality of the statement is not a  
 9 defense to a charge of false swearing by an expert witness.

10 (c) False swearing by an expert witness is a Class A misdemeanor.

11 5-53-204. Fraud or false swearing - Oath.

12 It is no defense to a prosecution under §§ 5-53-202 and 5-53-203 that:

13 (1) The oath was administered or taken in an irregular manner; or

14 (2) The person administering the oath lacked authority to do so if the  
 15 taking of the oath was required by law.

16 5-53-205. Tampering with physical evidence by an expert.

17 (a) An expert witness commits the offense of tampering with physical  
 18 evidence if he alters, destroys, suppresses, removes, or conceals any record,  
 19 document, or thing with the purpose of impairing its verity, legibility, or  
 20 availability in any official proceeding or investigation.

21 (b) Tampering with physical evidence by an expert is a Class D felony."

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23 SECTION 2. All provisions of this act of general and permanent nature  
 24 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 25 Revision Commission shall incorporate the same in the Code.

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27 SECTION 3. If any provisions of this act or the application thereof to  
 28 any person or circumstance is held invalid, the invalidity shall not affect  
 29 other provisions or applications of the act which can be given effect without  
 30 the invalid provisions or application, and to this end the provisions of this  
 31 act are declared to be severable.

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33 SECTION 4. All laws and parts of laws in conflict with this act are  
 34 hereby repealed.

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