

## CHAPTER FIVE

### TITLE; PREAMBLE; ENACTING CLAUSE

1. TITLE
2. PREAMBLE
3. ENACTING CLAUSE

---

This chapter deals with the drafting of a legally sufficient title, preamble and enacting clause of a bill draft. Chapter 6 deals with the drafting of the body of a bill draft. The sequence of the two chapters follows the order in which the items appear in a complete draft. However, a drafter generally should draft the title after the body of the draft is finished.

#### **1. TITLE.**

Section 20, Article IV of the Oregon Constitution, provides:

**Sec. 20.** Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.

This section shall not be construed to prevent the inclusion in an amendatory Act, under a proper title, of matters otherwise germane to the same general subject, although the title or titles of the original Act or Acts may not have been sufficiently broad to have permitted such matter to have been so included in such original Act or Acts, or any of them.

For a general discussion of the first paragraph of the constitutional provision, see Probert, "The Constitutional Restriction on Titles of Acts in Oregon," 31 Or. L. Rev. 111 (1952). The article does not discuss the second paragraph because the article was written before section 20 was amended to include that paragraph.

#### **a. Purpose of Title.**

The title must identify generally the subject of the bill. By reading the title, a person should be able to determine whether the bill deals with a subject in which the person is interested. The purpose of the constitutional title requirement is to prevent the concealment of the true nature of the provisions of the bill from the legislature and the public. Northern Wasco County PUD v. Wasco County, 210 Or. 1 (1957); State v. Williamson, 4 Or. App. 41(1970). For a violation of the Constitution to be found, the title must give no notice of the questioned provision; the conflict must be palpably plain. Calder v. Orr, 105 Or. 223 (1922); Clayton v. Enterprise Electric Co., 82 Or. 149 (1916). The title serves as a means of identifying the subject of a bill and **not** as an index or table of contents. Calder, supra at 232. The constitutional restriction on titles is designed to prevent use of the title as a means of deceiving legislators and others, and to assure people who cannot examine the body of the bill itself that the bill does not deal with a subject not disclosed in the title. The courts

construe this requirement liberally, Anthony v. Veatch, 189 Or. 462 (1950), and the courts will not hold an Act to be in violation unless the insufficiency of the title is “plain and manifest” or “palpable and clear.” Warren v. Marion County, 222 Or. 307 (1960) . See also Croft v. Lambert, 228 Or. 76 (1960).

The requirement of section 20, Article IV, is mandatory. Brugger v. Wagner, 135 Or. 615 (1931); State v. Hawks, 110 Or. 497 (1924). Paraphrasing section 20, Article IV, Oregon Constitution, the requirement is that the title express the subject embraced by the Act. The Oregon Supreme Court has held many times that the single subject is all that is required to be stated in the title, and that it is not necessary to recite all the “matters properly connected therewith” that are contained in the bill. Foeller v. Housing Authority of Portland, 198 Or. 205 (1953); Feero v. Housley, 205 Or. 404 (1955). The Constitution further contemplates that a title be so phrased as to identify the **one subject** of the bill, and should not leave it to the courts to determine, from an enumeration of particulars, what single subject of the legislation the Act concerns.

In summary, the title should express the **subject** of the bill, not what the bill **does** or how the bill accomplishes its purpose.

#### **b. Form of Title Generally.**

Since the Oregon Constitution requires that the title express the subject embraced by the bill, titles begin with a “relating to” clause, such as “Relating to personal income taxation.” This form expresses the subject of the bill, as contemplated by section 20, Article IV. References to amendments, repeals and other special provisions follow the “relating to” clause not in obedience to constitutional requirements but as a matter of adherence to legislative rules or practices for the convenience of legislators.

**First:** Relating to. . . .

**Second:** creating new provisions (if new sections are created and there are amendments or repealers)

**Third:** amending. . .(ORS or session law, or both)

**Fourth:** repealing. . .(ORS or session law, or both)

**Fifth:** appropriating money

**Sixth:** limiting expenditures

**Seventh:** prescribing an effective date

**Eighth:** declaring an emergency

**Ninth:** supermajority clause

**Tenth:** referendum clause

**c. Designation of Subject.**

The subject of a bill should be designated in general terms, not in minute detail. This designation must be honest and within reasonably defined limits. The stated subject may be broader than the subject dealt with in the body of the bill, as long as it is not misleading. For example, a title such as “Relating to personal exemptions under the income tax laws for persons 65 years of age or older” substantially restricts the scope of the bill by its specificity. It may be better to write a title such as “Relating to personal income taxation.” The more detailed information may be included in the measure summary.

Note that a narrow description of the subject of a bill also restricts the scope of amendments that may be added to the bill.

The title should not state what the bill **does**, but should designate its **subject**. If a drafter goes into detail in a title, then every detail in the bill must be included in the title and a detail not included may be held invalid. Northern Wasco County PUD, supra.

An Act “relating to the protection of salmon” justified a prohibition on the placing of obstructions to the passage of salmon in the Rogue River, but a 28-line title specifying many other protections for salmon, but not mentioning obstructions, did not justify a section relating to obstructions. State v. Beaver Portland Cement Co., 169 Or. 1 (1942). The provision was clearly related to all other provisions of the Act, but those other provisions were mentioned or at least were generally within the scope of the title; obstructions were not.

An Act “to grant to nonresident owners of motor vehicles the privilege of using the highways of the state,” and to subject “**such** nonresident **users** of the highways” to substituted service, did not cover a provision subjecting nonresident users who were not owners to substituted service, because they were not **such** users. State ex rel. Pardee v. Latourette, 168 Or. 584 (1942). In Multnomah County v. First National Bank of Portland, 151 Or. 342 (1935), the court held that an Act “relating to duties and powers of the county auditor of Multnomah County in auditing of claims” did not give adequate notice that the Act went on to authorize the auditor to borrow money when the county treasury did not contain enough money to pay approved claims.

Traditional practices of the House of Representatives and the Senate have prohibited amending the title, which is sometimes necessary if a bill with a narrow title is extensively amended. The prohibition is aimed at preventing the bill from being used as a vehicle for ideas unrelated to those initially expressed in the bill.

**d. Expressing One Subject**

Section 20, Article IV, Oregon Constitution, requires that each Act be limited to one subject, which shall be expressed in the title. The use of a generic expression may make it easier to identify the single subject. However, a title that is so global that it does little more

than define the universe with respect to which the legislature is empowered to act is too broad. It fails to identify a single subject. McIntire v. Forbes, 322 Or. 426 (1996).

The drafter should be quite cautious of using the word “and” in the title. An “and” in the relating clause, when used between nouns, may describe two subjects. For example, “Relating to dogs and cats” suggests two subjects; “Relating to certain domestic animals” designates a single subject.

The text of a bill cannot contain a provision not related to the single subject expressed in the title. For this reason, it is best to draft the title **after** every other part of the bill has been finished. In other words, the title is drafted to fit the bill, rather than the bill being drafted to fit the title. After writing the title, the drafter should check each section in the text to be sure that all sections are within the scope of the title.

See also the discussion of the one-subject rule in Chapter Six.

#### **e. Special Matters Mentioned in Title.**

While the Oregon Constitution does not require an enumeration of particular features or sections of a bill, the rules and practices of the Legislative Assembly require that the following matters be referred to in the title:

**Amendments and repeals.** If a bill amends or repeals sections in ORS, session laws or both, all amended or repealed sections are listed in the title in numerical order with the amended sections preceding the repealed sections and the ORS sections preceding the session law sections.

**New provisions.** If a bill amends or repeals existing law and also enacts a new section not otherwise described in the title, the drafter must add the words “creating new provisions” to the title. These words are added **only** if the bill also amends or repeals existing statutes.

**Appropriations.** If a bill contains a section appropriating money, the drafter must add the words “appropriating money” to the title. It is customary to add these words whether the section appropriates a specific sum for a biennial period or makes a continuing appropriation in an unspecified amount. If an existing section that appropriates money is being amended to affect the appropriation by changing the amount or in any other substantial way, the drafter must add the words “appropriating money” to the title.

**Limiting expenditures.** If a bill contains a provision limiting the expenditure of appropriated money, the drafter must add the words “limiting expenditures” to the title.

**Emergency clause.** If a bill contains an emergency clause, the drafter must add the words “and declaring an emergency” to the title. An emergency clause in the body of a bill cannot contain any other provision.

**Special effective date clause.** If a bill contains a section prescribing a special effective date that is **earlier or later** than the normal effective date, the drafter must add the words “prescribing an effective date” to the title.

**Referendum clause.** If the bill contains a referendum clause, the drafter must add the words “and providing that this Act shall be referred to the people for their approval or rejection” to the title.

**Supermajority clause.** If the bill contains provisions for revenue raising or criminal sentence reduction and more than a simple majority is required for passage, the drafter must add the words “and providing for revenue raising that requires approval by a three-fifths majority” or “and providing for criminal sentence reduction that requires approval by a two-thirds majority” to the title as appropriate. The appropriate clause appears at the end of the title after all other special clauses. See Chapter 15 for a discussion of revenue raising that may require a supermajority and Chapter 11 for a discussion of criminal sentence reduction that may require a supermajority.

The following forms of titles are standard examples:

**New provisions only:**

Relating to water pollution.

**New provisions plus amendment:**

Relating to water pollution; creating new provisions; and amending ORS 440.010.

Amended sections should appear in numerical order in the title, regardless of their order in the bill.

**New provisions plus repeal:**

Relating to water pollution; creating new provisions; and repealing ORS 449.125.

Repealed sections should appear in numerical order in the title, regardless of their order in the bill.

**New provisions plus amendment and repeal:**

Relating to water pollution; creating new provisions; amending ORS 449.010; and repealing 449.125.

**Amendment only:**

Relating to water pollution; amending ORS 449.010.

**Amendment and repeal:**

Relating to water pollution; amending ORS 449.010; and repealing ORS 449.125.

**Repeal only:**

Relating to water pollution; repealing ORS 449.125.

#### **f. Order of Title.**

It is unlikely that a bill will include all the items described for inclusion in the title, but the following examples indicate the order in which the drafter must list these items:

Relating to taxation, including but not limited to a general retail sales and use tax; creating new provisions; amending ORS 316.005; repealing ORS 316.101; appropriating money; limiting expenditures; prescribing an effective date; and providing that this Act be referred to the people for their approval or rejection.

Relating to taxation, including but not limited to a general retail sales and use tax; creating new provisions; amending ORS 316.005; repealing ORS 316.101; appropriating money; limiting expenditures; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

#### **g. Title of Amendatory Act.**

Before the 1952 amendment of section 20, Article IV, Oregon Constitution, the Oregon Supreme Court had held that nothing could be added to a section by amendment that could not have been included under the title of the **original** Act that enacted the section being amended. The second clause of section 20, Article IV, was added in 1952 to permit inclusion in an existing ORS section of new material that is appropriate under the title of the **amendatory** Act, a change that simplifies the work of the drafter enormously.

#### **h. Title of Bill Amending Several Statutes.**

A drafter may amend any number of different statutes in a single bill, as long as **the substance of the amendments** relates to the single subject expressed in the title of the bill. It is perfectly proper to state a subject that describes only the **changes** made by the bill. For example, if a bill to enact a general law covering bonds of public officers amends those provisions in existing statutes that relate to those bonds, the title “Relating to bonds of public officers” may be used even though the unchanged parts of the amended statutes contain provisions dealing with subjects other than bonds of public officers. A drafter must beware of too much “housekeeping” in a bill containing archaic material because the housekeeping changes may be beyond the scope of the title.

#### **i. Titles of Particular Types of Bills.**

Appendix A contains examples of titles of bills to create or abolish state agencies, or to transfer functions from one state agency to another. Chapter 9 contains an example of a title of an appropriation bill for a building project.

#### **j. Germaneness.**

Germaneness of amendments to measures, including titles to measures, is not a legal question, but a matter of interpretation and application of legislative rules and parliamentary procedure. The rules of the House and the Senate adopt Mason’s Manual of Legislative Procedure (House Rule 2.01 and Senate Rule 2.01). On the subject of germaneness of

amendments, section 402 of Mason's points out that whether an amendment is germane is ultimately a matter to be decided by the body.

The drafter has responsibility to adjust a title if amendments make an adjustment necessary to comply with constitutional requirements. However, the drafter should be wary of changing a title because the House and the Senate resist title changes as suggesting that the amendment is not truly germane. Because of this resistance, the drafter should notify the requester of amendments that **require** a change in the title, preferably before preparing them. However, the drafter is professionally responsible to ensure that, when amendments requiring changes in the title are drafted, the title is changed accordingly, without regard to the practices of the House and Senate Desks.

## **2. PREAMBLE.**

Though a preamble is rarely used, a drafter may include a preamble in a bill draft following the title and preceding the enacting clause. A preamble does not become part of the law, but is a preliminary statement of the reasons for the enactment of the law. A preamble cannot supply a provision not appearing in the text of the bill and will not be considered in ascertaining the meaning of the bill unless the text of the bill is ambiguous. Sunshine Dairy v. Peterson, 183 Or. 305 (1948). If a requester insists on inclusion of a preamble, the drafter should explain its effectiveness or lack thereof. Examples of Acts containing preambles are chapters 114 and 152, Oregon Laws 1957; chapter 302, Oregon Laws 1979; chapter 41, Oregon Laws 1981; and chapters 236 and 329, Oregon Laws 1999. A preamble may be in the form of "whereas" clauses or in the form of numbered paragraphs. "Section" should not be used.

## **3. ENACTING CLAUSE.**

The enacting clause immediately precedes the text of the bill. The drafter must include and may not vary the following form, formerly required by section 1, Article IV, Oregon Constitution:

### **Be It Enacted by the People of the State of Oregon:**

Until 1968, the form of the enacting clause was fixed by section 1, Article IV, Oregon Constitution. Before 1968, failure to include an enacting clause invalidated a bill. The enacting clause was the formal expression of legislative enactment, and only sections following the enacting clause became law. Colby v. Medford, 85 Or. 485 (1917). In 1968, this section of the Constitution was repealed and another section 1 was enacted that did not include reference to an enacting clause.

However, judicial recognition of the traditional practice indicated the advisability of continuing to use the enacting clause formerly prescribed. The enacting clause, in the form above, is now prescribed by the Rules of the House and the Senate, and the drafter may not omit it from a bill.

