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LEGISLATIVE ACTION

Senate

.

House

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Floor: WD/2R

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04/25/2013 09:37 AM

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Senators Negrón, Benacquisto, and Galvano 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 courts of this state shall interpret and apply the
21 requirements of subsection (1) and s. 90.704 in accordance with
22 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579
23 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and
24 *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999). *Frye v.*
25 *United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent
26 Florida decisions applying or implementing *Frye* no longer apply
27 to subsection (1) or s. 90.704. All proposed expert testimony,
28 including pure opinion testimony as discussed in *Marsh v.*
29 *Valyou*, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1)
30 and s. 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, 2013.

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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; requiring the courts of this state to
57 interpret and apply the principles of expert testimony
58 in conformity with specified United States Supreme
59 Court decisions; subjecting pure opinion testimony to
60 such requirements; amending s. 90.704, F.S.; providing
61 that facts or data that are otherwise inadmissible in
62 evidence may not be disclosed to the jury by the
63 proponent of the opinion or inference unless the court
64 determines that the probative value of the facts or
65 data in assisting the jury to evaluate the expert's
66 opinion substantially outweighs the prejudicial effect
67 of the facts or data; providing an effective date.