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# A BILL FOR AN ACT

RELATING TO TESTIMONY.

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

1           SECTION 1. The purpose of this Act is to update Hawaii  
2 Rules of Evidence rules 701, 702, and 703 to reflect the current  
3 version of Federal Rules of Evidence rules 701, 702, and 703.  
4 Hawaii Rules of Evidence rules 701, 702, and 703 were originally  
5 modeled on the federal rules, but have not been updated to adopt  
6 the amendments that Congress made to the federal rules on April  
7 17, 2000.

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



1 702 applies to non-scientific, as well as scientific, expert  
2 testimony.

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

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

17 SECTION 2. Section 626-1, Hawaii Revised Statutes, is  
18 amended by amending rule 701 to read as follows:

19 **"Rule 701 Opinion testimony by lay witnesses.** If the  
20 witness is not testifying as an expert, the witness' testimony  
21 in the form of opinions or inferences is limited to those  
22 opinions or inferences [~~which~~] that are (1) rationally based on



1 the perception of the witness, [and] (2) helpful to a clear  
2 understanding of the witness' testimony or the determination of  
3 a fact in issue[-], and (3) not based on scientific, technical,  
4 or other specialized knowledge within the scope of rule 702."

5 SECTION 3. Section 626-1, Hawaii Revised Statutes, is  
6 amended by amending rule 702 to read as follows:

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

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



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

16           SECTION 5. Rules 701, 702, and 703 of the Hawaii Rules of  
17 Evidence, chapter 626, Hawaii Revised Statutes, as amended by  
18 this Act, shall be construed consistent with federal courts'  
19 interpretations of rules 701 through 703 of the Federal Rules of  
20 Evidence.

21           SECTION 6. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on January 1, 2112.



**Report Title:**

Judicial Proceedings; Expert Testimony

**Description:**

Adopts 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.

(HB1234 HD1)

