Legislative History Materials in MAALL and adjacent states

Compiled and Presented by:
Lee Little & Ben Keele
Ruth Lilly Law Library
IU Robert H McKinney School of Law
States covered:

- North Dakota
- South Dakota
- Nebraska
- Kansas
- Oklahoma
- Ohio
- Iowa
- Illinois
- Missouri
- Arkansas
- Wisconsin
- Indiana
- Tennessee
Three inquiries

1. What is the standard of review for questions of legislative intent?

2. When will extrinsic materials be utilized?

3. What materials are available?
Question 1: What standard of review?

- All states surveyed view statutory construction as a matter of law and apply a **de novo standard of review** to issues of statutory construction.
Question 2: When will extrinsic materials be utilized?

- **All states** surveyed turn to extrinsic materials if the **plain and ordinary meaning** of a statute is ambiguous.

- **Iowa** uses both plain language and extrinsic materials to determine intent **at outset**.
Question 3: What materials are available?

- **6** states have **good online access** to legislative history materials
- **1** state has **some online/physical access** to legislative history materials
- **6** states have **poor access** – Good luck!
Treatment by individual states
When determining legislative intent, we first examine the language of the statute itself and will resort to extrinsic aids only if the language is ambiguous. *Zimmerman v DHSS*, 169 Wis.2d 498 (Wis.Ct.App1992)

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Acts</th>
<th>Bills</th>
<th>Journals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Online: 1849-present</td>
<td>Online: 1848-present (state) 1836-1986 (LLMC)</td>
<td>Online: 1999-present (state) Microfiche: 1927-present</td>
<td>Online: 1995-present Print: 1907-present</td>
</tr>
</tbody>
</table>

State Legislature's website is immensely helpful: https://docs.legis.wisconsin.gov/archive

Wisconsin State Law library has a helpful guide: https://wilawlibrary.gov/learn/wilegislativehistory.pdf
When the language is ambiguous and does not yield a clear interpretation, the court may consult the legislative history for additional interpretive guidance. *Storey v. Bradford Furniture Co.*, 910 S.W.2d 857, 859 (Tenn. 1995)

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Acts</th>
<th>Bills</th>
<th>Journals</th>
</tr>
</thead>
</table>

No materials prior to 1955

Secretary of State's office is helpful: https://sos.tn.gov/tsla/legislative-history-recording
The fundamental rule of statutory construction is to ascertain and give effect to the legislative intent, and that intent is first sought in the language of a statute. Pentagon Academy v. Ind. Sch. Dist. No. 1 Tulsa Cty, 2003 OK 98

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Bills &amp; Session Laws</th>
<th>Journals</th>
<th>Recordings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online: 1988-present (WL)</td>
<td>Online: 1993-present (legislature)</td>
<td>Online: 1895-1987 (LLMC) 1999-present (House); 2003-present (senate)</td>
<td>Online: some spotty availability (legislature)</td>
<td>Physical: State Archives</td>
</tr>
</tbody>
</table>
Where the language is clear and unambiguous, there is “no room for judicial construction.” *St. Vincent Hosp. & Health Care Ctr., Inc. v. Steele*, 766 N.E.2d 699, 704 (Ind. 2002).

Recordings of floor debate and committee hearings (the only records of what is said in these proceedings) cannot be used as evidence of legislative intent. Ind. Code 2-5-1.1-15.
Only in those cases “where the language of the statute is ambiguous or where ‘its plain meaning would lead to an illogical result,’” will this court “look past the plain and ordinary meaning of a statute.” *Nichols v. Dir. of Revenue*, 116 S.W.3d 583, 586 (Mo.App. W.D.2003).

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Session laws</th>
<th>Journals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online: 1989-present (WL)</td>
<td>Online: 1999-present (legislature)</td>
<td>Online: 1820-1899; 1996-present (legislature)</td>
<td></td>
</tr>
</tbody>
</table>

“The typical librarian disclaimer when discussing Missouri legislative history is that there isn’t any! Though with creativity we can usually find something about intent. At the federal level the government is required to publish committee reports, hearings, debate, etc. Typically none of that is available at the state level in Missouri.”
To this end, a statute's legislative history and debates are “[v]aluable construction aids in interpreting an ambiguous statute.” Krohe v. City of Bloomington, 789 N.E.2d 1211 (Ill. 2003).

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Session laws</th>
<th>Journals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online: 1988-present (WL)</td>
<td>Online: 1971-present (legislature)</td>
<td>Online: 1971-present (legislature)</td>
<td></td>
</tr>
</tbody>
</table>
Iowa

“We give words their **ordinary and common meaning** by considering the context within which they are used . . . We also consider the legislative history of a statute, including prior enactments, when ascertaining legislative intent. When we interpret a statute, we assess the statute in its entirety, not just isolated words or phrases.”

Doe v. Iowa Dep't of Human Servs., 786 N.W.2d 853, 858 (Iowa 2010).

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Session laws/acts</th>
<th>Journals</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Online: 1988-present (WL)</td>
<td>Online: 1838-present (legislature)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Online: 1838-present (legislature)</td>
<td>Online: 1838-present (legislature)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Online: 1995-present (legislature)</td>
<td>Online: 1995-present (legislature)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
When the language of a statute is ambiguous, courts may use extrinsic aids, including legislative history, to ascertain legislative intent. NDCC 1-02-39

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Session laws</th>
<th>Journals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Online: 1989-present (WL)</td>
<td>Online: 1862-present (legislature)</td>
<td>Online: 1983-present (legislature)</td>
</tr>
</tbody>
</table>

In City of Fargo v. Ness, 529 N.W.2d 572 (N.D. 1995), the North Dakota Supreme Court used Code Revision Commission notes to interpret a statute.
Courts can only look to legislative history if legislation is ambiguous or its literal meaning is absurd or unreasonable. Slama v. Landmann Jugman Hosp. 654 N.W.2d 826 (S.D. 2002).
Ohio

Legislative history may be considered if statute is ambiguous. R.C. 1.49.

Legislative history was used to interpret a statute in State v. Sidell, 282 N.E.2d 367 (Ohio 1972).

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Session laws</th>
<th>Journals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online: 1994-present (WL)</td>
<td>Online: 1997-present (legislature)</td>
<td>Online: 2003-present (legislature)</td>
<td></td>
</tr>
</tbody>
</table>
"It is also settled law that where the general intent of the Legislature may be readily discerned, and yet the language in which the law is expressed leaves the application of it in specific instances obscure, doubtful, ambiguous, or uncertain, the courts may have resource to historical facts of general information in order to aid them in interpreting its provisions."

Adkins v. City of Columbus, 333 N.W.2d 661 (Neb. 1983).
Arkansas

Courts can use legislative history when statute is ambiguous. ACW, Inc. v. Weiss, 947 S.W.2d 770 (Ark. 1997).

<table>
<thead>
<tr>
<th>General availability</th>
<th>Statutes</th>
<th>Session laws</th>
<th>Journals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Online: 2004-present (WL)</td>
<td>Online: 1987-present* (legislature)</td>
<td>Online: Current session (legislature)</td>
</tr>
</tbody>
</table>

Court held testimony from former state lawmaker was inadmissible. Board of Trustees for City of Little Rock, Ark. Police Pension Fund v. City of Little Rock, 750 S.W.2d 950 (Ark. 1988).
Kansas

"Where a statute may be of doubtful meaning and is susceptible to two constructions, the court may look at the legislative history of the statute to assist in determining the meaning of the statute. Tompkins v. Bise, 910 P.2d 185 (Kan. 1996).
Your experience?
Further Reading


• Maureen Bonace McMahon, Legislative History in Ohio: Myths and Realities, 46 Clev. St. L. Rev. 49 (1998).
Further Reading

• Karen Wallace, Does the Past Predict the Future?: An Empirical Analysis of Recent Iowa Supreme Court Use of Legislative History as a Window into Statutory Construction in Iowa, 63 Drake L. Rev. 1 (2015).

Further Reading


Further Reading

• Our colleagues at Georgetown Law Library have created several very helpful state-specific libguides that include legislative history research tips:
  • https://guides.ll.georgetown.edu/home/us-law

• When in doubt, call your colleagues at a law school in that state