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LEGISLATIVE ACTION

Senate

.

House

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Floor: WD/2R

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04/25/2013 09:38 AM

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Senators Negrón, Benacquisto, and Galvano moved the following:

1 **Senate Substitute for Amendment (871158) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

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

8 90.702 Testimony by experts.—If scientific, technical, or
9 other specialized knowledge will assist the trier of fact in
10 understanding the evidence or in determining a fact in issue, a
11 witness qualified as an expert by knowledge, skill, experience,
12 training, or education may testify about it in the form of an
13 opinion or otherwise, if:



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

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

17 (3) 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 Section 2. Section 90.704, Florida Statutes, is amended to
21 read:

22 90.704 Basis of opinion testimony by experts.—The facts or
23 data upon which an expert bases an opinion or inference may be
24 those perceived by, or made known to, the expert at or before
25 the trial. If the facts or data are of a type reasonably relied
26 upon by experts in the subject to support the opinion expressed,
27 the facts or data need not be admissible in evidence. Facts or
28 data that are otherwise inadmissible may not be disclosed to the
29 jury by the proponent of the opinion or inference unless the
30 court determines that their probative value in assisting the
31 jury to evaluate the expert's opinion substantially outweighs
32 their prejudicial effect.

33 Section 3. This act shall take effect July 1, 2013.

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete everything before the enacting clause
38 and insert:

39 A bill to be entitled

40 An act relating to expert testimony; amending s.

41 90.702, F.S.; providing that a witness qualified as an
42 expert by knowledge, skill, experience, training, or



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43 education may testify in the form of an opinion as to
44 the facts at issue in a case under certain
45 circumstances; requiring the courts of this state to
46 interpret and apply the principles of expert testimony
47 in conformity with specified United States Supreme
48 Court decisions; subjecting pure opinion testimony to
49 such requirements; amending s. 90.704, F.S.; providing
50 that facts or data that are otherwise inadmissible in
51 evidence may not be disclosed to the jury by the
52 proponent of the opinion or inference unless the court
53 determines that the probative value of the facts or
54 data in assisting the jury to evaluate the expert's
55 opinion substantially outweighs the prejudicial effect
56 of the facts or data; providing an effective date.

57
58 WHEREAS, the Supreme Court of the United States in *Daubert*
59 *v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
60 replaced the standard for expert testimony in all federal courts
61 that was first articulated in *Frye v. United States*, 293 F.2d
62 1013 (D.C. Cir 1923) with a new standard that is known as the
63 Daubert standard, and

64 WHEREAS, the United States Supreme Court has subsequently
65 reaffirmed and refined the Daubert standard in the cases of
66 *General Electric Co. v. Joiner*, 522 U.S. 136 (1997) and *Kumho*
67 *Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and

68 WHEREAS, Florida's Evidence Code is generally patterned
69 after the Federal Rules of Evidence,

70 WHEREAS, Rule 702 of the Federal Rules of Evidence,
71 applicable to all federal courts, was amended in 2000 to reflect



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72 the holdings in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,
73 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S.
74 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137
75 (1999), and

76 WHEREAS, as result of the 2000 amendment, Rule 702 of the
77 Federal Rules of Evidence provides that:

78 A witness who is qualified as an expert by knowledge,
79 skill, experience, training, or education may testify in the
80 form of an opinion or otherwise if:

81 (a) The expert's scientific, technical, or other
82 specialized knowledge will help the trier of fact to understand
83 the evidence or to determine a fact in issue;

84 (b) The testimony is based on sufficient facts or data;

85 (c) The testimony is the product of reliable principles and
86 methods; and

87 (d) The expert has reliably applied the principles and
88 methods to the facts of the case, and

89 WHEREAS, by amending s. 90.702, Florida Statutes, to
90 pattern it after Rule 702 of the Federal Rules of Evidence as
91 amended in 2000, the Florida Legislature intends to adopt the
92 standards for expert testimony in the courts of this state as
93 provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509
94 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S. 136
95 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999),
96 and to no longer apply the standard in *Frye v. United States*,
97 293 F.2d 1013 (D.C. Cir 1923) in the courts of this state, and

98 WHEREAS, by amending s. 90.702, Florida Statutes, the
99 Florida Legislature intends to prohibit in the courts of this
100 state pure opinion testimony as provided in *Marsh v. Valyou*, 977



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101 So.2d 543 (Fla. 2007), NOW, THEREFORE,