

HB 153 -- EXPERT WITNESSES

SPONSOR: Corlew

COMMITTEE ACTION: Voted "Do Pass" by the Special Committee on Litigation Reform by a vote of 9 to 3. Voted "Do Pass" by the Rules- Legislative Oversight Committee by a vote of 8 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.

The bill specifies the provisions do not prevent a landowner from testifying as to the value of their land.

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.

PROPOSERS: Supporters say that this bill will improve the reliability of expert witness testimony in Missouri courts. The standard adopted in the bill is consistent with the Daubert standard for expert testimony used in the federal courts. It is a best practice standard that requires a judge to act as a gatekeeper to ensure an expert's opinion testimony is based upon sound science. The bill is neutral in that it applies to both sides and should facilitate settlement in civil cases. The new expert witness standards should also improve the resolution of criminal

cases because of the ability to obtain a pretrial ruling on the admissibility of opinion testimony in certain cases.

Testifying for the bill were Representative Corlew; Missouri Organization of Defense Lawyers; Healthcare Services Group; Missouri Hospital Association; The Doctors Company; Judge John R. Gray; Missouri Petroleum Council - A Division of The American Petroleum Institute; Shelter Insurance; Missouri Society of Certified Public Accountants; Missouri Railroad Association; National Federation of Independent Business; Doe Run Company; Enterprise; Monsanto; Kansas City Power & Light; Missouri Chamber of Commerce And Industry; OOIDA; Johnson & Johnson; Missouri State Medical Association; State Farm Insurance Companies; and Michael Fusselman, Missouri Association of Prosecuting Attorneys.

OPPONENTS: Those who oppose the bill say that the current standard works well in Missouri courts and judges are already able to keep "junk science" out of the courtroom. The Daubert standard for expert witnesses contained in the bill will not improve the quality of expert testimony and it has not been applied consistently in the federal courts. It will extend the time of litigation and increase costs for the parties. The bill may be interpreted to eliminate a diminished capacity defense in certain criminal cases.

Testifying against the bill were Hon. Jack Green, Circuit Judge, United Steel Workers Dist 11; Missouri AFL-CIO; Jack Graze; Sheet Metal/Air/Rail/Transportation (Smart); and Ken Barnes, Missouri Association of Trial Attorneys.

This bill is the same as HCS HB 1676 (2016).