

ALICE MODEL LAW DRAFTING MANUAL

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American Legislative and Issue Campaign Exchange

TABLE OF CONTENTS

INTRODUCTION	1
<u>MODEL LAW ELEMENTS</u>	
OVERVIEW OF MODEL LAW ELEMENTS	1
EXPLANATION OF CORE ELEMENTS	2
<u>FORMATTING RULES & TEMPLATE</u>	
FORMATTING RULES	9
FORMATTING TEMPLATE	11
<u>DRAFTING RULES</u>	
DRAFTING RULES INTRODUCTION	13
<u>PART 1. GENERAL</u>	
RULE 101. SENTENCE STRUCTURE	13
RULE 102. SUBJECT OF SENTENCE	14
RULE 103. TENSE, MOOD, NUMBER, AND VOICE	14
RULE 104. GENDER	14
RULE 105. CONSISTENCY	15
RULE 106. BREVITY	15
RULE 107. PUNCTUATION	15
RULE 108. CAPITALIZATION	16

<u>PART 2. WORDS AND PHRASES</u>	
RULE 201. CHOICE OF WORDS AND PHRASES IN GENERAL.	16
RULE 202. LIMITATIONS, EXCEPTIONS, AND CONDITIONS.	17
RULE 203. USE OF "SHALL", "MAY", AND "MUST".	19
RULE 204. USE OF "MAY NOT" AND "MUST NOT".	19
RULE 205. USE OF "SHOULD" AND "OUGHT".	20
<u>PART 3. DEFINITIONS</u>	
RULE 301. DEFINITIONS: FORMULATION AND USE.	20
<u>PART 4. STRUCTURE AND FORMAT</u>	
RULE 401. SHORT TITLE OF ACT.	22
RULE 402. SECTIONS AND LOWER SUBDIVISIONS.	22
RULE 403. ORDER OF ARRANGEMENT OF PROVISIONS OF ACT.	24
RULE 404. SERIES AND TABULATIONS.	25
RULE 405. REFERENCES TO OTHER PROVISIONS OF ACT.	26
RULE 406. USE OF BRACKETS.	27
RULE 407. POLICY OPTIONS.	27
<u>PART 5. PROHIBITED AND QUESTIONABLE PROVISIONS</u>	
RULE 501. PURPOSE CLAUSE.	29
RULE 502. PROVISION DUPLICATING GENERAL PROVISIONS OF LAW.	29
RULE 503. CREATION OF AGENCY OR OFFICE.	30
<u>PART 6. STANDARD SECTIONS</u>	
RULE 601. SAVINGS AND TRANSITIONAL PROVISIONS.	30
RULE 602. SEVERABILITY.	31

Introduction

ALICE (American Legislative and Issue Campaign Exchange) works to provide legislative content in a simple, user-friendly format. We want our audience to be able to get the gist of a model law quickly and, if interested, be able to start immediately on the process of moving toward policy enactment. But we also like to be professional in bill language and documentation, and nuanced in consideration of alternative means to progressive policy ends.

This document provides a description and explanation of the different elements of an ALICE model law, along with style, formatting, and drafting rules that serve as a handy reference when drafting a model law.

Overview of the elements of an ALICE model law

Think of an ALICE model law as having two broad parts, here called “core” and “supports.” Together, the hope is that they both enable a legislator or other user to get started quickly in making a suggestion for reform and to be effective in public argument for it. The “supports” are the additional materials commonly needed in public argument. That’s potentially unlimited, of course, and naturally subject to change over time, as the terms of that public argument shift. But, briefly, supports mean written arguments supporting the policy topic or analyzing its potential impacts, legal commentary around barriers to implementation, and links to additional information – whether examples of enactment, fiscal estimates, policy reports, talking points, websites, or other online resources. While creating support materials is a welcome contribution, this drafting guide focuses on the core elements of a model law.

Core Elements

The core elements provide a user with just enough information to understand the aim and content of a law, and to get started on their local process of drafting and introduction. They include the elements typically seen in a model law (i.e. summary, definitions, suggested language, etc.) as well as components that provide the basic rationale of the law, alternative model language for key provisions, and links to sources used directly in its composition. While not every model law will include all of the core elements, the list below provides the most likely components.

Core Elements

1. Model law title
2. Rationale
3. Summary
4. Short title
5. Definitions
6. Scope, applicability, exceptions, exclusions [if needed]
7. Substance
8. Prohibitions and penalties [if needed]
9. Savings and transitional provisions [if needed]
10. Severability [if needed]
11. Repeals (and amend) [if needed]
12. Effective date [if needed]
13. Policy options
14. Sources

Explanation of Core Elements

For many, the “elements” of an ALICE model law may be unfamiliar. The purpose of this section is simply to explain them a bit more, and give some examples. Most of the examples below are taken either from ALICE model laws or the Council of State Governments’ *Suggested State Legislation*. Please note: the suggested order of arrangement of provisions is subject to the general requirement that an act be organized in the format most useful to the reader, and therefore the order of elements 6-10 are modifiable.

1. Model law title. The title indicates the policy topic or reform. The title should begin with "ALICE Model" and end with "Act" or “Ordinance”, or, if awkward or unwieldy, "ALICE Model law [on] [for] [to] [relating to] . . .”

Examples:

ALICE Model Divestment from Fossil Fuel Companies Ordinance

ALICE Model Family Sick Leave Act

ALICE Model In-state Tuition for Undocumented Immigrants Act

ALICE Model Minimum Wage Act

ALICE Model Net Metering Act

2. Rationale. This section describes the need or problem this model law addresses, and how and why it does so. Often the rationale will be the only way your arguments for enactment will be presented to legislators contemplating introducing it or voting for it (or opposing it). Unlike the summary, which is similar to those attached to an introduced bill draft, the rationale is more like the cover letter legislators and others circulate requesting support for their proposals. It needs to present your position for enactment in a clear and direct manner. Tell the readers why they need to take the time and effort to understand it and work to enact it.

Example:

Rationale:

Raising the minimum wage is one of the simplest, most effective ways to both improve the lives of the working poor and increase consumer spending. The current federal minimum wage of \$7.25 per hour is too low to support a single worker, much less a family. Adjusted for inflation, the federal minimum wage is now more than \$3.00 below its 1968 level. At that time, the federal minimum wage was equal to about 50% of the average hourly wage for production workers. Now it is less than 40%, even though the average hourly wage for production workers adjusted for inflation is lower now than it was then. Moreover, current minimum wage workers are on average older and have more work experience than 40 years ago.

Raising the minimum wage to \$10 per hour would restore lost purchasing power to minimum wage workers, bring dignity to low wage work by allowing low-wage workers to earn enough to

support themselves, and restore the historical relationship between minimum wages and average wages in the economy. Recent research confirms that raising the minimum wage . . .

3. Summary. This section describes the main components and actions of the model law.

Example:

Summary: *This act provides that certain students are entitled to exemption from nonresident tuition and fees at state institutions of higher education and provides such students access to state financial aid. Authorizes exemption from paying nonresident tuition and fees when the student: attended a primary or secondary school in the state for at least two years before graduating or leaving school; graduated from a high school in the state or attained equivalent thereof; registered as an entering student or enrolled as a continuing student at a state institution of higher education; and if the student is without lawful immigration status, provided an affidavit stating that the student will file for legal immigration status as soon as the student is eligible. Requires a change of determination and repayment or reimbursement . . .*

4. Short title. (optional) The short title is distinguished from the longer, more detailed title that is often included in bills as they are introduced in state legislatures. It can be “catchy” or not, but if used, needs to accurately convey the basic substance of the act.

Examples:

This [act] may be cited as the “Low-profit Limited Liability Company Act”.

This [act] may be cited as the “State Dream Act”.

This [act] shall be known as the “Death Penalty Racial Justice Act”.

The [ordinance] shall be known as the “Municipal Divestment from Fossil Fuels Ordinance”.

5. Definitions. This section provides formal definitions for terms used in the model law, in order that it is understood and interpreted as precisely as possible. The custom is to define a term (whether a single word or a phrase) if: (1) it has different common meanings and it is necessary to preclude any unintended construction of the act supported by a contradictory meaning; (2) it’s used in the model law in a sense that is broader or narrower than its common usage; or (3) use of the defined term will avoid excessive repetition of a phrase and improve the clarity of the act. Drafters should use the defined term, not its definitional language, whenever appropriate in the text of the model law.

Examples of clarifying terms:

“Asset manager” means the individual or firm endowed with the responsibility to physically invest the public fund’s assets.

“Coal extraction activities” means exploring for, extracting, processing, transporting, or wholesale selling or trading of coal, the facilitation of such activities, and the provision of supplies or services in support of such activities.

“Company” means a sole proprietorship, organization, firm, association, corporation, utility, partnership, venture, franchisor, franchisee, trust, conglomerate, holding company, or other entity, including its wholly owned subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage.

“Company” means a person other than a natural person that exists for profitmaking purposes or to otherwise secure economic advantage.

“Person” means a corporation, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity. The term does not include an individual or a public corporation or government, governmental subdivision, agency, or instrumentality.

Examples of avoiding excessive repetition:

“Exchange” means the state [Health Benefit Exchange] established by this [act].

“Center” means the [Center for Diabetes Prevention and Health Improvement].

Definitions can also be used to exclude a meaning, but the definition section should not be used to create substantive law, such as scope, applicability, exceptions and exclusions (see next section).

Example excluding a common meaning:

“Fish” includes both game fish and nongame fish, but does not include thaleichthys pacificus, commonly known as smelt.

6. Scope, applicability, exceptions, exclusions. (if needed) This section defines the scope of the model law and limits its applicability.

Examples:

This [ordinance] applies to all monies directly or indirectly held by public funds including, but not limited to, trustee-directed pension plans, short-term accounts, endowments, and foundations.

This [act] applies to an individual who meets all of the following requirements:

(1) Attendance of a primary or secondary school for [two] or more years in this state before receiving a high school diploma or leaving school before receiving a high school . . .

This [act] does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this.

This [act] applies to all retirement programs and retirement systems, except: (1) a retirement program that is unfunded and is maintained by a public employer solely for the purpose of providing deferred compensation for a select group of management employees or employees who rank in the top [five] percent of employees of that employer based on . . .

7. Substance. This section includes substantive requirements listed in order of time, importance, or some other logical sequence. These make up the substantive core of the model law, by defining required

actions, powers, authority, duties, and prohibited actions. The principal functions of an act are to (1) impose a duty or obligation, (2) confer a power, create a right, or grant a privilege, and (3) prohibit conduct.

Examples of requirements:

Within [ninety] days after the effective date of this [ordinance], a public fund shall make its best efforts to identify all fossil fuel companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future.

Every person who builds a new single-family detached residence for which a buyer is under contract shall offer the buyer the opportunity to select one or more of the following water-smart home options for the residence . . .

To be a low-profit limited liability company, a company shall state in its articles of organization that it is a low-profit limited liability company and be organized for a business purpose that satisfies, and at all times operates to satisfy, each of the requirements under . . .

Examples of authority:

An individual who meets the requirements in Section 3 shall be eligible to apply for, and participate in, any student financial aid program administered by the State of [name of state] to the full extent permitted by federal law.

A community solar garden may be owned by a subscriber organization, whose sole purpose shall be beneficially owning and operating a community solar garden. The subscriber organization may be any for-profit or nonprofit entity permitted by state law. The community solar garden may also be built, owned, and operated by a third party under contract with the subscriber organization.

If a governing body determines that it is necessary for the best interests of the public to promote access to postsecondary education, the governing body may, by resolution, declare its intention to establish a promise zone.

Examples of new agency or program:

The [Name of new department] is under the supervision and control of a director, who is responsible for the performance of the duties, functions, and powers of the department.

The Governor shall appoint the Director of the [Name of new department], who holds office at the pleasure of the Governor.

There is hereby established in the [department of agriculture] a program to award grants to nonprofit organizations for the purpose of collecting and distributing surplus agricultural commodities grown and raised in this state to food banks and other charitable organizations that serve needy or low-income individuals.

8. Prohibitions and penalties. (if needed) This section defines prohibited actions that are subject to penalties and sanctions. Prohibited actions can be punishable as a criminal offense or a civil penalty.

Example of prohibitions:

A written or oral contract or agreement arising out of an employment relationship that prohibits, impairs, restrains, restricts, or places any condition on a person's ability to seek, engage in, or accept any type of employment or independent contractor work, for any period of time after an employment relationship has ended, is void and unenforceable with respect to that restriction.

Public and private postsecondary educational institutions, and their employees and representatives, shall not request or require that a student or applicant disclose any password, account name, or other related account information in order to gain access to any student's or applicant's personal account, social networking site profile, or other online service by way of an electronic communication device . . .

An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

- (1) give any materially false or misleading information or make a materially false promise or representation;*
- (2) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or*
- (3) furnish anything of value to any . . .*

Examples of penalties:

A person who, through the commencement of a civil action, attempts to enforce a provision of a contract or agreement that is void under subsection (a) shall pay attorney fees and costs incurred by an affected employee or individual as a result of the civil action.

A person is guilty of a crime and upon conviction may be imprisoned for not more than [], fined not more than [], or both, for a violation of [subsection] with respect to . . .

The [Secretary of State] may assess a civil penalty against an athlete agent not to exceed [\$25,000] for a violation of this [act].

Example of combined prohibition and penalties:

Except as otherwise provided in subsection (b), a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a [[felony] and upon conviction is subject to a fine not exceeding [\$50,000] or imprisonment not exceeding [five] years, or both][class[] felony].

9. Savings and transitional provisions. (if needed) This section clarifies the effect of the model law on existing relationships. It often defines the time period to which the bill applies, thereby exempting actions taken before enactment (such as obligations of contracts).

Examples:

The rights, duties, and interests flowing from a transaction, certificate of title, or record relating to a vessel which was validly entered into or created before [the effective date of this

[act]] and would be subject to this [act] if it had been entered into or created on or after [the effective date of this [act]], remain valid on and after [the effective date of this [act]].

This [act] does not affect an action or proceeding commenced before [the effective date of this [act]].

Transactions entered into before this [act] takes effect and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this [act] as though the amendment, repeal, or modification had not occurred.

10. Severability. (if needed) This section provides that if any part of the model law is held unconstitutional or otherwise invalid, the remainder shall not be affected. (This is rarely used and some states have language automatically applying a severability provision to all acts passed.)

Example:

If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

11. Repeals and amend. (if needed) This section can be included if existing law must be repealed or amended as a result of the enactment of the model law.

Example:

The following acts and parts of acts are repealed:

12. Effective date. (if needed) This section provides the date(s) upon which law becomes effective. Sections of an act can have different effective dates if need be or the act as a whole can take effect on the same date (or a period of time following enactment).

Examples:

This [ordinance] shall take effect upon passage.

This [act] shall take effect [twelve months] after passage.

This [act] takes effect on January 1, 20xx.

13. Policy options. (optional) These would, for key components, indicate available alternative model language consistent with the underlying purposes of the act. Policy options should be offered within the footnotes of the model law and include a short note or description of the option. A bracketed and “footnoted” title of the policy option should be placed within the main substance of the model law to indicate where the language would appear if included.

Examples:

[Policy Option: Access to State Financial Aid.¹]

Footnote:

¹In order to allay concerns that allowing undocumented student access to state aid will result in loss of state aid for qualified state residents, the legislature may consider the following language:

The number of financial aid awards received by [name of state] resident students from financial aid programs administered by the [governing body of the institutions of higher education in the state] shall not be diminished as a result of the application of [subsection]. [2011 California Assembly Bill 131](#).

[Policy Option: Climate Risk in Credit Ratings.¹]

Footnote:

¹Credit rating agencies have historically failed to account for the impact of climate risk in their credit ratings, and as such, investors are not fully aware of the risks inherent in fossil fuel investments. Model language:

CLIMATE RISK IN CREDIT RATINGS.

(a) The [city treasurer] shall urge credit rating agencies to incorporate climate risks into their credit ratings for publicly held companies . . .

14. Sources. Citations to sources used in drafting this particular ALICE model law, including preexisting models and existing state law.

Examples:

National Employment Law Project - <http://www.nelp.org/page/-/Justice/2011/WinningWageJustice2011.pdf?nocdn=1>

2010 New York Senate Bill 8380 -

<http://assembly.state.ny.us/leg/?sh=printbill&bn=S08380&term=2009>

2010 Washington Chapter 42 (House Bill 3145) -

<http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202010/3145-S.SL.pdf>

Formatting Rules

Drafters should observe the following formatting guidelines while drafting model laws. These guidelines supplement the drafting rules.

1. Create the act in Word. Do not convert the act to PDF format.
2. Use the Times New Roman 12 font for the bill text, policy options and comments; **16 font** for the general title.
3. Double-space the text of an act/bill. Single-space rationale, summary, policy options and comments.
4. Number each page at the center of the bottom of the page. Use Arabic numbers to number the pages of the text of the act. Use lower case roman numerals to number preliminary pages.
5. Number sections sequentially from **SECTION 1**, using Arabic numerals. Do not skip numbers. If articles are used, number sections in Article 1 from **SECTION 101**; in Article 2, from **SECTION 201**; etc. Following the same numbering scheme for subsequent articles. Do not skip articles. Use boldface for section numbers and boldface and solid capitals for headings. Place a period and two spaces after each section number and a period after each heading.
6. Do not hyphenate a word that would not otherwise be hyphenated solely to distribute the word between two lines.
7. Do not underscore, italicize, or use boldface for the text of an act, except section numbers and headings, which should be in boldface. Policy options and comment headings should be in boldface and initial capitals.
8. Policy options and drafter comments should be placed in a footnote. Drafter explanations/notes should be in normal font and optional model law language or exemplary bill examples should be italicized and block indented. Hyperlinks to bill examples should be in the format: "Year" "State" "Legislative Chamber" "Bill or Act Number".
9. Do not skip lines to start a new page with a new section unless the last line contains no more than the section number and heading. Run all material continuously without page break.
10. Tabulate subdivisions of sections as follows:
 - a. If a section has no subsections [(a), (b), (c)], after setting one tab for "**SECTION**", begin the text of the section two spaces after the period ending the section heading. Do not insert a "return" or "tab" before beginning the text of the section; let it wrap to the next line.

Illustration

[1 Tab] **SECTION [3]. CREATION OF AGENCY.** There is created

- b. If a section has no subsections [(a), (b), (c)], but has paragraphs [(1), (2), (3)], *e.g.*, a definitions section or other list, indent each paragraph one tab.

Illustration

[1 Tab] **SECTION [1]. DEFINITIONS.** In this [act]:

[1 Tab] (1) "Organization" means

[1 Tab] (2) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

[1 Tab] (3) "State" means a

c. If a section has subsections [(a), (b), (c)], paragraphs [(1), (2), (3)], and subparagraphs [(A), (B), (C)], indent each subdivision one, two, and three tabs, respectively.

Illustration

[1 Tab] **SECTION [4]. POWERS; DUTIES.**

[1 Tab] (a) The manager may prescribe requirements for complying with

[1 Tab] (b) Each member shall:

[2 Tabs] (1) inform the manager, or a person designated by . . . ;

[2 Tabs] (2) keep a record of . . . ; and

[2 Tabs] (3) report any change in:

[3 Tabs] (A) marital status, including divorce, separation, . . . ;

[3 Tabs] (B) occupation; and

[3 Tabs] (C) residence.

d. Avoid use of clauses [(i), (ii), (iii)] and subclauses [(I), (II), (III)]. If used, indent each clause four tabs and each subclause five tabs.

e. Always bring the second and succeeding lines of text of a subdivision back to the left margin of the page. Do not block indent, except for model/exemplary bill language in policy options.

Formatting Template

The suggested order of arrangement of provisions is subject to the general requirement that an act be organized in the format most useful to the reader. [See Rule 403.] ALICE has also created a Microsoft Word template that applies the style and formatting indicated below.

Policy Topic [Times New Roman, 16 font, left justified, no tabs]

Rationale: [Times New Roman, 12 font, single-spaced, left justified, no tabs]

Summary: [Times New Roman, 12 font, single-spaced, left justified, no tabs]

SECTION 1. SHORT TITLE. [See Rule 401 for discussion.] [Times New Roman, 12 font, double-spaced, left justified, 1 tab]

SECTION 2. DEFINITIONS. [See Rule 301 for discussion.] [Times New Roman, 12 font, double-spaced, left justified, 1 tab] [*Note: put all terms in alphabetical order*]

(1) “[*First term*]” [Times New Roman, 12 font, double-spaced, left justified, 1 tab]

(A) “[*First term*]” option 1 definition [if definition has more than one meaning]
[Times New Roman, 12 font, double-spaced, left justified, 2 tabs]

SECTION 3. SCOPE, APPLICABILITY, EXCEPTIONS, AND EXCLUSIONS.
[Times New Roman, 12 font, double-spaced, left justified, tabs based on level – see below]

SECTION 4. SUBSTANCE. [Times New Roman, 12 font, double-spaced, left justified, tabs based on level – see below]

(a) [Refer to as “subsection (a)”]

[Return to margin]

(1) [Refer to as “paragraph (1)”]

[Return to margin]

(A) [Refer to as “subparagraph (A)”]

[Return to margin]

(i) [Refer to as “clause (i)”]

[Return to margin]

(I) [Refer to as “subclause (I)”]

[Return to margin]

[Policy Option: *[Policy Option Title]*.¹

SECTION 5. PROHIBITIONS AND PENALTIES. [Times New Roman, 12 font, double-spaced, left justified, tabs based on level – see Substance section above]

SECTION 6. SAVINGS AND TRANSITIONAL PROVISIONS. [See Rule 601 for discussion.] [Times New Roman, 12 font, double-spaced, left justified, tabs based on level – see Substance section above]

SECTION 7. SEVERABILITY. [See Rule 602 for discussion.] [Times New Roman, 12 font, double-spaced, left justified, tabs based on level – see Substance section above]

SECTION 8. REPEALS. [Times New Roman, 12 font, double-spaced, left justified, tabs based on level – see Substance section above]

SECTION 9. EFFECTIVE DATE. [Times New Roman, 12 font, double-spaced, left justified, tabs based on level – see Substance section above]

Model law Sources: [Times New Roman, 12 font, single-spaced, left justified, no tabs]
[FORMAT: Bill Number (“Year” “State” “Legislative Chamber” “Bill Number”) or Organization/Agency Name - [Hyperlink to source materials.](#)]

¹ Explanation of policy option. [Times New Roman, 12 font, single-spaced, left justified, no tabs]

Policy option model language [Times New Roman, *italics*, 12 font, single-spaced, left justified, 1 tab, block indent]
– [Hyperlink to source](#) [Times New Roman, 12 font, single-spaced, left justified, 1 tab, block indent] [FORMAT: “Year” “State” “Legislative Chamber” “Bill Number”]

DRAFTING RULES

The following is excerpted and adapted from the National Conference of Commissioners on Uniform State Laws, Drafting Rules for Uniform and Model Acts, July, 2006.² We've excluded rules not relevant to ALICE, made numbers continuous after excisions, made minor changes to some of the rules, and added Rule 407 – but the majority of the NCCUSL language has been left intact.

INTRODUCTION

The following drafting rules are not intended to be exhaustive guidelines for good legislative drafting. They must be supplemented by a variety of other rules, such as those for spelling, grammar, usage, compounding, punctuation, capitalization, and numerals. In situations not covered by these rules, it is recommended that the drafter use the most recent edition of the *Style Manual* of the United States Government Printing Office for guidance. That publication is on the Internet at <http://www.gpoaccess.gov/stylemanual>. For generally accepted meanings and standard usage of words, a reputable dictionary should be consulted.

The essentials of good legislative drafting are accuracy, brevity, clarity, and simplicity. The purpose and effect of an act should be evident from its language. There should never be a provision explaining the purposes of the legislation in the text of the act.

Choose words that are plain and commonly understood. Use language that conveys the intended meaning to every reader. Omit unnecessary words. Use correct grammar.

The principal functions of an act are to (1) impose a duty or obligation, (2) confer a power, create a right, or grant a privilege, and (3) prohibit conduct. Occasionally, an act may establish an agency or other entity. An act is often subject to conditions, qualifications, limitations, or exceptions. The clarity and precision of the act are enhanced by plain and orderly expression of those functions.

PART 1. GENERAL

RULE 101. SENTENCE STRUCTURE.

Use short, simple sentences. Avoid excessive use of dependent clauses, parallel clauses, compound sentences, and other complex sentence structures. Several short, simple sentences are preferable to one long, involved sentence.

² NCCUSL has since come out with an updated drafting manual. "The manual is considered a living document by the Committee on Style, and a much-improved, user friendly Style Manual." (NCCUSL's Committee on Style) The 2012 version of the NCCUSL drafting rules is available:

http://www.uniformlaws.org/Shared/Publications/DraftingRules_2012.pdf

Comment

An act should be understandable. Complex sentence structure often makes a statute ambiguous or its meaning obscure. A sentence that expresses a single thought is easier for the reader to understand.

RULE 102. SUBJECT OF SENTENCE.

Unless it is clear from the context, use as the subject of each sentence the person upon which a duty, obligation, or prohibition is imposed or to which a power, right, or privilege is granted.

RULE 103. TENSE, MOOD, NUMBER, AND VOICE.

(a) Use the present tense and the indicative mood.

(b) State a condition precedent in the perfect tense if its occurrence is required to have been completed.

(c) Unless there is a compelling reason, use the singular rather than the plural. The singular includes the plural.

(d) Use the active voice. Avoid use of the passive voice. (See Rule 104 for exception to rule.)

Comment

A statute is regarded as speaking in the present and constantly. The use of "shall" in imposing a duty or prohibition does not indicate the future tense. Even if an action is required on a specified future date, the form of expression is not in the future tense.

In speaking in the present, a circumstance putting a provision of an act in operation, if continuing to exist, is in the present tense. Example: "A victim who is injured may bring an action." If the triggering circumstance has been completed, it is expressed in the perfect tense, never in the future or future perfect tense. Example: "If the issue has been litigated, the claimant may not recover."

The singular is simpler and clearer than the plural. For example, "a possibility of reverter is subject to a limitation in the document that creates it." is preferable to "possibilities of reverter are subject to limitations in the documents that create them." However, the plural may be used to comply with Rule 104 if its use is the least awkward solution.

The passive voice may be used to comply with Rule 104.

RULE 104. GENDER.

Draft in a gender-neutral form unless the subject must be a member of a particular gender, such as the mother or father of a child. Repeat the noun or use the plural form, selecting the least awkward

solution. The passive voice may be used if the subject remains clear. Do not use phrases such as "he or she", "his or her", or "himself or herself".

Comment

Virtually all states draft legislation in a gender-neutral form.

RULE 105. CONSISTENCY.

(a) Be consistent in the use of language throughout an act. Do not use the same word or phrase to convey different meanings. Do not use different language to convey the same meaning.

(b) Be consistent in the arrangement of comparable provisions. Arrange sections containing similar material in the same way.

Comment

Consistency helps prevent different interpretations of similar provisions.

RULE 106. BREVITY.

(a) Omit needless language.

(b) If a word has the same meaning as a phrase, use the word.

(c) Use the shortest sentence that conveys the intended meaning.

Comment

In construing an act, a court considers each word and tries to give it meaning. Unnecessary language is more likely to mislead than to help.

RULE 107. PUNCTUATION.

(a) Punctuate carefully. Consider rewriting a sentence if a change in punctuation might change its meaning.

(b) Use a comma, followed by "or", to separate the last of a disjunctive series of three or more words, phrases, or clauses in a sentence. Example: "men, women, *or* children".

(c) Use a comma, followed by "and", to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence. Example: "men, women, *and* children".

(d) Use a colon to introduce a list of items. See Rule 404(b), *infra*.

(e) Do not use parentheses or brackets as punctuation. Use parentheses only around numbers or letters to designate subdivisions, as provided in Rule 402(k), *infra*. Brackets have a special significance. See Rule 406, *infra*.

(f) Place a comma or period outside quotation marks unless an entire sentence is contained in quotation marks. Examples: "The name of a limited liability company must contain 'limited liability company' or 'limited company' or the abbreviation 'L.L.C.', 'LLC', 'L.C.', or 'LC'." "The application must contain the following sentence: 'You may cancel this agreement at any time before midnight of the third business day that begins the day after you agree to it.'"

RULE 108. CAPITALIZATION.

(a) Use an initial capital letter when referring to a specific article, part, or section. Use lower case letters when referring to a specific subsection, paragraph, or lower subdivision. Examples: "The application required by *Section 27*. . .". "Except as otherwise provided in *subsection (b)*, . . .".

(b) Use lower case letters for internal references within the same act, article, part, or section. Examples: "An individual who violates a provision of this [*act*] . . .". "The procedures set forth in this [*article*] . . .". "Except as otherwise provided in this *section*, . . .".

(c) Do not capitalize the word "act" when used to refer to the act being drafted.

(d) Do not capitalize the word "state" unless it is part of a proper noun, *e.g.*, "Department of State".

(e) Do not capitalize words that are defined in the act when they are used in the act, unless it is grammatically correct to do so (*e.g.* at the beginning of a sentence).

PART 2. WORDS AND PHRASES

RULE 201. CHOICE OF WORDS AND PHRASES IN GENERAL.

(a) Do not use slang, contractions, abbreviations, legalese, acronyms, or colloquial expressions.

(b) Select short, familiar words and phrases that best express the intended meaning. Examples: Use "after" instead of "subsequent to"; use "before" instead of "prior to".

(c) Do not use both a word and its synonym.

(d) Use a pronoun only if its antecedent is unmistakable. Repeat the noun rather than use a pronoun unless the antecedent is a series of nouns.

(e) Make careful use of possessive nouns.

(f) Do not use "said", "aforesaid", "hereinabove", "aforementioned", "whatsoever", or similar words of reference or emphasis.

(g) Do not use "any", "each", "every", "all", or "some" if "a", "an", or "the" can be used with the same result. Example: "*Each* owner attending the meeting shall sign a registration card."

"Each" is appropriate here only if the failure of an owner to attend the meeting has a legal consequence other than to an individual owner, such as the validity of the meeting. If the only legal consequence is to the owners as individuals, "an" should be used.

(h) Do not use "and/or".

(i) Do not use "deem" to mean "consider". Use "deem" only to state that something is to be treated as true even if contrary to fact.

(j) Do not include "to the provisions of" when referring to a provision of an act. For example, do not say "subject to the provisions of this [act]" or "subject to the provisions of Section 2". Say "subject to this [act]" or "subject to Section 2".

(k) In a section without subsections, and in each subsection of a section, use the indefinite article "a" or "an" to impart particularity to the first mention of a noun indicative of a member of a class or group, or to single out a referent from a class indicated by the noun. Use the definite article "the" or the pronoun "that" or "which" for further references to that noun. Example: "As early as possible before *a* prospective adoptive parent accepts physical custody of *a* minor." Exceptions to this rule are (1) when referring to "the court" and (2) when the first reference to the noun, imparting particularity, is implied. Examples: "*The* court may request that a recipient . . .". "Upon recording of *an* assignment of rents, *the* security interest in rents . . .". Because an assignment of rents creates a security interest, reference to a particular assignment of rents implies the first reference, imparting particularity to "security interest".

(l) If a noun is compound, even if defined, use the complete term in the first mention of the term in a subsection or in a section without subsections. In later references to that term in the same subsection or section without subsections, use only the principal noun of the term. Example: "*A qualified patient* may make decisions regarding life-sustaining treatment so long as *the patient* is able to do so."

RULE 202. LIMITATIONS, EXCEPTIONS, AND CONDITIONS.

(a) A limitation, exception, or condition to the applicability of a provision by another provision of an act should be placed at the beginning of the subordinated provision, so that it will be readily noticed. The subordinated provision should reference the dominant provision. Examples: "Except as otherwise provided in Section 201(a), . . .". "Subject to Section 201(a), . . .".

(b) Use the phrase "except as otherwise provided" to indicate that the dominant provision referred to, at least in some situations, limits or qualifies the rule stated in the subordinated provision. Use the phrase "subject to" to indicate that the dominant provision, though not inconsistent with the subordinated provision, provides other criteria that should be considered in construing the subordinated provision.

(c) If a provision states a default rule that is subordinate to a contrary provision in a private document, such as a contract or instrument, reference to the document should be made at the beginning of the provision. Examples: "Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust." "Except as otherwise provided in the agreement, . . .".

(d) Avoid using "notwithstanding" to express a limitation of a general provision of the same act. Do not say "(b) Notwithstanding subsection (a) . . .". Instead, begin subsection (a) with "Except as otherwise provided in subsection (b), . . ." or "Subject to subsection (b) . . .".

(e) If the application of a provision of an act is limited by the occurrence of a condition that may never occur, use "if" to introduce the condition in the subjunctive mood, not "when" or "where". If the condition is certain to occur, use "when". Example: "*When* this section takes effect, the court shall dismiss all pending proceedings." If the condition may occur more than once with respect to the object to which it applies, use "whenever". Example: "*Whenever* an officer receives a call, the officer shall note the time in the log." Use "when" to indicate a particular time. Use "where" to indicate a particular place or set of circumstances. Example: "'Principal office' means the office *where* the principal executive office of a limited liability company or foreign limited liability company is located, whether or not the office is located in this state."

(f) Do not use "provided that", "provided however that", or a similar proviso.

(g) Use "but" instead of "except that".

(h) Negate only unintended and reasonably inferable implications of a provision of an act. Example: "'Person' means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity. The term *does not include* a public corporation or government, governmental subdivision, agency, or instrumentality."

Comment

A limitation or exception to an act or provision should be placed where it is noticed. Consistent placement in the first part of an act or provision serves to avoid surprise.

An unnecessary disclaimer in one provision of an act may create a negative pregnant suggesting a contrary construction of the meaning of a similar provision in which a disclaimer is not made.

Without the negating sentence in the example in subdivision (h), one could reasonably infer that a governmental body is within the scope of the definition as "any other legal or commercial entity".

RULE 203. USE OF "SHALL", "MAY", AND "MUST".

(a) A duty, obligation, requirement, or condition precedent is best expressed by "shall" or "must".

(b) Use "shall" if the verb it qualifies is a transitive verb in the active voice and the subject is animate. Example: "The aggrieved party *shall* file the application." However, if the word is used to express a condition precedent, use "must". Example: "An applicant *must* file an application to be considered for an exemption."

(c) Use "must" if the verb it qualifies is in the passive voice or the subject is inanimate. Examples: "The applicant *must* be an adult." "Any prior conviction *must* be set forth in the application." "The order *must* state the time and place of the hearing."

(d) Use "may" to confer a power, privilege, or right. Examples: "The applicant *may* demand [power] an extension of time." "The applicant *may* renew [privilege] the application." "The applicant *may* appeal [right] the decision."

Comment

The test for determining whether the subject is animate is whether it can respond to a statutory command. For example, individuals, legal entities, and courts are animate because they can respond to a statutory command. Use "shall" in these cases. Examples: "A corporation *shall* file a report with the [Secretary of State] each year." "A court of this state *shall* recognize a foreign- country judgment." On the other hand, an application cannot respond to a command and, thus, is inanimate. Example: "The application *must* contain the following information:"

RULE 204. USE OF "MAY NOT" AND "MUST NOT".

(a) Use "may not" or "must not" to express a prohibition.

(b) Use "may not" if the verb it qualifies is a transitive verb in the active voice. Example: "The applicant *may not* submit more than one application."

(c) Use "must not" if the verb it qualifies is an intransitive verb or a transitive verb in the passive voice. Examples: "The applicant *must not* be a convicted felon." "The application *must not* be filed before the end of the reporting period."

RULE 205. USE OF "SHOULD" AND "OUGHT".

(a) Do not use "should" or "ought" instead of "shall" or "must." Example: "An applicant *must* be 18 years of age." Do not say: "An applicant *should* be 18 years of age."

(b) The words "should" and "ought" are properly used to state a duty to take action or to have knowledge. Examples: "If payment is due and demanded on the delivery to the buyer of goods or documents of title, the seller may reclaim the goods delivered upon a demand made within a reasonable time after the seller discovers or *should* have discovered that payment was not made." "'Conspicuous', with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate *ought* to have noticed it."

Comment

A statutory provision of the type described in subdivision (a) must state a command, not merely give advice. In the second example in subdivision (a), the word "should" is advisory or hortatory.

PART 3. DEFINITIONS

RULE 301. DEFINITIONS: FORMULATION AND USE.

(a) Define a term, whether a single word or phrase, if:

(1) the term has several different meanings and it is necessary to preclude any unintended construction of the act supported by a contradictory meaning;

(2) the term is used in a sense that is broader or narrower than its common usage; or

(3) use of the defined term will avoid excessive repetition of a phrase and improve the clarity of the act.

(b) If a definition is intended to exhaust the meaning of a term, use "means". In an exhaustive definition, avoid using the term itself in the definitional language. If the term embraces more than one meaning, close the series with "or". Example: "'Tribunal' *means* a court, agency, *or* other entity authorized to establish, enforce, *or* modify a child-custody determination."

(c) If a definition is intended not to exhaust the meaning of a term but to give examples, use "includes". If more than one item is listed, close the series with "and". Example: "'Transfer' *includes* an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, *and* transfer by operation of law."

(d) The meaning of a defined term, or a term having an ordinary meaning, may be expanded to embrace one or more additional meanings by using "includes" in the qualifying language. For example, if "wages"

is defined in the act, add the following to the definition: "The term *includes* gratuities received by an employee from patrons of the employer in the course of employment." If "wages" is not defined in the act, but "wages" as used in the act includes items not usually included in the term, the example would read: "'Wages' *includes* gratuities received by the employee from patrons of the employer in the course of employment." If the definition embraces more than one additional meaning, close the series with "and". Example in which the word "animal" is defined: "The term includes fish, reptiles, *and* birds."

(e) The meaning of a defined term may also be narrowed by adding qualifying language. Examples: "The term *does not include* a birthday gift or a reward for suggestions to enhance efficiency." The ordinary meaning of a word may be narrowed by defining the word to mean only a part of its ordinary meaning. Example: "'Instrument' *means* a negotiable instrument."

(f) If a term can be used as more than one part of speech and is used in the act in an ordinary sense as well as a defined sense, a limitation to the definition should be added immediately after the term. Example: "'Record', *used as a noun*, means . . .". Do not use the same definition for more than one form of a word - such as "writing" and "written". It is generally clear that a definition applies to other forms of the word. If necessary, add a sentence stating that the other form of the word has a corresponding meaning. Example: "'Writing' includes printing, typewriting, or any other intentional reduction to tangible form. 'Written' has a corresponding meaning."

(g) Do not use two defined terms to mean the same thing, such as "physician" and "surgeon". Choose a single term. See Rules 105(a) and 201(c), *supra*.

(h) Use the defined term whenever apt, not its definitional language.

(i) Do not use a defined term in the act in a sense that is inconsistent with the definition. Example: If "record" is defined as a noun, do not use it as a verb.

(j) Do not include substantive provisions in a definition. In a definition of "termination", for example, it is incorrect to add the following sentence: "On termination, all obligations that are still executory on both sides are discharged and any rights based on prior breach of performance survive." The sentence is substantive law, not definitional.

(k) Arrange all defined terms in alphabetical order and place them at the beginning of the act after the short title if they are used generally in the act. If a defined term is used in only a single section, part, or article, locate the definition at the beginning of the subdivision highest in rank in which the term is used. Examples: If the term is used only in Sections 202, 205, and 208 of Article 2, place the definition in Section 201 of Article 2. If a term is used only in Section 305, place the definition in subsection (a) of that section.

(l) A term should be so defined that, if the definition were substituted for the defined term as used in the text of the act, the sentence would be grammatically correct. Example: Do not say "'Presumption'

means that the trier of fact must find that the existence of the fact is presumed until evidence is introduced that would support a finding of its nonexistence." The phrase "that the trier of fact . . ." cannot be substituted for the noun "presumption", for example, in the sentence "There is a presumption that the death of an insured individual is accidental." Instead, say "'Presumption'" means a rule under which the trier of fact must find that the existence of the fact is presumed until evidence is introduced that would support a finding of its nonexistence." Example: Do not say "'Effective' means that the record has become effective under Section 206(c)." Say "'Effective' means effective under Section 206(c)."

Comment

Use computer-aided searches to check the use of defined terms in the act. When revising an act, be careful to ascertain whether each defined term is still used in the substantive provisions of the act and used with the defined meaning.

PART 4. STRUCTURE AND FORMAT

RULE 401. SHORT TITLE OF ACT.

The short title is to be distinguished from the longer, more detailed title that is often included in bills as they are introduced in state legislatures. The short title should end with "Act" or "Ordinance". The short title of the act must accurately reflect its substance.

Comment

Each state has its own standards and practices as to what titles require, many of them prescribed by the state's constitution.

RULE 402. SECTIONS AND LOWER SUBDIVISIONS.

(a) Number sections using Arabic numerals. See *Formatting Guidelines, infra*, for numbering conventions.

(b) "Section" and the section number and heading should be printed boldface, using capital letters for "section" and the words in the heading. Example: "**SECTION 10. MANNER OF DESIGNATING SECTIONS.**"

(c) Do not use pronouns or articles in a section heading.

(d) Use short sections.

(e) Use a separate section for each separate topic.

(f) Although a section heading need not be comprehensive, it should accurately reflect the contents of the section as a whole. As the contents are revised, be sure that the heading remains accurate and consistent with the contents.

(g) In a section with subsections, each subsection must be self-contained and must be able to stand alone without deriving meaning by implication from other subsections. Example: If subsection (a) states "A dissolved limited liability company may publish notice of its dissolution", subsection (b) cannot simply state "The notice must contain . . ." because the word "notice" may not depend upon another subsection for its meaning. Instead, it is necessary to say "The notice authorized by subsection (a) . . .". This makes it clear what "notice" is the subject of subsection (b).

(h) Words that limit a noun should be used only in the first mention of the noun in a subsection but must be repeated when used the first time in a subsequent subsection, even in the same section. Subsequent references within the same subsection need only use the word "notice". Example: If subsection (a) uses the term "statement of dissolution", subsection (b) cannot simply use the word "statement" but must repeat the whole term, "statement of dissolution". Subsequent references within the same subsection need only use the word "statement". See Rule 201(l), *supra*.

(i) Do not use headings for subsections or lower subdivisions.

(j) Divide into subsections and paragraphs, as necessary, a section that covers a number of contingencies, alternatives, requirements, or conditions. A paragraph may be divided into subparagraphs. A subparagraph may be divided into clauses, and a clause may be divided into subclauses, but avoid their use. Divide a section into several sections as an alternative to subparagraphs.

(k) Designate each subsection, paragraph, subparagraph, clause, or subclause by a letter or number, in the following order:

(1) Designate subsections by lower case letters in parentheses. Example: "Section 101(a)".

(2) Designate paragraphs by Arabic numerals in parentheses. Example: "Section 101(a)(1)".

(3) Designate subparagraphs by upper case letters in parentheses. Example: "Section 101(a)(1)(A)".

(4) Designate clauses by lower case Roman numerals in parentheses. Example: "Section 101(a)(1)(A)(i)".

(5) Designate subclauses by upper case Roman numerals in parentheses. Example: "Section 101(a)(1)(A)(i)(I)".

(l) Do not number internal clauses in a nontabulated sentence.

Comment

A section heading is a sign post. It gives general notice of the contents of the section.

Section headings are not part of the substantive law and should not be considered in interpreting the section. Do not depend on headings to add substance to a section.

Most legislative drafting offices delete headings for subsections or lower subdivisions and internal numbering.

RULE 403. ORDER OF ARRANGEMENT OF PROVISIONS OF ACT.

(a) Organize an act in the most useful and logical format for the reader. Avoid an organization that requires an understanding of a later section to understand an earlier section. Group all sections dealing with a common subject.

(b) A lengthy act may be divided into articles. In very exceptional cases, further subdivision into parts may be considered. Some states do not use divisions lower than articles.

(c) The following is suggested as the order of arrangement of provisions in an act:

(1) Short title.

(2) Definitions.

(3) Scope, applicability, exceptions, exclusions. [if needed]

(4) Substance.

(5) Prohibitions and penalties. [if needed]

(6) Savings and transitional provisions. [if needed]

(7) Severability. [if needed]

(8) Repeals. [if needed]

(9) Effective date. [if needed]

Comment

The suggested order of arrangement of provisions is subject to the general requirement that an act be organized in the format most useful to the reader.

Some refer to the Severability, Repeals, and Effective date sections as just boilerplate, something that is required form but does not need to be read. The "Severability" section is rarely appropriate. See Rule 602, *infra*. The "Repeals" section is appropriate only if existing law must be repealed as a result of the enactment of the act. Therefore, these two sections are in brackets, indicating that they may be omitted. If the effective date section is not included, the legislative drafting agency will insert one if needed under their constitution or legislative rules. However, if you intend a delayed effective date, insert the date you want the act to take effect, such as the beginning of a calendar, budget year, or school year.

RULE 404. SERIES AND TABULATIONS.

(a) Break a sentence into its parts and present them as a series in tabular form only if the meaning is made substantially clearer.

(b) A tabulated series must be preceded by a colon.

(c) Unless each item in a tabulated series is a complete sentence, the first letter of each item in the series is lower case and each item, except the last, in the series is concluded with a semicolon. Only the next to last item in such a series is followed by "or" to indicate a disjunctive series or by "and" to indicate a conjunctive series.

(d) Instead of using "or" or "and" to indicate the disjunctive or conjunctive in a tabulated series, a phrase in the introductory clause of the series may more clearly express how many of the items in the series are to be required, such as: "any of the following", "one of the following", "all of the following", or "one or more of the following", followed by a colon.

(e) If each item in a tabulated series is a complete sentence, the first letter of each item in the series is upper case and each item is concluded with a period. A tabulated series may consist of complete sentences if it is preceded by phrases such as "as follows", "the following", or "the following rules apply:". An item in a tabulated series consisting of complete sentences may have more than one sentence.

(f) Do not include in the last item of a tabulation language intended to qualify all of the items. Place language intended to qualify all provisions in a tabulated series in the text immediately preceding the tabulated series.

(g) Do not place a sentence after a tabulation. If the language is not a part of the tabulated series, place it before the tabulated sentence or draft it as a separate subsection, paragraph, or other subdivision.

(h) Provisions in a tabulated series in a subsection or a section without subsections are set forth in paragraphs, *e.g.*, (1), (2), (3). Provisions in a tabulated series in a paragraph are set forth in subparagraphs, *e.g.*, (A), (B), (C). See Rule 402, *supra*, for lower subdivisions.

(i) Do not use subsections for tabulations.

(j) If the language of the introductory text and tabulated series comprise a single sentence, the introductory text and each individual paragraph, or other subdivision, must constitute a coherent, grammatically correct sentence.

Comment

Tabulation is especially appropriate if the context precludes the use of short sentences. Consider using tabular form if a number of rights, powers, privileges, duties, or liabilities are granted to or imposed upon a person and in other situations if tabulation facilitates comprehension. See Rule 402, *supra*, concerning the manner of designating subdivisions in a tabulation. If feasible, avoid using tabulations below the subparagraph level because many legislative drafting offices exclude these subdivisions and run the text together.

RULE 405. REFERENCES TO OTHER PROVISIONS OF ACT.

(a) Refer to a subsection, or other subdivision, in the same section as "subsection ()", "paragraph ()", "subparagraph ()", etc. Example: "Except as otherwise provided in subsection (c), . . .". When referring to a provision in another subsection within the same section, use the word "subsection" for the reference, even though the provision referred to is in a lower subdivision of the subsection. For example, a reference in subsection (a) to paragraph (2) of subsection (d) should be stated: "Except as otherwise provided in *subsection* (d)(2), . . .". A reference in subsection (a) to subparagraph (B) of paragraph (2) of subsection (d) should be stated: "Except as otherwise provided in *subsection* (d)(2)(B)". The same rule applies at lower levels. For example, if the referring provision and referenced provision are both in subsection (a), a reference in paragraph (1) to subparagraph (C) of paragraph (2) should be stated: "Except as otherwise provided in *paragraph* (2)(C)".

(b) Refer to a subsection, or other subdivision, in a different section as "Section 27()" or "Section ()()", etc. Examples: "Except as otherwise provided in Section 26(b) or 27(a)(1), . . .". Do not say "Except as otherwise provided in paragraph (1) of subsection (a) of Section 27".

(c) If the reference is to more than one subdivision of a section, the second and subsequent subdivisions should not include higher subdivisions. Examples: "Section 27(a), (b), and (g)", "Section 27(a)(1) and (2)", "Section 27(a)(1)(A) and (B)". Do not say "Section 27(a)(1) and (a)(2)".

(d) Refer to specific provisions. Do not say "Except as otherwise provided in this [act], . . .". Say "Except as otherwise provided in Section 201" or "Section 201(g)".

(e) Avoid using "road maps" - *i.e.*, provisions that have no substantive effect of their own but merely refer to other provisions. A reference to another provision may be included in the comments.

Comment

Limited use of specific references to other sections may be useful because it avoids the need to search the entire act to locate the provisions to which reference is intended. But overuse of specific references to other provisions of an act can make the act difficult to read and understand. The greater the number of internal references, the greater the risk that a referenced provision will be changed without the referring provision also being changed.

Using "road maps" may create uncertainty. All provisions are assumed to have substantive effect. A provision that is not intended to have substantive effect of its own but which merely refers to other sections may be assumed to have substantive effect, which may clash with the referenced provisions and create uncertainty as to the meaning of the act.

RULE 406. USE OF BRACKETS.

(a) To indicate that a choice is given to the enacting state in adopting or omitting language, place all of the language affected by the choice within brackets. Example: "The [Secretary of State] may issue rules to carry out the purposes of this [act] in accordance with the [insert reference to state administrative procedure act]." The name of the state official and statutory reference will vary from state to state. Example: "'Child' means an individual who is under [15] years of age." An enacting state may substitute a different age for "15" without affecting the intent of the law.

(b) Place a reference to the act itself in brackets except in the short title of the act. Example: "In this [act]: . . .".

Comment

A word, number, or phrase, or even an entire section, may be placed in brackets to indicate that the bracketed language is suggested but may be changed to conform to state usage or requirements or to indicate that the entire section is optional. The word "act" is placed within brackets because it often is replaced with "chapter", "part", or a comparable division when the act is introduced in the enacting state.

RULE 407. POLICY OPTIONS.

(a) To indicate that the legislator or legislating state has a range of options in configuring the bill language on key points, place alternative model language in a footnote.

(b) Within the body of the model law, place a short descriptive title of the policy options in brackets and begin title with "Policy Option: . . ." and end the title with a period.

(c) Put explanatory notes in regular font and model language in italics.

(d) Hyperlink to legislative sources of model law language options in the format “Year” “State” “Legislative Chamber” “Bill or Act Number”.

Examples:

Example A - alternative language:

In body of model law:

[Policy Option: *Alternative Methods of Indexing.*[#]]

In footnote:

[#]Alternative Methods of Indexing (other than using CPI-U):

Using CPI-W:

Substitute “... shall be increased by the percentage increase of the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, as calculated by the United States Department of Labor...” [Revised Code of Washington 49.46.020](#).

Using Productivity:

Substitute “...shall be increased by the revised year-on-year percentage increase in the index of nonfarm business sector labor productivity (2005 = 100), or a successor index, as calculated the United States Department of Labor...”

Example B - additional language:

In body of model law:

[Policy Option: *Reinvest in Socially Responsible Investments.*[#]]

In footnote:

[#]While the market for fossil fuels may be sitting on a speculative bubble, the market for socially responsible investments (SRI) appears to be getting stronger every year. The SRI market has grown over the past 30 years to account for almost 10% of U.S. assets under management – about \$2.3 trillion. Additionally, the size of the SRI market opportunity was estimated at the end of 2010 to be from \$400 billion to \$1 trillion. And SRI’s such as green strategic investments can leverage public funds to maximize both financial and social impacts. Model language:

REINVESTMENT IN SOCIALLY RESPONSIBLE INVESTMENTS.

(a) Public funds shall reinvest at least [10] percent of monies divested in accordance with this [ordinance] into socially responsible investments that have less risk compared to similar investments in fossil fuel companies. Public funds may consider, but are not limited to, the risk assessment implications for fossil fuel companies due to:

(1) future constraints on carbon-intensive revenues and the risk of a “carbon” asset bubble due to stranded fossil fuel reserves;

- (2) potential actions taken by foreign governments with large carbon reserves, such as the countries that are members of OPEC; and*
- (3) improvements in automobile fuel economy and other factors leading to reduced demand . . .*

Comment

Policy options are not mandatory, but they can add to the depth, customizability, and utility of the model law. The policy options can be used to describe alternative language or additional language to increase the scope of the model for policymakers who are interested in broader reforms or reduce the impact in a way that makes it more politically viable. No option should be included that deviates from the underlying intent, contradicts other sections of the model law, or causes confusion about which version to choose.

PART 5. PROHIBITED AND QUESTIONABLE PROVISIONS

RULE 501. PURPOSE CLAUSE.

Do not include language stating the purpose of an act. ALICE model laws include a rationale section outside of the body of the model law that describes the need and arguments for the law.

Comment

A well-drafted act requires no extraneous statement within itself of what it seeks to accomplish or the reasons prompting its enactment. Rationale, comments, and annotations supply this detail to aid in its passage and interpretation. A purpose clause may create uncertainty by giving support to specious arguments that the substantive provisions of the act should be ignored because they are inconsistent with the purpose clause.

RULE 502. PROVISION DUPLICATING GENERAL PROVISIONS OF LAW.

(a) Do not include a provision concerning civil, criminal, administrative, or appellate procedure unless the act is intended to establish a procedure different from general procedures.

(b) Do not include a provision stating that the act is supplemented by common law principles unless, without such an affirmative statement, the act is likely to be construed as occupying the field and, hence, displacing common law principles.

Comment

The incorporation of unnecessary procedural provisions impairs the enactability of a model law. Repetition of general procedural provisions especially creates problems in states in which such procedures are established by court rule rather than by statute.

All state statutes are presumed to be supplemented by the common law. The rare exception is a statute, such as a workers' compensation statute, that is intended to preempt the field and displace common-

law remedies. Unless there is a legitimate concern that a model law that, although not intended to occupy the field, will nevertheless be so construed, it is unnecessary and confusing to include a provision that repeats this settled principle of law.

RULE 503. CREATION OF AGENCY.

Avoid creating a new state agency in an act. However, if it is necessary to create a new agency, use simple language in the present tense to create the agency. Example: "The office of _____ is created." Each legislative drafting agency will use this general statement to draft what is required in its state.

Comment

It is generally unwise to create a new state agency in a model law because the fiscal implications impair enactability. It is better to vest governmental functions established by an act in an existing agency.

PART 6. STANDARD SECTIONS

RULE 601. SAVINGS AND TRANSITIONAL PROVISIONS.

Use a savings or transitional provision, or both, to clarify the effect of the act on existing relationships. Example: "Transactions, certificates of title, records, and information that were validly entered into or created before the effective date of this [act], and would be subject to this [act] if they had been entered into or created on or after the effective date of this [act], and the rights, duties, and interests flowing from these transactions, certificates of title, records, and information, remain valid after the effective date of this [act]."

Comment

It is important to consider the effect enactment of the act will have on existing rights, liabilities, and proceedings. The function of a savings provision is to preserve a law that the act supersedes and that otherwise would apply with respect to described transactions and events that occur before the act takes effect to minimize disruption inherent in change from the old to the new law. If existing rights are preserved, it may be desirable to require that they be asserted within a relatively short, specified period after the act takes effect. See Section 8-101 of the Uniform Probate Code for an example of a fairly comprehensive savings and transitional provision. Section 1007 of the Revised Uniform Partnership Act is an example of a limited savings provision. If a short statute of limitations is included in the savings provision, consider including a statement that it does not revive claims for relief already barred or preclude the barring of existing claims for relief sooner by another statute of limitations.

A transitional provision may phase in certain sections of an act over time. See Section 1006 of the Revised Uniform Partnership Act. The provision may also be used to make effective under the act certain preenactment transactions that were not previously effective. See Section 19 of the Uniform Unincorporated Nonprofit Association Act.

Do not confuse savings and transitional provisions with applicability provisions. If used, an applicability provision should be placed at the beginning of the act immediately after the definitions section. See Rule 403. Example of an applicability provision: "This [act] applies to any transaction, certificate of title, record, or information involving a vehicle, even if the transaction, certificate of title, record, or information was entered into or created before the effective date of this [act]." Do not create an applicability provision as a road map. See Rule 405 (e).

RULE 602. SEVERABILITY.

If inclusion of a severability section is considered necessary because of a risk that one or more provisions of the act may be declared unconstitutional or otherwise invalid, include the following section, in brackets, with the following legislative note. The note indicates that the section is to be included only if the state enacting the act lacks a general severability statute or a decision by the highest court of the state stating a general rule of severability:

[**SECTION __. SEVERABILITY.** If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: *Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

Comment

It is rarely necessary to include a severability section in an act because the great majority of states either have general severability statutes or a decision by the highest court of the state stating a general rule of severability.