

INTERPRETING LEGISLATION: Reading the Bill and Researching Legislative History

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I. INTRODUCTION – OVERVIEW

This presentation focuses on statutory interpretation, and construction of Kansas statutes. We will present information on the legislative process, elements of legislative bills, the use of legislative history in statutory construction, and various resources available to assist those seeking to determine legislative intent. Use of legislative history may provide support for a plain meaning determination of the text of a statute or provide insight as to legislative intent when the text of a statute gives rise to multiple interpretations. We will not settle the debate between "textualists," "purposivists" and "consequentialists," and we will not declare a position as to the appropriateness of the use of legislative history in specific circumstances.

II. LEGISLATION: BILLS & STATUTES

A. Section 20 of Article 2 of the Constitution of the State of Kansas requires all statutes be enacted by bill: "No law shall be enacted except by bill."

B. Elements of a Bill

1. Heading
 - a. Chamber designation
 - b. Bill number
 - c. Sponsor
 - d. Date
 - e. Title
 - f. Enacting clause
2. Body
 - a. Sections—new or amendatory
3. End
 - a. Repealer
 - b. Effective date

C. All bills have certain constitutional requirements.

1. One subject rule: No bill shall contain more than one subject, except appropriations bills.¹
2. Title: The subject of each bill shall be expressed in the title.²
3. Body: No law shall be amended unless the entire section to be amended is contained in the bill.³

¹ Kan. Const. Art. 2 § 16.

² Id.

³ Id.

4. Repealer: The amended sections shall be repealed.⁴
5. Enacting clause: "Be it enacted by the Legislature of the State of Kansas:"⁵

III. HOW A BILL BECOMES A LAW

A bill may be introduced in either house (senate or house of representatives), known as the house of origin. If it passes the house of origin, it is sent to the second house. If it passes the second house without amendment, it is sent to the governor. If it passes the second house with amendment, the house of origin must concur or request a conference committee. If it passes both houses with identical language as contained in the conference committee report, it is sent to the governor.

A. House of Origin

1. Bill introduced

- a. Article 2, Section 12 of the Kansas Constitution provides that "bills and concurrent resolutions may originate in either house, but may be amended or rejected by the other."
- b. Article 2, Section 20 of the Kansas Constitution provides that "the enacting clause of all bills shall be 'Be it enacted by the Legislature of the State of Kansas:'. No law shall be enacted except by bill
- c. K.S.A. 45-317. Printing of bills and concurrent resolutions; types.
- d. Article 2 Section 10 of the Kansas Constitution requires the House of Representatives and the Senate to publish a journal of its proceedings. This is the official record of chamber activities.
- e. K.S.A. 45-116. Permanent journals of the house and senate; preparation, binding and number of volumes and copies; sale and distribution; disposition of volumes; sale price for volume fixed by legislative coordinating council; proceeds to state general fund.
- f. House Rules Article 7. Introduction of Bills and Resolutions
- g. Senate Rule 31. Introduction of Bills and Concurrent Resolutions

2. Committee

- a. Article 2, Section 15 of the Kansas Constitution provides "no bill shall be passed on the day that it is introduced, unless in case of emergency declared by two-thirds of the members present in the house where a bill is pending".
- b. House Rules Article 9. Reference of Bills and Resolutions
- c. House Rules Article 11. Committees; Composition
- d. House Rules Article 13. Committees; Procedure
- e. Senate Rule 32. Reference of Bills and Resolutions
- f. Senate Rule 7. Standing Committees

⁴ Id.

⁵ Kan. Const. Art. 2 § 20.

- g. Senate Rule 9. Standing Committees – Duties of Chairperson, etc.
 - h. Senate Rule 10. Vote in Senate Committee
 - i. Senate Rule 11. Committee Action on Bills and Resolutions
 - 3. Committee of the whole
 - a. House Rules Article 19. Committee of the Whole
 - b. House Rules Article 21. Amendment of Bills and Resolutions
 - c. House Rules Article 23. Procedural Motions
 - d. Senate Rules 40-46.
 - 4. Messaged to second house
- B. Second House
 - 1. Bill introduced
 - 2. Committee
 - 3. Committee of the whole
- C. Conference committee
 - 1. Joint Rule 3
- D. Governor
 - 1. Article 2, Section 14 of the Kansas Constitution provides that “within ten days after passage, every bill shall be signed by the presiding officers and presented to the governor”
 - a. The governor can sign or veto the bill, and if the governor does not take action on the bill within ten calendar days, it shall become law as though the bill was signed.
 - b. If the governor vetoes a bill, the bill shall be returned to the house of origin of the bill along with a veto message.
 - c. The house of origin has 30 days to reconsider the bill, and if two-thirds of the members then elected or appointed vote to pass the bill, it shall be sent to the other chamber, which has 30 days to reconsider, and if approved by the two-thirds of the members then elected or appointed, it shall become law
 - 2. K.S.A. 45-302. Signing of legislative documents by officers; presentation to the governor for approval
 - 3. K.S.A. 45-303. Approval of bills by governor
 - 4. K.S.A. 45-304. Veto by governor; return to house of origin; reconsideration by legislature; procedure upon passage over veto; publication
 - 5. K.S.A. 45-304a. Journal entries referring to vetoed bills
 - 6. K.S.A. 45-304b. Veto after adjournment; reconsideration
 - 7. K.S.A. 45-305. Bills becoming law without approval of governor, when
 - 8. K.S.A. 45-307. Vetoes of items of appropriation of money
 - 9. K.S.A. 45-308. Item vetoes; reconsideration by legislature
- E. Kansas Register

Bills can become effective by publication in either the statute book, the Kansas register, or some other date specifically designated in the bill. Bills that become effective on publication in the statute book become effective on July 1. Bills that become effective on publication in the Kansas Register become effective when they are printed in the Kansas register. The Session laws will tell you the date a bill was printed in the Kansas register, and this is the effective date.

1. Article 2 Section 19 of the Kansas Constitution provides that “no act shall take effect until the enacting bill is published as provided by law”
2. K.S.A. 45-312. Publication of bills in Kansas register

F. Session Laws

After each regular session of the legislature, the Secretary of State compiles all the bills that became law into the Session laws. Each chapter represents a bill that became law, and they appear in the Session Laws in the order that they met the requirements to become law. There is an index in the back that links each chapter to the bill number that passed.

1. Article 2 Section 19 of the Kansas Constitution provides that “no act shall take effect until the enacting bill is published as provided by law”
2. K.S.A. 45-106. Session laws; disposition of volumes by secretary of state.
3. K.S.A. 45-107. Session laws; sales; disposal of certain inventory
4. K.S.A. 45-310. Session laws; publication, printing, title and contents.
5. K.S.A. 45-311. Certification of session laws; date of publication.
6. K.S.A. 45-313. Printing of session laws.
7. K.S.A. 45-315. Timetable for printing session laws.

G. Kansas Statutes Annotated

The Revisor of Statutes is responsible for publishing the Kansas Statutes Annotated and the Supplements. At the end of each regular session of the legislature, with some statutory limitations, the Revisor of Statutes assigns new statute numbers to new sections of law that passed and provides for the publication of amended versions of existing statutes. The office also provides captions describing the contents of a statute, history of statute with references to session laws, source or prior law notes, research and practice aids, cross references to relevant statutes including tables, and annotations based on case law. In arranging the material in the K.S.A.'s and Supplements, the Revisor of Statutes "shall not alter the sense, meaning or effect of any legislative act." The Revisor of Statutes may correct "manifest orthographical, clerical or typographical errors." K.S.A. 77-136 provides a list of other permitted edits to the statutes by the Revisor of Statutes. The law provides that any error made by the Revisor of Statutes during this process shall be construed as a clerical error. As authorized by the Legislative Coordinating Council, the K.S.A's and Supplements are then printed by the state printing plant and sold by the Secretary of State.

1. Article 1 of Chapter 77. Statutes.

2. K.S.A. 77-131. Kansas Statutes Annotated; preparation, printing and binding; preservation of type
3. K.S.A. 77-133. Other materials included in the statutes
4. K.S.A. 77-136. Editing of statutes by Revisor of Statutes

IV. LEGISLATIVE INTENT: WHAT DOES THE BILL SAY?

A. Read the bill:

1. K.S.A. 77-201 provides that, "Words and phrases shall be construed according to the context and the approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law, shall be construed according to their peculiar and appropriate meanings."
2. "It is the intent of the legislature that governs."⁶
3. A statute's language is the paramount consideration because "the best and only safe rule for ascertaining the intention of the makers of any unwritten law is to abide by the language they used."⁷
4. "When statutory language is plain and unambiguous, there is not need to resort to statutory construction. An Appellate Court merely interprets the language as it appears; it is not free to speculate and cannot read into the statute language not readily found there."⁸

B. Liberal construction of a bill

1. Article 2 section 16 of the Constitution of the State of Kansas provides, "The provisions of this section shall be liberally construed to effectuate the acts of the legislature."
2. "Naturally, there is a strong presumption in favor of validity of any bill passed by the legislature."⁹

V. LEGISLATIVE INTENT: WHAT ARE THE RULES OF STATUTORY CONSTRUCTION?

A. Question of Law

1. "Interpretation of Statutes is a question of law. The function of the court is to interpret the statutes, giving the statutes the effect intended by the legislature."¹⁰

B. Legislature's Intent

1. "When interpreting statutes, the court begins with 'the fundamental rule that courts give effect to the legislature's intent as it is expressed in the statute.

⁶ *In re Marriage of Ross*, 245 Kan. 591 (1989).

⁷ *State v Looney* 299 Kan. 903, 906 (2014) (citing *Gannon v State* 298 Kan. 1107, 1143 (2014)).

⁸ *State ex. rel. Schmidt v City of Wichita*, 303 Kan 650, 659 (2016); *State v Nguyen*, 304 Kan. 420 (2016).

⁹ *State ex re. Fatzer v. Shanahan*, 178 Kan. 400 (1955).

¹⁰ *State ex rel. Stephan v. Kansas Racing Comm'n*, 246 Kan. 708, 719 (1990).

¹¹ *State v. Williams*, 298 Kan. 1075, 1079 (2014).

Courts must apply a statute's language when it is clear and unambiguous, rather than determining what the law should be, speculating about legislative intent, or consulting legislative history."¹¹

2. "The court derives legislative intent by first applying the meaning of the statute's text to determine its effect in a specific situation. 'It is only when the language is unclear or ambiguous that the court employs the canons of statutory construction, consults legislative history, or considers other background information to ascertain the statute's meaning.'"¹²

C. Beyond the Legislature's Words

1. "Fundamental rule to which all other rules are subordinate is that the intent of the legislature governs if that intent can be ascertained."¹³
2. "The court must give effect to the legislature's intent even though words, phrases or clauses at some place in the statute must be omitted or inserted."¹⁴
3. "In determining legislative intent, courts are not limited to consideration of the language used in the statute, but may look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions suggested."¹⁵
4. "When legislative intent cannot be derived from the plain language of the statute, this court may look to legislative history or other methods of statutory construction."¹⁶

D. Avoid Unreasonable Results

1. "As a general rule, statutes are construed to avoid unreasonable results."¹⁷
2. "There is a presumption that the legislature does not intend to enact useless or meaningless legislation."¹⁸

E. Avoid Rendering the Statute Impracticable

1. "A construction of a statute should be avoided which would render the application of a statute impracticable or inconvenient, or which would require the performance of a vain, idle, or futile thing, or attempt to require the performance of an impossible act."¹⁹

F. Effect Given to the Entire Act

1. "In construing statutes, the legislative intention is to be determined from a general consideration of the entire act. Effect must be given, if possible, to the

¹² *Whaley v. Sharp*, 301 Kan. 192, 196 (2014).

¹³ *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 918 (2015).

¹⁴ *In re Marriage of Ross*, 245 Kan. 591 (1989).

¹⁵ *Id.*

¹⁶ *State v. Holt*, 298 Kan. 469, 474 (2013).

¹⁷ *Wells v. Anderson*, 8 Kan. App. 2d 431 (1983).

¹⁸ *In re Adoption of Baby Boy L.*, 231 Kan. 199 (1982).

¹⁹ *Id.*

entire act and every part thereof. To this end, it is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible."²⁰

2. "In ascertaining the plain meaning of the statutes, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole."²¹
3. As far back as Sir Edward Coke in 1628 explained this principle as follows: "It is the most natural and genuine exposition of a statute to construe one part of the statute by another part of the same statute, for that best expresseth the meaning of the makers." "If any section [of a law] be intricate, obscure, or doubtful, the proper mode of discovering its true meaning is by comparing it with other sections, and finding out the sense of one clause by the words by or obvious intent of the other."²²

VI. LEGISLATIVE INTENT: USING THE LEGISLATIVE PROCESS TO DETERMINE LEGISLATIVE INTENT

A. Example: Legislative History of K.S.A. 21-5402.

1. House of Origin

- a. 2018 House Bill No. 2458 introduced on January 11, 2018, by the Committee on Judiciary.
- b. Referred to the House Committee on Judiciary.
- c. The Committee conducted a hearing on Thursday, January 31, 2018.
- d. The committee report recommending HB 2458 be passed as amended was read into the House on February 19, 2018.
- e. The House Committee of the Whole debated HB 2458 on February 21, 2018.
- f. The House Committee of the Whole passed HB 2458 via final action on February 22, 2018.

2. Second House

- a. HB 2458 was received and introduced to the Senate on February 22, 2018.
- b. On February 28, 2018, HB 2458 was referred to the Senate Committee on Judiciary.
- c. The Judiciary Committee held a hearing on March 7, 2018.
- d. The committee report recommending HB 2458 be passed was read into the Senate on March 23, 2018.

²⁰ *Ross*, 245 Kan. 591 (1989).

²¹ *K-Mart v. Carrier, Inc.*, 486 US 281, 291 (1988) (per Kennedy, J.).

²² The First Part of the Institutes of the Laws of England, or a Commentary upon Littleton §728, at 831a (1628; 14th ed. 1791).

- e. The Senate Committee of the Whole debated HB 2458 on March 28, 2018. A floor amendment was offered, but it was ruled not germane. A second floor amendment was offered, ruled germane, and did not get adopted.
 - f. The Senate Committee of the Whole passed HB 2458 via final action on March 29, 2018.
3. Conference Committee
- a. The House nonconcurred with Senate Amendments and requested a conference committee be appointed on April 2, 2018.
 - b. On April 3, 2018, the Senate acceded to the House request for a conference committee.
 - c. The first conference committee report was made available to the Senate on May 2, 2018. The Senate moved to suspend joint rule 4(k) to consider the conference committee report and adopted it.
 - d. On May 3, 2018, the House moved to suspend joint rule 4(k) to consider the conference committee report and adopted it.
 - e. HB 2458 was final engrossed by the Office of Revisor of Statutes on May 3, 2018.
4. Governor
- a. HB 2458 was enrolled and presented to the governor on May 4, 2018.
 - b. HB 2458 was signed by the governor on May 16, 2018.
5. Publication
- a. HB 2458 became law upon publication in the statute book on July 1, 2018.
6. Session Laws
- a. HB 2458 became Chapter 112 of the 2018 Session Laws of Kansas.
7. Kansas Statutes Annotated
- a. The sections of law contained in HB 2458 were published in a 2018 supplement to the Kansas Statutes Annotated.
8. Kansas Legislature Website (2011-present): www.kslegislature.org
- a. House Permanent Journal
 - b. Senate Permanent Journal
 - c. Senate and House Actions Report and Subject Index Report
 - d. House Rules
 - e. Senate Rules
 - f. Joint Rules

B. Resources

2. Kansas Register: https://sos.ks.gov/publications/pubs_kansas_register.asp
3. 2018 Kansas Session Laws: <https://sos.ks.gov/publications/session-laws.html>
4. Kansas Statutes Annotated: www.ksrevisor.org/ksa.html
5. Kansas Legislative Archive (1997-2010):
<http://www.kansas.gov/government/legislative/>
6. HeinOnline Session Laws Library
7. State Library of Kansas: <https://kslib.info/>
 - a. Kansas Constitution
 - b. House and Senate Permanent Journals
 - c. Research Librarian can assist with the following:
 - (1) Access to every version of every bill which allows one to determine at what step in the legislative process the statutory language in question first appeared in the legislation that would give guidance as to where to search for legislative history. Changes in language of the bill made by legislature which may indicate the intent behind the language.
 - (2) Search of extensive collection of legal articles, research sources and newspaper articles covering the legislation of interest.

C. Additional Resources

1. Washburn Kansas Legislative History and Research Guide:
<http://www.washburnlaw.edu/library/research/guides/kansasleghistory.html>
2. Kansas Government Information (KGI) Online Library:
<https://cdm16884.contentdm.oclc.org/>
3. Legislative Administrative Services (Room 551-S in the Statehouse)
 - a. Extensive committee records, including minutes and attachments with documents of conferees submitted to committees that date back to 1980. Prior to 1980, such committee records are not comprehensive but may be available.
4. Statutory Construction Resources
 - a. *Using Legislative History as a Tool of Statutory Construction in Kansas*, Richard E. Levy and Robert Mead, 71-May J. Kan. K.A. 35 (May, 2002)
 - b. *Reading Law. The Interpretation of Legal Texts*, Antonin Scalia and Bryan A Garner, Thomson/West, St. Paul, Mn (2012)
 - c. *Sutherland Statutes and Statutory Construction*, Norman J. Singer and J.D. Shambie Singer, Part V—Statutory Interpretation (West 7th Ed. 2007).
5. Legal Drafting Resources

- a. *The Fundamentals of Legal Drafting*, Reed Dickerson, Little, Brown and Co., Boston (1986).
- b. *Guidelines for Drafting and Editing Legislation*, Bryan Garner, RosePen Books, Dallas, Texas (2016).

VII. COMMON STATUTE QUESTIONS

A. Annotations

1. History
2. Asterisks
3. Revisor's Notes
4. Attorney General's Opinions
5. Law Review and Bar Journal References
6. Case Annotations

B. Conflicts