

## 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

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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.

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

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 rationaly all of the following:

6           **(1) Rationaly** 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.

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:

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.

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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.

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.

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.

20 **SECTION 7. Initial applicability.**

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

23 (END)