



OFFICE *of*
LEGAL
SERVICES

2015

LEGISLATIVE

DRAFTING GUIDE

OUR MISSION:

TO PROVIDE TO THE MEMBERS OF THE GENERAL ASSEMBLY LEGAL ANALYSIS AND ADVICE; AS WELL AS RESEARCH, DRAFTING, LIBRARY, AND CODIFICATION SERVICES; ALL IN A PROFESSIONAL, CONFIDENTIAL, AND NON-PARTISAN MANNER.

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August 25, 2015.

**Upon request, OLS will provide an outside drafter with an
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INTRODUCTION

DRAFTING GUIDE

This guide is intended to assist drafters in preparing bills and amendments for consideration by the Tennessee General Assembly. It is not intended to be a comprehensive treatise on the subject of legislative drafting.

Examples are provided throughout this guide to aid drafters. However, because of margin constraints, not all examples are in 11 font or double spaced as would be required in a draft. There are also times when emphasis is added to examples by underlining. Near the end of this guide are [guidelines on proper font and word processing features](#) applicable to legislation.

The information contained in this guide reflects the current practice of the Office of Legal Services as of August 25, 2015, and replaces all previous drafting guides. OLS's practices and procedures, including preferred form and style guidelines, are updated annually.

DRAFTER'S CHECKLIST

There is a [Drafter's Checklist](#) at the end of this guide. Each item on the checklist is linked to the location in the guide where a more detailed discussion of the subject may be found. The checklist is intended to encourage thoroughness in drafting and reviewing legislation.

OFFICE OF LEGAL SERVICES

The Office of Legal Services (OLS) is created by Tenn. Code Ann. § 3-12-101. OLS attorneys draft legislation on a nonpartisan basis for members of the general assembly. Additionally, OLS attorneys review proposed legislation as to form and style prior to its filing. While performing these duties, OLS attorneys maintain an attorney-client relationship with respect to communications between a member of the general assembly and the OLS attorney.

TENNESSEE CODE COMMISSION

The Tennessee Code Commission (the commission) is responsible for the publication of the Tennessee Code Annotated (the code). The commission's role is limited by Tenn. Code Ann. § 1-1-108, which prohibits the commission from altering the sense, meaning, or effect of any act of the general assembly, and requires the commission to copy the exact text of the public chapters. Although the commission is authorized to "correct manifest misspelling and typographical errors," the commission narrowly interprets this power. Every effort is made by OLS attorneys in their capacities as drafters, reviewers, and committee staff to correct any deficiencies.

DRAFTING BILLS

PREPARATION

(a) FILING DEADLINES

(1) Drafters should be aware of the various filing deadlines for each house of the general assembly. In preparation for filing, each bill is entered into the general assembly's electronic database by OLS and assigned a barcode for proper identification by each clerk's office. OLS is required by Tenn. Code Ann. § 3-12-101(5) to "review all proposed legislation as to form and style, prior to its introduction." The weeks leading up to the bill filing deadlines are extremely busy. As filing deadlines approach, the time available for OLS review is limited. Drafters are strongly encouraged to work with OLS well in advance of the bill filing deadlines to allow adequate time to ensure a quality bill and to reduce the need for amendments after a bill is filed.

(2) Drafters may find, due to unavoidable circumstances, that the final draft of a bill is not ready by a filing deadline, and the drafter may need to use a bill that will require an amendment to incorporate the final draft. A bill that requires an amendment should include substantive content that is relevant to the anticipated amendment. If the drafter makes only cosmetic changes of no substance to the code in the body of a filed bill, then the question may arise as to whether the body provides notice of a bill's content sufficient to comply with the Constitution of Tennessee, Article II, § 17.

(b) PURPOSE

The first and most important step in preparing a bill is to gain a thorough understanding of what the legislation is intended to accomplish. Generally, the purpose of legislation is to direct behavior. The legislation will either prohibit, authorize, or require some form of behavior. In addition to these three directives, the legislation may set forth conditions under which a directive applies and consequences for failure to follow a directive. A drafter should strive to be as specific as possible when setting forth these directives, conditions, and consequences, as generality may lead to ambiguity and confusion.

(c) RESEARCH

(1) The second step is to conduct the research necessary to ensure a sound bill. This research should include a thorough review of relevant state and federal constitutional provisions to determine the constitutionality of the proposed bill. Additionally, research should include a review of relevant state and federal statutes, regulations, and case law. Tennessee courts presume that when the general assembly enacts laws, it: (1) knows the "state of the law," including common law affecting the subject matter; (2) is aware of and has considered its own previous enactments; and (3) is aware of how the courts have interpreted enacted statutes. Therefore, a complete understanding of the legal context of any proposed bill is required before drafting.

(2) If a drafter prepares a bill prior to the annual update of the code, then the drafter will need to review the research and drafting after the annual update. The code commission updates the code every year to include changes that were made in the prior legislative session. During codification, not only will new law be integrated into the code, but changes may be made that alter designations. Tenn. Code Ann. § 1-1-108(a) authorizes the code commission to “rearrange, regroup and renumber the titles, chapters, sections and part sof sections of the statutes, codes and code supplements.” Updating any research and legislation drafted prior to the code commission's annual update is required to verify that the language in the bill accurately amends the current code.

(d) ORGANIZATION

The third step in preparing to draft a bill is to develop a plan for logically and systematically organizing and arranging the proposed content, such as an outline, timeline, chart, or other organizational aid. For legislation that is more complex, working with a thoughtfully conceived plan will promote clarity, consistency, and accuracy.

DRAFTING

(a) ELECTRONIC FORMAT

(1) If possible outside drafters should, submit an electronic version of a bill to OLS in Microsoft Word. When electronic drafts are submitted in Microsoft Word, the process of entering the bill into the general assembly's electronic database is expedited, and the potential for error when retyping or scanning a bill is eliminated.

(2) **Upon request, OLS will provide an outside drafter with an electronic template to use when drafting.** Requests for electronic templates should be sent to Sandra Whitmore, sandra.whitmore@capitol.tn.gov, or Brian Heath, brian.heath@capitol.tn.gov.

(3) If the OLS template is not used, the following guidelines should be followed:

- (A) The bill should only be in Arial 11 font;
- (B) The bill should be double spaced, except for the caption of the bill, which should be single spaced;
- (C) Italic font should only be used if required for a subdivision designation;
- (D) Bold font should not be used, except as otherwise provided in this guide;
- (E) The "indent" and "tab" format in the example below should be followed;
- (F) "Left justification" should be used;
- (G) There should be no headers, footers, footnotes, margin changes, or other similar word processing features; and
- (H) Two spaces should be placed between the section and the beginning of text, and between a subsection or subdivision designation and the beginning of text.

(4) For additional help, please review the [SAMPLE BILL](#) and the [BILL FORMATTING INSTRUCTIONS](#) located near the end of this guide.

(b) CORRECT VERSION

(1) When an OLS attorney and an outside drafter are both working on editing a bill, it is important to ensure that the most recent version is being edited; otherwise, edits and corrections previously made by OLS may be lost and not reflected in subsequent drafts, causing OLS to perform duplicate formatting and review. Any drafts of bills should be saved with an updated name reflecting the most recent version of the draft before transmittal.

(2) The OLS attorney may be able to provide an outside drafter with a final PDF version of the bill. However, PDF versions that contain barcodes are treated as jacketed bills or amendments ready to be filed with the applicable chief clerk. Therefore, PDF versions containing barcodes are only provided to outside drafters if the legislator or the legislator's staff give express permission.

(c) CAPTION

(1) The Constitution of Tennessee, Article II, § 17, requires that all bills contain a caption. Drafting a caption is one of the most important parts of the initial drafting process because the caption cannot be amended after the bill is filed. The following is an example of a caption:

AN ACT to amend Tennessee Code Annotated, Title 45,
relative to banks and financial institutions.

(2) The first portion of a caption contains the code provisions, or the public or private chapters, that a bill amends, or that may be amended in order to carry out the purpose of the bill. The code provisions should be set out as title, chapter, and part. However, if amending a section and only that specific section should be in the caption, then the section number should be used in the caption and not "title, chapter, part."

| | |
|--------------------------|--|
| <u>CORRECT:</u> | AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 4, Part 5, relative to public records. |
| <u>CORRECT:</u> | AN ACT to amend Tennessee Code Annotated, Section 10-7-503, relative to public records. |
| <u>CORRECT:</u> | AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 2, relative to taxation of income received from stock dividends and interest on bonds. |
| <u>INCORRECT:</u> | AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Part 5, Section 301, relative to public records. |

(A) When drafting a caption, the drafter should conduct an electronic code search to find any cross-references in the code to the provision or provisions that are amended by the bill. If the text in the cross-referenced code provisions needs to be amended in order to be consistent with the bill's text, then the drafter must include the cross-referenced code provisions in the caption.

(B) If the bill removes a code provision, then cross-references to the code provision must also be removed. A drafter should perform an electronic text search in the code for the citation. Because an electronic search of a citation may not catch references to the subject of a deleted section, the drafter should also conduct a search of any subject references in the code and include any applicable code provision containing the subject reference in the caption.

EXAMPLE

Amendatory Language of the Bill:

Tenn. Code Ann. § 3-15-201, is amended by deleting the section in its entirety.

Search of Citation Would Catch:

The select committee on children and youth created by § 3-15-201.....

Search of Citation Would Not Catch:

The select committee on children and youth shall be responsible for....

This Additional Subject Search Required:

“select committee on children and youth”

(C) Title 4 should be included in the caption of a bill if the bill pertains to an entity that is subject to sunset review or creates a new entity that may be subject to sunset review.

(3) The Constitution of Tennessee, Article II, § 17, requires that a bill contain only one subject. Although there are various acceptable phrases that may be used to introduce the subject, the most common phrase is “relative to.”

(A) When drafting the subject, a drafter may find that words describing what the bill is about, rather than what the bill does, most helpful. Because bills are often amended, a statement of what a bill is about is more likely to remain accurate than a statement of what the bill does.

NARROW SUBJECT

(bill does):

relative to requiring state agencies to
sell surplus motor vehicles at public

BROAD SUBJECT

(bill is about):

relative to the disposition of surplus
motor vehicles owned by state agencies

(B) Conjunctions, such as "and" or "or," should be avoided in describing the subject of the bill because conjunctions suggest a violation of the one subject requirement. However, a conjunction may be used when the phrase that includes the conjunction describes only one subject.

MULTIPLE SUBJECTS:

insurance and criminal offenses

food safety and automobiles

SINGLE SUBJECT:

dependent and neglected children

sales and use taxes

(4) A drafter should give consideration to whether the caption should be broad or narrow in context of the subject matter that the bill addresses and the legislative environment. Specifically, a drafter may need to address the potential of unwanted amendments by limiting the scope of the code provisions set out in the caption or by narrowly tailoring the subject.

(d) PREAMBLE

(1) A preamble is not a required part of the bill. Generally, a preamble is used to demonstrate the legislature's intent. If a preamble is used, it does not become part of the enacted law and is not codified. The preamble is placed between the caption and the enacting clause. When drafting a preamble, each clause should begin with "WHEREAS," and end with "; and", except the final clause, which ends with "; now, therefore,". The following is an example of the format of a preamble:

WHEREAS, throughout the years, the intrepid and valiant members of the United States Armed Forces have continued to inspire our confidence, loyalty, and support; and

WHEREAS, from Valley Forge to Iraq, Afghanistan, and the war-torn nations of Africa, Eastern Europe, and the Middle East, our armed forces have unselfishly paid the price of freedom for their friends and families and for all of us; and

WHEREAS, it is most appropriate that we should honor those courageous men and women who have made many sacrifices to preserve the blessed freedoms we enjoy today and that our progeny will hopefully continue to cherish for generations to come; and

WHEREAS, this General Assembly wishes to name the remaining portion of U.S. Highway 27 in the City of Dayton and Rhea County that is not otherwise designated in memory of those brave sons and daughters who sacrificed personal concerns and their safety, with many of them giving their lives, so that we may enjoy the many bounties of democracy and the American way of life; now, therefore,

(2) There are times when a drafter seeks to include a legislative intent statement. A legislative intent statement may be included in a preamble. The drafter should exercise extreme care when including a legislative intent statement in a bill because the statement may be used by the courts to interpret the statute or may include representations that could generate litigation.

(e) ENACTING CLAUSE

The enacting clause is required by the Constitution of Tennessee, Article II, § 20, and must be written as follows:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

(f) DIRECTORY AND AMENDATORY LANGUAGE

(1) The body of legislation is composed of directory language and amendatory language. The directory language of a bill directs the reader to the applicable code provision that is being amended and describes how the code provision is to be amended.

(A) There are various ways to draft directory language. The following are examples:

Tennessee Code Annotated, Section 50-6-623, is amended by deleting the section in its entirety.

Tennessee Code Annotated, Section 3-6-306(a)(1)(A), is amended by deleting the language “twenty-five dollars (\$25.00)” and substituting instead the language “fifty dollars (\$50.00)”.

Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

Tennessee Code Annotated, Section 4-29-233(a), is amended by deleting subdivision (2) in its entirety.

Tennessee Code Annotated, Section 4-29-235(a), is amended by adding the following as a new, appropriately designated subdivision:

(B) The purpose of a bill and the directory language may be to direct that a code provision be removed. There are various ways to remove a code provision.

(i) A code provision may be removed by stating “the provision is hereby repealed.” This method of removing a code provision is sometimes referred to as “an express repeal.” If expressly repealing a code provision, the Constitution of Tennessee, Article II, § 17, requires that “repeal” be set out in the caption. However, if “repeal” is set out in the caption, the bill may only be used: (1) to repeal; or (2) to repeal and amend cross-references to the repealed provision. The bill may not be used to amend other code provisions.

(ii) A code provision may be removed by altering it or amending it. If “deleting the code provision and substituting instead,” then the Constitution of Tennessee, Article II, § 17, requires that “to amend” be set out in the caption.

(iii) A code provision may also be removed by deleting the code provision in its entirety. The practice has been that if "deleting without substitution," then, "to amend" should be set out in the caption.

(iv) A general repealing clause, such as "all acts or parts of acts in conflict with this section are hereby repealed," is a greatly disfavored form of drafting, as the clause lacks express direction to the public or a court. A general repealing clause does not direct the commission to codify a repeal of, or to delete, any additional code provisions; therefore, the public and the courts are left to determine the exact provisions of law the general assembly intended to remove. If an existing law needs to be deleted, the drafter should expressly repeal the law, delete by substitution, or delete without substitution.

(C) Directory language should always be "reader friendly"; that is, presented in a manner that facilitates an efficient and clear understanding. For example, only code provisions that contain changes should be re-written, so that readers are not required to scan through several pages when fewer pages would suffice. However, re-writing only the smallest subdivision of a section may not be "reader friendly" when related subdivisions or introductory text could show how changes to the law are being made. Using entire sections or subsections is preferred, except where the length of the section or subsection makes this impractical or inappropriate.

READER FRIENDLY

Tennessee Code Annotated, Section 39-15-208(a), is amended by deleting the subsection and substituting the following:

(a) It is unlawful for any person, agency, corporation, partnership or associations to engage in medical experiments, research, or the taking of photographs upon an aborted fetus without the prior knowledge and consent of the mother and father, if the father is known.

NOT READER FRIENDLY

Tennessee Code Annotated, Section 39-15-208(a), is amended by adding the language "and father, if the father is known" to the end of the subsection.

NOT READER FRIENDLY

Tennessee Code Annotated, Section 39-15-208, is amended by deleting the section and substituting the following:

(a) It is an offense for any person, agency, corporation, partnership or association to engage in medical experiments, research, or the taking of photographs upon an aborted fetus without the prior knowledge and consent of the mother and father, if the father is known.

(b) No person, agency, corporation, partnership or association shall offer money or anything of value for an aborted fetus; nor shall any person, agency, corporation, partnership or association accept any money or anything of value for an aborted fetus.

(c) It is the express intent of the general assembly that nothing in the provisions of this section shall be construed to grant to a fetus any legal right not possessed by a fetus prior to July 1, 1979.

(d) A violation of this section is punishable as a Class E felony.

(2) In addition to directory language, the body of the bill also includes amendatory language. Amendatory language is the language of the code provision that is being modified. Amendatory language should always be “reader friendly” as well. For example, a lengthy provision that has multiple contingencies should be divided into subsections or subdivisions, so that the format facilitates a clear understanding of the text. Not only should the drafter divide subsections and subdivisions for readability, but this process often reveals missing words or inconsistencies. The following are examples of identical amendatory language, one in a “reader friendly” version and the other in a “not ready friendly” version:

READER FRIENDLY

(a) Any action to recover damages for injury, as defined by § 50-6-102, by a construction services provider shall proceed as at common law, and the defendant in the suit may make use of all common law defenses if, at the time of the injury, the construction services provider was:

(1) Listed on the registry as having a workers' compensation exemption and working in the service of a business entity through which the construction services provider obtained an exemption;

(2) Not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider was providing services at the time of the injury; and

(3) Eligible for an exemption pursuant to § 50-6-914(b)(2), if the eligibility requirements apply, at the time of the injury.

(b) Any construction services provider proceeding as at common law pursuant to subsection (a) shall forego the right to sue to establish or reestablish coverage.

NOT READER FRIENDLY

Any action to recover damages for injury, as defined by § 50-6-102, by a construction services provider shall proceed as at common law, and the defendant in the suit may make use of all common law defenses if, at the time of the injury, the construction services provider was: listed on the registry as having a workers' compensation exemption and working in the service of a business entity through which the construction services provider obtained an exemption; not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider was providing services at the time of the injury; and eligible for an exemption pursuant to § 50-6-914(b)(2), if the eligibility requirements apply, at the time of the injury. Any construction services provider proceeding as at common law pursuant to this section shall forego the right to sue to establish or reestablish workers' compensation coverage.

(g) DESIGNATION SYSTEMS

(1) The basic code designation system consists of three-tier numbering.

| | | | | | |
|------------|---|-------|---------|------|---------|
| § 3-12-112 | = | 3 - | 12 - | 1 | 12 |
| | | Title | Chapter | Part | Section |

(2) The substance within a sub-designation always relates to the higher designation. For example, the offense of "aggravated assault" is in a section located within the part labeled "assaultive offenses," which is located within the chapter labeled "offenses against persons," which is located within the "criminal offenses" title of the code.

(3) Sections contain the provisions of law. A section is often divided into subsections and subdivisions. Sections are always grammatically complete without any aid from a prior or subsequent section. Within each section, there is a designation system of subsections and subdivisions. The following uniform designation system is the proper order for subsection and subdivision designations:

(a)(1)(A)(i)(a)(1)(A)(i)

The first level "(a)" is referred to as a subsection; all subsequent levels are referred to as subdivisions. There are no subchapters, subparts, paragraphs, subparagraphs, items, or subitems in the code.

(4) There should be at least two subsections or subdivisions in order to use the designated subsection or subdivision. For example, if there is an "(a)", there must be a "(b)"; there should never be an "(a)" without a "(b)." If there is only one subsection in a section but several subdivisions, such as in a definition section, then the first subsection does not need to be written out, and the first designation is subdivision (1). The following is an example:

1-3-105. As used in this code:

(1) "Age of majority" means eighteen (18) years of age or older;

(2) "Code" includes the Tennessee Code and all amendments and revisions to the code and all additions and supplements to the code;

(3) "Collector" includes any person entrusted with the collection of public revenue; . . .

(5) When referring to a subsection or subdivision, do not use the language "of this section" or "of this subsection."

CORRECT: this subdivision (a)(2)

CORRECT: this subsection (b)

INCORRECT: subdivision (2) of this subsection (a)

INCORRECT: subsection (b) of this section

(6) Omit the phrase "the provisions of" when the phrase is superfluous. However, use "the provisions of" when it adds meaning to the sentence.

- CORRECT:** this subsection (a)
- CORRECT:** the provisions of § 1-5-301, relative to statutory construction
- INCORRECT:** the provisions of this subsection (a)

(7) If subsections and subdivisions are used, avoid undesignated language. All language should be attached to the appropriate designation. Failure to attach text to a designation makes referring to the text or citing to it difficult.

CORRECT:

(a) The claims commission may make an emergency award to the claimant pending a final decision in the case if it appears to the claims commission, prior to any hearing on a claim, that:

(1) The claim is one with respect to which an award will probably be made; and

(2) Undue hardship will result to the claimant if immediate payment is not made.

(b) The amount of the emergency award shall not exceed five hundred dollars (\$500).

(c) The amount of such emergency award shall be deducted from any final award made to the claimant.

INCORRECT:

(a) The claims commission may make an emergency award to the claimant pending a final decision in the case if it appears to the claims commission, prior to any hearing on a claim, that:

(1) The claim is one with respect to which an award will probably be made; and

(2) Undue hardship will result to the claimant if immediate payment is not made.

The amount of the emergency award shall not exceed five hundred dollars (\$500).

(b) The amount of such emergency award shall be deducted from any final award made to the claimant.

(8) Legislation should not be drafted to amend the language of section headings, as the headings are not considered law. Instead, if a drafter would like to request in the legislation that the commission insert certain headings, then the drafter should use the language found in the “correct example” box.

CODIFIED VERSION OF THE STATUTE:

3-2-101. Engrossment and enrollment.

All bills and resolutions of the general assembly shall be engrossed or enrolled in type, or on a typewriter, by the engrossing clerks, and a copy made at the time and furnished the secretary of state.

INCORRECT:

SECTION __. Tennessee Code Annotated, Section 3-2-101, is amended by deleting the language “Engrossment and enrollment” and substituting instead the language “Engrossment or enrollment”.

CORRECT:

SECTION __. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

(h) PLAIN LANGUAGE

(1) Simplicity

(A) Select short and familiar words and phrases to best express an intended meaning according to common and approved usage. Use ordinary English and avoid "legalese." Also, avoid using a complicated word when a simple word would convey the same concept.

(B) Do not include material that has no legal effect in a bill. For example, avoid "aforesaid," "whatsoever," or similar words that only provide unnecessary emphasis.

(C) Avoid superfluous and verbose expressions. The following is a list of terms to avoid and the preferred substitutes for each:

Superfluous or Verbose

absolutely null and void and of no effect
adequate number of
by means of
by virtue of
during such time as
during the course of
each and every
for a period of
for the purpose of
give consideration to
give recognition to
in accordance with
is applicable
is directed to
is empowered to
is entitled to
is required to
it is the duty
make application
make payment
make provision for
shall be construed to mean
state of Tennessee
under the provisions of
until such time as

Preferred

void
sufficient
by
by, under
while
during
each
for
to
consider
recognize
under
applies
shall
may
may
shall
shall
apply
pay
provide
means
this state
under

(2) Clarity

(A) Avoid wide gaps between the subject, the verb, and the object.

CORRECT:

Any injured party may file a claim with the claims commission. A claim shall not exceed five hundred dollars (\$500) for negligent misconduct, nor one thousand dollars (\$1,000) for intentional misconduct.

INCORRECT:

A claim, which in the case of negligent misconduct shall not exceed five hundred dollars (\$500), and in the case of intentional misconduct shall not exceed one thousand dollars (\$1,000), may be filed with the claims commission by any injured party.

(B) Do not use "and/or," as the conjunctions have very different meanings and may cause confusion when used together. Instead, use "or" when one or more is sufficient, and use "and" when all are required.

(C) If a concept can be expressed either positively or negatively, then the drafter should express it positively.

POSITIVE:

The commission shall approve a renewal application if the application is complete.

NEGATIVE:

The commission shall not reject a renewal application if the application is complete.

(D) Use grammatically parallel sentence structure when elements in a series are joined by coordinating conjunctions.

CORRECT: A person may obtain a copy by mail or by appearing personally.

INCORRECT: A copy may be obtained by mail or if a person appears personally.

(E) Although the phrase "notwithstanding any law to the contrary" has frequently been used in the past, avoid using it. The term "law" in the phrase lacks clarity, and the reader will likely be unable to determine the specific code provision referenced. If "notwithstanding" is used, then it should be followed by a specific code provision, such as "notwithstanding § 56-5-401."

(F) Whenever possible, be specific when cross-referencing. Avoid the use of "herein," "hereinafter," "above," "below," or similar words. For example, if "herein" is used, it is unclear if the reference is to the subdivision, subsection, or section. These words fail to precisely identify where the cross-referenced provision is located. Instead, use the exact citation to cross-reference a separate provision.

CORRECT: as used in this section

INCORRECT: as used herein

(G) Use the active voice. Active voice typically requires fewer words to express an idea, and when used, it is easier for a reader to discern the subject and verb of the sentence.

ACTIVE:

The department of commerce and insurance shall promulgate rules consistent with this section.

PASSIVE:

Rules shall be promulgated consistent with this section.

(H) If possible, use finite verbs rather than their corresponding participles, infinitives, gerunds, or other noun or adjective forms.

CORRECT: consider

INCORRECT: given consideration by

CORRECT: applies

INCORRECT: is applicable to

(I) Do not use "etc.," "i.e.," "e.g.," or "viz.," as the abbreviations are considered shorthand and lack a clear and distinct meaning.

(3) Consistency

(A) Terms should be used consistently throughout the bill. Do not use the same word or phrase to convey different meanings, and do not use a word and its synonym.

CORRECT:

The defendant shall be given time to consider the allegations and an opportunity to be heard by the court.

INCORRECT:

The defendant shall be given time to consider the allegations, and the accused shall be given an opportunity to be heard in court.

(B) If a section begins using a singular subject or noun, then the singular should be used throughout the section. If a section begins using a plural subject or noun, then the plural should be used throughout the section.

(C) Verbs and their subjects must agree in number.

(D) A pronoun must have a clear antecedent and must agree with its antecedent in number.

(i) FORM AND STYLE GUIDELINES

(1) Names of Departments

(A) If a department is defined in a definition section for a particular title, chapter, or part, then all subsequent references in the title, chapter, or part should be to "the department." The department's full name need not be written out, except when confusion would result from references to other departments. This rule should also be followed for "commissioner."

| | |
|--------------------------|--|
| <u>IF:</u> | "Department" means the department of financial institutions; |
| <u>THEN:</u> | <u>The department</u> shall promulgate rules. |
| <u>EXCEPTION:</u> | <u>The department of financial institutions</u> , in consultation with the department of safety, shall prepare a report on this topic. <u>The department of financial institutions</u> shall submit the report by August 15. |

(B) If a department is not defined in a definition section for a particular title, chapter, or part, then write out the name of the department the first time it appears in each section and use "the department" each subsequent time when in the same section. This rule should also be followed for "commissioner."

(C) Do not use "of the department" in a reference to a commissioner.

| | |
|--------------------------|--|
| <u>CORRECT:</u> | the commissioner of financial institutions |
| <u>INCORRECT:</u> | the commissioner of the department of financial institutions |

(2) Capitalization

(A) Use lower case for federal, state, and local public entities, but capitalize private entities.

the environmental protection agency
the Audubon Society
the American Psychiatric Association

(B) Use lower case for titles of public officials.

the governor
the commissioner of revenue
the speaker of the house

(C) Capitalize the names of schools and proper names used in connection with places or programs more than one country, state, county, or city.

the John S. Wilder development center
the University of Memphis
Pell grants

(D) Capitalize short titles of acts.

Comprehensive Alcohol and Drug Treatment Act

(E) Capitalize the names of countries, states, counties, and cities. However, do not capitalize the words "countries," "states," "counties," or "cities," when used to identify more than one country, state, county, or city.

| | |
|--|--|
| <u>CORRECT</u> : Hamilton County | <u>INCORRECT</u> : Hamilton county |
| <u>CORRECT</u> : Shelby and Davidson counties | <u>INCORRECT</u> : Shelby and Davidson Counties |

(F) Capitalize "Internet," but do not capitalize "e-mail," "electronic mail," or "web site."

(G) Capitalize criminal penalty classifications.

Class A misdemeanor
Group III violation

(3) Numerals

(A) Express numbers in text with words followed by numerals in parentheses. However, express numbers in dates and tables with numerals only.

CORRECT: a period of one hundred forty-two (142) days

CORRECT: two-thirds (2/3) of the members

CORRECT: NOT MORE THAN NOR LESS THAN

25,500

26,000

37,590

38,500

(B) The word "one," when used as a number and when used as an indefinite pronoun, are treated differently. The parenthetical numeral is never inserted after the pronoun.

one may obtain the information

one (1) member from each house

(C) Hyphenate numbers from twenty-one to ninety-nine.

(D) Do not insert a parenthetical numeral in hyphenated adjectives, unless the adjective is a fraction.

CORRECT: a two-thirds (2/3) majority

CORRECT: a nine-member commission

INCORRECT: a nine (9)-member commission

(E) Write dates in the form of "month" then "day." When a month, day, and year are used as a date in a sentence, use a comma after the day and the year.

CORRECT: July 1

CORRECT: On March 1, 2008,
the procedures
become effective.

INCORRECT: July 1st

INCORRECT: July First

INCORRECT: first of July

(F) Write out time expressions and include a parenthetical translation at the end.

five o'clock p.m. (5:00 p.m.)

twelve o'clock (12:00) noon

(G) Use "first," "second," or "third," instead of "1st," "2nd," or "3rd."

(H) If a fraction can easily be expressed as a decimal, use a decimal.

USE DECIMAL: one-tenth of one percent (0.1%)

USE FRACTION: three-eighths of one percent (3/8 of 1%)

(I) When identifying amounts of money, use decimals for numbers less than one hundred dollars or if cents are indicated, but do not use decimals for numbers equal to one hundred dollars or more.

CORRECT:

ninety-nine dollars (\$99.00)

one dollar and fifty cents (\$1.50)

one hundred and fifty dollars (\$150)

INCORRECT:

ninety-nine dollars (\$99)

one hundred and fifty dollars (\$150.00)

(J) Use "years of age" when stating a person's age.

CORRECT: twelve (12) years of age

INCORRECT: twelve (12) years old

INCORRECT: the age of twelve (12)

(4) Punctuation

(A) Do not use a hyphen when use of a hyphen is optional.

CORRECT: firefighter

INCORRECT: fire-fighter

CORRECT: service member

INCORRECT: service-member

(B) Hyphenate "full-time" and "part-time" when the terms are used as an adjective or an adverb. Do not hyphenate "full time" or "part time" when the terms are used as a noun.

CORRECT: all full-time candidates

CORRECT: a candidate who works part-time

CORRECT: This section does not apply to any candidate for office for which the service is part time.

(C) Never hyphenate "vice president," "vice chair," or "attorney general."

(D) Hyphenate adjectives that incorporate numbers.

CORRECT: any three-way intersection

(E) Always hyphenate fractions.

CORRECT: two-thirds (2/3) of the members

CORRECT: one-fourth (1/4) of the time

CORRECT: five-eighths (5/8) of the membership

CORRECT: a two-thirds (2/3) majority

(F) Generally, do not hyphenate words beginning with "pre," "non," or "re."

CORRECT: predetermined, nonmalignant, reelected

(G) Always use commas for clarity, especially to set off an introductory phrase or clause, or to separate independent clauses that are connected with a conjunction.

The committee shall have several responsibilities, including
analyzing cases and recommending possible reforms.

(H) Use "that," not preceded by a comma, to introduce a restrictive clause. Use "which," preceded by a comma, to introduce a nonrestrictive clause. A restrictive clause or phrase limits or identifies which of several possible things or ideas the clause or phrase refers; therefore, the restrictive clause is essential to the meaning of the sentence. A nonrestrictive clause or phrase provides additional or parenthetical information about the thing or idea to which the clause or phrase refers.

(I) The phrase "provided, however" should be preceded with a semi-colon and followed by a comma:

CORRECT: ; provided, however, that

CORRECT: ; provided further, however,

CORRECT: ; provided, that

(J) Use a colon to introduce a list of items, and use semicolons to separate items within a list if commas are used within an item. When designating a list by subdivision, always separate subdivisions by a semicolon, not a comma.

(a) A person commits the offense of involuntary labor servitude who knowingly subjects, or attempts to subject, another person to forced labor or services by:

(1) Causing or threatening to cause serious bodily harm to the person;

(2) Abusing or threatening to abuse the law or legal process;

(3) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person;

(4) Facilitating or controlling the person's access to an addictive controlled substance; or

(5) Controlling the person's movements through threats or violence.

(K) Avoid using parentheses, except when designating subsections or subdivisions.

(L) Do not use brackets.

(M) When setting out language in a directory sentence, use quotations to identify the language; however, when setting out language below a directory clause, do not use quotations.

**SETTING OUT LANGUAGE IN A
DIRECTORY SENTENCE**

Tennessee Code Annotated, Sections 12-4-405(5) and 12-4-406(a), are amended by deleting the language "contractors" wherever it appears and substituting instead "highway contractors".

**SETTING OUT LANGUAGE BELOW A
DIRECTORY CLAUSE**

Tennessee Code Annotated, Section 12-4-401, is amended by deleting the section and substituting instead the following:

This part shall be known and may be cited as the "Prevailing Wage Act for State Highway Construction Projects."

(N) Use quotation marks when defining a word or phrase.

"Department" means the department of education.

(O) Place periods and commas inside quotation marks and place colons and semicolons outside quotation marks, unless the language is amendatory language that is being repeated for purposes of identifying language to be deleted. In such a case, the only punctuation that would be placed inside the quotation marks would be punctuation in the language of the code provision being amended.

**NO PUNCTUATION WITHIN THE TEXT
BEING DELETED**

Tennessee Code Annotated, Section 71-5-110(c)(1), is amended by deleting the language "thirty (30)" and substituting the language "fifteen (15)".

**PUNCTUATION WITHIN THE TEXT
BEING DELETED**

Tennessee Code Annotated, Section 55-4-236(a), is amended by deleting the language "the Congressional Medal of Honor," and "the Air Medal,".

(5) Other Guidelines

(A) Delete “of Tennessee” or “of the state of Tennessee” from the end of official or department titles.

CORRECT: department of financial institutions

INCORRECT: department of financial institutions of Tennessee

CORRECT: secretary of state

INCORRECT: secretary of state of Tennessee

However, if there is a federal department with the same name as a state department, then the federal or state department designations may be used to avoid ambiguity.

The state department of transportation shall deliver the documentation to the federal department of transportation within five (5) days.

(B) Do not include the words “Tennessee” or “of this state” when referencing a county within Tennessee, as the general assembly does not enact legislation affecting any other state.

CORRECT: Hamilton County

INCORRECT: Hamilton County, Tennessee

CORRECT: Nashville

INCORRECT: Nashville, Tennessee

(C) Use “United States” rather than “United States of America.”

(D) Use “general assembly” rather than “legislature” and “house of representatives” rather than “house.” Use the complete name of any standing committee. For example, use “senate commerce and labor committee” rather than “senate commerce committee.”

(E) Use "shall" when expressing a duty, mandate, obligation, requirement or condition precedent. Do not use "must" to substitute for "shall." Use "may" to confer a power, privilege, or right. Use "shall not" to express a prohibition. Do not use qualifiers, such as "will," "should," or "ought," as the words are ambiguous.

(F) Do not use "said" or "such". The use of "the" or "that" is generally preferred over "said" or "such" when appropriate.

(G) Do not use "any," "each," "all," or "some" if "a," "an," or "the" can be used with the same result.

(H) Do not use "sunset" as a verb. Appropriate alternatives include "terminate," "expire," or "is repealed."

CORRECT: This section is repealed on June 30, 2009.

INCORRECT: This section shall sunset June 30, 2009.

(I) Generally, singular and plural designations are unnecessary, as Tenn. Code Ann. § 1-3-104(c) states: "singular includes the plural and the plural the singular, except when the contrary intention is manifest." However, if a drafter needs to indicate both singular and plural, the drafter should not place the "s" in parentheses. Instead, the drafter should write out the term in singular and plural.

CORRECT: the subcommittee or subcommittees

INCORRECT: the subcommittee(s)

(J) The plural of "district attorney general" is "district attorneys general".

(K) Use gender-neutral language. The terms "he" or "she" or "him" or "her" should not be used, except in those rare instances when the topic is gender-specific. An example may be a bill dealing with ovarian cancer. Otherwise, whenever reasonable, nouns rather than pronouns should be used to refer to persons in order to be gender-neutral. Replace gender-specific terms with gender-neutral terms.

CHANGE:

"councilman" should be "council member"

"fireman" should be "firefighter"

"chairman" should be "chair"

"policeman" should be "police officer"

DO NOT CHANGE:

alderman, aldermanic, councilmanic,

materialman, warehouseman, airman,

journeyman, ombudsman, workmanlike

(L) "Web site" should be two words, and "e-mail" should be hyphenated.

(j) COMMONLY MISUSED WORDS

Affect

As a verb, affect means to influence or to have an effect on.
As a noun, affect has no modern meaning other than as a psychological term.
As an adjective, affected means artificially or falsely assumed.

Effect

As a verb, effect means to cause to come into being, or to bring about a result.
As a noun, effect means a result.

Among

used for more than two

Between

used for two

Biannual

twice a year

Biennial

once every two years

Capital

a capital city, money or assets, or related to physical improvements

Capitol

the statehouse

Ensure

to make certain or to guarantee

Insure

to procure insurance for someone or for something

Farther

applies to actual distance

Further

additional or more advanced

Less

denotes amount or quantity among things that are measured

Fewer

denotes number among things that are counted

Means

indicates that the following is identical or synonymous

Includes

indicates that the following is part of the first, but the following is not exhaustive

Principal

As a noun, principal means a leader, chief, or head; a capital sum placed at interest, due as a debt, or used as a fund; or the main body of a decedent's estate.
As an adjective, principal means chief or main.

Principle

As a noun, principle means a fundamental truth or a governing law of conduct.
Principle should never be used as an adjective

(k) ARCHAIC AND OUTDATED LANGUAGE

(1) The form and style guidelines contained in this guide should always be followed when drafting new code provisions, including avoiding the use of outdated language. However, when amending current law, updating outdated terms may not be the best approach due to the structure or judicial construction of specific code provisions.

(2) There are terms that were once used by drafters that may now be considered outdated and possibly offensive. The following is a list of terms that should give a drafter pause prior to usage:

| | | |
|----------|--------------------|-----------------|
| insane | defective person | retarded |
| crippled | feeble-minded | retardation |
| idiot | handicapped person | handicap |
| senile | mental defect | physical defect |

(l) REFERENCING

(1) A citation to the Constitution of Tennessee:

Constitution of Tennessee, Article XI, § 5

(2) A citation to the United States Constitution:

United States Constitution, Article I, § 8

(3) If citing to the code within language that will be codified, "Tennessee Code Annotated," or a similar phrase, should not be used. However, if citing to the code within language that will not be codified, such as in a preamble, severability clause, or effective date section, "Tennessee Code Annotated," or a similar phrase identifying the code should be used.

CODIFIED TEXT: § 8-36-102
UNCODIFIED TEXT: as provided in Tennessee Code Annotated, Section 8-36-102

(4) A citation to a Tennessee statute or statutes that appears at the beginning of a sentence within text that will be codified should be as follows:

Section 8-36-108
Sections 8-36-108, 8-36-109, and 8-36-114
Section 8-36-109, § 8-36-109, or § 8-36-114

(5) A citation to a Tennessee statute or statutes that does not appear at the beginning of a sentence within text that will be codified should be as follows:

§ 8-36-108

§§ 8-36-108, 8-36-109, and 8-36-114

§ 8-36-108, § 8-36-109, or § 8-36-114

(6) If there is a need to reference a specific title, chapter, part, section, subsection, or subdivision within the title, chapter, part, section, subsection, or subdivision, the drafter should not use "title x" or "part x"; instead, the drafter should use "this title" or "this part."

(7) The drafter should not use the phrase "of this section" when referencing a subsection or subdivision; however, the drafter should use "of this title" and "of this chapter," as appropriate.

CORRECT: Reimbursements paid from the fund pursuant to subdivision (b)(3) shall be deemed to be benefits for the purpose of this chapter.

CORRECT: Reimbursements paid from the fund pursuant to part 5 of this chapter.

INCORRECT: Reimbursements paid from the fund pursuant to subdivision (b)(3) of this section.

(8) When a drafter references a short title in a provision that will be codified, the drafter should use the following format:

Uniform Administrative Procedures Act, compiled in title 4, chapter 5

However, when a drafter references a short title in a provision that will not be codified, the drafter should use the following format:

Uniform Administrative Procedures Act, compiled in
Tennessee Code Annotated, Title 4, Chapter 5

(9) The drafter should use pinpoint citations to subsections and subdivisions when cross referencing:

as described in § 32-4-101(a)

However, definitions are kept in alphabetical order. When a definition section is amended, the subdivision designation may change. Therefore, a drafter should not use a pinpoint citation when cross-referencing a definition.

CORRECT: person, as defined in § 32-1-101

INCORRECT: person, as defined in § 32-1-101(1)

An exception to the "no pinpoint citation rule for definitions" occurs when a term has multiple definitions within a subdivision.

the definition of 'business' in § 67-6-102(8)(B)

"Business" has several definitions in § 67-6-102(8).

(10) References to federal code provisions should include, if available, citations to the United States Code.

26 U.S.C. § 501(c)(4)

(11) If the federal code provision has not yet been codified, a citation to the public law may be used.

Pub. L. No. 92-75, § 2

(12) When a federal code provision has a short title or popular name, the drafter may use the title or name in the citation. A citation following a short title or popular name should be placed in a parenthetical following the title or name.

Fair Credit Reporting Act (15 U.S.C. §§ 1681-1697)

Clean Water Act of 1977 (Pub. L. 97-300)

(13) A short title or popular name may also be used, even if the reference is to specific portions of the act. If citing to only specific sections of a short title or popular name, the sections should be indicated prior to the short title or popular name.

Sections 203(b) and (k), National Housing Act (12 U.S.C. §§ 1709(b) and (k))

(14) Citations to the Code of Federal Regulations should be as follows:

14 CFR Part 121

14 CFR Part 121, Subpart J

14 CFR 121.221(a)

(m) DEFINITIONS

(1) Definitions are commonly used to avoid repetition of a phrase or to give a standard meaning to a word or phrase. Definitions should be in alphabetical order. Once a defined term is placed in a definition section, use the defined term throughout the applicable code provision. Do not use synonyms or derivatives. Do not define a word that is not subsequently used in the applicable code provisions.

(2) The introductory language of a definition provision should be "As used in this ____:". The blank should be the applicable code provision, such as a section, chapter, part, or title. The drafter may substitute "act," if the drafter has not designated the location in the code. Where the act will be placed. When drafting a definition section, remember the difference between the words "means" and "includes." "Means" indicates that the following is identical or synonymous, while "includes" indicates that the following is part of the first. Use "means" instead of "shall mean," and use "includes" instead of "shall include."

(3) Definitions should not be used to prescribe substantive law. Placing substantive law in a definition section may be easily missed by a reader and may call into question the substantive law's application. The following is an example of a definition section:

39-16-701. As used in this part:

(1) "Material" means the statement, irrespective of its admissibility under the rules of evidence, could have affected the course or outcome of the official proceeding;

(2) "Official proceeding" means any type of administrative, executive, judicial, or legislative proceeding that is conducted before a public servant authorized by law to take statements under oath in that proceeding; and

(3) "Statement" means any representation of fact.

(n) CRIMINAL OFFENSES

(1) Pursuant to Tenn. Code Ann. § 39-11-102, conduct does not constitute an offense unless it is defined as an offense. Therefore, when drafting a provision that contains a criminal offense, a drafter should use the phrase "it is an offense" instead of language such as "it is unlawful" or "shall not." Each criminal offense should contain the elements of the crime. Examples of elements of a crime are an overt act and a mental state. There may be other provisions included within a criminal offense, such as definitions, exceptions to the offense, defenses to the offense, and aggravating factors. The following are examples of language a drafter may use to make conduct criminal:

It is an offense to...
A person commits...if...

(2) When drafting criminal offenses, the drafter should designate the offense classification. A criminal offense is either a felony or a misdemeanor. Tenn. Code Ann. § 40-35-111 sets out the authorized terms of imprisonment and fines for felonies and misdemeanors. There are three classifications for misdemeanor offenses: Class A, Class B, and Class C. If an offense is punishable as a misdemeanor, but the drafter does not specify a classification, then, by operation of Tenn. Code Ann. § 39-11-114, the offense is considered a Class A misdemeanor. There are five classifications for felony offenses: Class A, Class B, Class C, Class D, and Class E. If an offense is punishable as a felony, but the drafter does not specify a classification, then, by operation of Tenn. Code Ann. § 39-11-113, the offense is considered a Class E felony. If conduct is made criminal, but the drafter does not specify whether the offense is a misdemeanor or a felony, then, pursuant to Tenn. Code Ann. § 39-11-111, the offense is considered a misdemeanor. The following are examples of language that may be used to draft a penalty for a criminal offense:

CORRECT: A violation of this section is a Class B misdemeanor.
CORRECT: An offense under this section is a Class A felony.
CORRECT: Bigamy is a Class A misdemeanor.
CORRECT: A first violation of this section is a Class B misdemeanor. A second or subsequent violation of this section is a Class A misdemeanor.

(3) The Constitution of Tennessee, Article VI, § 14, provides that fines exceeding fifty dollars are to be assessed by a jury. The drafter should note that municipal and general sessions courts do not have the authority to impanel juries. Therefore, any offense punishable by a fine greater than fifty dollars must be tried by a court of record, unless the defendant waives the right to a jury trial.

(4) The Constitution of Tennessee, Article I, § 11, provides that no *ex post facto* law shall be made. Generally, an *ex post facto* law retroactively changes the legal consequences of actions that were engaged in before the enactment of the law. The drafter should be mindful that *ex post facto* may apply not only when conduct is made criminal, but also when a penalty is increased, or certain sentencing credits are reduced.

(5) The Constitution of Tennessee, Article I, § 8, provides that no person shall be taken, imprisoned, or in any other way deprived of life, liberty, or property but by judgment of the person's peers or "the law of the land." The "law of the land" has been interpreted to mean a general and public law operating equally upon every citizen of the state. The general assembly is generally considered to be prohibited from making conduct criminal only in specific geographical areas within the state or allowing a specific geographical area within the state to declare conduct to be criminal.

(o) SEVERABILITY

(1) A drafter may want to include a severability clause in the legislation. If a severability clause is included, it is not codified. The following is an example of a severability clause:

SECTION _____. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

(2) Instead of a severability clause, a drafter may want to include a reverse severability clause in the legislation. If a reverse severability clause is included, it is not codified. The following is an example of a reverse severability clause:

SECTION _____. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, then all provisions and applications of this act are declared to be invalid and void.

(p) RULES

There are times when a drafter authorizes a department to promulgate rules to effectuate the purposes of an act. The following is sample language to use when drafting a rules provision:

SECTION _____. The department (or commissioner) of _____ is authorized to promulgate rules to effectuate the purposes of this _____. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

(q) EFFECTIVE DATE

(1) Typically, the effective date section is the last section of a bill. The Constitution of Tennessee, Article II, § 20, states that, "no law of a general nature shall take effect until forty days after its passage unless the same or the caption thereof shall state that the public welfare requires that it should take effect sooner." Therefore, if the intent is for a bill to take effect sooner, then the drafter must include the language "the public welfare requiring it." Although the phrase is not constitutionally required, if the bill will become effective forty days or more after the signing of the bill, many drafters will always include the phrase as a matter of practice.

SECTION _____. This act shall take effect upon becoming a law, the public welfare requiring it.

(2) There are certain instances in which a specific date should be used as the effective date rather than "upon becoming a law." For example, bills that include a criminal offense should have an effective date that specifies the act will take effect on a certain date so that the public has adequate notice of changes in the law that make certain behavior criminal.

SECTION _____. This act shall take effect July 1, 2015, the public welfare requiring it.

SECTION _____. Sections 1 and 3 of this act shall take effect upon becoming a law, the public welfare requiring it. All other sections of this act shall take effect July 1, 2015, the public welfare requiring it.

(3) A variation of the effective date is the applicability clause, which specifies that the new statutory provision, although effective on the effective date of the act, will only apply to certain events or transactions. Applicability clauses are also frequently used in bills that contain criminal and education laws, or that affect contractual relationships.

SECTION __. This act shall take effect July 1, 2015, the public welfare requiring it, and shall apply to the 2015-2016 academic year and academic years thereafter.

SECTION __. This act shall take effect July 1, 2015, the public welfare requiring it, and shall apply to offenses committed on or after that date.

SECTION __. This act shall take effect July 1, 2015, the public welfare requiring it, and shall apply to contracts entered into or renewed on or after that date.

(4) Some applicability clauses are placed within the effective date of the legislation, which means the applicability clause may not be codified, and some are placed within the statutory text. The drafter should give thought to where the applicability clause should be placed.

REVIEW

(a) EDITING

(1) A bill draft should undergo various edits by the drafter. Allowing the draft to lie over before editing further may give a drafter a "fresh pair of eyes" for editing. During the editing process, the drafter's review should have the following focus:

- (A) There are no substantive errors in the bill;
- (B) Bill sections are numbered correctly;
- (C) Internal code and bill section references are accurate;
- (D) There are no spelling or grammar errors; and
- (E) The bill ultimately accomplishes the intended objectives.

(2) A review by a second or third drafter is also an invaluable tool in helping to produce quality legislation. A good reviewer may raise questions about apparent "loopholes" or other unintended consequences in the bill and suggest ways to enhance clarity and consistency. The drafter should carefully consider the reviewer's comments in polishing the final draft. The ability to accept and utilize constructive criticism to improve the draft of a bill is a prized quality in a drafter.

(b) DRAFTER'S CHECKLIST

As a last step, before finalizing a bill, the drafter should review each item on the [Drafter's Checklist](#) to verify that each item has been properly addressed.

(c) OTHER LEGISLATION

There are times when one bill amends the same section as another bill or adds new material, identically numbered, as another bill. Accordingly, the drafter should monitor all legislation on the same subject matter as the drafter's legislation. If two acts amending the same section are enacted in the same legislative session, the code commission will attempt to codify the language of both acts, to the extent possible. If the differences in the acts are irreconcilable, then, generally, the act with the later effective date will prevail, or neither act will be codified, depending on the nature of the conflict. To avoid an act failing to take effect due to an irreconcilable conflict, the drafter should closely monitor legislation for potential conflicts as part of the initial bill drafting review and throughout the legislation process.

DRAFTING AMENDMENTS

PREPARATION

(a) FILING DEADLINES

Typically, each standing committee has filing deadlines for amendments. Additionally, there are filing deadlines for amendments to be properly considered on the floor of each house. Amendments, just as bills, must be entered into the general assembly's electronic database by OLS, assigned a barcode for proper identification by the clerk's office of either house, and reviewed by OLS for deficiencies. Drafters should allow time for a proper review of the amendment prior to the amendment being filed.

(b) ALTERATIONS TO THE BILL

Just as with a bill, the first and most important step in preparing an amendment is to comprehend the objectives and gain a thorough understanding of what the amendment is intending to accomplish. Not only does this include understanding the substance of the amendment but also how the amendment amends the bill and any other proposed amendments.

DRAFTING

(a) FORMAT

(1) A bill may be amended by deleting language, adding language, deleting and substituting language, or rewriting a bill in its entirety. Currently, the rules of both houses of the general assembly prohibit amendments greater than the second degree, which means that amendments to amendments are permissible, but amendments to amendments to amendments are not permitted. As with bills, OLS is required by Tenn. Code Ann. § 3-12-101 (5) to review all amendments prior to their introduction. A sample amendment is located at the end of this guide.

(2) The top of an amendment includes the following:

Amend House Bill No. ____

Senate Bill No. ____

(3) The drafter should use the word "by" to begin the directory language of the amendment. The directory language of the amendment directs where and how the engrossing clerk will insert substantive language of the amendment into the bill. The directory language of the amendment is not codified. The following is an example of directory language at the beginning of an amendment:

by deleting Section 1 of the bill.

(4) Each additional clause containing directory language of an amendment should begin with the following phrase in bold:

AND FURTHER AMEND

(b) DIRECTORY LANGUAGE

(1) Depending on how the drafter wishes to amend the filed bill or prior adopted amendments, there are multiple ways to draft the directory language of an amendment. The following are examples:

by adding the following new section to the bill:

by adding the following language at the end of Section 1:

(2) There may be separate sections within the amendment that contain directory language that directs where and how the actual substance of the bill should be placed in the code. Again, this directory language is not codified. Moreover, an amendment may amend the directory or the amendatory language of a bill.

AND FURTHER AMEND by deleting the language " _____ " in the amendatory language of Section 1 and by substituting instead the language " _____ ".

AND FURTHER AMEND by deleting the language " _____ " in the directory language of Section 1 and by substituting instead the language " _____ ".

(c) CAPTION

An amendment to a bill must fall within the subject set forth within the caption, which means the amendment should amend only code provisions that are set out in the caption and relevant to the caption's subject. An amendment may not amend the caption of a bill.

(d) OTHER AMENDMENTS

(1) Before preparing an amendment, the drafter should be aware of any previously adopted amendments to determine whether the amendment to be drafted will work with or without prior amendments. Depending on whether a prior amendment was adopted by a committee or by one house, the drafter may need to remove the prior amendment. The language "by deleting all language after the enacting clause and by substituting instead the following:" will not only delete the body of a bill but also all prior amendments on the bill, whether in committee or on a house floor.

(2) However, if there is a previously adopted amendment and the drafter would like the drafter's amendment to work with the previously adopted amendment, the drafter should not only reconcile conflicts in the substance of the two amendments, but should also draft the drafter's amendment's directory language to be consistent with the previously adopted amendment, so that both amendments can be accurately engrossed.

REVIEW

(a) EDITING

When amendments are being drafted, time available for editing is typically limited. However, to the extent that time permits, a drafter should edit and also have another drafter edit prior to finalizing an amendment.

(b) DRAFTER'S CHECKLIST

As a last step, the drafter should review each item on the [Drafter's Checklist](#), located at the end of this guide, to verify that each item has been properly addressed.

OTHER INFORMATION

SAMPLE BILL

CAPTION

AN ACT to amend Tennessee Code Annotated, Title 68, relative to emergency medical telecommunications.

PREAMBLE

WHEREAS, it is the intention of the General Assembly to employ a statewide system of emergency medical service area telecommunications to provide effective and rapid emergency medical service to the general population; now, therefore,

ENACTING CLAUSE

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2 through 5 as a new chapter.

SHORT TITLE

SECTION 2. This chapter shall be known and may be cited as the "Emergency Medical Services Act."

SECTION 3. As used in this chapter:

DEFINITIONS

(1) "Category 'B' hospital" means a hospital facility within the state of Tennessee assigned to a category B by the board for licensing health care facilities of the department of health; and

(2) "Health care professional" includes a person licensed under the provisions of title 63.

SECTION 4.

BODY

(a) The department of health shall create and administer a statewide system of emergency medical service area telecommunications through rules.

(b) Health care professionals and category B hospitals shall report to the department regarding implementation of a statewide system of emergency medical service, pursuant to rules promulgated by the department.

(c) It is an offense for health care professionals and category B hospitals to fail to report to the department pursuant to this Section.

PENALTIES

SECTION 5. A violation of Section 4(c) is a Class A misdemeanor.

SECTION 6. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SEVERABILITY CLAUSE

SECTION 7. For purposes of promulgating rules, this act shall take effect, upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2016, the public welfare requiring it.

EFFECTIVE DATE

DRAFTING NUMBER

0616523456

001676

BILL FORMATTING INSTRUCTIONS

All font is Arial 11
Do not bold text
Align text to the left

The caption is the only provision that is single-spaced.

Enacting Clause (do not change)

AN ACT to amend Tennessee Code Annotated..., relative to...

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

TAB SECTION 1.

2 SPACES between each new section, subsection, or subdivision designation and the text that follows.

SECTION 2.

INDENT + TAB

(a)
(b)

If there is only 1 subsection in a section but many subdivisions, as in a definition section then the first designation is subdivision (1).

2 INDENTS + TAB

(1)
(2)

3 INDENTS + TAB

(A)
(B)

4 INDENTS + TAB

(i)
(ii)

5 INDENTS + TAB

(a)
(b)

Begin to italicize subdivision designations but NOT bill text.

6 INDENTS + TAB

(1)
(2)

7 INDENTS + TAB

(A)
(B)

8 INDENTS + TAB

(i)
(ii)

SECTION 3.

The effective date is typically the final section of the bill.

SAMPLE AMENDMENT

HEADER

Amendment No. _____

Signature of Sponsor

DIRECTORY
LANGUAGE

BILL NUMBER

BILL NUMBER

AMEND Senate Bill No. 139

House Bill No. 107*

by deleting the amendatory language of Section 28 and by substituting instead the following:

AMENDATORY LANGUAGE

On or before July 1, 2015, and annually thereafter, the division shall review the effect of the Workers' Compensation Reform Act of 2013 on the workers' compensation system and deliver a report of its findings to the general assembly.

AND FURTHER AMEND by deleting the language "five (5) business period" from the first sentence in subdivision (d)(2)(B) of Section 76, and substituting the language "five-day period".

AND FURTHER AMEND by deleting the language "seven (7) days" from the second sentence in subdivision (a)(1)(A) of Section 83, and substituting the language "seven (7) business days".

AND FURTHER AMEND by deleting Sections 5, 10, 57, 58 and 93 and renumbering the remaining sections accordingly.

AND FURTHER AMEND by adding the following new section immediately preceding the last section and by renumbering the subsequent section accordingly:

SECTION _____. The division of workers' compensation created pursuant to this act shall terminate pursuant to title 4, chapter 29 on June 30, 2018.

DRAFTING NUMBER

0616523456

001676

RULES OF STATUTORY CONSTRUCTION

(a) Legislative Intent

The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aides to that end. Therefore, it is presumed that every word in a statute has meaning and purpose and should be given full effect if the legislature's intent is not violated by doing so. A court's obligation is simply to enforce the written language.

Tennessee v. Layman, 214 S.W. 3d 442 (Tenn. 2007); *In re C.K.G.*, 173 S.W.3d 714 (Tenn. 2005); *Abels ex rel. Hunt v. Genie Indus., Inc.*, 202 S.W.3d 99 (Tenn. 2006).

(b) Ambiguity

Only when a statute is ambiguous should a court look to the entire statutory framework, the history of the legislation, or other sources to ascertain legislative intent and purpose. Courts must presume that the legislature was aware of and considered its prior enactments and the state of the law at the time the legislature passed the legislation. If a phrase is found to be ambiguous, then the entire statutory framework, the legislative history, and any other sources from which the legislative intent and purpose can be derived may be considered. In resolving a statutory ambiguity, courts may consider "matters beyond the text of the statute being construed," public policy, earlier versions of the statute, the caption of the act, and "historical facts preceding or contemporaneous with the enactment being construed"; provided, however, no matter how illuminating non-codified external sources may be, a court cannot provide a basis from departing from clear statutory provisions.

Eastman Chem. Co. v. Johnson, 151 S.W.3d 507 (Tenn. 2004); *Tenn. v. Edmondson*, 231 S.W. 3d 925, (Tenn. 2007).

(c) Judicial Presumptions

The rules of statutory construction allow the courts to make numerous presumptions about the legislative process. In interpreting statutes, the courts presume the general assembly:

- (a) Used every word deliberately and that every word and phrase has a specific meaning and purpose;
- (b) Did not intend to enact a useless statute;
- (c) Did not intend to create an absurdity;
- (d) Knew the "state of the law," including common law affecting the subject matter;
- (e) Was aware of and considered its own previous enactments;
- (f) Was aware of how the courts have interpreted enacted statutes; and
- (g) Enacted laws that are constitutional.

Lee Med., Inc. v. Beecher, 312 S.W.3d 515 (Tenn. 2010); *State v. White*, 362 S.W.3d 559 (Tenn. 2012).

(d) Construction in Favor of Constitutionality

A court has an obligation to interpret a statute in a way that preserves the statute's constitutionality.

Jordan v. Knox Cnty, 213 S.W.3d 751 (Tenn. 2007).

(e) Specific/General

A special statute or a special provision of a particular statute will prevail over a general provision in another statute or a general provision in the same statute.

Keough v. State, 356 S.W. 3d 366 (Tenn. 2011); *Five Star Exp., v. Davis*, 866 S.W. 2d 944 (Tenn. 1993).

(f) In Pari Materia

Tennessee courts use the "well-settled rule" of statutory construction referred to as *in pari materia*. Statutes that are *in pari materia* are those that relate to the same subject or have a common purpose and that are to be construed together. With this rule, an ambiguous construction of one statute may be aided by considering the words and legislative intent indicated by another statute. Where the legislature includes particular language in one section of the statute but omits it in another section of the same act, courts presume that the legislature acted purposefully in including or excluding that particular subject.

Graham v. Caples, 325 S.W.3d 578 (Tenn. 2010); *Wilson v. Johnson Cnty.*, 879 S.W.2d 807 (Tenn. 1994); *State v. Edmondson*, 231 S.W.3d 925 (Tenn. 2007); *State v. Hawk*, 170 S.W.3d 547 (Tenn. 2005).

(g) Dillon's Rule

Dillon's Rule is a canon of statutory construction that calls for the strict and narrow construction of local governmental authority. Dillon's Rule has been applied in Tennessee for over one hundred years. A municipal government may exercise a particular power only when one of the following three conditions is satisfied: (1) the power is granted in the "express words" of the statute, private act, or charter creating the municipal corporation; (2) the power is necessarily or fairly implied in, or incident to, the powers expressly granted; or (3) the power is one that is neither expressly granted nor fairly implied from the express grants of power, but is otherwise implied as "essential to the declared objects and purposes of the corporation."

S. Constructors, Inc. v. Loudon County Bd. of Educ., 58 S.W.3d 706 (Tenn. 2001); *Mayor & City Council v. Linck*, 80 Tenn. 499 (1883).

(h) “Inclusionary” Rule of Construction

Within definition sections and substantive lists, the words "includes," "including," "including, but not limited to," or "includes, but is not limited to" are used to give examples of a word that has been broadly defined in the same section. The general rule of construction for interpreting inclusionary words is that when a broad or general statutory definition is followed by language stating that the definition "includes" specific items, the language means that other includable items have not been specifically mentioned.

Cohen v. Cohen, 937 S.W.2d 823 (Tenn. 1996).

| BILL | AMENDMENT | DRAFTER'S CHECKLIST |
|------|-----------|--|
| | | What is the bill filing deadline ? What is the amendment filing deadline ? |
| | | What is the purpose ? |
| | | Has the necessary research been conducted? |
| | | Is there an organized arrangement for the proposed content? |
| | | Is the proper electronic format being used? If multiple versions, is the most recent version sent from OLS being used? |
| | N/A | Is there a caption ? Are all code provisions that the bill amends or may amend in the caption? Is there a single subject? If the bill is removing a code provision, have other code provisions referring to the removed provision been included in the caption? Is there a need to include Title 4 in the caption? |
| N/A | | Does the amendment fall within the caption of the bill? |
| | | Is a preamble needed? |
| | | Is there an enacting clause ? |
| | N/A | Is all directory language complete and accurate? Is the directory language "reader friendly"? |
| N/A | | Does the amendment's directory language adequately inform the engrossing clerk? Is all directory language complete and accurate? Is the directory language "reader friendly"? |
| N/A | | Are there other amendments traveling with the bill, and if so, have the amendments been considered or addressed? |
| | | Is the proper code and section designation system used? Are there at least two subsection or subdivision designations for each type of designation being used? |
| | | Has the legislation been reviewed for simplicity ? Is short and familiar language used? Are simplified words used? Has unnecessary language been removed? |
| | | Has the legislation been reviewed for clarity ? Does every pronoun have a clear antecedent? Are conjunctions used properly? Are concepts expressed positively when possible? Is parallel sentence structure used? Are cross-references precise? Is active voice used? |
| | | Has the legislation been reviewed for consistency ? |
| | | Are all names for departments and commissioners correct? |
| | | Is correct capitalization used? |
| | | Are numerals used correctly? |
| | | Is correct punctuation used? |
| | | Have commonly misused words been used correctly? |
| | | Has archaic and outdated language been updated? |
| | | Are citations to federal and state law in the correct format? |
| | | Is there a definitions section , and if so, is it in the correct format? |
| | | Is there a criminal offense , and if so, is it in the correct format? |
| | | Is a severability or reverse severability clause needed? |
| | | Is a rules provision needed? |
| | | Is there an effective date section, and is an applicability clause needed? |
| | | Has other legislation on the same subject been tracked? Does the other legislation conflict with the bill? Have the conflicts been addressed? |
| | | Has the legislation been edited by the drafter and by a second drafter? Are internal code and legislation section references accurate? Is spelling correct? Is grammar correct? |
| | | Does the legislation ultimately accomplish its purpose ? |