

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 52

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GREEN, Toohey

Introduced: 1/27/95

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the admissibility into evidence of deoxyribonucleic acid (DNA)
2 profiles in civil and criminal proceedings; amending Rules 702(a) and 703 of the
3 Alaska Rules of Evidence to modify the rule relating to the basis or foundation
4 for the admissibility of expert opinion testimony that is based on scientific
5 evidence as it relates to DNA profile evidence; and amending Rules 401, 403, and
6 705 of the Alaska Rules of Evidence."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 * **Section 1.** LEGISLATIVE FINDINGS AND STATEMENT OF PURPOSE. (a) The
9 legislature finds that

10 (1) recent developments in molecular biology and genetics have important
11 applications for forensic science; it has been scientifically established that there is a unique
12 pattern to the chemical structure of the deoxyribonucleic acid (DNA) contained in each cell
13 of the human body; the process for identifying this pattern is called "DNA identification";

1 (2) the accuracy of identification provided by this method is superior to that
2 of any presently existing technique and recognizes the importance of this scientific
3 breakthrough in providing a reliable and accurate tool for the investigation and prosecution
4 of crimes;

5 (3) scientific evidence provides an increasingly critical source of information
6 in civil and criminal litigation;

7 (4) court decisions guiding the admissibility of scientific evidence in the state
8 courts impose a requirement on the introduction of expert scientific testimony that conditions
9 the introduction of that testimony on a degree of its validation within the community, that is,
10 to its general acceptance by experts in the relevant scientific field; under those court decisions,
11 trial courts are empowered to evaluate the quality of expert witnesses' opinions and to exclude
12 opinions that have not achieved general acceptance in the scientific community;

13 (5) the ability of a trial court to exclude opinion evidence that has not achieved
14 general acceptance in the scientific community may prohibit introduction and consideration
15 of evidence and testimony based on experimental scientific information that could be useful
16 to the trier of fact; and

17 (6) to better assure that relevant evidence based on emerging scientific
18 techniques and processes of debatable reliability may be considered, the "general acceptance"
19 principle for admissibility of scientific testimony should be replaced and a more flexible
20 approach to the use of opinion testimony should be adopted.

21 (b) In amending Alaska Rules of Evidence 702(a) and 703 in secs. 4 and 5 of this
22 Act, it is the purpose of the legislature to change the appropriate standard for the admissibility
23 of DNA evidence in civil and criminal proceedings. The legislature's amendment of this rule
24 would eliminate, as to DNA evidence, the principle of "general acceptance" underlying
25 scientific evidence as a precondition to the admissibility of scientific evidence in a criminal
26 or civil action, a principle first enunciated in *Frye v. United States*, 293 F. 1013 (D.C. Cir.
27 1923) and adopted for the courts of this state in *Pulakis v. State*, 476 P.2d 474, 478 (Alaska
28 1970). In its place, the legislature opts to substitute the comparable rule applicable to the
29 introduction of scientific evidence in cases in the federal courts. That standard was announced
30 in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. --, 125 L.Ed.2d 469, 113 S.Ct.
31 2786 (1993). Under the *Daubert* standard, the reliability of scientific evidence is to be

1 determined based on the evidence's scientific validity without reference to the quality of
2 expert opinion, and without the qualifying condition that an expert opinion that has not
3 achieved general acceptance in the scientific community must be excluded.

4 * **Sec. 2.** AS 09.25 is amended by adding a new section to read:

5 Sec. 09.25.051. **ADMISSIBILITY OF DNA PROFILES.** (a) In a civil action
6 or proceeding, the evidence of a DNA profile is admissible to prove or disprove the
7 identity of a person.

8 (b) In this section,

9 (1) "deoxyribonucleic acid" means the molecules in all cellular forms
10 that contain genetic information in a patterned chemical structure for each individual;

11 (2) "DNA profile" means an analysis that uses the restriction fragment
12 length polymorphism analysis of deoxyribonucleic acid material in a human sample
13 of blood, semen, tissue, or other DNA-bearing cells resulting in the identification of
14 the individual's patterned chemical structure of genetic information.

15 * **Sec. 3.** AS 12.45 is amended by adding a new section to read:

16 Sec. 12.45.035. **ADMISSIBILITY OF DNA PROFILES.** (a) In a criminal
17 action or proceeding, the evidence of a DNA profile is admissible to prove or disprove
18 the identity of a person.

19 (b) In this section,

20 (1) "deoxyribonucleic acid" means the molecules in all cellular forms
21 that contain genetic information in a patterned chemical structure for each individual;

22 (2) "DNA profile" means an analysis that uses the restriction fragment
23 length polymorphism analysis of deoxyribonucleic acid material in a human sample
24 of blood, semen, tissue, or other DNA-bearing cells resulting in the identification of
25 the individual's patterned chemical structure of genetic information.

26 * **Sec. 4.** Rule 702(a), Alaska Rules of Evidence, is amended to read:

27 (a) If scientific, technical, or other specialized knowledge will assist the trier
28 of fact to understand the evidence or to determine a fact in issue, a witness qualified
29 as an expert by knowledge, skill, experience, training, or education, may testify thereto
30 in the form of an opinion or otherwise. **However, when expert testimony that is**
31 **based upon a scientific theory or technique is used to support the admission of**

1 evidence of or based upon a deoxyribonucleic acid (DNA) profile, the court may
2 not admit the evidence if the court finds that the theory or technique in question
3 is scientifically valid for the purpose for which it is applied.

4 * **Sec. 5.** Rule 703, Alaska Rules of Evidence, is amended to read:

5 Rule 703. BASIS OF OPINION TESTIMONY BY EXPERTS. The facts or
6 data in the particular case upon which an expert bases an opinion or inference

7 (1) may be those perceived by or made known to the expert at or
8 before the hearing;

9 (2) [. FACTS OR DATA] need not be admissible in evidence; and

10 (3) [BUT] must be of a type reasonably relied upon by experts in the
11 particular field in forming opinions or inferences upon the subject; however, when
12 used to support the admission of evidence that is based on a deoxyribonucleic acid
13 (DNA) profile, the facts or data that relate to and support the expert opinion or
14 inference as to scientific knowledge need not be sufficiently established to have
15 become generally accepted in the particular field to which the facts or the data
16 belong.

17 * **Sec. 6.** AS 09.25.051, added by sec. 2 of this Act, and AS 12.45.035, added by sec. 3
18 of this Act, have the effect of amending

19 (1) Rules 401 and 403, Alaska Rules of Evidence, by determining that, when
20 offered in civil and criminal actions and proceedings, DNA profile evidence has probative
21 value and that its probative value outweighs the danger of unfair prejudice;

22 (2) Rule 705, Alaska Rules of Evidence, by eliminating a requirement that the
23 court require or allow antecedent expert testimony concerning the reliability of DNA profiles
24 as a method of identification prior to its receipt into evidence in the action or proceeding.