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LEGISLATIVE ACTION

Senate

.

House

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Senator Simmons moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 90.702, Florida Statutes, is amended to
read:

90.702 Testimony by experts.—

(1) If scientific, technical, or other specialized
knowledge will assist the trier of fact in understanding the
evidence or in determining a fact in issue, a witness qualified
as an expert by knowledge, skill, experience, training, or
education may testify about it in the form of an opinion, or
otherwise, if:



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

15 (b) The testimony is the product of reliable principles and
16 methods; and

17 (c) The witness has applied the principles and methods
18 reliably to the facts of the case; however, the opinion is
19 admissible only if it can be applied to evidence at trial.

20 (2) The threshold required by subsection (1) to permit a
21 witness to testify as an expert witness is satisfied if the
22 principles and methods on which such knowledge is based are
23 sufficiently established as generally accepted by the relevant
24 expert community and are relevant to the facts of the particular
25 case.

26 (3) The stated testimonial requirements apply in any case
27 in which the expert opinion testimony is based on scientific,
28 technical, or other specialized knowledge. All proposed expert
29 testimony, including pure opinion testimony, is subject to ss.
30 90.702 and 90.704.

31 Section 2. Section 90.704, Florida Statutes, is amended to
32 read:

33 90.704 Basis of opinion testimony by experts.—The facts or
34 data upon which an expert bases an opinion or inference may be
35 those perceived by, or made known to, the expert at or before
36 the trial. If the facts or data are of a type reasonably relied
37 upon by experts in the subject to support the opinion expressed,
38 the facts or data need not be admissible in evidence. Facts or
39 data that are otherwise inadmissible shall not be disclosed to
40 the jury by the proponent of the opinion or inference unless the
41 court determines that their probative value in assisting the
42 jury to evaluate the expert's opinion substantially outweighs



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43 their prejudicial effect.

44 Section 3. This act shall take effect July 1, 2012.

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46 ===== T I T L E A M E N D M E N T =====

47 And the title is amended as follows:

48 Delete everything before the enacting clause
49 and insert:

50 A bill to be entitled
51 An act relating to expert testimony; amending s.
52 90.702, F.S.; providing that a witness qualified as an
53 expert by knowledge, skill, experience, training, or
54 education may testify in the form of an opinion as to
55 the facts at issue in a case under certain
56 circumstances; providing that the elements necessary
57 to permit a witness to testify as an expert witness
58 are satisfied if the principles and methods on which
59 such knowledge is based are generally accepted by the
60 relevant expert community; providing for
61 applicability; amending s. 90.704, F.S.; providing
62 that facts or data that are otherwise inadmissible in
63 evidence may not be disclosed to the jury by the
64 proponent of the opinion or inference unless the court
65 determines that the probative value of the facts or
66 data in assisting the jury to evaluate the expert's
67 opinion substantially outweighs the prejudicial effect
68 of the facts or data; providing an effective date.

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70 WHEREAS, the Legislature finds that the admissibility of
71 expert testimony in the state of Florida is in need of revision



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72 and clarification, and

73 WHEREAS, the Legislature finds that the admissibility of
74 expert testimony should be subject to a standard that generally
75 applies the requirement of *Daubert v. Merrell Dow*
76 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and federal rule of
77 evidence 702, while recognizing that once knowledge is based
78 upon principles and methods that are generally accepted within
79 an expert community, a court need not continually reexamine the
80 basis for such knowledge, but must ensure that the generally
81 accepted principles and methods are relevant to the facts of the
82 case before the court. This act does not alter the authority of
83 the courts in this state to manage their dockets as they deem
84 appropriate, including, but not limited to, deciding whether a
85 hearing or presentation of live testimony is required to resolve
86 a pending motion, and

87 WHEREAS, the Legislature finds that all proposed expert
88 testimony should be subject to the new standards of s. 90.702,
89 Florida Statutes, as revised in this act, and as such, *Marsh v.*
90 *Valyou*, 977 So. 2d 543 (Fla. 2007) and its holding as to pure
91 opinion testimony, is overruled, NOW, THEREFORE,