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J. R. Armstrong

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HOW TO DRAFT A BILL

J. R. ARMSTRONG*

The preparation of a bill for introduction into one of the Houses of the Wyoming Legislature is not difficult. The mechanics of the preparation pertain as much to your secretary as they do to the Clerks in the Legislature, and, as long as we are going to prepare a bill, it might as well be ready in the formal sense as well as in a substantive sense when we hand it to our favored member of the Legislature for introduction. It is the purpose here, therefore, to briefly discuss both.

An act is a bill until it has passed both houses of the Legislature by a majority by all of the members elected to each house¹ and is presented to the governor for his approval or passage over his veto by two-thirds of the members elected to both houses.² So the first words of our proposal become a BILL FOR AN ACT.

In the upper left hand corner we should have S. F. No..... (for Senate File) if the bill is to be introduced in the Senate, or H. B..... if it is to become a House Bill. In the upper right hand corner the words "Introduced By" should be followed by a blank.

No Bill shall be passed containing more than one subject which shall be clearly expressed in its title.³ There have been a number of Wyoming cases construing that constitutional provision and all but one of them have held that the title of the act in question did not violate the constitutional provision. In other words, Wyoming follows the general line of authorities which hold that the constitutional provision must be liberally construed, to permit the body of the act to embrace all matters reasonably connected with the title.⁴ The object of the title is to inform the members of the Legislature and the public generally of the content of the proposed law and to put them on notice thereof.⁵ If an act has but one general object, no matter how broad that object may be, and contains no matter not germane or relevant thereto, and the title fairly expresses the subject

*Member of the Wyoming State Bar, from Rawlins, Wyoming.

1. ART. 3, SEC. 25:

"No bill shall become a law except by a vote of a majority of all the members elected to each house, nor unless on its final passage the vote taken by ayes and noes, and the names of those voting be entered on the journal."

2. ART. 4, SEC. 8:

"Every bill which has passed the legislature shall, before it becomes a law, be presented to the governor . . ."

3. ART. 3, SEC. 24:

"No bill, except general appropriation bills and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject is embraced in any act which is not expressed in its title, such an act shall be void as to so much thereof as shall not be so expressed."

4. *Harris v. Fitting*, 9 Cal. 2d 117, 69 P.2d 833 (1937); *Maher v. State*, 144 Neb. 463, 13 N.W. 2d 641 (1944); *Witmer v. Polk County*, 222 Iowa 1075, 270 N.W. 323 (1936).

5. *Gibson Product Co. v. Murphy*, 186 Okla. 714, 100 P.2d 453 (1940).

of the Act, it will not violate this constitutional provision.⁶ The title should not be an abstract of all the various provisions of the bill.⁷ The title need not serve as an index to the bill.⁸ The maxim that "the expression of one thing is the exclusion of another" is inapplicable in construing the title of a statute.⁹ On the other hand, it is up to the Legislature to determine whether it wants a restrictive or a comprehensive title. However, if the language is specific, rather than general, the courts are not apt to interpret the constitutional provision liberally and the provisions of the bill not fairly embraced in the title cannot be given force.¹⁰

It is the better practice when repealing an act to make a reference in the title to the section number and a statement that it is repealed. If the act declares an emergency to exist, or the general statement "all acts or parts of acts in conflict herewith are hereby repealed" is used in the act, appropriate references should be made in the title. If the act contains penalties the general words "providing penalties for violations thereof" should be inserted in the title.

Section 16-401, Wyoming Compiled Statutes, 1945, provides that it is sufficient when amending or repealing a law to do so by designating the section number of the Statute or Session Laws. It would be hazardous, however, to refer in the title of your bill only to a section number without an elucidating statement. The title should read: A BILL FOR AN ACT to amend and re-enact Section 101-101, Wyoming Compiled Statutes, 1945, "relating to gambling games and to prohibit the issuance of any licenses therefor." Those words were used in the act construed in *State v. Tobin*,¹¹ where the court said "the title was clear and fairly stated the subject of the intended legislation." The court further said, "Of course, if the title of an act purports to amend, for instance, only one section of a law, then the act is limited in its scope to the subject matter of the section proposed to be amended, and nothing that is not germane to the section as it stood originally can be introduced." In the same case it is said, "a reference in the title of the amending act to the section or sections of the Statute to be amended by number, accurately indicated the general subject of the legislation to be affected by the amendment, and is not in violation of the foregoing constitutional provision, if the new matters contained in the amended section are germane to the subject of the original section."¹²

In spite of the wording of Section 16-401, Wyoming Compiled Statutes, 1945, (Supra), Art. 3, Sec. 26 of the Constitution should be noticed, which

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6. *Beisner v. Cochran*, 138 Neb. 445, 293 N.W. 289 (1940); *Koppala and Camp v. State*, 15 Wyo. 398, 89 Pac. 476 (1907).
 7. *Board of Commissioners v. Stone*, 7 Wyo. 280, 51 Pac. 605 (1898); *Lowden v. Luther*, 190 Okla. 31, 124 P. 2d 359 (1941).
 8. *Kull v. Michigan State Apple Commission*, 296 Mich. 262, 296 N.W. 250 (1941); *Petition of Board of Directors*, 160 Ore. 530, 86 P. 2d 460 (1939).
 9. *Lowden v. Luther* (supra).
 10. *Cory v. Nethery*, 19 Wash. 2d 326, 142 P. 2d 488 (1943).
 11. *State v. Tobin*, 31 Wyo. 355, 226 Pac. 681 (1924).
 12. *Trent v. Union Pacific Coal Co.*, 68 Wyo. 146, 231 P. 2d 180 (1951).

reads: "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended, shall be re-enacted and published at length." The practice has prevailed recently to amend and re-enact the sub-paragraphs (which are set off by letter) of long sections without re-enacting the entire section. That practice has not received the blessing or condemnation of the Supreme Court, hence, the writer expresses no opinion on the matter.**

The title is followed by the enacting clause usually written in capitals and shall be in the words following: "BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WYOMING."¹³

When amending an existing statute the common phraseology in the body of the bill is: "Section 1. Section 101-101, Wyoming Compiled Statutes, 1945, is hereby amended and re-enacted to read as follows:" Then follows the entire section with the changes set forth as follows: If portions of the original enactment are omitted from the new bill, the deletion should be indicated by three (3) asterisks (***) . New material added to the original enactment should appear in capital letters. Of course, everything that goes to a printer should be double-spaced. The bold type heading of the section of the statute is not part of the law and should not be copied into the bill amending the section, and, of course, the historical references at the end of the section should not be put in the amendment. The old section number is, however, carried into the re-enactment.

Wyoming, of course, recognizes the well-known rule "that where a subsequent statute covers the whole ground occupied by an earlier statute, it repeals by implication the former statute."¹⁴ However, "a law is not repealed in a later enactment, if the provisions of the two laws are not irreconcilable nor necessarily inconsistent, but both may stand and be operative without repugnance to each other."¹⁵ Furthermore, repeals by implication are not favored.¹⁶ In view of those three rules it has always seemed to the writer, first, that the scrivener of legislation should be definite if he intends certain statutes to be repealed, and, second, that the general clause: "and all laws and parts of laws in conflict herewith are hereby repealed" is redundant and merely occupies valuable space.

Some draftsmen wax rhetorical with another bit of surplusage, to-wit, "If any section, sub-section, sentence, clause, or phrase of this Act is for

**Since the author submitted this article, the practice referred to in the article, that of amending and re-enacting sub-paragraphs (which are set off by letter) of long sections without re-enacting the entire section, has received the approval of the Wyoming Supreme Court. See *State v. Pitet*, 243 P.2d 177 (Wyo. 1952) (Ed.).

13. ART. 3, SEC. 21:

The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Wyoming."

14. *Tucker v. State ex rel. Snow*, 35 Wyo. 430, 251 Pac. 460 (1926).

15. *Gale v. School District*, 49 Wyo. 384, 54 P. 2d 811 (1936).

16. *Snyder v. McCracken*, 34 Wyo. 349, 244 Pac. 135 (1926); *State v. Cantrell*, 64 Wyo. 132, 186 P. 2d 539 (1947).

any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this Act." Such a provision only "furnishes assurance to the courts that they may properly sustain separate provisions of a partly invalid Act without hesitation or doubt as to whether they would have been adopted if the Legislature had been advised of the invalidity of part."¹⁷ With or without the inclusion of this fancy section it is still up to the court to determine whether the invalid provisions are separable from the valid ones. If they are, the court will hold the valid provisions effective if it believes that the Legislature would have enacted the statute with the unconstitutional parts eliminated.¹⁸

Section 16-405, Wyoming Compiled Statutes, 1945, reads as follows: "Every law shall take effect ninety (90) days after the adjournment of the session of the Legislature at which it was enacted, unless some other day for it to take effect shall have been fixed therein." The advantages of not making the Act effective "from and after its passage and approval" are obvious. The sessions laws are seldom, if ever, available before ninety (90) days after the adjournment of the Legislature. Most appropriation bills have a sentence attached which reads: "An emergency is declared to exist, therefore, this Act shall take effect and be in force from and after its passage." The emergency does not refer to the insolvency of some fund, but established a reason for departing from the usual time fixed by law when the Act would become effective. In construing the Act no significance can be given to the emergency clause.¹⁹

The format recommended in this article can be best shown by an example which follows:

H. B. No.

Introduced by

A BILL
FOR

AN ACT to amend and re-enact Section 27-914, Wyoming Compiled Statutes, 1945, relating to the compensation for coroner; and to amend and re-enact Section 27-915, Wyoming Compiled Statutes, 1945, providing for the appointment of deputy coroners; and to repeal Section 27-913, Wyoming Compiled Statutes, 1945, permitting the coroner to summon physicians for inquisition.

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17. *Hill v. Wallace*, 259 U.S. 44, 42 S.Ct. 453, 66 L.Ed. 822 (1922).
 18. *State v. Schnitgen*, 16 Wyo. 479, 95 Pac. 698 (1908); *State v. Sheldon*, 29 Wyo. 233, 213 Pac. 92 (1923); *State ex rel Wyckoff v. Ross*, 31 Wyo. 500, 228 Pac. 636 (1924); *Salt Creek Transp. Co. v. Public Service Commission of Wyoming*, 37 Wyo. 488, 263 Pac. 621 (1928); *Fristam v. City of Sheridan*, 66 Wyo. 143, 206 P. 2d 741 (1949); *Hanson v. Town of Greybull*, 63 Wyo. 467, 183 P. 2d 393 (1947).
 19. *People ex rel. Toman v. Illinois Central Hotel Company*, 380 Ill. 203, 43 N.E. 2d 969 (1942).

BE IT ENACTED BY THE LEGISLATURE
OF THE STATE OF WYOMING:

Section 1. That Section 27-914, Wyoming Compiled Statutes, 1945, be amended and re-enacted to read as follows:

27-914. The coroner of each county within this state shall receive for holding an inquest *** TEN dollars per day for each day necessarily and actually employed; and for each mile actually and necessarily traveled in going to and returning from the place of inquest by the nearest practicable route *** FIFTEEN cents per mile; for performing the duties of sheriff, when the sheriff is a party to a cause or proceeding, or otherwise disqualified, the same fees as may be allowed for sheriff.

Section 2. That Section 27-915, Wyoming Compiled Statutes, 1945, be amended and re-enacted to read as follows:

In counties having an assessed valuation of \$50,000,000.00 or more, the county coroner, by and with the consent of the Board of Commissioners, may appoint *** ONE OR MORE deputy *** CORONERS, who shall receive the same compensation as now provided *** for the County Coroner.

Section 3. Section 27-913, Wyoming Compiled Statutes, 1945, is hereby repealed.