

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1336

WILSONART, LLC and SAMUEL  
ROSARIO,

Petitioners,

vs.

DCA Case No. 5D18-2907  
L.T. Case No. 2018-CA-000237

MIGUEL LOPEZ, as Personal  
Representative of the Estate of JON  
LOPEZ, deceased,

Respondent.

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**RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITIES**

Pursuant to Fla. R. Civ. P. 9.225, Respondent, Miguel Lopez, as Personal Representative of the Estate of Jon Lopez, deceased, brings this Court's attention to the following:

1. An authority pertinent to Respondent's argument, on pages 39 and 40 of his answer brief, that this Court should rely on the federal courts' interpretations of rule 56 made before 1950, the year when rule 1.510's predecessors were adopted:

- ***2B Sutherland Statutory Construction § 52:2 & nn. 7, 48-52 (7<sup>th</sup> ed).***

2. An authority pertinent to Respondent's argument, on pages 45 to 48 of his answer brief, that, under textualism, this Court may not adopt the 1986 trilogy because rule 56 in 1986 was materially different from today's rule 1.510:

- ***Jones v. Gen. Motors Corp., 939 P.2d 608, 615-616 (Or. 1997).***

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3. Authorities pertinent to Respondent's argument, on page 50 of his answer brief, that due process requires any new summary judgment standard should be applied only prospectively and not to the motion filed below:

- ***Callens v. Jefferson County Nursing Home*, 769 So. 2d 273, 279 n. 4 (Ala. 2000).**
- **Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.**<sup>1</sup>

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<sup>1</sup> The answer brief inadvertently and mistakenly cited to the Due Process Clause of the Fifth Amendment. (AB 50.)

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 10, 2020, I electronically filed the foregoing document using the Florida Court's E-Filing Portal and an electronic copy has been furnished to the following counsel of record:

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## 2B Sutherland Statutory Construction § 52:2 (7th ed.)

Sutherland Statutes and Statutory Construction | October 2019 Update  
Norman Singer

Shambie Singer

### Part V. Statutory Interpretation

#### Subpart A. Principles and Policies

#### Chapter 52. Interpretation by Reference to Similar Statutes of Other States

## § 52:2. Statutes copied from other states

### References

When a state legislature adopts a statute which is identical or similar to one in another state or country, courts of the adopting state usually adopt the original jurisdiction's construction.<sup>1</sup> One need show only through the similarity of language that an act was copied from another state.<sup>2</sup> Connecticut noted that “The fact that a statute is almost a literal copy of a statute of a sister state is persuasive evidence of a practical reenactment of a statute of the sister state; as such it is proper to resort to decisions of a sister court construing that statutory language.”<sup>3</sup> The rule applies to the interpretation of state acts copied by another state,<sup>4</sup> to the judicial and administrative interpretation of federal acts copied by a state,<sup>5</sup> and to the interpretation of a federal act which is the model for another federal act.<sup>6</sup>

Numerous decisions evince the judicial presumption that an adopting state receives the construction of an adopted statute.<sup>7</sup> Maryland applies federal interpretations of the federal Freedom of Information Act to its own understanding of the Maryland Public Information Act.<sup>8</sup> A California statute which provides for forfeiture of property connected with, and proceeds traceable to, unlawful drug transactions is patterned after a federal statute, and federal case law is instructive to construe the statute.<sup>9</sup> The District of Columbia looks to cases construing Title VII of the Civil Rights Act of 1964 as an aid to construe its own Human Rights Act, given the substantial similarity of both statutes' antidiscrimination provisions.<sup>10</sup> National Labor Relations Board and federal judicial constructions of the National Labor Relations Act are persuasive authority for similar state provisions.<sup>11</sup> One state's interpretations of the Uniform Commercial Code are generally used in other states.<sup>12</sup> An Alabama income tax statute modeled on a federal statute accepts the construction of the federal statute.<sup>13</sup> New Jersey adopted its Comparative Negligence Act nearly verbatim from a Wisconsin statute, including Wisconsin's prior construction of the act.<sup>14</sup> Missouri's Narcotic Drug Act is patterned after the Federal Comprehensive Drug Abuse Prevention and Control Act, and Missouri courts look to the United States Congress' legislative history as an aid to understand the Missouri Act.<sup>15</sup> And the Florida Evidence Code is patterned after the Federal Rules of Evidence and takes the same construction in Florida courts as its prototype has been given in federal courts.<sup>16</sup>

States borrow extensively from federal legislation in certain substantive areas of the law. Among those areas are the Rules of Civil Procedure,<sup>17</sup> freedom of information<sup>18</sup> and employee relations.<sup>19</sup> State tax laws are often modeled on the federal Internal Revenue Code.<sup>20</sup> And similar policies undergird state and federal antitrust laws and make federal decisions construing federal acts “persuasive” sources of guidance to interpret state acts.<sup>21</sup>

Statutes do not have to be identical for the rule to apply.<sup>22</sup> The presumption “varies in strength with the similarity of the language, the established character of the decisions in the jurisdiction from which the language was adopted and the presence or

lack of other indicia of intention.”<sup>23</sup> Where the adoption is only of a “general scheme,” a construction by the parent jurisdiction is not controlling.<sup>24</sup>

Courts interpreting treaties adopted by a number of jurisdictions, both in the United States and abroad, make as universal a construction as possible. The courts of any United States jurisdiction are not bound by judicial opinions from other jurisdictions, in terms of the interpretation of a treaty. However, proper regard for promoting a uniform approach to understanding and applying a treaty requires that all foreign adjudications receive respectful attention.<sup>25</sup>

The general rule of construction has full effect on statutes adopted by Congress for the territories or the District of Columbia.<sup>26</sup> Federal courts follow the general rule to construe the statutes of one state which have been adopted from another.<sup>27</sup> The rule also has been applied in a few cases to municipal city charters.<sup>28</sup>

Courts of the adopting state are not absolutely bound,<sup>29</sup> and may refuse to follow, a construction if they believe it is against the weight of authority, the underlying precedent is no longer vital, it is inconsistent with policy, or is not based on sound reasoning.<sup>30</sup> Louisiana found that a federal analysis of the Sherman Antitrust Act was not controlling for its interpretation of a state counterpart act, as the relevant federal ruling was a departure from its own well-established rule, and from a prevailing Louisiana decision.<sup>31</sup> Even when legislative history indicates a particular statute is modeled on another statute, courts are cautious before employing the construction of one for the other.<sup>32</sup> When the “purpose and policy” of a federal act and a state statute are different, decisions construing the federal statute have no application to the state statute.<sup>33</sup> Courts also do not follow the rule of presumed adoption where another state's construction is contrary to a settled policy of the adopting state.<sup>34</sup> Illinois found that a mandate in its Consumer Fraud and Deceptive Business Practices Act to “consider” relevant federal interpretations of the Federal Trade Commission Act did not make such interpretations dispositive.<sup>35</sup> State statutes that seek to adopt future administrative rulings under adopted enabling legislation raise constitutional difficulties because such acts delegate legislative power to an extra-state agency.<sup>36</sup>

Courts often reject a foreign interpretation when the adopting state makes changes to an act for the very purpose of avoiding the construction developed elsewhere.<sup>37</sup> Rejection also occurs where the original statute is not a helpful source because of significant differences, despite similar form or substance.<sup>38</sup> Connecticut's mechanic's lien statute, for example, differs sufficiently from similar legislation in other states so that precedents elsewhere are of limited utility to interpret Connecticut's act.<sup>39</sup> Even though an act follows in many respects that of another state, courts do not adopt language from the other state's statute to remedy any supposed lacunae in its own version of the statute.<sup>40</sup> Decisions from intermediate courts in the state of origin, and from administrative tribunals, have less effect than those of the highest court,<sup>41</sup> because states normally adopt only decisions from a court of last resort when they adopt a statute.<sup>42</sup> Vermont, for example, looks to federal decisions interpreting the National Labor Relations Act, which parallels its own Municipal Labor Relations Act, but understands “federal decisions” to mean those of the Supreme Court and the Circuit Courts of Appeals, but not the National Labor Relations Board.<sup>43</sup> If the adopting state has judicial decisions on the same general subject, or has previously rejected a construction made by the originating state, the adopting state follows its own decisions rather than the foreign decisions.<sup>44</sup> Courts interpreting federal statutes are cautious about employing state law definitions, as federal statutes generally are intended to have uniform nationwide application.<sup>45</sup> Where a statute is a composite of statutes from two states, courts usually refuse to follow either state's construction and interpret the statute according to its plain meaning.<sup>46</sup> In any case, the rule of presumed adoption does not override a statute's plain meaning.<sup>47</sup>

When the state of origin interprets a statute after the adopting state statute has been enacted, courts do not presume the adopting state also adopted the subsequent construction.<sup>48</sup> A subsequent construction in the state of origin is never more than “persuasive,”<sup>49</sup> and usually has no more weight than the interpretation of any similar statute from another jurisdiction.<sup>50</sup> However, courts do look to the state of origin's interpretation at the time a statute was adopted, even if the state of origin's highest court subsequently has changed its construction of the statute.<sup>51</sup> The amendment of a federal statute does not effect

a similar amendment on an adopted state statute absent action by the state legislature, and the pre-amendment federal statute and relevant case law applies to interpret the state statute.<sup>52</sup>

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## Footnotes

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**United States.** Shannon v. U.S., 512 U.S. 573, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994); James v. Appel, 192 U.S. 129, 24 S. Ct. 222, 48 L. Ed. 377 (1904); Willis v. Eastern Trust & Banking Co., 169 U.S. 295, 18 S. Ct. 347, 42 L. Ed. 752 (1898); Cathcart v. Robinson, 30 U.S. 264, 8 L. Ed. 120, 1831 WL 3965 (1831); Berkeley v. West Indies Enterprises, Inc., 480 F.2d 1088 (3d Cir. 1973); U.S. v. Nedley, 255 F.2d 350 (3d Cir. 1958); Crane Co. v. Richardson Const. Co., 312 F.2d 269 (5th Cir. 1963); Hill v. Cheek, 230 F.2d 104 (5th Cir. 1956); Merck & Co. v. Kidd, 242 F.2d 592 (6th Cir. 1957); Department of Water and Power of City of Los Angeles v. Bonneville Power Admin., 759 F.2d 684 (9th Cir. 1985); Christy v. U.S., 17 Alaska 107, 261 F.2d 357 (9th Cir. 1958); Boka Elec. Const. Co. v. W. M. Chappell, Inc., 262 F.2d 718 (D.C. Cir. 1958); Richey v. Sumoge, 257 F. Supp. 32 (D. Or. 1966); U. S. ex rel. Brown v. Smith, 200 F. Supp. 885 (D. Vt. 1961), order rev'd on other grounds, 306 F.2d 596 (2d Cir. 1962); Moba v. Total Transp. Services Inc., 16 F. Supp. 3d 1257 (W.D. Wash. 2014); Teague v. Damascus, 183 F. Supp. 446 (E.D. Wash. 1960); Petition of Lujan, 144 F. Supp. 150 (D. Guam 1956); Paiewonsky v. Paiewonsky, 315 F. Supp. 752 (D.V.I. 1970), order aff'd, 446 F.2d 178 (3d Cir. 1971); James v. Henry, 157 F. Supp. 226 (D.V.I. 1957).

When a dispute concerns one of the substantially similar provisions in the Kentucky Wages and Hours Act (KWHHA) and the federal Fair Labor Standards Act (FLSA), and state case law is lacking, courts look to federal precedent for interpretive guidance, however, federal cases requiring exemptions under the FLSA to be narrowly construed against an employer do not apply to KWHHA claimants because the KWHHA's exclusion of supervisory staff from the definition of "employee" does not constitute an exemption. In re Amazon.com, Inc., Fulfillment Center Fair Labor Standards Act (FLSA) and Wage and Hour Litigation., 852 F.3d 601 (6th Cir. 2017).

Oregon decisions are controlling with respect to most of the Alaska civil code, which was adopted from Oregon. Pilip v. U.S., 186 F. Supp. 397 (D. Alaska 1960), opinion supplemented on other grounds, 191 F. Supp. 943 (D. Alaska 1961).

It is appropriate to look at California law where Guam law is unclear. People of Territory of Guam v. Ojeda, 758 F.2d 403 (9th Cir. 1985).

In Arizona when a statute is adopted from another state courts presume that the statute is taken with the construction placed upon it by the courts of that state prior to its adoption. Van Cleef v. Aeroflex Corp., 657 F.2d 1094 (9th Cir. 1981).




An Ohio anti-discrimination statute, which prohibits discrimination of, *inter alia*, age and disability, is generally construed in the identical fashion as its counterpart federal laws. Pollitt v. Roadway Exp., Inc., 228 F. Supp. 2d 854 (S.D. Ohio 2002).





Title VII and the Pennsylvania Human Relations Act (PHRA) are substantially similar, and Pennsylvania courts generally interpret the PHRA as consistent with Title VII. Nagle v. RMA, The Risk Management Ass'n, 513 F. Supp. 2d 383 (E.D. Pa. 2007).





**Alabama.** Ex parte Huguley Water System, 282 Ala. 633, 213 So. 2d 799 (1968); Travis v. Hubbard, 267 Ala. 670, 104 So. 2d 712 (1958); Avery Freight Lines, Inc. v. Alabama Public Service Commission, 267 Ala. 646, 104 So. 2d 705 (1958); Ex parte Rice, 265 Ala. 454, 92 So. 2d 16 (1957); State v. Southern Surety Co., 221 Ala. 113, 127 So. 805, 70 A.L.R. 296 (1930); Blackmon v. W. S. Badcock Corp., Inc., 342 So. 2d 367 (Ala. Civ. App. 1977).




The Workmen's Compensation Act was modeled after Minnesota's Act and Minnesota's construction of its laws is persuasive. *Gold Kist, Inc. v. Barnett*, 439 So. 2d 703 (Ala. Civ. App. 1983).



**Alaska.**  *City of Fairbanks v. Schaible*, 375 P.2d 201 (Alaska 1962) (overruled in part on other grounds by,  *Scheele v. City of Anchorage*, 385 P.2d 582 (Alaska 1963)) and (rejected by,  *Newton v. Magill*, 872 P.2d 1213 (Alaska 1994)).

**Arizona.**  *Cottonwood Development v. Foothills Area Coalition of Tucson, Inc.*, 134 Ariz. 46, 653 P.2d 694 (1982);  *England v. Ally Ong Hing*, 105 Ariz. 65, 459 P.2d 498 (1969);  *Hayward Lumber & Inv. Co. v. Graham*, 104 Ariz. 103, 449 P.2d 31 (1968); *Allen v. Industrial Commission*, 92 Ariz. 357, 377 P.2d 201 (1962); *Elias v. Territory*, 9 Ariz. 1, 76 P. 605 (1904);  *State v. Stone*, 8 Ariz. App. 118, 443 P.2d 933 (1968), opinion vacated on other grounds, 104 Ariz. 339, 452 P.2d 513 (1969); *Blakely v. Superior Court of Pima County*, 6 Ariz. App. 1, 429 P.2d 493 (1967). Arizona's garnishment statutes were adopted from Texas and courts presume that the construction previously placed upon the statutes by Texas is persuasive. *Gulf Homes, Inc. v. DM Federal Credit Union*, 125 Ariz. 68, 607 P.2d 387 (Ct. App. Div. 2 1979).





**California.**  *City and County of San Francisco v. Ragland*, 227 Cal. Rptr. 44 (App. 1st Dist. 1986), reh'g granted, opinion not citeable, (July 7, 1986) and opinion vacated,  188 Cal. App. 3d 1375, 234 Cal. Rptr. 327 (1st Dist. 1987); *Lafortune v. Ebie*, 26 Cal. App. 3d 72, 102 Cal. Rptr. 588 (2d Dist. 1972); *Barger v. All-Coverage Ins. Exchange*, 20 Cal. App. 3d 675, 97 Cal. Rptr. 888 (2d Dist. 1971); *Gorman Rupp Industries, Inc. v. Superior Court*, 20 Cal. App. 3d 28, 97 Cal. Rptr. 377 (2d Dist. 1971); *Estate of Gill*, 19 Cal. App. 3d 496, 96 Cal. Rptr. 786 (2d Dist. 1971);  *McDermott v. Bear Film Co.*, 219 Cal. App. 2d 607, 33 Cal. Rptr. 486 (3d Dist. 1963);  *In re Teddy's Estate*, 214 Cal. App. 2d 113, 29 Cal. Rptr. 402 (1st Dist. 1963).


The California Public Records Act was modeled on the Freedom of Information Act and the two have a common purpose, and the federal legislative history and judicial construction of the federal act may be used to construe the California act.  *California State University v. Superior Court*, 90 Cal. App. 4th 810, 108 Cal. Rptr. 2d 870, 155 Ed. Law Rep. 664 (5th Dist. 2001).

*Cf.* *State of California ex rel. Dept. of Employment v. General Ins. Co.*, 13 Cal. App. 3d 853, 96 Cal. Rptr. 744 (2d Dist. 1970).


**Colorado.**  *Vandermee v. District Court In and For Arapahoe County*, in Eighteenth Judicial Dist., 164 Colo. 117, 433 P.2d 335 (1967);  *Hoen v. District Court In and For Arapahoe County in Eighteenth Judicial Dist.*, 159 Colo. 451, 412 P.2d 428, 19 A.L.R.3d 131 (1966).

**Connecticut.** *Town of New Canaan v. Connecticut State Bd. of Labor Relations*, 160 Conn. 285, 278 A.2d 761 (1971); *SLI Intern. Corp. v. Crystal*, 236 Conn. 156, 671 A.2d 813 (1996); *State v. Darwin*, 29 Conn. Supp. 423, 290 A.2d 593 (Super. Ct. 1972).




**Delaware.** *Opinion of the Justices*, 54 Del. 524, 181 A.2d 215 (1962);  *Stauffer v. Standard Brands Inc.*, 41 Del. Ch. 7, 187 A.2d 78 (1962) (overruled on other grounds by,  *Roland Intern. Corp. v. Najjar*, 407 A.2d 1032 (Del. 1979)); *Stauffer v. Standard Brands Inc.*, 40 Del. Ch. 202, 178 A.2d 311 (1962), judgment aff'd,  41 Del. Ch. 7, 187 A.2d 78 (1962) (overruled on other grounds by,  *Roland Intern. Corp. v. Najjar*, 407 A.2d 1032 (Del. 1979)).


The Connecticut corporate directors consent statute is the model for the Delaware act, and there is a strong presumption that the Delaware legislature intended to adopt the construction of the statute when it modeled its legislation on the prior existing act.  *Hana Ranch, Inc. v. Lent*, 424 A.2d 28 (Del. Ch. 1980) (abrogated on other grounds by, *Hazout v. Tsang Mun Ting*, 134 A.3d 274 (Del. 2016)).

**District of Columbia.** *Dent v. District of Columbia Department of Employment Services*, 158 A.3d 886 (D.C. 2017), as amended, (May 25, 2017); *In re G.G.*, 667 A.2d 1331 (D.C. 1995); *Lenaerts v. District of Columbia Dept. of Employment Services*, 545 A.2d 1234 (D.C. 1988).

Courts look to the interpretation of the federal statute to determine the construction of the District of Columbia's statute concerning the appointment of counsel, since the District of Columbia's statute was based on the federal provision.  *Corley v. U. S.*, 416 A.2d 713 (D.C. 1980).


When one jurisdiction adopts in similar form a regulation of another, it has adopted prior constructions of the regulation from the original jurisdiction. *Whitt v. District of Columbia*, 413 A.2d 1301 (D.C. 1980).

**Florida.**   *Oppenheimer & Co., Inc. v. Young*, 456 So. 2d 1175 (Fla. 1984), judgment vacated, 470 U.S. 1078, 105 S. Ct. 1830, 85 L. Ed. 2d 131 (1985) and (disavowed on other grounds by, *Melamed v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 476 So. 2d 140 (Fla. 1985)); *Flammer v. Patton*, 245 So. 2d 854 (Fla. 1971);  *Akey v. Murphy*, 238 So. 2d 94 (Fla. 1970); *Farley v. Collins*, 146 So. 2d 366 (Fla. 1962); *Duval v. Hunt*, 34 Fla. 85, 15 So. 876 (1894); *Marchman v. St. Anthony's Hosp., Inc.*, 152 So. 3d 830 (Fla. 2d DCA 2014), review denied, 171 So. 3d 115 (Fla. 2015).

Where a Florida statute is patterned after the statute of another state, Florida courts may look to the judicial interpretation of that other state as persuasive authority to interpret the Florida statute.  *Dunn v. Doskocz*, 590 So. 2d 521 (Fla. 3d DCA 1991).

North Carolina's occupational disease statute uses terminology similar to that of Florida's, and the perceptions of the North Carolina court are persuasive. *Smith v. Crane Cams, Inc.*, 418 So. 2d 1266 (Fla. 1st DCA 1982).





**Georgia.** *Todd v. State*, 228 Ga. 746, 187 S.E.2d 831 (1972).


The dissenting shareholder statutes were adopted from New York Business Corporation Law, and Georgia courts will, when appropriate, look to New York decisions.  *Atlantic States Const., Inc. v. Beavers*, 169 Ga. App. 584, 314 S.E.2d 245 (1984).





Federal cases may provide aid to interpret state statutes patterned after federal enactments. *Blackmon v. Mazo*, 125 Ga. App. 193, 186 S.E.2d 889 (1971).


**Hawai'i.** The adoption of a statute from another jurisdiction does not carry with it the judicial interpretation of the statute by that jurisdiction where the legislature adopted the language of the statute but not the judicial gloss, and where the original jurisdiction had registered serious misgivings about the relevant construction. *Wong v. Hawaiian Scenic Tours, Ltd.*, 64 Haw. 401, 642 P.2d 930 (1982).

**Idaho.** *City of Weippe for Use and Benefit of Les Schwab Tire Centers of Idaho, Inc. v. Yarno*, 96 Idaho 319, 528 P.2d 201 (1974); *Siegel Mobile Home Group, Inc. v. Bowen*, 114 Idaho 531, 757 P.2d 1250 (Ct. App. 1988).


**Illinois.**  *People v. Linn*, 356 Ill. 220, 191 N.E. 450 (1934) (overruled in part on other grounds by, *In re Curtis' Estate*, 28 Ill. 2d 172, 190 N.E.2d 723 (1963));  *People v. Moczek*, 407 Ill. 373, 95 N.E.2d 428 (1950); *People v. Union Trust Co.*, 255 Ill. 168, 99 N.E. 377 (1912);  *LeMaster v. Amsted Industries, Inc.*, 110 Ill. App. 3d 729, 66 Ill. Dec. 454, 442 N.E.2d 1367 (5th Dist. 1982) (overruled on other grounds by,  *Wilson v. Hoffman Group, Inc.*, 131 Ill. 2d 308, 137 Ill. Dec. 579, 546 N.E.2d 524 (1989)); *Requa v. Graham*, 86 Ill. App. 566, 1900 WL 5442 (1st Dist. 1900), aff'd, 187 Ill. 67, 58 N.E. 357 (1900); *Lewis v. Lynch*, 61 Ill. App. 476, 1895 WL 2661 (2d Dist. 1895); *Hudson v. King Bros.*, 23 Ill. App. 118, 1887 WL 5670 (2d Dist. 1887).



**Indiana.** *Eads v. J. & J. Sales Corp.*, 257 Ind. 485, 275 N.E.2d 802 (1971);  *Kirchoff v. Selby*, 686 N.E.2d 121 (Ind. Ct. App. 1997), transfer granted, opinion vacated on other grounds, 706 N.E.2d 179 (Ind. 1998) and opinion aff'd in part, vacated in part on other grounds, 703 N.E.2d 644 (Ind. 1998); *In re Marriage of Hudson*, 434 N.E.2d 107 (Ind. Ct. App. 1982).

**Iowa.** *Franklin Mfg. Co. v. Iowa Civil Rights Commission*, 270 N.W.2d 829 (Iowa 1978);  *Quaker Oats Co. v. Cedar Rapids Human Rights Commission*, 268 N.W.2d 862 (Iowa 1978);  *Young v. City of Des Moines*, 262 N.W.2d 612, 1 A.L.R.4th 431 (Iowa 1978) (rejected by,  *City of Gladewater v. Pike*, 727 S.W.2d 514 (Tex. 1987)) and (overruled on other grounds by,  *Parks v. City of Marshalltown*, 440 N.W.2d 377 (Iowa 1989)); *Saxton v. State*, 206 N.W.2d 85 (Iowa 1973); *Hubbard v. State*, 163 N.W.2d 904 (Iowa 1969); *Best v. Yerkes*, 247 Iowa 800, 77 N.W.2d 23, 60 A.L.R.2d 1354 (1956).


**Kansas.**  *State v. Loudermilk*, 208 Kan. 893, 494 P.2d 1174 (1972); *Hulme v. Woelagel*, 208 Kan. 385, 493 P.2d 541 (1972).

**Kentucky.** The Kentucky civil rights statute is virtually identical to the corresponding section of the United States Civil Rights Act of 1964, and federal decisions regarding the federal provisions are most persuasive, if not controlling, to interpret the Kentucky statute. *Kentucky Commission on Human Rights v. Com., Dept. of Justice, Bureau of State Police*, 586 S.W.2d 270 (Ky. Ct. App. 1979).

**Louisiana.**  *Cousins v. State Farm Mut. Auto. Ins. Co.*, 258 So. 2d 629 (La. Ct. App. 1st Cir. 1972).



**Maine.**  *Austin v. Raybestos-Manhattan, Inc.*, 471 A.2d 280 (Me. 1984);  *Wing v. Morse*, 300 A.2d 491 (Me. 1973); *Beneficial Finance Co. (Me.) v. Fusco*, 160 Me. 273, 203 A.2d 457, 10 A.L.R.3d 410 (1964) (borrowed amendment).

The construction of another state's accomplice statute, which served as the verbatim model of the Maine statute, was a powerful precedent. *State v. Caouette*, 462 A.2d 1171 (Me. 1983).

**Maryland.** The similarities of design and wording between the New York and Maryland laws, and a near coincidence in the time of their enactments, suggested that the Maryland law was patterned after the New York law, and New York decisions were persuasive as to the meaning of the Maryland act, though they were not precisely identical in plan and the New York construing decisions came after the passage of the Maryland enactment.  *St. Joseph Hospital v. Quinn*, 241 Md. 371, 216 A.2d 732, 25 A.L.R.3d 849 (1966).


**Massachusetts.** *Piemonte v. New Boston Garden Corp.*, 377 Mass. 719, 387 N.E.2d 1145 (1979); *Poirier v. Superior Court*, 337 Mass. 522, 150 N.E.2d 558 (1958).


**Michigan.** *Greek v. Bassett*, 112 Mich. App. 556, 316 N.W.2d 489 (1982); *Piatkowski v. Mok*, 29 Mich. App. 426, 185 N.W.2d 413 (1971) (federal Rules of Civil Procedure).

**Minnesota.**  *Anderson v. Commissioner of Taxation*, 253 Minn. 528, 93 N.W.2d 523 (1958);  *Larson v. Babcock & Wilcox*, 525 N.W.2d 589 (Minn. Ct. App. 1994).

**Mississippi.** *Marqueze v. Caldwell*, 48 Miss. 23, 1873 WL 4110 (1873).

**Missouri.** *Lamley v. Missouri Commission on Human Rights*, 570 S.W.3d 16 (Mo. 2019); *Gilroy-Sims and Associates v. Downtown St. Louis Business Dist.*, 729 S.W.2d 504 (Mo. Ct. App. E.D. 1987).

**Montana.** *Edgar v. Hunt*, 218 Mont. 30, 706 P.2d 120 (1985); *In re Roberts' Estate*, 135 Mont. 149, 338 P.2d 719 (1959); *St. George v. Boucher*, 88 Mont. 173, 293 P. 313 (1930); *Esterly v. Broadway Garage Co.*, 87 Mont. 64, 285 P. 172 (1930);  *State v. Gondeiro*, 82 Mont. 530, 268 P. 507 (1928) (overruled in part on other grounds by, *State v. Bosch*, 125 Mont. 566, 242 P.2d 477 (1952)); *Fleming v. Consolidated Motor Sales Co.*, 74 Mont. 245, 240 P. 376 (1925).





Courts presume that the construction placed on a statute will be the same as in the state of origin, but such a construction is not binding.  *Lawrence v. Harvey*, 186 Mont. 314, 607 P.2d 551 (1980).



"Consideration" should be given to a construction, but it is not binding. *Cahill-Mooney Const. Co. v.*

*Ayres*, 140 Mont. 464, 373 P.2d 703 (1962);  *Continental Oil Co. v. Board of Labor Appeals*, 178 Mont. 143, 582 P.2d 1236 (1978).

**Nebraska.** *Rouse v. State*, 301 Neb. 1037, 921 N.W.2d 355 (2019); *Haarhues v. Gordon*, 180 Neb. 189, 141 N.W.2d 856 (1966); *State v. McBride*, 64 Neb. 547, 90 N.W. 209 (1902); *Rose v. Vickers Petroleum*, 4 Neb. App. 585, 546 N.W.2d 827 (1996).


The Nebraska Fair Employment Practice Act is patterned from the employment discrimination provisions of the Civil Rights Act of 1964, and it is appropriate to look to federal court decisions construing the similar federal legislation. *Rose v. Vickers Petroleum*, 4 Neb. App. 585, 546 N.W.2d 827 (1996).


**Nevada.** *Coleman v. State*, 416 P.3d 238, 134 Nev. Adv. Op. No. 28 (Nev. 2018); *City of Las Vegas Downtown Redevelopment Agency v. Crockett*, 117 Nev. 816, 34 P.3d 553 (2001);  *El Ranco, Inc. v. New York Meat & Provision Co.*, 88 Nev. 111, 493 P.2d 1318 (1972); *U. S. v. State ex rel. Beko*, 88 Nev. 76, 493 P.2d 1324 (1972);  *Nootenboom v. State*, 82 Nev. 329, 418 P.2d 490 (1966) (overruled on other grounds by,  *Morales v. State*, 116 Nev. 19, 992 P.2d 252 (2000));  *Menteberry v. Giacometto*, 51 Nev. 7, 267 P. 49 (1928).

**New Jersey.**  *State v. Ramseur*, 106 N.J. 123, 524 A.2d 188 (1987);  *Hall v. Doremus*, 114 N.J.L. 47, 175 A. 369 (N.J. Sup. Ct. 1934).





A statute adopted from another state comes with the hereditary baggage of that court's decisions.


 **Roman v. Mitchell**, 82 N.J. 336, 413 A.2d 322 (1980).

The New Jersey Tort Claims Act was patterned after the California Tort Claims Act and reference to California precedent is appropriate.  **Madaj v. Doe**, 194 N.J. Super. 580, 477 A.2d 439 (Law Div. 1984)

(disapproved of on other grounds by,  **Milacci v. Mato Realty Co., Inc.**, 217 N.J. Super. 297, 525 A.2d 1120 (App. Div. 1987)).


A New Jersey statute which provides that any person who, in public or private, by speech, writing, printing or drawing, or by any other method, threatens to take or procure taking the life of any person is guilty of a high misdemeanor was substantially drawn from a similar Maine statute, and Maine's prior judicial interpretation can provide guidance. **State v. Milano**, 167 N.J. Super. 318, 400 A.2d 854 (Law Div. 1979), judgment aff'd, 172 N.J. Super. 361, 412 A.2d 129 (App. Div. 1980).

**New Mexico.**  **Garrett v. Howden**, 73 N.M. 307, 387 P.2d 874 (1963);  **Gray v. Armijo**, 70 N.M. 245, 372 P.2d 821 (1962);  **Melfi v. Goodman**, 69 N.M. 488, 368 P.2d 582 (1962);  **Wellborn Paint Mfg. Co. v. New Mexico Employment Sec. Dept.**, 101 N.M. 534, 1984-NMCA-075, 685 P.2d 389 (Ct. App. 1984).




**North Dakota.** **Treiber v. Citizens State Bank**, 1999 ND 130, 598 N.W.2d 96 (N.D. 1999);  **J.P. Furlong Enterprises, Inc. v. Sun Exploration and Production Co.**, 423 N.W.2d 130 (N.D. 1988); **St. Paul Mercury Ins. Co. v. Andrews**, 321 N.W.2d 483, 29 A.L.R.4th 1 (N.D. 1982).

**Ohio.** **Spears v. Madden**, 28 Ohio Misc. 125, 57 Ohio Op. 2d 202, 276 N.E.2d 669 (C.P. 1971).


When comparable legislation has been construed in other jurisdictions prior to the enactment of a similar Ohio statute, the interpretation given the law in other jurisdictions is given great weight to construe the


Ohio statute.  **Koster v. Boudreaux**, 11 Ohio App. 3d 1, 463 N.E.2d 39 (6th Dist. Lucas County 1982).



**Oklahoma.** **Bank of the Lakes, Langley, Okl. v. First State Bank, Ketchum, Okl.**, 1985 OK 81, 708 P.2d 1089 (Okla. 1985); **Baker v. Knott**, 1972 OK 6, 494 P.2d 302 (Okla. 1972).



**Oregon.**  **Joseph v. Lowery**, 261 Or. 545, 495 P.2d 273 (1972); **Karsun v. Kelley**, 258 Or. 155, 482 P.2d 533 (1971);  **School Dist. No. 1, Multnomah County ex rel. Lynch Co. v. A. G. Rushlight & Co.**, 232 Or. 341, 375 P.2d 411 (1962); **Santiam Fish & Game Ass'n v. Ellis**, 229 Or. 506, 368 P.2d 401 (1962);  **U'Ren v. Bagley**, 118 Or. 77, 245 P. 1074, 46 A.L.R. 1173 (1926); **Steers v. Rescue 3, Inc.**, 146 Or. App. 746, 934 P.2d 532 (1997).


**Rhode Island.** **In re O'Connor**, 21 R.I. 465, 44 A. 591, 814 (1899).


**South Carolina.**  **Carter v. Penney Tire & Recapping Co.**, 261 S.C. 341, 200 S.E.2d 64 (1973); **Harding v. Plumley**, 329 S.C. 580, 496 S.E.2d 29 (Ct. App. 1998).

**Tennessee.** The legislature envisioned that the state Human Rights Act would be coextensive with the federal law, and Tennessee courts may appropriately look to the decisions of federal courts construing Title VII when analyzing claims against the state.  **Spann v. Abraham**, 36 S.W.3d 452 (Tenn. Ct. App. 1999).






**Texas.** **Tarrant Regional Water District v. Johnson**, 572 S.W.3d 658 (Tex. 2019);  **State v. Moreno**, 807 S.W.2d 327 (Tex. Crim. App. 1991);  **Munson v. Hallowell**, 26 Tex. 475, 1863 WL 2726 (1863);


 **City of Garland v. Dallas Morning News**, 969 S.W.2d 548 (Tex. App. Dallas 1998), aff'd,  22 S.W.3d 351 (Tex. 2000); **Williams v. Price**, 308 S.W.2d 185 (Tex. Civ. App. Fort Worth 1957), writ refused n.r.e.; **Napier v. Mooneyham**, 94 S.W.2d 564 (Tex. Civ. App. Eastland 1936), writ dismissed.

**Utah.** **Jensen v. Intermountain Health Care, Inc.**, 679 P.2d 903 (Utah 1984); **State v. Hunt**, 13 Utah 2d 32, 368 P.2d 261 (1962);  **Donahue v. Warner Bros. Pictures Distributing Corp.**, 2 Utah 2d 256, 272 P.2d 177 (1954).


**Virginia.** **General Acc. Fire & Life Assur. Corp. v. Cohen**, 203 Va. 810, 127 S.E.2d 399 (1962) (Federal Rules of Civil Procedure);  **Hoffer Bros. v. Smith**, 148 Va. 220, 138 S.E. 474 (1927); **Parramore v. Taylor**, 52 Va. 220, 11 Gratt. 220, 1854 WL 3101 (1854).



**Washington.** *Everett Concrete Products, Inc. v. Department of Labor & Industries*, 109 Wash. 2d 819, 748 P.2d 1112, 7 A.L.R.5th 1086 (1988);  *Buchanan v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers*, 94 Wash. 2d 508, 617 P.2d 1004 (1980); *State v. Brunn*, 145 Wash. 435, 260 P. 990 (1927);  *Hisle v. Todd Pacific Shipyards Corp.*, 113 Wash. App. 401, 54 P.3d 687 (Div. 1 2002), *aff'd*,  151 Wash. 2d 853, 93 P.3d 108 (2004);  *State v. Runions*, 32 Wash. App. 669, 649 P.2d 144 (Div. 2 1982), decision *rev'd* on other grounds, 100 Wash. 2d 52, 665 P.2d 1358 (1983);  *State v. Funkhouser*, 30 Wash. App. 617, 637 P.2d 974 (Div. 2 1981).


When state statutes or regulations have the same purpose as their federal counterparts, the courts will look to the federal decisions to aid in reaching the appropriate construction.  *Peoples State Bank v. Hickey*, 55 Wash. App. 367, 777 P.2d 1056 (Div. 1 1989).

**Wisconsin.** *In re Adams Machinery, Inc.*, 20 Wis. 2d 607, 123 N.W.2d 558 (1963); *Country Motors, Inc. v. Friendly Finance Corp.*, 13 Wis. 2d 475, 109 N.W.2d 137 (1961); *Pomeroy v. Pomeroy*, 93 Wis. 262, 67 N.W. 430 (1896); *State v. Green*, 208 Wis. 2d 290, 560 N.W.2d 295 (Ct. App. 1997).

Statutes that have received a judicial construction in another state and then have been adopted by Wisconsin are taken with the construction that has been given to them and the same rule applies when a federal statute is adopted.  *Carlson Heating, Inc. v. Onchuck*, 104 Wis. 2d 175, 311 N.W.2d 673 (Ct. App. 1981).

**Wyoming.**  *Payne v. City of Laramie*, 398 P.2d 557 (Wyo. 1965).

When the Wyoming legislature adopts a statute from another jurisdiction, that jurisdiction's case law construing the statute is considered persuasive authority and an aid to determine legislative intent.



 *Palato v. State*, 988 P.2d 512 (Wyo. 1999).


**Guam.** *Tumon Partners, LLC v. Shin*, 2008 Guam 15, 2008 WL 4533663 (Guam 2008).


**Virgin Islands.** *Bryan v. Fawkes*, 61 V.I. 201, 2014 WL 4244046 (2014).

**Appellate Briefs.** *Shannon v. U.S.*, On Writ of Certiorari, 1994 WL 190957 (U.S.).

**Secondary Sources.** Long, *Blue Sky Law* §§ 1:15, 1:16, 2:41. Federbush, *The Unclear Scope of Unconscionability in FDUTPA*, 74-Aug Fla. B.J. 49 (2000).

2 **California.**  *Friends of Mammoth v. Board of Sup'rs of Mono County*, 104 Cal. Rptr. 16, 500 P.2d 1360 (Cal. 1972), republished as modified at  104 Cal.Rptr. 761, 502 P.2d 1049.

**Connecticut.**  *Connecticut Humane Soc. v. Freedom of Information Com'n*, 218 Conn. 757, 591 A.2d 395 (1991).



**New Jersey.**  *Cohen v. Southbridge Park, Inc.*, 369 N.J. Super. 156, 848 A.2d 781 (App. Div. 2004).



**Virgin Islands.** *Bryan v. Fawkes*, 61 V.I. 201, 2014 WL 4244046 (2014).

**Secondary Sources.** Long, *Blue Sky Law* § 1:16.

See § 52:2.


3  *State v. Elliott*, 177 Conn. 1, 5, 411 A.2d 3 (1979).

**United States.** *Schwartz v. Oberweis*, 826 F. Supp. 280 (N.D. Ind. 1993);  *Granite Partners, L.P. v. Bear, Stearns & Co. Inc.*, 17 F. Supp. 2d 275, 41 Fed. R. Serv. 3d 1345, 36 U.C.C. Rep. Serv. 2d 1238 (S.D. N.Y. 1998) (rejected on other grounds by,  *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 354 (S.D. N.Y. 2010)).


The Iowa Civil Rights Act mirrors federal law, including the Age Discrimination in Employment Act of 1967.  *Fisher v. Pharmacia & Upjohn*, 225 F.3d 915 (8th Cir. 2000);  *Schoonover v. Schneider Nat. Carriers, Inc.*, 492 F. Supp. 2d 1103 (S.D. Iowa 2007).


Title VII and the Pennsylvania Human Relations Act (PHRA) are substantially similar, and Pennsylvania courts generally interpret the PHRA as consistent with Title VII. *Nagle v. RMA, The Risk Management Ass'n*, 513 F. Supp. 2d 383 (E.D. Pa. 2007).

**Arizona.** *Vairo v. Clayden*, 153 Ariz. 13, 734 P.2d 110 (Ct. App. Div. 1 1987).

**California.**  *Williams v. Superior Court*, 5 Cal. 4th 337, 19 Cal. Rptr. 2d 882, 852 P.2d 377 (1993); *Schneider v. Vennard*, 183 Cal. App. 3d 1340, 228 Cal. Rptr. 800 (6th Dist. 1986).

State courts may look to federal statutes for guidance to interpret a closely analogous state statute.

 **California** Amplifier, Inc. v. RLI Ins. Co., 94 Cal. App. 4th 102, 113 Cal. Rptr. 2d 915 (2d Dist. 2001).


**Colorado.** Interpretations of federal law are persuasive to interpret like state statutes.  **People v. Rivera**, 56 P.3d 1155 (Colo. App. 2002).


**Connecticut.** Commissioner of Revenue Services v. Peska, 220 Conn. 77, 595 A.2d 348 (1991).


The Connecticut Uniform Securities Act is a substantial adoption of major provisions of the 1956 Uniform Securities Act, and courts may look to the interpretations of that act to interpret analogous language in Connecticut's own statutes. **Lehn v. Dailey**, 77 Conn. App. 621, 825 A.2d 140 (2003).


**Florida.** Courts construe the Florida Civil Rights Act in conformity with the federal Americans with Disabilities Act. **McCaw Cellular Communications of Florida, Inc. v. Kwiatak**, 763 So. 2d 1063 (Fla. 4th DCA 1999).

**Louisiana.** **Figueroa Intern., Inc. v. Touby**, 623 So. 2d 1354, 23 U.C.C. Rep. Serv. 2d 246 (La. Ct. App. 5th Cir. 1993).

The comments of French authors interpreting articles adopted from the French Civil Code, although not absolutely binding, are entitled to great persuasive weight. **Martin v. Louisiana Farm Bureau Cas. Ins. Co.**, 628 So. 2d 1213 (La. Ct. App. 3d Cir. 1993), writ granted, 634 So. 2d 844 (La. 1994) and judgment aff'd,  638 So. 2d 1067 (La. 1994).

**Maine.** Courts may look to analogous federal statutes, regulations and case law for guidance to construe Maine's version of the Fair Labor Standards Act.  **Gordon v. Maine Cent. R.R.**, 657 A.2d 785 (Me. 1995).

**Nevada.**  **State ex rel. Harvey v. Second Judicial Dist. Court**, 117 Nev. 754, 32 P.3d 1263 (2001).


**New Mexico.** **Vulcraft, a Div. of Nucor Corp. v. Midtown Business Park, Ltd.**, 110 N.M. 761, 800 P.2d 195 (1990);  **In re Estate of Sumler**, 133 N.M. 319, 2003-NMCA-030, 62 P.3d 776 (Ct. App. 2002).

**New York.** Courts may consider federal decisions construing federal blue sky laws to determine whether an interest is a "security" under the New York General Business Law. **People v. First Meridian Planning Corp.**, 201 A.D.2d 145, 614 N.Y.S.2d 811 (3d Dep't 1994), order aff'd, 86 N.Y.2d 608, 635 N.Y.S.2d 144, 658 N.E.2d 1017 (1995).


Absent any state authority on point under the Martin Act, courts are advised to consider federal decisions construing federal Blue Sky Laws. **People v. Landes**, 192 A.D.2d 1, 600 N.Y.S.2d 292 (3d Dep't 1993), order aff'd, 84 N.Y.2d 655, 621 N.Y.S.2d 283, 645 N.E.2d 716 (1994).

Federal decisions construing federal securities laws are persuasive to construe a provision of the state blue sky law governing participation interests in real estate. **All Seasons Resorts, Inc. v. Abrams**, 68 N.Y.2d 81, 506 N.Y.S.2d 10, 497 N.E.2d 33 (1986).


**North Dakota.** A statute adopted from another state without change is taken with the construction placed upon it by the courts of that state, and courts presume the legislature intended that construction. **Treiber v. Citizens State Bank**, 1999 ND 130, 598 N.W.2d 96 (N.D. 1999).

**Oklahoma.**  **Price v. Southwestern Bell Telephone Co.**, 1991 OK 50, 812 P.2d 1355 (Okla. 1991).


**Oregon.** **State v. Stockfleth**, 311 Or. 40, 804 P.2d 471 (1991).

Where a state law in large measure is drawn from a federal counterpart, it is appropriate to look for guidance to federal decisions interpreting similar federal laws, even though those decisions are not binding.  **Badger v. Paulson Inv. Co., Inc.**, 311 Or. 14, 803 P.2d 1178 (1991).


**South Carolina.** The South Carolina Workers' Compensation Act was tailored after the North Carolina Act, and North Carolina opinions are entitled to great weight in construing the Act. **Holley v. Owens Corning Fiberglas Corp.**, 301 S.C. 519, 392 S.E.2d 804 (Ct. App. 1990), cert. granted, opinion adopted, 302 S.C. 518, 397 S.E.2d 377 (1990).

**Texas.** A section of the state electronic surveillance statute was borrowed from a federal wiretapping statute, and the construction of the federal statute can be used in state court.  **Castillo v. State**, 810 S.W.2d 180 (Tex. Crim. App. 1990).


Interpretations of the federal Securities Act of 1933 may be reliable guidelines to interpret the Texas Securities Act when the acts contain virtually the same wording, but when the statutes use materially different language, courts base their interpretation of the Texas Securities Act on the legislature's language. **Anheuser-Busch Companies, Inc. v. Summit Coffee Co.**, 934 S.W.2d 705 (Tex. App. Dallas


1996), writ dismissed by agreement, (Oct. 24, 1996);  *Summers v. WellTech, Inc.*, 935 S.W.2d 228 (Tex. App. Houston 1st Dist. 1996).


**Vermont.** The handicap discrimination provisions in Vermont's Fair Employment Practices Act are patterned after the federal Rehabilitation Act, and courts look to federal case law to guide their interpretation. *State v. G.S. Blodgett Co.*, 163 Vt. 175, 656 A.2d 984 (1995).



**Wisconsin.**  *Fore Way Exp., Inc. v. Bast*, 178 Wis. 2d 693, 505 N.W.2d 408 (Ct. App. 1993).

**Secondary Sources.** Long, *Blue Sky Law* §§ 1:16, 2:41.

4 **Nevada.**  *Miller v. Retirement Bd. of Policemen's Annuity*, 329 Ill. App. 3d 589, 264 Ill. Dec. 727, 771 N.E.2d 431 (1st Dist. 2001), as modified on denial of reh'g, (May 20, 2002).


**North Dakota.**  *State v. One Black 1989 Cadillac VIN 1G6DW51Y8KR722027*, 522 N.W.2d 457 (N.D. 1994).

**West Virginia.**  *In re Stephen Tyler R.*, 213 W. Va. 725, 584 S.E.2d 581 (2003).

5 **United States.**  *Oak Industries, Inc. v. Foxboro Co.*, 596 F. Supp. 601 (S.D. Cal. 1984);  *Sterling Recreation Organization Co. v. Segal*, 537 F. Supp. 1024 (D. Colo. 1982) (disavowed on other grounds by, *Jiffy Lube Intern., Inc. v. Grease Monkey Holding Corp.*, 671 F. Supp. 1275 (D. Colo. 1987)); *Moba v. Total Transp. Services Inc.*, 16 F. Supp. 3d 1257 (W.D. Wash. 2014).


When a dispute concerns one of the substantially similar provisions in the Kentucky Wages and Hours Act (KWHa) and the federal Fair Labor Standards Act (FLSA), and state case law is lacking, courts look to federal precedent for interpretive guidance, however, federal cases requiring exemptions under the FLSA to be narrowly construed against an employer do not apply to KWHa claimants because the KWHa's exclusion of supervisory staff from the definition of "employee" does not constitute an exemption. *In re Amazon.com, Inc., Fulfillment Center Fair Labor Standards Act (FLSA) and Wage and Hour Litigation.*, 852 F.3d 601 (6th Cir. 2017).


Pennsylvania courts interpret the Pennsylvania Human Relations Act in accord with the ADA.

 *Mascioli v. Arby's Restaurant Group, Inc.*, 610 F. Supp. 2d 419 (W.D. Pa. 2009).


**Alabama.** *State v. Southern Surety Co.*, 221 Ala. 113, 127 So. 805, 70 A.L.R. 296 (1930).


**Arizona.** The Arizona Civil Rights Act is modeled after and generally identical to Title VII of the Civil Rights Act of 1964, and federal Title VII case law is persuasive to interpret the Arizona Civil Rights Act. *Higdon v. Evergreen Intern. Airlines, Inc.*, 138 Ariz. 163, 673 P.2d 907 (1983).

To determine whether the legislature intended to include federal regulations in the public policy to be vindicated by the Arizona Employment Protection Act, courts first look at the language of the statute itself.  *Galati v. America West Airlines, Inc.*, 205 Ariz. 290, 69 P.3d 1011 (Ct. App. Div. 1 2003).

To resolve the issue of sex discrimination in pay under the state civil rights act or Title VII, courts look to the federal Equal Pay Act and the cases which interpret it.  *Arizona Civil Rights Division, Dept. of Law v. Olson*, 132 Ariz. 20, 643 P.2d 723 (Ct. App. Div. 1 1982).

**California.** *People v. Angeloni*, 40 Cal. App. 4th 1267, 47 Cal. Rptr. 2d 584 (5th Dist. 1995), as modified, (Dec. 7, 1995); *People v. Property Listed In Exhibit One*, 227 Cal. App. 3d 1, 277 Cal. Rptr. 672 (5th Dist. 1991); *People v. Norcross*, 71 Cal. App. 2, 234 P. 438 (2d Dist. 1925).


Courts look to federal law for guidance in interpreting state labor law statutes whose language parallels that of the federal labor legislation.  *Solano County Employees' Assn. v. County of Solano*, 136 Cal. App. 3d 256, 186 Cal. Rptr. 147 (1st Dist. 1982).

The state Environmental Quality Act was modeled on the National Environmental Policy Act, and interpretations of the federal act are persuasive authority to interpret the state act.  *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors*, 134 Cal. App. 3d 1022, 185 Cal. Rptr. 41 (4th Dist. 1982).






**Colorado.** *Granite State Ins. Co. v. Ken Caryl Ranch Master Ass'n*, 183 P.3d 563 (Colo. 2008).

**Connecticut.** *Success Village Apartments, Inc. v. Local 376, UAW, United Auto. Aerospace and Agr. Implement Workers of America*, 175 Conn. 165, 397 A.2d 85 (1978).

A statute providing for a motion for the suppression of evidence obtained through an allegedly illegal search and seizure was almost a verbatim adoption of a federal rule of criminal procedure, and federal decisions could be looked to for precedents as to the statute's application to confessions or admissions. *State v. Darwin*, 29 Conn. Supp. 423, 290 A.2d 593 (Super. Ct. 1972).


**District of Columbia.**  *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609 (D.C. 1992).

The District of Columbia Administrative Procedure Act is modeled on a federal act to a great extent, particularly with respect to the definition of adjudicatory proceedings, and judicial constructions of analogous provisions in the federal act are persuasive. *Pendleton v. District of Columbia Bd. of Elections and Ethics*, 449 A.2d 301 (D.C. 1982).

**Florida.** *Marchman v. St. Anthony's Hosp., Inc.*, 152 So. 3d 830 (Fla. 2d DCA 2014), review denied, 171 So. 3d 115 (Fla. 2015);  *Brown v. State*, 426 So. 2d 76 (Fla. 1st DCA 1983) (disapproved of on other grounds by,  *Bundy v. State*, 471 So. 2d 9 (Fla. 1985));  *Hall v. Oakley*, 409 So. 2d 93 (Fla. 1st DCA 1982) (disapproved of on other grounds by,  *State v. Page*, 449 So. 2d 813 (Fla. 1984)) and (disapproved of on other grounds by,  *State v. Raydo*, 713 So. 2d 996 (Fla. 1998)).

To determine whether something is important enough to be a “term and condition of employment” under the state Public Employees Relations Act, courts may look to the federal National Labor Relations Act, since the state statute is patterned after the federal law and takes the same construction in state courts as its prototype has been given in federal courts, so long as such construction is consistent with the spirit and policy of the state law. Sources of National Labor Relations Act can be used to interpret Florida's Public Employees Relations Act. *City of Orlando v. Florida Public Employees Relations Com'n*, 435 So. 2d 275 (Fla. 5th DCA 1983).

**Hawai'i.** *Wolfe v. Au*, 67 Haw. 259, 686 P.2d 16 (1984).


**Idaho.**  *State ex rel. Kidwell v. Master Distributors, Inc.*, 101 Idaho 447, 615 P.2d 116 (1980).

**Illinois.** *Luken v. Lake Shore & M.S. Ry. Co.*, 154 Ill. App. 550, 1910 WL 1890 (1st Dist. 1910), *aff'd*, 248 Ill. 377, 94 N.E. 175 (1911).

Cases decided under the federal Truth in Lending Act are highly persuasive authority for similar questions arising under the Illinois Consumer Installment Loan Act. *Gray v. ITT Thorp Corp.*, 101 Ill. App. 3d 167, 56 Ill. Dec. 738, 427 N.E.2d 1284 (3d Dist. 1981).

**Indiana.** Interpretations of the federal Norris-LaGuardia Act can be used as an aid to construe the Indiana Anti-Injunction Act. *United Steelworkers of America, AFL-CIO-CLC v. Northern Indiana Public Service Co.*, 436 N.E.2d 826 (Ind. Ct. App. 1982).

Courts construing the Indiana Business Takeover Offers Act rely on the body of law which interprets the federal Williams Act. *Matter of CTS Corp.*, 428 N.E.2d 794 (Ind. Ct. App. 1981).

**Iowa.**  *Boelman v. Manson State Bank*, 522 N.W.2d 73, 6 A.D.D. 897 (Iowa 1994); *Cassady v. Wheeler*, 224 N.W.2d 649 (Iowa 1974).

The Iowa Tort Claims Act can be given the same meaning as the federal Tort Claims Act upon which it is based. *Adam v. Mount Pleasant Bank and Trust Co.*, 340 N.W.2d 251 (Iowa 1983).


**Kansas.** *In re Adoption of G.L.V.*, 286 Kan. 1034, 190 P.3d 245 (2008).


Where the state's wiretap provisions, which conform to their counterparts in the Omnibus Crime Control and Safe Streets Act, are at issue, federal case authority has precedential value at least equivalent to state case authority, if any. *State v. Willis*, 7 Kan. App. 2d 413, 643 P.2d 1112 (1982).

**Louisiana.** *McNamara v. Leslie Ardoin, Inc.*, 357 So. 2d 1317 (La. Ct. App. 3d Cir. 1978), writ denied, 359 So. 2d 200 (La. 1978).





**Maryland.** In the absence of Maryland case law discussing relocation assistance, courts may refer for guidance to federal cases interpreting the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act. *Rollins Outdoor Advertising Inc. v. State Roads Com'n of State Highway Admin.*, 60 Md. App. 195, 481 A.2d 1149 (1984).


Interpretations of the notice of claim statute in the federal Tort Claims Act are relevant to interpret the notice of claim provision of the Maryland Tort Claims Act, as the purpose and language are substantially the same in both acts. *Gardner v. State*, 77 Md. App. 237, 549 A.2d 1171 (1988).

**Massachusetts.**  *Howard v. Town of Burlington*, 399 Mass. 585, 506 N.E.2d 102 (1987).


State courts usually do not follow federal interpretations of an adopted statute if a federal result is dictated by some principle of federal law not found in state law.  *Vasys v. Metropolitan Dist. Com'n*, 387 Mass. 51, 438 N.E.2d 836 (1982).




**Michigan.**  *Detroit Police Officers Ass'n v. City of Detroit*, 391 Mich. 44, 214 N.W.2d 803 (1974);  *Michigan Employment Relations Commission v. Reeths-Puffer School Dist.*, 391 Mich. 253, 215 N.W.2d 672 (1974);  *Edmond v. Department of Corrections*, 116 Mich. App. 1, 321 N.W.2d 817 (1982), decision rev'd on other grounds, 421 Mich. 93, 365 N.W.2d 74 (1984); *Greek v. Bassett*, 112 Mich. App. 556, 316 N.W.2d 489 (1982) (Rules of Evidence);  *Citizens for Better Care v. Reizen*, 51 Mich. App. 454, 215 N.W.2d 576 (1974).


To construe the state's Freedom of Information Act, courts should consider relevant decisions under the federal Freedom of Information Act.  *Evening News Ass'n v. City of Troy*, 417 Mich. 481, 339 N.W.2d 421 (1983).

The legislature intended for courts, in construing the Public Employment Relations Act, to rely on the interpretations given to analogous provisions of the National Labor Relations Act by federal courts and by the National Labor Relations Board. *Howell Educational Secretaries Ass'n, MESPA v. Howell Public Schools*, 130 Mich. App. 546, 343 N.W.2d 616, 15 Ed. Law Rep. 1286 (1983).

Similar terms in federal and state statutes need not be given similar meanings when those terms are applied to dissimilar situations.  *Clarke-Gravelly Corp. v. Department of Treasury*, 412 Mich. 484, 315 N.W.2d 517 (1982).

State courts construing the meaning and intent of the Fair Employment Practices Act are not bound by the construction given by the federal courts to the federal legislation on which the act was modeled. *Bully v. General Motors Corp.*, 120 Mich. App. 165, 328 N.W.2d 24 (1982).

**Missouri.** Where Missouri adopted verbatim a provision of the federal Unemployment Compensation Act, the history of the law and the intent of Congress when it adopted the provision had a bearing on the intent of the Missouri legislature, courts presume Missouri had knowledge of the interpretation placed on that provision as expressed during pre-adoption congressional debates, and weight is given to the Internal Revenue Department's interpretation of the federal law.  *American Nat. Ins. Co. v. Keitel*, 353 Mo. 1107, 186 S.W.2d 447 (1945).


**Montana.** The Montana Human Rights Act is closely modeled on Title VII of the federal Civil Rights Act, and reference to pertinent federal case law is useful and appropriate.  *Snell v. Montana-Dakota Utilities Co.*, 198 Mont. 56, 643 P.2d 841 (1982).

**Nebraska.** The Fair Employment Practices Act is patterned after part of the federal Civil Rights Act of 1964, and courts look to federal decisions for aid in interpreting the Nebraska Act. *Airport Inn, Inc. v. Nebraska Equal Opportunity Com'n*, 217 Neb. 852, 353 N.W.2d 727 (1984).

**Nevada.** *Coleman v. State*, 416 P.3d 238, 134 Nev. Adv. Op. No. 28 (Nev. 2018).



**New York.** *Fink v. Lefkowitz*, 47 N.Y.2d 567, 419 N.Y.S.2d 467, 393 N.E.2d 463 (1979).



**North Dakota.** *State v. Bastien*, 436 N.W.2d 229 (N.D. 1989); *State v. Bower*, 442 N.W.2d 438 (N.D. 1989) (federal Criminal Code).



**Pennsylvania.**  *Appeal of Cumberland Valley School Dist. from Final Order of Pa. Labor Relations Bd. in Case No. Pera-M-6966-C*, 483 Pa. 134, 394 A.2d 946 (1978) (National Labor Relations Act).

**Rhode Island.** *H.J. Baker & Bro., Inc. v. Organics, Inc.*, 554 A.2d 196 (R.I. 1989).

**Tennessee.** All the presumptions, criteria and standards contained in or promulgated by the federal Coal Mine Health and Safety Act of 1969 used to determine the eligibility for benefits relating to pneumoconiosis were incorporated by reference into state law, and the federal act and relevant federal regulations are as much a part of the state's Workmen's Compensation Law as if they had been enacted in their entirety by the state legislature. *Blankenship v. Old Republic Ins. Co.*, 539 S.W.2d 23 (Tenn. 1976).






**Texas.** *Tarrant Regional Water District v. Johnson*, 572 S.W.3d 658 (Tex. 2019);  *Quantum Chemical Corp. v. Toennies*, 47 S.W.3d 473 (Tex. 2001) (Human Rights Act); *U.S. Fidelity & Guaranty Co. v. Henderson County*, 253 S.W. 835 (Tex. Civ. App. Beaumont 1923), writ granted, (Oct. 24, 1923) and  *aff'd*, 276 S.W. 203 (Tex. Comm'n App. 1925); *Fennell v. Trinity Portland Cement Co.*, 209 S.W. 796 (Tex. Civ. App. Texarkana 1919), writ refused, (Oct. 22, 1919).

**Washington.**  *McClellan v. Sundholm*, 89 Wash. 2d 527, 574 P.2d 371 (1978);  *Juanita Bay Valley Community Ass'n v. City of Kirkland*, 9 Wash. App. 59, 510 P.2d 1140 (Div. 1 1973).


**Wisconsin.**  *Industrial Commission v. Woodlawn Cemetery Ass'n*, 232 Wis. 527, 287 N.W. 750 (1939);  *State v. Shillcutt*, 116 Wis. 2d 227, 341 N.W.2d 716 (Ct. App. 1983), decision aff'd, 119 Wis. 2d 788, 350 N.W.2d 686 (1984) (Rules of Evidence).


Federal cases construing the federal Arbitration Act apply to state cases relating to vacating an award. *Diversified Management Services, Inc. v. Slotten*, 119 Wis. 2d 441, 351 N.W.2d 176 (Ct. App. 1984).

**Secondary Sources.** Posner, *Economics, Politics, and the Reading of Statutes and the Constitution*, 49 U. Chi. L. Rev. 263 (1982).

6 **United States.**  *Colwell v. Suffolk County Police Dept.*, 158 F.3d 635 (2d Cir. 1998);  *U.S. v. Bollin*, 264 F.3d 391, 57 Fed. R. Evid. Serv. 429 (4th Cir. 2001) (overruled on other grounds by,  *U.S. v. Chamberlain*, 868 F.3d 290 (4th Cir. 2017));  *Flowers v. Southern Regional Physician Services Inc.*, 247 F.3d 229 (5th Cir. 2001);  *U.S. v. McCorkle*, 143 F. Supp. 2d 1311 (M.D. Fla. 2001).

Cases construing the Railroad Revitalization & Regulatory Reform Act are relevant to analyze the Federal Motor Carrier Act. *ABF Freight System, Inc. v. Tax Div. of Arkansas Public Service Com'n*, 787 F.2d 292 (8th Cir. 1986).

7 **United States.** *Clews v. Stiles*, 303 F.2d 290 (10th Cir. 1960); *Com. of Pa. v. Brown*, 260 F. Supp. 323 (E.D. Pa. 1966);  *Kelly v. Capital Ins. & Sur. Co.*, 241 F. Supp. 605 (D. Guam 1965), judgment rev'd on other grounds, 361 F.2d 567 (9th Cir. 1966).


The general rule that the adoption of the wording of a statute from another legislative jurisdiction carries with it previous judicial interpretations of the wording is merely a presumption of legislative intention to be invoked only under suitable conditions.  *Shannon v. U.S.*, 512 U.S. 573, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994).

A statute borrowed from the federal government must be given the same construction that it has been given by federal courts. *Caribe Const. Co. v. Penn*, 342 F.2d 964 (3d Cir. 1965).

Each reenactment adopts the original state's construction up to the time thereof. *Diamond Nat. Corp. v. Lee*, 333 F.2d 517 (9th Cir. 1964).

Application of Maryland's Antitrust Act is guided by the federal courts' similar interpretation of federal antitrust statutes. *Purity Products, Inc. v. Tropicana Products, Inc.*, 702 F. Supp. 564 (D. Md. 1988), judgment aff'd, 887 F.2d 1081 (4th Cir. 1989).


Nevada's legislature borrowed the statutory law of a sister state and is presumed to have intended to adopt the construction placed on that law by the highest court of the state. *Hubbard Business Plaza v. Lincoln Liberty Life Ins. Co.*, 596 F. Supp. 344, 40 U.C.C. Rep. Serv. 1011 (D. Nev. 1984).

**Alabama.** *Ex parte Thackston*, 275 Ala. 424, 155 So. 2d 526 (1963); *Smith v. Flynn*, 275 Ala. 392, 155 So. 2d 497 (1963);  *Macey v. Crum*, 249 Ala. 249, 30 So. 2d 666 (1947).


**Alaska.** *Carver v. Gilbert*, 387 P.2d 928, 32 A.L.R.3d 563 (Alaska 1963); *Andreanoff v. State*, 746 P.2d 473 (Alaska Ct. App. 1987).

The Ohio rules holding accomplices guilty of felony-murder if an accomplice has the intent to kill antedates adoption of the Ohio felony-murder statute as the Alaska felony-murder statute and thus was adopted with the statute. *Carman v. State*, 658 P.2d 131 (Alaska Ct. App. 1983).


**Arizona.** *Jackson v. Phoenixflight Productions, Inc.*, 145 Ariz. 242, 700 P.2d 1342 (1985).



The legislature copied a federal statute allowing a claimant to sue a surety without joining the general contractor and courts presume this was the result the legislature intended.  *SCA Const. Supply v. Aetna Cas. & Sur. Co.*, 155 Ariz. 281, 746 P.2d 22 (Ct. App. Div. 1 1987), decision vacated, 157 Ariz. 64, 754 P.2d 1339 (1988).


Arizona's garnishment statutes were adopted from Texas, and the construction previously placed upon the statute by Texas is persuasive. *Gulf Homes, Inc. v. DM Federal Credit Union*, 125 Ariz. 68, 607 P.2d 387 (Ct. App. Div. 2 1979).

**California.** The Fair Employment and Housing Act (FEHA) is modeled after federal anti-discrimination laws and decisions interpreting the federal statutes are relevant to interpret similar provisions of the FEHA.  *Finegan v. County of Los Angeles*, 91 Cal. App. 4th 1, 109 Cal. Rptr. 2d 762 (2d Dist. 2001).

**Connecticut.** *Knights of Columbus Federal Credit Union v. Salisbury*, 3 Conn. App. 201, 486 A.2d 649 (1985).

**District of Columbia.** Thomas v. District of Columbia Dept. of Employment Services, 547 A.2d 1034 (D.C. 1988);  Feaster v. Vance, 832 A.2d 1277, 181 Ed. Law Rep. 694 (D.C. 2003).


**Florida.**  Hightower v. Bigoney, 156 So. 2d 501, 17 A.L.R.3d 1308 (Fla. 1963);  O'Loughlin v. Pinchback, 579 So. 2d 788 (Fla. 1st DCA 1991) (rejected on other grounds by, Glass v. Captain Katanna's, Inc., 950 F. Supp. 2d 1235 (M.D. Fla. 2013)).



Uniform reciprocal statutes, like the Uniform Reciprocal Enforcement of Support Act, or two identical state statutes, should be construed in a compatible manner.  State, Dept. of Health and Rehabilitative Services v. Franklin, 630 So. 2d 661 (Fla. 2d DCA 1994).


**Guam.** Tumon Partners, LLC v. Shin, 2008 Guam 15, 2008 WL 4533663 (Guam 2008).

**Idaho.** Nixon v. Triber, 100 Idaho 198, 595 P.2d 1093 (1979).

The statute describing a *bona fide* purchaser was adopted from the nearly identical section of a separate jurisdiction and carries the construction given to it by the jurisdiction from which it was taken. Sun Valley Land and Minerals, Inc. v. Burt, 123 Idaho 862, 853 P.2d 607 (Ct. App. 1993).

**Illinois.**  Hansen v. Raleigh, 391 Ill. 536, 63 N.E.2d 851, 163 A.L.R. 1425 (1945); Suburban Ice Co. v. Industrial Board, 274 Ill. 630, 113 N.E. 979 (1916); People v. Kellogg, 268 Ill. 489, 109 N.E. 304 (1915);

People v. Union Trust Co., 255 Ill. 168, 99 N.E. 377 (1912);  In re Marriage of McMahon, 82 Ill. App. 3d 1126, 38 Ill. Dec. 499, 403 N.E.2d 730 (4th Dist. 1980);  Sexton v. Sexton, 82 Ill. App. 3d 482,

37 Ill. Dec. 887, 402 N.E.2d 889 (3d Dist. 1980), judgment rev'd on other grounds,  84 Ill. 2d 312, 49 Ill. Dec. 709, 418 N.E.2d 729 (1981).

**Indiana.** In re Marriage of Hudson, 434 N.E.2d 107 (Ind. Ct. App. 1982).

**Kansas.** Standard Steel Works v. Crutcher-Rolfs-Cummings, Inc., 176 Kan. 121, 269 P.2d 402 (1954).


Kansas has only one case interpreting the provisions of its Fair Credit Reporting Act. The Kansas act was modeled closely on a 1971 federal act, and case law interpreting the federal act, although not controlling, is persuasive. Peasley v. Telecheck of Kansas, Inc., 6 Kan. App. 2d 990, 637 P.2d 437 (1981).

**Maine.** Foye v. Consolidated Baling Mach. Co., 229 A.2d 196 (Me. 1967).

**Michigan.** In re Rackham's Estate, 329 Mich. 493, 45 N.W.2d 273 (1951) (New York's Inheritance Tax Act); State v. Welch's Estate, 235 Mich. 555, 209 N.W. 930 (1926); Besser v. Alpena Circuit Judge, 155 Mich. 631, 119 N.W. 902 (1909).

Precedent under the federal National Labor Relations Act is persuasive in applying the state Public Employees Relations Act. Local 1467, Intern. Ass'n of Firefighters, AFL-CIO v. City of Portage, 134 Mich. App. 466, 352 N.W.2d 284 (1984).

**Mississippi.** Marqueze v. Caldwell, 48 Miss. 23, 1873 WL 4110 (1873).

**Missouri.** Hume v. Crane, 352 S.W.2d 610 (Mo. 1962);  Pratt v. Miller, 109 Mo. 78, 18 S.W. 965 (1892).

**Montana.** Cahill-Mooney Const. Co. v. Ayres, 140 Mont. 464, 373 P.2d 703 (1962); St. George v. Boucher, 88 Mont. 173, 293 P. 313 (1930).


**Nevada.** Coleman v. State, 416 P.3d 238, 134 Nev. Adv. Op. No. 28 (Nev. 2018); State, Dept. of Business and Industry, Office of Labor Com'r v. Granite Const. Co., 118 Nev. 83, 40 P.3d 423 (2002); Hard v. Depaoli, 56 Nev. 19, 41 P.2d 1054 (1935).


The state and federal occupational safety and health statutes were nearly identical, and the state statute did not reflect a legislative intent contrary to the federal statute, so courts presume that the legislature adopted the federal construction of a "willful" violation. Century Steel, Inc. v. State, Div. of Indus. Relations, Occupational Safety and Health Section, 122 Nev. 584, 137 P.3d 1155 (2006).


**New Hampshire.**  In re Hennessey-Martin, 151 N.H. 207, 855 A.2d 409 (2004).


**New Jersey.** Todd Shipyards Corp. v. Weehawken Tp., 45 N.J. 336, 212 A.2d 364 (1965); Rutkowski v. Bozza, 77 N.J.L. 724, 73 A. 502 (N.J. Ct. Err. & App. 1909); Hopper v. Edwards, 88 N.J.L. 471, 96 A. 667 (N.J. Sup. Ct. 1916).

**Oklahoma.** A statute adopted from a sister state comes burdened with the construction previously placed upon it by the highest court of the sister state because courts presume the legislature was aware of the construction and adopted the statute as so construed. Atlantic Richfield Co. v. State ex rel. Wildlife Conservation Com'n In and For State, 1983 OK 14, 659 P.2d 930 (Okla. 1983).



The legislature is not presumed also to have adopted the construction placed on a statute by another state where decisions in the other state conflict.  *Stoll v. Allen*, 1948 OK 118, 202 Okla. 514, 215 P.2d 559 (1948).


**Oregon.**  *Todd v. Bigham*, 238 Or. 374, 390 P.2d 168 (1964), on reh'g, 238 Or. 374, 395 P.2d 163 (1964).

Decisions interpreting a borrowed statute may be persuasive, but the borrowing state is not bound by another state's courts.  *State v. Langan*, 54 Or. App. 202, 634 P.2d 794 (1981), decision aff'd in part, rev'd in part on other grounds, 293 Or. 654, 652 P.2d 800 (1982).


Courts assume the legislature intended to adopt the construction of a statute that the courts of the other jurisdiction rendered before adoption of the statute in Oregon.  *Jones v. General Motors Corp.*, 325 Or. 404, 939 P.2d 608 (1997).

**Rhode Island.** *Rhode Island Hospital Trust Co. v. Anthony*, 49 R.I. 339, 142 A. 531, 59 A.L.R. 1501 (1928).


**Texas.**  *Board of Water Engineers v. McKnight*, 111 Tex. 82, 229 S.W. 301 (1921); *Napier v. Mooneyham*, 94 S.W.2d 564 (Tex. Civ. App. Eastland 1936), writ dismissed;  *Texas Co. v. Schriewer*, 38 S.W.2d 141 (Tex. Civ. App. Waco 1931), writ granted, (July 22, 1931) and modified on other grounds, 53 S.W.2d 774 (Tex. Comm'n App. 1932).

When the legislature adopts a statute with wording that is substantially similar to a federal statute, courts presume that, absent some indication to the contrary, the legislature was aware of the federal courts' construction of the federal statute and intended to adopt it.  *Chiriboga v. State Farm Mut. Auto. Ins. Co.*, 96 S.W.3d 673 (Tex. App. Austin 2003).


The provisions of the federal Civil Rights Act can be used to construe the Texas Commission on Human Rights Act. *Eckerdt v. Frostex Foods, Inc.*, 802 S.W.2d 70 (Tex. App. Austin 1990).

**Vermont.**  *Hartnett v. Union Mut. Fire Ins. Co.*, 153 Vt. 152, 569 A.2d 486 (1989).

**Wyoming.** *Woodward v. Haney*, 564 P.2d 844 (Wyo. 1977).

Wyoming gives substantial weight to Florida authorities interpreting Florida's capital sentencing procedure, upon which the Wyoming sentencing procedure was modeled, but is not committed to follow the interpretation of the Florida statute by its courts if courts conclude that such precedents are not sound or do not amply reflect the policy of the state of Wyoming.  *Engberg v. State*, 686 P.2d 541 (Wyo. 1984).

**Secondary Sources.** Long, *Blue Sky Law* §§ 1:16, 2:41.

**Maryland.**  *Faulk v. State's Attorney for Harford County*, 299 Md. 493, 474 A.2d 880 (1984).

**Michigan.** The differences between the federal Freedom of Information Act exemption for "personnel, medical and similar files" and the Michigan Freedom of Information Act exemption for the "personnel records" of law enforcement agencies make decisions interpreting the federal provision only a starting point to determine whether particular records fall within the Michigan exemption. *Newark Morning Ledger Co. v. Saginaw County Sheriff*, 204 Mich. App. 215, 514 N.W.2d 213 (1994).

**Nevada.** *Gallegos v. State*, 123 Nev. 289, 163 P.3d 456 (2007).


**Rhode Island.** Courts look to the interpretation applied by several sister states with respect to the fee schedules promulgated under their Workers' Compensation Acts. *Rhode Island Orthopedic Soc. v. Blue Cross & Blue Shield of R. I.*, 1998 WL 726495 (R.I. Super. Ct. 1998), judgment aff'd, 748 A.2d 1287 (R.I. 2000) (Not reported in A2d).

**California.** *People v. Property Listed In Exhibit One*, 227 Cal. App. 3d 1, 277 Cal. Rptr. 672 (5th Dist. 1991).

**Oregon.** *Oregonian Pub. Co. v. Portland School Dist. No. 1J*, 329 Or. 393, 987 P.2d 480, 139 Ed. Law Rep. 658 (1999).

**District of Columbia.**  *Arthur Young & Co. v. Sutherland*, 631 A.2d 354 (D.C. 1993).

**Illinois.** *American Federation of State, County and Mun. Employees, AFL-CIO v. State Labor Relations Bd.*, 190 Ill. App. 3d 259, 137 Ill. Dec. 742, 546 N.E.2d 687 (1st Dist. 1989).

**Massachusetts.** Where the legislative history of a state statute provides no guidance on the meaning of a term, courts may look to interpretations of analogous federal statutes for guidance, but are not bound by them.  *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165, 732 N.E.2d 289 (2000).














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- 12 **Washington.** Pasco Police Officers' Ass'n v. City of Pasco, 132 Wash. 2d 450, 938 P.2d 827 (1997).  
**United States.** National Environmental Service Co. v. Ronan Engineering Co., 256 F.3d 995, 45 U.C.C. Rep. Serv. 2d 430 (10th Cir. 2001).  
 Where there is a paucity of Missouri case law interpreting a provision of Missouri's version of the Uniform Commercial Code, Missouri courts look for guidance to decisions of other jurisdictions.  Williams v. Regency Financial Corp., 309 F.3d 1045, 48 U.C.C. Rep. Serv. 2d 1488 (8th Cir. 2002).
- Michigan.**  White v. Harrison-White, 280 Mich. App. 383, 760 N.W.2d 691 (2008); Old Kent Bank-Southeast v. City of Detroit, 178 Mich. App. 416, 444 N.W.2d 162, 9 U.C.C. Rep. Serv. 2d 1327 (1989).  
 When interpreting uniform laws, such as the Uniform Commercial Code, courts may look to decisions from other states for guidance. Check Reporting Services, Inc. v. Michigan Nat. Bank-Lansing, 191 Mich. App. 614, 478 N.W.2d 893, 16 U.C.C. Rep. Serv. 2d 1116 (1991).  
**Oklahoma.** Where Uniform Commercial Code concepts or case law are neither conflicting nor inconsistent with applicable motor vehicle provisions, those concepts or case law may be used to interpret questions about whether a particular security interest in a vehicle has been properly submitted for filing and, thus, perfected under the motor vehicle title/lien entry form statute.  In re Gregory, 2004 OK 57, 97 P.3d 639 (Okla. 2004).
- Oregon.**  Schultz v. Bank of the West, C.B.C., 325 Or. 81, 934 P.2d 421, 32 U.C.C. Rep. Serv. 2d 379 (1997).  
 The state statute regarding unlawful employment practices is patterned after Title VII and federal cases are instructive. A.L.P. Inc. v. Bureau of Labor and Industries, 161 Or. App. 417, 984 P.2d 883 (1999).  
**Tennessee.** Courts should seriously consider precedents from other jurisdictions interpreting the Uniform Commercial Code and adopt them when they are harmonious with Tennessee's public policy, even though such precedents should not be followed blindly.  Davenport v. Chrysler Credit Corp., 818 S.W.2d 23, 15 U.C.C. Rep. Serv. 2d 324 (Tenn. Ct. App. 1991).
- 13 State Dept. of Revenue v. McLemore, 540 So. 2d 754 (Ala. Civ. App. 1988).  
**Alabama.** The legislature modeled its basic tax statute after the Internal Revenue Code, and courts may look to federal statutory or case law as persuasive authority to construe the tax statute. State Dept. of Revenue v. Robertson, 733 So. 2d 397 (Ala. Civ. App. 1998).  
**Wisconsin.** The Wisconsin Equal Access to Justice Act was modeled on the federal Equal Access to Justice Act and specifically states that courts should be guided by federal law to interpret the state act. Stern ex rel. Mohr v. Wisconsin Dept. of Health & Family Services, 222 Wis. 2d 521, 588 N.W.2d 658 (Ct. App. 1998).
- 14 **New Jersey.**  Van Horn v. William Blanchard Co., 88 N.J. 91, 438 A.2d 552 (1981).  
**Pennsylvania.** The Pennsylvania statute is modeled after a Michigan law and courts may seek guidance from Michigan case law to determine the definition of "serious injury" in the "limited tort alternative" section of the Pennsylvania Motor Vehicle Financial Responsibility Law.  Murray v. McCann, 442 Pa. Super. 30, 658 A.2d 404 (1995).
- 15 **Missouri.**  State v. Mitchell, 563 S.W.2d 18 (Mo. 1978).  
**Wisconsin.**  State v. Bruckner, 151 Wis. 2d 833, 447 N.W.2d 376 (Ct. App. 1989).
- 16  Hall v. Oakley, 409 So. 2d 93 (Fla. 1st DCA 1982) (disapproved of on other grounds by,  State v. Page, 449 So. 2d 813 (Fla. 1984)) and (disapproved of on other grounds by,  State v. Raydo, 713 So. 2d 996 (Fla. 1998)).
- 17 **Alabama.**  Assured Investors Life Ins. Co. v. National Union Associates, Inc., 362 So. 2d 228 (Ala. 1978) (overruled on other grounds by, Ex parte Norfolk Southern Ry. Co., 897 So. 2d 290 (Ala. 2004)).  
**Georgia.** Federal decisions construing and applying the federal Rules of Civil Procedure are not binding but are persuasive authority for state courts construing state acts modeled after the Federal Rules. Poole v. City of Atlanta, 117 Ga. App. 432, 160 S.E.2d 874 (1968).  
**New Mexico.** Benavidez v. Benavidez, 99 N.M. 535, 660 P.2d 1017 (1983).
- 18 **California.** Because the California Public Records Act (CPRA) was modeled on the Freedom of Information Act (FOIA), and the two have a common purpose, federal legislative history and judicial

construction of FOIA may be used to construe the CPRA.  **California** *State University v. Superior Court*, 90 Cal. App. 4th 810, 108 Cal. Rptr. 2d 870, 155 Ed. Law Rep. 664 (5th Dist. 2001).



**Michigan**. *Bredemeier v. Kentwood Bd. of Ed.*, 95 Mich. App. 767, 291 N.W.2d 199 (1980).


**New York**.  *Quirk v. Evans*, 116 Misc. 2d 554, 455 N.Y.S.2d 918 (Sup 1982).


See § 78:3.



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**United States**. When a dispute concerns one of the substantially similar provisions in the Kentucky Wages and Hours Act (KWHHA) and the federal Fair Labor Standards Act (FLSA), and state case law is lacking, courts look to federal precedent for interpretive guidance, however, federal cases requiring exemptions under the FLSA to be narrowly construed against an employer do not apply to KWHHA claimants because the KWHHA's exclusion of supervisory staff from the definition of "employee" does not constitute an exemption. *In re Amazon.com, Inc., Fulfillment Center Fair Labor Standards Act (FLSA) and Wage and Hour Litigation.*, 852 F.3d 601 (6th Cir. 2017).

**California**.  *Kaplan's Fruit & Produce Co. v. Superior Court*, 26 Cal. 3d 60, 160 Cal. Rptr. 745, 603 P.2d 1341 (1979) (National Labor Relations Act);  *Solano County Employees' Assn. v. County of Solano*, 136 Cal. App. 3d 256, 186 Cal. Rptr. 147 (1st Dist. 1982).

The Meyers-Milias-Brown Act parallels the National Labor Relations Act and courts should look to federal case law to interpret the Meyers-Milias-Brown Act.  *Public Employees Assn. v. Board of Supervisors*, 167 Cal. App. 3d 797, 213 Cal. Rptr. 491 (5th Dist. 1985).


**District of Columbia**.  *Feaster v. Vance*, 832 A.2d 1277, 181 Ed. Law Rep. 694 (D.C. 2003).

**Florida**.  *School Bd. of Dade County v. Dade Teachers Ass'n, FTP-NEA*, 421 So. 2d 645, 7 Ed. Law Rep. 749 (Fla. 3d DCA 1982) (National Labor Relations Act);  *Public Employees Relations Com'n v. District School Bd. of De Soto County*, 374 So. 2d 1005 (Fla. 2d DCA 1979).

Decisions construing the National Labor Relations Act are persuasive but not binding to construe Florida's Public Employees Labor Relations Act.  *City of Clearwater (Fire Dept.) v. Lewis*, 404 So. 2d 1156 (Fla. 2d DCA 1981).

**Georgia**. *Fireman's Fund Ins. Co. v. Fischer & Porter Co.*, 143 Ga. App. 533, 239 S.E.2d 174 (1977).


**Michigan**. *Local 79, Service Emp. Intern. Union, AFL-CIO, Hospital Emp. Division v. Lapeer County General Hospital*, 111 Mich. App. 441, 314 N.W.2d 648 (1981); *Local 79, Service Emp. Intern. Union, AFL-CIO, Hospital Emp. Division v. Lapeer County General Hospital*, 111 Mich. App. 441, 314 N.W.2d 648 (1981).


**Washington**. Decisions construing the National Labor Relations Act are not controlling but are persuasive to interpret state labor acts which are similar and are based on the NLRA.  *State ex rel. Washington Federation of State Emp., AFL-CIO v. Board of Trustees of Central Washington University*, 93 Wash. 2d 60, 605 P.2d 1252 (1980); *Washington Public Emp. Ass'n v. Community College Dist. 9*, 31 Wash. App. 203, 642 P.2d 1248, 3 Ed. Law Rep. 421 (Div. 2 1982).

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**Alabama**. *Best v. State Dept. of Revenue*, 417 So. 2d 197 (Ala. Civ. App. 1981).

**California**.  *Estate of Morse*, 9 Cal. App. 3d 411, 88 Cal. Rptr. 52 (2d Dist. 1970).


**Connecticut**.  *Leonard v. Commissioner of Revenue Services*, 264 Conn. 286, 823 A.2d 1184 (2003).

**Maryland**. Where the state tax code and the Internal Revenue Code are not exactly comparable, interpretations under the Internal Revenue Code can offer guidance but need not be relied upon by courts interpreting the state tax code.  *Lyon v. Campbell*, 324 Md. 178, 596 A.2d 1012 (1991).

**New York**. *Delese v. Tax Appeals Tribunal of State of New York*, 3 A.D.3d 612, 771 N.Y.S.2d 191 (3d Dep't 2004).

**Ohio**. *Buckley v. Wilkins*, 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811 (2005).

**Oregon**. *Hardwick v. Department of Revenue*, 272 Or. 100, 535 P.2d 89 (1975).

**Pennsylvania**. Courts interpreting the Estates Act are not bound by the U.S. Tax Court's interpretations of the Internal Revenue Code.  *In re Schwartz' Estate*, 449 Pa. 112, 295 A.2d 600 (1972).

**Tennessee**. *Crew One Productions, Inc. v. State*, 149 S.W.3d 89 (Tenn. Ct. App. 2004).

**United States.** *Orion's Belt, Inc. v. Kayser-Roth Corp.*, 433 F. Supp. 301 (S.D. Ind. 1977); *Laitram Machinery, Inc. v. Carnitech A/S*, 901 F. Supp. 1155 (E.D. La. 1995); *Laitram Machinery, Inc. v. Carnitech A/S*, 884 F. Supp. 1074 (E.D. La. 1995); *Giddens v. City of Shreveport*, 901 F. Supp. 1170 (W.D. La. 1995); *Verizon New Jersey, Inc. v. Ntegrity Telecontent Services, Inc.*, 219 F. Supp. 2d 616 (D.N.J. 2002); *Claudio v. U.S.*, 907 F. Supp. 581 (E.D. N.Y. 1995); *In re Wiring Device Antitrust Litigation*, 498 F. Supp. 79 (E.D. N.Y. 1980); *Stolow v. Greg Manning Auctions Inc.*, 258 F. Supp. 2d 236 (S.D. N.Y. 2003), *aff'd*, 80 Fed. Appx. 722 (2d Cir. 2003); *Geneva Pharmaceuticals Technology Corp. v. Barr Laboratories, Inc.*, 201 F. Supp. 2d 236 (S.D. N.Y. 2002), *aff'd in part, rev'd on other grounds in part and remanded*, 386 F.3d 485 (2d Cir. 2004); *Granite Partners, L.P. v. Bear, Stearns & Co. Inc.*, 17 F. Supp. 2d 275, 41 Fed. R. Serv. 3d 1345, 36 U.C.C. Rep. Serv. 2d 1238 (S.D. N.Y. 1998) (rejected on other grounds by, *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 354 (S.D. N.Y. 2010)).

California's antitrust statute is patterned after the federal Sherman Act, and has identical objectives, and federal cases interpreting the Sherman Act are persuasive authority under California's statute. *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 269 F. Supp. 2d 1213 (C.D. Cal. 2003); *Carter v. Variflex, Inc.*, 101 F. Supp. 2d 1261 (C.D. Cal. 2000).

The New Hampshire Consumer Protection Act tracks the language of the Massachusetts Consumer Protection Act and courts may rely on Massachusetts law to interpret the New Hampshire Act. *Donovan v. Digital Equipment Corp.*, 883 F. Supp. 775 (D.N.H. 1994).

The legislative history of Hawai'i's antitrust law clearly indicates that state laws are to be interpreted and construed in harmony with analogous federal antitrust laws. *Island Tobacco Co., Ltd. v. R. J. Reynolds Industries, Inc.*, 513 F. Supp. 726 (D. Haw. 1981).

Application of Maryland's Antitrust Act is guided by the interpretation of federal antitrust statutes. *Purity Products, Inc. v. Tropicana Products, Inc.*, 702 F. Supp. 564 (D. Md. 1988), judgment *aff'd*, 887 F.2d 1081 (4th Cir. 1989).

The interpretation of the Sherman Act by federal courts is persuasive authority for the meaning of Michigan's antitrust statute, which was patterned after the Sherman Act. *Danou v. Kroger Co.*, 557 F. Supp. 1266 (E.D. Mich. 1983).

New York's Donnelly Act is modeled on the Sherman Act and is construed in light of federal precedent.

*Stolow v. Greg Manning Auctions Inc.*, 258 F. Supp. 2d 236 (S.D. N.Y. 2003), *aff'd*, 80 Fed. Appx. 722 (2d Cir. 2003).

**California.** *Rosack v. Volvo of America Corp.*, 131 Cal. App. 3d 741, 182 Cal. Rptr. 800 (1st Dist. 1982); *Southern California Title Co. v. Great Western Financial Corp.*, 60 Cal. Rptr. 114 (App. 2d Dist. 1967), opinion vacated on other grounds, 69 Cal. 2d 305, 70 Cal. Rptr. 849, 444 P.2d 481 (1968). The Cartwright Act has objectives identical to federal antitrust laws, and California courts look to cases construing the federal antitrust laws for interpretive guidance. *Vinci v. Waste Management, Inc.*, 36 Cal. App. 4th 1811, 43 Cal. Rptr. 2d 337 (1st Dist. 1995).


**Connecticut.** *Roncari Development Co. v. GMG Enterprises, Inc.*, 45 Conn. Supp. 408, 718 A.2d 1025 (Super. Ct. 1997).

**Louisiana.** *State ex rel. Ieyoub v. Bordens, Inc.*, 684 So. 2d 1024 (La. Ct. App. 4th Cir. 1996), writ denied, 690 So. 2d 42 (La. 1997).

The federal analysis of the Sherman Act does not control the interpretation of the state antitrust act, although the state act is a counterpart to the federal act, especially in cases where a relevant ruling of the U.S. Supreme Court is a departure from a well-established rule. *Louisiana Power and Light Co. v. United Gas Pipe Line Co.*, 493 So. 2d 1149 (La. 1986).

**Maryland.** Courts interpreting the Little Miller Act may refuse to follow federal decisions where they believe the purpose of the state statute differs. *General Federal Const., Inc. v. D.R. Thomas, Inc.*, 52 Md. App. 700, 451 A.2d 1250 (1982).

**Ohio.** The Ohio Valentine Act was patterned after the federal Sherman Antitrust Act, and has been interpreted in light of federal judicial constructions of the Sherman Act. *Pacific Great Lakes Corp. v. Bessemer & Lake Erie R.R.*, 130 Ohio App. 3d 477, 720 N.E.2d 551 (8th Dist. Cuyahoga County 1998).

**Oklahoma.**  *Beville v. Curry*, 2001 OK 1, 39 P.3d 754 (Okla. 2001), as corrected, (Jan. 22, 2001).


**Rhode Island.** *H.J. Baker & Bro., Inc. v. Organics, Inc.*, 554 A.2d 196 (R.I. 1989).


**Washington.** *Washington Public Emp. Ass'n v. Community College Dist. 9*, 31 Wash. App. 203, 642 P.2d 1248, 3 Ed. Law Rep. 421 (Div. 2 1982).

**West Virginia.** *Gray v. Marshall County Bd. of Educ.*, 179 W. Va. 282, 367 S.E.2d 751, 46 Ed. Law Rep. 868 (1988).

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**United States.** *Hurt v. New York Life Ins. Co.*, 53 F.2d 453 (C.C.A. 10th Cir. 1931).

**Idaho.** To discern and implement legislative intent, courts seek edification from a statute's legislative history, examine the statute's evolution through a number of amendments and seek enlightenment from the decisions of other courts which have resolved the same or similar issues.  *Leliefeld v. Johnson*, 104 Idaho 357, 659 P.2d 111 (1983).


**Illinois.**  *People v. Moczek*, 407 Ill. 373, 95 N.E.2d 428 (1950); *American Steel Foundries v. Gordon*, 404 Ill. 174, 88 N.E.2d 465 (1949).

**Maine.** Unlike the federal Age Discrimination in Employment Act, the Maine Human Rights Act does not contain a reasonable-factor-other-than-age (RFOA) affirmative defense, and this is a substantive difference, and the laws are not “substantially identical,” and, thus, neither the text of the RFOA affirmative defense nor the federal cases applying that text provides helpful guidance to interpret the Maine statute. *Scamman v. Shaw's Supermarkets, Inc.*, 2017 ME 41, 157 A.3d 223 (Me. 2017), as corrected, (Mar. 23, 2017).


**New Jersey.** *In re Christie's Estate*, 87 N.J. Eq. 303, 101 A. 64 (Prerog. Ct. 1917).

**New York.** *Great Northern Tel. Co. v. Yokohama Specie Bank*, 297 N.Y. 135, 76 N.E.2d 117 (1947) (English rules of procedure).


**Oregon.** *Fleischhauer v. Bilstad*, 233 Or. 578, 379 P.2d 880 (1963); *Commercial Credit Corp. v. Marden*, 155 Or. 29, 62 P.2d 573, 112 A.L.R. 931 (1936).

**Washington.**  *State v. Runions*, 32 Wash. App. 669, 649 P.2d 144 (Div. 2 1982), decision rev'd on other grounds, 100 Wash. 2d 52, 665 P.2d 1358 (1983).



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 *Carolene Products Co. v. U.S.*, 323 U.S. 18, 65 S. Ct. 1, 89 L. Ed. 15, 155 A.L.R. 1371 (1944).


**United States.** *Hill v. Cheek*, 230 F.2d 104 (5th Cir. 1956).

Where textual similarity raises an inference that a state statute was copied from another state, federal courts consider decisions from the first state as “persuasive authority” to determine how it should be construed in the latter state, where the latter state has not yet authoritatively construed it. *U.S. v. Nevada Tax Commission*, 291 F. Supp. 530 (D. Nev. 1968), judgment aff'd,  439 F.2d 435 (9th Cir. 1971).


**Florida.** *Marchman v. St. Anthony's Hosp., Inc.*, 152 So. 3d 830 (Fla. 2d DCA 2014), review denied, 171 So. 3d 115 (Fla. 2015).

**Illinois.** *Cf.*  *F & F Laboratories, Inc. v. Chocolate Spraying Co.*, 6 Ill. App. 2d 299, 127 N.E.2d 682 (1st Dist. 1955) (overruled in part on other grounds by,  *Skolnick v. Martin*, 47 Ill. App. 2d 167, 197 N.E.2d 739 (1st Dist. 1964)).

**Kentucky.** When a statute's language admits of more than one reasonable interpretation, courts attempt to understand the legislative intent by considering legislative history, statutory context, and, where the statute is plainly based on or intended to coordinate with legislation from another jurisdiction, construction of similar statutes by other courts. *Brown v. Com.*, 40 S.W.3d 873 (Ky. Ct. App. 1999).














**Louisiana.**  *Louisiana Power and Light Co. v. United Gas Pipe Line Co.*, 493 So. 2d 1149 (La. 1986).

**Maryland.** *Public Service Commission of Md. v. Baltimore Transit Co.*, 207 Md. 524, 114 A.2d 834 (1955).


**North Dakota.**  *State v. One Black 1989 Cadillac VIN 1G6DW51Y8KR722027*, 522 N.W.2d 457 (N.D. 1994).

**Texas.** *Tarrant Regional Water District v. Johnson*, 572 S.W.3d 658 (Tex. 2019); *Malone-Hogan Hospital Clinic Foundation, Inc. v. City of Big Spring*, 288 S.W.2d 550 (Tex. Civ. App. Eastland 1956), writ refused n.r.e..




- 24 **Delaware.** *Wilmington Housing Authority v. Nos. 401, 403, 405 East Seventh St.*, 56 Del. 595, 195 A.2d 392 (1963).
- Appellate Briefs.** *Shannon v. U.S.*, On Writ of Certiorari, 1994 WL 190957 (U.S.).
- 25 **New Jersey.** Courts are not bound by the decisions of other states with respect to the Hague Convention on the Civil Aspects of International Child Abduction, or by the manner in which the treaty has been interpreted in other nations, but proper regard to promote a uniform approach to the Convention requires that the views of other courts receive respectful attention.  *Tahan v. Duquette*, 259 N.J. Super. 328, 613 A.2d 486 (App. Div. 1992).
- 26 **United States.**  *U.S. v. Howard*, 352 U.S. 212, 77 S. Ct. 303, 1 L. Ed. 2d 261 (1957); *J.M. Robinson & Co. v. Belt*, 187 U.S. 41, 23 S. Ct. 16, 41 L. Ed. 65 (1902); *Capital Traction Co. v. Hof*, 174 U.S. 1, 19 S. Ct. 580, 43 L. Ed. 873 (1899); *Sanger v. Flow*, 48 F. 152 (8th Cir. 1891); *Sanger v. Flow*, 48 F. 152 (8th Cir. 1891); *Love v. Pavlovich*, 222 F. 842, 4 Alaska Fed. 293 (C.C.A. 9th Cir. 1915);  *Jennings v. Alaska Treadwell Gold Min Co*, 170 F. 146, 3 Alaska Fed. 350 (C.C.A. 9th Cir. 1909); *Randall v. Bockhorst*, 232 F.2d 334 (D.C. Cir. 1956); *In re Adoption of a Minor*, 144 F.2d 644, 156 A.L.R. 1001 (App. D.C. 1944); *Hartford Accident & Indemnity Co. v. Hoage*, 85 F.2d 411 (App. D.C. 1936). Even if a federal law was copied from a state statute, the construction placed on the state statute by the highest state court will not under all circumstances be binding on a federal court. *U.S. ex rel. Demarois v. Farrell*, 87 F.2d 957 (C.C.A. 8th Cir. 1937); *Twin Harbor Stevedoring & Tug Co. v. Marshall*, 103 F.2d 513 (C.C.A. 9th Cir. 1939).
- 27 **United States.**  *Beason v. United Technologies Corp.*, 337 F.3d 271 (2d Cir. 2003);  *Iacone v. Cardillo*, 208 F.2d 696 (2d Cir. 1953);  *Paiewonsky v. Paiewonsky*, 446 F.2d 178 (3d Cir. 1971); *Williams v. Dowling*, 318 F.2d 642 (3d Cir. 1963);  *McNeil v. Time Ins. Co.*, 205 F.3d 179 (5th Cir. 2000); *Blas v. Talabera*, 318 F.2d 617 (9th Cir. 1963); *American Sur. Co. of New York v. Cove Irr. Dist.*, 54 F.2d 197 (C.C.A. 9th Cir. 1931); *Randall v. Bockhorst*, 232 F.2d 334 (D.C. Cir. 1956); *Hubbard Business Plaza v. Lincoln Liberty Life Ins. Co.*, 596 F. Supp. 344, 40 U.C.C. Rep. Serv. 1011 (D. Nev. 1984); *In re Sweet Laboratories Co.*, 261 F. 810 (S.D. Ohio 1919);  *Hiersche v. Seamless Rubber Co.*, 225 F. Supp. 682 (D. Or. 1963); *Texas Emp. Ins. Ass'n v. Sheppard*, 32 F.2d 300 (S.D. Tex. 1929).
- Kentucky.** *Lindall v. Kentucky Retirement Systems*, 112 S.W.3d 391 (Ky. Ct. App. 2003).
- Secondary Sources.** Posner, *Economics, Politics, and the Reading of Statutes and the Constitution*, 49 U. Chi. L. Rev. 263 (1982).
- 28 **United States.** *Walsh Const. Co. v. City of Cleveland*, 271 F. 701 (N.D. Ohio 1920), *aff'd*, 279 F. 57 (C.C.A. 6th Cir. 1922).
- California.** *Mann v. Brison*, 120 Cal. App. 450, 7 P.2d 1110 (2d Dist. 1932).
- 29 **United States.** *U.S. v. Acorn Technology Fund, L.P.*, 295 F. Supp. 2d 494 (E.D. Pa. 2003).
- Arizona.**  *In re Thelen's Estate*, 9 Ariz. App. 157, 450 P.2d 123 (1969). The statute governing theft by false pretenses was adopted from another state, but courts are not absolutely bound to follow the original state's construction, and may construe the statute in accordance with justice and public policy. *State v. Ebner*, 126 Ariz. 355, 616 P.2d 30 (1980).
- An interpretation must be consistent with Arizona's goals or intent.  *State v. Tramble*, 144 Ariz. 48, 695 P.2d 737 (1985).
- A state court interpreting the Little Miller Act, which requires that a general contractor on a public project post bond to ensure that all who supplied labor or materials on the project are paid, is under no obligation to follow federal decisions interpreting the federal Miller Act. *Trio Forest Products, Inc. v. FNF Const., Inc.*, 182 Ariz. 1, 893 P.2d 1 (Ct. App. Div. 2 1994).
- Florida.**  *O'Loughlin v. Pinchback*, 579 So. 2d 788 (Fla. 1st DCA 1991) (rejected on other grounds by, *Glass v. Captain Katanna's, Inc.*, 950 F. Supp. 2d 1235 (M.D. Fla. 2013));  *First American Bank & Trust v. Windjammer Time Sharing Resort, Inc.*, 483 So. 2d 732 (Fla. 4th DCA 1986).
- Illinois.** *Kroger Co. v. Department of Revenue*, 284 Ill. App. 3d 473, 220 Ill. Dec. 566, 673 N.E.2d 710 (1st Dist. 1996); *Mitchell Buick & Oldsmobile Sales, Inc. v. McHenry Sav. Bank*, 235 Ill. App. 3d 978, 176 Ill. Dec. 662, 601 N.E.2d 1360, 19 U.C.C. Rep. Serv. 2d 518 (2d Dist. 1992).
- Indiana.**  *Hatfield v. La Charmant Home Owners Ass'n, Inc.*, 469 N.E.2d 1218 (Ind. Ct. App. 1984).


**Michigan.** Check Reporting Services, Inc. v. Michigan Nat. Bank-Lansing, 191 Mich. App. 614, 478 N.W.2d 893, 16 U.C.C. Rep. Serv. 2d 1116 (1991).

**Montana.** Courts may consider a construction by the highest court of a state from which a statute was borrowed, but that construction is not binding.  State ex rel. Mankin v. Wilson, 174 Mont. 195, 569 P.2d 922 (1977).

**Ohio.** Amzee Corp. v. Comerica Bank-Midwest, 2002-Ohio-3084, 48 U.C.C. Rep. Serv. 2d 833 (Ohio Ct. App. 10th Dist. Franklin County 2002).

**Oregon.** In re Stroman's Estate, 178 Or. 100, 165 P.2d 576 (1946).

It does not necessarily follow that, by adopting federal wording, Oregon legislators shared the identical intent of their federal counterparts.  State ex rel. Davey v. Frankel, 312 Or. 286, 823 P.2d 394 (1991).

**Pennsylvania.** The United States Tax Court's interpretations of the Internal Revenue Code do not bind Pennsylvania's interpretations of its own Estates Act.  In re Schwartz' Estate, 449 Pa. 112, 295 A.2d 600 (1972).

**Texas.** In re Carrigan's Estate, 517 S.W.2d 817 (Tex. Civ. App. Tyler 1974).


**Washington.** Department of Retirement Systems v. Kralman, 73 Wash. App. 25, 867 P.2d 643, 23 U.C.C. Rep. Serv. 2d 508 (Div. 3 1994).

**United States.** An enactment departs from the language of a model act usually to express an intention different from the model act, however, where a legislature was not working in a vacuum and was not building first principles in an area of law, it does not automatically follow it meant anything by a departure from a model act, and absent a clear indication that a legislature considered a revision and deliberately rejected it, legislative inaction is a weak reed upon which to lean, and a poor beacon to follow, to construe a statute that borrows some, but not all, of a model act's provisions, and model-act-based statutes are better interpreted with reference to the circumstances existing at the time of their passage, including looking to the prior act that the new legislation amends. In re Amazon.com, Inc., Fulfillment Center Fair Labor Standards Act (FLSA) and Wage and Hour Litigation., 852 F.3d 601 (6th Cir. 2017).


An adopting state may accept an interpretation from the state of origin if the interpretation is "consistent with reason and sound logic." State Roads Commission v. Contee Sand & Gravel Co., 308 F. Supp. 650 (D. Md. 1970).


**Alaska.** Andreanoff v. State, 746 P.2d 473 (Alaska Ct. App. 1987).


Courts generally follow the rule that the original jurisdiction's interpretation of a statute is adopted with the statute, unless the precedent underlying the adopted statute is no longer vital or is poorly reasoned.


 Twenty-Eight (28) Members of Oil, Chemical and Atomic Workers Union, Local No. 1-1978 v. Employment Sec. Div. of Alaska Dept. of Labor, 659 P.2d 583 (Alaska 1983).


**Arizona.** Industrial Commission v. Harbor Ins. Co., 104 Ariz. 73, 449 P.2d 1 (1968); Peterson v. Flood, 84 Ariz. 256, 326 P.2d 845 (1958); Phoenix Title & Trust Co. v. Old Dominion Co., 31 Ariz. 324, 253 P. 435, 59 A.L.R. 625 (1927).


**Arkansas.**  Western Inv. Co. v. Davis, 7 Indian Terr. 152, 104 S.W. 573 (Indian Terr. 1907), rev'd on other grounds, 168 F. 187 (8th Cir. 1909).

**California.** California will not follow the reasoning of an unsound sister state decision, even though the language and context of the statutes are identical.  Acco Contractors, Inc. v. McNamara & Peepe Lumber Co., 63 Cal. App. 3d 292, 133 Cal. Rptr. 717 (1st Dist. 1976).

There is no support for the idea that legislative intent can be determined by the legislature's presumed knowledge of the judicial interpretation of similar statutes in foreign jurisdictions.  Motors Ins. Corp. v. Division of Fair Employment Practices, 118 Cal. App. 3d 209, 173 Cal. Rptr. 332 (2d Dist. 1981).

**Florida.**  O'Loughlin v. Pinchback, 579 So. 2d 788 (Fla. 1st DCA 1991) (rejected on other grounds by, Glass v. Captain Katanna's, Inc., 950 F. Supp. 2d 1235 (M.D. Fla. 2013)).


**Georgia.**  Superior Pine Products Co. v. Williams, 214 Ga. 485, 106 S.E.2d 6 (1958).

**Illinois.**  In re Marriage of Tiskos, 161 Ill. App. 3d 302, 112 Ill. Dec. 860, 514 N.E.2d 523 (4th Dist. 1987).


**Iowa.** In re Klug's Estate, 251 Iowa 1128, 104 N.W.2d 600 (1960).

**Kansas.** Chapman v. Parker, 203 Kan. 440, 454 P.2d 506 (1969).

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**Massachusetts.** When the legislature adopts the language of a federal statute, courts need not follow federal interpretations of the statute if the federal result is dictated by some principle of federal law not found in state law.  *Vasys v. Metropolitan Dist. Com'n*, 387 Mass. 51, 438 N.E.2d 836 (1982).

**Minnesota.** *Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy*, 301 Minn. 28, 221 N.W.2d 162 (1974).



**Mississippi.** By adopting a mortmain statute patterned after Georgia's, Mississippi adopted the interpretation Georgia had placed on the statute. However, Mississippi is not bound by any and all interpretations which Georgia might subsequently place upon its mortmain statute, especially if Georgia changes its interpretation of the statute.  *Crosby v. Alton Ochsner Medical Foundation*, 276 So. 2d 661, 75 A.L.R.3d 853 (Miss. 1973).


**Montana.** *Kujich v. Lillie*, 127 Mont. 125, 260 P.2d 383 (1953); *State v. Callow*, 78 Mont. 308, 254 P. 187 (1927).


The interpretation given to an adopted statute by the original state is only persuasive, not binding.

 *Continental Oil Co. v. Board of Labor Appeals*, 178 Mont. 143, 582 P.2d 1236 (1978).

**New Jersey.** The interpretation of an out-of-state statute by the courts of that jurisdiction is rarely helpful to interpret a New Jersey statute because of the different public policy concepts and objectives.


 *Autotote Ltd. v. New Jersey Sports and Exposition Authority*, 171 N.J. Super. 480, 410 A.2d 52 (App. Div. 1979), judgment rev'd on other grounds,  85 N.J. 363, 427 A.2d 55 (1981).


**Oklahoma.** A legislature is presumed not to have adopted the construction placed on a statute by another state where the other state's decisions conflict.  *Stoll v. Allen*, 1948 OK 118, 202 Okla. 514, 215 P.2d 559 (1948).

**Oregon.**  *State ex rel. Davey v. Frankel*, 312 Or. 286, 823 P.2d 394 (1991).

**South Dakota.** *State v. Nelson*, 58 S.D. 562, 237 N.W. 766, 76 A.L.R. 1226 (1931).

**Utah.** *In re Reynolds' Estate*, 90 Utah 415, 62 P.2d 270 (1936); *Holloway v. Wetzel*, 86 Utah 387, 45 P.2d 565, 98 A.L.R. 1006 (1935).

**Wisconsin.**  *State v. Rodgers*, 119 Wis. 2d 102, 349 N.W.2d 453 (1984).

**Wyoming.** Wyoming's probate law is derived from California's probate law, and California decisions have particular importance to construe Wyoming's law.  *Matter of Kimball's Estate*, 583 P.2d 1274 (Wyo. 1978).

**Guam.** A court does not blindly adopt another jurisdiction's interpretation on the basis that a statute from another jurisdiction has been adopted, for to do so would be to sacrifice the deciding court's reasoned analysis and independent thinking. *Custodio v. Boonprakong*, 1999 Guam 5, 1999 WL 104490 (Guam 1999).

**Secondary Sources.** *Federbush, The Unclear Scope of Unconscionability in FDUTPA*, 74-Aug. Fla. B.J. 49 (2000).

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**Louisiana.**  *Louisiana Power and Light Co. v. United Gas Pipe Line Co.*, 493 So. 2d 1149 (La. 1986).

**Maine.** Courts assume that changes made in a statute drawn from a similar statute in another jurisdiction must have been for the very purpose of avoiding the construction developed elsewhere. *State v. Greenwald*, 454 A.2d 827 (Me. 1982).

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**United States.** *U.S. v. Kattan-Kassin*, 696 F.2d 893 (11th Cir. 1983).

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**United States.** Although Congress may have had the District of Columbia statute providing for a special verdict of not guilty by reason of insanity in mind when it passed the Insanity Defense Reform Act, significant differences between the two enactments rendered inapplicable the statutory canon that adoption of the wording of a statute from another legislative jurisdiction carries with it the previous judicial interpretations of the wording.  *Shannon v. U.S.*, 512 U.S. 573, 114 S. Ct. 2419, 129 L. Ed. 2d 459 (1994).


**Alabama.** *State v. Self*, 492 So. 2d 319 (Ala. Crim. App. 1986).

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**United States.** *Whitney v. Fox*, 166 U.S. 637, 17 S. Ct. 713, 41 L. Ed. 1145 (1897);  *Penn Bridge Co. v. City of New Orleans*, 222 F. 737 (C.C.A. 5th Cir. 1915); *Boyd v. Panama Canal Co.*, 160 F. Supp. 50 (D. C.Z. 1958).


**California.** City and County of San Francisco v. Superior Court In and For City and County of San Francisco, 161 Cal. App. 2d 653, 327 P.2d 195 (1st Dist. 1958).

**Florida.** Duval v. Hunt, 34 Fla. 85, 15 So. 876 (1894).

**Illinois.**  A. E. Staley Mfg. Co. v. Swift & Co., 84 Ill. 2d 245, 50 Ill. Dec. 156, 419 N.E.2d 23 (1980).




**Montana.** Oleson v. Wilson, 20 Mont. 544, 52 P. 372 (1898).


**New Jersey.** The interpretation of out-of-state statutes by the courts of those jurisdictions is rarely helpful to interpret a New Jersey statute because of different public policy concepts and objectives.  Autotote Ltd. v. New Jersey Sports and Exposition Authority, 171 N.J. Super. 480, 410 A.2d 52 (App. Div. 1979), judgment rev'd on other grounds,  85 N.J. 363, 427 A.2d 55 (1981).


35  Totz v. Continental Du Page Acura, 236 Ill. App. 3d 891, 177 Ill. Dec. 202, 602 N.E.2d 1374 (2d Dist. 1992).


36 **United States.** The Brazil, 134 F.2d 929 (C.C.A. 7th Cir. 1943).


Cf. Somermeier v. District Director of Customs for Port of Los Angeles-Long Beach, 448 F.2d 1243 (9th Cir. 1971).

**Arizona.**  In re Forsstrom, 44 Ariz. 472, 38 P.2d 878 (1934) (overruled in part on other grounds by,  Mohave County v. Chamberlin, 78 Ariz. 422, 281 P.2d 128 (1955)) and (overruled in part on other grounds by,  State ex rel. Morrison v. Thelberg, 87 Ariz. 318, 350 P.2d 988 (1960)).


**California.**  Ex parte Lasswell, 1 Cal. App. 2d 183, 36 P.2d 678 (2d Dist. 1934); Bartosh v. Board of Osteopathic Examiners of State, 82 Cal. App. 2d 486, 186 P.2d 984 (2d Dist. 1947).

Cf.  Palermo v. Stockton Theatres, 32 Cal. 2d 53, 195 P.2d 1 (1948).


**New Jersey.**  State v. Larson, 10 N.J. Misc. 384, 160 A. 556 (Ct. of Oyer & Terminer 1932); Wilentz v. Sears, Roebuck & Co., 12 N.J. Misc. 531, 172 A. 903 (Ch. 1934).


**New York.**  Darweger v. Staats, 267 N.Y. 290, 196 N.E. 61 (1935); De Agostina v. Parkshire Ridge Amusements, 155 Misc. 518, 278 N.Y.S. 622 (Sup 1935); Spaulding v. Kaminski, 153 Misc. 678, 276 N.Y.S. 663 (Sup 1934); Cline v. Consumers' Co-op. Gas & Oil Co., 152 Misc. 653, 274 N.Y.S. 362 (Sup 1934).

**Pennsylvania.** Com. v. Alderman, 275 Pa. 483, 119 A. 551 (1923).


37 **United States.** Sekinoff v. U S, 283 F. 38, 5 Alaska Fed. 130 (C.C.A. 9th Cir. 1922);  Crane Co. v. Richardson Const. Co., 312 F.2d 269 (5th Cir. 1963); Bank of America v. Webster, 439 F.2d 691 (9th Cir. 1971).

An enactment departs from the language of a model act usually to express an intention different from the model act, however, where a legislature was not working in a vacuum and was not building first principles in an area of law, it does not automatically follow it meant anything by a departure from a model act, and absent a clear indication that a legislature considered a revision and deliberately rejected it, legislative inaction is a weak reed upon which to lean, and a poor beacon to follow, to construe a statute that borrows some, but not all, of a model act's provisions, and model-act-based statutes are better interpreted with reference to the circumstances existing at the time of their passage, including looking to the prior act that the new legislation amends. In re Amazon.com, Inc., Fulfillment Center Fair Labor Standards Act (FLSA) and Wage and Hour Litigation., 852 F.3d 601 (6th Cir. 2017).

**Alaska.**  Cesar v. Alaska Workmen's Compensation Bd., 383 P.2d 805 (Alaska 1963) (overruled on other grounds by, Providence Washington Ins. Co. v. Grant, 693 P.2d 872 (Alaska 1985)).


**Arizona.** Case law from the original jurisdiction premised upon an amendment to a statute adopted in the original jurisdiction but not adopted by the second legislature is not given any special effect.  Kries v. Allen Carpet, Inc., 146 Ariz. 348, 706 P.2d 360 (1985).


**Arkansas.** The omission from an Arkansas statute of a provision found in the Kentucky prototype, concerning venue in a civil action for libel, is presumed to be deliberate. Baker v. Fraser, 209 Ark. 932, 193 S.W.2d 131 (1946).


**California.** The omission of a provision which was in a foreign statute used as a model by the legislature is a strong indication that the legislature did not intend to import that provision into the statute.  J.




R. Norton Co. v. General Teamsters, Warehousemen & Helpers Union, 208 Cal. App. 3d 430, 256 Cal. Rptr. 246 (6th Dist. 1989).


**Delaware.** Martin v. American Potash & Chemical Corp., 33 Del. Ch. 234, 92 A.2d 295, 35 A.L.R.2d 1140 (1952);  Chicago Corp. v. Munds, 20 Del. Ch. 142, 172 A. 452 (1934).

**Hawai'i.**  Levy v. Kimball, 51 Haw. 540, 465 P.2d 580 (1970).

**Idaho.**  Hendrix v. Gold Ridge Mines, 56 Idaho 326, 54 P.2d 254 (1936).

**Louisiana.** Simmesport State Bank v. Scallan, 134 So. 2d 391 (La. Ct. App. 3d Cir. 1961).  
When the legislature adopts a new law using a source statute that has already been adopted by another state or by the federal government and omits provisions of the source statute, courts presume the legislature intended not to adopt the omitted portion.  Aultman v. Entergy Corp., 747 So. 2d 1151 (La. Ct. App. 1st Cir. 1999).

**Maine.** Changes made in a statute which was drawn from a similar statute in another jurisdiction must have been for the very purpose of avoiding the construction developed elsewhere. State v. Greenwald, 454 A.2d 827 (Me. 1982).

**Massachusetts.**  Baruffaldi v. Contributory Retirement Appeal Bd., 337 Mass. 495, 150 N.E.2d 269 (1958).

**Michigan.** Local 79, Service Emp. Intern. Union, AFL-CIO, Hospital Emp. Division v. Lapeer County General Hospital, 111 Mich. App. 441, 314 N.W.2d 648 (1981).

**Minnesota.** State v. Ritschel, 220 Minn. 578, 20 N.W.2d 673, 168 A.L.R. 274 (1945).

**Montana.** Kirkpatrick v. Aetna Casualty & Surety Co., 104 Mont. 212, 65 P.2d 1169 (1937).


**North Carolina.** Sutton v. Duke, 277 N.C. 94, 176 S.E.2d 161 (1970).


**Ohio.** United Steelworkers of America, AFL-CIO v. Doyle, 77 Ohio L. Abs. 385, 150 N.E.2d 334 (C.P. 1958).


**Texas.** Texas intentionally patterned its Tort Claims Act after the federal statute while still using noticeably different language, which counsels against wholesale incorporation of federal case law, but courts do not ignore the federal cases. Tarrant Regional Water District v. Johnson, 572 S.W.3d 658 (Tex. 2019).

**Wisconsin.** Wiedner v. Smith, 206 Wis. 438, 240 N.W. 367 (1932).

38 **North Carolina.**  State ex rel. Edmisten v. J. C. Penney Co., Inc., 292 N.C. 311, 233 S.E.2d 895 (1977).

39  Nickel Mine Brook Associates v. Joseph E. Sakal, P.C., 217 Conn. 361, 585 A.2d 1210 (1991).


40 **District of Columbia.**  Johnson v. Martin, 567 A.2d 1299 (D.C. 1989).


41 **Illinois.**  People's Gas Light & Coke Co. v. Ames, 359 Ill. 152, 194 N.E. 260 (1934).


**Montana.** Edgar v. Hunt, 218 Mont. 30, 706 P.2d 120 (1985).

**New Jersey.** Public Service Ry. Co. v. Board of Public Utility Com'rs, 81 N.J.L. 363, 80 A. 27 (N.J. Sup. Ct. 1911).


42 **Alaska.** Zerbe v. State, 583 P.2d 845 (Alaska 1978).

**Arizona.**  Lewis v. State, 32 Ariz. 182, 256 P. 1048 (1927).

**California.**  Andrews v. Franchise Tax Bd., 275 Cal. App. 2d 653, 80 Cal. Rptr. 403 (3d Dist. 1969).


**Colorado.**  Park Floral Co. v. Industrial Com'n, 104 Colo. 350, 91 P.2d 492 (1939).


**District of Columbia.** Lenaerts v. District of Columbia Dept. of Employment Services, 545 A.2d 1234 (D.C. 1988).

**Illinois.**  A. E. Staley Mfg. Co. v. Swift & Co., 84 Ill. 2d 245, 50 Ill. Dec. 156, 419 N.E.2d 23 (1980); American Steel Foundries v. Gordon, 404 Ill. 174, 88 N.E.2d 465 (1949); People v. Kellogg, 268 Ill. 489, 109 N.E. 304 (1915).


**Montana.** Esterly v. Broadway Garage Co., 87 Mont. 64, 285 P. 172 (1930).

**Nebraska.** In re Thompson's Estate, 169 Neb. 311, 99 N.W.2d 245 (1959).

**Oklahoma.** The rule that the legislature, in adopting a statute from another state, is presumed to have adopted the construction placed on the statute by the highest court of the other state, does not apply where there is a conflict in the decisions in the other state.  Stoll v. Allen, 1948 OK 118, 202 Okla. 514, 215 P.2d 559 (1948).

**Oregon.**  State v. Burke, 126 Or. 651, 270 P. 756 (1928).

In re Local 1201, AFSCME, Rutland Dept. of Public Works, 143 Vt. 512, 469 A.2d 1176 (1983).

**United States.**  U.S. v. Masel, 563 F.2d 322 (7th Cir. 1977).

**United States.** See  U.S. v. Masel, 563 F.2d 322 (7th Cir. 1977).

The meaning of a federal statute or rule generally is not determined by state law unless the statute or rule so directs. Info-Hold, Inc. v. Sound Merchandising, Inc., 538 F.3d 448, 71 Fed. R. Serv. 3d 477 (6th Cir. 2008).

**Alabama.** Cf. Ex parte Shepherd, 565 So. 2d 241 (Ala. 1990).

**South Dakota.** People In Interest of G.R.F., 1997 SD 112, 569 N.W.2d 29 (S.D. 1997).

**Arizona.** O'Malley Lumber Co. v. Martin, 45 Ariz. 349, 43 P.2d 200 (1935).

**Colorado.** In re Waldron's Estate, 84 Colo. 1, 267 P. 191 (1928).

**District of Columbia.** Davidson v. U.S., 467 A.2d 1282 (D.C. 1983).

**Missouri.** In re Rosing's Estate, 337 Mo. 544, 85 S.W.2d 495 (1935).


**Colorado.** In re Waldron's Estate, 84 Colo. 1, 267 P. 191 (1928).


**Illinois.** American Steel Foundries v. Gordon, 404 Ill. 174, 88 N.E.2d 465 (1949).


**New Jersey.** Torrance v. Edwards, 89 N.J.L. 507, 99 A. 136 (N.J. Sup. Ct. 1916).



**Wisconsin.** Ditsch v. Finn, 214 Wis. 305, 252 N.W. 562 (1934).

**Arizona.** Even though the Arizona statutes of limitations were adopted from Texas, interpretations made by Texas after the statutes were adopted in Arizona are not controlling. Gee v. Pima County, 126 Ariz. 116, 612 P.2d 1079 (Ct. App. Div. 2 1980).


**California.** Where the federal construction of a statute was rendered after the adoption of the state statute, it is not binding on state courts, though it may be persuasive and entitled to considerable respect.  Kahn v. Kahn, 68 Cal. App. 3d 372, 137 Cal. Rptr. 332 (1st Dist. 1977).


**Indiana.** Where a statute is a literal or substantial copy of a statute from another state, the construction given to the statute by the courts of the other state is an interpretive aid for the adopting state, but only for cases decided prior to the adoption. This rule is equally applicable where incorporated language is taken from a federal statute interpreted by federal courts.  Indiana Dept. of State Revenue, Inheritance Tax Division v. Wallace's Estate, 408 N.E.2d 150 (Ind. Ct. App. 1980).

**Kansas.** The construction of a statute by the highest court of the original state after it is adopted has no controlling effect on the adopting state.  J & S Bldg. Co., Inc. v. Columbian Title & Trust Co., 1 Kan. App. 2d 228, 563 P.2d 1086 (1977).

**Nevada.**  SFR Investments Pool 1 v. U.S. Bank, 130 Nev. 742, 334 P.3d 408, 130 Nev. Adv. Op. No. 75 (2014) (holding modified on other grounds by,  Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A., 388 P.3d 970 (Nev. 2017)).

Generally, a statute adopted from another jurisdiction is adopted with the construction placed on it by the courts of that jurisdiction before its adoption. Ybarra v. State, 97 Nev. 247, 628 P.2d 297 (1981).


**North Dakota.** Where an adopted statute has not been interpreted and construed by federal courts at the time of enactment by the state legislature, subsequent interpretation or construction by federal courts is not controlling, but may be persuasive.  State v. Wells, 276 N.W.2d 679 (N.D. 1979).

**Vermont.**  State v. Wilcox, 160 Vt. 271, 628 A.2d 924 (1993).


**United States.** Skaug v. Sheehy, 157 F.2d 714 (C.C.A. 9th Cir. 1946); Anderson v. United States, 11 Alaska 198, 157 F.2d 429 (C.C.A. 9th Cir. 1946).


A statute making it a misdemeanor for person to keep a house of ill repute was adopted from the California Penal Code and is construed in light of the California appellate decisions in existence at the time the Guam Codes were adopted in 1933, and subsequent California decisions may be persuasive but are not necessarily controlling. Paulino v. Government of Guam, 145 F. Supp. 549 (D. Guam 1956).


**Arkansas.** Copeland v. Union Industrial Loan Corporation, 185 Ark. 643, 48 S.W.2d 845 (1932).

**Kansas.**  State ex rel. Carrington v. Schutts, 217 Kan. 175, 535 P.2d 982, 76 A.L.R.3d 700 (1975).


**Maryland.** Munday v. Unsatisfied Claim and Judgment Fund Bd., 233 Md. 169, 195 A.2d 720, 2 A.L.R.3d 755 (1963).

**New Mexico.**  Ickes v. Brimhall, 42 N.M. 412, 79 P.2d 942 (1938).


**North Dakota.**  State v. Wells, 276 N.W.2d 679 (N.D. 1979).

**Utah.**  Donahue v. Warner Bros. Pictures Distributing Corp., 2 Utah 2d 256, 272 P.2d 177 (1954).



**Virginia.** Big Jack Overall Co. v. Bray, 161 Va. 446, 171 S.E. 686 (1933).

**Wisconsin.**  State v. Szarkowitz, 157 Wis. 2d 740, 460 N.W.2d 819 (Ct. App. 1990).

**Alabama.** Jett v. Turner, 215 Ala. 352, 110 So. 702 (1926).

**Arizona.**  Gibson v. Gordon, 30 Ariz. 310, 246 P. 1036 (1926).

**Arkansas.** McIlroy v. Fugitt, 182 Ark. 1017, 33 S.W.2d 719, 73 A.L.R. 1223 (1930).

**Illinois.**  F & F Laboratories, Inc. v. Chocolate Spraying Co., 6 Ill. App. 2d 299, 127 N.E.2d 682 (1st Dist. 1955) (overruled in part on other grounds by,  Skolnick v. Martin, 47 Ill. App. 2d 167, 197 N.E.2d 739 (1st Dist. 1964)).

**Iowa.** Cassady v. Wheeler, 224 N.W.2d 649 (Iowa 1974).


**Michigan.** Goodell v. Yezerski, 170 Mich. 578, 136 N.W. 451 (1912).


**Missouri.** McKenzie v. Missouri Stables, 225 Mo. App. 64, 34 S.W.2d 136 (1930).

**Montana.** Edgar v. Hunt, 218 Mont. 30, 706 P.2d 120 (1985).

**North Dakota.** State v. Kisse, 351 N.W.2d 97 (N.D. 1984).

**Ohio.** United Steelworkers of America, AFL-CIO v. Doyle, 77 Ohio L. Abs. 385, 150 N.E.2d 334 (C.P. 1958).

**Wisconsin.**  State v. Szarkowitz, 157 Wis. 2d 740, 460 N.W.2d 819 (Ct. App. 1990).

**Idaho.** Courts look to the interpretation given by the other state's courts at the time the statute was adopted, and construe it in a similar manner, even though the other state changed its construction of the statute thereafter.  Leliefeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983).

**Alabama.**  Estate of Walton v. State Dept. of Revenue, 579 So. 2d 643 (Ala. Civ. App. 1991).

325 Or. 404  
Supreme Court of Oregon.

Jerrold W. JONES, Petitioner on Review,

v.

GENERAL MOTORS CORPORATION, a Delaware  
corporation and Wentworth Chevrolet Co., an  
Oregon corporation, Respondents on Review.

CC 9304-02799; CA A84036; SC S43153.

|  
Argued and Submitted Jan. 16, 1997.

|  
Decided June 26, 1997.

### Synopsis

Police officer who suffered from illness which was alleged to have stemmed from leakage of water into passenger area of squad car brought products liability action against manufacturer and seller of squad car. Defendants moved for summary judgment, and the Circuit Court, Multnomah County, George M. Joseph, Senior Judge, granted motion. Police officer appealed, and the Court of Appeals reversed, 139 Or.App. 244, 911 P.2d 1243. Review was allowed, and the Supreme Court, Durham, J., held that: (1) 1995 amendment to summary judgment rule codified prior court decisions interpreting rule, but otherwise effected no substantive change, and did not “federalize” rule, and (2) fact issues as to whether officer's illness was idiosyncratic, and whether sensitivity was not shared by identifiable group of prospective consumers, precluded summary judgment.

Court of Appeals affirmed, Circuit Court reversed, and remanded.

**Procedural Posture(s):** On Appeal; Motion for Summary Judgment.

### Attorneys and Law Firms

Robert K. Udziela, of Pozzi Wilson Atchison, Portland, argued the cause and filed the petition for petitioner on review.

Charles F. Adams, of Stoel Rives LLP, Portland, argued the cause for respondents on review and filed a brief. With him on the response to the petition was John V. Acosta.

Anthony A. Allen, Salem, and Phil Goldsmith, Portland, filed briefs on behalf of amicus curiae Oregon Trial Lawyers Association.

James N. Westwood, of Miller, Nash, Wiener, Hager & Carlsen LLP, Portland, filed a brief on behalf of amicus curiae Oregon Association of Defense Counsel.

Before CARSON, C.J., and GILLETTE, VAN  
HOOMISSEN, FADELEY, DURHAM and KULONGOSKI,  
JJ. \*

### Opinion

\*407 DURHAM, Justice.

This is an action for damages for negligence and strict liability. Plaintiff appeals from a judgment entered after the trial court granted defendants' motion for summary judgment. The dispositive question is whether a 1995 amendment to ORCP 47 C permits entry of a summary judgment for defendants on this record. We agree with the Court of Appeals that defendants are not entitled to a summary judgment, although we disagree with its reason for reaching that conclusion. Accordingly, we affirm the decision of the Court of Appeals, in part on different grounds, reverse the judgment of the circuit court, and remand to the circuit court for further proceedings.

ORCP 47 C, with the 1995 amendment emphasized, provides:

“The motion and all supporting documents shall be served and filed at least 45 days before the date set for trial. The adverse party shall have 20 days in which to serve and file opposing affidavits and supporting documents. The moving party shall have five days to reply. The court shall have discretion to modify these stated times. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. **No genuine issue as to a material fact exists if, based upon the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment.** A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a



genuine issue as to the amount of damages.” Or Laws 1995, ch. 618, § 5 (bold in original).

The parties agree that the 1995 amendment applies to this case. *See* Or.Laws 1995, ch. 618, § 140(2) (“The amendments to ORCP \* \* \* 47 C \* \* \* apply to all actions, whether commenced before, on or after the effective date [September 9, 1995] of this Act.”).


**\*408** The Court of Appeals' opinion states the facts in detail. *Jones v. General Motors Corp.*, 139 Or.App. 244, 911 P.2d 1243 (1996). We summarize here only those facts necessary to explain our disposition on review. Because this is a summary judgment proceeding, we view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to plaintiff, who is the party opposing the motion. *Double Eagle Golf, Inc. v. City of Portland*, 322 Or. 604, 606, 910 P.2d 1104 (1996).

Plaintiff, a Portland police officer, developed a permanent illness when he was exposed to a contaminant in the air inside a patrol car furnished to him by the City of Portland (City). Plaintiff's medical records described the condition as a “predisposition **\*\*611** to sensitivity to these substances.”<sup>1</sup> Defendant General Motors Corporation (GMC) manufactured the car. Defendant Wentworth Chevrolet Co. (Wentworth) sold the car to City in 1991.

City mechanics installed a radio and other electrical equipment in the car by drilling holes in the bulkhead that separated the engine and the passenger compartments. A Wentworth mechanic examined the car, smelled a musty odor, and determined that the odor resulted from water leaking into the passenger compartment through holes drilled in the firewall by City.

A City mechanic, Schenfeld, also examined the car and opined that the leak resulted from a gap in the sealant around the bulkhead below the windshield. He did not agree that the leak resulted from the holes drilled in the bulkhead for electrical wiring. Schenfeld also discovered a white substance growing under the floor coverings as a result of the leak. He said that the white substance caused the odor in the car. After Schenfeld sealed the gap with silicone, there were no further reports of moisture in the car.

Plaintiff alleged that defendants were negligent in distributing the car without a seal adequate to prevent leakage of water into the passenger compartment and in failing to inspect

the car adequately. He further alleged that those **\*409** were unreasonably dangerous, defective conditions for which defendants were strictly liable under  ORS 30.920.<sup>2</sup>

Defendants moved for summary judgment. They argued, first, that the product liability claim lacked merit because no proof existed that the car was unreasonably dangerous and because the car had undergone a substantial post-sale modification after defendants delivered it to City.<sup>3</sup> Second, defendants argued that plaintiff had no evidence demonstrating that defendants were negligent in manufacturing or selling the car. Third, defendants argued that the court should dismiss both the negligence and product liability claims because plaintiff's injury was an idiosyncratic reaction to a contaminant in the car—a result of his own peculiar sensitivity—and not a reaction that an ordinary consumer would experience. The trial court granted summary judgment to defendants.

**\*410** On appeal, the Court of Appeals reversed. Addressing defendants' first two arguments, the Court of Appeals held that Schenfeld's testimony was sufficient to create a dispute as to a material fact under plaintiff's theories that the car was unreasonably dangerous, that the injury did not result from a post-sale product modification of the car, and that defendants were negligent. *Jones*, 139 Or.App. at 261–62, 264–65, 911 P.2d 1243. The parties have not sought review **\*\*612** with respect to those issues, and we do not address them further.






We turn to defendants' third argument, *viz.*, that they are not liable for plaintiff's “idiosyncratic” reaction to a contaminant in the car. At the outset, we emphasize that our discussion of that argument should not be mistaken as a holding that such a “defense” exists, under Oregon law, in cases of this kind. In regard to defendants' argument, the Court of Appeals said:

“Instead, courts construing that ‘defense’ have recognized it involves a two-step process. First, the defendant has the burden of producing evidence that the plaintiff's injury from use of the defendant's product is the result of an allergic response. Second, after the defendant has satisfied that initial burden of production, the plaintiff bears the burden of proving that his or her reaction, rather than being idiosyncratic, could be experienced by an identifiable class of consumers.” *Id.* at 263, 911 P.2d 1243.

The Court of Appeals held that defendants “satisfied their burden of producing evidence that plaintiff's injuries were the result of an allergic reaction.”<sup>4</sup> *Id.* at 264, 911 P.2d 1243. The court also held that “plaintiff” was then obligated

to present evidence that his reaction was not idiosyncratic. He failed to do so.” *Ibid.* The court reasoned that the 1995 amendment to ORCP 47 C imposed on plaintiff the burden to produce evidence on which a reasonable juror could rely in returning a verdict on the non-idiosyncrasy of the allergic response \*411 because, at trial, plaintiff would bear the burden of persuasion on that issue. The court then remanded the case for further proceedings because plaintiff did not have the opportunity to introduce evidence that would satisfy the burden of persuasion that amended ORCP 47 C imposed. *Id.* at 264–65, 911 P.2d 1243.

On review, plaintiff argues that the Court of Appeals erred in holding that, under amended ORCP 47 C, plaintiff must produce evidence to establish that his reaction was not idiosyncratic. Plaintiff contends that, under both the prior and amended versions of ORCP 47 C, the moving party has the initial burden to produce evidence establishing that there is no genuine issue of material fact and that that party is entitled to judgment as a matter of law as to all issues. Plaintiff argues that the Court of Appeals incorrectly concluded that the legislature intended to shift the burden of production from the moving party to the non-moving party when it amended ORCP 47 C.

Our task is to interpret ORCP 47 C to discern the legislature's intent when it amended that rule. See  *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610, 859 P.2d 1143 (1993) (stating standards for interpreting legislation); ORS 174.010.<sup>5</sup> Specifically, we must determine whether the legislature intended, under the circumstances of a summary judgment proceeding, to shift the burden of production of evidence from the moving party to the adverse party. We first examine the text and context of the statute.  *PGE* 317 Or. at 610, 859 P.2d 1143. As a part of context, this court considers, among other things, other provisions of the same statute, other related statutes, prior versions of the statute, and this court's decisions interpreting the statute.  *Id.* at 611, 859 P.2d 1143 (context includes other provisions of same statute and related statutes); *State ex rel. Penn v. Norblad*, 323 Or. 464, 467, 918 P.2d 426 (1996) (context includes prior versions of the statute);  *Gaston v. Parsons*, 318 Or. 247, 252, 864 P.2d 1319 (1994) (context includes case law interpreting the text of the statute itself and other related statutes). See also *State v. Clevenger*, 297 \*412 Or. 234, 244,  683 P.2d 1360 (1984) (“In enacting subsequent legislation,

the legislature is considered \*\*613 to be aware of this court's decisions” (citation omitted)).

The sentence added to ORCP 47 C in 1995 states:

“No genuine issue as to a material fact exists if, based upon the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment.”


The 1995 amendment did not modify the wording of any other part of ORCP 47 C. In summary, the amendment purports to identify a circumstance in which a court, in resolving a summary judgment motion, must conclude that no genuine issue of material fact exists. That circumstance is that, on the record before the court, no objectively reasonable juror could return a verdict for the party who opposes the motion.


We turn to an examination, phrase by phrase, of the amendatory sentence. We note, first, that it incorporates several legal terms and phrases that are well known in Oregon civil procedure. The introductory phrase “[n]o genuine issues as to a material fact exists” is not a separate statement of new substantive law. Rather, it informs the reader that what follows is a description of a circumstance in which a summary judgment motion can meet the substantive law standard set out in the *preceding* sentence of ORCP 47 C, which states:


“The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that *there is no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law.” (Emphasis added.)

The phrase in question, in short, introduces and defines the subject addressed in the sentence.

Although the phrase “record before the court” is new to ORCP 47 C, the text and context of that phrase demonstrate that the legislature intended that phrase to serve as a shorthand reference to the documents listed in the preceding sentence of subsection C (“pleadings, depositions, and admissions on

file, together with affidavits”). See  *Fields v. Jantec*, \*413 Inc., 317 Or. 432, 437, 857 P.2d 95 (1993) (illustrating that the record before the court, under ORCP 47 C, includes “affidavits and other evidence in support of, and in opposition to,” the motion for summary judgment). We perceive no textual basis for concluding that the legislature intended that phrase to expand or contract the scope of the record that the court considers on summary judgment, to alter either party’s burden of persuasion or proof, or to modify the court’s decision-making standards on summary judgment.

Consistent with the foregoing, the direction in the 1995 amendment that the court shall view the record “in a manner most favorable to the adverse party” also repeats the rule long followed by this court that, in deciding a summary judgment motion, the court is obliged to “review the record on summary judgment in the light most favorable to the party opposing the motion.”  *Forest Grove Brick v. Strickland*, 277 Or. 81, 87, 559 P.2d 502 (1977). We perceive in that phrase no substantive change in the law relating to motions for summary judgment.


The phrase “no objectively reasonable juror could return a verdict for the adverse party” also is new to ORCP 47 C, but, like the other phrases already discussed, the concept that that phrase embodies is a familiar one. In  *Seeborg v. General Motors Corporation*, 284 Or. 695, 700–01, 588 P.2d 1100 (1978), this court held that a court may allow a summary judgment motion, due to the absence of a genuine issue as to any material fact for trial, if the record fails to show the existence of a “triable issue,” that is, sufficient evidence to entitle a party to a jury determination:

“In deciding whether a genuine issue of fact exists, courts generally read ‘genuine issue’ to mean ‘triable issue.’ Before a party has a triable issue, he or she must have sufficient evidence to be entitled to a jury determination. This has led both courts and commentators to compare the motion for summary judgment to the motion for a directed verdict. \*\*614 10 Wright & Miller, *Federal Practice and Procedure* § 2713.


“ \* \* \* \* \*

\*414 “ \* \* \* All defendants have to show is that the admitted factual posture of the case is such that plaintiff would not be entitled to a jury determination.”

As noted above, *Seeborg* and its progeny are context for the 1995 amendment. Addressing first the phrase “no objectively reasonable juror,” we see no distinction of substance in that phrase and the references in *Seeborg* to a “jury.” The premise of *Seeborg*’s reference to a “jury” is that the court must deny summary judgment if a hypothetical objectively reasonable *factfinder* could resolve a material dispute as to the facts in favor of the adverse party. In resolving a summary judgment motion, a court would arrive at the same answer whether it inquires, under *Seeborg*, if the record calls for a “jury” determination or asks, instead, under the text of the 1995 amendment, whether “no objectively reasonable juror” could decide the facts against the moving party. Consequently, we conclude that the phrase “no objectively reasonable juror” effects no modification in the substance of ORCP 47 C.

We reach the same conclusion from our analysis of the phrase “could return a verdict for the adverse party” in the 1995 amendment. That phrase embodies the same analytical standard that *Seeborg* employed in stating that a moving party is entitled to summary judgment if, on the record before the court, the adverse party “would not be entitled to a jury determination.”  *Seeborg*, 284 Or. at 701, 588 P.2d 1100. Stated differently, under both *Seeborg* and the 1995 amendment, summary judgment is appropriate only if the agreed upon facts would compel a jury to return a verdict for the moving party. In reaching our conclusion, we see no ambiguity in either the text or context of the 1995 amendment to ORCP 47 C.

Defendants offer a series of propositions that are contrary to our view of the unambiguous meaning of the 1995 amendment to ORCP 47 C. First, they argue that the court is obliged to conclude that the addition of a new sentence to ORCP 47 C necessarily represents a substantive alteration of the meaning of the rule.<sup>6</sup> While that proposition often may be \*415 true, it is by no means universally so. And where, as here, the text and context show otherwise, the rigid application of defendants’ proposition would allow the bare fact of the amendment to overcome what the amendatory text actually says.

Defendants next argue that this court is bound to construe the 1995 amendment as a substantive change in law, not a codification of existing rules from case law construing ORCP 47 and its statutory predecessor,  ORS 18.105 (1975), because the amendment embodies new analytical criteria that did not exist in the former version of ORCP 47 C.

According to defendants, the 1995 rule amendment means that a party opposing a summary judgment motion now bears a burden to produce evidence, sufficient to create an issue of fact, on those issues about which that party would bear a burden of proof at trial. However, our preliminary analysis of the 1995 amendment to ORCP 47 C, in the light of the preexisting rule and judicial interpretations of it, discloses that the sentence added by the 1995 amendment codified, but otherwise effected no substantive change in, the law that obtained under this court's decisions interpreting the preexisting version of ORCP 47 C. We deem it significant that the amendment, by its terms, does not alter the quantum of proof required to support or oppose a motion for summary judgment, shift any evidentiary burden to either party, or **\*\*615** modify the standard that governs the court's decision on a motion for summary judgment. As we have indicated, our scrutiny of the amendment ends with its terms, whose meaning we find to be clear.


The parties offer conflicting arguments about *why* the legislature adopted the 1995 amendment to ORCP 47 C. **\*416** We decline to resolve that dispute. Paying heed to ORS 174.010, this court must ascertain and declare what is contained in the amendment. If, as here, the amendment's text is not ambiguous, the parties' disagreement about the legislature's motive for doing what it did is beside the point.


One aspect of the parties' dispute does merit a response. The parties debate whether the legislature, in adopting the 1995 amendment, intended to correct the result in several unreviewed decisions of the Court of Appeals that assertedly depart from the summary judgment standards required by this court's decisions and that this court did not review subsequently. We need not and do not address whether that asserted departure exists.


Without question, the legislature is entitled to adopt legislation that modifies the result in Court of Appeals cases (or this court's cases) that interpret and apply rules regarding summary judgment. The legislature need not stay its hand until this court reviews and accepts or modifies the interpretations of such rules by the Court of Appeals. However, the legislature should not assume that an interpretation of a rule regarding summary judgment by the Court of Appeals that contradicts a prior interpretation of the same rule by this court constitutes a change in Oregon law on that point. What is true in *any* case of an asserted conflict in the decisional law of this court and the Court of Appeals also is true in the context of a conflict in the interpretation of the

rules that govern a summary judgment motion. In determining the substance of Oregon law on a legal question, the decisions of this court describe the law of this state authoritatively and prevail over conflicting decisions of the Court of Appeals.


Defendants next argue that three 1986 decisions of the United States Supreme Court that interpreted FRCP 56 should influence our construction of the 1995 amendment to ORCP


47 C. The cases are  *Matsushita Elec. Ind. Co. v. Zenith Radio*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986);

 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct.

2505, 91 L.Ed.2d 202 (1986); and  *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).



Defendants contend that those cases are relevant in two respects.


**\*417** First, defendants assert that, because Oregon's first summary judgment statute,  ORS 18.105 (1975) (enacted in Or.Laws 1975, ch. 106, § 1) (now ORCP 47), was closely

patterned after FRCP 56, *see*  *Garrison v. Cook*, 280 Or. 205, 209, 570 P.2d 646 (1977) (so stating), the 1986 decisions of the United States Supreme Court construing FRCP 56 are context for the 1995 amendment to ORCP 47 C and bind this court in its construction of the amendment. Defendants emphasize that this court in *Garrison* said that it would give cases interpreting FRCP 56 considerable weight in construing the statutory predecessor to ORCP 47 C. *Ibid.*

Second, according to defendants, if the text and context of the 1995 amendment conclusively demonstrate that the legislature meant to codify existing case law, that case law includes the three United States Supreme Court decisions cited above. They contend that the 1995 amendment reenacted ORCP 47 C in its entirety. Defendants also contend that the reenactment incorporates the decisions of the United States Supreme Court that precede the 1995 amendment as well as this court's decision in *Garrison*, cited above, that federal cases interpreting the federal rule are entitled to great weight in this court's interpretation of the state rule. For that proposition, defendants rely on the rule stated in *State v. Ford*, 310 Or. 623, 637 n. 21, 801 P.2d 754 (1990) (“[W]hen a statute has been construed by the court of last resort of the state and is later reenacted, it is deemed that the legislature has adopted the court's construction unless the contrary purpose is clearly shown.”). Defendants argue that, because the 1986 decisions of the United States Supreme Court adopted a construction of FRCP 56 that differs from the **\*\*616** construction that




this court had adopted regarding  ORS 18.105 (1975) and ORCP 47 C, an ambiguity arises that necessitates an examination of legislative history. See  PGE, 317 Or. at 611, 859 P.2d 1143 (if, but only if, the statutory text and context fail to make the legislature's intention clear, court will consider legislative history).


Defendants' arguments are incorrect. We disagree with defendants' contention that the legislature's addition of one sentence to ORCP 47 C also constituted a reenactment of the balance of that rule.  *Allison v. Hatton*, 46 Or. 370, 372, 80 P. 101 (1905), states the applicable rule:

**\*418** “The rule is that where a section of the statute is amended so as to read ‘as follows,’ and the section is then set forth with the changes intended to be made, those portions of the old section that are merely copied into the amendment without change are not to be considered as re-enacted or as a new statement of the law, but are to be read as a part of the earlier statute, if in conflict with another law passed after the section amended and before the amendatory act, unless there is a clear manifestation of legislative intention to the contrary. In the absence of such an intention, it is the change or additions incorporated in the section amended only that are to be considered enacted.”


Applying *Allison* here, we conclude that the 1995 amendment added one sentence to ORCP 47 C, and that we perceive no clear indication that the legislature also intended, by that action, to reenact ORCP 47 C in its entirety.

Defendants' argument also misstates the relevance of the federal cases on which they rely to the 1995 amendment of ORCP 47 C. If the Oregon legislature adopts a statute or rule from another jurisdiction's legislation, we assume that the Oregon legislature also intended to adopt the construction of the legislation that the highest court of the other jurisdiction had rendered before adoption of the legislation in Oregon. See

 *State v. Cooper*, 319 Or. 162, 167–68, 874 P.2d 822 (1994) (so holding). In *Taylor v. Baker*, 279 Or. 139, 141 n. 2, 566 P.2d 884 (1977), this court made it clear that, in the present context, the federal cases to which that rule applies are those decided before Oregon enacted its summary judgment statute:

“Oregon's summary judgment statute,  ORS 18.105 (Oregon Laws 1975, ch 106, § 1), is patterned after Rule 56 of the Federal Rules of Civil Procedure. However, subsection (d) of Rule 56 was not adopted by the

legislature. \* \* \* Therefore, federal cases interpreting those aspects of Rule 56, other than subsection (d) thereof, and decided prior to the enactment of this state's summary judgment statute, are entitled to great weight.” (Citations omitted.)

The 1986 federal cases on which defendants rely did not exist when Oregon enacted  ORS 18.105 (1975).

What did exist when the legislature amended the rule in 1995 was the then-current version of ORCP 47 C and **\*419** a substantial body of case law from this court that had interpreted that rule. In 1995, the legislature amended Oregon's summary judgment rule, not FRCP 56. We already have concluded, tentatively, that the 1995 amendment codifies, and does not alter, this court's decisions construing ORCP 47 C. The 1986 federal decisions cited by defendants create no ambiguity about the meaning of ORCP 47 C, as construed in this court's decisions.

Defendants' arguments do not persuade us that, in reaching that view, we have overlooked important contextual information or that an ambiguity obliges us to resort to legislative history. Defendants present no other argument that indicates that our tentative reading of the 1995 amendment is incorrect. In consequence of the foregoing, we conclude that the 1995 amendment codified, but did not alter materially, the standards regarding summary judgment that this court had expressed in its case law.

We proceed to an application of ORCP 47 C, as amended in 1995, to the record of this case. Defendants produced evidence that plaintiff suffered a predisposition to sensitivity to substances inside the car. From that predicate fact, they contend that, at trial, plaintiff would bear the burden to prove that his condition is not idiosyncratic **\*\*617** but could be experienced by an identifiable class of consumers. As the Court of Appeals' opinion demonstrates, some courts in other jurisdictions have discussed or adopted the rule that defendants posit, *Jones*, 139 Or.App. at 254–55, 911 P.2d 1243, but this court has not done so.

The premise of defendants' argument is that the idiosyncrasy of plaintiff's condition—itsself a factual question—defeats his claim because no manufacturer or seller could have foreseen that the car might cause such a condition. Even though defendants' argument rests on the idiosyncrasy of plaintiff's condition, the record does not demonstrate, let alone establish without contradiction, that plaintiff's predisposition

to a substance in the car was idiosyncratic. The record does not eliminate the factual question whether plaintiff's predisposition was an allergy and, if so, whether plaintiff peculiarly was allergic to the cause of the predisposition.

\*420 Moreover, assuming, *arguendo*, that defendants have identified a factual question on which plaintiff would have the burden at trial, defendants cannot prevail on summary judgment. According to *Seeborg*:

“The moving party has the burden of showing that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. The record on summary judgment is viewed in the light most favorable to the party opposing the motion. *This is true even as to those issues upon which the opposing party would have the trial burden.*” 284 Or. at 699, 588 P.2d 1100 (emphasis added; citations omitted).

To the same effect, see *Hampton Tree Farms, Inc. v. Jewett*, 320 Or. 599, 613, 892 P.2d 683 (1995) (on summary judgment, “the burden falls on [the moving party] even though [the adverse party] would have had the burden of establishing its claims at the time of trial” (citing *Welch v. Bancorp Management Advisors*, 296 Or. 713, 716, 679 P.2d 866 (1984) (same rule))).

We conclude that defendants are not entitled to summary judgment. ORCP 47 C, as amended, codifies the holdings of this court's prior cases, without material change. The amendment does not alter the rule from *Seeborg*, *Welch*, and *Hampton Tree Farms* quoted above. The record fails to establish the absence of a triable issue of fact about whether plaintiff's condition was idiosyncratic and that his sensitivity was not shared by an identifiable group of prospective consumers. Consequently, the trial court erred in granting summary judgment.

The decision of the Court of Appeals is affirmed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings.

#### All Citations

325 Or. 404, 939 P.2d 608, Prod.Liab.Rep. (CCH) P 15,029

#### Footnotes

\* Graber, J., did not participate in the consideration or decision of this case.

1 The Court of Appeals' opinion stated that plaintiff suffered an “allergic reaction,” *Jones*, 139 Or.App. at 264, 911 P.2d 1243, but the record does not support that statement.

2 *ORS 30.920* provides in part:

“(1) One who sells or leases any product in a defective condition unreasonably dangerous to the user or consumer or to the property of the user or consumer is subject to liability for physical harm or damage to property caused by that condition, if:

“(a) The seller or lessor is engaged in the business of selling or leasing such a product; and

“(b) The product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold or leased.

“(2) The rule stated in subsection (1) of this section shall apply, even though:

“(a) The seller or lessor has exercised all possible care in the preparation and sale or lease of the product; and

“(b) The user, consumer or injured party has not purchased or leased the product from or entered into any contractual relations with the seller or lessor.”

- 3 Modification of a product is a defense to a product liability claim under certain circumstances. ORS 30.915 provides:

“It shall be a defense to a product liability civil action that an alteration or modification of a product occurred under the following circumstances:

“(1) The alteration or modification was made without the consent of or was made not in accordance with the instructions or specifications of the manufacturer, distributor, seller or lessor;

“(2) The alteration or modification was a substantial contributing factor to the personal injury, death or property damage; and

“(3) If the alteration or modification was reasonably foreseeable, the manufacturer, distributor, seller or lessor gave adequate warning.”

- 4 In the Court of Appeals, plaintiff argued that defendants' evidence of plaintiff's condition, consisting of chart notes prepared by plaintiff's physician, was inadmissible. The Court of Appeals concluded that plaintiff had waived that objection. *Jones*, 139 Or.App. at 264, 911 P.2d 1243. Plaintiff does not challenge that ruling on review and, accordingly, we do not address it.

- 5 ORS 174.010 provides in part:

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted \* \* \*.”

- 6 See  *Fifth Avenue Corp. v. Washington Co.*, 282 Or. 591, 597–98, 581 P.2d 50 (1978):

“In the construction of amendatory acts, it is presumed that material changes in language create material changes in meaning. It is also said that a presumption exists that amendatory acts do not change the meaning of preexisting language further than is expressly declared or necessarily implied.” (Citations omitted.)

Although that passage in *Fifth Avenue* embodies a correct rule of law, the references to “presumption” in that passage potentially are misleading. The task of interpreting a legislative amendment requires the court to ascertain and declare the substance of the legislative enactment, see ORS 174.010 (so stating), not to apply a “presumption” favoring or disfavoring a change in meaning.

769 So.2d 273  
Supreme Court of Alabama.

Bettye CALLENS, individually and as administrator  
of the estate of Julia Presley, deceased

v.

JEFFERSON COUNTY NURSING HOME et al.

1980323.

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Feb. 11, 2000.

|

Rehearing Denied April 28, 2000.

**Synopsis**

Daughter of nursing home resident, individually and on behalf of resident's estate, sued county nursing home, county, county commission, commissioners, and others, alleging civil conspiracy and the tort of outrage in daughter's individual capacity and alleging civil conspiracy, personal injury to resident, and negligent hiring, training, and supervision in her representative capacity. The Circuit Court, Jefferson County, No. CV-97-03715, Arthur J. Hanes, Jr., J., dismissed amended complaint and entered summary judgment for all defendants. Daughter appealed. The Supreme Court, Lyons, J., held that: (1) personal injury claims survived resident's death; (2) amended complaint against county nursing home and others, seeking damages on behalf of resident for personal injury, related back to original complaint by daughter against same defendants, for limitations purposes; (3) nursing home document promising "to ensure a safe, clean and comfortable environment" gave rise to a contractual duty to maintain sanitary conditions, precluding summary judgment for nursing home on basis that breach of this duty sounded in tort, not in contract; and (4) by failing to appeal from summary judgment as it related to her wrongful-death claim, daughter did not have a valid underlying cause of action to support her claim for conspiracy to commit acts resulting in her mother's wrongful death.

Affirmed in part; reversed in part; and remanded.

**Procedural Posture(s):** On Appeal; Motion for Summary Judgment.

**Attorneys and Law Firms**

\*275 Rhonda Marie of Gaiser & Associates, P.C.,  
Birmingham, for appellant.

Jasper P. Juliano and Dorothy A. Powell of Parsons, Lee & Juliano, P.C., Birmingham, for appellees Jefferson County Nursing Home, Jefferson County, and Jeff Germany.

**Opinion**

LYONS, Justice.

Bettye Callens, individually and as the administrator of the estate of her mother, Julia Presley, appeals a judgment dismissing her amended complaint and a summary judgment (as to her original complaint) in favor of the defendants Jefferson County Nursing Home ("JCNH"); Jefferson County; and the Jefferson County Commission and its Commissioners. We affirm in part, reverse in part, and remand.

*I. Facts and Procedural History*

From February 1992 through April 4, 1996, Presley was a resident at JCNH, a nursing home facility owned and operated by Jefferson County. Callens claims that, when Presley was admitted, JCNH contracted to provide care and treatment for Presley. Callens also alleges that, from September 1995 to March 1996, she made numerous complaints to JCNH, the Jefferson County Commission, and the Alabama Department of Public Health ("DPH") regarding the services and treatment Presley was receiving at JCNH and regarding the health and safety conditions at JCNH. These complaints included the complaint that her mother was living in unsanitary conditions (for example, that she was occupying an ant-infested bed); that her mother \*276 was frequently dressed in unclean and soiled clothing; and that JCNH was not carefully supervising her mother. After Callens made her complaints, the DPH investigated JCNH, served JCNH and Jefferson County with a notice of the deficiencies at JCNH, and asked them to submit a plan of correction.

On December 11, 1995, while JCNH employees were attempting to insert a Foley catheter, Presley suffered a fracture to her right hip and her right and left pubic bones. Callens alleges that the fractures were caused by negligence on the part of JCNH employees while they were restraining Presley in their attempt to insert the catheter. The nurse's notes regarding the incident indicate that several JCNH employees were restraining Presley and that the employee holding Presley's right leg bent it toward the head of Presley's bed until her leg popped audibly. Callens alleges that this



incident caused Presley to have surgery on her right hip, on February 16, 1996. Callens also alleges that JCNH employees intentionally withheld from her information about this incident, and that, when she asked JCNH employees about her mother's injury, they told her that Presley herself had somehow injured her knee.

On April 2, 1996, Callens, as Presley's legal guardian, filed a notice of claim with the Jefferson County Commission regarding Presley's December 11, 1995, injury.<sup>1</sup> On April 4, 1996, Presley experienced a fracture to her left hip and, on April 8, 1996, had surgery to replace her left hip. After this surgery, Presley's doctors released her from the hospital to a different nursing home in Jefferson County, where she resided until she died on May 9, 1996.

On June 17, 1997, Callens, individually and as personal representative of Presley's estate, sued JCNH; Jefferson County; the Jefferson County Commission and its Commissioners;<sup>2</sup> Augmentation, Inc., a corporation that contracts to supply nurses to work at nursing homes and hospitals; and Steve Cox, who the plaintiff alleged to be an employee of either JCNH or Augmentation. Callens, in her representative capacity, claimed damages for an alleged wrongful death; in both her individual and representative capacities, she alleged, and sought damages for, a civil conspiracy; in her individual capacity she claimed damages for breach of an alleged contract between her and JCNH; and, in her individual capacity she alleged, and sought damages for, the tort of outrage. On June 18, 1998, Callens filed an amended complaint stating claims, made in her representative capacity, alleging (1) personal injury to Presley prior to her death and (2) negligent hiring, training, and supervision on the part of JCNH and Augmentation, Inc., which negligent acts she alleged caused personal injury to Presley prior to her death.

The trial court dismissed Callens's amended complaint, stating:

“Although said claims may be deemed to survive the death of Julia Presley, pursuant to *Groeschner v. County of Mobile*, 512 So.2d 70 [ (Ala.1987) ], the amendment of this wrongful death complaint to allege and claim personal injuries was not filed within the statute of limitations nor does it relate back.

Accordingly, all claims for personal injury are dismissed.”

After dismissing the amended complaint, the court entered a summary judgment in favor of all defendants on the claims asserted in the original complaint.

Callens appeals the trial court's dismissal of her amended complaint and the summary judgment for JCNH, Jefferson County, and its Commission and Commissioners entered on her original complaint. \*277 Callens does not appeal as to her claims against Commissioner Jeff Germany (see note 2), Augmentation, and Cox.

## II. Dismissal of the Amended Complaint

### A. Survival of the Cause of Action

The defendants involved in this appeal (JCNH and Jefferson County and its Commission and Commissioners) argue that the personal-injury claims are barred because the amended complaint, seeking damages for Presley's personal injury, was not filed before Presley's death. According to § 6-5-462, Ala.Code 1975, personal-injury claims do not survive the death of a plaintiff unless an action has been filed before the plaintiff's death. Presley died on May 9, 1996; Callens filed her amended complaint on June 18, 1998. However, on April 2, 1996 (and allegedly on December 9 and 30, 1996), acting pursuant to § 6-5-20, Ala.Code 1975, Callens filed a notice of claim with the Jefferson County Commission based on her mother's December 11, 1995, injury.<sup>3</sup> Section 6-5-20 provides, in pertinent part:

“(a) An action must not be commenced against a county until the claim has been presented to the county commission, disallowed or reduced by the commission and the reduction refused by the claimant.

“(b) The failure or refusal of such a county commission to enter upon its minutes the disallowance or reduction of the claim for 90 days is a disallowance.”

The effect of this statute is that a claimant may not commence an action “against a county until the claim is presented to and disallowed by the county commission.” *Marshall County v. Uptain*, 409 So.2d 423, 425 (Ala.1981).

The statutory requirement of presenting a claim to the county commission is a condition precedent to filing a lawsuit against the county. *Williams v. McMillan*, 352 So.2d 1347 (Ala.1977).

By complying with § 6–5–20, Callens took the appropriate action to allow the personal-injury claims to survive Presley's death. In *Groeschner v. County of Mobile*, 512 So.2d 70 (Ala.1987), a person who had suffered injuries in an automobile accident filed a claim with the county commission pursuant to § 6–5–20. He died of unrelated causes after the expiration of the 90–day period allowed for the commission to act on the claim. Immediately after his death (which occurred some 30 days after the running of the 90–day period), an action was filed based on his personal injuries. This Court held that by complying with § 6–5–20, the injured person “had taken appropriate action to meet the requirement that he first present his claim to the county commission before filing suit against the county.” *Id.* at 72. Moreover, because he took that action, he was deemed to have satisfied the requirement of § 6–5–462, so that his personal-injury action survived his death. *Id.*

In this case, Callens, as Presley's guardian, filed a notice of claim with the Jefferson County Commission in April 1996, more than one month before Presley died. Because Presley died before the 90–day statutory period had expired, her case is even stronger than was the plaintiff's case in *Groeschner*; the claims made on her behalf had not been disallowed by the Jefferson County Commission (or deemed disallowed) at the time of her death. Section 6–5–20 prevented Callens or Presley from filing a lawsuit against the county until the Commission had acted on the notice or until the expiration of the 90–day statutory period. Callens's filing a notice of claim with the Jefferson County Commission was sufficient to constitute a filing within the meaning of § 6–5–462; therefore, the personal-injury claim asserted on behalf of \*278 Presley in Callens's amended complaint survived Presley's death.

### B. Statute of Limitations

Callens argues that the trial court erred in dismissing her amended complaint on the grounds that it was barred by the statute of limitations. In that amended complaint, Callens, in her capacity as personal representative, sought damages for personal injuries to Presley. Although a claim alleging personal injury is subject to a two-year statute of limitations, § 6–2–38(1), Ala.Code 1975, the personal-injury claims stated in Callens's amended complaint relate back to the

date she filed her original complaint because the allegations in the amended complaint arise out of the same “conduct, transaction, or occurrence” as the claims stated in the original complaint. Rule 15(c)(2), Ala. R. Civ.P., provides:

“(c) ... An amendment of a pleading relates back to the date of the original pleading when

“....

“(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading....”

In her amended complaint, Callens alleged that Presley's personal injuries were caused on December 11, 1995, by actions of JCNH, Augmentation, and Cox. Callens's claims stated in her original complaint alleging wrongful death, civil conspiracy, breach of contract, and the tort of outrage also arose out of events of December 11, 1995.

Callens's claims in the amended complaint alleging negligent hiring, training, and supervision that she alleges resulted in personal injury to Presley would relate back under Rule 15(c)(2), Ala. R. Civ.P., if those claims arose out of the same “conduct, transaction, or occurrence” as that alleged in the original complaint, i.e., the December 11, 1995, injury to Presley. JCNH, Augmentation, and Cox moved to dismiss these claims; the trial court granted the motion. A court should not grant a motion to dismiss unless, under the allegations of the complaint, the plaintiff can prove no set of facts under which she would be entitled to relief. *Thermal Components, Inc. v. Golden*, 716 So.2d 1166, 1167 (Ala.1998). From the allegations of the complaint, it was possible that the negligent acts related to hiring, training, and supervising could have occurred on the date of Presley's injury and could have related back to the date of the original complaint. We reverse the trial court's dismissal of these claims.

### III. Summary Judgment

Callens argues that the trial court improperly entered a summary judgment on the original complaint, in favor of JCNH and Jefferson County and its Commission and Commissioners. She complains only as to her claims alleging civil conspiracy, breach of contract, and the tort of outrage; she did not appeal as to the wrongful-death claim.

Our standard for reviewing a summary judgment is well settled. A summary judgment is proper if there was no genuine issue of material fact and the movant was entitled to a judgment as a matter of law. Rule 56, Ala. R. Civ.P. The defendants, as the parties moving for a summary judgment, had the burden of making a prima facie showing that no genuine issue of material fact existed and that they were entitled to a judgment as a matter of law. *Long v. Jefferson County*, 623 So.2d 1130 (Ala.1993). If the defendants made that showing, then the burden shifted to Callens to present evidence creating a genuine issue of material fact, so as to avoid the entry of a judgment against her. *Id.* In deciding whether the evidence created a genuine issue of material fact, we view the evidence in the light most favorable to the nonmovant and resolve all reasonable doubts against the movant. *Id.* In determining whether the nonmovant has created a genuine issue of material fact, we apply the “substantial-evidence rule”—evidence, to create a genuine issue of material fact, must be “substantial.” § 12–21–12(a), Ala.Code 1975. “Substantial evidence” is defined as “evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.” *West v. Founders Life Assurance Co. of Florida*, 547 So.2d 870, 871 (Ala.1989).<sup>4</sup>

#### A. Callens's Breach-of-Contract Claim

In her original complaint, Callens, in her individual capacity, alleged that JCNH contracted with her to provide care and treatment for her mother and to preserve her mother's dignity. Callens states that she suffered damage as a result of the breach of contract. When JCNH moved for a summary judgment on Callens's breach-of-contract claim, it argued only that Callens's “claim sounds in tort, not in contract” and that her sole remedy is a wrongful-death action based on a claim of medical negligence. In opposition to JCNH's motion for a summary judgment, Callens submitted her affidavit and a series of documents that she characterized as a “contract” between her and JCNH.<sup>5</sup> These documents included an estimate of costs for a Medicaid patient (Exhibit A to her affidavit) and a description of the items and services included in the nursing home's daily pay rate for private-pay residents (Exhibit B to her affidavit). The description of items included in the rates for private-pay residents included “[l]inen, housekeeping and maintenance services to ensure a safe, clean and comfortable environment.” In her affidavit, Callens stated:

“During her stay in Jefferson County Nursing Home, [Presley] was forced to live in unsafe and unsanitary conditions; she was relegated to an ant infested bed; she was frequently dressed in unclean and urine soiled clothing; her unit smelled of urine; and her unit was infested with flies.”

Callens also included these allegations in her complaint.

JCNH did not respond to Callens's submission in opposition to the summary-judgment motion. The trial court entered a summary judgment for JCNH, stating that Callens had not presented evidence indicating that Presley's death was caused by the alleged negligence. On appeal, Callens argues that the trial court erred in entering the summary judgment on her claim, made in her individual capacity, for damages for breach of contract. She again refers to the evidence in her affidavit regarding unsanitary conditions that, according to her affidavit, indicate a breach of contract. While Callens does not specifically draw our attention to the aforementioned portion of Exhibit B that says Presley would be ensured a “safe, clean and comfortable environment,” it is part of the materials she submitted in the trial court as evidence of her contract. JCNH's only response is the same argument it made in the trial court—that Callens's claim arises in tort, not in contract. JCNH does not controvert the plaintiff's claim of contamination, nor does it argue that the referenced portion of Exhibit B does not create an express contract sufficient to take this case beyond the realm of cases where a duty is only implied from a contract lacking specificity as to the manner of performance. See *Wilkinson v. Moseley*, 18 Ala. 288 (1850), cited with approval in *Eidson v. Johns–Ridout's Chapels, Inc.*, 508 So.2d 697 (Ala.1987). The *Wilkinson* court provided \*280 an example that is helpful in this case. A contract to ride a horse to a specified place cannot support an action in contract if the rider's excessive speed kills the horse, because the contract only implies a duty to ride at a moderate speed. On the other hand, a contract to ride a horse to a specified place at a reasonable speed would give rise to a claim for breach of contract if the rider rode at an excessive speed. *Wilkinson*, 18 Ala. at 291. In this present case, the duty to maintain sanitary conditions is expressed in the contract; therefore, a breach of that duty is actionable in contract. We reverse the summary judgment insofar as it related to Callens's breach-of-contract claim.

#### B. Callens's Civil-Conspiracy Claims

Callens claims the summary judgment was improper as to her civil-conspiracy claims. As previously noted, Callens asserted these claims in her individual and representative capacities, seeking damages based on harm she incurred and on the alleged wrongful death of Presley. “ ‘A civil conspiracy requires a combination of two or more individuals to accomplish a lawful end by unlawful means.’ ” *Drill Parts & Serv. Co. v. Joy Mfg. Co.*, 619 So.2d 1280, 1290 (Ala.1993) (quoting *Nelson v. University of Alabama System*, 594 So.2d 632, 634 (Ala.1992)). A plaintiff alleging a conspiracy must have a valid underlying cause of action. *Id.* “[A] conspiracy claim must fail if the underlying act itself would not support an action.” *Triple J Cattle, Inc. v. Chambers*, 621 So.2d 1221, 1225 (Ala.1993).

### 1. Callens's Claim Alleging a Conspiracy to Engage in Fraudulent Suppression

Callens, in her individual capacity, argues that she presented substantial evidence indicating that the defendants engaged in a civil conspiracy to commit fraud, negligence, and wantonness when they withheld information about the cause of Presley's hip injury, telling Callens that Presley had injured her knee.

Callens's argument on this issue is devoted exclusively to her claim of fraudulent suppression. We therefore do not address her theories of a civil conspiracy to engage in negligence and wantonness. To prove fraudulent suppression, a plaintiff must show “(1) that the defendant had a duty to disclose material facts; (2) that the defendant concealed or failed to disclose those facts; (3) that the concealment or failure to disclose induced the plaintiff to act; and (4) that the defendant's action resulted in harm to the plaintiff.” *Booker v. United American Ins. Co.*, 700 So.2d 1333, 1339 n. 10 (Ala.1997). Callens has not shown the materiality of the facts she alleges the defendants suppressed from her. “A ‘material fact’ ... is a fact of such a nature as to induce action on the part of the complaining party.” *Bank of Red Bay v. King*, 482 So.2d 274, 282 (Ala.1985).

Callens's complaint alleges that, because of the defendants' alleged suppression, she suffered loss or harm because she lost her mother and because, she says, she suffered shame, embarrassment, and extreme mental and emotional upset. Callens did not produce substantial evidence indicating that the defendants suppressed a material fact; she did not show, nor did she allege, that an act or statement of the defendants

induced her to act. She also did not allege that her mother would have lived if the defendants had not concealed facts from her or that, but for the alleged concealment, her course of conduct would have been different. In addition, Callens did not show that the defendants' alleged concealment of material facts, or the defendants' alleged actions, resulted in her mother's death. She produced no expert testimony indicating that the defendants' allegedly fraudulent conduct caused Presley's death or caused Callens's alleged embarrassment.<sup>6</sup> We affirm the summary judgment insofar as it related to Callens's claim alleging a conspiracy to engage in fraudulent suppression.

### 2. Callens's Claim Alleging a Conspiracy to Commit Acts Resulting in Presley's Wrongful Death

In her representative capacity, Callens alleges that the defendants conspired to commit acts that caused the wrongful death of Presley. This claim must fail, because the trial court entered a summary judgment for the defendants on Callens's wrongful-death claim, on the basis that Callens could not prove causation. (See note 6.) Because Callens did not appeal the summary judgment as it related to her wrongful-death claim, she does not have a valid underlying cause of action to support her conspiracy claim. *Triple J Cattle*, 621 So.2d at 1225. We affirm the summary judgment insofar as it related to Callens's claim alleging a conspiracy to commit acts resulting in Presley's death.

### C. Callens's Claim Alleging the Tort of Outrage

Callens, in her individual capacity, argues that the trial court erred in entering the summary judgment for the defendants on her claim alleging intentional infliction of emotional distress—the tort of outrage. In order to prevail on this claim, Callens must prove (1) that the defendants either intended to inflict emotional distress, or knew or should have known that emotional distress was likely to result from their conduct; (2) that the defendants' conduct was extreme and outrageous; and (3) that the defendants' conduct caused emotional distress so severe that no reasonable person could be expected to endure it. *American Road Serv. Co. v. Inmon*, 394 So.2d 361 (Ala.1980); *Jackson v. Alabama Power Co.*, 630 So.2d 439 (Ala.1993). This Court has recognized the tort of outrage in three areas: (1) wrongful conduct within the context of family burials; (2) an insurance agent's coercing an insured into settling an insurance claim; and (3) egregious sexual



harassment. See *Thomas v. BSE Indus. Contractors, Inc.*, 624 So.2d 1041 (Ala.1993). This Court has limited the outrage cause of action to egregious circumstances. Although we in no way condone the defendants' alleged conduct, we conclude, after reviewing the evidence in a light most favorable to Callens, that their alleged behavior was not so extreme as to reach the level necessary to constitute the tort of outrage. We affirm the summary judgment as it relates to Callens's tort-of-outrage claim.

#### IV. Conclusion

As to Callens's claims made in her individual capacity, we affirm the summary judgment on her claims in the original complaint alleging civil conspiracy and the tort of outrage, and we reverse the summary judgment as it relates to Callens's breach-of-contract claim stated in the original complaint. As to Callens's claims in her representative capacity, we

affirm the summary judgment as it relates to her claim in the original complaint alleging civil conspiracy, and we reverse the order dismissing Callens's claims, stated in the amended complaint, alleging personal injury to Presley; we also reverse the dismissal of Callens's claims, stated in the amended complaint, alleging negligent hiring, training, and supervision. We remand the cause for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

HOOPER, C.J., and MADDOX, HOUSTON, COOK, SEE, BROWN, JOHNSTONE, and ENGLAND, JJ., concur.

#### All Citations

769 So.2d 273

#### Footnotes

- 1 Callens also claims that she filed notices of claim with the Jefferson County Commission on December 9 and 30, 1996.
- 2 Callens's complaint also specifically names Commissioner Jeff Germany; the complaint does not explain why she named him specifically.
- 3 While the notices of claim Callens says she filed are not in the record before us, we view Callens's allegations in her complaint as true for purposes of reviewing the sufficiency of her complaint. This Court has held that appellate courts "must review motions to dismiss in the light most favorable to the plaintiff, resolving all reasonable doubts in his favor." *Thermal Components, Inc. v. Golden*, 716 So.2d 1166, 1167 (Ala.1998).
- 4 We note that this present case was pending in this Court at the time this Court decided *Ex parte General Motors Corp.*, 769 So.2d 903 (Ala.1999). The summary-judgment standard established in *Ex parte General Motors Corp.* is to be applied prospectively only.
- 5 In her complaint, Callens "makes claims against Defendants Jefferson County, Alabama, its Commission and Commissioners, including Jeff Germany, and Jefferson County Nursing Home for compensatory damages resulting from the breach of contract." Callens offered no evidence of a contract between her and any defendant other than JCNH.
- 6 Insofar as it related to the wrongful-death claim, the summary judgment was based upon the plaintiff's failure to present proof of causation by expert testimony. As noted in the first paragraph of Part III, Callens did not appeal the summary judgment as it related to the wrongful-death claim.

United States Code Annotated  
Constitution of the United States  
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;  
Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE  
PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;  
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV, USCA CONST Amend. XIV  
Current through P.L. 116-142.

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