

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:

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

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

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

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

57 (1) Unless otherwise required by the court, an expert may
58 testify in terms of opinion or inferences and give reasons
59 without prior disclosure of the underlying facts or data. On
60 cross-examination the expert shall be required to specify the
61 facts or data.

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

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

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

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

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

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

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

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

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

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

107 Section 6. If any provision of this act or the application
108 thereof to any person or circumstance is held invalid, the
109 invalidity does not affect other provisions or applications of

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110 the act that can be given effect without the invalid provision
111 or application, and to this end the provisions of this act are
112 declared severable and shall remain valid and enforceable.

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