

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 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- 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.

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\* 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.