

CHAPTER 2013-107

House Bill No. 7015

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

WHEREAS, the Supreme Court of the United States in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) replaced the standard for expert testimony in all federal courts that was first articulated in *Frye v. United States*, 293 F.2d 1013 (D.C. Cir 1923) with a new standard that is known as the Daubert standard, and

WHEREAS, the United States Supreme Court has subsequently reaffirmed and refined the Daubert standard in the cases of *General Electric Co. v. Joiner*, 522 U.S. 136 (1997) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and

WHEREAS, Florida's Evidence Code is generally patterned after the Federal Rules of Evidence,

WHEREAS, Rule 702 of the Federal Rules of Evidence, applicable to all federal courts, was amended in 2000 to reflect the holdings in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and

WHEREAS, as result of the 2000 amendment, Rule 702 of the Federal Rules of Evidence provides that:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The expert has reliably applied the principles and methods to the facts of the case, and

WHEREAS, by amending s. 90.702, Florida Statutes, to pattern it after Rule 702 of the Federal Rules of Evidence as amended in 2000, the Florida Legislature intends to adopt the standards for expert testimony in the courts of this state as provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and to no longer apply the standard in *Frye v. United States*, 293 F.2d 1013 (D.C. Cir 1923) in the courts of this state, and

WHEREAS, by amending s. 90.702, Florida Statutes, the Florida Legislature intends to prohibit in the courts of this state pure opinion testimony as provided in *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007), NOW, THEREFORE,

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

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

90.702 Testimony by experts.—If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case; ~~however, the opinion is admissible only if it can be applied to evidence at trial.~~

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

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

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

Approved by the Governor June 4, 2013.

Filed in Office Secretary of State June 4, 2013.