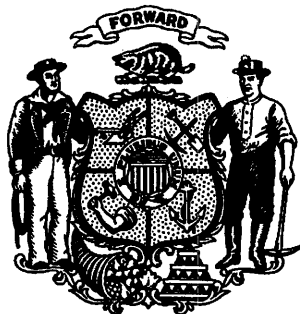


# State of Wisconsin



2003 Senate Bill 49

Date of enactment:  
Date of publication\*:

## 2003 WISCONSIN ACT

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.

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

SECTION 1d. 227.45 (1) of the statutes is amended to read:

227.45 (1) Except as provided in sub. (1m) and ss. 19.52 (3) and 901.05, an agency or hearing examiner shall not be bound by common law or statutory rules of evidence. The agency or hearing examiner shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. The agency or hearing examiner shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

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

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

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

**907.01 Opinion testimony by lay witnesses.** (intro.) If the witness is not testifying as an expert, the

witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are rati-  
onally all of the following:

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

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

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

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

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

907.02 (1) (intro.) If the testimony is given in a case other than a criminal case or a case brought under ch. 980 and if scientific, technical, or other specialized knowl-  
edge 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 all of the following criteria are met:

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

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

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

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

907.02 (3) If the testimony is given in a criminal case or a case brought under ch. 980 and 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.

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

**907.03 Bases of opinion testimony by experts.** The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Unless the testimony is given in a criminal case or a case that is brought under ch. 980, facts or data that are otherwise inadmissible may be disclosed to the jury by the proponent of the opinion or inference only if the court determines that their probative value in assisting the jury to evaluate the expert's opinion or inference substantially outweighs their prejudicial effect.

**SECTION 7. Initial applicability.**

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

**SENATE BILL 49 (LRB -0671)**

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

**2003**

02-26.	S.	Introduced by Senators <b>Welch, Stepp and Kanavas</b> ; cosponsored by Representatives <b>Gundrum, Olsen, Hines, Albers, Townsend, McCormick, Krawczyk, Nass, Vukmir, Musser, Van Roy, Gunderson and Ladwig</b> .	
02-26.	S.	Read first time and referred to committee on Judiciary, Corrections and Privacy .....	98
04-09.	S.	Public hearing held.	
06-23.	S.	✓ LRB correction ✓ .....	247
10-02.	S.	Executive action taken.	
10-08.	S.	Report passage recommended by committee on Judiciary, Corrections and Privacy, Ayes 3, Noes 2 .....	405
10-08.	S.	Available for scheduling.	

**2004**

02-02.	S.	Placed on calendar 2-3-2004 by committee on Senate Organization.	
02-03.	S.	Read a second time .....	589
02-03.	S.	Senate amendment 1 offered by Senator Welch ( <b>LRB a1528</b> ) .....	589
02-03.	S.	Senate amendment 1 <b>adopted</b> .....	589
02-03.	S.	Ordered to a third reading .....	589
02-03.	S.	Rules suspended .....	589
02-03.	S.	Read a third time and <b>passed</b> , Ayes 18, Noes 15 .....	589
02-03.	S.	Ordered immediately messaged .....	591
02-05.	A.	Received from Senate .....	677
02-05.	A.	Read first time and referred to committee on Corrections and the Courts .....	678
02-11.	A.	Public hearing held.	
03-03.	A.	Executive action taken.	
03-03.	A.	Assembly amendment 1 offered by committee on Corrections and the Courts ( <b>LRB a2197</b> ) .....	782
03-04.	A.	Report Assembly Amendment 1 adoption recommended by committee on Corrections and the Courts, Ayes 9, Noes 1 .....	783
03-04.	A.	Report concurrence as amended recommended by committee on Corrections and the Courts, Ayes 7, Noes 3 .....	783
03-04.	A.	Referred to committee on Rules .....	783
03-05.	A.	Placed on calendar 3-9-2004 by committee on Rules.	
03-09.	A.	Made a special order of business at 12:20 P.M. on 3-10-2004 pursuant to Assembly Resolution 38 .....	818
03-10.	A.	Read a second time .....	855
03-10.	A.	Assembly amendment 1 <b>adopted</b> .....	855
03-10.	A.	Assembly amendment 2 offered by Representative Colon ( <b>LRB a2753</b> ) .....	855
03-10.	A.	Assembly amendment 2 laid on table, Ayes 58, Noes 41 .....	855
03-10.	A.	Assembly amendment 3 offered by Representative Molepske ( <b>LRB a2769</b> ) .....	855
03-10.	A.	Assembly amendment 3 laid on table, Ayes 58, Noes 41 .....	855
03-10.	A.	Ordered to a third reading .....	855
03-10.	A.	Rules suspended .....	855
03-10.	A.	Read a third time and <b>concurrred in</b> as amended, Ayes 54, Noes 45 .....	855
03-10.	A.	Ordered immediately messaged .....	856
03-10.	S.	Received from Assembly amended and concurrred in as amended, Assembly amendment 1 adopted .....	700
03-11.	S.	Placed on calendar 3-11-2004 by committee on Senate Organization.	
03-11.	S.	Assembly amendment 1 <b>concurrred in</b> .	
03-11.	S.	Action ordered immediately messaged.	

**2003  
ENROLLED BILL**

03en S B- 49

**ADOPTED DOCUMENTS:**

Orig     Engr           SubAmdt       

03-067/1

Amendments to above (if none, write "NONE"): SA1, AA1

Corrections - show date (if none, write "NONE"): 6-23-03

Topic Relay

3/12/04      [Signature]  
Date                      Enrolling Drafter

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State of Wisconsin  
2003-2004 LEGISLATURE

**CORRECTIONS IN:**

**2003 SENATE BILL 49**

Prepared by the Legislative Reference Bureau  
(June 20, 2003)

1. Page 3, line 1: substitute "principles" for "principal".
2. Page 3, line 2: substitute "principles" for "principals".

## 2003 SENATE BILL 49

February 26, 2003 - Introduced by Senators WELCH, STEPP and KANAVAS, cosponsored by Representatives GUNDRUM, OLSEN, HINES, ALBERS, TOWNSEND, MCCORMICK, KRAWCZYK, NASS, VUKMIR, MUSSER, VAN ROY, GUNDERSON and LADWIG. Referred to Committee on Judiciary, Corrections and Privacy.

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

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a witness is not testifying as an expert, the witness's testimony is limited to those opinions that are rationally based on the perception of the witness and helpful to a clear understanding of the witness's testimony or of a fact at issue in the case. This bill adds the additional limit that a nonexpert's testimony may not be based on scientific, technical, or other specialized knowledge of the witness.

Current law allows the testimony of an expert witness if that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact at issue in the case. This bill limits the testimony of an expert witness to testimony that is based on sufficient facts or data, that is the product of reliable principals and methods, and that is based on the witness applying those principals and methods to the facts of the case. The bill also prohibits the testimony of an expert witness who is entitled to receive any compensation contingent on the outcome of the case.

Currently, the facts or data in a particular case on which an expert witness bases his or her opinion may be made known to the expert at or before the case hearing, but if those facts or data are reasonably relied upon by experts in the field in forming opinions about the subject, they do not need to be admissible into evidence

**SENATE BILL 49**

in the case. This bill adds that facts or data that are otherwise inadmissible may not be disclosed to the jury unless the court determines that their value in assisting the jury to evaluate the expert's testimony outweighs their prejudicial effect.

AAH  
SP  
2-1

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

1 g. ✓

1 SECTION 1. 907.01 of the statutes is renumbered 907.01 (intro.) and amended  
2 to read:

3 **907.01 Opinion testimony by lay witnesses.** (intro.) If the witness is not  
4 testifying as an expert, the witness's testimony in the form of opinions or inferences  
5 is limited to those opinions or inferences which are rationally all of the following:

- 6 (1) Rationally based on the perception of the witness ~~and helpful.~~
- 7 (2) Helpful to a clear understanding of the witness's testimony or the
- 8 determination of a fact in issue.

2-10 (SAI)

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

10 907.01 (3) ~~Not~~ based on scientific, technical, or other specialized knowledge  
11 within the scope of a witness under s. 907.02 (1).

12 SECTION 3. 907.02 of the statutes is renumbered 907.02 (1) (intro.) and  
13 amended to read:

2-14 (SAI)

14 907.02 (1) (intro.) If scientific, technical, or other specialized knowledge will  
15 assist the trier of fact to understand the evidence or to determine a fact in issue, a  
16 witness qualified as an expert by knowledge, skill, experience, training, or education,  
17 may testify thereto in the form of an opinion or otherwise. if all of the following  
18 criteria are met:

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

20 907.02 (1) (a) The testimony is based upon sufficient facts or data.

SENATE BILL 49

principles ccc

1 (b) The testimony is the product of reliable principal and methods.

2 (c) The witness has applied the principals and methods reliably to the facts of  
3 the case.

principles ccc

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

5 907.02 (2) Notwithstanding sub. (1), the testimony of an expert witness may  
6 not be admitted if the expert witness is entitled to receive any compensation  
7 contingent on the outcome of any claim or case with respect to which the testimony  
8 is being offered.

under sub. (1) SA 1

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

10 907.03 Bases of opinion testimony by experts. The facts or data in the  
11 particular case upon which an expert bases an opinion or inference may be those  
12 perceived by or made known to the expert at or before the hearing. If of a type  
13 reasonably relied upon by experts in the particular field in forming opinions or  
14 inferences upon the subject, the facts or data need not be admissible in evidence in  
15 order for the opinion or inference to be admitted. ~~Facts or data that are otherwise~~  
16 ~~inadmissible may not be disclosed to the jury by the proponent of the opinion or~~  
17 ~~inference unless the court determines that their probative value in assisting the jury~~  
18 ~~to evaluate the expert's opinion or inference substantially outweighs their~~  
19 ~~prejudicial effect.~~

3-12-8  
SA 1

3-15 SA 1

20 SECTION 7. Initial applicability.

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

(END)

SA 1  
any if



**SENATE AMENDMENT 1,  
TO 2003 SENATE BILL 49**

February 3, 2004 - Offered by Senator WELCH.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 10: delete "Not" and substitute "If the testimony is given in a  
3-30 case other than a criminal case or a case brought under ch. 980, not".

4 **2.** Page 2, line 14: after "If" insert "the testimony is given in a case other than  
5-14 a criminal case or a case brought under ch. 980 and if".

6 **3.** Page 3, line 6: after "admitted" insert "under sub. (1)".

7 **4.** Page 3, line 8: after that line insert:

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

9 907.02 (3) If the testimony is given in a criminal case or a case brought under  
10 ch. 980 and if scientific, technical, or other specialized knowledge will assist the trier  
11 of fact to understand the evidence or to determine a fact in issue, a witness qualified  
12 as an expert by knowledge, skill, experience, training, or education may testify  
13 thereto in the form of an opinion or otherwise.



**ASSEMBLY AMENDMENT 1,  
TO 2003 SENATE BILL 49**

March 3, 2004 - Offered by COMMITTEE ON CORRECTIONS AND THE COURTS.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 2, line 1: before that line insert:

3 "SECTION 1d. 227.45 (1) of the statutes is amended to read:

4 227.45 (1) Except as provided in sub. (1m) and ss. 19.52 (3) and 901.05, an  
5 agency or hearing examiner shall not be bound by common law or statutory rules of  
6 evidence. The agency or hearing examiner shall admit all testimony having  
7 reasonable probative value, but shall exclude immaterial, irrelevant or unduly  
8 repetitious testimony or evidence that is inadmissible under s. 901.05. The agency  
9 or hearing examiner shall give effect to the rules of privilege recognized by law. Basic  
10 principles of relevancy, materiality and probative force shall govern the proof of all  
11 questions of fact. Objections to evidentiary offers and offers of proof of evidence not  
12 admitted may be made and shall be noted in the record.

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

