

SENATE BILL NO. 13

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS LEMAN, Kelly, Halford, Sharp, Green

Introduced: 1/16/95

Referred: JUD, FIN

A BILL

FOR AN ACT ENTITLED

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

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

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

11 (1) scientific evidence provides an increasingly critical source of information
12 in civil and criminal litigation;

13 (2) court decisions guiding the admissibility of scientific evidence in the state

1 courts impose a requirement on the introduction of expert scientific testimony that condition
2 the introduction of that testimony to a degree of its validation within the community, that is,
3 to its general acceptance by experts in the relevant scientific field;

4 (3) under the court decisions, trial courts are empowered to evaluate the quality
5 of expert witnesses' opinions and to exclude opinions that have not achieved general
6 acceptance in the scientific community;

7 (4) the ability of a trial court to exclude opinion evidence that has not achieved
8 general acceptance in the scientific community may prohibit introduction and consideration
9 of evidence and testimony based on experimental scientific information that could be useful
10 to the trier of fact; and

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

15 (b) In amending Alaska Rules of Evidence 702(a) and 703, enacted by secs. 4 and 5
16 of this Act, it is the purpose of the legislature to change the appropriate standard for the
17 admissibility of scientific evidence in civil and criminal proceedings. The legislature's
18 amendment of this rule would eliminate the principle of "general acceptance" underlying
19 scientific evidence as a precondition to the admissibility of scientific evidence in a criminal
20 or civil action, a principle first enunciated in *Frye v. United States*, 293 F. 1013 (D.C. Cir.
21 1923) and adopted for the courts of this state in *Pulakis v. State*, 476 P.2d 474, 478 (Alaska
22 1970). In its place, the legislature opts to substitute the comparable rule applicable to the
23 introduction of scientific evidence in cases in the federal courts. That standard was announced
24 in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. --, 125 L.Ed.2d 469, 113 S.Ct.
25 2786 (1993). Under the *Daubert* standard, the reliability of scientific evidence is to be
26 determined based on the evidence's scientific validity without reference to the quality of
27 expert opinion, and without the qualifying condition that an expert opinion that has not
28 achieved general acceptance in the scientific community must be excluded.

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

30 Sec. 09.25.300. **ADMISSIBILITY OF DNA PROFILES.** (a) In a civil action
31 or proceeding, the evidence of a DNA profile is admissible to prove or disprove the

1 identity of a person.

2 (b) A party seeking to introduce the evidence of a DNA profile shall

3 (1) notify all other parties in writing, at least 45 days before the
4 commencement of the action or proceeding, of the party's intention to introduce the
5 evidence; and

6 (2) provide all other parties, at least 30 days before commencement of
7 the action or proceeding, copies of the DNA profiles and the report or statement of the
8 profile to be introduced.

9 (c) If the notice required by (b) of this section is not timely provided and a
10 party attempts to introduce the evidence, the court may, in its discretion, either allow
11 the opposing party a continuance or, under appropriate circumstances, bar the party
12 from presenting the evidence.

13 (d) If a party to whom notice is given under (b) of this section intends to
14 object to the admissibility of the DNA profile, the party shall give written notice of
15 the objection at least 10 days before commencement of the action or proceeding.

16 (e) In this section,

17 (1) "deoxyribonucleic acid" or "DNA" means the molecules in all
18 cellular forms that contain genetic information in a patterned chemical structure for
19 each individual;

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

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

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

28 (b) A party seeking to introduce the evidence of a DNA profile shall

29 (1) notify all other parties in writing, at least 45 days before the
30 commencement of the action or proceeding, of the party's intention to introduce the
31 evidence; and

1 (2) provide all other parties, at least 30 days before commencement of
2 the action or proceeding, copies of the DNA profiles and the report or statement of the
3 profile to be introduced.

4 (c) If the notice required by (b) of this section is not timely provided and a
5 party attempts to introduce the evidence, the court may, in its discretion, either allow
6 the opposing party a continuance or, under appropriate circumstances, bar the party
7 from presenting the evidence.

8 (d) If a party to whom notice is given under (b) of this section intends to
9 object to the admissibility of the DNA profile, the party shall give written notice of
10 the objection at least 10 days before commencement of the action or proceeding.

11 (e) In this section,

12 (1) "deoxyribonucleic acid" or "DNA" means the molecules in all
13 cellular forms that contain genetic information in a patterned chemical structure for
14 each individual;

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

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

20 (a) If scientific, technical, or other specialized knowledge will assist the trier
21 of fact to understand the evidence or to determine a fact in issue, a witness qualified
22 as an expert by knowledge, skill, experience, training, or education, may testify thereto
23 in the form of an opinion or otherwise. **In the case of expert testimony that is based**
24 **upon a scientific theory or technique, the court may not admit the evidence unless**
25 **the court finds that the theory or technique in question is scientifically valid for**
26 **the purpose for which it is applied.**

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

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

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

1 (2) [. FACTS OR DATA] need not be admissible in evidence; and
2 (3) [BUT] must be of a type reasonably relied upon by experts in the
3 particular field in forming opinions or inferences upon the subject, but facts or data
4 that relate to and support an expert opinion or inference as to scientific
5 knowledge need not be sufficiently established to have become generally accepted
6 in the particular field to which the facts or the data belong.

7 * **Sec. 6.** AS 09.25.300, added by sec. 2 of this Act, and AS 12.45.035, added by sec. 3
8 of this Act, have the effect of amending

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

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