



768244

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
Floor: 1/AD/2R	.	Floor: SEN1/C
04/25/2013 10:44 AM	.	04/26/2013 04:15 PM
	.	

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.—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:

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



768244

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

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

19 Section 2. Section 90.704, Florida Statutes, is amended to
20 read:

21 90.704 Basis of opinion testimony by experts.—The facts or
22 data upon which an expert bases an opinion or inference may be
23 those perceived by, or made known to, the expert at or before
24 the trial. If the facts or data are of a type reasonably relied
25 upon by experts in the subject to support the opinion expressed,
26 the facts or data need not be admissible in evidence. Facts or
27 data that are otherwise inadmissible may not be disclosed to the
28 jury by the proponent of the opinion or inference unless the
29 court determines that their probative value in assisting the
30 jury to evaluate the expert's opinion substantially outweighs
31 their prejudicial effect.

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

33
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete everything before the enacting clause
37 and insert:

38 A bill to be entitled
39 An act relating to expert testimony; amending s.
40 90.702, F.S.; providing that a witness qualified as an
41 expert by knowledge, skill, experience, training, or
42 education may testify in the form of an opinion as to



768244

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

56
57 WHEREAS, the Supreme Court of the United States in *Daubert*
58 *v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
59 replaced the standard for expert testimony in all federal courts
60 that was first articulated in *Frye v. United States*, 293 F.2d
61 1013 (D.C. Cir 1923) with a new standard that is known as the
62 Daubert standard, and

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

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

69 WHEREAS, Rule 702 of the Federal Rules of Evidence,
70 applicable to all federal courts, was amended in 2000 to reflect
71 the holdings in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,



768244

72 509 U.S. 579 (1993), *General Electric Co. v. Joiner*, 522 U.S.
73 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137
74 (1999), and

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

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

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

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

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

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

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

97 WHEREAS, by amending s. 90.702, Florida Statutes, the
98 Florida Legislature intends to prohibit in the courts of this
99 state pure opinion testimony as provided in *Marsh v. Valyou*, 977
100 So.2d 543 (Fla. 2007), NOW, THEREFORE,