
A BILL FOR AN ACT

RELATING TO TESTIMONY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. This Act shall be known as the "Reliability of
2 Expert Testimony Act of 2006."

3 SECTION 2. The purpose of this Act is to update Hawaii
4 Rules of Evidence rules 701, 702, and 703 to reflect the current
5 version of Federal Rules of Evidence rules 701, 702, and 703.
6 Hawaii Rules of Evidence rules 701, 702, and 703 were originally
7 modeled on the federal rules, but have not been updated to adopt
8 the amendments that Congress made to the federal rules on April
9 17, 2000.

10 This Act adopts the April 17, 2000, amendments. In doing
11 so, the intent of the legislature is to adopt the federal
12 standard for expert witness testimony set forth by the Supreme
13 Court of the United States in Daubert v. Merrell Dow
14 Pharmaceuticals, Inc., 509 U.S. 579 (1993), and Kumho Tire Co.,
15 Ltd. v. Carmichael, 526 U.S. 137 (1999). In Daubert, the
16 Supreme Court established four factors that clarify when expert
17 scientific testimony is admissible. The Daubert court also

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1 established a gatekeeping requirement for trial courts that
2 helps to ensure the reliability and relevancy of expert
3 testimony. In Kumho Tire, the Supreme Court clarified that rule
4 702 applies to non-scientific, as well as scientific, expert
5 testimony.

6 The supreme court of the State of Hawaii has declined to
7 adopt the holdings in Daubert and Kumho Tire, in part because
8 the legislature has not adopted the April 17, 2000, amendments
9 to the federal rules. See State v. Vliet, 95 Haw. 94, 105-10
10 (2001). The Daubert and Kumho Tire standards provide trial
11 courts and legal practitioners with greater guidance regarding
12 the admissibility of expert testimony under rule 702. The
13 legislature therefore intends to adopt these federal standards
14 as part of the amendment to Hawaii Rules of Evidence rules 701
15 and 702.

16 The amendment to rule 703 clarifies the relationship
17 between rules 702 and 703. This amendment should reduce
18 confusion regarding the effect of an expert witness' reliance on
19 otherwise inadmissible facts or data.

20 SECTION 3. Section 626-1, Hawaii Revised Statutes, is
21 amended by amending rule 701 to read as follows:

1 **"Rule 701 Opinion testimony by lay witnesses.** If the
2 witness is not testifying as an expert, the witness' testimony
3 in the form of opinions or inferences is limited to those
4 opinions or inferences which are (1) rationally based on the
5 perception of the witness, [and] (2) helpful to a clear
6 understanding of the witness' testimony or the determination of
7 a fact in issue[-], and (3) not based on scientific, technical,
8 or other specialized knowledge within the scope of rule 702."

9 SECTION 4. Section 626-1, Hawaii Revised Statutes, is
10 amended by amending rule 702 to read as follows:

11 **"Rule 702 Testimony by experts.** If scientific, technical,
12 or other specialized knowledge will assist the trier of fact to
13 understand the evidence or to determine a fact in issue, a
14 witness qualified as an expert by knowledge, skill, experience,
15 training, or education may testify thereto in the form of an
16 opinion or otherwise [~~. In determining the issue of assistance~~
17 ~~to the trier of fact, the court may consider the trustworthiness~~
18 ~~and validity of the scientific technique or mode of analysis~~
19 ~~employed by the proffered expert.], if (1) the testimony is
20 based upon sufficient facts or data, (2) the testimony is the
21 product of reliable principles and methods, and (3) the witness~~

1 has applied the principles and methods reliably to the facts of
2 the case."

3 SECTION 5. Section 626-1, Hawaii Revised Statutes, is
4 amended by amending rule 703 to read as follows:

5 "Rule 703 Bases of opinion testimony by experts. The
6 facts or data in the particular case upon which an expert bases
7 an opinion or inference may be those perceived by or made known
8 to the expert at or before the hearing. If of a type reasonably
9 relied upon by experts in the particular field in forming
10 opinions or inferences upon the subject, the facts or data need
11 not be admissible in evidence [~~— The court may, however,~~
12 ~~disallow testimony in the form of an opinion or inference if the~~
13 ~~underlying facts or data indicate lack of trustworthiness.] in
14 order for the opinion or inference to be admitted. Facts or
15 data that are otherwise inadmissible shall not be disclosed to
16 the jury by the proponent of the opinion or inference unless the
17 court determines that their probative value in assisting the
18 jury to evaluate the expert's opinion substantially outweighs
19 their prejudicial effect."~~

20 SECTION 6. Rules 701 through 703 of the Hawaii Rules of
21 Evidence, chapter 626, Hawaii Revised Statutes, as amended by
22 this Act, shall be construed consistent with federal courts'

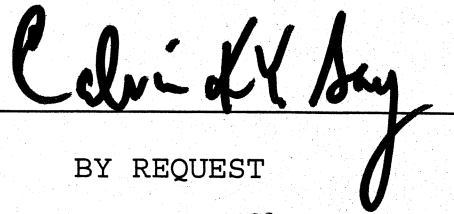
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1 interpretations of rules 701 through 703 of the Federal Rules of
2 Evidence.

3 SECTION 7. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect upon its approval.

6
7 INTRODUCED BY:



8 BY REQUEST

JAN 23 2006

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO TESTIMONY.

PURPOSE: To adopt a uniform standard based on the Federal Rules of Evidence for ensuring the admissibility of reliable, trustworthy, and relevant lay and expert testimony in a judicial proceeding.

MEANS: Amend Hawaii Rules of Evidence rules 701, 702, and 703 in section 626-1, Hawaii Revised Statutes.

JUSTIFICATION: Hawaii Rules of Evidence rules 701, 702, and 703 allow state courts broad discretion to determine the admissibility of lay and expert witness testimony. These rules were originally modeled on Federal Rules of Evidence rules 701, 702, and 703. However, the legislature has not updated the state rules to reflect important amendments made to the federal rules. This oversight has created confusion in the courts and the legal community regarding which common law standards apply to the state rules. This bill eliminates that confusion by updating rules 701, 702, and 703, so that they are virtually identical to their federal analogues.

Rules 701 and 702 incorporate the federal standard established by the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999). The holdings in these cases set forth much-needed guidance to courts and practitioners regarding the admissibility of expert witness testimony.

Accordingly, this bill should clarify the law for the courts and legal practitioners, and promote certainty and uniformity in the application of rules 701 through 703.

To further ensure certainty and uniformity, this bill expressly directs courts to construe Hawaii Rules of Evidence rules 701 through 703 consistently with the federal courts' interpretation of Federal Rules of Evidence rules 701 through 703.

Impact on the public: This measure would help to eliminate litigants' uncertainty and confusion by clarifying when lay and expert witness testimony is admissible in a judicial proceeding.

Impact on the department and other agencies: This measure would positively impact the department and other agencies by clarifying when a court should admit lay or expert witness testimony into evidence.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Judiciary, corporation counsels, county prosecutors, Office of the Public Defender, and any other agency handling litigation for the State of Hawaii or the counties of this State.

EFFECTIVE DATE: Upon approval.