

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 section may be cited as
 17 the "Junk Science Elimination 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:

22 (a) Rationally based on the perception of the witness.

23 (b) Helpful to a clear understanding of the witness's
 24 testimony or the determination of a fact in issue.

25 (c) Not based on scientific, technical, or other
 26 specialized knowledge within the scope of subsection (3).

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

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29 understanding the evidence or determining a fact in issue, a
30 witness qualified as an expert by knowledge, skill, experience,
31 training, or education may testify as to the evidence or fact in
32 the form of an opinion or otherwise if:

33 (a) The testimony is based upon sufficient facts or data;

34 (b) The testimony is the product of reliable principles
35 and methods; and

36 (c) The witness has applied the principles and methods
37 reliably to the facts of the case.

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

51 (5) LIMITATIONS ON EXPERT TESTIMONY.--

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

56 (b) An expert witness may receive a reasonable and

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57 customary fee for the rendering of professional services;
58 however, the testimony of an expert witness shall not be
59 admitted if any such compensation is contingent upon the outcome
60 of any claim or case with respect to which the testimony is
61 being offered.

62 (6) MANDATORY PRETRIAL HEARING.--If a witness is
63 testifying as an expert, upon motion of a party the court shall
64 hold a pretrial hearing to determine whether the witness
65 qualifies as an expert and whether the expert's testimony
66 satisfies the requirements of subsections (3), (4), and (5). The
67 court shall allow sufficient time for a hearing and shall rule
68 on the qualifications of the witness to testify as an expert and
69 whether the testimony satisfies the requirements of subsections
70 (3), (4), and (5). The trial court's ruling shall set forth the
71 findings of fact and conclusions of law upon which the order to
72 admit or exclude expert evidence is based. Such ruling shall be
73 issued prior to the commencement of the trial.

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

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

79 (b) Except as otherwise stipulated or directed by the
80 court, with respect to a witness who is retained or specially
81 employed to provide expert testimony in the case or whose duties
82 as an employee of the party regularly involve providing expert
83 testimony, a disclosure provided under paragraph (a) shall be
84 accompanied by a written report prepared and signed by the

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85 witness. The report shall contain a complete statement of all
86 opinions to be expressed and the basis and reasons for such
87 opinions; the data or other information relied upon by the
88 witness in forming the opinions; any exhibits to be used as a
89 summary of or support for the opinions; the qualifications of
90 the witness, including a list of all publications authored by
91 the witness within the preceding 10 years; the compensation to
92 be paid for the study and testimony; and a listing of any other
93 cases in which the witness has testified as an expert at trial
94 or by deposition within the preceding 4 years.

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

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

110 (8) INTERPRETATION.--In interpreting and applying this
111 section:

112 (a) The courts of this state shall follow the opinions of

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113 the United States Supreme Court in Daubert v. Merrell Dow
114 Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric Co.
115 v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. Ltd. v.
116 Carmichael, 526 U.S. 137 (1999); Weisgram v. Marley, 528 U.S.
117 440 (2000); and their progeny.

118 (b) The courts of this state may also draw from other
119 precedents binding in the federal courts in this state applying
120 the standards announced by the United States Supreme Court in
121 the cases specified in paragraph (a).

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

135 (10) STANDARD OF REVIEW.--For purposes of this section:

136 (a) The proper construction of the provisions for
137 admissibility of expert evidence prescribed by this section is a
138 question of law, and a court of appeals shall apply a de novo
139 standard of review in determining whether the trial court fully
140 applied the proper legal standard in considering the

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141 admissibility of expert evidence.

142 (b) The application of this section to determine the
143 admissibility of expert testimony is a question of fact, and a
144 court of appeals shall apply an abuse of discretion standard in
145 determining whether the trial court properly admitted or
146 excluded particular expert evidence.

147 (11) SEVERABILITY.--The provisions of this section are
148 severable. If any portion of this section is declared
149 unconstitutional or the application of any part of this section
150 to any person or circumstance is held invalid, the remaining
151 portions of the section and their applicability to any person or
152 circumstance shall remain valid and enforceable.

153 Section 2. This act shall take effect upon becoming a law
154 and shall apply to all actions commenced on or after the
155 effective date and to all actions pending on the effective date
156 for which a trial has not been scheduled or for which a trial
157 has been scheduled to take place at least 90 days after the
158 effective date.