

By the Committee on Judiciary; and Senator Bogdanoff

590-02270-11

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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; amending s. 90.704, F.S.; providing  
11 that facts or data that are otherwise inadmissible in  
12 evidence may not be disclosed to the jury by the  
13 proponent of the opinion or inference unless the court  
14 determines that the probative value of the facts or  
15 data in assisting the jury to evaluate the expert's  
16 opinion substantially outweighs the prejudicial effect  
17 of the facts or data; providing an effective date.

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

20  
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:

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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; and

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

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

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

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