

**CS FOR SENATE BILL NO. 13(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/9/95

Referred: Finance

Sponsor(s): SENATORS LEMAN, Kelly, Halford, Sharp, Green

**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 Rule 403 of the  
6 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 the legislature recognizes the importance of this  
3 scientific breakthrough in providing a reliable and accurate tool for the investigation and  
4 prosecution 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 condition  
9 the introduction of that testimony on the degree of its validation within the community, that  
10 is, to its general acceptance by experts in the relevant scientific field;

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

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

18 (7) to better assure that relevant DNA profile evidence may be considered, the  
19 "general acceptance" principle for admissibility of scientific testimony should be replaced and  
20 a more flexible 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, a case-by-case determination of "general acceptance"  
25 underlying scientific evidence as a precondition to the admissibility of scientific evidence in  
26 a criminal or civil action, a principle first enunciated in *Frye v. United States*, 293 F. 1013  
27 (D.C. Cir. 1923) and adopted for the courts of this state in *Pulakis v. State*, 476 P.2d 474, 478  
28 (Alaska 1970). In its place, for DNA evidence, the legislature opts to substitute the  
29 comparable rule applicable to the introduction of scientific evidence in cases in the federal  
30 courts. That standard was announced in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509  
31 U.S. --, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993). Under the *Daubert* standard, the reliability

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

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

6 Sec. 09.25.300. **ADMISSIBILITY OF DNA PROFILES.** (a) In a civil action  
7 or proceeding, the evidence of a DNA profile is admissible to prove or disprove any  
8 relevant fact.

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

10 (1) notify all other parties in writing, on or before a date determined by  
11 order or rule of the court, of the party's intention to introduce the evidence; and

12 (2) provide all other parties, on or before a date determined by order  
13 or rule of the court, copies of the DNA profiles and the report or statement of the  
14 profile to be introduced.

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

19 (d) If a party to whom notice is given under (b) of this section intends to  
20 object to the admissibility of the DNA profile, the party shall give written notice of  
21 the objection on or before the date determined by order or rule of the court.

22 (e) In this section,

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

26 (2) "DNA profile" means an analysis of deoxyribonucleic acid material  
27 in a human sample of blood, semen, tissue, or other DNA-bearing cells resulting in the  
28 identification of the individual's patterned chemical structure of genetic information.

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

30 Sec. 12.45.035. **ADMISSIBILITY OF DNA PROFILES.** (a) In a criminal  
31 action or proceeding, the evidence of a DNA profile is admissible to prove or disprove

1 any relevant fact.

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

3 (1) notify all other parties in writing, on or before a date determined  
4 by order or rule of the court, of the party's intention to introduce the evidence; and

5 (2) provide all other parties, on or before a date determined by order or  
6 rule of the court, copies of the DNA profiles and the report or statement of the profile  
7 to be introduced.

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

12 (d) If a party to whom notice is given under (b) of this section intends to  
13 object to the admissibility of the DNA profile, the party shall give written notice of  
14 the objection on or before the date determined by order or rule of the court.

15 (e) In this section,

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

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

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

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

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

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

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

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

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

13 \* **Sec. 6.** AS 09.25.300, added by sec. 2 of this Act, and AS 12.45.035, added by sec. 3  
14 of this Act, have the effect of amending Rule 403, Alaska Rules of Evidence, by determining  
15 that, when offered in civil and criminal actions and proceedings, DNA profile evidence has  
16 probative value and that its probative value outweighs the danger of unfair prejudice.