

THE
ESSENTIALS
OF
BILL DRAFTING
IN THE
MISSOURI GENERAL ASSEMBLY



Committee on Legislative Research

October 1, 2011

The Essentials of Bill Drafting in the Missouri General Assembly

I should apologize, perhaps, for the style of this bill. I dislike the verbose and intricate style of the modern English statutes. . . . You however can easily correct this bill to the taste of my brother lawyers, by making every other word a "said" or "aforesaid" and saying everything over two or three times so as that nobody but we of the craft can untwist the diction, and find out what it means.

Thomas Jefferson, 1817

Preface

This publication represents the combined efforts of staff members of the Committee on Legislative Research, Division of Research of the Missouri Senate, and the Research Staff of the Missouri House of Representatives, with the goal of providing technical guidance in the drafting of bills and other legislative documents for members of the Missouri General Assembly. Portions from previous editions of *The Essentials of Bill Drafting* by the Committee on Legislative Research and *Bill Drafting in the Missouri Senate* by the Division of Research of the Missouri Senate have been incorporated and updated.

Bill drafting style has evolved over time in response to court decisions, preferences of legislators, and the flexibility of new technology. This manual traces the evolution of current drafting procedures, identifies drafting alternatives, and explains the rationale for preferred procedures.

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I. INTRODUCTION

Preliminary Considerations

The genesis of a bill lies in the receipt by the drafter of a bill request from a member of the General Assembly or a person expressly approved by the member to submit the bill request. Each proposal is drafted according to the express wishes of the requesting legislator, who is responsible for the determination of necessary policy decisions. A drafter must never interpose his or her personal concepts or preferences into a draft nor attempt to influence or persuade a legislator as to the merits of a drafting assignment. The drafter's primary function is properly limited to ascertaining the legislator's intent and policy objectives, obtaining necessary facts, and converting the information into proper legal terminology, form, and style. The drafter should advise the sponsor if the drafter believes that the proposed legislation presents constitutional problems, but the sponsor makes the ultimate determination as to the contents of the legislation.

A properly drafted bill presupposes the drafter's ability to determine how the bill will work if enacted into law, and thus the drafter should have a thorough understanding of Missouri state and local government structures. In addition, the drafter should also review relevant state and federal constitutional provisions, court decisions, and existing law for any conflicts, inconsistencies, or legal problems. Existing provisions of the Revised Statutes of Missouri (RSMo) should be examined to determine the appropriate location for the proposed legislation. If a new section is intended to fit into a block of existing sections with their own definitions or penalties, care should be taken to assign a new section number to fit within that block.

The essentials of good bill drafting are accuracy, brevity, clarity, and simplicity. The purpose of the bill should be clearly evident, and the language used should convey only one meaning. Legal words and maxims should be used only when clear judicial interpretation has given them the exact meaning and effect desired. Correct grammatical usage is essential. Wherever possible, use the simple declarative sentence and avoid long and convoluted sentences.

All contacts between drafters and analysts of the legislative research offices and members of the General Assembly are kept strictly confidential. Any request from a legislator may only be discussed with another staff person of that particular research office and may not be disclosed or discussed with anyone else without the prior approval of that legislator.

The Missouri Constitution (Article III, Sections 21 to 35) establishes the basic outline of the procedure for enacting laws. Additional guidance can be obtained from the Rules of the Senate, Rules of the House of Representatives, and from Joint Rules (rules which apply to both legislative chambers). Chapters 1, 2, and 3 of the Revised Statutes of

Missouri establish general procedures for statutory construction, provide the method of publication of laws enacted, and specify the authority of the Committee on Legislative Research. These sources cannot answer every question which a bill drafter must resolve, but they provide the foundation for bill drafting in Missouri.

While the constitutional provisions have remained largely the same throughout Missouri's history, the drafting conventions have varied significantly. Literally hundreds of cases exist in which the courts have interpreted the impact of variations in the mechanics of bill drafting, and the courts have almost always upheld drafting conventions that consistently and clearly put the legislature and the public on notice as to the content of a bill. It follows that drafters should use the style which best meets the notice objective, whether in drafting a bill or in preparing an amendment.

II. ELEMENTS OF A BILL

The General Assembly changes existing laws and adopts new laws by bill. A bill may contain the following elements, apart from the body of the bill:

- Title (required for all bills)
- Style clause (required for all bills)
- Enacting clause, usually known as "Section A" (almost always used in modern drafting but not required)
- Emergency clause (if necessary)
- Effective date(s) (if necessary)
- Referendum clause (if necessary)
- Termination or expiration date(s) (if necessary)

The analysis presented in this section identifies the basis for the Title, for Section A, and for the effective date/referendum clauses. It also provides an overview of relevant case law and includes examples of appropriate drafting styles.

EXAMPLE BILL

AN ACT

*To repeal section 195.017, RSMo,
and to enact in lieu thereof one new
section relating to controlled substances,
with penalty provisions.*

TITLE

*BE IT ENACTED BY THE GENERAL ASSEMBLY OF
THE STATE OF MISSOURI, AS FOLLOWS:*

STYLE

*Section A. Section 195.017, RSMo, is
repealed and one new section enacted in lieu thereof,
to be known as section 195.017, to read as follows:*

**SECTION
A**

195.017. 1. The department of health and senior services
[shall] **may** place a substance in Schedule I if it finds

that the substance:

BODY

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in

the United States or lacks accepted safety for use

in treatment under medical supervision.

A. TITLE

In general, the title's purpose is "to limit the subject matter of the bill to one general subject and to afford reasonably definite information to the members of the General Assembly and the people as to the subject matter dealt with by the bill." *Graves v. Purcell*, 85 S.W.2d 543, 548 (Mo. 1935). The current style of drafting contains two elements which provide that information: a subject matter description and a listing of the affected sections of law (see example above).

1. Bill to Contain Single Subject

One essential element of providing adequate notice in the title is the subject matter of the bill. Article III, Section 23 of the Missouri Constitution mandates that "no bill shall contain more than one subject, which shall be clearly expressed in its title...." Voluminous case law exists on this subject, and the reader is encouraged to review the notes contained in Vernon's Annotated Missouri Statutes for an overview.

In general, a short, broad title should be used unless the sponsor of a bill requests a more narrow title. There has been a tendency to expand bills as they move through the legislative process, especially since the Missouri Supreme Court's decision in *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2 (Mo.banc 1984). At issue in the case was whether a bill which originally increased fees for vital records could be expanded to include fees for a variety of services (within the Division of Health) while remaining within the single subject requirement. As introduced, the bill involved two sections in chapter 193 and as truly agreed to and finally passed, it involved seven sections in chapters 192, 193, 197, 315, 325, and 640.

The court ruled that the change did not violate the single subject requirement.

"The test to determine if the title of a bill contains more than one subject is whether all provisions of the bill fairly relate to the same subject, have natural connection therewith or are incidents or means to accomplish its purpose."

(*Id.*, at 6.)

Elsewhere, the court has indicated that the single subject requirement should be liberally construed. *Graves, supra; State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4 (Mo.banc 1975), *City of St. Charles v. State*, 165 S.W.3d 149 (Mo.banc 2005), *Trout v. State*, 231 S.W.3d 140 (Mo.banc 2007). A statement of the court's thinking on single subject questions can be found in *United Gamefowl Breeders Association v. Nixon*, 19 S.W.3d 137, 140 (Mo.banc 2000) ("[a] measure may encompass one subject, and yet effect several changes and incidents, if all are germane to its one controlling purpose.").

Questions of subject matter are critical when combining or amending bills. The title does not determine or necessarily limit the subject matter of a bill. A parliamentary challenge under Rule 57, Rules of the Missouri Senate, 2011, Rule 69, Rules of the House, 2011, or a legal challenge to a bill will be decided on the basis of the subject matter content of the bill, rather than the title. An early case on point is *State v. Parker Distilling Co.*, 139 S.W. 453 (Mo. 1911). It is important, however, to ensure that the subject matter to be added to the existing bill and the title description are in harmony in order to avoid a challenge (see *Hammerschmidt v. Boone Co.*, 877 S.W.2d 98 (Mo.banc 1994) (subject of county governance unrelated to bill's core subject of elections) and *Missouri Health Care Association v. Attorney General*, 953 S.W.2d 617 (Mo.banc 1997) (subject of merchandising practices, enforced by the Attorney General, unrelated to bill's core subject of health and social service programs administered by the Department of Social Services)). If they are not, the title should be broadened to specify a single subject.

A title may be broader than the act, *Berry v. Majestic Milling Co.*, 223 S.W. 738 (Mo. 1920), 284 Mo. 182, but it is not appropriate to combine two logically connected elements under a single title which applies to only one element, *United Brotherhood of Carpenters and Joiners of America, etc. v. Industrial Commission*, 352 S.W.2d 633 (Mo. 1962) (subject of establishing separate classes of cases for Supreme Court jurisdiction encompassing review of prevailing wage determinations not germane to subject of regulating workers' wages). The title cannot, however, be so general that it tends to obscure the contents of the act, *C.C. Dillon Company v. City of Eureka*, 12 S.W.3d 322, 329 (Mo.banc 2000).

There are examples every year of bills that were significantly expanded and amended as they made their way through the legislative process, and these are not necessarily subject to challenge on the single subject rule (see, e.g., CCS/HB 77, et al. (1989), SB 80 and SB

180 (1993), SB 141 and HB 331 (1997), SB 614, et al. (1998) and HB 1900 (2006)). HB 700 (1987) was found to be constitutional even though it included provisions relating to liability of insurance carriers, manufacturer's tort liability, prejudgment interest, punitive damage awards, and the tort victims compensation fund under the title "assuring just compensation for certain person's damages." *Fust v. Attorney General*, 947 S.W.2d 424 (Mo.banc 1997).

Similarly, the court found a bill with multiple components could relate to a single subject. The title for the combined bill was "relating to environmental control". CCS/HB 77, et al. (1989) was found to be constitutionally sound even though it combined separate bills containing the following subjects: asbestos abatement projects (chapter 643, RSMo); liquid underground storage tanks (chapter 319, RSMo); and the Missouri Emergency Response Commission (Chapter 292, RSMo). *Covera Abatement Technologies Inc. v. Air Conservation Commission*, 973 S.W.2d 851 (Mo.banc 1998).

HB 1900 (2006) was found to be constitutional even though the so-called campaign finance bill contained provisions disqualifying persons who were delinquent on certain taxes from running for office and disqualifying felons from running for office. The court held that the campaign finance reform bill did not lose its original purpose on the grounds that regulation of ethical conduct of lobbyists, public officials, and candidates was the general and overarching purpose of the campaign finance provisions that were set out in the original version of the bill and the candidate disqualification amendments were germane to the original purpose of ethics. *Trout v. State*, 231 S.W.3d 140, 145 (Mo.banc 2007)

Nonetheless, in recent years the Supreme Court has been more disposed to find that bills contain multiple subjects or that the title was not clearly expressed. See *National Solid Waste Management Association v. Director of the Department of Natural Resources*, 964 S.W.2d 818 (Mo.banc 1998) (title "relating to solid waste management" did not clearly express addition through amendment of section regulating hazardous waste facilities); *St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo.banc 1998) (title "relating to certain incorporated and non-incorporated entities" too broad to clearly express a single subject. The court invalidated the entire act.); *SSM Cardinal Glennon Children's Hospital v. State*, 68 S.W.3d 412 (Mo.banc 2002) (title "relating to professional licensing" did not allow inclusion of language relating to hospital liens); *Home Builders Association of Greater St. Louis v. State*, 75 S.W.3d 267 (Mo.banc 2002) (title "relating to property ownership" failed the clear title requirement because it could describe most, if not all, legislation passed by the General Assembly .

The Supreme Court has found other titles to be overly broad. For example, the court found "that the words 'economic development' are too broad and amorphous to describe the subject of a pending bill with the precision necessary to provide notice of its contents". *Carmack v. Director, Department of Agriculture*, 945 S.W.2d 956, 960 (Mo.banc 1997). Similar objections could be made to such titles as "relating to property" or "relating to state

revenues." The *Carmack* decision is also noteworthy in that the court determined the presence of a constitutional section (Article IV, Section 36(a)) entitled "economic development" to mean that bills with that title were thus limited to programs administered by that executive department. Again, similar concerns are possible with titles such as "relating to insurance", "relating to mental health", "relating to natural resources", etc.

In previous decisions over several decades determining "single subject", the court has traditionally looked at the *subject* of the original bill, not the title, and the subjects that were subsequently added. Beginning a few years ago, however, the court began to look first to the title of a bill to determine its subject. See *Carmack, supra*, and *Hammerschmidt, supra*. As the Court stated in *Stroh Brewery Co. v. State*, 954 S.W.2d 323, 327 (Mo.banc 1997), "[w]here an amorphous title to a bill renders its subjects uncertain, but the party challenging the bill claims a 'one subject' violation and not a 'clear title' violation, the Court may determine the subject of the bill from either reference to the subjects of the Constitution, or the contents of the bill itself." Thus, if the court continues to use this standard, drafters will have to more carefully consider how narrow or how broad the original title should be drawn. For an excellent discussion of these and related issues, see Martha J. Dragich, *State Constitutional Restrictions on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges*, 38 Harvard Journal of Legislation 103 (2001).

To summarize, court decisions on this question appear to require the following:

- (1) A title must cover the matters included in the bill, i.e., not be too narrow;
- (2) A title must not be amorphous, i.e., express no definite subject matter or one so broad as to be meaningless; and
- (3) During the process between introduction and final passage, the subject of a bill can be expanded or contracted and the title can be adjusted accordingly, provided the additions are germane to the subject of the introduced bill.

The drafter should devise a title that is descriptive and inclusive without being overly broad. When asked to draft a bill that potentially contains multiple subjects, the drafter should advise the sponsor of that possibility.

2. Sections Repealed/Amended

Another notice element in the title is the listing of sections to be repealed or amended or which chapter is being amended by adding new sections:

EXAMPLES OF TITLES:

"AN ACT

To repeal section 142.310, RSMo, and to enact in lieu thereof one new section relating to..."

"AN ACT

To repeal sections 376.370 and 382.120, RSMo, and to enact in lieu thereof five new sections relating to..."

"AN ACT

To amend chapter 168, RSMo, by adding thereto one new section relating to. . . ."

The only exception to citing merely to RSMo involves the situation where multiple versions of the same statutory section are present (and see IV, Section C below):

"AN ACT

To repeal section 32.125, as enacted by house committee substitute for senate substitute for senate bill no. 3, eighty-eighth general assembly, first regular session, and section 32.125, as enacted by house substitute for senate bill no. 374, eighty-eighth general assembly, first regular session. . . ."

EXAMPLES OF COMPLETE TITLES:

Examples of complete titles are provided below. Some of these include a reference to penalty provisions in the bill, an emergency clause, an effective date, or a referendum clause. All of these are explained in this section.

"AN ACT

To repeal section 84.510, RSMo, and to enact in lieu thereof one new section relating to certain law enforcement agencies."

"AN ACT

*To repeal sections 135.305, 252.040, 252.043, 254.020, 254.040, and 270.170, RSMo, and to enact in lieu thereof thirteen new sections relating to conservation, **with penalty provisions.**"*

"AN ACT

*To repeal sections 238.207, 238.216, 238.220, 238.235, and 238.252, RSMo, and to enact in lieu thereof five new sections relating to transportation development districts, **with an emergency clause.**"*

"AN ACT

*To repeal section 208.151, RSMo, and to enact in lieu thereof one new section relating to health care, **with an expiration date.**"*

"AN ACT

*To repeal section 100.010, RSMo, and to enact in lieu thereof one new section relating to industrial development, **with an effective date.**"*

"AN ACT

*To amend chapter 84, RSMo, by enacting five new sections relating to public mass transportation, **with a contingent effective date.**"*

"AN ACT

*To repeal sections 163.011 and 163.021, RSMo, and to enact in lieu thereof two new sections relating to education, **with a referendum clause.**"*

On occasion a section which has already passed in a truly agreed to and finally passed bill during the current legislative session will be repealed or repealed and reenacted:

"AN ACT

To repeal sections 273.327, 273.345, 273.347, and 1 as truly agreed to and finally passed in house committee substitute for senate bills nos. 113 & 95, ninety-sixth general assembly, first regular session, and to enact in lieu thereof four new sections relating to agriculture, with penalty provisions and an emergency clause for certain sections."

A title may contain notice provisions regarding penalty provisions, an effective date, an expiration date, or a referendum, as shown in bold in the examples above. These provisions are discussed in greater detail in Sections D-H, pp. 13-20.

B. STYLE CLAUSE

The style clause is mandated by Article III, Section 21 of the Constitution: *"Be it enacted by the General Assembly of the State of Missouri, as follows:"*

The style clause, in older court cases known as the enacting clause, is routinely

incorporated in every bill prepared for consideration by the Missouri General Assembly. A defective enacting clause or even the absence of the clause, however, is not a fatal defect. See *City of Cape Girardeau v. Riley*, 52 Mo. 424 (Mo. 1873), 14 Am. Rep. 427 and *City of St. Louis v. Foster*, 52 Mo. 513 (Mo. 1873). In these and other cases, the court held that the requirements of Article III, Section 21 were directory rather than mandatory.

A style clause should be incorporated into every bill immediately following the title.

C. SECTION A (THE ENACTING CLAUSE)

Section A is placed immediately below the style/enacting clause. It lists in numerical order those sections to be repealed that are contained in the Revised Statutes of Missouri and the new sections to be enacted or reenacted.

Section A is not required by the Constitution, by law, or by Joint Rule, but it serves to put legislators and the public on notice about the scope and content of the bill, consistent with the provisions of Article III, Section 23. Each bill prepared for use in the Missouri General Assembly should contain a Section A.

1. Section A - Current Form

A typical Section A might read as follows:

EXAMPLES:

"Section A. Section 170.250, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 170.250, to read as follows:"

"Section A. Section 173.608, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 173.608 and 173.610, to read as follows:"

Sometimes a bill will contain all new language without repealing or revising any existing law and it is possible to draft such a bill without a Section A, **but it is preferable to include a Section A.**

EXAMPLE:

"Section A. Chapter 105, RSMo, is amended by adding thereto one new section, to be known as section 105.956, to read as follows:"

The inclusion of new language within an existing chapter enables the drafter to integrate the new language with the existing functions and duties of the department and to include various existing powers of the department by reference (e.g. rulemaking procedures, rule review, penalty provisions, appeals of decisions, etc.). *After determining*

the appropriate chapter and approximate location within the chapter, the drafter should contact the Revision staff of Legislative Research to assign the new section or sections. The Revisor of Statutes is the final authority on the assignment of sections.

2. Section A - Earlier Forms

Section A is an important component of a bill but its usage is a matter of custom. Any number of ways may be used to identify the sections included in the bill, and the methods used have been modified from time to time to meet changing concepts of appropriate notice. Earlier styles are presented below.

(a) From an 1870 bill:

"Section 1. That section one of an act entitled an act authorizing county courts to have the records of probate courts and county courts indexed, approved March 2, 1867, be amended by inserting after the words "probate court," and before the word "by," in said section, the words "and records of the common pleas court and the records of the circuit court, and to renew any worn out index books" so that the same shall read as follows:"

(followed by another Section 1, containing the amended language)

(b) From an 1877 bill:

"Section 1. Section fourteen of an act entitled "An act to establish a criminal court in St. Louis county," approved November 29th 1855, is hereby amended by striking out the word "September," and inserting the word "October", so as to read as follows:"

(followed by Section 2, containing the amended language)

(c) From a 1951 bill:

"Section 1. That section 169.270, RSMo 1949, be amended by striking out from subdivision (8) lines 48, 49 and 50, the following words "in the school district covered by sections 169.270 to 169.400" and inserting in lieu thereof the words "in any public school district"; and that said section be further amended by inserting in subdivision (9) line 55 after the word "member" the words, "or as provided in subsection 5a. of section 169.300... so that said section as amended will read as follows:"

(followed by section 169.270, containing the amended language) SB 62

The example above, SB 62 from 1951, contains twelve sections. Each of six unassigned sections (i.e., sections 1-6) describe the change to be made in a section of law and each is followed by that section. The bill does not contain a Section A. The form of

the bill is:

Section 1. Describes changes to be made in section 169.270.

Section 169.270. Incorporates the changes specified in Section 1.

Section 2. Describes the changes to be made in section 169.300.

Section 169.300. Incorporates the changes specified in Section 2.

This style of drafting was commonly but not exclusively used in the 1950s.

All of the examples of methods of enacting legislation shown above conformed to the requirements of the Constitution and the law, and while the method of identifying the sections has varied over time, those legal requirements have remained constant. See Article IV, Sections 26 and 28, Constitution of 1865; Article IV, Sections 24 and 28, Constitution of 1875; and Article III, Section 21, Constitution of 1945.

3. Section A and Effective Dates

In the normal style of drafting, bills contain a single Section A followed by the amended sections in numeric sequence (e.g. 142.039, 144.220, and 610.005) with an emergency clause or delayed effective date at the end of the bill:

EXAMPLE:

Section A. Enacting clause followed by amended sections presented in numeric sequence.

Section B. Effective date for the sections contained in Section A.

Section C. Emergency clause for sections contained in Section A.

The use of multiple enacting clauses is strongly discouraged because it fails to put legislators on notice about the content of the bill due to the fact that one or more enacting clauses may be buried deep within the body of the bill, rather than on page one. Multiple enacting clauses do not necessarily imply multiple subjects, however, and the courts have noted the distinction between multiple subjects and the use of multiple enacting clauses to indicate severability.

"One method the legislature uses to signal its intent as to what provisions are severable is to segregate a bill into separate sections, as was done here. By clearly segregating the provisions of section A from the troublesome sections

involving referendum, the General Assembly signaled an intent that section A be treated as severable from the latter provisions should constitutional questions as to the referendum arise." *Akin v. Director of Revenue*, 934 S.W.2d 295, 301 (Mo.banc 1996).

The preferred style is to list all sections within Section A, present the sections in numeric sequence in the body of the bill, and present effective dates and emergency clauses at the end of the bill.

EXAMPLE:

"Section A. Sections 36.100, 36.105, and 36.110, RSMo, are repealed and three new sections enacted in lieu thereof to be known as sections 36.100, 36.105, and 36.110, to read as follows:

36.100....

36.105....

36.110....

Section B. The repeal and reenactment of section 36.100 of this act shall become effective on October 1, 2011.

Section C. The repeal and reenactment of section 36.110 of this act shall become effective on July 1, 2012."

Sections B and C are placed at the end of the bill.

When only certain sections of a bill are subject to an effective date or emergency clause, it is important to specify existing sections with the language "The repeal and reenactment of section/sections.....of this act...", and new sections with the language "The enactment of section/sections. . . of this act..." This language ensures that everyone is fully aware of when the previous law is extinguished and the new law takes its place or when the new section becomes effective. If all sections as listed in Section A will be subject to the same effective date or emergency clause, it is sufficient to state that "This act shall become effective July 1, 2012."

D. PENALTY PROVISIONS

Many legislative acts impose penalties for certain actions or for the failure to perform certain acts. The Constitution does not directly require that penalty provisions be noted in the title, and bills which contain no such notice are not constitutionally defective. *State v.*

Oswald, 306 S.W.2d 559 (Mo. 1957) ("Penalties for violations of criminal statutes are but incidents of the law and need not be referred to in the title."). But inclusion in the title puts legislators and the public on notice about the content of the bill and, therefore, meets the notice requirements of Article III, Section 23. When penalties are included in the bill, whether for criminal acts or for failure to meet a filing deadline, the bill's title should contain a notice of the presence of the penalty provision: ". . . , with penalty provisions" (see examples of titles, *supra*).

E. EMERGENCY CLAUSE

All acts of the General Assembly become effective on August 28 of each year by operation of Article III, Section 29 of the Missouri Constitution. To have an earlier effective date, the bill must contain "in the preamble or the body of the act" a statement declaring that an emergency exists, stating the nature of the emergency, and indicating when the bill will become effective. The emergency clause must be voted on separately by roll call and requires approval by two-thirds of the members. Failure to vote separately on the emergency clause means that the clause is not operative. **An emergency clause must state a valid rationale, and that rationale is subject to judicial review.**

A mere declaration by a legislative body that an act which is passed is an emergency measure cannot make it so, but *it is for a court in a judicial proceeding to determine whether the act is in fact an emergency measure within the meaning of the constitutional provisions*. The usual test that is employed to determine whether an emergency exists is to analyze the factual situation to see whether there is actually a crisis or an emergency which requires immediate action for the preservation of public peace, property, health, safety, or morals. *Sutherland Statutory Construction*, Section 33.3, citing *Inter-City Fire Protection Dist. of Jackson County v. Gambrell*, 231 S.W.2d 193 (Mo.banc 1950) and *Osage Outdoor Advertising, Inc. v. State Highway Com'n of Missouri*, 687 S.W.2d 566 (Mo.App.W.D. 1984). (Emphasis added.) See also *State ex rel. Tyler v. Davis*, 443 S.W.2d 625, 631 (Mo.banc 1969).

Current drafting style places a notice of the emergency in the title to ensure that legislators are aware of it and to ensure that there is a separate vote on the emergency clause (see examples of titles, pp. 7-9). The emergency clause is also presented in full form at the end of the bill.

The general form is:

"Section B. Because (insert rationale), this act (or listed sections of this act) (is/are) deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency

act within the meaning of the constitution, and this act (or listed sections of this act) shall be in full force and effect upon its passage and approval."

Examples with specific reasons/dates - not all sections:

"Section B. **Because immediate action is necessary to ensure federal reimbursements to the state of Missouri**, the repeal and reenactment of sections 111.111 and 123.123 of this act are deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and the repeal and reenactment of sections 111.111 and 123.123 of this act are hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 111.111 and 123.123 of this act **shall be in full force and effect upon its passage and approval.**"

"Section B. Because of the **immediate need for the state department of revenue to administer the provisions of the state income tax laws**, the enactment of sections 111.111 and 123.123 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and the enactment of sections 111.111 and 123.123 of this act is hereby declared to be an emergency act within the meaning of the constitution, and the enactment of sections 111.111 and 123.123 of this act **shall be in full force and effect on July 1, 2012, or upon its passage and approval, whichever occurs later.**"

F. EXPIRATION DATE

It is sometimes desirable to enact legislation with an expiration or termination date. For example, in 1989 the General Assembly imposed a temporary increase in the corporate income tax to fund income tax refunds to federal retirees as required by the U.S. Supreme Court decision in *Davis v. Michigan, Department of the Treasury*, 489 U.S. 803 (1989) and the resulting Missouri Supreme Court decision in *Hackman v. Director, Department of Revenue*, 771 S.W.2d 77 (Mo.banc 1989). No constitutional or statutory provisions directly establish the procedure to be used to terminate a section. Customarily, the termination language is placed at the end of the bill as a Section B, and the presence of a termination date is noted in the title: "with an expiration date" or "with an expiration date for certain sections". Internal statutory termination dates are deemed to satisfy the notice requirement, so notice of the termination date should be included in the title of the bill only if the termination date is set out in Section B at the end of the bill.

EXAMPLES:

"Section B. The provisions of sections 260.225 and 260.330 of this act shall terminate on July 1, 2011." **Title change necessary.**

"260.232. The provisions of sections 260.225, 260.330, and this section terminate on July 1, 2011." No title change necessary.

A variation of the expiration date has come into vogue in recent years:

"144.085.1.... (language of section)...

3. The provisions of this section terminate on December 31, 2011."

G. DELAYED OR CONTINGENT EFFECTIVE DATES

A request is sometimes made for an effective date later than the August 28 date imposed by Article III, Section 29 of the Missouri Constitution, or upon the occurrence of a specified event. Delayed or contingent effective dates may be established for all or any portion of a bill. When an existing section is repealed and reenacted with a delayed effective date, the existing statute remains in effect until the delayed effective date becomes operational.

"A section with a definite effective date commences operation from that time..... A repealing clause in a statute with a future effective date will not be operative until the statute itself takes effect."

Sutherland Statutory Construction
5th edition, Section 33.07

See also *State ex rel. Bauer v. Edwards*, 38 S.W. 73 (Mo. 1896). In 1925, a challenge was made to a newly adopted Kansas City charter, in part because the charter contained delayed effective dates. The Missouri Supreme Court held these provisions constitutional based upon the following logic:

"In this State it is a very common thing for an act of the Legislature to provide that different parts thereof shall become effective on different dates. . . . A statute speaks from the time it commences to take effect. . . . The new charter supersedes the 'existing charter and amendments thereof' *as and when its provisions take effect*. Such a course is commonly pursued in the legislative practice of this State *and its legality has never been questioned*." (Emphasis added.)

State ex rel. Otto v. Kansas City
276 S.W. 389, 396 (Mo. 1925)

A constitutionally valid delayed effective date can be drafted in a number of ways, but the style that provides the best notice, and therefore the preferred style, is outlined

below.

EXAMPLE:

Section B. The repeal and reenactment of sections 246.010, 246.020, 246.030, and 246.040 of this act shall become effective on January 1, 2012.

You will note that the delayed effective date, provided in the example above, contains the phrase "the repeal and reenactment". This phrase is not essential because of the presumption of continuity, as described above, but the use of the phrase ensures that there is no confusion as to the effective date of the repeal and the reenactment of a section or sections. **It is recommended that delayed effective dates contain the phrase "the repeal and reenactment of..." or "the enactment of. . .".**

Contingent effective dates arise from the occurrence of a specified event. In most instances, the contingent effective date language should require notice to the Revisor of Statutes of that occurrence. (See Section W. "Contingent Effective/Expiration Dates", p. 36).

EXAMPLE:

Section B. The enactment of sections 354.750 to 354.795 of this act shall be effective April first of the year following the notice to the revisor of statutes that a waiver has been obtained from the Secretary of the Department of Health and Human Services by the director of the department of social services based on a request filed under section 354.807 of this act.

H. REFERENDUM

Article III, Section 52(a) of the Missouri Constitution provides that the General Assembly may submit measures to the voters for their approval or rejection. Emergency acts and appropriation measures cannot be the subject of a referendum.

The issue occasionally arises as to whether only part of a bill may be submitted by referendum. Case law indicates that a partial referendum provision is unconstitutional. "The Missouri Constitution does not provide for a referendum as to part of a bill. The Missouri Supreme Court has held that the referendum clause in the Missouri Constitution cannot be construed to allow a referendum as to part of the subjects covered by the same bill." *Murray v. City of St. Louis*, 947 S.W.2d 74, 80-81 (Mo.App.E.D. 1997) (citing *State ex rel. Boatmen's Nat'l. Bank of St. Louis v. Webster Groves General Sewer Dist. No. 1*, 37 S.W.2d 905, 908 (Mo.banc 1931)).

Note that the Governor cannot veto a bill with a referendum clause. Bills with a

referendum clause are usually sent directly to the Secretary of State. See *Brown v. Morris*, 290 S.W.2d 160 (Mo. 1956). On rare occasions, a bill with a referendum will be sent to the Governor for signature. In 1987, SCS/SBs 135 & 65, which imposed a gas tax hike and contained a referendum clause, was sent to the Governor to enable (and require) the Governor to proclaim his support for the tax increase. The Governor's signature was not constitutionally required, and the referendum would have been submitted to the voters without his signature. In this case, legislators knew that the Governor's active support was necessary for voter approval of the tax increase, and they and the Governor agreed that his signature on the bill would very dramatically communicate his support.

In 1993, the General Assembly sent the Governor SB 380 (Public School Foundation Formula) which contained a "contingent referendum clause" for two of the fifty-eight sections in the bill. The "contingent" language would have placed two sections on the ballot by operation of law *if and only if* the Missouri Supreme Court rendered a decision in a pending case affirming the equity of Missouri's foundation formula as the formula existed prior to the passage of SB 380.

The Governor signed the bill, but the contingent effective date was subsequently challenged. In 1996, the Missouri Supreme Court ruled that the contingent referendum clause was inoperative:

"Finally, the contingency clause may be read to directly involve the judiciary in the referendum and legislative process, in contravention of article II, Section 1 of the state constitution. In sum, the contingent referendum provisions of sections B, C and D are no more than a poor imitation of a constitutionally authorized referendum. The legislature has the authority to refer a bill to the people but only in the manner provided by the constitution. *Bohrer v. Toberman*, 360 Mo. 244, 227 S.W.2d 719, 722 (Mo.banc 1950). Because the contingent referendum provisions are not consistent with a constitutionally authorized referendum, they are a void attempt to delegate legislative authority."

Akin v. Director of Revenue, 934 S.W.2d 295, 300 (Mo.banc 1996).

Sometimes the General Assembly will submit a bill containing existing law to the voters by referendum. The defeat of the referendum constitutes defeat of the new material but it does not affect existing law which was included in the referendum. See, for example, SB 353/Proposition B, concerning elementary and secondary education (1991).

A referendum becomes effective when approved by the voters unless the referendum clause specifies otherwise. (See Article III, Section 52(b), and *State ex rel. Elsas v. Missouri Workmen's Compensation Commission*, 2 S.W.2d 796 (Mo.banc 1928). This

is in contrast to the Article XII, Section 2(b) provision making amendments proposed by the General Assembly or by the initiative effective thirty days after approval by the voters.

An effort to achieve the same results of a referendum provision without using a referendum clause is contained in section 190.440, RSMo, as enacted by SB 743 (1998). The statute conditioned the authorization of a fee for enhanced 911 service upon submission of a ballot measure by the Secretary of State to the voters for their approval. Although case law recognizes the authority of the General Assembly to condition the effective date of a law on voter approval (see *Akin*, supra, and *Bergman v. Mills, et al.*, 988 S.W.2d 84, 89 (Mo.App.W.D. 1999)), it is possible that a future court will view such a contingent effective date as a referendum provision. Thus, it is advisable when using that mechanism to apply the contingency to all sections of the bill and to meet the other constitutional requirements.

Three examples of referendum clauses are provided below. The first example is a "normal" referendum clause. The second permits various sections of the act to become effective at different times and the third has a delayed effective date.

Referendum Clause

EXAMPLES:

"Section B. This act is hereby submitted to the qualified voters of this state for approval or rejection at an election which is hereby ordered and which shall be held and conducted on Tuesday next following the first Monday in (month/year), under the applicable laws and constitutional provisions of this state for the submission of referendum measures by the general assembly, and it shall become effective when approved by a majority of the votes cast thereon at such election and not otherwise."

Referendum Clause

(With Variable Delayed Effective Dates)

"Section B. This act is hereby submitted to the qualified voters of this state for approval or rejection at an election which is hereby ordered and which shall be held and conducted on Tuesday next following the first Monday in (month/year), under the applicable laws and constitutional provisions of this state for the submission of referendum measures by the general assembly. If approved by a majority of the votes cast thereon at such election and not otherwise, the repeal and reenactment of (list sections) of this act shall become effective on (month/year) and the repeal and reenactment of (list sections) of this act shall become effective on (month/year)."

Referendum Clause

(With Delayed Effective Date for Certain Section)

*"Section B. This act is hereby submitted to the qualified voters of this state for approval or rejection at a special election which is hereby ordered and which shall be held and conducted on Tuesday next following the first Monday in (**month/year**), under the laws and constitutional provisions of this state applicable to general elections and the submission of referendum measures by the general assembly, and it shall become effective when approved, except that (**list sections**) of this act shall become effective on January 1, 2013, by a majority of the votes cast thereon at such election and not otherwise."*

It is usually **not** desirable for a referendum to become effective on the same day as its approval. The drafter should select an appropriate effective date after consultation with the sponsor. See also Section T, "Ballot Titles", p. 34.

III. IMPACT OF TECHNICAL ERRORS IN THE TITLE AND SECTION A

The courts have employed a very pragmatic interpretation of the purpose of the title and Section A and, over time, have found a variety of styles appropriate. The purpose of the title and Section A is to place legislators and the public on notice about the general contents of a bill. Bills are found constitutional as long as a title provides a general description of the subject matter, despite minor drafting flaws. **Court cases establish the precedence of the body of the bill over the title and enacting clause. Where there is a discrepancy, the body is determinative on whether a section is amended or repealed by a bill.** For example, a section is not repealed if it was listed as being repealed in the title and Section A, but was not presented in the body and, conversely, a section is repealed if so presented in the body of the bill but not referenced in the title and/or enacting clause. *Murphy v. Pemiscot County*, 639 S.W.2d 384 (Mo. 1982) (section which was bracketed in bill, indicating repeal, but not referenced in either the title or enacting clause, held to be repealed); *State v. Long*, 141 S.W. 1099 (Mo. 1911); *Cox v. Hannibal and St. Joseph RR. Co.*, 74 S.W. 854 (Mo. 1903); *City of Cape Girardeau v. Riley*, 52 Mo. 424 (Mo. 1873), 14 Am. Rep. 427.

One decision, however, has been read to place greater significance on the sections listed in the title and Section A. *State ex rel. Ashcroft v. Blunt*, 696 S.W.2d 329 (Mo. banc 1985). At issue was a drafting error which listed a section in the title and Section A (which was called Section 1 in this case) coupled with a clerical error, made when the truly agreed to and finally passed bill was prepared for signature, which removed a reference to the section from the reenacting portion of Section A/Section 1 but left it in the title and in the repealing portion of Section A/Section 1.

The section itself was not included in the body of the bill but the Supreme Court did not comment upon this fact. The court concluded that "this text" (i.e., the title and enacting clause) "on its face, repealed section....". The court's opinion failed to recognize that the section was not contained in the body of the bill or that previous opinions had given a rule for dealing with such discrepancies; the entire act was invalidated because the bill passed by the General Assembly was not the bill delivered to the Governor. Consequently, this opinion should not be seen as overturning the precedents cited above.

The clearly established case law to the contrary notwithstanding, gubernatorial vetoes have been justified on the basis of the lack of uniformity between the title, enacting clause, and body of the bill. Thus, it is still worth the effort to achieve uniformity, removing all doubt as to the intent of the General Assembly and the appearance of technical defect.

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IV. DRAFTING PROCEDURES

There are a variety of technical issues which should be considered when drafting legislation. Several of these are discussed below.

A. STATUTORY ASSIGNMENT

A new program should be placed within an existing chapter of law and within an existing department. Actual section numbers (e.g., 213.040, 213.045) should be used rather than generic numbers (Section 1, Section 2). The drafter should consult the Revision staff in Legislative Research to identify and reserve the specific section numbers to be used. This will ensure that existing rule review authority, appeals procedures, and penalties provisions apply to the new provisions. **The Revisor of Statutes is the final authority on the assignment of sections** (see Section 3.050, RSMo.).

B. TRANSFER OF AN AGENCY/CREATION OF A NEW AGENCY

It is helpful to specify the degree of autonomy to be enjoyed by the transferred or newly created entity. This can be done by specifying one of the three types of transfer set out in Appendix B (Reorganization Act of 1974) in the Revised Statutes of Missouri, as follows:

Type I - All operations of the agency shall be under the direction of the department director.

Type II - The department director has supervisory authority over the agency's budget, employees, the allocation of space and supplies, and general administration. The department director does not exercise supervision over the substantive functions of the agency.

Type III - The department director has supervision only over budgetary matters.

C. REPEALING A SECTION WHICH WAS ENACTED TWO TIMES

It is increasingly common for the General Assembly to enact the same section two or more different times in two or more different ways during a session. The Committee on Legislative Research has the power to combine sections if their provisions are not in conflict (see Section 3.065, RSMo).

When two sections are not reconcilable, both will be printed in the Revised Statutes. The drafter may be asked to draft a bill to repeal one of the duplicate sections or to repeal both and reenact a single, revised section. In either case, it is preferable to explicitly identify the bill(s) containing the affected section(s) and the year they were enacted as

follows:

"AN ACT

To repeal section 137.073 as enacted by senate bill no. 432 of the first regular session of the eighty-sixth general assembly, and section 137.073 as enacted by house committee substitute for house bill no. 608 of the first regular session of the eighty-sixth general assembly...."

In the example above, the body of the bill contains both versions of §137.073, one of which is repealed and the other one repealed and reenacted with changes.

When the bill contains both single version sections and multiple version sections, it is preferred that the descriptions of the multiple version sections be placed after the "RSMo" in the Title and Enacting clauses rather than in numerical order. It is also preferred that both versions of the multiple version statute be placed together in the bill rather than the repealed version at the end of the bill, with Version 1 and Version 2 of the multiple version section always being placed in order.

**D. REPEALING AND REENACTING/
TERMINATION DATE ALREADY IN FORCE**

Statutes are not automatically removed from the Revised Statutes of Missouri after they have expired, and sometimes a legislator will wish to revive sections after their date of termination. For example, one might wish to reenact the Task Force on Trade and Investment which expired at the end of 2001.

*"620.1310. 1. There is hereby created within the department of economic development the "Task Force on Trade and Investment".
5. The provisions of this section shall expire December 31, 2001."*

Reenactment merely requires the repeal of the termination date by bracketing subsection 5.

E. CREATING A NEW STATE ENTITY/MERIT SYSTEM

It may be necessary to specify whether a new entity is a merit system entity subject to chapter 36, RSMo. The Departments of Revenue, Agriculture, and Elementary and Secondary Education are not merit agencies, and most programs within the Department of Economic Development do not fall under chapter 36, RSMo. The Departments of Transportation and Conservation are merit agencies but they operate independently of chapter 36, RSMo.

F. CREATING A FUND

If the drafter must create a special fund, check to determine whether a subaccount to an existing fund may be created. For example, moneys might be placed in an appropriate subaccount *"of the Natural Resources Protection Fund created in section 640.220."* Money is paid to the Director of Revenue for deposit in the fund, and you should specify whether interest earned is to be retained in the fund. Moneys not retained revert to the General Revenue Fund. If you do not want moneys in the fund to lapse to General Revenue at the end of each biennium, you must so specify: "notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the (fund or subaccount) shall not lapse to general revenue". If you want to rename a fund you must ensure that new deposits go to the new fund, transfer moneys from the old to the new fund and abolish the old fund as of a date certain.

The following language has been agreed to by the State Treasurer for the creation of a new fund:

"1. There is hereby created in the state treasury the "----- Fund", which shall consist of money collected under section ----. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and, upon appropriation, money in the fund shall be used solely for the administration of section ----.

2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

3. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund."

G. SPECIAL LEGISLATION

Article III, Section 40 of the Missouri Constitution prohibits the General Assembly from passing any local or special law in twenty-nine specified situations, or "where a general law can be made applicable". Most court decisions have interpreted the last restriction ("where a general law...") to allow very specific classifications, as long as the classifications are open-ended in nature. "The unconstitutionality of a special law is presumed . . . Classifications based upon historical facts, geography, or constitutional status focus on immutable characteristics and are therefore facially special laws." *Tillis v. City of Branson*, 945 S.W.2d 447, 448-449 (Mo.banc 1997) (citing *Harris v. Missouri Gaming Commission*, 869 S.W.2d 58, 65 (Mo.banc 1994)). Thus, all population classes for counties have been upheld on the ground that other counties could come within the enumerated class (as long as the population limit is not tied to a specific census). Conversely, classifications which are not open-ended may not withstand judicial scrutiny. See also *Jefferson County*

Fire Protection District Associations, et al. v. Matt Blunt and Jeremiah Nixon, et al., 205 S.W.3d 866 (Mo.banc 2006) (Statute unconstitutional because population range was too narrow and no substantial justification for its narrowness). But see *State, ex rel. Slah, L.L.C. v. City of Woodson Terrace*, 2011 WL 1119044 (Mo.App.E.D. March 29, 2011).

In *Tillis*, a municipal tourism tax was authorized to be imposed by "any municipality of the fourth classification with a population of more than three thousand inhabitants but less than five thousand inhabitants.....located in a county that borders the state of Arkansas....." *id.* at 448. The Court held the requirement for the city to be in a county adjoining Arkansas was a closed-ended classification and thus unconstitutional. See also *School District of Riverview Gardens v. St. Louis County*, 816 S.W.2d 219 (Mo.banc 1991) (constitutional status not open-ended); *State ex rel. City of Blue Springs v. Rice*, 853 S.W.2d 918 (Mo.banc 1993) (past and fixed census figure is unchanging historical fact and thus not open-ended); and *Zimmerman v. State Tax Commission of Missouri*, 916 S.W.2d 208 (Mo.banc 1996) (limiting statute to first class charter counties is open-ended as other counties could join class; adding City of St. Louis is permissible given city's constitutionally unique status).

Whether a general law can be made applicable involves a possible judicial determination and raises burden of proof issues. If a law is directed to a closed class, it is presumed to be unconstitutional and the burden lies with the proponent of the closed class to show substantial justification for its creation. If a law is directed to an open class, the burden is on the proponent to show it is not reasonable, although the germaneness of the relationship between the classification and the statutory purpose may need to be shown.

Until the 1990s, Article VI, Section 8 of the Missouri Constitution, which specified in part that "a law applicable to any county shall apply to all counties in the class to which such county belongs", had been used only infrequently to invalidate laws which apply to fewer than all counties in a class, but the court ruled otherwise in several cases in the 1990s, culminating with *State ex rel. Ellisville v. St. Louis County Bd. of Election Commissioners*, 877 S.W.2d 620 (Mo.banc 1994) (statute creating boundary commission violated Article VI, Section 8 as applying only to St. Louis County; charter form of government does not affect classification) (*Ellisville* superceded by constitutional amendment, *Berry v. State*, 908 S.W.2d 682 (Mo. 1995); *Treadway v. State*, 988 S.W.2d 508 (Mo. 1999); *State, ex rel. Slah, L.L.C. v. City of Woodson Terrace*, 2011 WL 1119044 (Mo.App.E.D. March 29, 2011)) .

The General Assembly responded with SJR 4, which was passed by the legislature and ratified by the voters in 1995. It removed the language quoted above that was used by the Court to invalidate the law in the *Ellisville* case. Also, the 1995 revision was specifically applied retroactively to prevent other laws from being thrown out on this basis. Note that Section 8 still requires all counties in the same classification to possess the same powers and restrictions - there was reluctance to

remove all restrictive provisions from that section. Thus, some confusion may still exist in the future over this section's application to a law granting powers to or restricting powers of less than all counties of a particular classification. The 1995 amendment has also been interpreted by the courts to establish charter counties as a separate class by themselves. See *Leiser v. City of Wildwood*, 59 S.W.3d 597 (Mo.App.E.D. 2001).

The best way to distinguish between counties is to use a classification, to use population parameters, or to use some other basis for classification which is rationally related to the purpose of the bill (prison population; zoning and planning; lakeshore miles).

Another note: city classifications are subject to the Article III, Section 40 prohibition against local or special laws and the Article VI, Section 15 restriction that each class possess the same powers and restrictions.

Below are correct and incorrect ways to refer to specific counties and cities.

Wrong

Right

(1) Statutory requirement to use "classification" rather than "class"

Any county of the second class which adjoins a county of the first class containing any portion of a city with a population in excess of three hundred fifty thousand

Any county of the second classification

(2) No closed classifications; cannot use specific names of cities or counties

The City of Cape Girardeau

Any home rule city with more than twenty thousand but less than twenty-five thousand inhabitants

(3) Use some range of population, rather than a specific figure

Any county of the first classification with a population of nine hundred thousand and an assessed valuation of eleven billion dollars

Any county with a population of at least nine hundred thousand and an assessed valuation of eleven billion dollars

(4) Classification must be "open" and not limited to geography, etc.

Any county of the third classification which adjoins a county of the first classification located north of the Missouri River and containing a campus of the University of Missouri

Any county which has not established a system of planning and zoning

H. DESCRIPTION OF COUNTIES

Under Article VI, Section 8 of the Missouri Constitution, the number of classes of counties "shall not exceed four". However, Section 8 includes an exception to the number of classes of counties as provided in Article VI, Sections 18(a) and 18(m). Article VI, Section 18(a), as amended in 1995, provides: "Counties which adopt or which have adopted a charter or constitutional form of government shall be a separate class of counties outside of the classification system established under section 8 of this article."

In *Leiser v. City of Wildwood*, 59 S.W.3d 597, 603 (MoApp.E.D. 2001), the court interpreted Article VI, Section 18(a) as establishing a fifth classification of county. At issue was a statute that included the county description language "within a county of the first classification having a charter form of government". When referring to the use of the words "of the first classification", the court stated that "no county in Missouri can be a county of the first class and have a charter form of government. Because the inclusion of these words creates an absurd law, incapable of being enforced, we may strike this phrase as being improvidently inserted." As a result of the *Leiser* decision, any county with a charter form of government must be referred to as a charter county only, regardless of population or assessed valuation.

Due to a statutory change the word "classification" should be used when describing counties, rather than "class". Article VI, Section 15, however, refers to "classes" of cities.

The drafter should note that classification of counties is based on assessed valuation, which changes annually. The State Tax Commission publishes a listing of counties and their assessed valuations on a yearly basis.

I. CREATING BOARDS, COMMISSIONS, AND COMMITTEES

A board or commission should be assigned to a department. Members are typically not paid but are reimbursed for ordinary and necessary expenses; some are paid a per diem. Members may be appointed by the Department Director, the Governor, or for certain executive/legislative committees by both the Governor and the leadership of the General Assembly. If the Governor appoints the members, advice and consent of the Senate is required. If a legislative committee is created,

specify whether it is a temporary or permanent statutory committee.

The issues which should be considered include:

- a. Name or title
- b. Department
- c. Authority
- d. Membership
- e. Term of office
- f. Senate confirmation
- g. Compensation/reimbursement for expenses
- h. Political affiliation requirement
- i. Occupational/membership requirements
- j. Residency requirements
- k. Duties
- l. Rulemaking authority
- m. Selection of officers

J. AMENDING SUPREME COURT RULES

The General Assembly has revised the rules of the Missouri Supreme Court from time to time. Article V, Section 5 of the Missouri Constitution permits rules to be amended "by a law limited to that purpose". Amendments to Supreme Court rules are commonly placed in a bill which also contains statutory amendments; these enactments have not been questioned.

A bill amending a rule must provide notice in the title and must be set out separately with its own Section A.

EXAMPLE:

Title - To amend supreme court rules 32.09 and 51.05, for the purpose of clarifying when an attorney may file application for a change of judge.

Section A - Missouri supreme court rules 32.09 and 51.05 are amended to read as follows:

Supreme Court personnel have requested that the implementation of a rule change be delayed for a few months. Unless there is a reason to do otherwise, provide an effective date of January 1 of the following year for changes to court rules.

K. CHANGING TERMS OF OFFICE

Article VII, Section 12 of the Missouri Constitution reads in part: "Except as provided in this constitution...all officers shall hold office for the term thereof..."; however, Article VII, Section 13, specifically provides that the term of any officer shall not be extended but does not provide that they shall not be shortened. The Supreme Court has determined that it is permissible to shorten the terms of councilmen, especially when there were broader reasons for changing the terms of office. *State ex rel. Voss v. Davis*, 418 S.W.2d 163 (Mo. 1967). The Attorney General came to a similar position with regard to a proposal to change election dates for public water supply districts which had the incidental effect of reducing board members' terms of office. McKenna, Opinion Letter 180-95.

L. ESTABLISHING CRIMINAL PENALTIES

The Judiciary has requested that each separate crime be placed in separate sections or subsections.

M. THIS ACT v. LISTED SECTIONS

It is common to find references similar to the following:

- "Any person subject to the provisions of this act..."
- "This act is an emergency act."

The use of "this act" is not incorrect, but is discouraged because it can present complexities or when a statute containing "this act" is subsequently amended. It is unclear whether subsequent amendments in later acts of the General Assembly are included in the reference to "this act". The better alternative is to provide references to specific sections and to all sections (e.g., "sections _____ to _____") when the drafter wants to be inclusive.

N. EXPIRATION OF A FUND

To terminate a fund:

"The provisions of section 33.080 relating to the transfer of unexpended balances to the general revenue fund shall not apply to the _____ fund until June 30, 2011, at which time the unexpended balance in the _____ fund shall be transferred to general revenue and the _____ fund shall be abolished."

O. CIVIL PENALTIES LANGUAGE - COURT

To authorize a court to impose a civil penalty:

"Section ____. 1. *Any creditor who fails to comply with the provisions of sections ____ to ____ shall be liable to a surviving spouse who is affected thereby in an amount equal to:*

(1) Any actual damages sustained by the surviving spouse as a result of such failure;

(2) The costs of the action, including a reasonable attorney's fee; and

(3) An additional amount of not less than two hundred fifty dollars and not greater than two thousand five hundred dollars.

2. In addition to the foregoing monetary sums, a court, upon request of the surviving spouse, shall award such equitable relief as may be necessary to restore the surviving spouse's credit and to discourage future violations of this act by the creditor."

P. ADMINISTRATIVE PENALTIES IMPOSED BY A STATE DEPARTMENT

Although the statutes contain examples of administrative penalties imposed by a state department (e.g., section 260.249, RSMo), the drafter should alert the sponsor of any proposed administrative penalty to the prohibition contained in Article I, Section 31 of the Missouri Constitution: "That no law shall delegate to any commission, bureau, board or other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation.". An alternative to the imposition of an administrative penalty would be to provide for the revocation of a corresponding license.

Any administrative penalty which is construed to be for the breach of a penal law must be distributed to the public schools pursuant to Article IX, Section 7. *Missouri Gaming Commission v. Missouri Veterans' Commission*, 951 S.W.2d 611 (Mo.banc 1997).

Q. SEVERABILITY/NONSEVERABILITY CLAUSES

Severability clauses are not required, and should not be used, because section 1.140, RSMo, states that the provisions of every statute are severable. Section 3.030 authorizes the Revisor of Statutes to omit severability clauses when preparing the Revised Statutes for publication. A drafter may be asked, however, to include the

severability language as a separate clause, so an example is provided.

"Section _____. If any provision of sections ____ to ____ or the application thereof to anyone or to any circumstances is held invalid, the remainder of those sections and the application of such provisions to others or other circumstances shall not be affected thereby."

Legislative assertions of nonseverability also exist, where the intent is to declare an act or section to be all or nothing. The preferred language for drafting a nonseverability clause is:

"Notwithstanding the provisions of section 1.140 to the contrary, the provisions of this (section or act) shall be nonseverable, and if any provision is for any reason held to be invalid, such decision shall invalidate all of the remaining provisions of this (section or act)."

R. CURRENT ADMINISTRATIVE RULES REVIEW LANGUAGE

Most chapters provide that any rules promulgated under authority of the chapter are reviewable by the Joint Committee on Administrative Rules. If so, it is sufficient to cite that chapter when granting additional rulemaking authority, as follows: *"The director/department may promulgate rules to implement the provisions of sections _____ to _____ under chapter 536 and _____ (section within the same chapter as the bill which provides for rule review)."*

Existing rulemaking grants of authority:

The following language was approved by the Joint Committee on Administrative Rules and should be used when drafting Senate and House bills:

"Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 20--, shall be invalid and void."

If a bill contemplates new grants of rulemaking authority, it would be necessary to adjust the language and reinforce the narrow nature of the delegation of rulemaking power. As a starting point, consider the following:

The director/board/commission is authorized to adopt those rules that are

reasonable and necessary to accomplish the limited duties specifically delegated within (this section/ sections to). Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 20--, shall be invalid and void."

The Joint Committee on Administrative Rules has been in existence since 1975. The committee holds hearings on up to thirty of the roughly two thousand rules promulgated in a typical year and approves the suspension of two or three rules per year. The promulgating department is likely to agree to withdraw and revise ten to fifteen of the rules questioned by the committee.

Although seldom used, the existence of the committee has led the General Assembly to provide broad grants of rulemaking authority such as that contained in the preceding paragraph. Such broad grants should be reconsidered in light of *Missouri Coalition for the Environment v. Joint Committee on Administrative Rules*, 948 S.W.2d 125 (Mo.banc 1997) in which the Missouri Supreme Court held that the committee could not overturn rules unless such action was approved by the General Assembly in accordance with the bill passage and presentment requirements of the Missouri Constitution. **Based on this decision, it will be necessary to draft more narrow and more specific grants of rulemaking authority.**

EXAMPLES:

"The division may promulgate rules under chapter 536 to permit persons licensed in another state to become licensed in Missouri."

"The department may promulgate rules:

- (1) Establishing permit application and renewal fees; and
- (2) Requiring periodic renewal of licenses and establishing criteria for such renewal."

S. ADOPTING A PROPOSED AMENDMENT TO THE U.S. CONSTITUTION

Amendments to the United States Constitution may be adopted by either concurrent resolution or joint resolution. Since 1947, the General Assembly has ratified six proposed amendments which have subsequently been ratified by three-fourths of the states and become part of the U.S. Constitution. Five of them were adopted by joint resolution; one was adopted by concurrent resolution.

Limitations imposed by the state constitution and statutes do not apply because the power to ratify federal constitutional amendments is derived from the federal constitution. The U.S. Supreme Court decision in *Hawke v. Smith*, 253 U.S. 221 (1920), holds that the Article V method of ratification by the state legislatures does not authorize a state to submit a referendum under a state constitution for the ratification of a proposed amendment to the federal constitution.

Therefore, regardless of whether a concurrent resolution or joint resolution is used, the background and supporting arguments are presented in a series of "whereas" clauses, after which the General Assembly ratifies the proposed amendment. The usual form of a joint resolution, by which a proposed amendment to the state constitution is passed by the General Assembly and submitted to a vote of the people, cannot be used for adoption of a federal constitutional amendment.

T. BALLOT TITLES

From 1980 to 1996, the Committee on Legislative Research prepared the ballot titles for proposed constitutional and statutory referenda for all issues, whether submitted by the General Assembly or by initiative petition. This procedure was held unconstitutional by the Missouri Supreme Court in *John P. Thompson v. Committee on Legislative Research*, 932 S.W.2d 392 (Mo.banc 1996).

In 1997, the General Assembly revised the law by giving the Secretary of State and the State Auditor the authority to write the ballot title. In 1998, the General Assembly sought to incorporate its own title in a measure to be submitted to the voters (authorizing permits to carry handguns, known as "conceal and carry", HB 1891). This process was declared unconstitutional in early 1999 by the Cole County Circuit Court (*Mills, et al. v. Cook, et al.*, Case No. CV199-37CC, Circuit Court of Cole County, January 25, 1999, aff'd, *Bergman v. Mills*, 988 S.W.2d 84, 89 (Mo.App.W.D. 1999)).

Subsequently, the law was revised to specifically authorize the General Assembly to incorporate the ballot title and fiscal note summary into legislation that it proposes to send to the voters (*See* section 116.155, RSMo). This method has been used most recently in both bills and joint resolutions regarding the "Fair Tax" which would change the current state income tax system to a state sales tax system, although this recent legislation was not truly agreed to and finally passed. (*See* HCS/HB 2112 (2008), HCS/HB 814 (2009), and HJR 56 and HJR 71 (2010)).

U. CONCURRENT RESOLUTIONS WITH FORCE AND EFFECT OF LAW

Members of the General Assembly have had a continuing discussion for several

years concerning the form and constitutional passage requirements for concurrent resolutions having the force and effect of law. Many of these questions were answered by the Supreme Court in *Weinstock v. Holden*, 995 S.W.2d 411 (Mo. banc 1999). This decision reinforces the need for a consistent approach to the drafting and passing of these resolutions. In *Weinstock*, the Court held that a concurrent resolution nullifying the recommendations of the Citizen's Commission on Compensation for Elected Officials must meet all bill passage requirements.

EXAMPLES:

Concurrent Resolutions with the force and effect of law must have a title. ***This point was not explicitly raised in the decision, but it flows from the rationale presented in the case.***

"An act by concurrent resolution and pursuant to Article IV, Section 8, to repeal 10 CSR 80-2.013 relating to requirements for an application for a solid waste disposal facility permit."

SCR 31, 1998
(See Senate Journal, January 21, 1998, p 91)

OR

The current preferred form:

"Relating to disapproval of the recommendations of the Missouri Citizen's Commission on Compensation for Elected Officials."

Both Legislative Research and the Division of Research in the Senate, in consultation with the requesting member, make the determination as to the need for titles in concurrent resolutions offered by members. Each concurrent resolution should be carefully reviewed to determine how it should be handled.

The enactment of these special resolutions with force and effect of law have also created a dilemma regarding the publishing and inclusion of these resolutions in the Revised Statutes of Missouri. Since these resolutions are not statutes, the current practice is to publish these resolutions in an Appendix H of the Revised Statutes of Missouri.

There are no statutes, court cases, or rules of the House or Senate which directly address the manner and form of repealing or amending these resolutions. The current agreed upon method of repealing or amending resolutions which have force and effect of law is by the same form and manner of its enactment, which is passage of a concurrent resolution with force and effect of law.

V. ASSIGNING A PUBLIC DUTY TO PRIVATE ENTITIES

On occasion bills or amendments are received that assign a public duty to private entities. For example, an amendment in 1999 appointed the Director of the Missouri Safety Council and the Director of MADD, or their designees, to an advisory working group (Senate Journal, May 14, 1999, p. 1534). The correct way to accomplish the same objective is as follows:

"(5) One person knowledgeable and experienced in traffic safety, appointed by the director of the department of revenue;

(6) One person who represents the families of persons killed by drunk drivers, appointed by the director of the department of revenue;"

W. CONTINGENT EFFECTIVE/EXPIRATION DATES

It has become fairly common to draft bills with either an effective date or an expiration date that is triggered by some future event. Although the standard forms appear to meet constitutional muster, it is desirable to draft in a way that allows a reader to determine whether the section is or is not in effect. If a bill requires notice to the Revisor of Statutes before the effective/termination date, the Revisor can make that indication in the publication of the annual supplement. Two different styles of contingent effective/termination dates are presented below:

Not Preferred

"Section B. Section A of this act shall become effective on August 28, 2000, or upon adoption of 20 CFR Part 604, or similar federal regulations authorizing state authority to utilize the unemployment compensation program for paid parental leave, whichever occurs later."

(Senate Bill 751, 2000)

Awkward, but Preferred

"1. The repeal and reenactment of sections _____ to _____ and the enactment of section _____ shall become effective on July 1, 2012, unless notification has been provided under subsection 2 of this section.

2. If on or before July 1, 2012, the _____ provides notice to the revisor of statutes that (state the contingency) has occurred, the repeal and reenactment of sections _____ to _____ and the enactment of section _____ shall not become effective."

X. AMENDMENTS

Amendments can be written in a variety of ways, and the drafter must choose the style which will be the easiest to understand for those not familiar with the bill. This section examines the technical aspects of inserting amendments into a bill, the types of amendments which are considered "in order" under the rules of the Missouri House or Senate, the various ways the actual language of the amendment may be presented, and some parliamentary rules typically used to assess where amendments can be offered.

In the examples below, the text of the amendment is followed by the appropriate portion of the bill.

1. Adding/Deleting Sections in the Title and Enacting Clause by Amendment

Amending the title and Section A, as well as the body of the bill, helps put legislators and the public on notice and makes insertions and deletions from the bill easier to understand when the bill is truly agreed to and finally passed.

When preparing amendments for a bill it is not necessary to amend the Title and Enacting Clause (Section A) if the only change to the Title and Enacting Clause will be the addition of section numbers and changing the number of sections in the bill because of the following form language is included in all amendments:

Further amend said title, enacting clause and intersectional references accordingly.

The "further amend" language instructs the Senate Office of Enrolling and Engrossing or House Publications to insert sections in the appropriate places in the Title and Enacting clause (Section A) and to change in both places the number of sections which are to be enacted.

Please recognize that if it is necessary to include a multiple version section, a truly agreed to and finally passed section, to modify the subject matter listed in the Title, or to incorporate in the Title a reference to penalty provisions, an emergency clause, or an effective date, these additions cannot be made without otherwise amending the title.

EXAMPLE:

To amend the Title and Enacting Clause by adding a multiple version section of existing law:

The example below presents the Title and Section A as they appear:

- Before being amended;
- In the amendment to the Title and Section A; and
- As they would appear in the perfected or truly agreed to and finally passed bill.

When counting lines in the Title "An Act" is line 1 and blank lines are **not** counted.

SB 100

1. *AN ACT*

Title

2. *To repeal sections 143.495 and 143.496, RSMo,*
3. *and to enact in lieu thereof two new sections relating to the state*
4. *income tax.*

Section A

1. *Section A. Sections 143.495 and 143.496, RSMo,*
2. *are repealed and two new sections enacted*
3. *in lieu thereof, to be known as sections 143.495*
4. *and 143.496, to read as follows:*

Amendment

Amend Senate Bill No. 100, Page 1, In the Title, Line 2, by inserting immediately after "RSMo," the following: "and section 141.530 as enacted by senate committee substitute for house substitute for house committee substitute for house bills nos. 977 & 1608, eighty-ninth general assembly, second regular session, and section 141.530 as enacted by conference committee substitute no. 2 for house committee substitute for senate bill no. 778, eighty-ninth general assembly, second regular session,"; and

Further amend said page, Line 3, by deleting the word "two" and inserting in lieu thereof the word "three"; and

Further amend said bill, Page 1, Section A, Line 1, by inserting immediately after "RSMo," the following: "and section 141.530 as enacted by senate committee substitute for house substitute for house committee substitute for house bills nos. 977 & 1608, eighty-ninth general assembly, second regular session, and section 141.530 as enacted by conference committee substitute no. 2 for house committee substitute for senate bill no. 778, eighty-ninth general assembly, second regular session, "; and further on Line 2, by deleting the word "two" and inserting in lieu thereof the word "three"; and further on Line 3, by inserting after the word "sections" the following:

"141.530,"

In this example, section 141.530 is added to the title and section A, and the number of sections to be amended is correspondingly increased from two to three in both the title and section A.

The printed version of the amended bill would read as follows (bold for emphasis only):

SB 100

1. AN ACT

Title

2. *To repeal sections 143.495, and 143.496, RSMo, and section 141.530*
3. *as enacted by senate committee substitute for house substitute for*
4. *house committee substitute for house bills nos. 977 & 1608, eighty-*
5. *ninth general assembly, second regular session, and section 141.530*
6. *as enacted by conference committee substitute no. 2 for house*
7. *committee substitute for senate bill no. 778, eighty-ninth general*
8. *assembly, second regular session, and to enact in lieu thereof three*
9. *new sections relating to the state income tax.*

Section A

1. *Section A. Sections 143.495, and 143.496, RSMo, and section*
2. *141.530 as enacted by senate committee substitute for house*
3. *substitute for house committee substitute for house bills nos. 977 &*
4. *1608, eighty-ninth general assembly, second regular session, and*
5. *section 141.530 as enacted by conference committee substitute no.*
6. *2 for house committee substitute for senate bill no. 778, eighty-ninth*
7. *general assembly, second regular session, are repealed and three new*
8. *sections enacted in lieu thereof, to be known as sections 141.530,*
9. *143.495, and 143.496, to read as follows:*

2. Inserting/Deleting in the Body of a Bill

EXAMPLES:

(1) Amend Senate Bill No. 100, Page 40, Section 143.073, Lines 1-2, by deleting all of said lines and inserting in lieu thereof, the following: "of corporations in an amount not to exceed one and one-third percent of such income".

(2) Amend Senate Bill No. 100, Page 40, Section 143.073, Lines 1-2, by deleting all of said lines and inserting in lieu thereof, the following: "of

corporations in an amount [equal to one and one-half] not to exceed one and one-third percent of such income".

(3) Amend Senate Bill No. 100, Page 41, Section 144.801, Lines 2 and 5 of said section by deleting the word "three-eighths" on each of said lines and inserting in lieu thereof the following: "one-quarter".

(4) Amend Senate Bill No. 100, Section 143.073, Line 5, by inserting after the word "rate." the following: "All income tax returns submitted under this section shall be submitted no later than the fifteenth day of the fourth month following the end of the corporation's taxable year.".

3. Amending A Bill Not Printed

Usually, the House and Senate operate from printed bills where each line of each section is numbered so that when an amendment is prepared the drafter need only cite the printed line number. However, the Senate will consider floor substitutes which are not printed but do contain line numbers for each page rather than consecutive line numbers for an entire section. It is appropriate to specify the consecutive line number of a section if the bill has been printed.

EXAMPLE:

Page 8, Section 137.125, Line 12, by deleting...

For a Senate floor substitute, a drafter should specify the line number for the specific page.

EXAMPLE:

Page 14, section 375.102, line 6 of said section, by deleting...

4. Amending an Amendment in the Journal

Some amendments may be directed to pending amendments which have been printed in the Journal at some earlier date. The line count for these amendments begins with the top line of the page (for the House Journal) or the column (for the Senate Journal) to be amended. The form of the amendment is:

"Amend SCA 2, S.J. 4/15/96, p. 869, column 2, line 14 by...."

Blank lines must not be counted.

5. Repealing a Section Enacted in the Same Session - Not Signed by the Governor

Sometimes it is necessary to change a section after it has been truly agreed to and finally passed but before it has been signed by the Governor. An extreme example occurred in 1996 (CCS/SS/HB 895) when one section was enacted in three bills, with the third bill repealing the existing law and the two previous changes. The title of the final bill reads as follows:

"AN ACT

To repeal section 302.272, RSMo 1994, section 302.272 as truly agreed to and finally passed by the second regular session of the eighty-eighth general assembly in Senate Bill no. 522, and section 302.272 as truly agreed to and finally passed by the second regular session of the eighty-eighth general assembly in house bill no. 1441, relating to school bus operator permits, and to enact in lieu thereof three new sections relating to the same subject."

The bill:

- Repeals the section as it appears in current law in its entirety (i.e., with brackets "[]" around the entire section);
- Repeals the section as it was first enacted in SB 522 and again as it was second enacted in HB 1441, but with brackets around the entire section; (i.e. the material that SB 522 deleted is shown with brackets "[]" and new material is shown as bold/underscored but all within brackets to show its deletion.
- Reenacts the section as all new language.

See also SS/SCS/HS/HCS/HBs 1455 and 1463 (1998)

In each case, the entire section is repealed, and all of the changes are shown just as they appeared in SB 522 and HB 1441, respectively. These changes could result in brackets within brackets and underscoring (new language) within brackets:

"[302.272. 1. [No] A person shall not operate.....]"

Y. CONVEYANCES

For bills authorizing the conveyance of real property, the following form language is to be used:

"AN ACT

*To authorize the conveyance of property owned by the state in
_____ County to the City of _____.*

*BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE
OF MISSOURI, AS FOLLOWS:*

Section 1. 1. The governor is hereby authorized and empowered to sell, transfer, grant, and convey all interest in fee simple absolute in property owned by the state in _____ County to the City of _____. The property to be conveyed is more particularly described as follows:

(Insert legal description of real property)

2. The commissioner of administration shall set the terms and conditions for the conveyance as the commissioner deems reasonable. Such terms and conditions may include, but are not limited to, the number of appraisals required, the time, place, and terms of the conveyance.

3. The attorney general shall approve the form of the instrument of conveyance."

Conveyance bills *must* contain the official legal description of the real property to be conveyed. It is the responsibility of the requesting sponsor to obtain and provide to the drafter the official legal description. (To avoid the risk of typographical errors, the preference is to provide the official legal description in an electronic format.)

Z. SUNSET PROVISIONS

Under the Missouri Sunset Act, Section 23.253, RSMo, "any new program authorized by the general assembly shall sunset not more than six years after its effective date unless reauthorized by an act of the general assembly. Legislation...shall indicate whether it contains a program subject to the Missouri sunset act. Any such program shall have a sunset clause clearly indicating the date of termination without reauthorization."

The form for the sunset clause language to be used is as follows:

"Section _____ . Under section 23.253 of the Missouri Sunset Act:

(1) The provisions of the new program authorized under (this section, subsections _____ to _____ of this section, or sections _____ to _____) shall automatically sunset (1-6) years after the effective date of (this section, subsections _____ to _____ of this section, or sections _____ to _____) unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under (this section, subsections _____ to _____ of this section, or sections _____ to _____) shall automatically sunset (1-12) years after the effective date of the reauthorization of (this section, subsections _____ to _____ of this section, or sections _____ to _____); and

(3) (This section, subsections _____ to _____ of this section, or sections _____ to _____) shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under (this section, subsections _____ to _____ of this section, or sections _____ to _____) is sunset. "

After enactment and during the codification process, the Revisor of Statutes replaces the "(1-6) years after the effective date" with the actual effective date of the legislation and adds a footnote at the end of the section denoting the sunset and termination dates.

Example: For a section enacted in 2012 with a six-year sunset date, the Revisor would insert "August 28, 2018" for the sunset date in subdivision (1) and add the following footnote:

"Sunset date: August 28, 2018, unless reauthorized
Termination date: August 28, 2019, unless reauthorized"

The current method of reauthorization is by enactment of a bill which amends the sunset clause by bracketing the existing date and inserting the new date.

Example:

"(1) The provisions of the new program authorized under this section shall automatically sunset [August 28, 2018] August 28, 2024, unless reauthorized by an act of the general assembly; and".

Upon enactment of the reauthorization, the Revisor amends the footnotes to reflect the amended sunset and termination dates during the codification process.

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V. TECHNICAL DRAFTING RULES

1. Definitions

A drafter should define all frequently used words which have either a special meaning or a meaning that may be subject to misinterpretation. The uniform use of certain words and phrases is essential to proper bill drafting. See chapter 1, RSMo, for words or phrases which have general application to all the statutes; those definitions, rather than repetitive versions, should be used when the intended meaning is the same. After defining a term, use the defined word and not the definition. Definitions should clearly be limited only to those sections, subsections, paragraphs, subdivisions, chapters, or portions of the act to which they apply. Definitions should NOT say "shall be deemed to include" or "means and includes"; the word "means" is an exhaustive and closed term and the word "includes" is only partial and open-ended. Use of the term "includes", therefore, may allow a court or the administering agency to adopt additional meanings, while use of the word "means" restricts them to a reasonable construction of the drafter's wording.

The general rule of statutory construction is that the word "shall" is mandatory, not permissive. *Welch v. Eastwind Care Center*, 890 S.W.2d 395 (Mo.App.W.D. 1995); *Neal v. Director of Revenue*, 312 S.W.3d 444 (Mo.App.S.D. 2010). Missouri case law uses a different rule as applied to time limitations. "When a statute provides what results shall follow a failure to comply with its terms it is mandatory and must be obeyed; if it merely requires certain things to be done without prescribing the results that follow, the statute is merely discretionary." *Frager v. Director of Revenue*, 7 S.W.3d 555, 557 (Mo.App.E.D. 1999). See also *State ex rel. Tanner v. Nixon*, 310 S.W.3d 727 (Mo.App.W.D. 2010) citing *SSM HealthCare St. Louis v. Schneider*, 229 S.W.3d 279, 281 (Mo.App.E.D. 2007), "When a statute mandates that something be done by providing that it "shall occur and also provides what results "shall" follow a failure to comply with the statute, it is clear that it is mandatory and must be obeyed."

Do not write substantive provisions, operating conditions, or artificial concepts into definitions; such usage inevitably leads to confusion. Definitions should be placed at the beginning of the section or act.

General rule - use definitions only:

- (a) When a word is used in a sense other than its dictionary meaning or Chapter 1 meaning, or is used in the sense of one of several dictionary meanings; or

- (b) To avoid repetition of a phrase; or
- (c) To limit or extend the provisions of the act.

Example:

"264.021. As used in sections 264.011 to 264.101, unless the context clearly requires otherwise, the following terms mean:

- (1) "Apiary", any place or location where one or more colonies or nuclei of bees are kept;
- (2) "Authorized official", the state official authorized to inspect apiaries in the state of origin of bees being transported into the state of Missouri;
- (3) "Beekeeper", any individual, person, firm, association or corporation owning, possessing or controlling one or more colonies of bees for the production of honey, beeswax or by-products thereof, or for the pollination of crops for either personal or commercial use;
- (4) "Beekeeping equipment", all hives, supers, frames or other devices used in the rearing or manipulation of bees, their brood, honey or containers thereof which may be or may have been used in any apiary;
- (5) "Bees", any stage of the common honey bee, *Apis mellifera*, or other bees kept for the production of honey or wax or existing in the wild or feral state;
- (6) "Colony", the bees inhabiting a single hive, nuclei box or other dwelling place;
- (7) "Director", the director of the state department of agriculture;
- (8) "Disease", American or European foulbrood and any other infectious, contagious or communicable disease affecting bees or their brood;
- (9) "Eradicate", the complete destruction of infected or undesirable bees and equipment by burning or treatment approved by the state entomologist;
- (10) "Extermination", the complete destruction of bee colonies;
- (11) "Hive", any domicile with removable frames for keeping bees;
- (12) "Inspector", a person appointed by the director to check for diseased conditions or pest infestations in one or more apiaries or bees in the wild or feral state as authorized by this chapter;
- (13) "Pests", the honey bee mite, *Acarapis woodi*; the varroa mite, *Varroa jacobsoni*; the Africanized honey bee, *Apis mellifera scutellata*; and any other arthropod pest detrimental to honey bees."

2. Numbers and Figures, Monetary Sums, Date, Age, and Time

(a) Numbers and figures should be expressed in words only, and not in both words and figures. Examples: one-tenth of one percent; five hundred fifty.

(b) Monetary sums are expressed in words. Examples: one hundred dollars; seven dollars and fifty cents. The word "and" takes the place of the decimal point.

(c) Dates should be written as follows:

June first
June 1, 2012,
June, 2012,
2012

When the month and day only are used, the date is written out in words. If the month, day, and year are used, the day and year are expressed in figures. If the month and year only are used, the year is written in figures. When the year only is used, it is written in figures.

(d) Time should be expressed as follows:

Under twenty-one years of age

Twenty-one years of age or older (NOT "over twenty-one years of age")

Twenty-one years of age or older and under sixty-six years of age (NOT "between the ages of twenty-one and sixty-five")

(e) A period of time should clearly indicate the first and last day, as follows:

Before July 1, 2012 (NOT "until" or "by" or "to" or "not later than" July 1, 2012)

After June 30, 2012 (NOT "from" or "on and after" July 1, 2012)

After June 30, 2012, and before October 1, 2012

For the month of July, 2012, the period would be designated as "after June 30, 2012, and before August 1, 2012" (NOT "on and after July 1, 2012, and on or before July 31, 2012")

(f) A period of time is normally measured in whole days. Unless the intent is otherwise, use the word "day" instead of "time". For example, "filed within ninety days after the day (NOT time) on which judgment was entered".

3. Expression of Limitation

If a provision is limited in its application or is subject to an exception or condition, it will frequently promote clarity to begin the sentence with the limitation, exception, or condition, or with an expression calling attention to any

limitation that follows.

For conditions use "if", not "when" or "where"

4. Length of Sections

Avoid the use of long sections. If a section covers a number of contingencies, alternatives, requirements, or conditions, it may be broken down as follows:

- 1.060. 1. (1.060 section number - 1. subsection number)
 - (1) (subdivision indicator)
 - (a) (paragraph indicator)
 - a. (subparagraph indicator)
 - (i) (item indicator)
 - i. (subitem indicator)

All division indicators are indented five spaces from the margin.

Each subsection should contain one complete thought. It is usually advisable to divide separate thoughts into separate subsections.

5. Purpose Clause

Purpose clauses are not used in Missouri. Unless directed by the bill sponsor, do not include language stating the purpose of an act or recital of facts upon which the act is predicated. A properly drafted act is self-explanatory and requires no explanation of what it seeks to accomplish or the reasons for its enactment.

6. Severability Clause

Section 1.140, RSMo, clearly provides that the provisions of every statute are severable; a separate severability clause is not necessary and should not be used. Section 3.030 authorizes the Revisor of Statutes to omit severability clauses for publication of the statutes.

7. Punishment for Crimes and Misdemeanors

Since adoption of the Missouri Criminal Code, the drafter should draft all criminal statutes using criminal code format and specifying the class of

misdemeanor or felony involved. The code specifies the range of punishment for each class of offense so that specific punishments need not be set out in the bill.

Example:

"569.170. 1. A person commits the crime of burglary in the second degree when he or she knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein.
2. Burglary in the second degree is a class C felony."

8. Official Titles of Officers and Agencies

When referring to a public officer or agency in the text of a bill, use the official and correct title of the officer or agency. Proper nouns are capitalized, but names of state agencies and titles of officers are not capitalized, except for a newly created state agency (see Example below). The name of a new state agency is capitalized when it is first used in the clause which creates the state agency. Always check the Reorganization Act, Appendix B of Volume 15 of the Revised Statutes of Missouri, and Department Plans to ascertain the correct name of the officer or agency. All federal agencies, official titles, and acts of Congress are capitalized.

Example:

"There is created a "Missouri Council on Science" to be composed of six members appointed by the governor with the advice and consent of the senate."

The words "Council" and "Science" are capitalized in the section creating the council, but in all subsequent sections the words are written as "Missouri council on science".

Whether state or federal, all references to associations, federations, foundations, and commissions are capitalized.

9. Reference to the Constitution, the Revised Statutes of Missouri, and the Session Laws.

References to the Constitution and the laws of Missouri are made as follows:

- a. *** article III, section 16 of the Constitution of Missouri
- b. *** section 165.017

c. *** section 227.381 as enacted by house bill no. 1488, ninety-third general assembly, second regular session

d. *** section 273.345 as truly agreed to and finally passed by senate substitute for senate committee substitute for senate bills nos. 113 & 95, ninety-sixth general assembly, first regular session

The preference is not to use "RSMo" within a section when referring to another section within the Revised Statutes of Missouri. "RSMo" is to be used when including a statutory reference to a section of the Revised Statutes of Missouri which will be included in ballot language, signage, or other similar documents requiring such statutory references outside of the Revised Statutes of Missouri.

10. Reference to the Code of Federal Regulations and the Code of State Regulations

a. References to the Code of Federal Regulations are made as follows:

"40 CFR 79".

b. References to the Code of State Regulations are made as follows:

"13 CSR 35-32.010".

11. Reference to the U.S. Constitution and Federal Statutes

a. References to the United States Constitution are made as follows:

"Amendment XX, Section 2 of the Constitution of the United States".

b. References to a section which is in a title of the United States Code Annotated that has been enacted into law are cited in the following manner:

"7 U.S.C. Section 1366".

c. References to the Internal Revenue Code are made as follows:

"Internal Revenue Code of 1986, as amended".

d. References to a section not in any title of the United States Code Annotated and whose act has a short title are cited as "Section 15 of (short title name)".

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APPENDIX A

PREFERRED WORD LIST

NOT THIS WAY	PREFERRED
acknowledgement	acknowledgment
admissable	admissible
admissability	admissibility
adviser	advisor
after-market	aftermarket
after market	aftermarket
agri-business	agribusiness
airbag	air bag
anti-drug	antidrug
attorney at law	attorney-at-law
attorney in fact	attorney-in-fact
auxilliary	auxiliary
backpay	back pay
bee-keeping	beekeeping
benefited	benefitted
benefiting	benefitting
bold-faced	boldface
book-keeping	bookkeeping
book keeping	bookkeeping
braille	Braille
breast feeding	breast-feeding
breastfeeding	breast-feeding
camp site	campsite

NOT THIS WAY	PREFERRED
cancell	cancel
canceled	cancelled
canceling	cancelling
cancelation	cancellation
care giver	caregiver
car lots	carlots
casemanager	case manager
city-wide	citywide
Coast Guard	coast guard
congress	Congress
Constitution of the State of Missouri	Constitution of the state of Missouri
Consumer Price Index	consumer price index
consumer price index for all urban consumers	Consumer Price Index for All Urban Consumers
controling	controlling
coowner	co-owner
copayee	co-payee
copayment	co-payment
co-signer	cosigner
cost of living	cost-of-living
county-wide	countywide
court house	courthouse
court martial	court-martial
courtmartial	court-martial
court martials	courts-martial
courtmartials	courts-martial

NOT THIS WAY	PREFERRED
C.P.A.	CPA
cross head	crosshead
data base	database
day-care	day care
descendent	descendant
et al	et al.
et seq	et seq.
ex-officio	ex officio
exofficio	ex officio
finger printing	fingerprinting
fire fighter	firefighter
firefighting	fire fighting
flightcrew	flight crew
food borne	foodborne
franchiser	franchisor
ground water	groundwater
harrassment	harassment
head start	Head Start
high wall	highwall
highway M	Highway M
highway 72	Highway 72
transportation department	highways and transportation department
home owners	homeowners
horseracing	horse racing
hot line(s)	hotline(s)

NOT THIS WAY	PREFERRED
imposter	impostor
unapplicable	inapplicable
uncontestable	incontestable
unsanitary	insanitary
Internet	internet
inter-relate(s)	interrelate(s)
inter-relationship	interrelationship
Interstate Highway	interstate highway
judgement	judgment
knowledgable	knowledgeable
labelled	labeled
lessers	lessors
licenseholder	license holder
lien holder	lienholder
longterm	long-term
long-time	longtime
L.P.N	LPN
Marines	marines
material man	materialman
material men	materialmen
medicaid	Medicaid
medicare	Medicare
micro-economic	microeconomic
Missouri constitution	Missouri Constitution
Missouri highway 30	Missouri Highway 30

NOT THIS WAY	PREFERRED
Missouri route 364	Missouri Route 364
Missouri route B	Missouri Route B
monies	moneys
motor boats	motorboats
multi-county	multicounty
multi-family	multifamily
multi-list	multilist
multi-purpose	multipurpose
multi-state	multistate
multi-tenant	multitenant
multi-year	multiyear
National Guard	national guard
Navy	navy
non-certificated	noncertificated
non-narcotic	nonnarcotic
non-native	nonnative
non-primary	nonprimary
non-teacher	nonteacher
office holder	officeholder
payor	payer
permissable	permissible
policy-holder	policyholder
policymaking	policy making
post-closure	postclosure
post-conviction	postconviction

NOT THIS WAY	PREFERRED
post-degree	postdegree
post-mining	postmining
post-partum	postpartum
post-placement	postplacement
post-secondary	postsecondary
post-trial	posttrial
powerlines	power lines
pre-empt	preempt
pre-existing	preexisting
pre-owned	preowned
pro-rata	pro rata
prorata	pro rata
Public Law	P.L.
public law	P.L.
ratemaking	rate making
recordkeeping	record keeping
recordkeeping duties	record-keeping duties
re-employ	reemploy
re-enact	reenact
re-enlist	reenlist
re-enroll	reenroll
re-enter	reenter
re-entry	reentry
re-establish	reestablish
re-examine	reexamine

NOT THIS WAY	PREFERRED
registerable	registrable
requestor	requester
restroom(s)	rest room(s)
route 364	Route 364
rule-making	rulemaking
St. Louis city	St. Louis City
semi-professional	semiprofessional
semi-trailer	semitrailer
shuttlebus	shuttle bus
signaled	signalled
signaling	signalling
social security	Social Security
state highway M	State Highway M
state highway 13	State Highway 13
state route 160	State Route 160
state route m	State Route M
theatre	theater
tortfeasor	tort-feasor
United States Army Corps of Engineers	U.S. Army Corps of Engineers
United States Highway	U.S. Highway
U.S.C. section	U.S.C. Section
useable	usable
van pool	vanpool
veterans' administration	veterans administration
veterans affairs	veteran's affairs

NOT THIS WAY	PREFERRED
veteran's cemeteries	veterans cemeteries
veterans' cemeteries	veterans cemeteries
veterans' commission	veterans commission
Veterans' Day	Veterans Day
veterans' home	veterans home
vicechairman	vice chairman
video tape	videotape
waste water	wastewater
waterclosets	water closets
water craft	watercraft
watergates	water gates
web site	website
weigh master	weighmaster
wine makers	winemakers
work papers	workpapers