

1 A bill to be entitled
 2 An act relating to testimony of witnesses; providing a
 3 short title; providing standards for opinion testimony by
 4 lay witnesses; providing standards for, bases of, and
 5 limitations on expert testimony; authorizing expert
 6 witness fees; providing requirements for mandatory
 7 pretrial hearings; providing requirements for mandatory
 8 pretrial disclosure of expert testimony; providing for
 9 interpretation and application; providing for
 10 interlocutory appeals; specifying standards of review;
 11 providing severability; providing application; providing
 12 an effective date.

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 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. (1) SHORT TITLE.--This act may be cited as the
 17 "Reliability of Witness Testimony Standards Act."

18 (2) OPINION TESTIMONY BY LAY WITNESSES.--If a witness is
 19 not testifying as an expert, the witness's testimony in the form
 20 of opinions or inferences is limited to those opinions or
 21 inferences that are rationally based on the perception of the
 22 witness, helpful to a clear understanding of the witness's
 23 testimony or the determination of a fact in issue, and not based
 24 on scientific, technical, or other specialized knowledge within
 25 the scope of subsection (3).

26 (3) TESTIMONY BY EXPERTS.--If scientific, technical, or
 27 other specialized knowledge will assist the trier of fact in
 28 understanding the evidence or determining a fact in issue, a

29 witness qualified as an expert by knowledge, skill, experience,
30 training, or education may testify as to the evidence or fact in
31 the form of an opinion or otherwise if the testimony is based
32 upon sufficient facts or data, the testimony is the product of
33 reliable principles and methods, and the witness has applied the
34 principles and methods reliably to the facts of the case.

35 (4) BASES OF EXPERT TESTIMONY.--The facts or data in a
36 specific case upon which an expert bases an opinion or inference
37 may be those perceived by or made known to the expert at or
38 before the hearing. If the facts or data are reasonably relied
39 upon by experts in the particular field in forming opinions or
40 inferences upon the subject, the facts or data need not be
41 admissible in evidence in order for the opinion or inference to
42 be admitted. Facts or data that are otherwise inadmissible shall
43 not be disclosed to the jury by the proponent of the opinion or
44 inference unless the court determines that the probative value
45 of the facts or data in assisting the jury to evaluate the
46 expert's opinion substantially outweighs the prejudicial effect
47 of disclosing the facts or data.

48 (5) LIMITATIONS ON EXPERT TESTIMONY.--

49 (a) A witness qualified as an expert by knowledge, skill,
50 experience, training, or education may offer expert testimony
51 only with respect to a particular field in which the expert is
52 qualified.

53 (b) An expert witness may receive a reasonable and
54 customary fee for the rendering of professional services;
55 however, the testimony of an expert witness shall not be
56 admitted if any such compensation is contingent upon the outcome

57 of any claim or case with respect to which the testimony is
58 being offered.

59 (6) MANDATORY PRETRIAL HEARING.--If a witness is
60 testifying as an expert, upon motion of a party the court shall
61 hold a pretrial hearing to determine whether the witness
62 qualifies as an expert and whether the expert's testimony
63 satisfies the requirements of subsections (3), (4), and (5). The
64 court shall allow sufficient time for a hearing and shall rule
65 on the qualifications of the witness to testify as an expert and
66 whether the testimony satisfies the requirements of subsections
67 (3), (4), and (5). The trial court's ruling shall set forth the
68 findings of fact and conclusions of law upon which the order to
69 admit or exclude expert evidence is based.

70 (7) MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.--

71 (a) Regardless of whether any party elects to request a
72 pretrial hearing contemplated in subsection (6), each party
73 shall disclose to all other parties the identity of any person
74 who may be used at trial to provide expert testimony.

75 (b) Except as otherwise stipulated or directed by the
76 court, with respect to a witness who is retained or specially
77 employed to provide expert testimony in the case or whose duties
78 as an employee of the party regularly involve providing expert
79 testimony, a disclosure provided under paragraph (a) shall be
80 accompanied by a written report prepared and signed by the
81 witness. The report shall contain a complete statement of all
82 opinions to be expressed and the basis and reasons for such
83 opinions; the data or other information considered by the
84 witness in forming the opinions; any exhibits to be used as a

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85 summary of or support for the opinions; the qualifications of
86 the witness, including a list of all publications authored by
87 the witness within the preceding 10 years; the compensation to
88 be paid for the study and testimony; and a listing of any other
89 cases in which the witness has testified as an expert at trial
90 or by deposition within the preceding 4 years.

91 (c) The disclosures provided under paragraph (a) shall be
92 made at the times and in the sequence directed by the court. In
93 the absence of other directions from the court or stipulation by
94 the parties, the disclosures shall be made at least 90 days
95 before the trial date or the date the case is to be ready for
96 trial or, if the evidence is intended solely to contradict or
97 rebut evidence on the same subject matter identified by another
98 party under paragraph (b), within 30 days after the disclosure
99 made by the other party.

100 (d) A party may depose any person who has been identified
101 as an expert whose opinions may be presented at trial. If a
102 report from the expert is required under paragraph (b), the
103 deposition shall not be conducted until after the report is
104 provided.

105 (8) INTERPRETATION.--In interpreting and applying this
106 act:

107 (a) The courts of this state shall follow the opinions of
108 the United States Supreme Court in Daubert v. Merrell Dow
109 Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co.
110 v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. Ltd. v.
111 Carmichael, 526 U.S. 137 (1999); Weisgram v. Marley, 528 U.S.
112 440 (2000); and their progeny.

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113 (b) The courts of this state may also draw from other
114 precedents binding in the federal courts in this state applying
115 the standards announced by the United States Supreme Court in
116 the cases specified in paragraph (b).

117 (9) INTERLOCUTORY APPEAL.--Interlocutory appeal of a
118 ruling on the admissibility of expert evidence shall be
119 available at the discretion of the appellate court. In deciding
120 whether to grant an interlocutory appeal, the court shall
121 consider whether the ruling involved any challenge to the
122 constitutionality of this act, will help prove or disprove
123 criminal liability, or will help establish civil liability at or
124 above \$75,000 if the testimony may be determinative in
125 establishing liability or determining damages. A party's failure
126 to seek interlocutory appeal or an appellate court's decision to
127 deny a motion for interlocutory appeal does not waive a party's
128 right to appeal a ruling on the admissibility of expert evidence
129 after an entry of judgment in the case.

130 (10) STANDARD OF REVIEW.--For purposes of this act:

131 (a) The proper construction of the provisions for
132 admissibility of expert evidence prescribed by this act is a
133 question of law, and a court of appeals shall apply a de novo
134 standard of review in determining whether the trial court fully
135 applied the proper legal standard in considering the
136 admissibility of expert evidence.

137 (b) The application of this act to determine the
138 admissibility of expert testimony is a question of fact, and a
139 court of appeals shall apply an abuse of discretion standard in
140 determining whether the trial court properly admitted or

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141 excluded particular expert evidence.

142 (11) SEVERABILITY.--The provisions of this act are
143 severable. If any portion of this act is declared
144 unconstitutional or the application of any part of this act to
145 any person or circumstance is held invalid, the remaining
146 portions of the act and their applicability to any person or
147 circumstance shall remain valid and enforceable.

148 Section 2. This act shall take effect upon becoming a law
149 and shall apply to all actions commenced on or after the
150 effective date and to all actions pending on the effective date
151 for which a trial has not been scheduled or for which a trial
152 has been scheduled to take place at least 90 days after the
153 effective date.