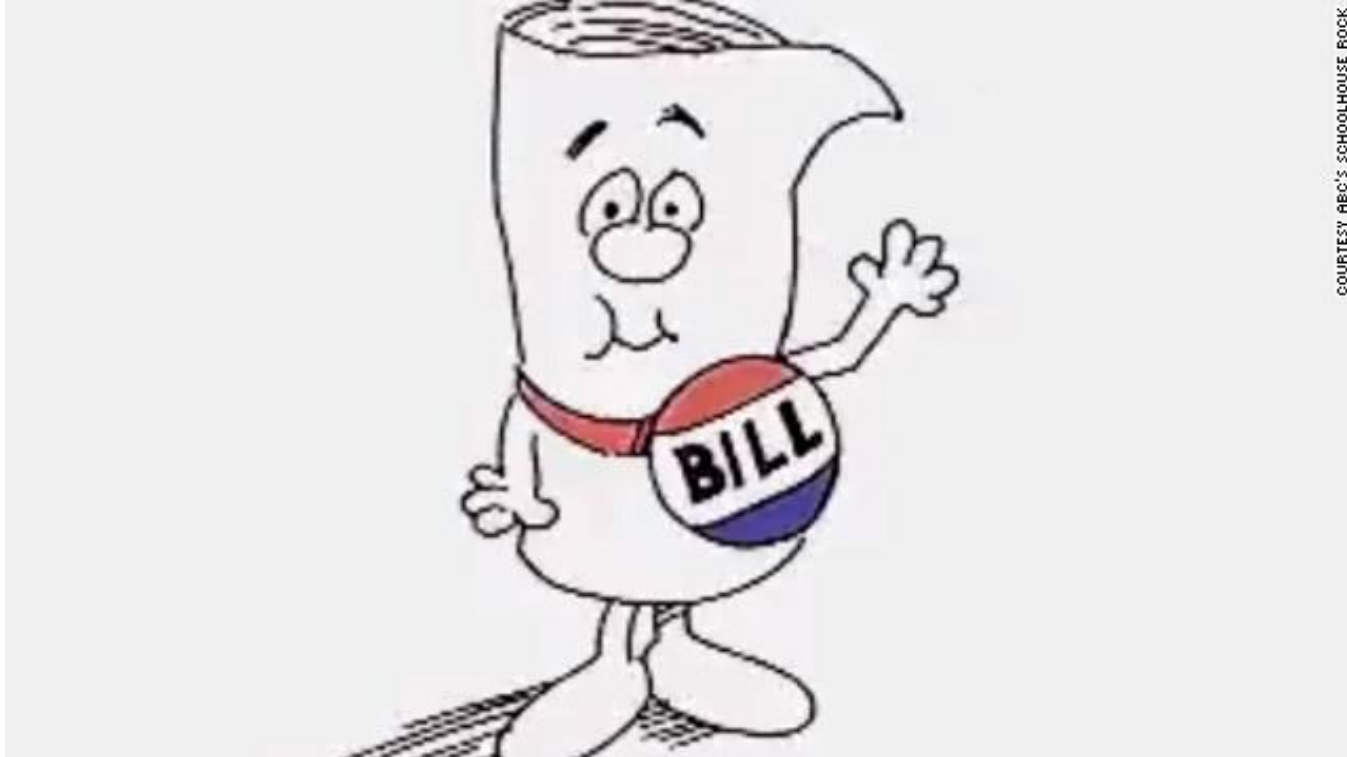
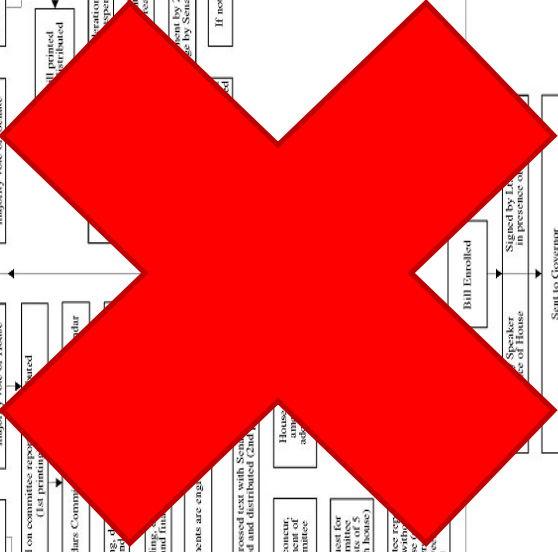


# **TEXAS LEGISLATIVE HISTORY AND STATUTORY CONSTRUCTION**

RULES, TOOLS AND THINGS TO THINK  
ABOUT

# BILLS TO LAW IN TEXAS





- HAVE A BILL
- INTRO/REFER
- COMM. ACTION
- CALENDAR
- FLOOR ACTION
- 2<sup>ND</sup> CHAMBER RINSE  
& REPEAT
- RECONCILE (IF NEEDED)
- EXECUTIVE ACTION

# INTRODUCTION



TEXAS LEGISLATIVE COUNCIL ARE THE  
KEEBLER ELVES OF LEGISLATIVE  
DRAFTING



<http://www.tlc.state.tx.us/legal/draftingmanual.pdf#page=156>

COOKBOOK TO BILL DRAFTING

# Article 3, Texas Constitution

Both Houses have  
Rules governing  
process

(form follows function)



# INTRODUCTION AND REFERRAL

- BILL MOVED FROM POSSESSION OF AUTHOR TO CLERK ON TO COMMITTEE

MAJ. DIFF WITH FEDS:

- CAN ONLY GO TO ONE COMMITTEE
- FINAL DECISION MAKER IS PRESIDING OFFICER

# COMMITTEE PROCESS

- COMMITTEE WEIGHS BILL, DETERMINES IF TESTIMONY IS NEEDED, TAKES TESTIMONY, MAKES CHANGES TAKES ACTION
- MAJ. DIFF. WITH FEDS
  - TIME COMPRESSION
  - LIMITATIONS ON SCOPE OF CHANGES
  - RULES REGARDING HEARINGS VARY BETWEEN HOUSES

# CALENDARING PROCESS

- LEGISLATIVE HOUSE DETERMINES METHOD BY WHICH ALL (OR SOME) OF COMMITTEE SUGGESTIONS ARE HEARD BY CHAMBER
- MAJ. DIFF. WITH FEDS
  - NO FUNCTIONAL EQUIVALENT OF FED CHAMBERS OPERATION ON CALENDARING
  - SPECIAL RULES ARE RARE (BUDGET AND SUNSET)
  - HOUSES DIVIDE METHODS OF ACTION ON CONTESTED AND LOCAL AND UNCONTESTED
  - 2/3<sup>RD</sup> RULE AND HOUSE CALENDARS COMMITTEE



# FLOOR ACTION

- MEMBERSHIP CONSIDERS PASSAGE, MAKES CHANGES, FINAL VOTE
- MAJ. DIFF. WITH FEDS
  - TIME, PLACE, AND MANNER LESS STRUCTURED
  - ALLOWABLE DEBATE
  - ALLOWABLE AMENDMENTS

# RINSE AND REPEAT IN 2<sup>ND</sup> CHAMBER



- IDENTICAL PROBLEMS TO FEDS: TIME COMPRESSION, EVERYONE THINKS THEY CAN IMPROVE ON YOUR BILL

# RECONCILE (IF NECESSARY)

- THREE OPTIONS:
  - CONCUR
  - CONFERENCE
  - NO!
    - STRIP AMENDMENTS/DIE

# EXECUTIVE ACTION

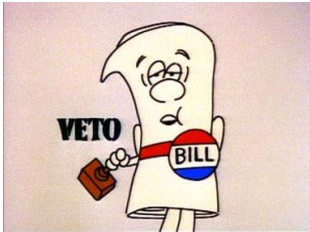
- VETO WORKS SLIGHTLY DIFFERENT IN TEXAS
- SO DOES VETO OVERRIDE

# WHAT ARE THE ODDS?



# 182 ACTORS HAVE 140 DAYS

- 5886 BILLS FILED
- 1437 BILLS PASSED = 24.4%

- 28  = 2%

# What to do with 1409 new laws?

- How do you orderly incorporate new measures into existing law in a thoughtful manner that is able to be used?

# ORGANIZATION OF TEXAS STATUTES

- TEXAS STATUTES ARE LOCATED IN ONE OF THREE PLACES:
  - SESSION LAWS;
  - TEXAS CIVIL STATUTES; AND
  - 1 OF 27 CODES



# SESSION LAWS

- THINK OF THIS AS A TEMP FILE
- SMALL NUMBER OF STATUTES NOT PLACED IN A CODE OR REVISED STATUTES
- MOST WILL BE ASSIGNED ARTICLE NUMBER OF TO A CODE IN THE NEXT INTERIM (“cleanup bills”)
  - (Practice note: some are footnoted in other places; local issues.)


# **CIVIL STATUTES (VERNON'S REVISED TEXAS STATUTES)**

- All state statutes in 1925 were revised (“Accountants” (Article 1) to Wreck” (Article 8324))
- The next major revision (“Codification”) begins in 1963.

# **CODES**

- LEG. CHARGES TEXAS LEGISLATIVE COUNCIL TO EXECUTE A “PERMANENT STATUTORY REVISION PROGRAM”
- SECTION 323.007, GOVERNMENT CODE

When the legislative council's statutory revision program is completed, all permanent statutes will be incorporated into the following 27 codes:



Agriculture Code  
Alcoholic Beverage Code  
Business & Commerce Code  
Business Organizations Code  
Civil Practice and Remedies Code  
Criminal Procedure Code  
Education Code  
Election Code  
Estates Code  
Family Code  
Finance Code  
Government Code  
Health and Safety Code  
Human Resources Code  
Insurance Code  
Labor Code  
Local Government Code

Natural Resources Code  
Occupations Code  
Parks and Wildlife Code  
Penal Code  
Property Code  
Special District Local Laws Code  
Tax Code  
Transportation Code  
Utilities Code  
Water Code

Current projects
Special District Local Laws Code
General Code Update Bill
Recently completed projects
Estates Code
Transportation Code (Railroad Provisions)
Review of proposed code chapters

[http://www.tlc.state.tx.us/code\\_overview.htm](http://www.tlc.state.tx.us/code_overview.htm)

# STATUTORY INTERPRETATION

- TEXAS HAS STATUTES ON HOW TO INTERPRET STATUTES
- SLIGHTLY DIFFERENT INTERPRETATIONS FOR ITEMS IN CODES v. STATUTES (v. SPECIAL RULES OF INTERPRETATION)

# CODE CONSTRUCTION ACT

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

# UNIFORM CONSTRUCTION OF UNIFORM ACT

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

UCC; UEFJA; UCCAJEA



# CIVIL STATUTES CONSTRUCTION

Sec. 312.005. LEGISLATIVE INTENT. In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

Sec. 312.006. LIBERAL CONSTRUCTION. (a) The Revised Statutes are the law of this state and shall be liberally construed to achieve their purpose and to promote justice.

(b) The common law rule requiring strict construction of statutes in derogation of the common law does not apply to the Revised Statutes.

# RESEARCHING TEXAS LEGISLATIVE HISTORY



## Outline of Texas Legislative History

[http://www.lrl.state.tx.us/legis/legintent/legInte  
nt.cfm](http://www.lrl.state.tx.us/legis/legintent/legInte<br/>nt.cfm)

## Compiling Texas Legislative History

[http://www.lrl.state.tx.us/legis/legintent/LegInte  
ntBrochure.pdf](http://www.lrl.state.tx.us/legis/legintent/LegInte<br/>ntBrochure.pdf)

# The Views from 3 Different Law Schools

- How U of H Law Library Explains It
  - <http://www.law.uh.edu/libraries/Publications/ResearchGuides/texasleghistory.htm>
- How UT Law Library Explains It
  - <http://tarltonguides.law.utexas.edu/texas-legislative-history>
- How South Texas Law Library Explains It
  - <http://libguides.stcl.edu/content.php?pid=131807>

# DO WE PROPERLY TEACH TEXAS LEGISLATIVE HISTORY ? CONSIDER...

## Official Documents of Legislative History

The following official documents are used to compile legislative history *These are listed roughly in the order of importance:*

- 
- **Interim Reports**
  - Conference Committee Reports
  - House public hearings
  - Senate public meetings
  -  • **House Research Organization and Senate Research Center reports**
  - House Committee minutes
  - Senate committee minutes
  - Texas House and Senate Journals
  - Texas Legislative Council materials

# STATUTORY INTERPRETATION

- ARE THE LEGISLATURE AND THE JUDICIARY SPEAKING THE SAME LANGUAGE?

## Standard in Texas Courts

- The Texas Supreme Court follows a textualist approach to statutory interpretation.
- “Yet a statute's pedigree is not itself law. For that reason, this Court usually applies a text-centric model when it construes a statute. We look first to the text. When the text is not clear, we explore extrinsic aids, including legislative history.” Ojo v. Farmers Group, Inc., 356 S.W.3d 421, 435 (Tex. 2011) (Chief Justice Jefferson concurring).
- The Texas Supreme Court refuses to consider extrinsic evidence when construing a statute unless the plain language in the statute is ambiguous or when a literal interpretation would lead to absurd results.

“So long as judges resort to external materials even when statutes are clear, lawmakers and lobbyists will keep peppering the legislative record with their preferred interpretation, not to inform legislators enacting statutes but to influence judges interpreting them. And then, when litigation ensues, statutory construction devolves into statutory excavation. The legal scavenger hunt begins, and the often-contradictory tidbits are unearthed and cited—perhaps inaccurately, selectively, or misleadingly—in order to hoodwink earnest judges and enable willful ones to reach a decision foreclosed by the text itself.”

Klein v. Hernandez, 315 S.W.3d 1, 11 (Tex. 2010) (Justice Willett concurring).



# Hecht (Concurring) in Entergy

- Only every so often do we come right out and brand a text with the a-word, as if it were a mark of shame. It seems nicer to call a statute unclear or better yet, just leave that implication. But the truth is that the meaning of statutory language is often reasonably disputed and therefore ambiguous to some extent, and resolving reasonable disputes with reason, rather than by denying their reasonableness, would result in a sounder jurisprudence.

# HECHT: “Two great evils attend this course”

- *One is that judges will use analysis of reasonable disagreements over meaning as a guise for substituting their own preferences in place of the legislature's. This would trespass upon the boundary between judicial and legislative spheres that is fundamental to our structure of government.*
- *The other is that in the search for the meaning of a statutory provision, courts will grasp at all sorts of statements made before, during, and after the process of enactment, whether by legislators or others, as relevant or even authoritative.*

The supreme court sometimes agrees with the Code Construction Act: “Even when a statute is not ambiguous on its face, we can consider other factors to determine the Legislature’s intent, including...the legislative history.” *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001). On the other hand: “if a

# Hedges and Townsend Article

This leads to a conundrum. Texas's confusion in the common-law about statutory interpretation is based on an internal contradiction: When a court says it is limited to considering the plain meaning of the text of statutes, the court can make that statement only by refusing to follow the plain meaning of the text of a statute that says the courts are not limited to the text of statutes.

## Other Helpful Items You May Want to Consider

### THE ART OF STATUTORY CONSTRUCTION: TEXAS STYLE

Ron Beal

- <http://www.baylor.edu/content/services/document.php/180393.pdf>

# MODELS OF STATUTORY INTERPRETATION APPLIED TO YOUR DAILY PRACTICE

*By Hon. Adele O. Hedges and Roger D. Townsend*

- <http://www.adjtlaw.com/assets/RT%20&%20AH%202007%20statutory%20interpretation.pdf>
- (For the Parable of Prof. Dow's Goldfish)

# Reading Statutes and Bills By Texas Legislative Council

- <http://www.tlc.state.tx.us/pubslegref/readingabill.pdf>

# MODERN PROBLEMS



# Question 1

- Pick the correct answer- All the problems in statutory interpretation in Texas stems from:
  - The Legislature-because they can't write clear laws
  - The Judiciary-because they look for statutory problems where none in fact exist; or
  - Lawyers-because they inappropriately use statutory interpretation to advance their client's position

## Question 2: Compare and contrast Prof. Tom Mayo's statements in these two news reports

- The Law Behind The Texas Life Support Controversy
  - <http://www.npr.org/2014/01/23/265358241/the-law-behind-the-texas-life-support-controversy>
- Texas law didn't anticipate Muñoz case, drafters say
  - <http://www.star-telegram.com/2014/01/23/5509944/texas-law-didnt-anticipate-dead.html>

QUESTION 3: CAN THE COURT'S GET IT RIGHT?

TRACFONE WIRELESS, INC. AND VIRGIN MOBILE  
USA, L.P., PETITIONERS,

v.

COMMISSION ON STATE EMERGENCY  
COMMUNICATIONS, RESPONDENT

- .
- . Texas cellphone users help fund the State's 911 emergency networks via two distinct "e911 fee" statutes.

- . The first, enacted in 1997, imposes on wireless subscribers a \$0.50/month “emergency service fee” collected on the customer’s bill.

- . The second, effective June 1, 2010, imposes on prepaid wireless subscribers a flat 2% fee, collected by the retail seller when a consumer buys prepaid service.

# The Question

- “The 2010 law assesses the e911 fee on prepaid wireless customers; the question here is whether the pre-2010 law did so?”

## 9-0 SCOTX -NO!

- The two e911 statutes are either ambiguous, meaning they must be construed narrowly in favor of the taxpayer, or they are unambiguous, meaning prepaid customers are impermissibly double-taxed.
- Either way, the original 1997 law—on the books before prepaid service was on the market—does not apply.



## 2 QUESTIONS

- WAS *TRAC-PHONE* CORRECTLY DECIDED?
- CAN YOU, WITHOUT DOING VIOLENCE TO STATUTORY CONSTRUCTION, WRITE A CONVINCING OPINION REACHING THE OPPOSITE CONCLUSION?