

By: Talton

H.B. No. 3164

A BILL TO BE ENTITLED

AN ACT

relating to the use of testimony of certain expert witnesses as evidence in criminal and civil proceedings.

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

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.45 to read as follows:

Art. 38.45. TESTIMONY OF EXPERT WITNESS. (a)

Notwithstanding Rule 702, Texas Rules of Evidence, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in relation to those areas in the form of an opinion or otherwise.

(b) In addition to showing that an expert witness is qualified under Subsection (a), the proponent of the expert's testimony shall show that the testimony is both relevant and reliable.

(c) In determining the admissibility of expert witness testimony regarding scientific knowledge under this article, the court may consider factors that are helpful in determining whether the underlying theories and techniques of the proffered evidence are scientifically reliable, including:

(1) the extent to which the theory has been or can be tested;

1 (2) the extent to which the technique relies on the
2 subjective interpretation of the expert;

3 (3) whether the theory has been subject to peer review
4 or publication;

5 (4) the technique's potential rate of error;

6 (5) whether the underlying theory or technique has
7 been generally accepted as valid by the relevant scientific
8 community;

9 (6) the nonjudicial uses that have been made of the
10 theory or technique; and

11 (7) other factors helpful in the particular case as
12 determined by the court.

13 (d) The court of criminal appeals may not amend or adopt
14 rules in conflict with this article.

15 SECTION 2. Subchapter A, Chapter 22, Civil Practice and
16 Remedies Code, is amended by adding Section 22.005 to read as
17 follows:

18 Sec. 22.005. TESTIMONY OF EXPERT WITNESS. (a)
19 Notwithstanding Rule 702, Texas Rules of Evidence, if scientific,
20 technical, or other specialized knowledge will assist the trier of
21 fact to understand the evidence or to determine a fact in issue, a
22 witness qualified as an expert by knowledge, skill, experience,
23 training, or education may testify in relation to those areas in the
24 form of an opinion or otherwise.

25 (b) In addition to showing that an expert witness is
26 qualified under Subsection (a), the proponent of the expert's
27 testimony shall show that the testimony is both relevant and

1 reliable.

2 (c) In determining the admissibility of expert witness
3 testimony regarding scientific knowledge under this section, the
4 court may consider factors that are helpful in determining whether
5 the underlying theories and techniques of the proffered evidence
6 are scientifically reliable, including:

7 (1) the extent to which the theory has been or can be
8 tested;

9 (2) the extent to which the technique relies on the
10 subjective interpretation of the expert;

11 (3) whether the theory has been subject to peer review
12 or publication;

13 (4) the technique's potential rate of error;

14 (5) whether the underlying theory or technique has
15 been generally accepted as valid by the relevant scientific
16 community;

17 (6) the nonjudicial uses that have been made of the
18 theory or technique; and

19 (7) other factors helpful in the particular case as
20 determined by the court.

21 (d) This section does not permit a witness to qualify as an
22 expert if another statute, including Chapter 74, Civil Practice and
23 Remedies Code, establishes specific qualifications for an expert
24 witness in certain civil suits that the witness does not meet.

25 (e) Notwithstanding Section 22.004, Government Code, the
26 supreme court may not amend or adopt rules in conflict with this
27 section.

1 SECTION 3. This Act applies only to a proceeding that begins
2 on or after the effective date of this Act. A proceeding that
3 begins before the effective date of this Act is governed by the law
4 applicable to the proceeding when it began, and that law is
5 continued in effect for that purpose.

6 SECTION 4. This Act takes effect September 1, 2007.