

Hi, this is Chris Micheli, a principal with the Sacramento governmental relations firm of Aprea and Micheli and an adjunct professor at McGeorge School of Law. Thanks for joining today's podcast, where we're going to try and cover some of the key reminders in drafting legislation in California.

When drafting bills and amendments in this state, there are a number of key reminders that are worth reviewing. At a most basic level, every bill draft should clearly describe who's required or allowed to do what, what's required or allowed to be done. Any necessary definitions should be provided. Any exemptions, penalties and administrative issues such as record-keeping should be set forth.

Now, when drafting bills and their amendments should use clear and precise language. Why? Well, this is done so that those affected by a statute or those who try to comply with a statute can readily determine what they can or cannot do and what requirements must be met in order to satisfy the provisions of the statute. So here, the goal is to ensure that the bill that's written is done so in a clear style that can be easily understood by those who are affected by the statute's provisions.

There are several shortfalls that often occur with bill and amendment drafting. What are some examples? Sometimes there's an effort to use too much legalese or sometimes there's a failure to use terms consistently throughout the bill language. Some other problems include instances where the proponents of a measure know what they envisioned in the law, but they often not use clear language because it's not so clear when others who weren't involved in the bill drafting then have to abide by the language. In other words, those who were intimately involved in the drafting believe the language is clear to them, but it may not be so clear to those who then read it yet.

Yet another problem arises when a statute is the product of substantial negotiations. So for example, here the issue might be in order to achieve a legislative compromise or consensus, the language isn't as clear as it should be. There might be some broad language that lacks specificity or doesn't provide clear guidance to those who are regulated by the statute.

Now it's helpful to keep these issues in mind when you begin your bill drafting. One of the most important parts of drafting bills and amendments well is to spend sufficient time thinking through the issues that basically are presented by the proposal legislation. And then you need to spend time thinking about how these issues will be addressed in the bill language. In other words, think through the bill before you start putting pen to paper, or at least you start typing. What are some examples of thinking through the bill? Well, you should ask yourself whether the language is clear enough to be understood by someone who isn't familiar with the topic of this proposed statute and what are potential ramifications of the bill language that you use.

So in light of these general guidelines, here are some key reminders to keep in mind while you're drafting. Be consistent throughout. I think consistency is key one drafting language. In other words, the language of the proposed statute needs to remain consistent. Not just consistent with the code section or sections that you're adding or even amending, but consistent with the entire area of this law. If there are defined terms already in statute, then be sure to continue to use those.

While variety in language is appropriate in creative writing, it's not the case in writing a statute. And I think consistency is not just in verbiage, but also in the organization of the statutory scheme that you're dealing with. Why is this consistency key? Because it's important to reduce any opportunities for misinterpretation or ambiguity in the statute that you're working with.

Next, use the active voice. As with consistency, the variable between the active and passive voices may be appropriate, again, in creative writing, but it's more likely to lead to confusion and perhaps misinterpretation when the passive voice is interspersed in the statute. So when drafting bills and amendments, you should try and write in the active voice as much as possible. Why is the active voice key? Well, it's important to identify the who and the what in the statute, such as the person required to do

something and the mandate that is being imposed upon them. And that is best accomplished by using the active voice.

Another reminder is to use the singular term. There's less likelihood of confusion or ambiguity when you use the singular subject rather than the plural version. For example, using the plural may be interpreted to require more than one person to engage in certain conduct in order for there to be a violation of the law. As such, use of the singular subject provides greater clarity to the reader of the statute.

Next, refrain from using gender terms. In other words, if a proposed law applies to all persons, then there's no reason to utilize the terms he or she. And using the plural term they will probably cause confusion to your readers who are simply trying to comply with the statute. As a result, it's better to use gender neutral terms. Examples of this would be person or licensee or applicant. And in many instances, it's best to repeat that term rather than use a pronoun. This helps to avoid any potential confusion. So repeat the noun rather than use a pronoun.

Next, keep in mind some other drafting guidelines. For example, in terms of time, it's always best to use the present tense of a verb, or else there may be confusion whether a statute applies retroactively, for example. Abbreviations, generally we don't use them when drafting bills and amendments. Another important reminder is to use short, simple sentences. In other words, whenever possible, try to use simplistic language in your bill writing. Use familiar words that are easily expressed and achieve what the author intends. These words should be used based upon their common understanding and usage. And you should generally avoid legal terminology unless it's required, such as maybe some of the provisions that are found in the code of civil procedure or the civil code.

And be concise in your writing. Along the same lines as some of the prior suggestions we've covered, when drafting legislation, try to avoid unnecessary language. Keep your sentences concise. So long as you properly convey the intent of the proposed language, that should be okay. And being concise also means using consistency, be direct in your writing, and generally try and express something in a positive manner rather than utilizing negative terminology. Now, while you want to be concise, be sure to ensure that the language clearly conveys the intent of the bill's author.

And then, a final reminder, deal properly with statutory references. In other words, it's important to ensure that the new statute or the amended statute is properly integrated with existing laws. This will help avoid any potential conflicts and interpretation and in the implementation of existing law, as well as the statute you're working with. Make sure that your statutory references or cross-references are correct and address, maybe through a repeal or an amendment, any conflicting statutes with your new language. And keep in mind the effective date. If a different effective date than January 1 is required, be sure to specify that new date.

So in closing on this podcast, remember that bill drafting is intended to ensure that a proposed statute, once it's enacted, can be easily understood by those who are regulated or affected by the statute. And this means that the words that you use are clear, unambiguous, that the statute itself is arranged in a logical manner because in the end, we want to accomplish the intent of the bill's author. And the best way to do that is to ensure that your statute is written plainly concisely, and clearly. Thanks for joining today's podcast. I hope you learned something.