I. INTRODUCTIONS; OPENING REMARKS

II. AGENCY DRAFTING PROCEDURES AND POLICIES

A. Alabama
   1. No bill can be introduced unless it has been entered into the Legislative Data Bank by the Legislative Service Agency or the Executive Budget Office. (Joint Rule 7)
   2. Services can be requested by Members of the Legislature, the Governor, the Lieutenant Governor, and any individual to whom the Director determines the provision of services by the agency is in the best interests of the state.
   3. Header - All documents contain a header that identifies the office in which the bill originated, the drafter’s initials, the typist’s initials, a unique identifier, and the date of release.

B. Texas
   1. Electronic Legislative Draft Request System - for members of the legislature and certain other authorized requestors; electronic delivery of .pdf (with footer) and Word doc (without footer). E-filing (.pdf) required in House.
   2. Council footer:
      a. Formal draft - Legislature, session, unique number, drafter initials, service level.
      b. Informal draft - Unique number; drafter initials.
   3. Drafting and document preparation service levels:
      a. Original drafting - "D"
      b. Form and style; legal review/advice - "F" ("form bill")
      c. Edit only - "E"
      d. Type only - "Typed" (formerly "T")
   4. Council draft not required for introduction or passage.

C. Virginia
   1. Electronic Bill Drafting System - for requests, tracking, delivery.
   2. Statutory provisions regarding drafting - how requests submitted; what a request must include to be considered complete; confidentiality of requests; duty to draft legislation, advise as to constitutionality and probable legal effect; prepare summaries of legislation.
   3. Requester review and revision stages - occur before final release of draft; may include stakeholder review.
   4. "NOT DRAFTED BY DLS" bills - members may submit bills not reviewed/prepared by DLS.
III. GENERAL DRAFTING CONSIDERATIONS

A. Instructions
1. Are they consistent and complete?
2. Is it clear what the client wants to accomplish?

B. Level of discretion - How free are you to make changes?

C. Placement in statutes
1. Subject matter codes or other organization by subject matter?
2. Amendatory/codified or nonamendatory/uncodified?
3. Revisor of statutes determines after enactment?

D. Other organizational principles
1. Bill organization conventions
2. Preferred order of statutory provisions
3. Group similar/related provisions; separate dissimilar/unrelated provisions.
4. Avoid repetition where practical.

E. Conventions and customs; style and grammar
1. Concision, clarity, consistency, and omission of unnecessary language
   a. Short sentences with simple sentence structure; longer sentences broken into subparts; shorter sections and subsections
   b. Policy and purpose statements may be disfavored.
2. Drafting manuals may prescribe specifics, including:
   a. Avoidance or substitution of certain words or phrases
   b. Verbs to impose a duty, create a condition precedent, grant authority, or impose a prohibition
   c. Standard phrasing for expression of age, time
   d. Use of present tense, indicative mood, active voice, positive expression; use of singular rather than plural; avoidance of gender-based pronouns
3. Code construction statutes may make certain provisions unnecessary; are the basis for certain drafting conventions.

F. Conforming changes
1. Conform requested language to existing statutes.
   a. Use terminology and phrasing of relevant existing statutes.
   b. Eliminate provisions that are redundant of existing law.
2. Conform existing statutes to requested language.
   a. Is the new law an exception to an existing provision?
   b. Is a repeal of conflicting law necessary?
   c. Do any cross-references need updating?
G. Technical requirements - constitution; rules
   1. Captions/descriptions
   2. Statutory layout requirements
   3. One subject rule
   4. Constitutional vote or citation requirements
   5. Effective dates

H. Identify items requiring counsel, resolution, or cure.
   1. Legal issues
      a. Constitutional issues
      b. Conflicts
   2. Gaps in the scheme
      a. Enforcement mechanism
      b. Administration or procedure
      c. Transition issues
   3. Ambiguity/vagueness
   4. Inconsistency

I. Counsel client/resolve questions/cure deficiencies as appropriate.

J. Account for every element.

Goals:
   • Adequately express substance without changing it.
   • Ensure a workable scheme.
   • Avoid points of order and other legislative infirmities.

IV. UNIFORM AND MODEL ACTS

A. Purpose/Benefit of Uniform Acts
   1. Need for consistency across jurisdictions
   2. Benefit of common law developments
   3. Comity

B. Know what variance is worthwhile.
   1. Style vs. substance
   2. Differences in judicial structure
   3. Legal issues unique to your state

C. Be Aware of the Source.
   1. Uniform Law Commission
   2. American Bar Association
   3. National organization of regulatory officials - e.g., National Association of Insurance Commissioners (NAIC)
   4. Specialty or partisan organization
D. Other Relevant Information
1. How many other states have adopted?
2. Have there been variances in language?
3. Has there been litigation?
4. Who is supportive or opposed?

E. The Alabama Process
1. Alabama Law Institute
2. Drafting committee structure
3. Formal review/vetting process
4. Recommendation to the Legislature

Tips:
- Know the effect and potential impact of variance from the original draft.
- Look to the commentary for additional context and useful information.

V. OTHER STATES AND JURISDICTIONS

A. A couple different situations in which this issue may arise:
   1. Specific request for another state's legislation
   2. Models for drafting

B. Substantive aspects
   1. How does the other state's language fit with existing statutes? How does it impact existing policies?
   2. Are terms consistent with existing terminology? If not, do you need to define new terms?
   3. Level of detail - what do you need to add or eliminate?
   4. How do you conform to your state's drafting conventions and code construction laws?

C. Organizational issues
   1. Placement and relation to other portions of the code
   2. Structure and organization of sections

Things to consider:
- What is the requester really looking for? Actual words vs. general intent
- Which states are we looking to as models? Why?
- How does the process work in the state you are using as a model? How does that process compare to your state’s structure (agencies, actors, policies, etc.)? Will the bill still work if they are different?
VI. STAKEHOLDER LANGUAGE

A. Competing duties and interests
   1. The law and public interest
   2. The legislature
   3. The client
   4. The stakeholder
   5. The agency
   6. The drafter

B. Understanding the parties' motives

C. Gauging stakeholder expertise

D. Protecting the client

E. Ownership of the draft; allocating responsibility for the draft

VI. TREATMENT OF THE DRAFT

A. FACTORS AFFECTING TREATMENT OF THE DRAFT
   1. Nature of the request
      a. Uniform or model act
      b. Politically sensitive
      c. Agreed or negotiated language
   2. Express constraints
   3. Parties to the draft and their motives
   4. Working conditions
      a. Time frame
      b. Position of bill in process
      c. Cooperation/availability of parties
   5. Audience/end user
   6. Quality of the supplied language

Tips:

- Think twice before you assume they don't mean what they wrote.
- Do some searches - may reveal the language tracks relevant federal law or state statute or uses a widely recognized industry term.

B. COMMUNICATING WITH PARTIES TO THE DRAFT
   1. Talking to stakeholders
   2. Keeping the client informed
   3. Moving forward without resolution
   4. Receiving feedback
Tips:

• Approach the stakeholder in a manner that assures them you are trying to get it right rather than tell them what to do; explain the rationale for significant changes; let them know that you are open to their feedback and questions and that, with the client's permission, they can get changes.

• Keep the client informed of any significant changes to instructions or resolution of significant issues arrived at with an outside party (whether the client likes it or not).

• If there is an issue that can’t be resolved in the first draft, or if you have made a decision for the sake of moving forward, make sure the client is aware and prepared to seek feedback.

C. WHAT’S NOT NEGOTIABLE?

VII. Q&A
RESOURCES AND REFERENCES

NCSL

Online Bill Drafting Manuals

UNIFORM LAW COMMISSION
http://www.uniformlaws.org/

ALABAMA

Online Constitution, Statutes, and Bill Tracking
http://alisondb.legislature.state.al.us/alison/default.aspx

Drafting Style Manual
http://lrs.state.al.us/style_manual/style_manual.html

Title 1, Chapter 1: Construction of Code and Statutes

TEXAS

Online Constitution and Statutes
http://www.statutes.legis.texas.gov/

Bills and Session Laws
http://www.lrl.texas.gov/legis/billsearch/lrlhome.cfm

Texas Legislative Council Drafting Manual
http://www.tlc.texas.gov/docs/legref/draftingmanual.pdf

Chapter 311, Government Code (Code Construction Act)

Chapter 312, Government Code (Construction of Laws)

VIRGINIA

Online constitution and statutes
http://law.lis.virginia.gov/vacode

Division of Legislative Services
Title 30, Chapter 2.2, Code of Virginia: http://law.lis.virginia.gov/vacode/title30/chapter2.2/
Website: http://dls.virginia.gov/index.html

Title 1, Chapter 2.1, Code of Virginia, Common Law and Rules of Construction
http://law.lis.virginia.gov/vacode/title1/chapter2.1/
REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)

Alabama Law Institute
January 2016 Draft (Excerpts)

SECTION 2. DEFINITIONS. In this Act:

(1) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney a person granted authority to act for a principal under a power of attorney, whether denoted an agent, attorney-in-fact, or otherwise. The term includes an original agent, co-agent, successor agent, and person to which an agent’s authority is delegated.

(3) "Carries" means engages in the transmission of an electronic communication.

(4) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) "Conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.

(6) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:

(A) has been sent or received by a user;

(B) is in electronic storage by a custodian providing an electronic-communication
service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(C) is not readily accessible to the public.

(7) "Court" means the [insert name of court in this state having jurisdiction in matters relating to the content of this act] circuit court or a probate court granted constitutional or statutory equitable jurisdiction.

(8) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(10) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) "Electronic communication" has the meaning set forth in 18 U.S.C. Section 2510(12), as amended.

(13) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) "Fiduciary" means an original, additional, or successor personal representative, {conservator}, agent, or trustee.

(15) "Information" means data, text, images, videos, sounds, codes, computer programs, software,
databases, or the like.

(16) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(18) "Personal representative" means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this act.

(19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal, whether or not the term power of attorney is used.

(20) "Principal" means an individual who grants authority to an agent in a power of attorney.

(21) "Protected person" means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), as amended.

(24) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.
"Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee.

"User" means a person that has an account with a custodian.

"Will" includes a codicil, testamentary instrument that only appoints a personal representative, an executor, or and instrument that revokes or revises a testamentary instrument another will.

SECTION 16. CUSTODIAN COMPLIANCE AND IMMUNITY.

(a) Not later than [60] days after receipt of the information required under Sections 7 through 14, a custodian shall comply with a request under this [act] from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance, and such other relief allowed under the law of this state.

(b) An order under subsection (a) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702[, as amended].

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this [act].

(d) A custodian may deny a request under this [act] from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(e) This [act] does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this [act] to obtain a court order which:
(1) specifies that an account belongs to the [protected person] or principal;

(2) specifies that there is sufficient consent from the [protected person] or principal to support the requested disclosure; and

(3) contains a finding required by law other than this [act].

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this [act].
Sec. 165.001. LEGISLATIVE FINDING. The legislature finds that breast-feeding a baby is an important and basic act of nurture that must be encouraged in the interests of maternal and child health and family values. In compliance with the breast-feeding promotion program established under the federal Child Nutrition Act of 1966 (42 U.S.C. Section 1771 et seq.), the legislature recognizes breast-feeding as the best method of infant nutrition.

Sec. 165.002. RIGHT TO BREAST-FEED. A mother is entitled to breast-feed her baby in any location in which the mother is authorized to be.

Sec. 165.003. BUSINESS DESIGNATION AS "MOTHER-FRIENDLY". (a) A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses the following:

   (1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;
   (2) the provision of accessible locations allowing privacy;
   (3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and
   (4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

   (b) The business shall submit its breast-feeding policy to the department. The department shall maintain a list of "mother-friendly" businesses covered under this section and shall make the list available for public inspection.

Sec. 165.004. SERVICES PROVIDED BY STATE AGENCIES. Any state agency that administers a program providing maternal or child health services shall provide information that encourages breast-feeding to program participants who are pregnant women or mothers with infants.

SUBCHAPTER B. DEMONSTRATION PROJECT

Sec. 165.031. LEGISLATIVE RECOGNITION. The legislature recognizes a mother's responsibility to both her job and her child when she returns to work and acknowledges that a woman's choice to breast-feed benefits the family, the employer, and society.

Sec. 165.032. DEMONSTRATION PROJECT. (a) The department shall establish a demonstration project in Travis County to provide access to
worksite breast-feeding for department employees who are mothers with infants.

(b) The department shall administer the demonstration project and shall determine the benefits of, potential barriers to, and potential costs of implementing worksite breast-feeding support policies for state employees.

Sec. 165.033. BREAST-FEEDING POLICY. The department shall develop recommendations supporting the practice of worksite breast-feeding that address the following:

1. work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;
2. the provision of accessible locations allowing privacy;
3. access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and
4. access to hygienic storage alternatives in the workplace for the mother's breast milk.

VIRGINIA

CHAPTER 45
An Act to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 17, consisting of a section numbered 32.1-370, relating to the right to breastfeed in public places.

[H 1499]
Approved March 10, 2015

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 17, consisting of a section numbered 32.1-370, as follows:

CHAPTER 17.
BREASTFEEDING.

§ 32.1-370. Right to breastfeed.
A mother may breastfeed in any place where the mother is lawfully present, including any location where she would otherwise be allowed on property that is owned, leased, or controlled by the Commonwealth in accordance with § 2.2-1147.1.