

## **ELEMENTS OF A BILL**

The necessary elements of a bill are the title, enacting clause, sections amending and repealing laws, and the effective date.

### **TITLE**

Background. The constitutions of more than forty states require that each bill have a title and that the title accurately reflect the contents of the bill. The prevalence of this requirement explains why model and uniform acts have such lengthy titles; bills drafted by bond counsel, who are accustomed to the requirements of other states, often follow this practice as well. North Carolina, by contrast, has left the subject of titles to legislative rule, thus allowing more flexibility in titling bills and placing the issue of a title's adequacy beyond the scope of judicial review.

Requirements. The requirements for titles are contained in the current rules of the chamber, adopted at the beginning of each biennium, and the drafter should check the current version of the rules. Traditionally, the House Rules have provided that all bills and resolutions shall show in their captions a brief descriptive statement of its true substance and may be amended.

### **ENACTING CLAUSE**

The enacting clause is the same for all bills and is prescribed in Article II of the North Carolina Constitution: "Sec. 21. Style of acts. The style of the acts shall be: "The General Assembly of North Carolina enacts:"." Any variation from the exact constitutionally prescribed wording may nullify the act. Any bill in which the enacting clause does not appear or have the officially prescribed wording must be corrected.

### **SECTIONS AMENDING & REPEALING LAWS**

Each bill must tell the legislative body what action is to be taken, precisely and clearly. This might involve section adding, repealing, or amending General Statutes, uncodified law, or sections of local acts or municipal charters.

### **EFFECTIVE DATES**

In General. The effective date section should be the last section of a bill. In the absence of an effective date, a bill becomes effective 60 days after sine die adjournment.<sup>1</sup> Sine die adjournment is an adjournment with no provision for returning and typically occurs after the short session in the even-numbered year.<sup>2</sup> The adjournment in the long session is not sine die because a date for return is set in the adjournment resolution. Thus,

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<sup>1</sup> G.S. 120-20.

<sup>2</sup> See, e.g., Resolution 2016-23.

an act enacted during the long session without an effective date would not become effective until 60 days following the succeeding short session.<sup>3</sup>

Content. The effective date section should account for every section of the bill. Although it can include an effective date for the effective date section itself, a better practice is to include a provision that the section or sections not specifically enumerated are effective when the bill becomes law. This unenumerated category will include the effective date section if nothing else.

Retroactive Application. Part or all of a bill can apply retroactively. Retroactive effective dates often create constitutional problems. Section 16 of Article I of the North Carolina Constitution reads as follows:

"Sec. 16. Ex post facto laws. Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted."

In addition, the due process clause of the United States Constitution and the corresponding Law of the Land clause of the North Carolina Constitution (Article 1, Section 19) protect individuals from laws that retroactively deprive them of vested rights. For example, if a statute of repose has run, a cause of action barred by it cannot be revived by extending the length of the statute retroactively.

Expiration Dates. Part or all of a bill may expire or "sunset." If part or all of a bill is to expire, the effective date section should state, for example: "This act becomes effective July 1, 20XX, and expires July 1, 20YY."

## **"WHEREAS" CLAUSES**

A preamble may be inserted between the title and the enacting clause of a bill for multiple reasons: to explain the state of affairs that caused the bill to be introduced; to make clear the purpose of the bill; as a sales pitch to improve the chances of enactment; or to serve some other purpose of the sponsor. A preamble is not a part of the enacted bill. In North Carolina, "whereas" clauses are most often used in resolutions.

In nearly every instance, the preamble creates more problems than it solves. If the preamble and body agree, the preamble is unnecessary. If the preamble and the body differ, the preamble will be ignored by the court but may still mislead the unsophisticated. If the preamble is more clear than the body, the body should use the language of the preamble.

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<sup>3</sup> Before 1971, the General Assembly held biennial sessions in even numbered years. It was customary for the biennial session of the General Assembly to adjourn sine die in late June; the occasional act passed at a session but not containing an effective date clause thus became effective in late July of the year of enactment.

## **TITLES WITHIN BILLS**

The purpose of a title within a bill is to identify the principal purpose and objective of the bill and to provide an official designation of the law. The section creating an internal short title will usually be the very first section of the bill. A good example of a section designating a short title is: "This act shall be known and may be cited as the North Carolina Health Planning Act of 1978."

## **STATEMENT OF PURPOSE**

A statement of purpose or a legislative declaration of findings of fact is similar to a "whereas" clause, except that it follows rather than precedes the enacting clause and is, therefore, part of the enactment. A statement of purpose may be used to provide information to another branch of government. For example, to persuade a court to uphold the act against attacks on constitutional grounds or, with complex or lengthy legislation where the executive has not participated in preparing the bill, to provide helpful information regarding enforcement of the act.

## **SAVINGS CLAUSE**

A savings clause preserves from destruction those rights, remedies, or privileges that would otherwise be destroyed by the general enactment. It is generally employed to restrict repealing acts so they do not affect existing powers, inchoate rights, penalties already incurred, or pending proceedings. In the absence of either specific language or a general statutory prescription, a repeal destroys these rights and powers, discharges the penalties, and halts the proceedings.

North Carolina has a statutory savings clause, G.S. 12-2, which states that the "repeal of a statute shall not affect any action brought before the repeal, for any forfeitures incurred, or for the recovery of any rights accruing under such statute." G.S. 12-2 has been held **not** to apply to criminal statutes, and therefore, without a savings clause, the repeal of a criminal statute eliminates any liability under it and halts proceedings that are not final. A statute reducing a criminal penalty applies likewise to pending proceedings.

Because of the ex post facto clauses, the drafter of a bill changing criminal law should always specify that a change applies only to offenses committed on or after the effective date of the act. An example of a generic savings clause in a criminal bill is: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." It is customary for criminal acts to become effective December 1 and to apply only to offenses committed on or after that date.

## **SEVERABILITY**

A severability clause provides that, if part of the act should be held invalid by a court of competent jurisdiction, that holding would not invalidate the remaining part of the act. A severability clause is not binding on a court. A reviewing court may disregard an included severability clause or judicially insert an absent severability clause if it finds,

respectively, that an act is so unified that it must stand or fall as a whole or that an act can stand alone and effect meaningfully and rationally absent an excised provision. A severability clause, then, adds nothing other than length to most bills and, unless it aids a court in understanding legislative intent, generally should not be used.