

2011 Jr1 DRAFTING REQUEST

Assembly Amendment (AA-AB1)

Received: 01/12/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Jim Ott (608) 266-0486

By/Representing:

May Contact:

Drafter: phurley

Subject: Courts - miscellaneous
Courts - evidence

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.OttJ@legis.wisconsin.gov

Carbon copy (CC:) to:

Note: Last Jacket
New #
a 0074

Pre Topic:

No specific pre topic given

Topic:

Expert witness standards

Instructions:

see attached

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>
/1	phurley 01/12/2011 phurley 01/14/2011	nmatzke 01/12/2011 nmatzke 01/14/2011	rschluet 01/12/2011	_____	lparisi 01/12/2011	lparisi 01/12/2011	
/2			mduchek 01/14/2011	_____	lparisi 01/14/2011	lparisi 01/14/2011	

FE Sent For:

<END>

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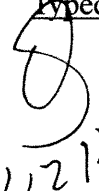
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/1	phurley 01/12/2011	lrb_editor /1 nwn 1/12	 1/12/11	_____	_____	_____	_____

FE Sent For:

<END>

Hurley, Peggy

From: Sappenfield, Anne
Sent: Wednesday, January 12, 2011 2:08 PM
To: Hurley, Peggy
Subject: amendments for rep. ott

Hi Peggy,

I have several amendment requests for Rep. Jim Ott. Ginger is the contact in his officer. All of these should be drafted as separate amendments:

1. On p. 31, line 1, delete "or continued".
2. In SEC. 45 (5), have the substantive provisions apply to acts or omissions that occur (I'm not sure this is the right wording) on the effective date. I think this would include the following, but let me know what you think: 893.555, 895.043 (3) and (6), 895.045 (3), 895.046, and 895.047.
3. Amend the expert witness qualifications so that they are the same as the federal rule. Leave in the provision relating to an expert who will be compensated based on case's outcome and admissibility of certain evidence.
4. Create punitive damages for drunk driving cases. Rep. Ott has suggested the following language, but is open to something similar: "In a case in which a defendant causes an injury while driving a motor vehicle in an intoxicated or drugged condition, it is presumed that the defendant knew that the defendant's action that resulted in injury to one or more persons was practically certain to result in injury to one or more persons."
5. Create deliberate indifference grounds for punitive damages. Use the current WI S.Ct. interpretation—the act or course of conduct was deliberate; the act or course of conduct actually disregarded the rights of the plaintiff, and the act or conduct was sufficiently aggravated to warrant punishment by punitive damages. If you think it is a problem to include that much detail, draft it as you see appropriate.
6. Modify the definition of "incident or occurrence report" to delete "or oral" and to make more clear who is notified and that the incident or occurrence report must lead to a review or evaluation of services.
7. Make clear that s. 904.16 permits use of a report that a regulatory agency prepares to a health care provider may be used as evidence.

Please don't hesitate to call me if you have any questions.

Thank you,
Anne

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council
(608) 267-9485



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa0049/1

PJH.:|:...

nwn

ASSEMBLY AMENDMENT ,
TO 2011 ASSEMBLY BILL 1

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

2 1. Page 28, line ⁶: delete lines 6 to 17 and substitute:

3 "SECTION 34m. 907.02 of the statutes is renumbered 907.02 (1) and amended
4 to read:

5 907.02 (1) Testimony by experts. If scientific, technical, or other specialized
6 knowledge will assist the trier of fact to understand the evidence or to determine a
7 fact in issue, a witness qualified as an expert by knowledge, skill, experience,
8 training, or education, may testify thereto in the form of an opinion or otherwise, if
9 the testimony is based upon sufficient facts or data, the testimony is the product of
10 reliable principles and methods, and the witness has applied the principles and
11 methods reliably to the facts of the case."[✓]



State of Wisconsin
2011 - 2012 LEGISLATURE
January 2011 Special Session



LRBa0049/1
PJH:nwn:rs

Today

ASSEMBLY AMENDMENT,
TO ASSEMBLY BILL 1

d-note

Insert 1

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

2 ~~1~~ Page 28, line 6: delete lines 6 to 17 and substitute:

3 "SECTION 34m. 907.02 of the statutes is renumbered 907.02 (1) and amended

4 to read:

5 907.02 (1) ~~If~~ ^{In a civil action, if} scientific, technical, or other specialized knowledge will assist the
6 trier of fact to understand the evidence or to determine a fact in issue, a witness
7 qualified as an expert by knowledge, skill, experience, training, or education, may
8 testify thereto in the form of an opinion or otherwise, if the testimony is based upon
9 sufficient facts or data, the testimony is the product of reliable principles and
10 methods, and the witness has applied the principles and methods reliably to the facts
11 of the case."

and ✓

1 ~~*~~ Page 30, line 25: delete "907.02 (1) (a), (b), and (c) and (2)" and substitute

2 "907.02 (2)" and 907.025 ✓

3 (END)

Insert 2

Insert 3

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0049/lins
PJH:nwn:rs

INSERT 1:

1. Page 28, line 5: after "907.02 (1)" insert "or 907.025 (1)".
2. Page 28, line 5: after that line insert:
"SECTION 34~~m~~^g. 907.02 (title) of the statutes is amended to read:
907.02 (title) Testimony by experts; civil actions."

History: Sup. Ct. Order, 59 Wis. 2d R1, R206 (1973).

INSERT 2:

3. Page 28, line 22: after that line insert:
"SECTION 37~~m~~^g. 907.025^g of the statutes is created to read:
907.025 Testimony by experts; criminal and civil forfeiture actions. (1)
In a criminal or civil forfeiture action, 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.
(2) Notwithstanding sub. (1), the testimony of an expert witness may not be admitted 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."

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

~~PJH~~
PJM

Date

LRB 10049/20n
PJH:nwn

Representative Ott:

Please review this draft to ensure that it is consistent with your intent. This amendment contains the changes to s. 907.02 that were included in SA1 to SB1 (making s. 907.02 (1) mirror the federal rules of evidence) but applies those changes only to civil actions. This amendment creates s. 907.025, which retains the standards for expert testimony under current law for criminal and civil forfeiture actions.

If you have any questions or would like to discuss this amendment further, please let me know.

PJH

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

LRBa0049/2dn
PJH:nwn:md

January 14, 2011

Representative Ott:

Please review this draft to ensure that it is consistent with your intent. This amendment contains the changes to s. 907.02 that were included in SA1 to SB1 (making s. 907.02 (1) mirror the federal rules of evidence) but applies those changes only to civil actions. This amendment creates s. 907.025, which retains the standards for expert testimony under current law for criminal and civil forfeiture actions.

If you have any questions or would like to discuss this amendment further, please let me know.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2011 LRBa0049/2 (For: Rep. Jim Ott)

has been copied/added to the drafting file for

2011 LRBa0074 (For: Rep. Jim Ott)



**RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 01/18/2011 (Per: PJH)

The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.