

2003 DRAFTING REQUEST

Bill

Received: 11/13/2002

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Jolene**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - evidence**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Evidence presented by expert and lay witnesses

Instructions:

See Attached 01-4470

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 12/05/2002	chanaman 12/12/2002		_____			
/1			chaskett 12/17/2002	_____	amentkow 12/17/2002	amentkow 01/23/2003	

per Gundrum's office for Sen. Welch's office

FE Sent For:

*None
Needed*

<END>

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01-21-03 (PM)
 RTN says
 Sen Welch's
 office wants
 this sent to
 them - Jacketed
 for the Senate
 ↓
 LWTCB - waiting
 to get the OK
 from Gundrum's
 office. (call Fri) GMB
 elch

FE Sent For:

<END>

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FE Sent For:		crh 12/10	12/12 CPH 1	pg/cph 12/16			<END>

Nelson, Robert P.

From: Churchill, Jolene
Sent: Tuesday, November 12, 2002 5:04 PM
To: Nelson, Robert P.
Subject: Rep. Mark Gundrum - Drafting Request - Evidence of Lay Expert Witnesses

Dear Bob,

Representative Gundrum would like to reintroduce a bill you drafted for him last session (LRB 4470/P1.) Could you re-draft the attached bill for the 2003-2004 session?

Please call if you have any questions.

Thanks!

- Jolene 267-5158



1B574000.tif

06711/1

[Handwritten signature]
PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-N

reinsert

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.**

insert and

Analysis by the Legislative Reference Bureau
~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

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

6 **907.01 Opinion testimony by lay witnesses.** (intro.) If the witness is not
7 testifying as an expert, the witness's testimony in the form of opinions or inferences
8 is limited to those opinions or inferences which are rationaly all of the following:

- 9 (1) Rationaly based on the perception of the witness and helpful.
- 10 (2) Helpful to a clear understanding of the witness's testimony or the
- 11 determination of a fact in issue.

proof w/ state

SECTION 2

1 **SECTION 2.** 907.01[✓] (3) of the statutes is created to read:

2 907.01 (3) Not based on scientific, technical, or other specialized knowledge
3 within the scope of a witness under s. 907.02 (1).

4 **SECTION 3.** 907.02[✓] of the statutes is renumbered 907.02 (1) (intro.) and
5 amended to read:

6 907.02 (1) (intro.) If scientific, technical, or other specialized knowledge will
7 assist the trier of fact to understand the evidence or to determine a fact in issue, a
8 witness qualified as an expert by knowledge, skill, experience, training, or education,
9 may testify thereto in the form of an opinion or otherwise. if all of the following
10 criteria are met:

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

12 907.02 (1) (a) The testimony is based upon sufficient facts or data.

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

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

16 **SECTION 5.** 907.02[✓] (2) of the statutes is created to read:

17 907.02 (2) Notwithstanding sub. (1), the testimony of an expert witness may
18 not be admitted if the expert witness is entitled to receive any compensation
19 contingent on the outcome of any claim or case with respect to which the testimony
20 is being offered.

21 **SECTION 6.** 907.03[✓] of the statutes is amended to read:

22 **907.03 Bases of opinion testimony by experts.** The facts or data in the
23 particular case upon which an expert bases an opinion or inference may be those
24 perceived by or made known to the expert at or before the hearing. If of a type
25 reasonably relied upon by experts in the particular field in forming opinions or

Proof

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inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion or inference substantially outweighs their prejudicial effect.

7

SECTION 7. Initial applicability.

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9

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

~~***NOTE: This initial applicability may cause some problems if it requires the court to look back at the evidence presented in an active, pending case that has finished with the introduction of evidence. Generally, we apply this type of change to actions commenced on the effective date. Perhaps the act could first apply to actions pending in which no evidence has been introduced?~~

10

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0671/?ins

.....

insert an:

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 ^{to} a non-expert's testimony ~~and the testimony is~~ not 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 ~~the~~ facts to understand the evidence or 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} that 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 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.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0671/?dn
RPN:.....

cmh

date
~~I don't know what happened to this etc. I checked it in the system and it was checked in the system. I checked it in the system and it was checked in the system. I checked it in the system and it was checked in the system.~~

I left the effective date as in the previous draft, but suggest that it be changed to first apply to actions **begun** on the effective date of the act. Otherwise, if a case is partially completed when this bill becomes law, the parties may have to revisit the testimony presented in the case, which could be messy and time consuming.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0671/1dn
RPN:cmh:cph

December 16, 2002

I left the effective date as in the previous draft, but suggest that it be changed to first apply to actions **begun** on the effective date of the act. Otherwise, if a case is partially completed when this bill becomes law, the parties may have to revisit the testimony presented in the case, which could be messy and time consuming.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us

Barman, Mike

From: Barman, Mike
Sent: Thursday, January 23, 2003 1:22 PM
To: Churchill, Jolene
Cc: Reiman, Greg; Rep.Gundrum; Nelson, Robert P.
Subject: LRB-0671/1 ????

The drafter of LRB-0671/1, Robert Nelson (RPN), received a request from Senator Welch's office to "Jacket" LRB-0671/1 for the Senate and send it to their office. This is your draft so please let us know if you wish to turn it over to Welch's office. Until we hear from you it will remain confidential and in your name. Thank you.

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Barman, Mike

From: Reiman, Greg
Sent: Thursday, January 23, 2003 1:26 PM
To: Barman, Mike
Subject: RE: LRB-0671/1 ????

Hi Mike:

I'll have to ask Mark, I don't even know what this bill is about.

Greg

-----Original Message-----

From: Barman, Mike
Sent: Thursday, January 23, 2003 1:22 PM
To: Churchill, Jolene
Cc: Reiman, Greg; Rep.Gundrum; Nelson, Robert P.
Subject: LRB-0671/1 ????

The drafter of LRB-0671/1, Robert Nelson (RPN), received a request from Senator Welch's office to "Jacket" LRB-0671/1 for the Senate and send it to their office. This is your draft so please let us know if you wish to turn it over to Welch's office. Until we hear from you it will remain confidential and in your name. Thank you.

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Mentkowski, Annie

From: Reiman, Greg
Sent: Thursday, January 23, 2003 4:59 PM
To: Barman, Mike; Mentkowski, Annie
Cc: Gundrum, Mark
Subject: RE: LRB-0671/1 ?????

Mark said that it is OK to do this for Sen Welch. Thanks for checking with us.

Greg Reiman

-----Original Message-----

From: Barman, Mike
Sent: Thursday, January 23, 2003 1:22 PM
To: Churchill, Jolene
Cc: Reiman, Greg; Rep.Gundrum; Nelson, Robert P.
Subject: LRB-0671/1 ?????

The drafter of LRB-0671/1, Robert Nelson (RPN), received a request from Senator Welch's office to "Jacket" LRB-0671/1 for the Senate and send it to their office. This is your draft so please let us know if you wish to turn it over to Welch's office. Until we hear from you it will remain confidential and in your name. Thank you.

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100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Barman, Mike

From: Mentkowski, Annie
Sent: Thursday, January 23, 2003 5:17 PM
To: Barman, Mike
Subject: LRB-0671

Hi Mike,
I went ahead and jacketed this for Welch's office
-Annie

Barman, Mike

From: Gundrum, Mark
Sent: Thursday, January 23, 2003 6:15 PM
To: Barman, Mike
Subject: RE: LRB-0671/1 ????

yes, you may send it to Sen. Welch.

-----Original Message-----

From: Barman, Mike
Sent: Thursday, January 23, 2003 1:22 PM
To: Churchill, Jolene
Cc: Reiman, Greg; Rep.Gundrum; Nelson, Robert P.
Subject: LRB-0671/1 ????

The drafter of LRB-0671/1, Robert Nelson (RPN), received a request from Senator Welch's office to "Jacket" LRB-0671/1 for the Senate and send it to their office. This is your draft so please let us know if you wish to turn it over to Welch's office. Until we hear from you it will remain confidential and in your name. Thank you.

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State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Mentkowski, Annie

From: Mentkowski, Annie
Sent: Thursday, February 20, 2003 12:43 PM
To: Churchill, Jolene
Cc: Nelson, Robert P.
Subject: RE: Draft review: LRB-0671/1 Topic: Evidence presented by expert and lay witnesses

Yes, you are correct! According to the notes in the file Welch's office had it jacketed. If your office would like it jacketed, you need to contact the drafter (Bob Nelson) and let him know. Then it will be assigned a new LRB number and I will be able to jacket it for you.

Let me know if you have any questions.

-Annie

-----Original Message-----

From: Churchill, Jolene
Sent: Thursday, February 20, 2003 12:35 PM
To: Mentkowski, Annie
Subject: RE: Draft review: LRB-0671/1 Topic: Evidence presented by expert and lay witnesses

I don't have the large cover folder for the bill and I don't recall submitting a jacketing request. Did Sen. Welch's office possibly request this?

-----Original Message-----

From: Mentkowski, Annie
Sent: Thursday, February 20, 2003 12:31 PM
To: Churchill, Jolene
Subject: RE: Draft review: LRB-0671/1 Topic: Evidence presented by expert and lay witnesses

Hi!

Our file shows that this was jacketed on 1/23/03. Let me know if you did not receive it and I'll jacket it ASAP!

Thanks!
Annie

-----Original Message-----

From: Churchill, Jolene
Sent: Thursday, February 20, 2003 12:25 PM
To: LRB.Legal
Subject: Draft review: LRB-0671/1 Topic: Evidence presented by expert and lay witnesses

It has been requested by <Churchill, Jolene> that the following draft be jacketed for the SENATE:

Draft review: LRB-0671/1 Topic: Evidence presented by expert and lay witnesses