

## Drafting Bill Titles

### I. General Requirements for Bill Titles

Drafting a sound bill title is a most important and often under appreciated aspect of quality bill drafting. The concept of bill titles evolved early on in the United States as a custom to give notice of the contents of bills by providing a summary of contents at the top of each bill.<sup>1</sup> Eventually, drafters of state constitutions inserted constitutional provisions requiring titles for all bills. The purpose of bill titles is to give notice to readers of how the bill changes current law. Failure to draft a proper title can result in a gubernatorial veto of the Act or court ruling voiding all or part of the intended legislation. This section provides an overview of proper title drafting as required under West Virginia law.

Constitutional requirements:

Article 6, §30 of the West Virginia Constitution reads:

No act hereafter passed shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act which is not so expressed, the act shall be void only as to so much thereof as shall not be so expressed, and no law shall be revived, or amended, by reference to its title only; but the law revived, or the section amended, shall be inserted at large, in the new act.....

The purpose of this provision is to assure that each act has a single stated subject matter described in the title. The

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<sup>1</sup>Sutherland Stat Const, §18.01 (4<sup>th</sup> Ed)

requirement that the title accurately reflect the purpose and scope of the bill is to assure that no language not referred to in the title becomes law. This is to discourage language from being inserted into a bill without notice, or, to prevent "log rolling" of several small separate issues into a single bill. Severability language is also included in §30, which allows all portions of a bill properly referred to in the title to become law even if some portions of the bill are deleted because of a defective title.

It is important to note that the West Virginia State Supreme Court of Appeals has historically viewed all titles of individual acts inclusively. This means that the bill title of each original act is combined along with any subsequent amendments to the act to create the single act title. As §30 states, all act titles must reflect what is in the act itself. The original act is reviewed with all subsequent amendments to see if the combined titles reflect the purpose and intent of the current version of the act. Although this concept is initially confusing, one way to view the Court's approach is to understand that the individual acts are the official law and not Michie or Westlaw's printed versions of West Virginia, each which only reflects an organized version of the acts for user convenience. Prior to these organizations of the acts into the West Virginia Code, everyone had to refer to the acts to figure out the law and titles were used as summaries to provide a

pointer to readers regarding the effect of an act.<sup>2</sup>

Historically, bill drafters have been instructed to draft a title to cover all aspects of any section being amended. This would allow correction for previously faulty titles by reenactment of a section under a subsequent title. This approach has not been followed for many years. Most drafters assume that the prior title is correct and focus on amending the title only to reflect changes. The current rule is that the drafter should write a complete and accurate title covering only the changes to current law contained in the body of the bill.

## **II. Contents of Bill Titles**

### **1. What should be contained in a title?**

A bill drafter should not use section headings as descriptions in any title. This has been an all too common way to do titles. Section headings have no legal significance and may or may not be accurate. When writing a specific title, a drafter should read each provision of each section of the bill and summarize the effect of the amendments to that section. A bill drafter should err on the side of putting too much information in the title rather than too little. When writing a more general title, drafters need to be certain that each aspect of the bill will fit in the general

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<sup>2</sup>All bills enacted into law are annually codified as the “Acts of the Legislature of West Virginia” following each legislative session.

subject area of the title. When writing a general title, the subject of the legislation should not be so general as to be meaningless or deceptive.

## **2. General v. Specific Bill Titles**

There are two types of acceptable title styles: general or specific. A sufficient title should contain a comprehensive statement regarding the single object of the bill followed by general comments on how the bill impacts current law. As long as the title provides a conceptual overview, the general title is generally speaking, drafted adequately.

Specific titles, i.e., titles containing brief statements regarding every substantive change in the law contained in the bill, are the choice of many bill drafters. All titles, whether specific or general, must make mention of changes to civil or criminal violations and penalties. The West Virginia Supreme Court has stated that penal statutes will be construed against the state, so in this case it is important that the penal law change be specific and clear. There also should be some specific reference in a title to provisions which have far-reaching implications. For example, it is important that a new right or privilege, such as suspension or revocation of a license, the exercise of the right of eminent domain, the right of immediate entry, the removal of one from office, etc., be stated in the title. Drafting titles is really a careful balancing act between stating the single object and

purpose of the bill without burdening the title to the extent that every small change in the bill will require a title amendment.

Within the limitations contained in this section, it is the choice of the drafter whether to draft a very specific or more general title.

### **3. Repealing and replacing acts**

Repeal and replace titles must include all provisions of the act. The prior act titles for the affected sections will be repealed, so the bill drafter must cover all provisions contained in the bill. Because the old act and its title are being repealed, the subsequent title must be general enough or specific enough to cover the subject matter of the new bill. A general title is sufficient if there is no portion of the act requiring a specific title.

### **4. The *relating to* clause**

The bill drafter should always begin the title by stating what single object the bill relates to, then go into further detail on the contents of the bill. When a bill drafter is writing any *relating to* clause, he or she can summarize generally what the bill does following the single object phrase. The single object phrase is most important. Without a clear single object stated in the title broad enough to encompass the conceptual purpose of the bill, the entire bill or portions thereof which do not relate to the overall purpose of the bill may be vetoed or subject to a

successful court challenge.

## **5. Local bills and special acts**

There are several different rules based on the nature of the local or special bill being drafted. Examples of local and special bill titles are contained in the "Title Examples Chapter" of the drafting manual. In applying the rules regarding general or specific language, it is important that the bill drafter specifically name the location and institutions involved and the effect of the bill.

### **III. Representative West Virginia Supreme Court Cases**

#### ***Shields v. Bennett*, 8 W.Va. 74 (1874)**

This case explains the necessity for writing a complete repeal and replace title. When an act repeals and replaces a former act, the court will not look back to the prior title to construct an adequate title for the new act.

The question whether the object of an act is expressed in the title, is determined by a comparison of the act with the title, - - and is not influenced by any former law which the later act, if valid, expressly or by implication, repeals.

*Shields* at 74.

#### ***Roby v. Sheppard*, 42 W.Va. 286 (1896)**

A different rule applies where the act amends and reenacts earlier statutes. In *Roby*, the Court recognized that the title of an amended act be supplemented by the title of the original act when considering whether the amended title is valid. Subsequent

titles are read with the original act's title to see if the act's subject is adequately described.

***Elliott v. Hudson*, 117 W.Va. 345 (1936)**

When determining the sufficiency of a title, our Court will read the title first to see if the challenged provision fits within the title and not backwards from the challenged provision to the title. In other words, the title will be read first to see if the body of the bill fits. If a challenged provision does not fit within the title, the Court will not try to make it fit.

***State ex rel. Myers v. Wood*, 175 S.E.2d 637 (1970)**

This case addresses the issue of specificity of titles relating to penal statutes. In this instance a criminal offense was contained in an act but not mentioned in the title. The Court found that in this circumstance, specificity is required:

The courts in this and other states are strict in their decisions involving criminal matters or penalties with regard to requiring the object of the Act to be contained in the title in order to advise the public of the intention of an act passed by the legislature...

*Myers* at 637. Bill drafters should be very careful when drafting a penal statute to state that a penal statute is being amended. As the Court states in *Davis* (below), these titles will be strictly construed against the state.

***City of Huntington v. Chesapeake & Potomac Telephone Co.*, 177 S.E. 2d 591 (1970)**

A new state tax that assessed public utilities also repealed

the then existing authority of cities to enact this same tax. In the authorizing act, the bill title provided that its object related to "an annual tax on certain carriers." *Huntington*, at 591. The appellants asserted that the removal of cities' taxing authority was not fully disclosed in the title.

The Court found:

Inasmuch as the title to the act distinctly states that its object relates "to an annual tax on incomes of certain carriers," we believe that such language is sufficient to alert everybody who might be concerned, particularly carriers and levying bodies of political subdivisions of the state, to the fact that the legislature had the power to extend or to withhold from political subdivisions of the state the right to impose a tax on carriers taxed under the provision of the statute.

*Huntington*, at 598.

This decision reaffirms the Court's pattern of recognition of general titles as being sufficient. If the title of an act states its general theme or purpose and the substance is germane to the object expressed in the title, the title will be held sufficient. *Copley* at 486, Syp. pt. 1, *State ex rel. Graney and Ford v. Sims*, 105 S.E.2d 886, (1958), et al.

***State ex rel Davis v. Oakley*, 191 S.E.2d 610 (1972)**

In this case a deputy sheriff was charged with receiving a bribe. The statute prohibiting the receipt of bribes originally applied only to county court commissioners, jurors, justices of the peace, umpires, auditors and arbitrators. The statute was amended to include appointed or elected county officials. However, the



subsequent title amendment was identical to the original title, failing to mention appointed or elected county officials. The Court found that the title was insufficient and the portion of the act not mentioned in the title was void. The Court noted that since this was a penal statute that it would be strictly construed against the state. The court also implied that a more general title would have been acceptable where this title was not:

It is true that if the title of the act had merely stated that the act related to the offense of bribery we would not have the difficulty we are confronted with in this case. However, the title refers specifically to the bribery of persons in certain positions and other county officials are not mentioned.

*Davis* at 613.

***State ex rel. City of Charleston v. Bosely, 268 S.E.2d 590 (1980)***

In this case a hotel occupancy tax act described all aspects of the collection and use of the tax. The Court rejected the notion that the act embraced more than one object. As long as the title reflects the principal object of an act and other principal objects *incidental* or *auxiliary* to the stated object of the act, then the title is sufficient.

***C. C. "Spike" Copley v. PSC, 300 S.E.2d 485 (1983)***

The Legislature amended, by an omnibus statute, the entire Public Service Commission statute. The act also deregulated the vehicle towing business. The title, which was very extensive, listed all significant changes to the Code and mentioned the

affected section in the enacting section, but failed to mention towing deregulation in the *relating to* clause. The PSC asserted that mentioning the section amended in the enacting section only was sufficient notice. The Court disagreed:

A person reading a title to a bill drawn with the specificity of the title [of the act] who finds no mention of wrecker services in the title would reasonably conclude that the act did not touch that subject because all the other concerns are set forth with specificity.

*Copley* at 487. Referring by section designation to the section amended, without any discussion in the *relating to* clause, created a defective title.

The Court also found that in drafting titles to meet constitutional muster, it is better to be general and vague rather than specific and inaccurate:

While we have consistently sustained Acts of the Legislature where the titles were vague, our research discloses no case where we have sustained an actively misleading title.

*Id.* at 488. Based on *Copley*, it appears that the Court requires that even if the act contains a comprehensive *relating to* clause, if the drafter begins listing specifics in the bill then he or she must list all specifics. If the drafter writes a general *relating to* clause that is encompassing enough to cover all aspects of the act without specificity, then the Court will uphold the title language.

It is always necessary for a bill drafter to phrase the *relating to* language in a manner that assures that a single general

concept of the area of the Code being amended is clearly conveyed. If the drafter undertakes to draft a specific *relating to* clause, it is important that he or she phrase the *relating to* language in a manner that assures that a single general concept of the area of the Code being amended is established.

***State ex rel. Walton v. Casey, 370 S.E.2d 141 (1988)***

In this case a provision was amended into an article of the Code dealing with licensing of osteopathic physicians relating to medical physicians who are licensed under a different section of the Code. The title's *relating to* clause states "all relating to the state board of osteopathy, its members...." The Court struck the offending section and upheld the remainder of the act.

The Court found two purposes for a title: 1) To give notice to legislators and members of the public as to the content of the legislation, and 2) to prevent amendments to a bill from becoming law which may be foreign to the purpose of the bill or objectionable to legislators, but hidden in the body of the bill. The single purpose of the bill must be stated in the title as well as enough information to describe the effect of the legislation on current law.

The Court also provided that a title must, at a minimum, furnish a "pointer" to the challenged provision in the act. The title must provide enough information to allow a person interested in a subject matter to notice, provoking him or her to read

further.

***Kincaid v. Mangum*, 432 S.E.2d 74 (1993)**

Prior to this case, the Legislature had bundled all the legislative rules authorization bills into a single bill for legislative consideration and passage. In finding the omnibus legislative rules bill in violation of the single object requirement of §30, the court found that although there was a rational basis for the omnibus act, i.e., the authorization of legislative rules, that the subject was excessively general and in violation of §30. The Court found that the Legislature could combine rules into groups as long as the groupings do not lead to "log rolling or other deceiving tactics." *Kincaid* at 82. As a result, the Legislature is now dividing up the rules into subject matter groups following super-secretary agency divisions. In *Kincaid* the Court affirmed the general principle as espoused in Sutherland Statutory Construction:

If there is any reasonable basis for grouping the various matters together, and the public will not be deceived, the act will be sustained. No accurate mechanical rule may be formulated by which the sufficiency of an act in relation to its title may be determined. Each case must be decided on its own peculiar facts.

Sutherland Stat Const §17.03, at 9 (4<sup>th</sup> Ed).

***McCoy v. VanKirk* 201 W.Va. 718 (1997)**

This case reaffirmed the standard statutory construction rule that the Court will work towards construing a title in a manner most favorable to its validity. The court also held that the purpose of having sufficient specificity in the title is to give

sufficient notice to the reader of the purpose of the act: "The requirement of expressiveness contemplated by [the constitution] necessarily implies explicitness."

**Swiger v. UGI/AmeriGas, Inc. 216 W.Va. 756 (2005)**

This case addressed the legislative rules bill bundling process that has been used for several years since the above discussed finding in *Kincaid*. The court approved the resulting method for organizing rules developed by the Legislature: "The inclusion in a bill which authorizes the promulgation of legislative rules pertaining to multiple agencies within one executive department does not violate the one object rule of article VI, section 30 of the West Virginia Constitution nor does it violate the holdings of this Court in *Kincaid v. Mangum*."

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