

By Senator Richter

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1 A bill to be entitled
2 An act relating to expert testimony; amending s.
3 90.702, F.S.; providing that a witness qualified as an
4 expert by knowledge, skill, experience, training, or
5 education may testify in the form of an opinion as to
6 the facts at issue in a case under certain
7 circumstances; requiring the courts of this state to
8 interpret and apply the principles of expert testimony
9 in conformity with specified United States Supreme
10 Court decisions; subjecting pure opinion testimony to
11 such requirements; amending s. 90.704, F.S.; providing
12 that facts or data that are otherwise inadmissible in
13 evidence may not be disclosed to the jury by the
14 proponent of the opinion or inference unless the court
15 determines that the probative value of the facts or
16 data in assisting the jury to evaluate the expert's
17 opinion substantially outweighs the prejudicial effect
18 of the facts or data; providing an effective date.

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

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

24 90.702 Testimony by experts.—

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

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30 otherwise, if:

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

32 (b) The testimony is the product of reliable principles and
33 methods; and

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

37 (2) The courts of this state shall interpret and apply the
38 requirements of subsection (1) and s. 90.704 in accordance with
39 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579
40 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and
41 *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999). *Frye v.*
42 *United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent
43 Florida decisions applying or implementing *Frye* no longer apply
44 to subsection (1) or s. 90.704. All proposed expert testimony,
45 including pure opinion testimony as discussed in *Marsh v.*
46 *Valyou*, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1)
47 and s. 90.704.

48 Section 2. Section 90.704, Florida Statutes, is amended to
49 read:

50 90.704 Basis of opinion testimony by experts.—The facts or
51 data upon which an expert bases an opinion or inference may be
52 those perceived by, or made known to, the expert at or before
53 the trial. If the facts or data are of a type reasonably relied
54 upon by experts in the subject to support the opinion expressed,
55 the facts or data need not be admissible in evidence. Facts or
56 data that are otherwise inadmissible shall not be disclosed to
57 the jury by the proponent of the opinion or inference unless the
58 court determines that their probative value in assisting the

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59 jury to evaluate the expert's opinion substantially outweighs
60 their prejudicial effect.

61 Section 3. This act shall take effect July 1, 2012.