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## Legislative Bill Drafting

Paul Mason

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# Legislative Bill Drafting

(Concluded)

## THE PLACING OF NEW PROVISIONS

THE statutes of California, unlike those of most states, are divided into four codes, and "general laws" besides many statutory provisions in the constitution. The codes deal in general with distinct subjects. The Political Code contains statutory law, dealing with political organization and governmental administration. The Civil Code contains the law governing civil rights and regulating the relations of individuals with each other. The Penal Code treats of crimes and criminal procedure. The Code of Civil Procedure governs civil procedure. The codes do not contain all of the statutory provisions in their respective fields. Much law which should be in the codes is contained in the general laws. It may be true that all of the statutes might better have been placed in the codes, and it is certainly true that the statutes would be far more accessible and convenient to use if they were all collected and organized in one code or compilation.

The general laws have been collecting for seventy-five years, and have never been organized. They contain much which has been repealed by implication, and on some points of law the statutory provisions are almost as difficult to find as the common law.

Because of the greater accessibility and better organization of the codes it is the better practice to put new statutory provisions in the codes whenever the subject of the act is not treated exclusively in the general laws.

Whenever the proposed act is an amendment of or addition to an existing act it should, of course, be an "amendment" of the existing act.

While the placing of provisions in the wrong code will not make them ineffective,<sup>56</sup> every provision relating to the same subject should be placed together in the same code.

## COMPOSITION

The rules of literary composition are the same for statutes as for any other literary work. There is no occasion for the use of a

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<sup>56</sup> County of Butte v. Merrill (1903) 141 Cal. 396, 74 Pac. 1036.

so-called "legal" style. In drafting statutes conciseness and absolute accuracy are at a premium, for in drafting a statute it is essential that it is incapable of being misinterpreted. The courts attempt to give meaning to every word, on the theory that every word has been added for some purpose and so brevity and conciseness reduce the possibility of misinterpretation to a considerable extent. Conciseness is also necessary to prevent the law from becoming burdensomely voluminous.

The problem of drafting a statute may be simplified by analyzing the particular parts of the enactment. The simplest form of act which might be imagined is a simple subject and legal action, as for example "Thou shall not kill". In modern times, however, such a simple form of statute would not suffice. The law must be more specific. In the first place, the action must be limited to a particular case and may frequently be further limited by exceptions or conditions. The natural order for the parts of a statute is the case to which the action is to apply, the conditions, if any, the subject and the action. An example of the order is as follows:

"Case: (1) When the seller of goods has a voidable title thereto  
 (2) but his title has not been voided at the time of sale  
 Condition (1) if the buyer buys in good faith  
 (2) for value, and  
 (3) without notice of the seller's defect in title  
 Subject: the buyer  
 Action: shall acquire good title to the goods.

Sometimes, particularly in drafting penal statutes, it is more convenient to have the subject first than the case and conditions, and finally, the action.

An example of that construction follows:

Subject: Every person  
 Case: who shoots at any kind of game, bird or mammal,  
 Exception: except whale,  
 Condition: from (1) a power boat, (2) sail boat (3) automobile or (4) airplane  
 Legal Action: is guilty of a misdemeanor.<sup>57</sup>

It is clear that the above construction is better than to add the exception as a proviso at the end, as is done below:

Subject: Every person  
 Case: who shoots at any kind of game, bird or mammal,

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<sup>57</sup> Cal. Pen. Code, § 626 (o).

Condition: from a (1) power boat, (2) sail boat, (3) automobile or (4) airplane  
 Legal Action: is guilty of a misdemeanor;  
 Proviso: *Provided, however,* that nothing in this section shall prohibit the shooting of whale from power boat, sail boat or airplane.

Provisos can usually be eliminated advantageously. They always tend to make the meaning obscure. Instead of adding provisos at the end of a section, the same purpose can be more certainly and conveniently achieved by placing the exception as a condition in the logical place, near the beginning of the section.

### SECTION STRUCTURE

Convenience in the use of statutes requires that they be divided into reasonably short sections. This is also required by legislative rule.<sup>58</sup> Each material division of the act should be placed in a separate section. Often when the subject matter is involved it gives clarity to the act to divide the sections into subsections, which should be indicated by figures or by letters. The general rules governing paragraph structure should apply to statutes. It is frequently helpful in making the meaning certain to divide sections and sometimes even subsections into paragraphs.

Accuracy and certainty are usually easier to secure if short sections and sentences are used.

### NUMBERING SECTIONS

Sections are always numbered with Arabic numerals. In the first section of an act the word "section" is spelled out; in later sections the abbreviation "Sec." is used.

In adding new sections either to general laws or to the codes, a problem of numbering the sections sometimes arises. When the substance of a new section is such that it is desired to add it between consecutive sections, for example sections 384 and 385, it is clear that some new system of numbering must be used to avoid ambiguity. The new section might be numbered 384½, or it might be designated by a letter, as 384*a*. The use of a letter is much the better system, because it is more elastic and less trouble may arise in case other sections are later added at the same point. In using the letter it would be better practice to use "*m*", for example, than "*a*", because

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<sup>58</sup> Joint Rule No. 8.

if it were desired to place sections between 384 and 384*a*, some new expedient would have to be found to make the numbers consecutive.

#### USE OF WORDS

The words used in statutes should have, as far as possible, a definite and certain meaning. The practice in California is to avoid Latin terms. In the codes, for example, the term "place of trial" is used instead of "venue". In fact, a criminal statute has been held void because the crimes prohibited therein were designated by Latin names.<sup>59</sup>

The general rules as to the manner of interpreting words apply to statutes in this state. It is provided in our law that words and phrases are to be construed according to the context and approved usage of the language, and that technical words and phrases and those which have acquired peculiar and appropriate meaning in law are to be given that particular meaning, except where the context indicates otherwise or the word or phrase is specifically defined.<sup>60</sup>

There are several sections in the codes defining particular words.<sup>61</sup>

And, of course, in the construction of statutes the present tense includes the future, and the future the present, words of one gender include the other, singular includes the plural and the plural includes the singular.

When a word is used in an unusual or limited sense, or is frequently repeated, it is best to define the word as used in the act. Definitions are usually given at the beginning of an act. It is particularly important when amending an act to be careful that words which are defined in the act are used in the same sense in the amendment.

It is essential then that the draftsman, in order to make the law clear and exact, should use language as far as possible, in its ordinary sense, or, if it appears necessary to use words in an unusual sense, they should be defined in the act itself.

Care should also be taken that the same word or term is not used with different meanings in the same act.

#### SURPLUS WORDS

There appears always to be the temptation in any "legal" papers

<sup>59</sup> *In re Lockett* (1919) 179 Cal. 581, 178 Pac. 134; Constitution, Art. IV, § 24.

<sup>60</sup> Cal. Civ. Code, § 13.

<sup>61</sup> Cal. Civ. Code, §§ 12, 13, 14; Cal. Code Civ. Proc. §§ 4, 5, 16 and 17; Cal. Pol. Code, §§ 4, 5, 16 and 17; Cal. Pen. Code, §§ 4, 5, 16 and 17.

to use words in pairs. For example, "each and every", "authorize and empower", "by and with", "each and all", "fully and completely", and so on, almost without limit; also the words "before-said", "beforementioned" and "the said" are very frequently used when they might better be omitted.

Such words practically add nothing to the meaning or certainty of the law, but merely add to the verbosity of the statutes.

### PUNCTUATION

Punctuation is another matter which should be carefully watched. In some cases the meaning of an act may be completely changed by the omission or addition of a comma, and it might be mentioned that bills have been vetoed in California because of incorrect punctuation. It is a good rule to construct the bill in such a manner that its meaning is clear without the use of punctuation.

### TITLES TO ORIGINAL ACTS

In drafting an act, care should be taken that the title is broad enough to cover the subject of the act, that it is unmistakable and that it is brief. If one may judge from the acts passed, it is more difficult to make the titles clear and to avoid unnecessary length than to make them broad enough to cover the subject.

The title of the Municipal Corporations Act is a good example of a clear and concise title.

The act consists of more than eight hundred sections, which contain a large part of the law relating to municipal corporations, and yet the title of that act is:

"An act to provide for the organization, incorporation and government of Municipal Corporations."

When an act has a long or complicated title, or is frequently cited, it is always good practice to provide a short title. Many of the longer or more frequently cited acts of the State have short titles. Among these are: the "California Vehicle Act", the "State Housing Act", the "Juvenile Court Law", the "Pure Milk Act" and the "Apple Standardization Act."

### TITLES OF AMENDATORY ACTS

When an original act is to be amended, the title of the amendatory act becomes somewhat more complicated. The title of an amending act should always consist of four parts, and sometimes

five, which are, first, a clause stating the purpose of the act, as "An act to amend Section — of an act entitled"; second, the quotation of the title of the act to be amended; third, the date of approval of the act to be amended; fourth, the words "as amended" if the act has been previously amended; and fifth, the subject of the amendments. The title of an act amending a section of the Municipal Corporations Act should read as follows: "An act to amend Section — of an act entitled 'An act to provide for the organization, incorporation and government of municipal corporations,' approved March 13, 1883, as amended, relating to —."

There is no legal requirement that the approval date of an act be given, but it is sometimes very important in distinguishing between acts having similar or identical titles. There are several acts "relating to the water front of the City and County of San Francisco" and many cases in which two acts have identical titles. In such cases the only means of determining the act which it is intended to amend is by the use of the approval date. The words "as amended" are to acquaint the reader with the fact that the law was previously amended. It is not necessary to recite the successive amendments.<sup>62</sup>

If an act is to be repealed the introductory clause should read "An act to repeal an act entitled" or if certain sections are to be repealed, the clause should read "An act to repeal sections — and — of an act entitled". If new sections are to be added the clause should read "An act to add — (number of sections to be added) new sections to be numbered — and —, to an act entitled."

Two or more such clauses might be used together in case sections are to be amended, added or repealed. For example, the title might begin: "An act to amend sections — and — of, to add — new sections to be numbered — and — to, and to repeal sections — and — of an act entitled".

Do not say "An act to amend an act entitled '—' by amending section —".

When the act to be amended has a short title, the short title should be substituted for the regular title and the title of the amendatory act should read, for example, "An act to amend section — of the 'California Vehicle Act' relating to —". The approval date and the words "as amended" are not used in the titles of bills amending acts with short titles as the short title is in itself a sufficient designation.

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<sup>62</sup> Fletcher v. Prather (1894) 102 Cal. 413, 36 Pac. 658.

## AMENDMENTS TO THE CODES

For the purpose of amendment, the Codes are treated as acts with short titles. The title of an act which amends a section of a code should read, "An act to amend section— of the — Code relating to ———".

In amending the codes as in amending acts with short titles the approval date is omitted and no reference is made to previous amendment.

It has been held that reference to a particular section of one of the codes sufficiently states the subject of the act, but it is better practice, always, to add the clause stating the subject to which the amendment relates.

## PREAMBLES

In early times preambles to bills were commonly used and they are still frequently used in some jurisdictions. A preamble to a bill is written in the same form and serves the same purpose as a preamble to a resolution. It is inserted after the title and before the enacting clause. A preamble is very rarely used in California although there are cases when its use may be advantageous.

## THE ENACTING CLAUSE

The title of an act, or in case a preamble is used, the preamble is followed by the "enacting clause". It is this clause which gives the enactment the character and force of law. The enacting clause is prescribed in Article IV, Section 1 of the constitution, and is:

*"The people of the State of California do enact as follows:"*

Prior to the amendment of 1911, which provided for the initiative, the enacting clause was "The people of the State of California, represented in Senate and Assembly, do enact as follows:".

The enacting clause is italicized in the bills.

## AMENDING CLAUSE

In every act except an original enactment it is necessary to insert clauses indicating what sections are to be amended, added or repealed. The following outline of an act will illustrate the form and use of such clauses:

"An act to amend sections two and four of, to add a new section to be numbered four *a* to and to repeal sections seven

and eight of an act entitled 'An act providing for publicity of contributions and expenditures made for the purpose of influencing electors for or against any provisions voted upon throughout the state,' approved June 1, 1921, relating to the filing of statements of contributions and expenditures.

*The people of the State of California do enact as follows:*

Section 1. Section two of an act entitled: "An act providing for publicity of contributions and expenditures made for the purpose of influencing electors for or against any provisions voted upon throughout the state", approved June 1, 1921, is hereby amended to read as follows:

Sec. 2. Not more than forty-five —.

Sec. 2. Section four of said act is hereby amended to read as follows:

Sec. 4. Within thirty days next succeeding —.

Sec. 3. A new section to be numbered four *a* is hereby added to said act to read as follows:

Sec. 4*a*. Every association, as in this act defined shall —.

Sec. 4. Sections seven and eight of said act are hereby repealed."

When the act to be amended has a short title it is, of course, used in the "Amending clauses" of the act instead of the regular title.

When code sections are to be amended the Code is named in each clause, as:

"Sec. 4. Section three hundred and twenty-eight of the Political Code is hereby amended to read as follows:

328. No Act or —.

The sections of an amending act are numbered "Section 1", "Sec. 2, Sec. 3" and so on. The sections of the act or code amended are indicated as they are in the amended act, the sections of acts being designated by their number preceded by "Sec." and the sections of codes being designated by the number alone.

#### URGENCY MEASURES

An amendment to Article IV, Section 1, of the Constitution adopted 1911 requires that:

"No act passed by the legislature shall go into effect until ninety days after the final adjournment of the legislature which passed such act, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the state, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of all of the members elected to each house. Whenever it is deemed necessary for the immediate preservation of the public peace, health or safety that a

law shall go into effect, a statement of the facts constituting such necessity shall be set forth in one section of the act."

In urgency measures the last section of the act usually contains the "urgency clause." When the act makes an appropriation for current expenses the section is usually as follows:

"Sec. —. Inasmuch as this act provides an appropriation for the usual current expenses of the state, it is hereby declared to be an urgency measure and shall, under the provisions of Art. IV, Sec. 1 of the Constitution, take effect immediately."

The usual form of the section in acts involving public peace, health and safety is as follows:

"Sec. —. This act is hereby declared to be an urgency measure, necessary for the immediate preservation of the public peace, health and safety, within the meaning of Art. IV, Sec. 1, of the Constitution and shall take effect immediately.

"The facts constituting such urgency are as follows: . . ."  
(here state the conditions actually constituting the reason for the urgency of the measure).

The legislature never in practice declares an act to be an urgency measure unless it is clearly such.

#### SHORT TITLE

The section providing a short title is usually in the following form:

"Sec. —. This act shall be known as the — Act."

It is better practice to place the short title at the beginning of the act than at the end where it may be overlooked.

#### REPEALS

Whenever a bill provides for the change of any known statutes it is always best practice to provide specifically for the repeal of the law repealed by implication. Failure specifically to repeal former conflicting statutes is the most common reason for conflicting statutes. It is also possible that unless the conflict is irreconcilable the new statute may be interpreted as a modification and continuation of the old law, thus defeating the purpose of the amendment.

There is a general repealing clause which is often found in the statutes in the following form:

"Sec. —. All acts or parts of acts in conflict with this act are hereby repealed."

This section probably serves no useful purpose and should therefore not be used. It has been definitely decided that the use of this

clause in the statutes of the United States, Illinois and Oregon add nothing to the act.<sup>63</sup>

Another special clause which appears frequently, especially in longer acts, is sometimes called the "constitutionality clause". It usually appears in the following form:

"Sec. —. If any section, subsection, sentence, clause or phrase of this act is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional."

The general rule regarding the separability of provisions which are constitutional and those which are not is probably unaffected by this section and whenever part of an act is unconstitutional and the remainder of the act is separable, the separate part will remain effective whether this clause has been inserted in the act or not.

An act or section which has been repealed is not revived by the repeal of the repealing act<sup>64</sup> and the repeal of an act which was previously repealed does not imply that it had continued in force.<sup>65</sup> An act purporting to amend a section of a repealed act is void.<sup>66</sup>

#### APPROPRIATION BILLS

The Governor is directed by Article IV, section 34, of the constitution, as amended in 1922, to include in the budget a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him and all expenditures for the state institutions, departments, etc. Any other appropriations are properly made by appropriation bills, but no such bill may contain more than one item of appropriation which shall be "for a single and certain purpose therein expressed." This provision does not require minute subdivision of the appropriations, for example one bill may provide for the purchase of land and erection of buildings thereon.<sup>67</sup>

Appropriations may be made in any bill to which the appropria-

<sup>63</sup> *Great Northern Ry. Co. v. U. S.* (1907) 155 Fed. 945, 84 C. C. A. 93; *Struthers v. People* (1904) 116 Ill. App. 481; *State v. County Court of Malheur Co.* (1909) 54 Ore. 255, 101 Pac. 907.

<sup>64</sup> Cal. Pol. Code, § 328.

<sup>65</sup> Cal. Pol. Code, § 4504.

<sup>66</sup> Cal. Pol. Code, § 330.

<sup>67</sup> *People v. Dunn* (1889) 80 Cal. 211, 22 Pac. 140.

tion properly relates or may be made by special act. A good form of section appropriating money follows:

“Sec. —. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated the sum of — dollars to be expended under the direction — for —.”

#### CLAIM BILLS

The courts have held that unless an appropriation bill shows on its face that the purpose for which the appropriation is made is unconstitutional it will be presumed to be valid.<sup>68</sup> The legislature has taken advantage of this fact and in passing laws making appropriations to private parties a particular form of bill is used, which since it does not state the purpose of the appropriation, is not open to question by the courts and leaves the final responsibility of determining the matter with the legislature.

The form used for these “claim bills” is as follows:

“An act to pay the claim of ——— against the State of California.

*The People of the State of California do enact as follows:*

Section 1. There is hereby appropriated, out of any money in the state treasury, not otherwise appropriated, the sum of — dollars to pay the claim of — against the State of California.”

#### RESOLUTIONS

Despite the requirement that all laws shall be passed by bill, resolutions fill an important place in legislation. They are used in proposing constitutional amendments, in approving city or county charters, in relations with the federal government, and in regulating the affairs of the houses of the legislature. Resolutions, except those approving charters or charter amendments, are not in general subject to constitutional regulation as to form and in practice are not so well standardized as bills.

The usual kinds of resolutions are joint resolutions, concurrent resolutions, those proposing constitutional amendments and Senate and Assembly resolutions. Resolutions approving charters or charter amendments are classified as concurrent resolutions but their form is regulated in detail by the constitution and for the purpose of drafting they belong to a distinct class. Joint resolutions are

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<sup>68</sup> Conlin v. Board of Supervisors (1893) 99 Cal. 17, 33 Pac. 753; Bourn v. Hart (1892) 93 Cal. 321, 28 Pac. 951; Rankin v. Colgan (1891) 92 Cal. 506, 28 Pac. 673; Stevenson v. Colgan (1891) 91 Cal. 649, 27 Pac. 1089.

used when the subject relates to matters connected with the federal government, all other resolutions in which the two houses join are concurrent resolutions.<sup>69</sup>

A resolution usually consists of four parts; a title, the preamble, the resolving clause, and the resolutions.

The title consists of the name of the kind of resolution and a "relating clause" similar to those used in bills.

The preamble to resolutions may consist of several clauses each preceded by the word "whereas", which may constitute an exposition or an argument. Resolutions appear to be often burdened by long and bombastic preambles which detract from, rather than add to, the effectiveness of the resolution.

A good form of resolving clause for a concurrent resolution is as follows:

*"Resolved by the Senate, the Assembly, concurring."*

In the case of an Assembly concurrent resolution the names of the houses are interchanged.

In joint resolutions, since they deal with relations with the federal government, it is better practice to include the name of the state in the resolving clause. A good form of resolving clause for joint resolutions is:

*"Resolved by the Senate and Assembly of the state of California jointly."*

The following resolution is an example of a well written resolution:

*"Senate Joint Resolution No. ——. Relative to the proposed formation of a bridge and highway district for the purpose of constructing a bridge across the Golden Gate."*

WHEREAS, The War Department of the government of the United States has recently approved the general plan placed before it for the construction of a bridge to span the Golden Gate; and

WHEREAS, Steps are now about to be taken for the formation of a bridge and highway district under the laws of the State of California for the purpose of constructing said bridge and the approaches thereto; and

WHEREAS, Said bridge will, when completed, form a much needed link in the chain of the famous highway system of the State of California, and afford service, convenience and economy of transportation to its citizens; and

WHEREAS, Said bridge will be a monument to engineering skill and public enterprise; now, therefore, be it

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<sup>69</sup> Joint Rule No. 5.

*Resolved by the Senate and the Assembly of the State of California jointly*, That we endorse the project of forming a bridge and highway district, as an agency of the State of California, for the purpose of building said bridge, and urge upon the boards of supervisors of the respective counties affected by the proposed district the desirability and urgency of passing the necessary resolutions and ordinances to effect the speedy organization of such bridge and highway district; and be it further

*Resolved*, That we extend to the War Department of the United States Government the appreciation of the Senate and Assembly of the State of California for its favorable and helpful consideration in the past, and most respectfully urge that such further consideration be extended to the project as will enable its early completion; and be it further

*Resolved*, That the secretary of the Senate be and he is hereby directed to forward a copy of this resolution to the secretary of war of the United States."

A constitutional amendment differs from an ordinary concurrent resolution principally in that it contains what might be called a proposing clause. The following constitutional amendment may serve as a model of form:

*"Senate Constitutional Amendment No. —. A resolution to propose to the people of the State of California an amendment to the constitution of said state by adding section two and three-fourths to article two of said constitution, relating to election to nonpartisan office at a primary election.*

*"Resolved by the Senate, the Assembly concurring*, That the legislature of the State of California, at its forty- — regular session, commencing on the — day of January, one thousand nine hundred twenty- —, two-thirds of all the members elected to each of the two houses voting in favor thereof, hereby propose to the people of the State of California that a new section be added to article two of the constitution of this state to be numbered section two and three-fourths, and to read as follows:

*"Sec. 2¾. Any candidate for a judicial, school, county, township, municipal or other nonpartisan office who at a primary election shall receive a majority of all the votes cast for candidates for the office for which such candidate seeks nomination, shall be elected to such office."*

A Senate or Assembly resolution rarely contains a preamble and the resolving clause is simply "*Resolved*".

Resolutions approving charters or charter amendments are too complicated to be treated in an article of this scope.

## AUTHORITY FOR FORMS

The forms used in this article may not be the only proper forms nor necessarily the best, but they are the forms used by the Legislative Counsel Bureau and the standard to which most bills are made to conform. Before being introduced, bills are referred to the Legislative Counsel Bureau, who under the joint rules of the Legislature are required to pass upon their form.<sup>70</sup>

*Paul Mason.*

Sacramento, California.

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<sup>70</sup> Joint Rule No. 10.