

HB 243

2012

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.

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

21  
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  
 30 | otherwise, if:

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

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

HB 243

2012

57 | the jury by the proponent of the opinion or inference unless the  
58 | court determines that their probative value in assisting the  
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.