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HOUSE BILL NO. 807

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL to amend and reenact § 8.01-401.3 of the Code of Virginia, relating to opinion testimony by experts.*

Patron—Fralin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-401.3 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-401.3. Opinion testimony and conclusions as to facts critical to civil case resolution.

A. *Admissibility of expert testimony generally.* In a civil proceeding, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, *if (i) the testimony is based upon sufficient facts or data as proffered to the court, (ii) the testimony is the product of scientifically reliable principles and methods, (iii) the witness has applied the principles and methods reliably to the facts of the case, and (iv) such testimony is relevant to the issues in the case.*

B. *Hearing on qualification of expert witnesses.* If a witness is testifying as an expert, then upon motion of a party, the court may hold a pre-trial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of §§ 8.01-401.1 and 8.01-401.3. If it holds such a hearing, the court shall allow sufficient time for such hearing and shall rule on the qualifications of the witness to testify as an expert and whether or not the testimony satisfies the requirements of §§ 8.01-401.1 and 8.01-401.3.

C. No expert or lay witness while testifying in a civil proceeding shall be prohibited from expressing an otherwise admissible opinion or conclusion as to any matter of fact solely because that fact is the ultimate issue or critical to the resolution of the case. However, in no event shall such witness be permitted to express any opinion which constitutes a conclusion of law.

ED. Except as provided by the provisions of this section, the exceptions to the "ultimate fact in issue" rule recognized in the Commonwealth prior to enactment of this section shall remain in full force.

INTRODUCED

HB807