



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 49

Assembly Amendment 1

Memo published: March 4, 2004

Contact: Philip G. Cardis, Staff Attorney (267-0683)

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 in a civil case. However, a nonexpert's testimony may be based on scientific, technical, or other specialized knowledge in a criminal case, or a chapter 980 case.

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 in a civil case. However, an expert witness's testimony in a criminal case, or a chapter 980 case, does not need to be 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 in the case. **This bill** adds that facts or data that are otherwise inadmissible may not be disclosed to the jury in a civil case unless the court determines that their value in assisting the jury to evaluate the expert's testimony outweighs their prejudicial effect. However, in criminal or a chapter 980 petition, facts or data that are otherwise inadmissible may be disclosed to the jury without the court determining their value in assisting the jury to evaluate the expert's testimony versus outweighing their prejudicial effect.

Assembly Amendment 1

Extends application of the standards for evidence of lay and expert witnesses created in the bill to all administrative hearings, except in a **county zoning adjustment board appeal** under s. 59.694, and in a **city zoning board of appeals** under s. 62.23 (7) (e).

Legislative History

On March 3, 2004, the Assembly Committee on Corrections and the Courts recommended adoption of Assembly Amendment 1 by a vote of Ayes, 8; Noes, 1. The Assembly Committee on Corrections and the Courts recommended concurrence of the bill, as amended, by a vote of Ayes, 6; Noes, 3.

PGC:wu