

By the Committee on Rules; and 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 or
6 otherwise as to the facts at issue in a case under
7 certain circumstances; providing that the elements
8 necessary to allow a witness to testify as an expert
9 witness are satisfied if the principles and methods on
10 which such knowledge is based are generally accepted
11 by the relevant expert community; providing for
12 applicability; amending s. 90.704, F.S.; providing
13 that facts or data that are otherwise inadmissible in
14 evidence may not be disclosed to the jury by the
15 proponent of the opinion or inference unless the court
16 determines that the probative value of the facts or
17 data in assisting the jury to evaluate the expert's
18 opinion substantially outweighs the prejudicial effect
19 of the facts or data; providing an effective date.

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21 WHEREAS, the Legislature finds that the admissibility of
22 expert testimony in the State of Florida is in need of revision
23 and clarification, and

24 WHEREAS, the Legislature finds that the admissibility of
25 expert testimony should be subject to a standard that generally
26 applies the requirement of *Daubert v. Merrell Dow*
27 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Federal Rule of
28 Evidence 702, while recognizing that once knowledge is based
29 upon principles and methods that are generally accepted within

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30 an expert community, a court need not continually reexamine the
31 basis for such knowledge, but must ensure that the generally
32 accepted principles and methods are relevant to the facts of the
33 case before the court, and

34 WHEREAS, this act does not alter the authority of the
35 courts in this state to manage their dockets as they deem
36 appropriate, including, but not limited to, deciding whether a
37 hearing or presentation of live testimony is required to resolve
38 a pending motion, and

39 WHEREAS, the Legislature finds that all proposed expert
40 testimony should be subject to the new standards of s. 90.702,
41 Florida Statutes, as revised in this act, and as such, *Marsh v.*
42 *Valyou*, 977 So. 2d 543 (Fla. 2007) and its holding as to pure
43 opinion testimony, is overruled, NOW, THEREFORE,

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

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47 Section 1. Section 90.702, Florida Statutes, is amended to
48 read:

49 90.702 Testimony by experts.—

50 (1) If scientific, technical, or other specialized
51 knowledge will assist the trier of fact in understanding the
52 evidence or in determining a fact in issue, a witness qualified
53 as an expert by knowledge, skill, experience, training, or
54 education may testify about it in the form of an opinion or
55 otherwise if:

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

57 (b) The testimony is the product of reliable principles and
58 methods; and

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

62 (2) The threshold required under subsection (1) to allow a
63 witness to testify as an expert witness is satisfied if the
64 principles and methods on which such knowledge is based are
65 sufficiently established as generally accepted by the relevant
66 expert community and are relevant to the facts of the particular
67 case.

68 (3) The stated testimonial requirements apply in any case
69 in which the expert opinion testimony is based on scientific,
70 technical, or other specialized knowledge. All proposed expert
71 testimony, including pure opinion testimony, is subject to ss.
72 90.702 and 90.704.

73 Section 2. Section 90.704, Florida Statutes, is amended to
74 read:

75 90.704 Basis of opinion testimony by experts.—The facts or
76 data upon which an expert bases an opinion or inference may be
77 those perceived by, or made known to, the expert at or before
78 the trial. If the facts or data are of a type reasonably relied
79 upon by experts in the subject to support the opinion expressed,
80 the facts or data need not be admissible in evidence. Facts or
81 data that are otherwise inadmissible may not be disclosed to the
82 jury by the proponent of the opinion or inference unless the
83 court determines that their probative value in assisting the
84 jury to evaluate the expert's opinion substantially outweighs
85 their prejudicial effect.

86 Section 3. This act shall take effect July 1, 2013.