

## 2003 SENATE BILL 49

**AN ACT** *to renumber and amend* 907.01 and 907.02; *to amend* 227.45 (1) and 907.03; and *to create* 227.45 (1m), 907.01 (3), 907.02 (1) (a), (b) and (c), 907.02 (2) and 907.02 (3) of the statutes; **relating to:** evidence of lay and expert witnesses.

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*Analysis by the Legislative Reference Bureau*

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1d.** 227.45 (1) of the statutes is amended to read:  
2           227.45 **(1)** Except as provided in sub. (1m) and ss. 19.52 (3) and 901.05, an  
3 agency or hearing examiner shall not be bound by common law or statutory rules of  
4 evidence. The agency or hearing examiner shall admit all testimony having  
5 reasonable probative value, but shall exclude immaterial, irrelevant or unduly  
6 repetitious testimony or evidence that is inadmissible under s. 901.05. The agency

**SENATE BILL 49****SECTION 1d**

1 or hearing examiner shall give effect to the rules of privilege recognized by law. Basic  
2 principles of relevancy, materiality and probative force shall govern the proof of all  
3 questions of fact. Objections to evidentiary offers and offers of proof of evidence not  
4 admitted may be made and shall be noted in the record.

5 **SECTION 1g.** 227.45 (1m) of the statutes is created to read:

6 227.45 **(1m)** Other than cases under s. 59.694 or 62.23 (7) (e), an agency or  
7 hearing examiner is subject to the provisions of ss. 907.01, 907.02, and 907.03.

8 **SECTION 1q.** 907.01 of the statutes is renumbered 907.01 (intro.) and amended  
9 to read:

10 **907.01 Opinion testimony by lay witnesses.** (intro.) If the witness is not  
11 testifying as an expert, the witness's testimony in the form of opinions or inferences  
12 is limited to those opinions or inferences which are rationally all of the following:

13 (1) Rationally based on the perception of the witness and ~~helpful.~~

14 (2) Helpful to a clear understanding of the witness's testimony or the  
15 determination of a fact in issue.

16 **SECTION 2.** 907.01 (3) of the statutes is created to read:

17 907.01 **(3)** If the testimony is given in a case other than a criminal case or a case  
18 brought under ch. 980, not based on scientific, technical, or other specialized  
19 knowledge within the scope of a witness under s. 907.02 (1).

20 **SECTION 3.** 907.02 of the statutes is renumbered 907.02 (1) (intro.) and  
21 amended to read:

22 907.02 **(1)** (intro.) If the testimony is given in a case other than a criminal case  
23 or a case brought under ch. 980 and if scientific, technical, or other specialized  
24 knowledge will assist the trier of fact to understand the evidence or to determine a  
25 fact in issue, a witness qualified as an expert by knowledge, skill, experience,

**SENATE BILL 49**

1 training, or education, may testify thereto in the form of an opinion or otherwise. if  
2 all of the following criteria are met:

3 **SECTION 4.** 907.02 (1) (a), (b) and (c) of the statutes are created to read:

4 907.02 **(1)** (a) The testimony is based upon sufficient facts or data.

5 (b) The testimony is the product of reliable principles and methods.

6 (c) The witness has applied the principles and methods reliably to the facts of  
7 the case.

8 **SECTION 5.** 907.02 (2) of the statutes is created to read:

9 907.02 **(2)** Notwithstanding sub. (1), the testimony of an expert witness may  
10 not be admitted under sub. (1) if the expert witness is entitled to receive any  
11 compensation contingent on the outcome of any claim or case with respect to which  
12 the testimony is being offered.

13 **SECTION 5m.** 907.02 (3) of the statutes is created to read:

14 907.02 **(3)** If the testimony is given in a criminal case or a case brought under  
15 ch. 980 and if scientific, technical, or other specialized knowledge will assist the trier  
16 of fact to understand the evidence or to determine a fact in issue, a witness qualified  
17 as an expert by knowledge, skill, experience, training, or education may testify  
18 thereto in the form of an opinion or otherwise.

19 **SECTION 6.** 907.03 of the statutes is amended to read:

20 **907.03 Bases of opinion testimony by experts.** The facts or data in the  
21 particular case upon which an expert bases an opinion or inference may be those  
22 perceived by or made known to the expert at or before the hearing. If of a type  
23 reasonably relied upon by experts in the particular field in forming opinions or  
24 inferences upon the subject, the facts or data need not be admissible in evidence in  
25 order for the opinion or inference to be admitted. Unless the testimony is given in

**SENATE BILL 49****SECTION 6**

1 a criminal case or a case that is brought under ch. 980, facts or data that are  
2 otherwise inadmissible may be disclosed to the jury by the proponent of the opinion  
3 or inference only if the court determines that their probative value in assisting the  
4 jury to evaluate the expert's opinion or inference substantially outweighs their  
5 prejudicial effect.

6 **SECTION 7. Initial applicability.**

7 (1) This act first applies to actions pending on the effective date of this  
8 subsection.

9 (END)