DRAFTING A BILL

I. TITLE

The title is a critical part of a bill, and drafting the title is sometimes the most difficult and challenging part of bill drafting.

A. The Single-Subject Requirement

The state constitution requires that a bill (except general appropriation bills) shall contain but one subject, which shall be clearly expressed in the bill's title. This requirement is found in section 21 of article V of the state constitution, as follows:

> No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

A bill can contain any number of sections and provisions so long as they relate to one subject. The Colorado Supreme Court has held that if one general subject matter is expressed in the title, the inclusion in the bill of subdivisions of the general subject matter is not obnoxious to the constitution. *Clare v. People*, 9 Colo. 122, 10 P. 799 (1886). Furthermore, a bill may amend any number of different statutes so long as all the amendments made to those statutes relate to one general subject. In 1964, for example, when it was necessary in order to comply with the judicial reform amendment to the state constitution to change the jurisdiction of certain courts and to repeal from the statutes all references to justices of the peace and constables, the act accomplishing this purpose amended some 400 different sections of existing statutes under a general title (Ch. 39, Session Laws of Colorado 1964).

However, a bill that includes a subject not contained in its title is void as to the subject not expressed in the title. In *Teller Co. v. Trowbridge*, 42 Colo. 449, 95 P. 554 (1908), the Colorado Supreme Court held that a statutory change in a district attorney's salary in an amendatory act, the title of which related to "fees", was void, since "salary" was not germane to the title.

The Colorado Supreme Court has repeatedly held that generality in the title to an act is not objectionable, and that if matters contained in an act are germane to the subject of the title, there is compliance with section 21 of article V (see the C.R.S. annotations to that section).

However, in 1987 the Court struck down a bill that coupled expenditure and program cuts with revenue and fee increases in order to fund that session's spending priorities, even though the Court conceded that all sections in the bill related to a single subject that was

stated in the bill's title, *In re House Bill No. 1353*, 738 P.2d 371 (Colo. 1987). The bill's title was "CONCERNING AN INCREASE IN THE AVAILABILITY OF MONEYS TO FUND EXPENDITURE PRIORITIES FOR THE 1987 REGULAR SESSION OF THE GENERAL ASSEMBLY THROUGH REALLOCATION OF FUNDS, PROGRAM CUTS, EXPENDITURE REDUCTIONS, USE OF REVENUE FROM UNCLAIMED PROPERTY, AND INCREASES IN FEES." The Court, noting that the single common feature stated in the title was "not sufficient", concluded "that these diverse and incongruous subjects impermissibly impede achievement of the goal that each legislative proposal be considered on its merits, and intrude on the governor's ability to exercise the veto power."

The period of time during which a title defect can be used as the basis for an objection in a judicial proceeding is apparently limited to causes of action arising or filed between enactment of the bill with the title defect and the subsequent enactment of the annual bill that reenacts the laws passed at the previous session as the statutory supplement and replacement volumes, *Olin v. City of Ouray*, 744 P.2d 761 (Colo. App. 1987), rev'd on other grounds, 761 P.2d 784 (Colo. 1988).

In 1971, the Office of Legislative Legal Services (then the Legislative Drafting Office) published a research memorandum entitled "Bills to Contain One Subject", which explores the single-subject requirement in some detail. A portion of this memorandum is contained in Appendix F of this manual.

B. Examples of Titles - General, Specific, Narrow

Bill titles may range from very broad to very narrow. Examples:

General:
A BILL FOR AN ACT CONCERNING SCHOOLS.
(The body of the bill could contain any matter concerning schools.)

Specific:
A BILL FOR AN ACT CONCERNING THE METHOD OF FINANCING TRANSPORTATION OF CHILDREN TO AND FROM PUBLIC SCHOOLS.
(The body of the bill could contain any matter concerning financing transportation of children, but could not contain matters, for example, concerning the powers of school boards to finance the construction of school buildings.)

Narrow:
A BILL FOR AN ACT CONCERNING DELAY UNTIL NOT LATER THAN SEPTEMBER 15, 1995, OF STATE BOARD OF EDUCATION DEADLINES FOR IMPLEMENTING STANDARDS-BASED EDUCATION.
(The body of the bill could only contain matters pertaining to the delay of the state board's deadlines for standards-based education and could not contain matters pertaining to other education issues.)

C. Practical and Strategic Considerations - Desires of Sponsor

When taking a request for a bill, the sponsor's preference as to type of title should be noted on the request form. The sponsor may desire a "broad" title to allow flexibility and latitude in the addition of amendments during the course of the bill's passage or the sponsor may want a narrow or "tight" title so that the bill cannot be altered by amendments containing matters not intended to be a part of the bill.

In 1984, the Legislative Procedures Committee of the Legislative Council adopted a policy that the Office of Legislative Legal Services should use tight titles on bills unless otherwise instructed by the legislator requesting the bill. The policy leaves the final determination of the nature of the title with the sponsor.

In any case, the drafter should be careful to avoid unnecessarily broad titles. While a title usually should not be so tight as to prohibit amendments that can be reasonably foreseen and that have a reasonable relationship to the single subject of the bill, the title should not be so broad as to permit the addition of amendments that are only remotely related to the single subject of the bill. The drafter should secure the express approval of the requesting legislator before using a broad title and have good reasons for using such a title.

D. Guidelines for Drafting Bill Titles

In view of the strategic importance of the title and the necessity of complying with the constitutional single-subject requirement, the title should be drafted very carefully. The drafter should keep the following points in mind in drafting the title to any bill.

The drafter should *either draft the title last or review the title to verify that it covers all subjects in the body of the bill after writing the bill*. The title should contain only the *subject* of the bill, *not* a table of contents or an explanation as to what the bill contains, as was done in 1966 in the "Metropolitan Stadium Act" (Ch. 36, Session Laws of Colorado 1966). (See also *Metzger v. People*, 98 Colo. 133, 136, 53 P.2d 1189, 1191 (1936); "a broad and general title is better than a title attempting to catalogue the constituent parts of an act.")

Bills drafted outside the Office of Legislative Legal Services sometimes contain long and rambling titles. The drafter should not hesitate to replace such a title with one stating only the *one general subject* of the bill.

Narrative titles should be avoided. Narrative titles are those that, rather than stating a single subject common to all matters in a bill, list at length all matters addressed in a bill. For example, this title from a 1993 bill on workers' compensation: "CONCERNING THE RESPONSIBILITY OF INSURERS AND SELF-INSURED EMPLOYERS TO PAY THE TOTAL COST OF INDEPENDENT MEDICAL EXAMINATIONS IN WORKERS' COMPENSATION PERMANENT DISABILITY CASES TO RESOLVE ISSUES RELATED TO THE DETERMINATION OF MAXIMUM MEDICAL IMPROVEMENT OR THE IMPAIRMENT RATING OF THE CLAIMANT UPON REQUEST OF THE

CLAIMANT SUBJECT TO REIMBURSEMENT THROUGH AN OFFSET AGAINST THE PERMANENT DISABILITY AWARD OR UPON A DETERMINATION OF THE INDIGENCY OF THE CLAIMANT BASED ON ADJUSTED GROSS FAMILY INCOME OF ONE HUNDRED TWENTY-FIVE PERCENT OR LESS OF THE FEDERAL POVERTY LEVEL PURSUANT TO THE INCOME CRITERIA FOR THE COLORADO MEDICALLY INDIGENT PROGRAM."

The phrase "and for other purposes" should not be used in a title. Although this phrase is used in federal legislation, it is not used in titles to Colorado legislation under any circumstances. In the event it is added to the title of a bill, it does not serve to include stray matters related or unrelated to the subject matter of a bill.

It is important to remember that the narrower a title becomes, the greater the danger that a bill will contain a subject that is void because it is not covered in the title. In *People ex rel. Kellogg v. Fleming*, 7 Colo. 230, 3 P. 70 (1883), the Colorado Supreme Court held that where a title specifies that the bill is *amending* a designated section of a specific article, an amendment that adds to the designated section new and different matters affecting many other sections of the article not germane to the designated section is void.

On the other hand, remember that the title of a bill should not be overly broad. If possible, the title should be drafted to allow only those amendments that are foreseeable and are germane to the single subject of a bill.

Where it is necessary to use a very broad title, the drafter should consider using "trailers" in the title to provide notice about the bill's major provisions. For example, consider the following title: "A BILL FOR AN ACT CONCERNING PROPERTY TAXES, AND, IN CONNECTION THEREWITH, MODIFYING PROCEEDINGS REGARDING ABATEMENTS AND PROVIDING FOR CERTIFICATION OF PROPERTY TAXES DUE AND UNPAID ON PERSONAL PROPERTY." In this example, the subject ("property taxes") is very broad, but the trailer (the remainder of the title) provides helpful notice about the two major provisions of the bill.

If a bill includes an appropriation, the phrase "... , AND MAKING AN APPROPRIATION THEREFOR." or "... , AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH." should be included in the title. This is extremely useful information and, while the addition of this phrase is not required by the constitution, a law, or legislative rule, it is standard drafting procedure.

If possible, conjunctions ("and" and "or") should be avoided in describing the subject of the bill because conjunctions suggest a violation of the constitutional single-subject requirement. For example, the title "A BILL FOR AN ACT CONCERNING INDIVIDUAL AND CORPORATE INCOME TAXES" may violate the single-subject rule by embracing two subjects: (1) Individual income taxes and (2) corporate income taxes. A better title might be: "A BILL FOR AN ACT CONCERNING INCOME TAXES."

On the other hand, conjunctions are sometimes unavoidable and unobjectionable such as where a subject is commonly described by a phrase that includes a conjunction and no single word exists to describe the subject. Examples: "Dependent and neglected children"; "sales and use taxes"; "alcohol and drug-related offenses"; "department of labor and employment".

As a rule, citations to the Colorado Revised Statutes should not be used in a title except for purposes of restricting the subject matter of the bill. If cited, the abbreviation for Colorado Revised Statutes (i.e., "C.R.S.") should not be used; instead, "Colorado Revised Statutes" should be written in its entirety.

"Blind" titles, such as "A BILL FOR AN ACT TO REPEAL ARTICLE 21 OF TITLE 23, COLORADO REVISED STATUTES", should not be utilized without stating the subject of the statutory material cited, because lack of a subject causes confusion in the assigning of a bill to committee and in the indexing of a bill, and fails to give notice of the contents of the bill. A short title may also present a hindrance for purposes of future referencing.

The drafter should avoid subjective judgments in the title such as: "A BILL FOR AN ACT CONCERNING *IMPROVEMENTS* IN MUNICIPAL ELECTION PROCEDURES." In this example, a better title might be: "A BILL FOR AN ACT CONCERNING MUNICIPAL ELECTION PROCEDURES." Similarly, the drafter should try to avoid stating the reason for a bill in the title unless necessary to narrow the subject of the bill. Example: "A BILL FOR AN ACT CONCERNING THE ADOPTION OF UNIFORM CHILD SUPPORT GUIDELINES TO COMPLY WITH THE FEDERAL "OMNIBUS BUDGET AND RECONCILIATION ACT OF 1990."

As a matter of style, it is recommended that titles not be written with a gerund form (a noun with an ing) immediately following the word CONCERNING. This can be avoided by rewriting the title. For example, write "A BILL FOR AN ACT CONCERNING THE PROMOTION OF TOURISM" instead of "A BILL FOR AN ACT CONCERNING PROMOTING TOURISM".

E. Titles on Recodification Bills

When an entire body of law is changed to reorganize and relocate provisions, the title may include the word "recodification". For example: "CONCERNING THE RECODIFICATION OF BANKING STATUTES". There is often debate as to whether a bill with such a title can contain substantive amendments as a part of the reorganization. The Office is not aware of any rule or practice that would prohibit the inclusion of substantive changes, and there have been prior bills that did involve substance. However, this debate would be eliminated by not using the term "recodification" and drafting a broader title for the bill. The drafter should discuss the implications of using "recodification" in a bill title with the member.

Sometimes bills contain a recodification of an entire body of law and are characterized by the sponsor as only reorganizing or relocating existing law without making substantive

changes. Drafters have written bill titles such as "CONCERNING A NONSUBSTANTIVE RECODIFICATION OF COLORADO'S BANKING LAWS" in hopes of limiting amendments to the bill to nonsubstantive or technical changes. The drafter should discuss with sponsors that a title that refers to recodification or nonsubstantive recodification may not prevent substantive amendments from being added to the bill. What is substantive may be subject to debate and ultimately depends upon the wishes of the committee or the body at the time an amendment is offered to the bill.

F. Amendments to Titles

When a bill is amended after its introduction, it may be necessary or appropriate to amend its title. A title may be amended to narrow but not to broaden the subject matter of the bill as introduced. For additional considerations in amending bill titles, see the chapter of this manual titled "Amendments to Bills".

II. SHORT TITLE

Each bill, resolution, and memorial is assigned an unofficial short title. The short title is a very brief phrase that identifies the measure according to its primary topic, purpose, or effect. It is used to identify the measure in calendars, journals, bill status reports, the subject index, and other legislative records. Since the 1995 legislative session, the Office of Legislative Legal Services has been responsible for drafting the short title.

The short title is drafted when the bill, resolution, or memorial itself is drafted. It does not appear on the measure itself, but it is written on the request sheet and entered into CLICS.

Guidelines for Drafting Short Titles

(1) The short title should provide as much identifying information as possible within a maximum size of 40 characters, including spaces, punctuation, and numerals.

(2) The short title should identify the bill's primary topic. An awareness of the way the short title is used in other documents should aid the drafter in writing a short title that is user-friendly and achieves the purpose of identifying the bill for the public. The short title is pulled from the CLICS program for insertion in the daily House and Senate calendars. When a bill is listed for a committee hearing, the entry will include the bill number, the sponsors' name, and the short title. In addition, each word of the short title for a bill is retrieved and alphabetized one word at a time to create the subject index. Members of the public as well as legislators, staff, and lobbyists look at the one-word entries in the subject index to identify bills. For example, someone looking for a bill affecting no-fault insurance rates would expect to find the bill by looking at the entries for "Insurance", "No-fault", or possibly "Motor" or "Vehicle". When drafting a short title, the drafter should think about

how someone likely to be affected by the bill or looking for a certain type of bill would look for the bill in the index. Instead of focusing on the purpose of the bill, focus on who or what is affected (insurance industry, small business, health department) or what the basic subject matter is for the bill. Simplifying the long title into a shorter version may not communicate the topic of the bill.

(3) When possible, the short title should state a subject, like "Alcoholic Beverages Produced In Colo". However, the short title may also use verbs like "Recodify Traffic Laws" or "Retaining Abandoned Property".

(4) The short title does not have to be 100% technically accurate and does not have to identify 100% of the contents of the bill. Instead, the drafter should try to use "plain English" words in the short title in the place of legalistic, technical words that may be used in the title or the body of the bill. However, the drafter must be careful to use reasonably accurate terms and avoid misstating the bill's primary topic, purpose, or effect when substituting plain English words for technical terms.

(5) The short title is not amended or updated as the bill is amended. Therefore, the drafter should try to avoid specific information that may change after the bill is introduced.

(6) The short title should be in lower case letters with the *first letter of each word capitalized*, i.e., "Initial Capped". There should be no period at the end. The bill drafting macro automatically puts quotation marks around the short title.

(7) Articles (such as "the", "a", etc.) should always be omitted. If necessary to squeeze other key words into the short title, the drafter may also omit connecting prepositions even if the resulting short title does not make strict grammatical sense. For example: "Colo Youth Small Game Hunting"; "Workers' Comp Motor Vehicle Accidents".

(8) Because each of the words of the short title are used individually to create the subject index which is used by the public and legislators to identify bills, the use of abbreviations is discouraged. If you do use abbreviations, use standard and consistent abbreviations. The standard abbreviations can be found on the internet at http://www.state.co.us/gov_dir/leg_dir/olls/PDF/ShortTitleAbbs.pdf, on the OLLS intra-office website under "Frequently Used Forms & Files", or on the OLLS HELP TOPICS button in WordPerfect.

(9) Do NOT make up abbreviations. Use abbreviations for things only when their meaning is widely recognized, ex: RTD, AFDC.

(10) Apply this TEST: Separate out the words from the proposed short title and think about whether the average subject index user would think of that individual word to try to find this bill? If the answer is no, then the short title needs modification.

(11) Do NOT abbreviate every word in the short title. If the drafter is the only one who can figure out what the abbreviations in a short title mean, then it is a meaningless short title.

(12) Focus on the subject matter and who the bill affects. Think about who would look for this particular bill rather than focusing on describing how the bill does something.

(13) The subject index is useful if it groups similar bills together under the same key words. If there are multiple bills on the same subject, the drafters and the teams should attempt to identify those similar bills using the same key words in the short titles for those bills. For example, all insurance bills should have insurance in the short title. All medicaid bills should have medicaid in the short title.

III. BILL SUMMARY

Joint Rule No. 29 of the Senate and House of Representatives requires that every bill and concurrent resolution include a brief summary written by the Office of Legislative Legal Services. Summaries should be written *after* the bill or concurrent resolution is drafted and should attempt to state what the bill would accomplish.

Guidelines for Drafting Bill Summaries

(1) The bill summary should be as short and concise as possible while still communicating the major points of the bill.

(2) A bill summary for a bill that amends current law should describe how current law will be *changed*, rather than how the law will read after the change is made. This is especially important in describing changes made by repealing and reenacting current law. For example, if current law requires the payment of a fee either in cash or by check, and the bill proposes to eliminate payment by check, then the bill summary should state something like, "Eliminates the option of paying the fee by check", rather than "Requires payment of the fee in cash".

(3) The bill summary should describe changes in order of importance or in some other logical order (which is not necessarily the order in which the changes appear in the body of the bill), and related changes should be described together in the summary. For example, the most important changes could be described first, and minor changes could be mentioned last. To give another example, the bill summary could list changes made by the bill in the order in which the affected events are likely to occur (for example, changes to procedures for obtaining driver's licenses could be described before changes to penalties for traffic offenses).

(4) Bill summaries may be written in complete sentences, may provide background material necessary to understand the change or addition to current law being made by the bill, may emphasize significant points through the use of bullets, and may refer to sections of the bill by section number.

(5) The substance of a repealed statute should be indicated in the summary if it is important to the bill.

(6) As a general rule, specific numbers, dates, and amounts contained in a bill should not be included in a summary, since they are susceptible to change as the bill passes through the legislative process and bill summaries are not updated when the bill is amended. However, the drafter should include specific numbers, dates, and amounts if necessary to supply important information that the reader could otherwise learn only by carefully searching the entire bill. Example: "Increases the state sales and use tax by one-fourth of one percent effective November 1, 1995."

(7) The drafter should avoid overusing the word "Provides" in the bill summary. Instead, the drafter should use more specific words such as "Increases", "Establishes", "Creates", etc.

(8) The drafter should try to use "plain English" words in the bill summary in the place of legalistic, technical words that may be used in the body of the bill. For example, a bill summary may describe changes in the amounts recoverable in civil actions for "wrongful death", although the statute amended by the bill uses the term "actions notwithstanding death" rather than the term "wrongful death". However, the drafter must be careful to use reasonably accurate terms and avoid making debatable legal conclusions when substituting plain English words for technical terms.

(9) The drafter should avoid statements of meaningless information such as "Amends definitions" or "Amends the definition of 'public employee'". (In these examples, the drafter should actually describe the definitional changes and how they change substantive law, if the changes are important to the bill; otherwise, it is not necessary to mention them at all.) On the other hand, it is acceptable to give notice of numerous minor changes with a general statement, such as "Makes conforming amendments" or "Makes various minor changes to definitions applicable to administrative proceedings".

(10) If a bill contains a legislative declaration and the drafter wants to note that, it should be noted at the end of the bill summary with "Makes legislative findings and declarations."

(11) Bill summaries submitted with drafts prepared outside the Office of Legislative Legal Services should always be checked to verify that they reflect what the bill actually does.

(12) If a bill is recommended by an interim or statutory committee, the summary should begin with the name of the committee. The name of the committee should be in bold type and followed by a period that is also in bold type, and the first letter of each significant word should be capitalized as follows:

Committee on Legal Services.
Executive Committee of the Legislative Council.
Joint Legislative Sunrise and Sunset Review Committee.
Interim Committee on School Finance.
Transportation Legislation Review Committee.

Exception: This rule *does not apply* to bills requested by the Joint Budget Committee. The Joint Budget Committee *does not* want "**Joint Budget Committee.**" noted in the bill summary for bills requested by the JBC.

IV. ENACTING CLAUSE

Section 18 of article V of the state constitution provides: "The style of the laws of this state shall be: "Be it enacted by the General Assembly of the State of Colorado"."

Section 2-4-213, C.R.S., provides:

> **2-4-213. Form of enacting clause.** All acts of the general assembly of the state of Colorado shall be designated, known, and acknowledged in each such act of said state as follows: "Be it Enacted by the General Assembly of the State of Colorado".

The "enacting clause", as above stated, is placed immediately before the first section of a bill. Its wording cannot be varied since it is fixed by the constitution and statutory law. It must be included before introduction because failure to include it could invalidate an entire act. The prescribed form, placed in one line immediately preceding the first section of the bill, is as follows:

"*Be it enacted by the General Assembly of the State of Colorado:*"

V. BODY OF A BILL

A. Prohibition on Introduction by Title Only

Section 19 of article V of the state constitution was amended in 1950 to provide in part that "No bill shall be introduced by title only". This provision specifically prohibits a former practice in the General Assembly (prior to 1950) that allowed bills to be introduced with a title, the enacting clause, and the word and figure "SECTION 1.". The body of the bill

as thus introduced by title was then "filled in" even, in some cases, after the fifteen-day limitation on the introduction of bills expired. (The fifteen-day limitation on introduction of bills was also deleted in the 1950 amendment to article V of the state constitution.) Now, every bill must be introduced "in full", that is, with a complete text.

B. Sectioning and Paragraphing - Terminology

Colorado Revised Statutes is divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXX. Headnote. (1) Subsection

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

In a three-part section number such as "5-6-301", "5" is the *title* number, "6" is the *article* number, and "301" is the *section* number within the article and title. The three numbers combined together as "5-6-301" constitute a section of C.R.S. When there is more than one part in an article, the first digit of a three-digit section number and the first two digits of a four-digit section number designate the *part*. In this example ("5-6-301"), the section is found in part 3 of article 6 of title 5.

In drafting new material, short sections should be used. This will help in later amendments and will reduce the length of amendments. When a long section containing several different matters must be amended, the General Assembly sometimes becomes involved in considering not only the particular matter at issue but other matters that the sponsor of the bill might not have wished to address. Short sections are also easier to index.

There is no definite rule as to the amount of material that should be put in one section, but, generally, each distinct topic should be in a separate section subdivided as necessary.

One test for determining whether a section is too long is to attempt writing a headnote for the section. If a short headnote cannot be written, the section is probably too long.

C. Section Headings - Headnotes

After each section number there is an explanatory heading or "headnote" that should briefly describe the content of the section. Section 2-5-113 (4), C.R.S., provides in part that "The classification and arrangement by title, article, and numbering system of sections of Colorado Revised Statutes, as well as the section headings ... shall be construed to form no part of the legislative text but to be only for the purpose of convenience, orderly arrangement, and information; therefore, no implication or presumption of a legislative construction is to be drawn therefrom." Thus, changes in section headings may be handled by the Revisor of Statutes and are not amended by bills.

Nonetheless, the drafter should employ care and good judgment in selecting the language of section headings. In *In re U.M. v. District Court*, 631 P.2d 165 (Colo. 1981), the Colorado Supreme Court held that, although no implication or presumption of legislative construction is to be drawn from a heading added by the Revisor of Statutes, a "legislatively selected" heading may be used by a reviewing court as an aid in construing a statute section.

If the drafter of a bill wishes to change a section heading to reflect the content of the section as amended by the bill, then the drafter simply rewrites the section heading. The drafter does not use "strike type" and "small caps" to show the changes to the section heading.

In a very few instances, subsections will also contain headnotes for clarity and easy reference. For example, see subsections (4) and (5) of section 8-73-108, C.R.S.

D. Amending Clauses

The body of every bill consists of sections numbered "SECTION 1.", "SECTION 2.", "SECTION 3.", etc. Except for sections having only a temporary effect, each of these section numbers is followed by an "amending clause" and, in a separate paragraph, by the existing law as it is to be amended or by new parts, sections, etc. that are to be added to C.R.S. These amending clauses cite the existing law to be amended or added to and refer to "Colorado Revised Statutes".

In some cases, the current version of the material being amended or added to has not yet been published. For example, this may occur when amending material previously amended or enacted during the same legislative session. In such cases, the amending clause will cite the material being amended or added to in the form described above, followed by a phrase in the following form: "as amended [or enacted] by section 3 of House Bill 91-1234, enacted at the First Regular Session of the Fifty-eighth General Assembly, ..."

1. Amending Current Statutory Material

The simplest form of an amending clause occurs when amending a section that is contained in the current volume of C.R.S. In such case, the amending clause should read as follows:

> **SECTION 1.** 32-7-128, Colorado Revised Statutes, is amended to read:

If the section to be amended is contained in a bill enacted at the same legislative session, the amending clause should read as follows:

> **SECTION 2.** 32-7-128, Colorado Revised Statutes, as amended by House Bill 97-1101, enacted at the First Regular Session of the Sixty-first General Assembly, is amended to read:

When only the introductory portion of a section or subsection (and none of its subdivisions) is to be amended, the amending clause should read as follows:

> **SECTION 3.** The introductory portion to 32-1-103, Colorado Revised Statutes, is amended to read:

2. Adding New Statutory Material

a. New Sections

New sections may be added either at the end of a statutory title, article, or part or they may be inserted at the most logical point between existing statutory material - sometimes through the use of decimals. The amending clause for adding a new section or sections should read as follows:

> **SECTION 1.** Part 9 of article 3 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

or

> **SECTION 2.** Part 9 of article 3 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

If adding new sections at the end of an article or part, the new sections would be numbered 10-3-911, 10-3-912, etc. Decimal points may be used to insert new sections between existing sections. For example, to insert new sections between sections 10-3-904 and 10-3-905, use section numbers such as 10-3-904.3, 10-3-904.5, 10-3-904.7, etc. New sections inserted between existing sections should be numbered to allow for later insertion of additional sections. For example, the first section inserted between sections 10-3-904 and 10-3-905 should not be 10-3-904.1 unless the new section is so closely connected to

10-3-904 in subject matter that it is inconceivable anyone would later want to insert a different section between 10-3-904 and 10-3-904.1.

A new section may be placed before the first section in an existing article or part in three instances only:

(1) To add a new "short title" section, which must be numbered as section 1-1-100.1;

(2) To add a new "legislative declaration" section, which must be numbered as section 1-1-100.2;

(3) To add a new "definitions" section, which must be numbered as section 1-1-100.3.

b. New Subsections, Paragraphs, Subparagraphs, and Sub-subparagraphs.

New subsections, paragraphs, subparagraphs, or sub-subparagraphs may be added either at the end of the existing statutory material or at a logical point within the existing statutory material. The amending clause in either case should read as follows:

> **SECTION 1.** 7-23-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

or

> **SECTION 2.** 7-23-103 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

Decimal points may be used for adding new subsections, paragraphs, subparagraphs, and sub-subparagraphs.

c. Multiple Amendments Within the Same C.R.S. Section

Amendments to two or more subdivisions of the same C.R.S. section may be combined in one bill section as follows:

> **SECTION 1.** 8-73-107 (1) (c), (1) (d) (II), (2), and (4), Colorado Revised Statutes, are amended to read:

Another type of combination may be used when one or more subdivisions of a section are amended and new material is also added:

> **SECTION 1.** 8-73-107 (1) (c) and (1) (d) (II), Colorado Revised Statutes, are amended, and the said 8-73-107 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

In the above example, note the commas setting off the clause relating to the new material.

d. New Titles, Articles, and Parts

When the new material is sufficiently long and is not directly related to specific provisions of existing law, a new article or part should be added. *New titles are rarely added, and the drafter should consult with the Revisor before adding a new title*.

New articles are either added at the end of an existing title or inserted between existing articles. The amending clause to add a new article should read as follows:

> **SECTION 1.** Title 2, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

If a new article were to be added at the end of title 1, its sections would be numbered 1-46-101, 1-46-102, et seq. Some titles have article numbers reserved for expansion.

If the new article fits most logically *between* two existing, consecutively numbered articles (for example, as in the case of a new licensing law for inhalation therapists, which probably should be placed in alphabetical order within the medical category of title 12, "Professions and Occupations"), it can be designated with a decimal point (in the example, the new article would contain sections numbered 12-35.5-101, 12-35.5-102, et seq.). The designation of an article as ##.5, rather than as article ##.1, allows future articles to be added either before or after the new article.

In extreme situations, a new article numbered ".5" could be inserted before the first article in an existing title. This practice is discouraged and should only be done where the new material simply cannot be placed anywhere else in the statutes.

New parts are always added at the end of an article. For example, if new parts were added to article 2 of title 2, the sections in successive new parts would begin with 2-2-701, 2-2-801, et seq. Because the original design of the computerized statute data base did not contemplate the practice, *new parts cannot be added by means of decimals*.

Whenever adding a new part to an existing article, it will be necessary to change every reference to "this article" in the existing article to "this part __" or to "parts __ to __ of this article" unless the reference may correctly be applied to the new part as well as the remainder of the article. If a large number of such amendments are required, it is better to add a new article instead of a new part.

The amending clause for the addition of a new part should read as follows:

SECTION 1. Article 4 of title 2, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

When an existing law is materially amended or rearranged to accomplish the purpose of a bill, when all the law on a subject scattered throughout the statutes is brought under one statute, or when a sponsor wishes to repeal all the old law on a particular subject and enact an entirely new and usually simplified approach to the subject at hand, a new article or part may be added and existing, conflicting law repealed. A good example of the use of this method was the "Colorado Municipal Election Code of 1965", in which the existing laws on municipal elections were repealed and an entirely new code consisting of 185 sections was adopted.

In using this method, both the sponsor and drafter should consider the fact that judicial and administrative interpretation of an old law may be lost in the creation of an entirely new statute the subject matter of which has been on the books for many years. Also, *all* existing law and references to the subject matter covered by the new law should be checked carefully so that conflicting and duplicate laws and references to any laws repealed do not remain in the statutes. If existing law is to be repealed in a bill creating new law, a repealing clause should be included in the bill.

3. Repealing and Reenacting Existing Law

Until the 1991 regular session, Joint Rule No. 21 of the Senate and House of Representatives allowed a deviation from the capital letter and strike type format of amendatory sections in cases of complex and extensive amendments. In 1991, Joint Rule No. 21 was amended to eliminate this practice because departure from the capital letter and strike type format too often caused reader confusion. The current policy favors showing the reader new material in capitals and omitted material in strike type as a general rule. Accordingly, the prior practice of merging existing law and new law without distinguishing between new law and omitted law through the practice of "repealing and reenacting" existing material is not favored. This alternative format in which the bill sets forth only the text of the law as it would read after the bill became law without graphically distinguishing the text of new or existing law leaves the reader uncertain as to the relationship of new and existing law. However, the 1991 amendment allows use of repeal and reenactment when the interests of better understanding of a bill are served by its use.

The form of the amending clause for repealing and reenacting existing law should read as follows:

SECTION 1. 1-1-101, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

4. Repealing Existing Law

The general rule that the reader should see new material in capitals and omitted material in strike type requires a preference for showing the repeal of complete subdivisions of law such as articles, parts, sections, and subdivisions of sections in strike type as follows:

> **SECTION 1. Repeal.** 25-3.5-607, Colorado Revised Statutes, is repealed as follows:
>
> **25-3.5-607. Repeal of part.** ~~Unless continued by the general assembly, this part 6 is repealed, effective July 1, 1992.~~

or

> **SECTION 2. Repeal.** 25-3.5-403 (2), Colorado Revised Statutes, is repealed as follows:
>
> **25-3.5-403. Poison information center - state funding.** (2) ~~The general assembly each year in the general appropriation bill may require that an amount equal to the state appropriation for the poison information center be obtained from private fund-raising sources prior to the disbursement by the state treasurer of the legislative appropriation.~~

However, a "straight repealer" may be employed when the length of the repealed provision outweighs the benefits of seeing the provision in strike type. The form of a straight repeal is as follows:

> **SECTION 1. Repeal.** Article 11 of title 26, Colorado Revised Statutes, is repealed.

When deleting entire subdivisions within an amendment to a larger body of material, it is generally preferable for historical purposes to retain the numbers or letters designating the deleted subdivisions instead of renumbering or relettering. Example:

Preferred:

> **12-47.1-519. Renewal of licenses.** (1) Subject to the power of the ~~commission~~ DIRECTOR to deny, revoke, or suspend licenses, any license in force shall be renewed by the ~~commission~~ DIRECTOR for the next succeeding license period upon proper application for renewal and payment of license fees and taxes as required by law and the regulations of the ~~commission~~ DIRECTOR. The license period for a renewed license shall be one year. In addition, the ~~commission~~ DIRECTOR shall reopen licensing hearings at any time at the request of the director, Colorado bureau of investigation, or any law enforcement authority. The ~~commission~~ DIRECTOR shall act upon any such application prior to the date of expiration of the current license.
>
> (2) ~~An application for renewal of a license shall be filed with the commission no later than one hundred twenty days prior to the expiration of the current license, and all license fees and taxes as required by law shall be paid to the commission on or before the date of expiration of the current license.~~

(3) ~~Upon renewal of any license, the commission shall issue an appropriate renewal certificate or validating device or sticker which shall be attached to each license.~~

(4) Renewal of a license may be denied by the ~~commission~~ DIRECTOR for any violation of this article or article 19 of title 18, C.R.S., or the rules and regulations promulgated pursuant thereto, for any reason which would or could have prevented its original issuance, or for any good cause shown.

Alternative:

12-47.1-519. Renewal of licenses. (1) Subject to the power of the ~~commission~~ DIRECTOR to deny, revoke, or suspend licenses, any license in force shall be renewed by the ~~commission~~ DIRECTOR for the next succeeding license period upon proper application for renewal and payment of license fees and taxes as required by law and the regulations of the ~~commission~~ DIRECTOR. The license period for a renewed license shall be one year. In addition, the ~~commission~~ DIRECTOR shall reopen licensing hearings at any time at the request of the director, Colorado bureau of investigation, or any law enforcement authority. The ~~commission~~ DIRECTOR shall act upon any such application prior to the date of expiration of the current license.

~~(2) An application for renewal of a license shall be filed with the commission no later than one hundred twenty days prior to the expiration of the current license, and all license fees and taxes as required by law shall be paid to the commission on or before the date of expiration of the current license.~~

~~(3) Upon renewal of any license, the commission shall issue an appropriate renewal certificate or validating device or sticker which shall be attached to each license.~~

~~(4)~~ (2) Renewal of a license may be denied by the ~~commission~~ DIRECTOR for any violation of this article or article 19 of title 18, C.R.S., or the rules and regulations promulgated pursuant thereto, for any reason which would or could have prevented its original issuance, or for any good cause shown.

The preceding alternative method should ordinarily be used only when recodifying a larger body of law such as an entire article or part.

Once a statute is repealed, the C.R.S. number is *never* reused unless the statute is "recreated and reenacted" as described below. This rule applies to articles, parts, and sections. It is unlikely that an entire title would ever be repealed. However, if a title were repealed, the title number could not be reused unless the title is recreated and reenacted.

In repealing existing law, the drafter must take great care to repeal *all* the existing law on the subject and to eliminate from the law all references to the subject repealed. For instance, in the example above, which abolishes a commission, if in existing law there were references to the commission under an entirely different title of the statutes (for example, in article 75 of title 24 on state funds) or if there were references to the commission in other parts of title 26 or in the "Administrative Organization Act of 1968", these provisions also

would be repealed or amended since the purpose of the bill was to abolish the commission. For further information, please see the section below entitled "Conforming Amendments".

As noted above in the discussion of bill summaries, the substance of a repeal statute should be indicated in the bill summary if it is important to the bill.

a. General Repeals and Repeals by Implication

A general repealing clause, such as "All acts or parts of acts in conflict with this section are hereby repealed", should never be used. A general repealing clause does not give a bill any effect it would not otherwise have, and the Colorado Supreme Court held in *People ex rel. Wade v. Downen*, 106 Colo. 557, 561, 108 P.2d 224, 226 (1940):

> It would seem scarcely necessary to repeat the rule we have so often announced that repeals by implication are not favored, and that it is only where there is a manifest inconsistency or conflict between a later and earlier act, that a repeal by implication will be held to have occurred.

The drafter should consider whether the bill requires or makes desirable the repeal of existing law, and, if repeals are necessary, the existing law should be repealed as provided in this manual.

b. Future Repeals - Sunset Provisions

The General Assembly frequently passes bills that provide for the repeal of an act, a provision contained in an act, or of other provisions in the statutes at a date later than the effective date of the act providing for such repeal. In cases of such "future repeals", the repeal provision should be set forth in the statutes. In the case of the future repeal of an article or part, the repeal is set forth in a separate section, and in the case of the future repeal of a section or a subdivision of a section, the future repeal is set forth as a separate portion of such section or subdivision. Thus, the future repeal of an existing section of law would be accomplished as follows:

> **SECTION 1.** 33-3-603, Colorado Revised Statutes, is amended to read:
>
> **33-3-603. Permit - fee - repeal.** (1) A permit shall be issued for five dollars ....
>
> (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2000.

c. Repealing Administrative Rules

Slight variations on the foregoing examples of repealing clauses are required for bills that repeal rules promulgated by the executive branch of government. Since executive agency rules are published in the Code of Colorado Regulations rather than as part of Colorado Revised Statutes, it is important to give as much information as is necessary to identify clearly the rules to be repealed. Such information should include the identity of the

rule-making entity, the subject matter of the rules being repealed, and a correct citation to the Code of Colorado Regulations. Since there is no standardized numbering system used by executive agencies, it is important to identify the rule in exactly the same manner as designated by the agency, for example, "Regulation 11.d." or "Section IV (A) (7)". The following is an example of a section repealing an administrative rule.

> **SECTION 1. Repeal.** Rule IV. (8)(b), concerning having a license that is active and in good standing for licensure by endorsement, of the rules and regulations of the state board of social work examiners, department of regulatory agencies (4 CCR 726-1), is repealed.

The drafter should be familiar with section 24-4-103 (8) (d), C.R.S., which governs the General Assembly's authority to review administrative rules.

5. Recodification Showing Relocation of Provisions

Some bills simultaneously amend and reorganize entire titles, articles, or parts of Colorado Revised Statutes. Frequently, the major purpose of such a recodification is a clearer and more logical structure with less redundancy. Most of the changes tend to be of a minor, technical nature such as renumbering provisions, correcting cross-references, deleting obsolete or repetitive language, and substituting gender-neutral language. A few very significant substantive changes may also be included.

When such a bill is prepared in the form of a "repeal and reenactment", the resulting law is shown in all capital letters as new law, and it is difficult for the reader to find the significant, substantive changes. In such circumstances, the drafter may use an alternative format that shows amendments in the form of strike type and capital letters and that identifies the source of relocated provisions. Examples of this alternative format may be found in the 1993 Session Laws at chapter 167 (regulation of fraternal benefit societies), chapter 183 (initiative and referendum process), and chapter 234 (regulation of racing), and in the 1994 Session Laws at chapter 337 (recodification of title 42, concerning vehicles and traffic). This alternative format is recommended whenever it is practical and useful to show the changes made by a bill recodifying a title, article, or part of Colorado Revised Statutes.

When this alternative format is used, it is preferred that each relocated section is relocated in its entirety; however, there may be instances that warrant dividing a section by relocating portions of a section as demonstrated by chapter 183 from the 1993 Session Laws. If the drafter needs to divide a section into two or more sections, it is recommended that those portions requiring a different section number be shown in strike type in the original section (including any subsections, paragraphs, etc.) and shown in capital letters in the new section. This is the preferred procedure for relocating provisions and allows for more concise and accurate publishing of the Colorado Revised Statutes and any comparative tables.

For examples of amending clauses that should be used in relocating provisions, see Appendix B of this manual.

6. Recreating and Reenacting Former Law

Previously repealed provisions may be "recreated and reenacted", as follows:

> **SECTION 1.** Part 2 of article 5 of title 39, Colorado Revised Statutes, is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

The new material should be capitalized.

New law should not be enacted by recreating and reenacting previously repealed material unless the subject matter of the new material is similar to the subject matter of the former material.

E. Conforming Amendments

In amending existing law, the drafter must take great care to amend *all* C.R.S. sections that are affected by the amendment to existing law. For example, when repealing a statutory section, it is necessary to amend all sections that refer to the section to be repealed. Similarly, when changing terminology, it is necessary to amend all sections that use the terminology to be amended.

When a section, part, or article is repealed, repealed and reenacted, or substantially amended, the drafter should always perform a computer search of the statutes to locate all other statutes that refer to the repealed or amended material so that appropriate conforming amendments can be made. In addition, the drafter should perform other appropriate computer searches of the statutes to locate sections requiring conforming amendments such as where a term is changed and the statutes must be amended wherever the old term is used.

When, in the judgment of the Director or the Revisor, conforming amendments would be so numerous as to unduly burden or disrupt the legislative process, a section that allows the Revisor to prepare conforming amendments may be added to the bill.

It is not always necessary or appropriate to make conforming amendments to statutes that no longer have any operative effect. For example, in a bill that changes the name of the "highway legislation review committee" to the "transportation legislation review committee", it may not be necessary to amend a provision that requires the "highway legislation review committee" to report to the General Assembly by January 1, 1992, or to amend a provision that makes a statutory appropriation of money to the "highway legislation review committee" for the fiscal year beginning July 1, 1992.

VI. Special Clauses

There are a number of special clauses that may be included in bills depending upon the nature of the particular bill. These various clauses are always placed in separate sections at the end of a bill. An explanation of those most generally used, and the reasons for including or omitting them from particular bills, are outlined below.

A. Saving Clause - Grandfather Clause

Usually the provisions of a bill enacted into law become effective on the effective date of the new act. When a new act would affect existing rights, obligations, and procedures, a saving clause may be included to limit the application of the bill when enacted into law. The saving clause differs from the applicability clause (discussed below) in that the saving clause "saves" existing law while the applicability clause provides that new law will apply to certain events and transactions after a specified date.

A saving clause is usually not included in a bill since a general saving clause, concerning penalties and liabilities, is included in section 2-4-303, C.R.S.:

> **2-4-303. Penalties and liabilities not released by repeal.** The repeal, revision, amendment, or consolidation of any statute or part of a statute or section or part of a section of any statute shall not have the effect to release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such statute, unless the repealing, revising, amending, or consolidating act so expressly provides, and such statute or part of a statute or section or part of a section of a statute so repealed, amended, or revised shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions, criminal as well as civil, for the enforcement of such penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions imposing, inflicting, or declaring such penalty, forfeiture, or liability.

If the general statutory saving clause quoted above is not adequate for purposes of a particular bill, a specific clause should be inserted. However, extreme care must be used in the drafting of a specific saving clause to be certain of its actual effect and operation.

1. Examples of Specific Saving Clauses

The "Uniform Commercial Code" contains a specific saving clause as follows:

> **4-10-101. Effective date.** (1) This title shall take effect at 12:01 a.m. on July 1, 1966. The provisions of this title apply to transactions entered into and events occurring after such date.
>
> (2) Transactions validly entered into prior to the effective date of this title and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute

or other law amended or repealed by the enactment of this title as though such repeal or amendment had not occurred.

2. Grandfather Clause

The "grandfather clause" is a special type of saving clause whereby persons lawfully engaged in a particular profession, occupation, or activity do not have to comply with certain provisions of a new licensing law. Section 12-2-114 (1), C.R.S., concerning the licensing of accountants, is an example:

> **12-2-114. Existing certificates confirmed.** (1) No person who, on or before August 1, 1959, holds a certified public accountant certificate previously issued under the laws of this state shall be required to secure an additional certificate under this article but shall otherwise be subject to all the provisions of this article. Such certificate previously issued shall, for all purposes, be considered a certificate issued under this article.

In reenactments of the income tax law and the general property tax law adopted in 1964, two very inclusive saving clauses were included. The first quoted below is from the income tax law, and the second quoted below is from the general property tax law:

> **39-22-624. Prior rights and liabilities not affected.** Nothing in this article shall be construed to affect any right, duty, or liability arising under statutes in effect immediately prior to January 1, 1965, but the same shall be continued and concluded under such prior statutes. Nothing in this article shall revive or reinstate any right or liability previously barred by statute.

> **39-1-117. Prior actions not affected.** Nothing in articles 1 to 13 of this title shall apply to or in any manner affect any valuation, assessment, allocation, levy, tax certificate, tax warrant, tax sale, tax deed, right, claim, demand, lien, indictment, information, warrant, prosecution, defense, trial, cause of action, motion, appeal, judgment, sentence, or other authorized act, done or to be done, or proceeding arising under or pursuant to the laws in effect immediately prior to August 1, 1964, but the same shall be governed by and conducted pursuant to the provisions of law in effect immediately prior to August 1, 1964.

A saving clause can also "save" existing law from implied repeal. If a bill is to be supplementary to an existing law, and is not intended impliedly to repeal any existing law, the drafter may wish to insert a clause such as that in the "Colorado Water Quality Control Act":

> **25-8-612. Remedies cumulative.** (1) It is the purpose of this article to provide additional and cumulative remedies to prevent, control, and abate water pollution and protect water quality.
>
> (2) No action pursuant to section 25-8-609 shall bar enforcement of any provision of this article or of any rule or order issued pursuant to this article by any authorized means.
>
> (3) Nothing in this article shall abridge or alter rights of action or remedies existing on or after July 1, 1981, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, cities, towns, counties, cities and counties,

or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

3. General Saving Clauses

Instead of any of the more specific saving clauses above, the following general saving clauses may suffice:

> The remedies provided for in sections __ and __ are cumulative, and no action taken by the state constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in this article.

> This article is intended to be in addition and supplementary to other laws of this state, and shall not be construed to repeal any of the provisions of sections __ and __, C.R.S.

Such clauses are included in a C.R.S. section since they are part of the permanent law and should be located conveniently with the permanent law.

B. Severability Clause - Nonseverability Clause

A severability clause provides that if any part of an act is held unconstitutional, the remainder shall not be affected. It is a type of saving clause in that it "saves" parts of an act if any other parts of the act are declared unconstitutional by court action.

Under article 4 of title 2, a general severability clause is provided that applies to all statutes:

> **2-4-204. Severability of statutory provisions.** If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

It would seem that the above general severability clause would be adequate since it applies to all statutes. Nonetheless, the Colorado Supreme Court has given some weight to the inclusion of a severability clause in specific statutes (*In re Questions of the Governor*, 55 Colo. 17, 123 P. 660 (1912); *Mountain States Telephone and Telegraph Co. v. Animas Mosquito Control District*, 152 Colo. 73, 380 P.2d 560 (1963)). Thus, a severability clause is sometimes included, especially in long or controversial bills or when a member specifically requests its inclusion in a bill. However, a severability clause should not be used indiscriminately since it serves no particular purpose in most bills.

If the drafter determines that a severability clause is necessary, the example below, adapted from the severability clause in uniform laws, should be used:

> **X-X-XXX. Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

In some cases the General Assembly may request a "nonseverability" clause. This clause declares that the General Assembly would not have enacted the bill without *all* the provisions in it; therefore, if any provision is held to be invalid, the entire act is invalid. The following is an example of a "nonseverability" clause:

> **29-8-139. Nonseverability.** If any provision of this article is held invalid, such invalidity shall invalidate this article in its entirety, and to this end the provisions of this article are declared to be nonseverable.

C. Effective Date Clause

The subject of effective dates of acts has been addressed in this manual to some extent in the section that discusses the safety clause. In this section, it is assumed that every bill contains the safety clause because without it the act would be subject to referendum, and therefore the effective date would vary even if an effective date is specified in the act.

Since 1951, the following provision of article V of the state constitution has provided specifically for the effective dates of acts though other provisions of the constitution have a bearing thereon.

> **Section 19. When laws take effect - introduction of bills.** An act of the general assembly shall take effect on the date stated in the act, or, if no date is stated in the act, then on its passage. * * *

Many bills do not specify a date when they become effective. Every bill without a specified date (but with the safety clause) becomes effective "on its passage".

The date of "passage" is determined by section 11 of article IV of the state constitution, which requires that every bill be presented to the Governor for his or her approval or veto and states that a bill becomes law when signed by the Governor, when his or her veto is overridden, or when he or she fails to act on the bill within the time allowed. In most cases, the date of "passage" is the date of the Governor's signature or, if the Governor does not sign or veto the bill, it is the date of the expiration of the ten-day or thirty-day period, whichever is applicable.

The Governor may sign or veto a bill on any day during the ten-day period after it is presented to him or her; except that, if the General Assembly adjourns during the ten-day period before the Governor acts on the bill, then the Governor may sign or veto the bill on any day during the thirty-day period following such adjournment.

As a general rule, if a bill contains an effective date clause but the bill is signed by the Governor after the specified date, the bill becomes law as of the date that the Governor signed the bill. In *People v. Glenn, Jr.*, 200 Colo. 416, 615 P.2d 700 (1980), the Colorado Supreme Court held as follows:

> When a bill repealing a criminal statute is signed into law after the bill's stated effective date, the directive contained in Art. IV, Sec. 11, to the effect that the bill does not "become a law" until it is signed by the Governor, takes precedence over the directive contained in Art. V, Sec. 19, to the effect that a legislative act "shall take effect on the date stated in the act".

The drafter should determine from the sponsor when the sponsor wants the bill to take effect, and the drafter should be prepared to discuss with the sponsor reasons why the bill should take effect at a particular time. Some bills can go into effect immediately without undue inconvenience to anyone, and the sponsor may want the bill to take effect at the earliest possible date. Thus, many bills need not contain an effective date section, and they will take effect on "passage".

However, the better practice on most bills is to provide that they become effective on a definite date subsequent to the passage of the bill. An interval between the passage and effective date of a bill allows state agencies, local governments, the courts, and individuals to be informed of the new law or the amendments to existing law that affect them, and, during this interval, such entities have time to make the necessary adjustments to comply with the new law.

Bills affecting state government and involving the appropriation or expenditure of state moneys generally should have an effective date of July 1, which marks the beginning of the state's fiscal year. Sometimes a date other than July 1 should be used. For a gasoline tax bill the sponsor may want to have an additional tax go into effect as soon as possible; however, if research discloses that distributors keep their records on a monthly basis, the effective date section could provide that the additional tax take effect on the first day of the month following the passage of the act.

The effective date clause is placed near the end of the bill after any repeals or appropriations and before the safety clause. A specified effective date can be simply stated as follows:

SECTION __. Effective date. This act shall take effect July 1, 2003.

There may be some variations in effective date sections. Examples are when certain sections of a bill should take effect at one time and other sections at another time, when increases in certain elected officials' compensation cannot apply during such officials' terms of office, or when a new reapportionment act is to apply only to subsequent General Assemblies. The following is an example of an effective date section with multiple effective dates:

> **SECTION __. Effective date.** Sections 1 and 2 of this act shall take effect July 1, 2003, and the remainder of this act shall take effect on passage.

In a bill containing multiple effective dates, *the bill sections containing the safety clause and the effective date clause must take effect at least as early as any other section in the bill*. Every bill should be considered separately as to when it, or parts of it, should take effect.

If a bill is to have an effective date or an automatic repeal provision that is to become effective on a date that is subsequent to a succeeding regular session, the effective date or the repeal should be made a part of the permanent statutes. Placement in the permanent statutes provides more effective public notice that the section has a delayed effective date or repeal, and the provision can be subsequently amended to further delay its effectiveness or repeal without having to amend an effective date clause or a repeal clause in the bill as printed in the session laws. In most cases this can be accomplished by adding an additional subsection or paragraph in C.R.S. indicating, for example, "This section is effective July 1, 2000", or "This section is repealed, effective July 1, 2000".

Under some circumstances, an act should go into effect upon the occurrence of a particular event or condition rather than on a date certain. For example, a portion of the hazardous waste law that was enacted in 1981 authorized the department of health to act as the state agency responsible for the administration of the federal hazardous waste program in Colorado but subject to official approval of the state program by the federal government pursuant to federal law. Thus, that portion of the act contained a contingent effective date provision, which was codified in section 25-15-102 (3), C.R.S., as follows:

> **25-15-102. Effective dates.** (3) Part 3 of this article, except section 25-15-302, shall take effect July 1, 1983, or the date upon which the department receives final federal authorization to conduct the state hazardous waste program in lieu of the entire federal program under section 3006 of the federal act, whichever is later.

Providing that an act takes effect on the occurrence of some event or condition is discouraged unless absolutely necessary because the reader of the statutes is unable to determine from the statutes alone whether the act is in effect. When it is necessary to make an act effective upon the occurrence of an event or condition, the event or condition should be described clearly and objectively so that there is no room for argument about whether the qualifying event has occurred. For example, the following provision is excessively subjective: "This act shall take effect when caseload studies indicate its provisions would be beneficial." If a contingent effective date provision is necessary, the following is suggested: "This act shall take effect when the number of pupils enrolled statewide under the early childhood development program, as determined by the commissioner of education, exceeds two thousand."

Sometimes a particular piece of legislation is so related to another piece of legislation that a sponsor wants the bill, or a portion of the bill, to take effect only upon passage of

another bill. For example, this effective date section contained in a school finance bill, H.B. 92-1344, provides a contingent effective date:

> **SECTION 40. Effective date.** Except for section 4 of this act which shall take effect July 1, 1992, this act shall take effect upon passage; except that section 4 of this act amending 24-51-401 (1), Colorado Revised Statutes, shall not take effect if House Bill 92-1335 is enacted at the Second Regular Session of the Fifty-eighth General Assembly and becomes law.

Another example occurred during the adoption of welfare reform legislation where the General Assembly wanted to make the passage of the child support enforcement legislation contingent upon the passage of the welfare bill implementing the program for temporary aid to needy families (TANF). In that instance, the following language was used: "This act [H.B. 97-1205] shall take effect July 1, 1997, only if S.B. 97-120 [the main TANF legislation] becomes law."

The drafter should be very cautious about making provisions effective on June 30 or December 31, especially in the case of repeals. In general, when an effective date is specified, the provision will be construed to take effect at 12:01 a.m. on that date. For example, if an act repeals a body of law on June 30, then the act may be construed to repeal the law at 12:01 a.m. on June 30. If the act further provides that a new body of law on the same subject is to take effect on July 1, the drafter may have inadvertently left a one-day gap when no body of law on that subject is in effect.

D. Applicability Clause

A variation on the effective date clause and the saving clause is the applicability clause, which specifies that the new statutory material (although effective on the effective date of the act) will apply to certain events or transactions. An applicability section should be added to any bill that regulates conduct or affects contracts or contractual relationships. The following are some common applicability sections:

> **SECTION 1. Effective date - applicability.** This act shall take effect July 1, 2003, and shall apply to offenses committed on or after said date.

> **SECTION 2. Applicability.** This act shall apply to fiscal years beginning on or after July 1, 2003.

> **SECTION 3. Effective date - applicability.** This act shall take effect July 1, 2003, and shall apply to causes of action filed on or after said date.

> **SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2003, and shall apply to civil actions pending on said date and to civil actions commenced after said date.

Drafters should be advised that use of the word "action" in applicability clauses without any modifying language like "civil action" or "cause of action" has led to litigation

as to what types of proceedings the term applies. When drafting applicability clauses for bills relating to civil matters, drafters are advised to use the term "civil action" rather than "action". Drafters might want to consider the case of *In re Marriage of Plank*, 881 P.2d 486 (Colo. App. 1994).

Amendments to the income tax or property tax laws should usually include an applicability clause in a numbered C.R.S. section to the effect that "This section [subsection, paragraph, etc.], as amended, shall apply only with respect to taxable years beginning after December 31, 20__". The reason is that the prior statutory provision must continue to govern taxable years prior to the specified date, and may govern filing of amended returns for such years or determination of penalties or refunds.

Applicability clauses are also frequently used in criminal laws and other acts concerning contracts, contractual relationships, or court proceedings. See, e.g., section 15-17-101, C.R.S., in the "Colorado Probate Code", and section 18-1-103, C.R.S., in the "Colorado Criminal Code". When amending a statute that is governed by a previously enacted applicability section with a C.R.S. number, it is important to remember to conform the applicability section to the desired effective date.

E. Safety Clause[1]

1. Background

Until 1997, the practice of the Office was to automatically put a "safety clause" on every bill unless a member directed us otherwise. In 1997, the Executive Committee directed our Office to ask each member whether or not the member wants to include a safety clause on his or her bill. (Copies of the Executive Committee memorandum and the Office's memorandums concerning the Executive Committee's directive can be found in Appendix F of this manual.) A bill that does not contain a safety clause is subject to referendum. The safety clause originates in the initiative and referendum provisions of the state constitution. Section 1 (3) of article V of the state constitution provides as follows:

> (3) The second power hereby reserved is the referendum, and it may be ordered, *except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions*, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the total number of votes cast for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition

[1] For information on effective date and applicability clauses, see "**C. Effective Date Clause**" and "**D. Applicability Clause**" in this chapter.

against any item, section, or part of any act shall not delay the remainder of the act from becoming operative. (Emphasis added.)

When discussing the use of a safety clause with a member as directed in the Executive Committee memorandum, the drafter should inform the member that a Colorado Supreme Court decision indicates that bills without a safety clause cannot take effect prior to the expiration of the ninety-day period following adjournment of the General Assembly (the period that is allowed for filing referendum petitions against such bills). In view of the ninety-day requirement for bills without a safety clause, the drafter should be aware of and inform the member that there are certain bills that may need to take effect on July 1 or before. These could include bills imposing new criminal penalties and bills that relate to fiscal or tax policy that are intended to apply to either the current fiscal year or to the entire upcoming fiscal year. If a member directs that a bill be prepared without a safety clause, an appropriate effective date clause should be substituted.

2. Points of Importance Regarding the Safety Clause

(1) An act containing a safety clause cannot be referred to the people by petition.

(2) The General Assembly can refer an act or part of an act to the people by the simple procedure of substituting a referendum clause in place of the safety clause. The bill then becomes what is often termed a "referred bill".

(3) The procedure by which the people can refer an act or part of an act of the General Assembly that does not contain a safety clause to themselves by petition is often termed a "recision referendum" or an "initiated referendum". To our knowledge, no act of the General Assembly has been referred to the people by petition of the people since 1932 when an increase in the tax on oleomargarine was referred.

(4) Certain acts are not referable either by petition of the people or by an act of the General Assembly even if they do not contain the safety clause. These are appropriation acts for the support and maintenance of the departments of state and state institutions.

(5) Acts without a safety clause which are referable to the people by petition cannot go into effect until the expiration of the 90-day period after adjournment of the session of the General Assembly that passed the act (*In re Interrogatories*, 66 Colo. 319, 181 P. 197 (1919)).

(6) If a bill must go into effect immediately or at any other time prior to the expiration of the 90-day period after adjournment, a safety clause must be included in the bill.

(7) The initiative and referendum provisions of the state constitution provide that, "The veto power of the governor shall not extend to measures initiated by or referred to the people." Accordingly, bills referred to the people by the General Assembly have not, as a matter of practice, been sent to the Governor. This is an exception to section 11 of article

IV under which the Governor has specified times within which he must approve or veto a bill - ten days when the General Assembly is in session and thirty days after adjournment of the session. However, bills that have been enacted without a safety clause are delivered to the Governor for his consideration.

(8) The drafter should consult with senior drafters whenever a situation arises that does not appear to be covered by these guidelines.

3. Bills with a Safety Clause

If a bill contains a safety clause, it is always the final section of the bill. The following are examples of safety clause provisions:

a. Safety Clause - No Effective Date Specified

If a member wants a bill to take effect as soon as possible or at an early date (before the expiration of the 90-day period following the adjournment of the session) and he or she accepts the fact that a safety clause is necessary, then a safety clause should be added to the bill. The bill will take effect when the Governor signs it, when it becomes law without his or her signature, or when it is adopted over a veto.

The safety clause that evolved from section 1 (3) of article V of the state constitution reads as follows:

> **SECTION __. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

b. Safety Clause - with Specified Effective Date

If a bill is to take effect on a specified date, include an effective date clause before the safety clause. An effective date clause specifies the predetermined date for the bill to take effect following its passage. For example:

> **SECTION __. Effective date.** This act shall take effect _____.
>
> **SECTION __. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

c. Safety Clause - with Specified Effective Date - with Applicability

A bill may also need an applicability clause and an effective date clause. For example:

SECTION __. Effective date - applicability. This act shall take effect _____, and shall apply to _____ on or after said date.

SECTION __. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

d. Safety Clause - with Applicability

A bill can also have a safety clause, no specified effective date clause, and an applicability clause. For example:

SECTION __. Applicability. This act shall apply to _____ on or after the effective date of this act.

SECTION __. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

4. Bills Without a Safety Clause

The following examples of effective date clauses have been developed to address different circumstances. If a bill does not have a safety clause and it is intended that the bill take effect at the *earliest possible date,* then a general effective date clause (or "no safety clause") should be added at the end of the bill in place of the safety clause. These examples can be used to fit the circumstances presented by most bills. There are other situations that may arise such as when different sections of a bill are to take effect at different times. Since it is not possible here to describe every situation, the drafter should consult with senior drafters whenever a situation arises that does not appear to be covered by these guidelines.

a. No Safety Clause - No Effective Date Specified

If no effective date is specified, a bill without a safety clause will take effect on the day following the expiration of the 90-day period following adjournment of the session. However, the bill will not take effect on that date if a petition is actually filed. In such a case, the bill can only take effect when approved by the people at a general election and when the vote is declared by proclamation of the Governor as required by subsection (4) of section 1 of article V of the state constitution. This usually occurs in late December or early January following the election.

SECTION __. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (*projected effective date inserted by the macro*); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

b. No Safety Clause - No Effective Date - with Applicability

If the bill does not have a safety clause and the bill requires the use of an applicability provision, the applicability provision can be included with the appropriate effective date clause. For example:

> **SECTION __. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (*projected effective date inserted by the macro*); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.
>
> (2) The provisions of this act shall apply to _____ on or after the applicable effective date of this act.

c. No Safety Clause - with Effective Date Specified

If a bill does not have a safety clause and it is intended that the bill take effect on a specified *fixed date* ***subsequent*** to the expiration of the 90-day period following adjournment, then the following clause should be used to assure that no ambiguity is created if a petition is actually filed against the bill. The clause indicates that if a petition is filed, the measure will take effect on the specified date or the date of the proclamation, whichever is later. For example:

> **SECTION __. Effective date.** (1) This act shall take effect _____.
>
> (2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

When a referendum petition is filed within the 90-day period, the bill would be submitted to the people at the next general election. General elections are held in November of even-numbered years. Bills approved at such an election take effect from and after the date of the governor's proclamation of the vote as required by subsection (4) of section 1 of article V of the state constitution. The proclamation is issued in late December of the election year or early January of the following year.

If the **specified date is before** the date of the next general election and the date of the Governor's proclamation of the vote and a petition is filed, the bill will not take effect on the

specified date. Instead, if it is approved by the voters, it will take effect on the date that the Governor proclaims the vote.

If the **specified date is after** the next general election and the date of the Governor's proclamation of the vote and a petition is filed, the bill will take effect on the specified date if it is approved by the voters and the vote is proclaimed prior to the specified date.

d. No Safety Clause - with Effective Date - with Applicability

A bill may also need an effective date clause and applicability clause. For example:

> **SECTION __. Effective date - applicability.** (1) This act shall take effect _____.
>
> (2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.
>
> (3) The provisions of this act shall apply to _____ on or after the applicable effective date of this act.

F. Referendum Clause

1. Non-TABOR Referendum

Under section 1 (3) of article V of the state constitution, as previously discussed, an act or part of an act of the General Assembly can be referred to the people for their approval or rejection if the General Assembly so desires. If so referred, the measure is voted upon at the next biennial regular general election. If a sponsor wishes a bill to be referred to the people, the drafter should insert, in lieu of the safety clause, a referendum clause as follows:

a. Referendum Clause - No Effective Date - No Applicability

> **SECTION __. Refer to people under referendum.** This act shall be submitted to a vote of the registered electors of the state of Colorado at the next biennial regular general election, for their approval or rejection, under the provisions of the referendum as provided for in section 1 of article V of the state constitution, and in article 40 of title 1, Colorado Revised Statutes. Each elector voting at said election and desirous of voting for or against said act shall cast a vote as provided by law either "Yes" or "No" on the proposition: "SHALL [THE STATE OF COLORADO CONDUCT A PRESIDENTIAL PRIMARY ELECTION WHICH CONFORMS TO POLITICAL PARTY RULES AT WHICH ELECTORS SHALL CAST VOTES FOR QUALIFIED CANDIDATES OF THEIR POLITICAL PARTY, AND THE RESULTS OF WHICH MAY BE USED BY POLITICAL PARTIES TO ALLOCATE DELEGATES TO NATIONAL POLITICAL CONVENTIONS FOR THE SELECTION OF A PRESIDENTIAL CANDIDATE AT SUCH CONVENTIONS]?"

The votes cast for the adoption or rejection of said act shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

b. Referendum Clause - with Effective Date - with Applicability

Since a bill cannot become effective until it is approved at the next general election, do not specify an effective date or applicability date earlier than the date that the Governor is likely to proclaim the results following the election (usually by early January following the November election).

SECTION __. Effective date - applicability. This act shall take effect _____ and shall apply to _____ on or after said date.

SECTION __. Refer to people under referendum. This act shall be submitted to a vote of the registered electors of the state of Colorado at the next biennial regular general election, for their approval or rejection, under the provisions of the referendum as provided for in section 1 of article V of the state constitution, and in article 40 of title 1, Colorado Revised Statutes. Each elector voting at said election and desirous of voting for or against said act shall cast a vote as provided by law either "Yes" or "No" on the proposition: "Shall *[insert language here]*?" The votes cast for the adoption or rejection of said act shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

2. TABOR Referendum Clause

If the bill involves matters arising under section 20 of article X of the state constitution (TABOR), insert a referendum that is specifically written for TABOR measures.

a. Referendum Clause - No Effective Date - No Applicability

SECTION __. Refer to people under referendum. This act shall be submitted to a vote of the registered electors of the state of Colorado at the next election for which it may be submitted, for their approval or rejection, under the provisions of the referendum as provided for in section 1 of article V and section 20 of article X of the state constitution, and in article 40 of title 1, Colorado Revised Statutes. Each elector voting at said election and desirous of voting for or against said act shall cast a vote as provided by law either "Yes" or "No" on the proposition: "SHALL [THE STATE SALES AND USE TAX BE INCREASED NINETY-ONE MILLION, TWO-HUNDRED AND SIXTY THOUSAND DOLLARS ANNUALLY, SAID AMOUNT REFLECTING THE ANTICIPATED REVENUES FROM A TWENTY-FIVE ONE-HUNDREDTHS OF ONE PERCENT INCREASE, FOR SIX YEARS FOR THE PURPOSE OF PROVIDING ADDITIONAL MONEYS FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF STATE CORRECTIONAL FACILITIES]?" The votes cast for the adoption or rejection of said act shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

b. Referendum Clause - with Effective Date - with Applicability

Since a bill cannot become effective until it is approved at the next general election, do no specify an effective date or applicability date earlier than the date that the Governor is likely to proclaim the results following the election (usually by early January following the November election).

> **SECTION __. Effective date - applicability.** This act shall take effect _____ and shall apply to _____ on or after said date.

> **SECTION __. Refer to people under referendum.** This act shall be submitted to a vote of the registered electors of the state of Colorado at the next election for which it may be submitted, for their approval or rejection, under the provisions of the referendum as provided for in section 1 of article V and section 20 of article X of the state constitution, and in article 40 of title 1, Colorado Revised Statutes. Each elector voting at said election and desirous of voting for or against said act shall cast a vote as provided by law either "Yes" or "No" on the proposition: "Shall *[insert language here]*?" The votes cast for the adoption or rejection of said act shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

G. Penalty Clause

Ordinarily, the drafter should specify a class of felony, misdemeanor, or petty offense for every crime added to the statutes consistent with the classification schemes established in part 4 of article 1.3 of title 18, C.R.S. This is especially true for felonies. If a class is not specified, there is the possibility that provisions that are based on the specific classes will not apply to the crime. (See, for example, sections 17-22.5-403, 18-1.3-504, and 18-1.3-506, C.R.S.)

Section 18-1.3-401, C.R.S., sets forth the classification of felonies and a presumptive range of the term of imprisonment to be applied upon conviction of a felony committed prior to July 1, 1985. For felonies committed on or after July 1, 1985, the statute establishes a minimum and a maximum penalty, upon conviction. Section 18-1.3-501, C.R.S., sets forth the classification of misdemeanors and section 18-1.3-503, C.R.S., sets forth the classification of petty offenses.

When referring to the specific class of an offense or to a specifically defined crime, in title 18, C.R.S., of the "Colorado Criminal Code", the word "commits" is used. For example:

> ... commits a class 2 misdemeanor ...

or

> ... commits second degree official misconduct ...

When working with a penalty clause outside title 18, C.R.S., specific section references should be used. For example:

(1) In the case of a specifically defined crime:

... commits second degree official misconduct, as defined in section 18-8-405, C.R.S.

(2) In the case of a specific class of misdemeanor or felony:

... commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

When making reference to a crime for which the penalty is detailed within the section or when "misdemeanor" or "felony" is used without reference to the class of misdemeanor or felony as established by the "Colorado Criminal Code", the words "is guilty of" are preferred. For example:

... is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

... is guilty of murder and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for not less than one year nor more than fifteen years.

... is guilty of a misdemeanor.

The penalty for a class 1 petty offense is set forth in section 18-1.3-503, C.R.S., following the words "upon conviction". Therefore, when adding a class 1 petty offense to the statutes, it is not necessary to include the words "upon conviction". As is the case with misdemeanors and felonies, if the penalty is set out in the "Colorado Criminal Code", the following language should be used:

... commits a class 1 petty offense.

If the penalty is in a statute outside the "Colorado Criminal Code", the following language should be used:

... commits a class 1 petty offense and shall be punished as provided in section 18-1.3-503, C.R.S.

When setting out the penalty language for a class 2 petty offense, the words "upon conviction" must be included in the section setting forth the penalty since section 18-1.3-503, C.R.S., provides that the penalty for such convictions be specified in the section defining the offense.

H. Declaration of Special Factors

Despite the prohibition on special legislation found in section 25 of article V of the state constitution, bills may be drafted to govern special situations or geographical areas when conditions prevent a general law being made applicable. Examples are the regional transportation district law, article 9 of title 32, C.R.S., the three lakes water and sanitation district law, article 10 of title 32, C.R.S., and S.B. 77-549, which would have provided a special procedure for creating a regional service authority in the Denver metropolitan area. Language justifying this type of bill may be modeled on the language contained in the regional transportation district statute:

> **32-9-102. Legislative declaration.** (1) The general assembly determines, finds, and declares:
> ****
> (b) That a general law cannot be made applicable to the district and to the properties, powers, duties, functions, privileges, immunities, rights, liabilities, and disabilities of such district as provided in this article because of a number of atypical factors and special conditions concerning same.

I. Accountability Clause

In 2006, section 2-2-1201, C.R.S., was enacted and this section provides for the post-enactment review by the legislative service agencies of the implementation of certain bills. The legislative service agencies are required to conduct a post-enactment review for any enacted bill that contains *both* an accountability clause and a legislative declaration setting forth the desired results or benefits to be achieved by the bill, as intended by the general assembly.

An accountability clause is defined as "a noncodified provision of a bill that directs legislative staff agencies to conduct a review of the implementation of the bill either two or five years, as specified in the provision, after the enactment of the bill." Depending on the time within which the legislative service agencies are to complete a post-enactment review, an accountability clause should take the following form with the appropriate time period selected:

> **SECTION __. Accountability.** Two/Five (*select one*) years after this act becomes law and in accordance with section 2-2-1201, Colorado Revised Statutes, the legislative service agencies of the Colorado General Assembly shall conduct a post-enactment review of the implementation of this act utilizing the information contained in the legislative declaration set forth in section 1? of this act.

An accountability clause should be placed toward the end of a bill, after any section of the bill containing appropriation clauses but prior to sections of the bill containing other noncodified clauses such as an effective date clause, a safety clause, or a referendum clause. Based upon the estimated cost of conducting a post-enactment review as reflected in the bill's

fiscal note, a "future appropriation" clause should also be added following any section of the bill containing appropriations but prior to the accountability clause section.

The title of any bill containing an accountability clause and the related legislative declaration should indicate that the bill requires a post-enactment review. The drafter should add the following trailer at the end of the title: "..., AND REQUIRING A POST-ENACTMENT REVIEW OF THE IMPLEMENTATION OF THIS ACT." Similarly, any amendment that adds an accountability clause and the related legislative declaration should include this trailer in the title of the bill to indicate the addition of a post-enactment review requirement.

An accountability clause and the related legislative declaration should be included in a bill only when requested by a member. When discussing the use of an accountability clause with a member, the drafter should ask whether the post-enactment review is to be conducted two or five years after the bill's enactment. The drafter should also inform the member that, in addition to an accountability clause, a legislative declaration must be included in the bill to trigger a post-enactment review. The legislative declaration, which may be codified or noncodified, should specify the desired results and benefits of the bill, as intended by the general assembly, as this information is to be used by the legislative service agencies to conduct the post-enactment review. Lastly, a drafter should inform the member that requiring a post-enactment review may result in a fiscal note for and a future appropriation clause added to the bill as the resources required for the legislative service agencies to conduct the post-enactment review will need to be reflected in each bill that requires a post-enactment review.

VII. Legislative Declarations and Legislative Intent Statements

Many times legislators or lobbyists request the inclusion of a legislative declaration or legislative intent statement in a bill. Because the statements may be used by the courts to interpret the statute or may include representations that could generate litigation, the drafter should exercise care in writing these statements.

A. The Difference Between a Legislative Declaration Statement and a Legislative Intent Statement

It is important that a drafter understand the distinction between a legislative declaration statement and a legislative intent statement. A *legislative declaration statement* is an explicit or formal statement or announcement about the legislation. It may provide such things as information or value statements about the subject addressed in the bill, findings made by the General Assembly, the history of a particular issue, or the manner for accomplishing a desired result. Often a legislative declaration statement indicates the problem the General Assembly is trying to address and includes a statement that the General Assembly is enacting this legislation to fix these problems. A *legislative intent statement* indicates the intended purpose or aim of the legislation or it may indicate the state of mind

of the legislature at the time it is enacting the measure. It usually includes a statement of the desired result. In some instances, it may include a statement of what is *not* the intended result. Many statements are a combination of information and intent.

B. Purpose of the Statement

A drafter should evaluate the purpose for inclusion of a legislative declaration statement or a legislative intent statement. Is the statement included for the purpose of making people feel good (i.e., a statement akin to "motherhood and apple pie")? Is the statement desired for no real purpose other than to garner support for the bill? Is the statement included for the purpose of establishing the desired result when the result may not be apparent from the act itself? Is it a persuasive or factual statement included for the purpose of justifying the enactment of the bill and promoting its passage? If the answers to these questions are yes, the drafter should consider suggesting to the sponsor that these kinds of statements might be more appropriate in a fact sheet or information sheet prepared for the committee of reference instead of being included in the bill. While the sponsor has the ultimate decision about the inclusion of these kinds of statements in a bill, the drafter can attempt to discourage them and at least be careful about the accuracy of the statements or representations made in these kinds of statements. In addition, such statements could be included as nonstatutory material that would only appear in the Session Laws rather than in the Colorado Revised Statutes.

On the other hand, there are some legitimate reasons for including legislative declaration statements or legislative intent statements in legislation. For example, a legislative declaration can be used for the purpose of establishing an historical perspective to justify the enactment of the bill. See SB 00-181 in Session Laws of Colorado 2000, p. 492. Like persuasive or factual statements, historical statements must be accurate. Legislative declaration statements may be used in anticipation of a challenge to the legislation in a court case and may be included for the purpose of establishing a justification for the bill that will stand up in court. See section 8-2-120, C.R.S., regarding residency requirements, or section 24-46.5-101, C.R.S., regarding whether business incentives for United Airlines were special legislation. Statements may be included to show the connection between a special session call item and the proposed bill. An example is HB 91S2-1027 pertaining to the funding of education and medicaid and changes in the tax procedures. Another legitimate purpose of legislative intent statements is where the General Assembly provides a statement about the intent of the General Assembly to the public, the administrators of the law, and to the court. For examples, see section 13-21-119, C.R.S., regarding the exemption from liability for equine or llama activities and section 13-80-103.7, C.R.S., regarding the extension of the statute of limitations. Sometimes the General Assembly includes a statement about what the general assembly did *not* intend. See section 14-10-103 (3), C.R.S., regarding the change of the term "visitation" to "parenting time". Statements have also been included in bills that were enacted in response to court cases. For examples, see sections 26-1-126.5 and 2-4-215, C.R.S.

C. Role of Legislative Declaration and Legislative Intent Statements

As a general rule, legislative declaration and legislative intent statements are only helpful to the courts if there are questions regarding the statute. Under rules of statutory construction and section 2-4-203, C.R.S., the courts only look to the legislative declaration or purpose if a statute is ambiguous.

Statements may be used to construe the scope and effect of a statute. "In construing the scope and effect of a statute, [the court must] seek out the intent of the legislature in voting its passage. Perhaps the best guide to intent is declaration of policy which frequently forms the initial part of an enactment". *St. Luke's Hosp. v. Industrial Comm'n*, 142 Colo. 28, 32, 349 P.2d 995, 997 (1960).

The general rule is that a legislative intent statement does not confer power or determine rights. See Sutherland's Statutory Construction, sec. 20.13 (4th ed). However, there have been cases where courts have construed legislative declaration or legislative intent statements as creating rights or creating entitlements to programs. Litigation has also been based upon value statements, goals, or promises contained in legislative declarations. Drafters should be very cautious about including statements that could be viewed as creating a substantive right or a promise that the state will do something.

D. Guidelines for Drafting Legislative Declaration or Legislative Intent Statements

(1) A legislative declaration or legislative intent statement should serve a legitimate purpose. Statements that serve other purposes should be avoided. Encourage members to make the arguments for their bills in a position or information statement instead of in the bill. If that can't be avoided, at least include the statement only as nonstatutory material.

(2) A statement should not be characterized as "legislative intent" when it really is a "legislative declaration" and vice versa. Consider the use of the term "legislative findings".

(3) A legislative declaration or legislative intent statement should accurately reflect the content of the bill and remain accurate as the bill is amended in the legislative process.

(4) There should be a connection between the desired result and the reasons stated in the statement. Decide what the purpose of the statement is to be and then make the words accomplish the purpose.

(5) Facts or statements in a legislative declaration or legislative intent statement should be verified for accuracy. Statistics should be avoided.

(6) A legislative declaration or legislative intent statement should not create any kind of right or prohibit any action and should not otherwise create substantive law. The drafter

should evaluate whether the statement is promising something on behalf of the state that could be used as a basis for a lawsuit against the state for failing to meet that promise.

(7) A legislative intent statement should not be ambiguous. If it is, the statement may be used for an unintended purpose.

(8) A legislative intent statement should not be a substitute for precise and accurate legislative bill drafting. If a bill is properly drafted, the intent is self-evident.

(9) As a general principle, a legislative declaration or a legislative statement should not be written unless there is a legitimate reason for its inclusion.