SCS SB 591 -- EXPERT WITNESSES

SPONSOR: Parson (Corlew)

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Civil and Criminal Proceedings by a vote of 7 TO 5. Voted "Do Pass" by the Select Committee on Judiciary by a vote of 5 to 3.

This bill specifies that a witness who is qualified as an expert may testify in the form of an opinion or otherwise if the expert's specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue, the testimony is based on sufficient facts or data, the testimony is the product of reliable principles and methods, and the expert has reliably applied the principles and methods to the facts of the case.

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, such facts or data need not be admissible for the opinion to be admitted. However, if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

An expert opinion is not objectionable just because it embraces an ultimate issue. In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense.

Unless the court orders otherwise, an expert may state an opinion and give the reasons for it without first testifying to the underlying facts or data. However, the expert may be required to disclose those facts or data on cross-examination.

A landowner is competent to testify as to the reasonable market value of his or her land, in accordance with case law specified in the bill.

PROPONENTS: Supporters say that this bill is attempting to match the federal standards on expert witnesses. They want to ensure that an individual up on the stand testifying as an expert actually is an expert in that area. These standards have been adopted in 40 other states. This bill will clarify the standard for admissibility of expert testimony. Until 1989, Missouri followed the Frye standard. In 2003, the Missouri Supreme Court issued an opinion on the standard for expert witnesses, State Bd. of

Registration for the Healing Arts v. McDonagh, saying courts should follow Daubert, but that where Daubert and Section 490.065 differ, Section 490.065 controls. This bill would provide consistency not only with our federal courts, but also with the majority of other states. Our judicial system should want the best experts in the courtroom, and this bill is a step in that direction.

Testifying for the bill were Senator Parson; Glenn Davis, Missouri Organization Of Defense Lawyers; Missouri Chamber Of Commerce and Industry; Associated Industries Of Missouri; Doe Run; The Doctors Company; American Insurance Association; Jake Skouby, Missouri Association Of Prosecuting Attorneys; Missouri Hospital Association; Missouri Petroleum Council -- A Division Of The American Petroleum Institute; National Federation Of Independent Business; Washington University; Missouri Society Of CPAs; Missouri State Medical Association; Ford Motor Company; National Association Of Mutual Insurance Companies; Missouri Insurance Coalition; Jeffrey N Davis, BNSF Railway Corporate Headquarters; and Missouri Grocers` Association.

OPPONENTS: Others testifying on the bill say the problem for practitioners is that the interpretation of Daubert varies greatly from circuit to circuit and judge to judge. Implementing this standard would not improve the quality of the testimony the fact-finder would hear or the judicial system. The Daubert system also allows junk science into the courtroom. This would drive up the cost of the case to the parties because Daubert hearings are inherently expensive. The injured party is the one that ends up eating that cost.

Testifying against the bill were Ken Barnes; Colleen Dolan, Circuit Judges Association; and Transportation Division of SMART.