

By Senator Wise

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1 A bill to be entitled

2 An act relating to expert witnesses; amending s. 90.702,
3 F.S.; revising requirements for admission of expert
4 testimony; amending s. 90.704, F.S.; providing that facts
5 or data that are otherwise inadmissible shall not be
6 disclosed to a jury except in specified circumstances;
7 amending s. 90.705, F.S.; providing for a pretrial hearing
8 to determine whether an expert's proposed testimony
9 satisfies specified requirements; providing a standard for
10 appellate review of such determination; providing for
11 interlocutory appeal of a ruling to admit or exclude
12 expert testimony; providing a directive to the Division of
13 Statutory Revision; creating s. 90.707, F.S.; requiring
14 courts to interpret specified provisions consistently with
15 specified Federal Rules of Evidence and United States
16 Supreme Court opinions; providing severability; providing
17 for applicability; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 90.702, Florida Statutes, is amended to
22 read:

23 90.702 Testimony by experts.--

24 (1) If scientific, technical, or other specialized
25 knowledge will assist the trier of fact in understanding the
26 evidence or in determining a fact in issue, a witness qualified
27 as an expert by knowledge, skill, experience, training, or
28 education may testify about it in the form of an opinion or
29 otherwise, if all of the following are true:

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30 (a) The testimony is based upon sufficient facts or data.

31 (b) The testimony is the product of reliable principles and
32 methods.

33 (c) The witness has applied the principles and methods
34 reliably to the facts of the case; ~~however, the opinion is~~
35 ~~admissible only if it can be applied to evidence at trial.~~

36 (2) An expert may only offer expert testimony with respect
37 to a particular field in which the expert is qualified.

38 Section 2. Section 90.704, Florida Statutes, is amended to
39 read:

40 90.704 Basis of opinion testimony by experts.--The facts or
41 data upon which an expert bases an opinion or inference may be
42 those perceived by, or made known to, the expert at or before the
43 trial. If the facts or data are of a type reasonably relied upon
44 by experts in the subject to support the opinion expressed, the
45 facts or data need not be admissible in evidence in order for the
46 opinion or inference to be admitted. Facts or data that are
47 otherwise inadmissible shall not be disclosed to a jury by the
48 proponent of the opinion or inference unless the court determines
49 that the probative value of the facts or data in assisting the
50 jury to evaluate the expert's opinion substantially outweighs the
51 prejudicial effect of disclosing the facts or data.

52 Section 3. Section 90.705, Florida Statutes, is amended to
53 read:

54 90.705 Disclosure of facts or data underlying expert
55 opinion.--

56 (1) Unless otherwise required by the court, an expert may
57 testify in terms of opinion or inferences and give reasons
58 without prior disclosure of the underlying facts or data. On

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59 cross-examination the expert shall be required to specify the
60 facts or data.

61 (2) Upon timely motion of a party, the court shall hold a
62 hearing prior to trial to determine whether an expert's proposed
63 testimony, including pure opinion testimony, satisfies the
64 requirements of ss. 90.702 and 90.704. The trial court's ruling
65 shall set forth the findings of fact and conclusions of law upon
66 which the order to admit or exclude expert testimony is based.
67 ~~Prior to the witness giving the opinion, a party against whom the~~
68 ~~opinion or inference is offered may conduct a voir dire~~
69 ~~examination of the witness directed to the underlying facts or~~
70 ~~data for the witness's opinion. If the party establishes prima~~
71 ~~facie evidence that the expert does not have a sufficient basis~~
72 ~~for the opinion, the opinions and inferences of the expert are~~
73 ~~inadmissible unless the party offering the testimony establishes~~
74 ~~the underlying facts or data.~~

75 (3) The trial court's ruling is a determination of law,
76 which shall be reviewed de novo on appeal.

77 (4) Interlocutory appeal of a ruling to admit or exclude
78 expert testimony shall be available at the discretion of the
79 appellate court. In deciding whether to grant such an appeal, the
80 court shall consider whether:

81 (a) The ruling involves a challenge to the
82 constitutionality of this act;

83 (b) The testimony would help prove or disprove criminal
84 liability; or

85 (c) The testimony would establish civil liability at or
86 above \$75,000.

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88 Neither a party's failure to seek interlocutory appeal nor an
89 appellate court's denial of a motion for interlocutory appeal
90 shall affect a party's right to appeal a ruling to admit or
91 exclude expert testimony after an entry of judgment in the case.

92 Section 4. The Division of Statutory Revision is directed
93 to substitute the chapter law number in the Laws of Florida
94 assigned to this act for the phrase "this act" wherever it occurs
95 in s. 90.705, Florida Statutes, as amended by this act, when
96 preparing that section for publication in the next edition of the
97 Florida Statutes.

98 Section 5. Section 90.707, Florida Statutes, is created to
99 read:

100 90.707 Uniformity in interpretation.--The courts of this
101 state shall interpret and apply the requirements of ss. 90.702
102 and 90.704 in a manner consistent with Rules 702 and 703, Federal
103 Rules of Evidence, and with all United States Supreme Court case
104 law interpreting those rules in effect at the time of enactment
105 of this provision.

106 Section 6. If any provision of this act or the application
107 thereof to any person or circumstance is held invalid, the
108 invalidity does not affect other provisions or applications of
109 the act that can be given effect without the invalid provision or
110 application, and to this end the provisions of this act are
111 declared severable and shall remain valid and enforceable.

112 Section 7. This act shall take effect July 1, 2008, and
113 shall apply to all actions commenced on or after the effective
114 date and to all pending actions in which trial has not been
115 scheduled or in which trial commences more than 90 calendar days
116 after that date.