

CS/HB 391

2011

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

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

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

22           90.702 Testimony by experts.—

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

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

30 (b) The testimony is the product of reliable principles  
 31 and methods; and

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

35 (2) The courts of this state shall interpret and apply the  
 36 requirements of subsection (1) and s. 90.704 in accordance with  
 37 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579  
 38 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and  
 39 *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999). *Frye v.*  
 40 *United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent  
 41 Florida decisions applying or implementing *Frye* no longer apply  
 42 to subsection (1) or s. 90.704.

43 Section 2. Section 90.704, Florida Statutes, is amended to  
 44 read:

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

56 Section 3. This act shall take effect July 1, 2011.