Legalese List for Laws

By the Plain English Committee

The Plain English Committee has previously reviewed the category of laws (which we now call laws and lawsuits). We summarized the documents in that category and gave Clarity Awards for well-written documents. The documents that we reviewed are shown in Figure 1.

Now we offer our legalese list of words to eliminate and documents to improve.

Michigan Statutes

We reviewed newly written statutes in 1993 and found that they generally reflect the clear and modern style of legislative drafting. Therefore, we gave a Clarity Award to the Legal Division of the Legislative Service Bureau. But one of the continuing blemishes is the wordy phrase pursuant to, which still appears in newly written statutes. An example is 1994 PA 39, MCL 35.1092(d)(iii):

“Veteran” means any of the following . . . .

(iii) A member of a reserve branch of the armed forces at the time he or she was ordered to active duty pursuant to section 672(a) . . . .

And this, even though every legal writing textbook recommends that this wordy phrase be replaced with under. Many federal statutes, incidentally, use under instead of pursuant to. Example—39 USC 3629:

The functions and activities of this chapter shall be considered to be inherently Governmental functions. The drafting of strategic plans, performance plans, and program performance reports under this section shall be performed only by employees of the Postal Service.

Michigan Honorary Resolutions

There are two types of legislative resolutions—joint and honorary. Joint resolutions are proposed amendments to the state constitution. An example is 1993 House Joint Resolution G, which proposed changes to school financing in Michigan. Joint resolutions are written by the Legislative Service Bureau’s Legal Division and are published about every two months in West’s Michigan Legislative Service pamphlets. Honorary resolutions (also referred to as nonbusiness, commemorative, congratulatory, sympathetic, ceremonial, house resolutions, senate resolutions, house concurrent resolutions, or senate concurrent resolutions) are written by the Legislative Service Bureau’s Legislative Research Division and published in the daily House and Senate Journals. These resolutions still begin with the archaic word Whereas. An example is 1992 House Resolution 884:

A resolution of tribute honoring . . . .

Whereas, It is a pleasure to join with . . . .

Whereas, The problems of auto theft . . . .

now, therefore, be it . . . .

Resolved by the House of Representatives, That tribute be hereby accorded . . . .

Figure 1

<table>
<thead>
<tr>
<th>Subcategories</th>
<th>Specific Types</th>
<th>Who Writes What</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislative</td>
<td>state statutes</td>
<td>• Legislative Service Bureau’s Legal Division (in 1993 wrote 25 new statutes and 284 amendments that were published about every two months in West’s Michigan Legislative Service)</td>
</tr>
<tr>
<td></td>
<td>state honorary resolutions</td>
<td>• Legislative Service Bureau’s Legislative Research Division (in 1993 wrote about 500 honorary resolutions that were published in daily House and Senate Journals)</td>
</tr>
<tr>
<td></td>
<td>county, township, and city ordinances and resolutions</td>
<td>• Detroit City Council (in 1993 passed 50 ordinances that were published in weekly Journal of City Council)</td>
</tr>
<tr>
<td>Executive</td>
<td>Governor’s executive orders</td>
<td>• Executive Office’s Legal Division (in 1993 wrote 25 executive orders that were published about every two months in West’s Michigan Legislative Service)</td>
</tr>
<tr>
<td></td>
<td>administrative rules</td>
<td>• Legislative Service Bureau’s Legal Editing and Law Publications Division (in 1993 edited about 900 rules which had been written by 10 different departments and published the rules in the monthly Michigan Register and in the Annual Administrative Code Supplement)</td>
</tr>
<tr>
<td></td>
<td>Opinions of Attorney General</td>
<td>• Attorney General Office’s Opinion and Public Inquiry Unit (in 1993 wrote 33 opinions that were published in the monthly Michigan Register)</td>
</tr>
<tr>
<td>Judicial</td>
<td>case opinions</td>
<td>• Michigan Supreme Court (in 1993 wrote about 75 opinions that were published in Michigan Reports)</td>
</tr>
<tr>
<td></td>
<td>jury instructions</td>
<td>• Michigan Court of Appeals (in 1993 wrote an estimated 500 opinions that were published in Michigan Appeals Reports)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Supreme Court Committee on Standard Civil Jury Instructions (in 1993 wrote 58 instructions that were published in the monthly Michigan Bar Journal)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• State Bar Committee on Standard Criminal Jury Instructions (in 1993 wrote 14 instructions that were published in the monthly Michigan Bar Journal)</td>
</tr>
</tbody>
</table>
Again, every legal writing textbook recommends that *whereas* be eliminated.\(^3\) And as David Mellinkoff points out in his entry "whereas" in *Mellinkoff’s Dictionary of American Legal Usage*, p 685:

> Worst of all, as lawyers stubbornly cling to whereas, it has become an unneeded pejorative for the profession. [Those lawyers and their whereass.]

**County, Township, and City Ordinances**

Most county boards of commissioners, township boards of trustees, and city councils do not pass many ordinances. They usually average fewer than one ordinance a year. Furthermore, even if they do pass an ordinance, it is not published in a regular journal. The exception is the Detroit City Council, which passes many ordinances a year that are published in the *Journal of the City Council*. These ordinances contain no obsolete formalisms. They do, however, contain the archaic word hereby. An example is City of Detroit Ordinance 7-92, shown in Figure 2. And notice the passive voice: “It is hereby ordained by the people of the City of Detroit,” instead of “The people of the City of Detroit ordain.” The first sentence of Section 2 again contains the unnecessary word hereby. And the second sentence contains 73 words, with multiple conditions and qualifiers.

**Governor’s Executive Orders**

These orders are written by the Executive Office’s Legal Division and are published in the monthly *Michigan Register*. They contain *whereas*, *pursuant to*, and *hereby*. Furthermore, they are dated “Given under my hand and the Great Seal of the State of Michigan this 25th day of August, in the Year of our Lord, One Thousand Nine Hundred Ninety-Four, and of the Commonwealth, One Hundred Fifty-Eight,” instead of simply “August 25, 1994.” See Executive Order 1994-22 in Figure 2.

**Legalese List**

The archaic words *whereas* and *hereby* and the wordy phrase *pursuant to* are three of the worst examples of legalese in Michigan. Yet these words are still prominently used in Michigan statutes, honorary resolutions, ordinances, and executive orders. At long last, why not let them die? ■

**Footnotes**