

Committee on Judiciary

HB 7015 — Expert Testimony

by Civil Justice Subcommittee; Rep. Metz and others (CS/SB 1412 by Rules Committee and Senator Richter)

Currently, Florida courts employ the standard articulated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) to determine whether to admit expert testimony. Under the *Frye* standard, the methodology or principle on which expert opinion testimony is based must be generally accepted in the field in which it belongs.

The bill replaces the *Frye* standard with the *Daubert* standard. Under the *Daubert* test, when there is a proffer of expert testimony, the judge as a gatekeeper must make a preliminary assessment of whether the reasoning or methodology properly can be applied to the underlying facts at issue. The bill adopts the *Daubert* standard by amending s. 90.702, F.S., to prohibit an expert witness from testifying in the form of an opinion or otherwise, including pure opinion testimony, unless:

- The testimony is based on sufficient facts or data;
- The testimony is the product of reliable principles and methods; and
- The witness has applied the principles and methods reliably to the facts of the case.

Additionally, the preamble further states that the Legislature intends to adopt the standards provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999) and to prohibit pure opinion testimony as provided in *Marsh v. Valyou*, 997 So. 2d 543 (Fla. 2007).

The bill amends s. 90.704, F.S., to prohibit the disclosure of inadmissible facts or data to a jury by the proponent of an expert opinion or by inference unless the court determines that their probative value in assisting the jury's evaluation of the expert's opinion substantially outweighs their prejudicial effect. As a result of the amendments, the effect of s. 90.704, F.S., is conformed to the effect of Federal Rule of Evidence 703.

If approved by the Governor, these provisions take effect July 1, 2013.

Vote: Senate 30-9; House 70-41