

UNIFORM STATUTE AND RULE
CONSTRUCTION ACT (1995) *

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

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ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FOURTH YEAR
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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Approved by the American Bar Association
Baltimore, Maryland, February 5, 1996

* The Conference changed the designation of the Statute and Rule Construction Act (1995) from Uniform to Model as approved by the Executive Committee on August 5, 2003.

UNIFORM STATUTE AND RULE CONSTRUCTION ACT (1995)

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UNIFORM STATUTE AND RULE CONSTRUCTION ACT

PREFATORY NOTE

This Act provides assistance in the construction and drafting of state statutes and administrative rules.

In 1965, the Uniform Statutory Construction Act was promulgated by the National Conference of Uniform Laws (NCCUSL) and in 1975 its name was changed to the Model Statutory Construction Act (MSCA). Although only three States (Colorado, Iowa, and Wisconsin) adopted substantially all of that Act, many of its provisions are found in the statutes of over 43 other States. In 1989 the Executive Committee of the NCCUSL approved a proposal to revise the MSCA. The first reading of this Act was held at the 1991 Annual Conference in Naples, Florida and the Act was adopted at the 1993 Annual Conference in Charleston, South Carolina. It was revised at the 1995 Annual Conference in Kansas City, Missouri. The revisions were limited to Sections 18 and 20 and were made in response to comments made by the Section of Administrative Law and Regulatory Practice of the American Bar Association.

The MSCA, the statutory construction acts of all the States, *A New Interpretation of the Statutes Act of New Zealand* (1990), recent case law, and law review articles were reviewed and considered before the drafting of this Act commenced.

This Act will assist drafters in preparing legislation and rules, government officials and lawyers in applying them, and courts and administrative agencies in construing them. It will significantly reduce the need for the boiler plate language commonly used in bill and rule drafting and provide common definitions of certain words and phrases often used in statutes and rules. It can be used as a summary of the aids to, and principles of, construction and can serve as a useful index to a complex area of the law. This Act will also encourage the development of a body of law as to construction of statutes and rules that will be more uniform than the present law.

This Act will aid in the drafting of proposed uniform or model legislation and it will lead to a greater uniformity of interpretation of state legislation. It will aid in the formulation of interstate transactions that are affected by statutes and rules in several States. It will assist the NCCUSL in assuring a uniform implementation of the more than 130 Uniform Acts that are currently recommended for adoption.

This Act informs courts of a legislature's expectations as to how its product should be construed. Inasmuch as the court's aim in construing statutes is to carry out the legislative intent or purpose, this Act assists the courts in performing that function. It is, therefore, not a legislative infringement of the judiciary's special function of construing a statute; it is merely an aid to the courts in performing that function. The existence and use of statutory construction acts for over a century without successful challenge further demonstrates that these acts do not violate the fundamental constitutional principle of separation of powers. *Commonwealth v. Trent*, 77 S.W. 390 (Ky. App. 1903); see *Simpson v. Kilcher*, 749 S.W.2d 386 (Mo. 1988); but see *State v. Parsons*, 220 N.W. 328 (Iowa 1928), a ruling that has gathered little support.

Although this Act has been drafted for adoption by a state legislature, a local government may desire to adopt it if it has the authority to do so. Enabling legislation may be required. The provisions of this Act could be incorporated by reference in contracts and, if so, it would simplify and shorten contractual documents.

This Act is a default act. It is only applicable if the text of the statute or rule being construed does not contain language that is inconsistent with this Act. See Section 1 and its Comments. Although most of the provisions of this Act provide aids to construction, the Act does more. Some sections (such as Sections 3 and 4) assist the drafter in choosing the proper word to be used. Other sections (such as Sections 8 and 9) help the drafter to decide whether to include a particular provision.

As discussed in the Comment to Section 18, all of the generally recognized theories of construction have been justifiably criticized. Regardless of whether a particular theory is followed in construing a statute or rule, the task is commonly said to be to ascertain the legislative intent or purpose and then to give an interpretation of the words that carries out that intent or purpose. This Act, therefore, does not require a construer to follow any particular theory of construction, but sets forth a process to be followed by a construer with an open mind (Sections 18, 19, and 20). It provides a broad range of aids and principles of construction that may be considered and used in the discretion of the construer, if pertinent. While it sets forth the most commonly used principles and aids, it does not prohibit the use of other valid principles or aids to construction.

"Agency" as used in the Comments means an "Administrative Agency."

"Statute" is used in a broad sense in this Act and the Comments. It is intended to encompass all legislative enactments of a legislature. In some States "statutes" may have a more limited meaning. If so, appropriate words such as "legislative enactment" should be substituted throughout this Act for "statute."

"Rule" as used in this Act and the Comments refers to rules promulgated by an agency under statutory rule-making authority. Some States may use another term for "rule," such as "regulation" or "administrative rule or regulation." If so, the appropriate word or phrase should be substituted throughout this Act for "rule."

"State" as used in the Comments has the same meaning as in Section 3(11).

"MSCA" as used in the Comments means the Model Statutory Construction Act (1965). Where its sections have been used in this Act, they have been rewritten. The source notes are for general reference purposes. "NCCUSL" as used in the Comments means the National Conference of Commissioners on Uniform State Laws.

The definitions in Section 3 are not definitions of terms used in this Act. See Comment to Section 3. See the Comment to a particular section as to the meaning of certain words and phrases used in the section.

The Advisors to the Drafting Committee were Charles W. Pike of Denver CO, National Conference of State Legislatures; Jay A. Rabinowitz of Fairbanks AK, Conference of Chief Justices; and Hugh E. Reynolds, Jr. of Indianapolis IN, American Bar Association. Former Commissioner William H. Nast, Jr. of Harrisburg PA and Commissioner Millard H. Ruud of Austin TX served as Reporters.

UNIFORM STATUTE AND RULE CONSTRUCTION ACT (1995)

SECTION 1. APPLICABILITY.

(a) This [Act] applies to a statute enacted or rule adopted before, on, or after the effective date of this [Act], unless the statute or rule expressly provides otherwise, the context of its language requires otherwise, or the application of this [Act] to the statute or rule would be infeasible.

(b) Subsection (a) does not authorize an administrative agency to exempt its rules from a provision of this [Act].

Comment

Source: Adapted from Section 1 MSCA.

Subsection (a) provides that if the statute or rule being construed contains a provision different from a provision in this Act, the provision in the statute or rule prevails. This Act is therefore a default act; that is, it applies only if the text of the statute or rule being construed is not inconsistent with this Act. Thus, if a statute or rule, whether adopted before or after this Act, contains, for example, a different definition or a different rule as to computation of time, the provision in the statute or rule prevails.

This Act also does not apply if its application would be infeasible. That avoids an unforeseen adverse consequence and prevents injustice.

This Act, including any definitions contained in Section 3 when this Act is adopted by a State, is to be considered as being a part of every statute or rule enacted or adopted after this Act.

Because this Act, for the most part, does not change existing rules of construction, or existing definitions, unless the statute or rule being construed provides otherwise, it is also intended that this Act be used in construing any statute enacted and rule adopted before this Act is adopted.

While subsection (b) may state the obvious, it clarifies that this Act does not grant authority to adopt a rule. That authority is to be found elsewhere. A difference exists between statutes and rules. Rules may be adopted by an administrative agency only to the extent a statute grants the agency express or implied authority to do so. Consequently, the authority of an agency to adopt a particular rule depends upon the precise scope of the authority it has been

granted by statute. This Act does not grant an agency authority to adopt a rule exempting a rule of the agency from any provision of this Act, although another statute of the State may do so.

For example, an agency might adopt a rule containing several sections and provide in the rule that if any section of that rule is held invalid all of its sections are of no effect. Section 9 of this Act states a principle of presumed severability of rules, but Section 1(a) recognizes that a rule adopted by an agency may provide otherwise. Subsection (b) makes it clear that a nonseverability clause in a rule adopted by an agency will be valid only if a statute other than this Act expressly or impliedly authorizes the agency to adopt the rule with such a provision.

In many States the statutory delegation of authority to an agency to adopt rules on a particular subject would impliedly grant the agency the authority to specify when its rules are effective. In those States an agency could adopt a nonseverability clause in a rule despite Section 9.

This Act does not apply to ordinances adopted by a municipality, county, or similar body unless the municipality or county, if it has the authority to do so, adopts this Act.

This Act does not apply to court rules unless the rules are enacted by statute or are adopted by a court rule adopting the provisions of this Act.

See the Prefatory Note as to the definition of some of the terms used in this Act and in these Comments.

SECTION 2. COMMON AND TECHNICAL USAGE. Unless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar, and common usage. A word or phrase that has acquired a technical or particular meaning in a particular context has that meaning if it is used in that context.

Comment

Source: Adapted from Section 2 MSCA.

A word or phrase defined in a statute or a rule or in this Act has the meaning expressed in its definition and therefore that meaning prevails over other meanings. See Section 1 of this Act.

The second sentence of this section states the term of art canon of construction. For other canons see Section 20(a) and (b)(6).

[SECTION 3. GENERAL DEFINITIONS. In the statutes and rules of this

[State]:

- (1) "Child" includes a child by adoption.
- (2) "Oath" includes an affirmation.
- (3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, [government, governmental subdivision, agency, or instrumentality,] or any legal or commercial entity.
- (4) "Personal property" means property other than real property.
- (5) "Personal representative" of a decedent's estate includes an administrator and executor.
- (6) "Population" means the number of individuals enumerated in the most recent federal decennial census.
- (7) "Property" means real and personal property.
- (8) "Real property" means an estate or interest in, over, or under land, and other things or interests, including minerals, water, structures, and fixtures that by custom, usage, or law pass with a transfer of land even if the estate or interest is not described or mentioned in the contract of sale or instrument of conveyance, and, if appropriate to the context, the land in which the estate or interest is claimed.
- (9) "Rule" includes regulation.
- (10) "Sign" or "subscribe" includes the execution or adoption of any symbol by a person with the present intention to authenticate a writing.

(11) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(12) "Swear" includes affirm.

(13) "Will" includes a codicil.]

Comment

Source: The definition of "child," "oath," "swear," "person," "population," "property," and "rule" are adapted from Section 26 MSCA. The definition of "real property" is adapted from the definition of real estate in the Uniform Land Security Interest Act Section 111(20). "Sign" and "subscribe" are adapted from the Uniform Commercial Code Section 1-201(39). "State" is adapted from NCCUSL Drafting Rules for Uniform or Model Acts.

Section 3 is optional as is indicated by its brackets.

The MSCA and most state statutory construction acts contain definitions. The definitions in this section are consistent with those found in most state statutory construction statutes. There is, however, sufficient diversity as to the terms defined in those acts and in the substance of those definitions to make it impractical to seek uniformity as to all the definitions in this section.

A State deciding to retain this section when adopting this Act should consider which of the definitions in this section it desires to retain or codify. It may be desirable not to repeal the definitions of terms in a State's existing statutory construction act that may have been relied upon by drafters of existing statutes, as to those statutes.

The use of "means" in a definition in this section signifies that the definition is exhaustive; that is, the words following "means" describe everything that is within the term defined. The use of "includes" signifies that the definition is partial and not exhaustive.

Because this Act is a default act (see Comment to Section 1), a restricted or narrow definition of some words has been chosen. As provided in Section 1(a), a different meaning of a word defined in this section may be included in a statute or rule, and if the definition in the statute or the rule conflicts with a definition in this section, the definition in the statute or rule being construed prevails.

The definitions in this section apply to all statutes or rules enacted before or after this Act is enacted unless the statute or rule provides a different definition or provides that the provisions of this Act or these definitions do not apply. See Comment to Section 1. This Act

would not, however, affect an existing final judicial decision construing a word differently from its definition in this section.

The definitions in this section are not definitions of terms used in this Act; they are definitions of terms used in the statutes or rules being construed. For the definition of some of the words and phrases used in this Act see the Comment to the particular section.

Paragraph (3) brackets "government, governmental subdivision, agency, or instrumentality." Whether a State should adopt this language depends on whether it commonly uses "person" in its statutes to indicate that it applies to state and local governments. If that is its practice, it should enact the bracketed phrase. Whichever choice is made, a drafter will need to use a special definition of "person" if the statute or rule being drafted intends a different coverage from that which the definition in this section would specify.

Paragraph (10) is adapted from Section 1-201(39) Uniform Commercial Code. Because "sign" or "subscribe" will apply to single as well as multiple party documents, "person" is used here for "party" as it appears in the Code definition.

The definition of "sign" or "subscribe" in paragraph (10) deals only with the authentication of a writing. It is appropriately a partial and not exhaustive definition. Hence the use of "includes."

New technologies permit contracts and other communications of legal import to exist only in an electronic medium. This omission has been addressed in some recent Uniform Acts, such as the Uniform Limited Liability Company Act (1995) (Section 101(16) and the Uniform Commercial Code Article 5 -- Letters of Credit (Section 5-102(14)). An exhaustive definition of "record" as a noun has been used. It is: "'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form." The last clause of this definition refers to information that is not in writing. This definition of "record" therefore permits a different definition of "sign" to be used: It is: "'Sign' means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it."

SECTION 4. CONSTRUCTION OF "SHALL," "MUST," AND "MAY."

(a) "Shall" and "must" express a duty, obligation, requirement, or condition precedent.

(b) "May" confers a power, authority, privilege, or right.

(c) "May not," "must not," and "shall not" prohibit the exercise of a power, authority, privilege, or right.

Comment

Source: Adapted from Drafting Rules for Uniform or Model Acts, NCCUSL (1995).

Rule 8, Drafting Rules for Uniform or Model Acts, NCCUSL (1995), provides that "'shall', if used to qualify an active verb, and 'must', if used to qualify an inactive verb or an active verb in the passive voice, express a duty, obligation, requirement, or condition precedent."

It is recognized that not all drafters use these words with care. That usage is therefore suggested but is not required.

The context of a statute or rule may indicate that a "shall" or "must" is directory and not mandatory. See Section 1.

SECTION 5. NUMBER, GENDER, AND TENSE.

(a) Use of the singular number includes the plural, and use of the plural number includes the singular.

(b) Use of a word of one gender includes corresponding words of the other genders.

(c) Use of a verb in the present tense includes the future tense.

Comment

Source: Adapted from Sections 3, 4, and 5 MSCA.

SECTION 6. REFERENCE TO SERIES. A reference to a series of numbers or letters includes the first and last number or letter.

Comment

Source: Adapted from Section 22 MSCA.

This section eliminates the need for the word "inclusive" in statutes or rules referring to a series. For example, it makes clear that "Sections 5-9" is the equivalent of "Sections 5 through 9," including both Sections 5 and 9 and the sections in between.

SECTION 7. COMPUTATION OF TIME. In computing a period of time prescribed or allowed by a statute or rule for taking or withholding action before, during, or after the period, the following rules apply:

(1) If the period is expressed in days, the first day of the period is excluded and the last day is included.

(2) If the period is expressed in weeks, the period ends on the day that is the same day of the concluding week as the day of the week on which an event determinative of the computation occurred.

(3) If the period is expressed in months, the period ends on the day of the concluding month which is numbered the same as the day of the month on which an event determinative of the computation occurred unless the concluding month has no such day, in which case the period ends on the last day of the concluding month.

(4) If the period is expressed in years, the period ends on the day of the concluding month of the concluding year which is numbered the same as the day of the month of the year on which an event determinative of the computation occurred unless the concluding month has no such day, in which case the period ends on the last day of the concluding month of the concluding year.

(5) If the period is less than seven days, a Saturday, Sunday, or legal holiday is excluded from the computation.

(6) If the last day of the period is a Saturday, Sunday, or legal holiday, the period ends on the next day that is not a Saturday, Sunday, or legal holiday.

(7) A day begins immediately after midnight and ends at the next midnight.

(8) If the period is determinable by the occurrence of a future event, the first day of the period is ascertained by applying the rules of the preceding paragraphs backward from the last day of the period as if the event had occurred.

Comment

Source: Paragraphs (1) and (3) are adapted from Section 8 MSCA; paragraph (6) is adapted from Section 8 MSCA and Rule 6(a) Federal Rules of Civil Procedure.

This section deals only with the computation of time and not with whether time provisions are mandatory or directory. Sutherland, *Stat. Const.* § 57.19 (5th ed. 1992).

While this section generally reflects common understanding, it may be contrary to the expectations in certain instances. For example, a month's lease that begins on the first day of a month customarily ends on the last day of the month and not on the first day of the following month, contrary to paragraph 3. Therefore a statute or rule dealing with rental of real property may need a specific definition of time that conforms to that common understanding.

Paragraphs (2) through (4) may deal with a situation that requires that some action be taken within a stated period after an event. For example, a statute or rule requiring that notice to an agency of the intention to seek judicial review be given within three weeks after the agency issues an order would be governed by paragraph (2). If the order was issued on a Tuesday, the person would need to give notice on or before the Tuesday three weeks later.

On the other hand, a rule may require that certain action be taken at a stated time before an event. For example, a statute or rule may require a judgment creditor to give notice to the owner of real property that a judicial sale of its property is to be held at least four weeks before the date of the sale. In that case, paragraph (8) states how paragraph (2) is to be used to calculate the last day on which the notice may be given. The date of the sale is treated as an event that has occurred and one counts backwards instead of forward. If the proposed date of the sale is a Wednesday, then the last day for giving notice is on Wednesday four weeks earlier.

Paragraph (8) is also applicable to paragraph (6). If, for example, the calculation of a ten day period places the ending of the period with respect to a future event on a Saturday, Sunday, or legal holiday, one calculates backward. If the calculation yields a Saturday, it would be the preceding Friday and not the following Monday that determines the time for the action.

The "unless" clause in paragraph (4) applies only if the event occurred on February 29th and the period is not four years or a multiple thereof.

If the use of this section would result in a time period being applied that was inconsistent with the purpose of the statute or rule being construed, the statute or rule would prevail over this Act. See Section 1 of this Act.

Because this Act is not intended to create an injustice, paragraph (5) does not require a prisoner sentenced to three days in jail to remain there over a weekend if his sentence would otherwise end on a Saturday. See Comment to Section 1.

The word "occurred," as used in this section, if used in connection with a continuing event, means when the event ends.

SECTION 8. PROSPECTIVE OPERATION. A statute or rule operates prospectively only unless the statute or rule expressly provides otherwise or its context requires that it operate retrospectively.

Comment

Source: Adapted from Section 14 MSCA.

This section is not a source of the authority to make a statute or rule retroactive. That is to be found in other law. For an administrative agency, the expressed authority is to be found in the agency's organic law. See *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988).

This section is, instead, a rule of construction. Retroactive operation is not favored, but a retroactive application will be found if a statute, by express language or necessary implication, clearly indicates that the legislature intended a retroactive application. See Section 1; Sutherland, *Stat. Const.* § 41.04 (5th ed. 1992). The apparent unfairness of applying a new rule to past transactions undergirds this approach. Elmer E. Smead, *The Rule Against Retroactive Legislation*, 20 Minn. L. Rev. 775 (1936). Application of the Uniform Parentage Act to children born before its enactment illustrates a finding of retroactivity where unfairness does not exist. *In Interest of B.G.*, 477 N.W.2d 819 (N.D. 1991). Validating and curative acts are examples of statutes that are clearly intended to have retroactive effect only. They make effective actions taken before the validating and curative statute's enactment by rendering some lapses or mistakes immaterial.

Retroactive statutes may raise constitutional due process questions. Constitutions in some States expressly prohibit retroactive statutes. Colo. Const. Art II, § 11; Ohio Const. Art II, § 28; Tex. Const. Art I, § 16. Bryant Smith, *Retroactive Laws and Vested Rights*, 6 Tex. L. Rev. 409 (1928), demonstrates that these constitutional provisions are not applied literally. Constitutional *ex post facto* and Bill of Attainder prohibitions may also invalidate retroactive applications.

This Act does not change the law in a State as to whether an agency may adopt a retrospective rule. See Section 1(b) and its Comment.

SECTION 9. SEVERABILITY. If a provision of a statute or rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute or rule which can be given effect without the invalid provision or application, and to this end the provisions of the statute or rule are severable.

Comment

Source: Adapted from Section 16 MSCA and Rule 23 Drafting Rules for Uniform or Model Acts, NCCUSL (1995).

A severability clause expresses the legislature or agency's will that the valid portions of a statute or rule be given effect even though some portion is invalid.

Sometimes a severability clause cannot provide that result. For example, a court may find that an otherwise valid provision of a statute or rule cannot be given effect because it is essentially and inseparably connected with and dependent upon an invalid provision or that the valid provision, standing alone, is incomplete and, therefore, incapable of being given effect.

If the statute or rule being construed contains a nonseverability clause, this section does not apply. See Section 1. Nonseverability clauses, however, are uncommon. A nonseverability clause expresses the legislative judgment that the entire act or rule should be operative or none of it. *Hubbell Bank v. Bryan*, 245 N.W. 20 (Neb. 1932) involved a clause specifying that certain sections were inseverable and certain sections were severable. Because the disputed section was in both lists, the court found the clause was not helpful.

SECTION 10. IRRECONCILABLE STATUTES OR RULES.

(a) If statutes appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later enacted statute governs. However, an earlier enacted specific, special, or local statute prevails over a later enacted general statute unless the context of the later enacted statute indicates otherwise.

(b) If an administrative agency's rules appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later adopted rule governs. However, an earlier adopted specific, special, or local rule prevails over a later adopted general rule unless the context of the later adopted rule indicates otherwise.

(c) If a statute is a comprehensive revision of the law on a subject, it prevails over previous statutes on the subject, whether or not the revision and the previous statutes conflict irreconcilably.

(d) If a rule is a comprehensive revision of the rules on the subject, it prevails over previous rules on the subject, whether or not the revision and the previous rules conflict irreconcilably.

Comment

Source: Adapted from Section 18 MSCA.

This section addresses the difficult problem presented where the legislature fails to make clear the relationship of a later enacted statute or rule to an earlier one. Express amendment or repeal of the earlier by the later would avoid the problem.

Courts are usually reluctant to find a statute to be of no effect and, usually give effect to both the earlier and later statute unless the conflict is irreconcilable. *Town of Madison v. City of Madison*, 70 N.W.2d 249 (Wisc. 1955).

Subsection (a) states the rule for statutes and subsection (b) states the rule for rules. If the conflict among rules is with respect to rules adopted by different administrative agencies, the first question may be one of authority. If only one agency was given authority to adopt the rules, its rules should govern.

The exception in subsections (a) and (b) as to specific, special, or local statutes and rules is based on the assumption that the legislature or agency, knowing of the specific, special, or local statutes or rules and not expressly repealing them, intended to continue them as a qualification or exception to the general rule in the later general statute or rule. *State v. Dairyland Power Cooperative*, 187 N.W.2d 878 (Wis. 1971) The Court noted that the prior act was 60 years old and very visible; *Thompson v. IDS Life Ins. Co.*, 549 P.2d 510 (Or. 1976).

However, an earlier general statute or rule may be repealed by implication by a later enacted or adopted specific, special or local statute or rule if that is clearly the intention of the legislature or agency. See Section 1; Sutherland, *Stat. Const.* § 23.15 (4th ed. 1985).

For purposes of this section, a special statute or rule is one that deals with only some of the persons or part of the transactions that would be covered by a general statute or rule. A local statute or rule is one that applies a rule to a locality and not to the whole jurisdiction as a general statute or rule does.

Subsections (c) and (d) deal with the case where there is an irreconcilable conflict of purpose and not of literal text. If the later act or rule is intended to be an exhaustive statement or comprehensive revision of the law on a subject, it prevails over all previous statutes or rules on the subject even though the conflict is not irreconcilable. It would frustrate the purpose of the comprehensive revision to find otherwise. Sutherland, *Stat. Const.* § 23.13 (4th ed. 1985). A difficult factual question often is whether the later statute or rule is an exhaustive statement or comprehensive revision. *Id.*

SECTION 11. [ENROLLED BILL] CONTROLS OVER SUBSEQUENT

PUBLICATION. If the text of an [enrolled bill] differs from a later publication of the text, the [enrolled bill] prevails.

Comment

Source: Adapted from Section 19 MSCA.

This section addresses the problem of a conflict between the statute as adopted by the legislature and a subsequent publication whether by the State or a private publisher. This section specifies that the text as adopted governs. In most jurisdictions the text as adopted is called the enrolled bill. It is the text that is signed by the presiding officers of both houses of the legislature and the governor and is deposited with the secretary of state. Of course, if a bill is passed over the governor's veto, it will not bear the governor's signature. Because this text as adopted is not called an "enrolled bill" in all States the term is placed in brackets to signify that, if necessary, the appropriate term should be inserted in its place.

Some States authorize a revisor of statutes or similar official to make style changes. See *Ky. Rev. Ann. Stat.* § 7.136. This section does not prohibit that practice. Some States provide for the reenactment of laws that have been revised by the revisor. In that case, the reenacted law is the official text.

This section does not address the problems posed by procedural and textual irregularities. For example, it may be alleged that an amendment adopted by both houses of the legislature was erroneously left out of the final text signed by the two presiding officers and the

governor. Under the Enrolled Bill Doctrine, the enrolled bill would be considered to be a verity and a court would not allow this error to be shown to vary the text of the enrolled bill as deposited with the secretary of state. *Carlton v. Grimes*, 23 N.W.2d 883 (Iowa 1946). See *People ex. rel. Dezettel v. Lueders*, 119 N.E. 339 (Ill. 1918). Some forms of the Journal Entry Rule, on the other hand, would permit a showing to establish that the omitted amendment was a part of the official act. *State v. Naftalin*, 74 N.W.2d 249 (Minn. 1956). This section does not deal with that issue. This section is limited to the effect of a subsequent publication of a statute that differs from the statute as enacted.

SECTION 12. INCORPORATION BY REFERENCE.

(a) A statute or rule that incorporated by reference another statute of this [State] incorporates a later enactment or amendment of the other statute.

(b) A statute that incorporates by reference a rule of this [State] does not incorporate a later adoption or amendment of the rule.

(c) A rule that incorporates by reference another rule of this [State] incorporates a later adoption or amendment of the other rule.

(d) A statute or rule that incorporates by reference a statute or rule of another jurisdiction does not incorporate a later enactment or adoption or amendment of the other statute or rule.

Comment

Source: Adapted from Section 21 MSCA.

The words "later enactment or amendment" are used in this section instead of the words "later amendment" to make it clear that a repeal and reenactment of an incorporated statute or rule is in substance an amendment.

This section changes the common law because subsection (a) applies whether the incorporation by reference is specific or general. At common law, if the incorporation of another statute of the enacting State was done by specifically referring to the provision in the statute being incorporated, subsequent amendments of the incorporated statute did not become a part of the later incorporating statute. This is so under the common law because by incorporating by specific reference the precise text of the earlier incorporated statute as it then existed, the earlier incorporated statute became a part of the later incorporating statute. Consequently, under

the common law, an amendment of the earlier statute that was incorporated by specific reference into the later statute would not change the later incorporating statute. On the other hand, if the incorporation was by general reference, such as to "the law on the collection of state and county taxes," the precise text of the earlier statute did not become a part of the later incorporating statute and a later amendment to the earlier statute would change the later incorporating statute. This is so under the common law because it was believed that incorporating by reference a general body of law implied a legislative judgment that the overall policies of the earlier incorporated statute should likewise govern the later incorporating statute. *Jones v. Dexter*, 8 Fla. 276 (1859); *City of Warrensburg v. Board of Regents of Central Missouri State University*, 562 S.W.2d 340 (Mo. 1978).

The distinction made by the two common law rules has been criticized. Horace E. Read, *Is Referential Legislation Worthwhile?*, 25 Minn. L. Rev. 251, 275 (1943). Among other things, the distinction between a special and general incorporation by reference is not always clear. A number of States, as does this section, have expressly rejected the distinction made by the two rules and made subsequent amendments operative in both cases. Minn. Stat. Ann. 645.31(2) (1992).

Subsections (a) through (c) are, like all sections of this Act, subject to contrary indications of legislative intent. Section 1(a). If, therefore, the incorporating statute expresses or otherwise indicates an intent contrary to this section, this section does not apply.

If the incorporated statute is amended so as to become substantially different in nature from what it was when it was incorporated, giving effect to it as being part of the incorporating statute would seem to be contrary to the legislative intent in making the incorporation.

The rules in this section as to incorporation by reference do not apply if a statute or rule copies the text of another statute or rule. The borrowed statute doctrine applies in that case. See Section 20(b)(1).

In subsection (d) "jurisdiction" includes the United States.

SECTION 13. HEADINGS AND TITLES. Headings and titles may not be used in construing a statute or rule unless they are contained in the [enrolled bill] or rule as adopted.

Comment

Source: New.

Courts occasionally use headings or titles that were in the enrolled bill as aids to construction. *State ex. rel. City of Mobile v. Bd. of Revenue and Road Comm'rs*, 80 So. 368 (Ala. 1918).

Even in this instance they may be of limited value. The section of the statute or the bill being construed may have been substantially amended without a corresponding change of its heading, or the title or heading may not have been drafted with the same care as the text itself.

A heading or title that was not in the enrolled bill was obviously added after the statute was enacted. It has no official standing and therefore should not be used as an aid to construction.

As in Section 11, "enrolled bill" is bracketed because some States use a different term for the official text as deposited with the secretary of state. If a different term is used in the enacting State, the correct term should be inserted.

SECTION 14. CONTINUATION OF PREVIOUS STATUTE OR RULE. A

statute or rule that is revised, whether by amendment or by repeal and reenactment, is a continuation of the previous statute or rule and not a new enactment to the extent that it contains substantially the same language as the previous statute or rule.

Comment

Source: Adapted from Section 20 MSCA.

This section changes the common law rule, sometimes called the Indiana Replacement Rule. *Blakemore v. Dolan*, 50 Ind. 194 (1875). Under that rule the revision of the earlier statute is deemed to be a new start and the earlier statute ceases entirely to exist. In *Blakemore*, Act 3 amended Act 1 instead of Act 2, which revised Act 1. Act 3 was held to be a nullity because it amended what under the Indiana Replacement Rule was a nullity, having been completely replaced by Act 2.

On the contrary, the rule provided in this section is now followed almost everywhere, whether the product of legislative or judicial action. Sutherland, *Stat. Const.* § 22.33 (4th ed. 1985). Which rule applies may make a difference in several situations. For example, in *Keeler v. Superior Court*, 470 P.2d 617 (Cal. 1970), the term "human being" was given the meaning it had in the original California Penal Code of 1850 and not what it would have had under the circumstances and conditions of the times in 1872 when the same term was used in the Revised Penal Code of 1872.

This section does not authorize an agency to amend a rule without complying with the Administrative Procedure Act or other statute of a State that confers the power to adopt or amend a rule on the agency.

SECTION 15. REPEAL OF REPEALING STATUTE OR RULE. The repeal of a repealing statute or rule does not revive the statute or rule originally repealed or impair the effect of a savings clause in the original repealing statute or rule.

Comment

Source: Adapted from Section 24 MSCA.

This section does not preclude a legislature from repealing language in a statute before the language takes effect.

This section reverses an old common law rule under which a repealing statute revived the statute formerly repealed. Most States have expressly rejected this old rule. Sutherland, *Stat. Const.* § 23.31 (4th ed. 1985).

SECTION 16. EFFECT OF AMENDMENT OR REPEAL.

(a) Except as to procedural provisions, an amendment or repeal of a civil statute or rule does not affect a pending action or proceeding or a right accrued before the amendment or repeal takes effect.

(b) Except as to procedural provisions, a pending civil action or proceeding may be completed, and a right accrued may be enforced as if the statute or rule had not been amended or repealed.

(c) If a penalty for a violation of a statute or rule is reduced by an amendment, the penalty, if not already imposed, must be imposed under the statute or rule as amended.

Comment

Source: Adapted from Section 25 MSCA, Section 20 Uniform Unincorporated Nonprofit Association Act, and Section 1006(c) Revised Uniform Partnership Act.

Subsection (a) is narrower than Section 25 of the MSCA and the general savings statutes of many States. Instead of having a broad savings clause in this Act and so imposing the obligation on drafters of bills to prepare a narrow savings clause if that is what is desired, subsection (a) places the burden the other way. Subsection (a) saves what is commonly

preserved. If more of the old law is desired to be saved, a savings clause tailored to the specific needs of the bill should be drafted. See Section 1.

Subsection (a) continues the prior law after the effective date of an amendment or repeal of a statute or rule as to "a pending action or proceeding or a right accrued." Except for this section, an amendment or repeal would displace the former statute or rule in most circumstances. The power of a new statute or rule to displace an old statute or rule with respect to conduct occurring before the new statute or rule takes effect is substantial. Millard H. Ruud, *The Savings Clause -- Some Problems in Construction and Drafting*, 33 Tex. L. Rev. 285, 286-293 (1955).

Subsection (a) preserves the old law as to a "pending action or proceeding." What is an "action or proceeding" for this purpose? "Action" refers to a judicial proceeding. "Proceeding," especially when used with "action," is broader and includes administrative and other governmental proceedings. For example, in *State ex rel. Carmean v. Board of Education of Hardin County*, 165 N.E.2d 918 (Ohio 1960), a petition to transfer certain land from one school district to another, filed before a change in the law, was a "pending proceeding" to be decided under the old law. Similarly, a request for permission to petition for an election to consolidate school districts was held to be a "proceeding commenced" so that the substance and procedure of the old law, which was materially different from the new, was preserved. *Grant v. Norris*, 85 N.W.2d 261 (Iowa 1957).

What is a "right accrued"? In *Matter of Estate of Hoover*, 251 N.W.2d 529, 531 (Iowa 1977), it was declared that a right has accrued if a "matured cause of action or legal authority to demand redress exists." In *Niesen v. State of Wisconsin*, 141 N.W.2d 194 (Wis. 1966), a landowner brought suit after the repeal of an act granting a landowner the right to recover from the State for damages to his land caused by the State's failure to install necessary culverts to prevent flooding. Before the act's repeal, the landowner's land had been damaged by flooding caused by the State's failures. The court held that the statutory clause saving the "rights of action accrued" saved his cause of action. In both of these cases, conduct that gave rise to a cause of action had occurred before the act was repealed. As subsection (a) provides, it is not enough that there is an inchoate right. For example, there is no accrued right under a contract until there is a breach. Because a right has accrued when a matured cause of action or a legal ability to obtain redress exists, a provision in a statute that is subsequently repealed, such as a tax deduction for a described expenditure, is saved only as to an expenditure made before the statute was repealed.

Subsection (b) merely states more fully the import of the statement in subsection (a) that "an amendment or repeal does not affect an action or proceeding pending or right accrued before the amendment or repeal takes effect." Thus the parties may proceed as to what is saved as if the old law had not been amended or repealed. Of course, the legislature may otherwise provide in the new or repealing statute. See Section 1.

Subsection (c) is commonly found in general savings clauses. It addresses the question of when a penalty is to be reduced. The object of a savings clause like this is to provide

that the penalty imposed might be less, but never greater, than that imposed by the law existing when the offense was committed. *Maul v. State*, 25 Tex. 166, 168 (1860). If the old law provided that punishment was imprisonment for "not less than two years nor more than four years" and the law was amended to make it "not less than one year nor more than five years," did the new law "reduce" the penalty? A reasonable construction would be that the penalty for the pre-amendment offense is "not less than one year nor more than four years."

A penalty that has been imposed but not completed does not continue past the reduced penalty period if it is reduced during an appeal or as a result of the appeal.

An evidentiary privilege, such as the attorney-client privilege, is a right not to reveal a communication. If the communication took place before the repeal of the privilege, the privilege would not be abrogated by the repeal.

This section does not contain a savings clause as to prosecution for criminal offenses. A State may desire to add one tailored to its policy. If so, the State should consider whether it desires to save only prosecutions that are pending; that is, offenses already charged by indictment or information, or all offenses already committed.

The repeal of a criminal statute is generally a bar to prosecution or conviction of an offense committed before the repeal of the statute that provided for the offense but a savings clause may preserve the right to prosecute after the repeal. A repeal is not generally grounds for release from a sentence already imposed and no longer subject to appeal. Elmer M. Million, *Expiration of a Federal or Oregon Statute or Regulation as a Bar to Prosecution for Violations Thereunder*, 24 Or. L. Rev. 25 (1944).

[SECTION 17. CITATION FORMS. Citations in the following forms are adequate for all purposes.

[(1) Session Laws: _____,

(2) Statutes: _____,

(3) Annotated Statutes: _____,

(4) Revised Code: _____,

(5) Administrative Rule: _____].]

Comment

Source: New.

This section is bracketed to indicate that an enacting jurisdiction may choose whether to adopt this section in whole or in part.

The use of short uniform citations results in clarity and simplicity. A State should consider adopting whichever citations are appropriate. Examples are:

Session Laws: 1995 Kan. L. 101

Statutes: 1995 Iowa Acts 101

Codified or Annotated Statutes: Ky. Rev. Stat. Ann. § 101 (1995)

Revised Code: 1 Del. C. § 101

Administrative Rule: 1 Tex. Admin. Code, § 101 (1995)

Other examples appear in *Judicial Opinion Writing Manual*, Chapter IV, American Bar Association Appellate Judges Conference (West 1991).

Courts and legislative bodies often promulgate their own citation forms. Under Section 1(a) these would not be preempted or superseded by this section, but it is hoped that they would be made to conform to the forms specified by this section.

SECTION 18. PRINCIPLES OF CONSTRUCTION; PRESUMPTION.

(a) A statute or rule is construed, if possible, to:

(1) give effect to its objective and purpose;

(2) give effect to its entire text; and

(3) avoid an unconstitutional, absurd, or unachievable result.

(b) A statute that is intended to be uniform with those of other States is construed to effectuate that purpose with respect to the subject of the statute.

(c) The presumption that a civil statute in derogation of the common law is construed strictly does not apply to a statute of this [State].

Comment

Source: Subsections (a)(2) and (3) are adapted from Section 13 MSCA. Subsection (b) is adapted from Rule 25 Drafting Rules for Uniform or Model Acts NCCUSL (1995).

As discussed hereafter, this Act provides a process to be followed by the construer in construing a statute or rule rather than embracing any particular theory of construction.

Theories of Construction

A particular theory of construction is not adopted, by this Act, in part, because of the state of the law on statutory construction and, in part, because "... American courts have no intelligible, generally accepted and consistently applied theory of statutory construction." Henry M. Hart, Jr., and Albert M. Sacks, *The Legal Process; Basic Problems in Making Application of Law*, 1169, (William N. Eskridge and Philip P. Frickey, eds., Foundation Press, 1994). A careful review of state court opinions discloses that the rules of statutory construction are not rules in the same sense as are other rules of law, such as the rule imposing strict liability on a manufacturer of goods. It is not clear whether this status of the law is due to the basic inadequacy and contradictory nature of the many and often contradictory rules of statutory construction, the imprecision of language, the inclination of some to start with the answer instead of the question, other factors, or some combination of these factors.

Although none of them are embraced by this Act, there are four generally recognized historic theories of statutory construction. These are, in historical order: the Mischief Rule, the Equity of Statute Rule, the Plain Meaning Rule, and the Golden Rule.

The Mischief Rule or Purpose Approach was early articulated in *Heydon's Case*, 3 Co. 7a, 76 Eng. Rep. 637 (Exchequer 1584.) Under this rule the construer first identifies the mischief or deficiencies of the common law and the remedy provided by the legislature and then adopts the construction that will suppress the mischief and advance the remedy. With an understanding of the true reason for the remedy in mind, the words of the text are expanded or contracted from their usual meaning to carry out the legislative purpose. There is no need to first find the text ambiguous or uncertain before obtaining from other sources an understanding of the purpose of the statute.

The Equity of the Statute Rule makes the statute's purpose, true reason for it, or the equity of the statute paramount. Unlike in the Mischief Rule or Purpose Approach, the construer is not restricted by the text in carrying out the statute or rule's purpose. Sometimes it requires a construction not within the literal meaning of the text. *Baker v. Jacobs*, 23 A. 588 (Vt. 1891). That case involved a statute that entitled a losing party to a new trial if the prevailing party gave any juror "victuals or drink" by way of treat. The prevailing party gave several jurors cigars by way of treat. In affirming the order granting a new trial, the court stated that "We do not deem it necessary to decide whether tobacco falls within the strict meaning of the terms 'victuals or drink,' as has been ingenuously argued by the defendants' counsel." 23 A. at 588. This approach is now little used.

The Plain Meaning Rule has several aspects. It is strongly literal. In its pure form, it precludes resort to any other sources of legislative intent or purpose if the meaning of the

text or rule is plain from the text; only if it is ambiguous may the construer resort to the other sources. A common formulation is that "where there is no ambiguity in the words, there is no room for construction." Chief Justice Marshall in *United States v. Wiltberger*, 5 Wheat. 76, 5 L. Ed. 73, 92 (1820). The Comment to Section 13 MSCA embraces this view.

Most state courts claim that they follow the Plain Meaning Rule, although it has many formulations and is often stated differently in opinions of the same court. Most commentators have criticized its use for various reasons, including that it has often been used to frustrate the apparent intent of the legislature. Thus, a court may find, or not find, an ambiguity, depending on the result it desires. Arthur W. Murphy, *Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts*, 75 Colum. L. Rev. 1299 (1975); E. Russell Hopkins, *The Literal Canon and the Golden Rule*, XV Canadian Bar Rev. 689-692 (1937); Hon. Felix Frankfurter, *Some Reflections on Reading Statutes*, 47 Colum. L. Rev. 527 (1947). That appellate courts often divide almost equally as to whether a particular text is ambiguous has furthered doubts about the way this approach is used. Another criticism is that the strict plain meaning rule requires a court to make a threshold finding of the existence of an ambiguity before all the information that the court needs to make an informed judgment is presented to it.

Although it was thought that the Plain Meaning Rule had received the death blow in the federal courts over 50 years ago in *United States v. American Trucking Ass'n*, 310 U.S. 534 (1940), the United States Supreme Court has recently stated that a version of it was followed. Philip P. Frickey, *From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Construction*, 77 Minn. L. Rev. 241, 254 (1992).

The Golden Rule or Baron Parke's Rule provides that if the unambiguous or literal meaning of the statute leads to an absurd or unjust result or even an inconsistency in the statute, the construer should search further for the correct meaning of the statute and construe it so as to avoid the absurd or unjust result. This may simply be a way to demonstrate that the text is ambiguous so that the construer may go beyond the specific word or phrase in question in its search for legislative intent.

There has been a great revival in interest in theories of statutory construction in the last two decades. The relative role of the text and other evidence of the legislative intent or purpose is a major concern of most of this literature. The plain meaning advocates or textualists insist on confining construction to the plain import of the words. The intentionalists or purpose adherents rely to a major extent on the intention or purpose of the statute. Some of them engage in "imaginative reconstruction" in order to understand the conditions existing at the time of the enactment so as to better understand the language. Judge Richard A. Posner would put the construer in the shoes of those who enacted the statute to find out how they would have resolved the problem, especially as to a situation apparently overlooked by the statute. This is the approach used in *Baker v. Jacobs*, 23 A. 588 (Vt. 1891), the Vermont Equity of the Statute case. Richard A. Posner, *Statutory Interpretation -- In the Classroom & in the Courtroom*, 50 U. Chi. L. Rev. 800 (1983).

The law and economics theorists advocate a public choice view that statutes are the product of deals made among competing private interest groups with the legislature. They, therefore, urge that the consequence of this agreement is that a statute should be narrowly construed and courts should not fill gaps. *Symposium on Theory of Public Choice*, 74 Va. L. Rev. 167-518 (1988).

Another view is that "the statute ought always to be presumed to be the work of reasonable men pursuing reasonable purposes reasonably, unless the contrary is made unmistakably to appear." Henry M. Hart, Jr. & Albert M. Sacks, *The Legal Process: Basic Problems in the Making and Application of Law*, 1125, (William N. Eskridge, Jr. and Philip P. Frickey, eds., Foundation Press, 1994). A statute therefore is to be construed accordingly. *Id.*, 1374-1380. See also Philip P. Frickey, *From Big Sleep to Big Heat: The Renewal of Theory in Statutory Construction*, 77 Minn. L. Rev. 241, 249 (1992); Reed Dickerson, *The Fundamentals of Legal Drafting* (2d ed. 1986).

Dynamic statutory interpretation is another theory advocated by some writers. Its advocates urge that as the societal, legal, and constitutional context of a statute changes, the interpretation of the statute may change. William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 Penn. L. Rev. 1479 (1987); Paul Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U. L. Rev. 204 (1980). Others insist this is improper.

Most writers would probably agree that there is a consensus that statutory construction is an art and not a science, but that the construer should conscientiously seek the legislature's view and not the construer's view.

The Construction Process

Instead of embracing any particular theory of construction, this Act adopts a process to be followed by the construer when seeking to construe a statute or rule. Sections 18, 19, and 20 are to be read together and set forth a unified step-by-step process. The initial step in construction is to read the text, which is the primary essential source of the meaning of the statute or rule. (Section 19). In reading the text, the construer must consider Sections 2 through 7, Section 18, and the context in which the statute or rule is being applied. The construer may also consider Section 20 or the other aids to construction in this Act (Sections 8 through 16).

The context of a statute or rule includes the section of the statute or rule in which the word or phrase appears, the entire statute, code, or rule of which the section is part, other statutes or rules on the same subject, and the facts and circumstances of the matter before the construer. The general legal environment, whether economic, political, social, or other, in which the statute or rule functions is also part of the context. For example, if the statute or rule in question functions in the legal environment of regulation of employment relations, that context must be considered. Any of these contexts may suggest the need to accommodate the meaning of the word or phrase to a particular context.

Not all of the sections are used in the same way, however. Sections 2 through 7 aid a construer in assigning meaning to certain kinds of words or phrases. Section 13 describes the limited value to a construer of the intrinsic aid of headings and titles. On the other hand, Sections 8 through 12 and 14 through 16 aid a construer as to what effect is to be given to certain statutes in given circumstances, but do not aid the construer in assigning meaning. Aids to construction not set forth in this Act may also be considered but have less value than those set forth in this Act.

Unlike MSCA Section 15, this Act uses "uncertain" instead of "ambiguous." "Uncertain" as used in this Act (Section 20) means "unclear." The use of "ambiguous" was rejected because of the undesirable baggage it carries from many plain meaning rule cases. Under the strict plain meaning rule, a finding that the meaning of a statute's text is "ambiguous" is required to meet the threshold that permits a court to go beyond the text to determine the meaning of a word or phrase. By using "uncertain" it is hoped to avoid the curious spectacle of a court dividing sharply over whether a particular word or phrase is "ambiguous." A strict threshold is undesirable; therefore, "uncertain" is also used as a lesser threshold.

In construing a statute or rule, the initial and primary focus is on the text. But its meaning may not be certain until the construer considers the context and the facts before the construer. For example, if a workers' compensation statute calculates the weekly benefit to be paid upon the basis of the average "weekly wages" paid to the injured employee in the 12 weeks preceding the injury, the question is what are "wages" for the purpose of the statute. The weekly payment by the employer of \$280. (40 hours x \$7.00) to a worker is certainly "wages." "Payment" as used in the statute is, therefore, included in the core meaning of the word "wages." What, however, if there is also a payment by the employer to an insurance company for the worker's fringe benefits, such as health care? This payment is certainly "compensation" but probably not "wages." What of tips regularly paid to a waiter? When the tip is placed on a credit card it is paid to the waiter by the employer. Whether the tip in that case is wages is not certain on the face of the statute. Depending on which fact situation of the three is before the construer, the meaning of "wages" is respectively certain, probably certain, and uncertain.

On the other hand, there are statutes or rules where the text is inherently unclear, at least if the literal meaning of the text is considered. A classic example is the Canadian provincial statute that requires drug stores to "close every evening at 10:30 p.m." The question presented is: When could a drug store reopen? At 10:31 p.m., 12:01 a.m., 7:30 a.m., or some other time? The statute literally provides no answer. If the construer, however, determines the purpose that the statute apparently was intended to serve, it might conclude that reopening at 10:31 p.m. or even 12:01 a.m. is not permitted.

The lack of clarity sometimes is not apparent until after all the factors have been considered. It is, therefore, anticipated that an advocate will present to the construer at the beginning of the inquiry all of the materials the advocate considers relevant but the construer will select, consider, and weigh only those materials and aids it considers to be relevant, valid, or persuasive to the inquiry. Because all the materials will be in writing, no oral testimony is anticipated as being necessary. At the end of the review the construer may conclude that only the

text itself is pertinent or it may find that other aids to construction are relevant in ascertaining the intent of the enacting body.

It is recognized that construers often consider and weigh various aids to construction and it is not the intent of this Act to restrict full judicial inquiry. It is intended that a construer seriously seeking to carry out the legislative objectives be given considerable discretion to select and weigh those aids to construction that are considered relevant and helpful.

If a statute or rule of another State is applicable and the particular question of construction has not been determined by the courts of the other State, the construer may use this Act to construe the statute or rule.

Subsection (a)(1) clarifies that the words of a statute or rule are not mere literary text but a statement made by the legislature or the agency to attain an objective or purpose. "Intent" could be substituted for "objective and purpose," although the latter may be a more accurate description under the circumstances. Sutherland, *Stat. Const.* §§ 45.08 and 45.09 (5th ed. 1992).

Subsection (a)(2) assumes that there are no superfluous words in a statute or rule -- that the legislature or agency expected every word to be given some effect. Sutherland, *Stat. Const.* § 46.06 (5th ed. 1992).

Subsection (a)(3) assumes that the legislature or agency intended that the statute or rule be constitutional and capable of effective administration. Sutherland, *Stat. Const.* §§ 45.11 and 45.12 (5th ed. 1992).

Subsection (b) provides that because a Uniform Act is intended to provide a uniform rule of law in all States that adopt it, a court construing a Uniform Act should adopt the same interpretation that courts in other States have already given the Uniform Act. Uniformity cannot be fully obtained unless there is uniformity of construction. Not every act called a uniform act is the product of the NCCUSL. However, if uniformity of law among enacting States is the purpose of a statute or rule, courts should seek to interpret them uniformly. If a state statute is enacted to conform to federal legislation so as to make a state program eligible for participation in a federal program, the state statute should be interpreted so that it remains consistent with interpretations of the federal act. *Christgau v. Woodlawn Cemetery Ass'n*, 293 N.W. 619 (Minn. 1940). If a state act is identical to a model act promulgated by a federal agency, the Borrowed Statutes Doctrine may also apply. See Section 20(b)(1).

Subsection (c) rejects what is perhaps the most commonly cited common law presumption -- that statutes in derogation of the common law should be strictly construed. In rejecting this presumption, subsection (c) follows legislation taking the same approach adopted many years ago by some States, e.g., Tex. Gov't Code § 312.006 (1988), which was first enacted as part of a 1911 revision. This common law presumption as to the legislative intent was based on an assumption that legislatures had such high regard for the common law that statutes changing the common law should be strictly construed so as to make only those changes that the

text of the statute plainly required. If the presumption ever had any basis in fact, the great quantity of legislation changing the common law enacted during the last half century demonstrates it has long been without foundation.

The presumption that remedial statutes that change the common law should be liberally construed seems to compete with the strict construction presumption. Professor Karl N. Llewellyn in his classic article, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed*, 3 Vand. L. Rev. 395, 401 (1950), paired the two presumptions and other similar rules as thrust and parry. He hypothesized that if two equally applicable rules would lead to different results, the choice of rules of interpretation and not the text of the statute or rule determined the result. His examples may have been instances of a court starting with the answer instead of the question.

The presumption that penal statutes shall be strictly construed is not included in this Act. Like the presumption about statutes in derogation of the common law, this presumption has been expressly rejected by a number of States. Texas rejected it in 1856 and California in 1872. Texas Penal Code Section 1.05(a) (1967); Calif. Penal Code Section 4 (1872). Over a half century ago Livingston Hall, in his article *Strict or Liberal Construction of Penal Statutes*, 48 Harv. L. Rev. 748 (1935), demonstrated that courts do not consistently apply the presumption. Professor Hall noted that courts have been less willing to apply the presumption if the offense is *malum in se* than if it is merely *malum in prohibitum*. The U.S. Supreme Court, for example, has not applied the presumption consistently. Compare *United States v. Campos-Serrano*, 404 U.S. 293 (1971) (applied) with *Dixson v. United States*, 465 U.S. 482 (1984) (not applied).

Nevertheless, a State that recognizes the presumption that a penal statute shall be strictly construed, and desires to retain that presumption, will need to add an appropriate subsection to this section.

The presumption that tax statutes are strictly construed against the government and in favor of the taxpayer continues to be used by some courts. A State may wish to consider adding that presumption to this section.

SECTION 19. PRIMACY OF TEXT. The text of a statute or rule is the primary, essential source of its meaning.

Comment

Source: New.

As stated in the Comment to Section 18, Sections 18, 19, and 20, with their Comments, are to be read together and set forth a unified step-by-step process that a construer should follow. The primary focus in that process is always the text.

SECTION 20. OTHER AIDS TO CONSTRUCTION.

(a) In considering the text of a statute or rule in light of Sections 2 through 7, Section 18, and the context in which the statute or rule is applied, the following aids to construction may be considered in ascertaining the meaning of the text:

(1) the meaning of a word or phrase may be limited by the series of words or phrases of which it is a part; and

(2) the meaning of a general word or phrase following two or more specific words or phrases may be limited to the category established by the specific words or phrases.

(b) In addition to considering the text of a statute or rule in light of Sections 2 through 7, Section 18, the context in which the statute or rule is applied, and the aids to construction in subsection (a), the following aids to construction may be considered in ascertaining the meaning of the text:

(1) a settled judicial construction in another jurisdiction as of the time a statute or rule is borrowed from the other jurisdiction;

(2) a judicial construction of the same or similar statute or rule of this or another State;

(3) an official commentary published and available before the enactment or adoption of the statute or rule;

(4) an administrative construction of the same or similar statute or rule of this State;

(5) a previous statute or rule, or the common law, on the same subject;

(6) a statute or rule on the same or a related subject, even if it was enacted or adopted at a different time; and

(7) a reenactment of a statute, or readoption of a rule which does not change the pertinent language after a court or agency construed the statute or rule.

(c) If, after considering the text of a statute or rule in light of Sections 2 through 7, Section 18, the context in which the statute or rule is applied, and the aids to construction in subsections (a) and (b), the meaning of the text or its application is uncertain, the following aids to construction may be considered in ascertaining the meaning of the text:

(1) the circumstances that prompted the enactment or adoption of the statute or rule;

(2) the purpose of a statute or rule as determined from the legislative or administrative history of the statute or rule;

(3) the history of other legislation on the same subject;

(4) legislative or rule-making materials, including proposed or adopted amendments, preambles, statements of intent or purpose, findings of fact, notes indicating source, contemporaneous documents prepared as a part of the legislative or rule-making process, fiscal notes, and committee reports; [and]

(5) the record of legislative or administrative agency debates and hearings[; and

(6) written or printed materials that are not legislative materials].

(d) In ascribing weight to the materials listed in subsection (c), greater weight must be given to materials that:

(1) are shown by the record to have been considered by the legislature or administrative agency before passage or adoption than to materials not shown by the record to have been so considered;

(2) were available to the legislature or administrative agency before passage or adoption than to materials not so available;

(3) formed the basis for the language in the statute or rule than to materials that did not do so; and

(4) were not revised after they were considered by the legislature or administrative agency than to materials that were so revised.

Comment

Source: New.

As stated in the Comment to Section 18, Sections 18, 19, and 20, with their Comments, are to be read together and set forth a unified step-by-step process that a construer should follow. Under that process the preceding sections are considered before this section is considered and subsections (a), (b), and (c) are considered in sequence. The use of an aid to construction in Section 20 is discretionary and its use and the weight to be given to it depends on the context.

Subsections (a)(1) and (2) are intrinsic aids to construction. They do not require resort to other sources external to the text in question and so are unlike the other aids to construction. For this reason they are placed in a separate subsection (a).

Subsection (a)(1) states the canon *Noscitur a Sociis* -- "it is known from its associates." The construer may use this canon of construction where there is a series of words of about the same level of abstraction. The meaning of a somewhat more general term is limited by the more specific. In *Carson & Co. v. Shelton*, 107 S.W. 793 (Ky. App. 1908), a statute gave a lien to all persons who perform or furnish "labor, materials, supplies, or teams for the construction ... of any ... railroad." Plaintiff supplied food for the contractor's help and food for its teams and sought a lien, contending these were "supplies" within the meaning of the statute. The court, in applying this canon, held for the defendant and found that "labor, material, ... or

teams" were things used in construction of the railroad and that "supplies" was restricted to that which entered into construction of the railroad. *Id.*

Subsection (a)(2) states the canon *Ejusdem Generis* -- "of the same kind." This canon permits a construction that a general term or phrase following more specific terms is limited in meaning to the category or class established by the specific terms. In *State v. Ferris*, 284 A.2d 288, 289 (Me. 1971), Ferris was convicted of possession of slips that were records of bets he had placed under a statute that made it a crime to possess, offer for sale, or sell "any punch board, seal card, slot gambling machine, or other implements, apparatus, or materials of any form of gambling." Applying *Ejusdem Generis* the court found that the specific terms established a class of gambling devices and that the general term following the specifications referred to the gambling devices. Therefore, the court held that because the betting slips were not gambling devices but merely records of gambling, the defendant had not violated the statute.

Courts have identified situations in which this canon is not applicable. For example, a single specific term or phrase does not establish a class limiting the general phrase. And if the specific terms exhaust the apparent class, the general phrase is not limited to that class. *Mason v. Inter-City Terminal Ry. Co.*, 251 S.W. 10 (Ark. 1923). Furthermore, courts have considered the canon to be a mere aid to construction. *Benson v. Chicago, ST.P., M. & O. Ry. Co.*, 77 N.W. 798 (Minn. 1899).

Subsection (b)(1) states the Borrowed Statutes Doctrine. It changes that doctrine by making it discretionary instead of binding. The doctrine assumes that if a State borrows a statute of another State and enacts it as its own, it borrows also the existing settled judicial construction of the statute in the lending State. *Cathcart v. Robinson*, 5 Pet. (U.S.) 264 (1831). The assumption is that the borrowing State wants the legal result of the statute that it has borrowed, including its settled interpretation. Comment, 31 Minn. L. Rev. 617 (1947).

Under this doctrine, if it is established that borrowing has occurred, generally an earlier interpretation of the borrowed statute in the lending State is binding on the courts in the borrowing State. Decisions in the lending State, settled or not, which occur after the borrowing are not considered controlling but may be persuasive. *Meanley v. McColgan*, 121 P.2d 45 (Cal. App. 1942).

There must be a borrowing, not a mere copying of language. Among the means used to determine if there is a borrowing is whether the language is identical or virtually so. *City of Tyler v. St. Louis Southwestern Ry. Co. of Texas*, 91 S.W. 1, (Tex. 1906), *on reh*, 93 S.W. 997 (Tex. 1906).

Courts, on various grounds, however, have found that an interpretation in the lending State was not binding on the borrowing State. For example, an interpretation that was "contrary to the spirit and policy of the jurisprudence" of the borrowing State has been held not to be binding. *Edwards Mfg. Co. v. Southern Surety Co.*, 283 S.W. 624, 625 (Tex. Civ. App. 1926). A pre-borrowing decision construing a Massachusetts statute added to a Texas statute was held not to be controlling because it was inconsistent with the other provisions of the Texas Workers

Compensation Act. *Consumers' Gas & Fuel Co. v. Erwin*, 243 S.W. 500 (Tex. Civ. App. 1922); *Morgan v. Davenport*, 60 Tex. 230 (1883). An interpretation that conflicts with other laws and long standing practices of the borrowing State has also been held not to be binding. *Cole v. the People*, 84 Ill. 216 (1876).

Subsection (b)(2) recognizes that a judicial construction of the same or similar statute may be helpful. If the prior judicial construction is of the statute being construed, some courts consider that the prior construction becomes a part of the statute and so is binding. *Patridge v. Palmer*, 277 N.W. 18 (Minn. 1937). *Brown v. State*, 196 S.W.2d 819 (Tex. Crim. App. 1946), took this view although the court considered that the prior decision lacked logic. However, *stare decisis*, even as to the common law, does not preclude a court from overruling its prior decision.

Subsection (b)(2) is not intended to have the effect of overturning the existing legal effect of a prior judicial or administrative construction of a statute or rule.

Subsection (b)(2) recognizes that as to judicial construction there is a further element: legislative silence is sometimes said to equal legislative approval. *People v. Hallner*, 277 P.2d 393 (Cal. 1954). This doctrine assumes that the legislature knew of the judicial construction and that it failed to change the law because it approved of the construction. These assumptions have been doubted. William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 Georgetown L. J. 1361 (1988); Horack, *Congressional Silence: A Tool of Judicial Supremacy*, 25 Tex. L. Rev. 247 (1947).

The construction by a court in another State of the same statute or rule may invoke the rule concerning Uniform Laws in Section 18(b). See Comment to Section 18(b). The construction of a similar statute or rule in the State of enactment or another State may be useful as evidence of its probable meaning.

Subsection (b)(3) provides that an official comment to a statute or rule is a comment that was prepared by the developer of the proposed legislation such as NCCUSL, a bar association, or a trade organization. If it was available to the enacting or adopting body before the enactment or adoption, it is likely to be very persuasive. Not every act called a uniform act is the product of the NCCUSL. In considering the value of a comment to a purported Uniform Act, the source of the comment should be considered. A confidential document cannot be an official commentary. An official comment may be used at any step in the construction process. A comment prepared after adoption may be considered under Section 20(c)(4).

Subsection (b)(4) recognizes the importance to a court construing a statute or rule of an interpretation of the same statute or rule by an administrative agency responsible for administering the statute. The impact of the agency's interpretation upon the court's function depends on a number of factors only some of which are stated in this Comment. Subsection (b)(4) refers to an administrative construction by an agency of "this State" while subsection (b)(2) refers to a judicial construction by a court of "this or another State." This distinction recognizes

that the construer is better able to assess the quality of a construction of an agency of its own State than that of another State.

The source of the agency's authority may be critical. Thus, an agency may interpret statutory language while formally exercising its delegated authority under prescribed procedures, as in an on-the-record adjudication, or in a less formal way. Obviously, actions of the first character are entitled to more attention than actions that are not shaped by the full, public procedure and the exercise of delegated legal authority. For example, the literature distinguishes between "legislative rules" and "interpretative rules." "Rule" is defined by the NCCUSL Model State Administrative Procedure Act (1981) as "an agency statement of general applicability that implements, interprets, or prescribes law or policy."

A legislative rule is the product of a delegation by a legislative body to an agency to define a specific term or to fill a statutory gap; in that case, the agency would be exercising delegated quasi-legislative authority. The delegation may be express or implied. It seems to follow that a legislative rule would be binding on a court, unless the agency has exceeded its delegated authority, but that is not entirely clear. See Bernard Schwartz, *Administrative Law*, §§ 10.31-10.33 (3d ed. 1991); Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 Yale L.J. 969, 972-975 (1992).

An interpretative rule, on the other hand, is an interpretation of a statute by an agency of the executive branch. With respect to an interpretative rule, various factors have historically been stated in determining the weight or deference that a court should give to an agency's interpretation. Some are: the expertise of the agency on the particular subject, especially if technical; the expertise of the agency as to legislative purpose because of the agency's involvement in the enactment or revision of the statute; that the interpretative rule was promulgated shortly after the legislative action; and that an agency's interpretative rule is of its own legislative rule should entitle the interpretative rule to greater weight or deference. Other important factors concern whether the interpretation was "longstanding," "consistent," and "uniform." In *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), the United States Supreme Court stated that the weight or amount of deference to be given to an agency interpretation is dependent "upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 323 U.S. at 140. Another factor is whether the "interpretative rule" was adopted by the agency that had primary responsibility for administering the statute. Reenactment of the text after an administrative interpretation and even legislative silence or inaction have been used as indicia of legislative approval of an agency interpretation. Assumptions about legislative knowledge of the interpretation and that legislative action or inaction means approval may be problematic, however.

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), considered by some as one of the most important decisions in the history of administrative law, was hailed by some as providing the road map for the way out of the inconsistency and chaos of the past. It specified a two-step process. First, a court using the usual rules of construction must determine whether the statute has "directly spoken" on the subject. If

the legislative body has, as determined by the Court, provided the answer, that is the end of the inquiry. Both the court and the agency must obey the legislative developed law.

Second, if the legislative body has not addressed the matter at issue, a reasonable interpretation by the agency that accommodates the competing interests is subject to great deference by a court. In adopting its interpretation, the agency may appropriately rely upon its incumbent administration's views of wise policy to inform its judgment. In other decisions, members of the Court have characterized *Chevron* as holding "that courts must give effect to reasonable agency interpretation unless it is inconsistent with clearly expressed congressional intent" and that "courts should determine whether an agency's interpretation of a statute is permissible, not correct." A number of state courts have expressed support for the *Chevron* principle. *Project: State Judicial Review of Administrative Action*, 43 Admin. L. Rev. 571, 563-66 (1991).

Chevron has been subjected to considerable analysis and empirical study, some of which is very critical. Bernard Schwartz, *Administrative Law*, (3d ed. 1991) §§ 10.35-10.38; Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 Yale L.J. 969, 980-1041 (1992); T. Alexander Aleinikoff, *Updating Statutory Interpretation*, 87 Mich. L. Rev. 20 (1988). *Chevron* has not been consistently applied by the Supreme Court itself. For example, in a recent 5-to-4 opinion, *Central Bank of Denver v. First Interstate Bank of Denver*, ___ U.S. ___; 114 S. Ct. 1439, 128 L.Ed. 119 (1994), the Court overturned a half century of administrative, as well as judicial, interpretation of Section 10(b) and Rule 10(b)(5) of the Federal Securities and Exchange Act without reference to *Chevron*. Although *Chevron's* precise terms and scope have become less clear, it remains an important guideline for courts dealing with agency interpretations, but its promise remains unfulfilled. Kenneth Culp Davis and Richard J. Pierce, Jr., I *Administrative Law Treatise*, (3d ed. 1994) §§ 3.4-3.6.

Subsection (b)(5) recognizes that a previous statute or the common law may be used to construe a statute. In *McBride v. Clayton*, 166 S.W.2d 125 (Tex. 1942), a Texas statute provided that a corporation had an insurable interest in its officers and directors. In finding that the policy was effective as to the president and majority stockholder after the corporation was in dissolution, the court used the common law definition of insurable interest and its rationale. See also Sutherland, *Stat. Const.* §§ 50.01 and 50.03 (5th ed. 1992). A previous statute or rule may also be useful as part of the history of the development of a statute or rule being construed.

Subsection (b)(6) recognizes that related statutes or rules may be used as an aid to construction as they reflect a policy common to the statute or rule being construed. See discussion of statute in *pari materia* in Comment to Subsection (b)(8).

In using subsections (b)(5) and (6), a construer should give greater weight to a statute or rule enacted contemporaneously with the statute or rule being construed than to a statute or rule enacted later.

Subsection (b)(6) states the canon *in pari materia* "on the same subject.") The basic assumption of this canon is that all statutes or rules on a subject manifest a common

legislative policy and so inconsistencies, lapses, and uncertainties in a statute may be resolved by looking at the other statutes on the same subject. *Thorne v. Jones*, 57 N.W.2d 40 (Mich. 1953).

Subsection (b)(7) invokes the reenactment doctrine. A reenactment of a statute without relevant change may constitute approval of a prior interpretation of the statute or rule. *Rosemary Properties, Inc. v. McColgan*, 177 P.2d 757 (Cal. 1947). Courts have used this as an aid to construction and not as a binding rule. *Girouard v. United States*, 328 U.S. 61 (1946).

The canon "the statement of one thing implies the exclusion of another" ("*Expressio Unius Est Exclusio Alterius*"), is not included in this Act because it has little practical use. It is appropriately used only if the statement, context, and other evidence of legislative intent indicates that the listing in the text is exhaustive; it merely states what is already known -- that the text is exhaustive. Sutherland, *Stat. Const.* § 47.25 (5th ed. 1992). Often it is readily apparent that a statement is exhaustive and, if so, use of the canon merely reinforces that conclusion. See *Mercein v. Burton*, 17 Tex. 206 (1856). The canon is merely an aid to determining legislative intent and is not a rule of law. *American Rio Grande Land & Irrigation Co. v. Karle*, 237 S.W. 358 (Tex. Civ. App. 1922). The canon's limitations are noted in *Industrial Trust Co. v. Goldman*, 193 A. 852, 855 (R.I. 1937).

The canon "term of art" is covered by Section 2. For a description of the common canons of construction see William P. Statsky, *Legislative Analysis and Drafting*, pp. 83-95 (2d ed. West, 1984). This Act does not preclude the use of canons or other aids to construction not included in this Act. See Comment to subsection (c).

Subsection (c) identifies additional aids to construction; these largely consist of legislative or administrative history. To use the materials described in subsection (c) the construer must conclude that the steps taken under Sections 18, 19, and 20(a) and (b) still leave the meaning uncertain. MSCA Section 15 contains a similar threshold. Subsection (c), however, does not describe comprehensively and exclusively all the sources a court may examine to obtain a fuller understanding of legislative purpose or intent to assist it in construing to a statute or rule. It identifies the common sources to which state courts resort.

The materials that may be considered under subsection (c) may not be confidential materials and must be generally available. All the materials permitted to be considered must be written or printed and therefore would generally be considered by a construer without the hearing of live testimony.

The use of legislative material has recently become a much debated issue. Although legislative materials are used extensively in the federal courts, their use has recently been strongly criticized by Justice Scalia. *U.S. v. Taylor*, 487 U.S. 326 (1988); *West Virginia University Hospitals v. Casey*, 499 U.S. 83 (1991), *but see* 103. (Stevens, J. dissenting); See also Bruce Fein, *Scalia's Way*, 76 ABA J. 38 (1990). Some of the reasons advanced against the use of legislative materials are: they are sometimes manufactured by advocates; they may be unreliable; committee staff play a major role in their preparation; they are not uniformly available; and the

search and production of them is expensive and favors those with the greater resources. See Jack Davies, *Legislative Law and Process in a Nutshell*, pp. 311-18 (2d ed. West, 1986).

The use of legislative materials, however, has also been strongly defended. Steven Breyer, *The Uses of Legislative History in Interpreting Statutes*, 65 S. Cal. L. Rev. 845 (1992); Philip P. Frickey, *From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Construction*, 77 Minn. L. Rev. 241 (1992); Judge Patricia Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 Iowa L. Rev. 195 (1983).

Subsection (c)(1) recognizes that the circumstances that prompted enactment or adoption of a statute or rule may provide useful information about the purpose of the statute or rule. This would include a history of the times and conditions at the time of enactment. *Cousins v. Sovereign Camp*, *WOW*, 35 S.W.2d 696 (Tex. 1931); *Chatwin v. U.S.*, 326 U.S. 455 (1945).

Subsection (c)(2) recognizes that the legislative or administrative history of a statute or rule may be useful in determining the purpose and so aid construction. *Kelly v. Dewey*, 149 A. 840 (Conn. 1930).

Subsection (c)(3) recognizes that history of other legislation on the same subject will be similarly useful. The assumptions of the canon *in pari materia*, discussed in the Comment to subsection (b)(6), support this.

Subsection (c)(4) identifies common materials that serve as intrinsic aids to construction, such as preambles, findings of fact, synopses, and statements of purpose found in the statute or rule itself. Committee reports are other materials that courts often consider important; some studies suggest that legislators read the committee reports instead of the bills.

Subsection (c)(5) identifies debates and hearings as potentially useful materials. The utility of them has been questioned. Reed Dickerson, *Statutory Interpretation: Dipping Into Legislative History*, 11 Hofstra L. Rev. 1125, 1131-32 (1983).

Subsection (c)(6) is bracketed to indicate that it is not required for uniformity. Some States may desire to expand this subsection to list the non-legislative materials that may be considered, such as: publications by academic and other scholars, governmental and other public statistics, books, magazines, newspaper articles and any other similar publications, and other sources of information describing the conditions existing at the time of enactment or amendment of the statute or promulgation of the rule being construed. A court generally may consider commentary in legal publications, such as law reviews and bar journals.

Testimony of a legislator after the passage of a statute has occurred about the meaning or purpose of the statute is generally not accepted as being against public policy. Sutherland, *Stat. Const.* § 48.16 (5th ed. 1992). This testimony is not listed as an aid to construction in this Act.

Subsection (d) provides a guide to the relative weight to be given materials described in subsection (c) under stated circumstances. See William N. Eskridge, Jr., *Legislative History Values*, 66 Chi-Kent L. Rev. 365 (1990). Subsection (d) describes the greater weight to be given to the identified materials as compared to the somewhat similar materials casting light on legislative purpose or intent. Subsection (d) should not be read to mean that certain legislative materials have no value to a construer seeking to understand the text of a statute or rule. A construer is given considerable latitude in determining how much weight, if any, should be given to a particular legislative material.

SECTION 21. SHORT TITLE. This [Act] may be cited as the Uniform Statute and Rule Construction Act (1995).

Comment

Source: Drafting Rules for Uniform or Model Acts, NCCUSL. (1995)

SECTION 22. EFFECTIVE DATE. This [Act] takes effect

Comment

Source: Drafting Rules for Uniform or Model Acts, NCCUSL (1995).

Care should be taken to have this Act become effective on the first day of a regular legislative session as it will have an impact on all statutes enacted after its effective date. Because bills are drafted in advance, adequate time should be provided between the enactment of this Act and its effective date.

SECTION 23. SEVERABILITY CLAUSE FOR THIS ACT. 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.

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among States enacting it.

SECTION 25. REPEALS. The following acts and parts of acts are repealed:

(1)

(2)

(3)

Comment

Source: Drafting Rules for Uniform or Model Acts, NCCUSL. (1995)

The existing statutory construction statute of a State should be examined to avoid any inconsistencies.

A State should consider whether to repeal or retain any provisions of its existing statutory construction statute that is covered by this Act. For example, a State may desire to retain a definition of a word as it appears in its existing statutory construction statute if the word is not defined in this Act.

In some instances, a State may desire to retain its existing statutory construction statute for aid in the construction of a statute adopted prior to the effective date of this Act.