

By Senator Wise

5-1412A-07

1 A bill to be entitled

2 An act relating to the testimony of witnesses;

3 providing a short title; providing standards

4 for opinion testimony by lay witnesses;

5 providing standards for, bases of, and

6 limitations on expert testimony; authorizing

7 expert witness fees; providing requirements for

8 mandatory pretrial hearings; providing

9 requirements for mandatory pretrial disclosure

10 of expert testimony; providing for

11 interpretation and application; providing for

12 interlocutory appeals; specifying standards of

13 review; providing for severability; providing

14 application; providing an effective date.

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

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18 Section 1. (1) SHORT TITLE.--This act may be cited as

19 the "Junk Science Elimination Act."

20 (2) OPINION TESTIMONY BY LAY WITNESSES.--If a witness

21 is not testifying as an expert, the witness's testimony in the

22 form of opinions or inferences is limited to those opinions or

23 inferences that are:

24 (a) Rationally based on the perception of the witness;

25 (b) Helpful to a clear understanding of the witness's

26 testimony or the determination of a fact in issue; and

27 (c) Not based on scientific, technical, or other

28 specialized knowledge within the scope of subsection (3).

29 (3) TESTIMONY BY EXPERTS.--If scientific, technical,

30 or other specialized knowledge will assist the trier of fact

31 in understanding the evidence or determining a fact in issue,

1 a witness who is qualified as an expert by knowledge, skill,
2 experience, training, or education may testify as to the
3 evidence or fact in the form of an opinion or otherwise if:

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

6 (b) The testimony is the product of reliable
7 principles and method; and

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

10 (4) BASES OF EXPERT TESTIMONY.--The facts or data in a
11 specific case upon which an expert bases an opinion or
12 inference may be those perceived by or made known to the
13 expert at or before the hearing. If the facts or data are of a
14 type reasonably relied upon by experts in the particular field
15 in forming opinions or inferences upon the subject, the facts
16 or data need not be admissible in evidence in order for the
17 opinion or inference to be admitted. Facts or data that are
18 otherwise inadmissible shall not be disclosed to the jury by
19 the proponent of the opinion or inference unless the court
20 determines that the probative value of the facts or data in
21 assisting the jury to evaluate the expert's opinion
22 substantially outweighs the prejudicial effect of disclosing
23 the facts or data.

24 (5) LIMITATIONS ON EXPERT TESTIMONY.--

25 (a) A witness qualified as an expert by knowledge,
26 skill, experience, training, or education may offer expert
27 testimony only with respect to a particular field in which the
28 expert is qualified.

29 (b) An expert witness may receive a reasonable and
30 customary fee for the rendering of professional services.
31 However, the testimony of an expert witness may not be

1 admitted if any such fee is contingent upon the outcome of any
2 claim or case with respect to which the testimony is being
3 offered.

4 (6) MANDATORY PRETRIAL HEARING.--If a witness is
5 testifying as an expert, upon motion of a party the court
6 shall hold a pretrial hearing to determine whether the witness
7 qualifies as an expert and whether the expert's testimony
8 satisfies the requirements of subsections (3), (4), and (5).
9 The court shall allow sufficient time for a hearing and shall
10 rule on the qualifications of the witness to testify as an
11 expert and whether the testimony satisfies the requirements of
12 subsections (3), (4), and (5). The trial court's ruling shall
13 set forth the findings of fact and conclusions of law upon
14 which the order to admit or exclude expert evidence is based.
15 The ruling shall be issued before the commencement of the
16 trial.

17 (7) MANDATORY PRETRIAL DISCLOSURE OF EXPERT
18 TESTIMONY.--

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

23 (b) Except as otherwise stipulated or directed by the
24 court, with respect to a witness who is retained or specially
25 employed to provide expert testimony in the case or whose
26 duties as an employee of the party regularly involve providing
27 expert testimony, a disclosure provided under paragraph (a)
28 shall be accompanied by a written report prepared and signed
29 by the witness. The report shall contain a complete statement
30 of all opinions to be expressed and the basis and reasons for
31 such opinions; the data or other information relied upon by

1 the witness in forming the opinions; any exhibits to be used
2 as a summary of or support for the opinions; the
3 qualifications of the witness, including a list of all
4 publications authored by the witness within the preceding 10
5 years; the compensation to be paid for the study and
6 testimony; and a listing of any other cases in which the
7 witness has testified as an expert at trial or by deposition
8 within the preceding 4 years.

9 (c) The disclosures provided under paragraphs (a) and
10 (b) shall be made at the times and in the sequence directed by
11 the court. In the absence of other directions from the court
12 or stipulation by the parties, the disclosures shall be made
13 at least 90 days before the trial date or the date the case is
14 to be ready for trial or, if the evidence is intended solely
15 to contradict or rebut evidence on the same subject matter
16 identified by another party under paragraph (b), within 30
17 days after the disclosure made by the other party.

18 (d) A party may depose any person who has been
19 identified as an expert whose opinions may be presented at
20 trial. If a report from the expert is required under paragraph
21 (b), the deposition may not be conducted until after the
22 report is provided.

23 (8) INTERPRETATION.--In interpreting and applying this
24 act:

25 (a) The courts of this state shall follow the opinions
26 of the United States Supreme Court in Daubert v. Merrell Dow
27 Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric
28 Co. v. Joiner, 522 U.S. 136 (1997); Kumho Tire Co. Ltd. v.
29 Carmichael, 526 U.S. 137 (1999); Weisgram v. Marley, 528 U.S.
30 440 (2000); and their progeny.

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1 (b) The courts of this state may also draw from other
2 precedents binding in the federal courts in this state
3 applying the standards announced by the United States Supreme
4 Court in the cases specified in paragraph (a).

5 (9) INTERLOCUTORY APPEAL.--Interlocutory appeal of a
6 ruling on the admissibility of expert evidence is permitted at
7 the discretion of the appellate court. In deciding whether to
8 grant an interlocutory appeal, the court shall consider
9 whether the ruling involved any challenge to the
10 constitutionality of this act, will help prove or disprove
11 criminal liability, or will help establish civil liability at
12 or above \$75,000 if the testimony may be determinative in
13 establishing liability or determining damages. A party's
14 failure to seek interlocutory appeal or an appellate court's
15 decision to deny a motion for interlocutory appeal does not
16 waive a party's right to appeal a ruling on the admissibility
17 of expert evidence after an entry of judgment in the case.

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

19 (a) The proper construction of the provisions for
20 admissibility of expert evidence prescribed by this act is a
21 question of law, and a court of appeals shall apply a de novo
22 standard of review in determining whether the trial court
23 fully applied the proper legal standard in considering the
24 admissibility of expert evidence.

25 (b) The application of this act to determine the
26 admissibility of expert testimony is a question of fact, and a
27 court of appeals shall apply an abuse of discretion standard
28 in determining whether the trial court properly admitted or
29 excluded particular expert evidence.

30 (11) SEVERABILITY.--The provisions of this act are
31 severable. If any portion of this act is declared

1 unconstitutional or the application of any part of this act to
2 any person or circumstance is held invalid, the remaining
3 portions of the act and their applicability to any person or
4 circumstance shall remain valid and enforceable.

5 Section 2. This act shall take effect upon becoming a
6 law and shall apply to all actions commenced on or after the
7 effective date and to all actions pending on the effective
8 date for which a trial has not been scheduled or for which a
9 trial has been scheduled to take place at least 90 days after
10 the effective date.

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SENATE SUMMARY

Provides standards for opinion testimony by lay witnesses. Provides standards for, bases of, and limitations on expert testimony. Authorizes expert witness fees. Provides requirements for mandatory pretrial hearings. Provides requirements for mandatory pretrial disclosure of expert testimony. Provides for interlocutory appeals. Specifies standards of review.