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SENATE BILL NO. 753

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact § 8.01-401.3 of the Code of Virginia, relating to standards for testimony of expert witnesses.

Patron—Peake

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 (Supreme Court Rule 2:701 derived from subsection B of this section, subdivision (a)(i) of Supreme Court Rule 2:702 derived from subsection A of this section, and subsection (a) of Supreme Court Rule 2:704 derived from subsections B and C of this section).

A. 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~~ *to scientific, technical, or other specialized knowledge in the form of an opinion or otherwise if the trial judge determines that (i) the expert's scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue; (ii) the testimony is based on sufficient facts or data; (iii) the testimony is the product of reliable principles and methods; and (iv) the expert has reliably applied the principles and methods to the facts of the case.*

B. 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.

C. 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.

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