

Legislative Reference Service

DRAFTING STYLE MANUAL

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This tool is the standard used by LRS staff in their daily activities.

Drafting Style Manual Introduction

The most important principle in drafting a bill is that the finished product accurately accomplish the intent of the author. The failure to accomplish the intent of the author is often the result of failing to follow the essentials of good bill drafting. Those principles are: Accuracy, brevity, clarity, and simplicity. The purpose and effect of a bill should be evident from its language. A bill should not be written in legalese, but should be drafted in terms a person without any special education or qualifications should be able to comprehend. Thus, a drafter should use words that are plain and commonly understood and convey the intended meaning to every reader.

The principal functions of a bill are (i) to create or establish, (ii) to impose a duty or obligation, (iii) to confer a power, create a right, or grant a privilege, and (iv) to prohibit. A bill is often subject to conditions, qualifications, limitations, or exceptions. The clarity and precision of the bill are enhanced by a plain and orderly expression of those functions.

The following drafting rules are intended as a guide to good bill drafting. Use of these rules will almost always result in a product that:

- Facilitates the intent of the author, rather than hides it.
- Makes statutory construction easier, rather than more difficult.
- Most importantly, makes the law understandable to the persons whose lives are governed by it.

Drafting Rules

Rule 1. Sentence Structure

Use short, simple sentences. Avoid excessive use of dependent clauses, parallel clauses, compound sentences, or other complex sentence structures.

Comment

Second only to the principle that a bill should reflect the intent of its author is the

principle that a bill should be understandable. Complex sentence structure often makes a statute ambiguous or its meaning obscure. A sentence that expresses a single thought is easier for the reader to understand.

Rule 2. Subject of Sentence

Unless it is clear from the context, use as the subject of each sentence the person or entity to whom a power, right, or privilege is granted or upon whom a duty, obligation, or prohibition is imposed.

Rule 3. Tense, Mood, Number, and Voice

(a) Use the present tense and the indicative mood. Prefer the singular to the plural. Avoid use of the passive voice.

(b) State a condition precedent in the perfect tense if its happening is required to be completed.

Comment

A statute is regarded as speaking in the present and constantly. The use of “shall” in imposing a duty does not indicate the future tense. Even if an action is required on a specified future date, the form of expression is in the present tense. In speaking in the present, a circumstance putting a provision of a bill in operation, if continuing to exist, is in the present tense.

Example: “The applicant, if married, may bring an action.” If the triggering circumstance is completed, it is expressed in the perfect tense, but is never in the future or future perfect.

Example: “If the issue has been litigated, the claimant may not recover.”

The singular is simpler and clearer than the plural. For example: “A possibility of reverter is subject to limitations in the document that creates it” is preferable to, “Possibilities of reverter are subject to limitations in the documents that create them.” However, the plural may be used to comply with Rule 4 if its use is the least awkward solution.

The passive voice may be used to comply with Rule 4.

Rule 4. Gender

Avoid using gender-based personal pronouns whenever possible.

Comment

Attempt to draft the sentence so as to minimize the need for gender-based pronouns. Repeat the noun, use the plural form, or use the phrase “he [or she],” “his [or her],” or “himself [or herself],” selecting the least awkward solution.

Passive voice may be used if the actor remains clear.

Rule 5. Consistency

(a) Be consistent in the use of language throughout the bill. Do not use the same word or phrase to convey different meanings. Do not use different language to convey the same meaning.

(b) Be consistent in the arrangement of comparable provisions. Arrange sections containing similar material in the same way.

Comment

Consistency helps prevent different interpretations of similar provisions.

Rule 6. Brevity

(a) Omit needless language.

- (b) If a word has the same meaning as a phrase, use the word.
- (c) Use the shortest sentence that conveys the intended meaning.

Comment

In construing legislative acts, courts consider each word and endeavor to give it meaning. Unnecessary language is more likely to mislead than to help.

Rule 7. Choice of Words and Phrases

(a) Select short familiar words and phrases that best express the intended meaning according to common and approved usage. Avoid “legalese.”

Examples: Use “after” instead of “subsequent to”; use “before” instead of “prior to.”

(b) Do not use both a word and its synonym.

(c) Use a pronoun only if its antecedent is unmistakable and its use is gender neutral. Repeat the noun rather than use a pronoun unless the antecedent is a series of nouns. If the sentence structure is so complex that a possessive pronoun seems necessary, consider redrafting the sentence rather than using a possessive pronoun.

(d) Make free but careful use of possessive nouns.

(e) Do not use “said,” “aforesaid,” “hereinabove,” “beforementioned,” “whatsoever,” or similar words of reference or emphasis.

(f) Do not use “any,” “each,” “every,” “all,” or “some” if “a,” “an,” or “the” can be used with the same result.

(g) Do not use “and/or.”

(h) Do not use “deem” for “consider.” Use “deem” only to state that something is to be treated as true even if contrary to fact.

Comment

For list of examples, see Appendix A.

Rule 8. Use of “Shall,” “May,” and “Must”

(a) A duty, obligation, requirement, or condition precedent is best expressed by “shall” rather than “must.” In no event should “shall” and “must” be used interchangeably in the same bill.

(b) Use “may” to confer a power, privilege, or right.

Examples: “The applicant ‘may demand’ (power) an extension of time.” “The applicant ‘may renew’ (privilege) the application.” “The applicant ‘may appeal’ (right) the decision.” Do not use substitute phrases for “may” such as “is authorized and empowered to.”

(c) Use “may not” to express a prohibition.

(d) Avoid using hortatory qualifiers, such as “will,” “should,” and “ought” in the text of a bill.

Rule 9. Use of “Which” and “That”

(a) Use “which” to introduce a nonrestrictive clause.

Example: “The application, ‘which’ need not be verified, shall be signed by the applicant.”

(b) Use “that” to introduce a restrictive clause modifying the nearest antecedent.

Example: “An application to renew a license ‘that’ has been revoked. . .”

(c) Use “which” to modify a remote antecedent in a restrictive clause.

Example: “An ‘application’ to renew a license ‘which’ has been rejected. . .”

Consider rewording the sentence to avoid the use of “which” to modify a remote antecedent in a restrictive clause if the reference is not clear: “If an application to renew a license has been rejected, the application. . .”

Rule 10. Use of “Such”

Do not use “such” as a substitute for “the,” “that,” “it,” “those,” “them,” or other similar words.

Example: “The (not ‘such’) application shall be in the form the court prescribes.”

Use “such” to express “for example” or “of that kind.”

Rule 11. Punctuation

(a) Punctuate carefully. Consider recasting a sentence if a change in punctuation might change its meaning.

(b) Use a comma before “and” to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence.

Example: “men, women, and children”; not “men, women and children.”

(c) Use a comma before “or” to separate the last of a disjunctive series of three or more words, phrases, or clauses in a sentence.

(d) Use a colon to introduce a list of items. See Rule 15.

(e) Do not use brackets or parentheses as punctuation.

Comment

Some uniform laws use parentheses.

Rule 12. Definitions

(a) Use a definition only in one or more of the following circumstances:

(1) If a word has several different common usages.

(2) If a word is used in a sense broader or narrower than its common usage.

(3) To avoid repetition of a phrase.

(b) Use “means” to express a comprehensive meaning of a word. Use “includes, but is not limited to,” to express a meaning in addition to common usage.

(c) Avoid using the defined word in its definition.

(d) Do not write substantive provisions or artificial concepts into definitions.

Example: Do not impose the substantive requirement that an agreement be “in writing” by defining “agreement” to mean “a written agreement.”

(e) Place general definitions at the beginning of the bill. Arrange them in alphabetical order.

(f) Use the defined word, not the definition.

(g) If a defined term is used only in a single section, chapter, or part, locate the definition at the beginning of that section, chapter, or part.

Comment

Definitions that are carefully written and properly located help to avoid unnecessary repetition and improve the clarity of a bill.

Rule 13. Capitalization

Generally, follow the Harvard Blue Book.

- All proper names are capitalized.
- The first word of an indented paragraph is capitalized.
- The first word following a colon is capitalized.

- In title, chapter, article, and other headings, capitalize the initial word, the word immediately following a colon (if any), and all other words except articles, conjunctions, and prepositions of four or fewer letters.
- Capitalize nouns referring to people or groups only when they identify specific persons, officials, groups, government offices, or government bodies.

Examples:

- The “Social Security Administrator,” but not “the administrator”
- The “NLRB,” but not “the board”
- The “FDA,” but not “the agency”
- The “Secretary of State,” but not “the secretary”
- The “Congress” and the “President,” when referring to the Congress of the United States and the President of the United States, are always capitalized

The following table indicates capitalization for words commonly used in legal writing.

Act - only when referring to a specific act:

The National Labor Relations Act

Act 473 of the Regular Session of the Legislature Alabama of 1949

Acts 1965

Alabama Alcoholic Beverage Control Board

A.M. (no spaces)

Amendment 84

Article V of the United States Constitution

Article 7, Chapter 19, Title 52

associations - lower case unless referring to proper names:

Y.M.C.A

Attorney General

Auburn University

Battleship Fund

Bill of Rights

bonds

Bureau of Credit Unions

Capitol (building)

Chapter 19

Circuit - only when used with a circuit number:

the Fifth Circuit

circuit court

City of Montgomery

Class A and B

Code - only when referring to a specific code:

Code of Alabama 1975

Code of Alabama

Commonwealth - only if it is part of the full title of a state, if the word it modifies is capitalized, or when referring to a state as a governmental actor or party to litigation:

the Commonwealth of Massachusetts

the Commonwealth Commissioner

the Commonwealth relitigated the issue

Congress

consortium - unless as a proper name (Marine Environmental Sciences Consortium)

Constitution - only when naming any constitution in full or when referring to the U.S. Constitution:

Fifth Amendment

Preamble

Supremacy Clause

Bill of Rights

Article I, Section 8, Clause 17 of the Constitution

see U.S. Const., Art. I, § 8, Cl. 17

Constitution of Alabama

County - only with a specific county: Monroe County

Court - only when naming any court in full or when referring to the United States

Supreme Court:

the Alabama Supreme Court

the supreme court (referring to a state supreme court)

the Court (referring to the U.S. Supreme Court)

the court of appeals

the Court of Appeals for the Fifth Circuit

Department of Conservation

Director of Conservation

Federal - only when the word it modifies is capitalized:

the Federal Reserve

federal spending

Federal Reserve Act

Federal Social Security Act

Fourteenth Amendment

funds (when not a proper name of fund)

General Fund (when a proper name)

Governor

Great Seal (proper name)

House

Judge, Justice - only when giving the name of a specific judge or justice or when referring to a Justice

of the United States Supreme Court:

Judge Cedarbaum

Justice Holmes

the Justice (referring to a Justice of the United States Supreme Court)

left hand

Legislature

Montgomery County

National College of State Trial Judges

National Formulary

1957 Docks Act

Office of State Planning

Partlow State School and Hospital

P.M. (no spaces)

President of the United States

Recompiled 1958

Rule 12

Section 9-7-15

Secretary of State

Senate

State - only if it is part of the full title of a state, if the word it modifies is capitalized, or when referring to a state as a governmental actor or party to litigation:

the State of Alabama

the state commissioner

the State relitigated the issue

state Merit System Act (name of an act)

Supreme Court of Alabama

Supreme Court of the United States

Supreme Court Rule 12

Term - only when referring to a Term of the United States Supreme Court:

1978 Term

this Term

But: Michalemas term

this rule

this title

Title 7

Tombigbee River

United States government

U.S. Code

U.S. Const., Art. I, § 2

U.S. Highway

university - unless as a proper name: Harvard University, University of West Alabama

Rule 14. Limitations, Exceptions, and Conditions

(a) Limitations or exceptions to the coverage of the bill or conditions placed on its application should be described in the first part of the bill. If they are numerous, notice of their existence should be given in the first part of the bill and they should be stated separately later in the bill.

(b) If a provision is limited in its application or is subject to an exception or condition, it generally promotes clarity to begin the provision with a statement of the limitation, exception, or condition or with a notice of its existence.

Example: “(a) Except as provided in subsection (b). . .” Avoid using “notwithstanding” to express a limitation of a general provision of the same act.

Example: “(b) Notwithstanding subsection (a). . .”

(c) If the application of a provision of the bill is limited by the occurrence of a condition that may never occur, use “if” to introduce the condition, not “when” or “where.” Use “when” to indicate a particular time. Use “where” to indicate a particular place or set of circumstances.

(d) Do not use “provided that” or “provided however that,” or similar proviso language. Use “but” instead of “except that.”

Comment

Limitations or exceptions to a bill should be placed where they are noticed. Consistent placement in the first part of a bill or provision serves to avoid surprises.

Rule 15. Lists and Tabulations

(a) Break a sentence into its parts and present them in tabular form only if this makes the meaning substantially clearer.

(b) It is the preferred style to use “any of the following,” “one or more of the following,” or “all of the following” in the introductory clause followed by separately stated complete sentences rather than set the series off by semicolons and an “or” or “and” after the next to last item in the series.

Example: “No person may be licensed as an attorney under this chapter unless the person meets all of the following requirements:

(1) The person is a resident of the state.

(2) The person has not been convicted of a crime involving moral turpitude.

(3) The person is a graduate of a law school accredited by the American Association of Law Schools.

(4) The person passes a proficiency examination administered by the State Bar Association.”

(c) Do not include in the last item of a tabulation language that qualifies all of the items.

(d) Do not place a sentence or paragraph after a tabulation. If the sentence or paragraph is not a part of the tabulated series, draft it as a separate subsection, subdivision, or paragraph.

Comment

Use tabulation especially if the subject matter makes the use of short sentences impossible. Consider using tabular form where a number of rights, powers, privileges, duties, or liabilities are granted to or imposed upon a person and in other situations if the use of tabular form makes the provision substantially easier to understand. See Rule 16 concerning manner of designating items in a tabulation.

Rule 16. Sections

(a) Number sections by Arabic numerals consecutively or progressively throughout the bill.

(b) Normally, sections are not captioned in the drafting stage. Adding headings is something normally done in the codification stage.

(c) Use short sections. Use a separate section for each separate topic.

(d) Divide a section that covers a number of contingencies, alternatives, requirements, or conditions into subsections, subdivisions, and paragraphs, as necessary. A paragraph may be divided into subparagraphs, but avoid their use. Divide a section into several sections as an alternative to subparagraphs.

(e) Designate each subsection, subdivision, paragraph, or subparagraph by a letter or number:

(1) Designate subsections by lower case letters in parentheses.

(2) Designate subdivisions by Arabic numerals in parentheses.

(3) Designate paragraphs by lower case letters.

(4) Designate subparagraphs by Arabic numerals.

(5) Designate items by lower case Roman numerals in parentheses.

(a) subsection

(1) subdivision

a. paragraph

1. subparagraph

(i) item

(f) Use lower case Roman numerals for internally numbered clauses (where each clause is run in and not a separate paragraph or subparagraph) only if this makes the meaning substantially clearer

Comment

Portions of a section that are not identified by a letter or number often cause confusion.

Rule 17. References to Other Provisions of Act

Use an initial capital letter in referring to a specific article, chapter, part, or section number; use lower case in referring to a specific subsection, paragraph, or subparagraph.

Examples: “The application required by Section 27. . . .”; “Except as provided in subsection (b),. . . .”

Comment

Where reference to only one or a few sections is intended, a specific reference is useful because it avoids the need to search the entire act to determine the provisions to which reference is intended. Overuse of specific references to other provisions of a bill can make the bill difficult to read and understand. Moreover, section numbers and subsections are sometimes changed without changing references to them. Computer technology has reduced the difficulty of finding these references.

Rule 18. Procedural Provisions

Do not include procedural provisions to administrative procedure or review, court procedure, or appellate procedure in a substantive bill unless essential to change those procedures in order to effectuate its purposes.

Rule 19. Creation of Agency or Office

Use simple language in the present tense to create or establish an agency, commission, or office.

Example: “The Office of _____ is [created] [established] in the Department of _____.”

Rule 20. Savings and Repeal Clauses and Transitional Provisions

Savings and repeal clauses or transitional provisions should not be included automatically in every draft. Savings and repeal clauses and transitional provisions should be specific and only used when necessary.

Comment

An essential step in the preparation of a bill is to determine the effect the enactment of the bill will have on existing rights, liabilities, and proceedings. Thus, savings clauses or repeal clauses should be specific and the result of thorough consideration of the issue. It is not desirable to put in boilerplate savings or repeal clauses since the effect of those clauses is the same as the effect without those clauses. The need for transitional provisions should also be carefully considered since it is presumed that a bill will operate prospectively. If a prospective application is not desired, or if from the context it is not clear that a prospective application is intended, it may be appropriate to place a transitional provision in the bill.

Rule 21. Purpose Clauses

Language stating the purpose of a bill or recital of facts upon which a bill is predicated should not be included as a matter of course. In some circumstances, purpose language may be useful in upholding a bill against constitutional attack after enactment or to give meaning to a provision for liberal construction. In those circumstances, appropriate language may be included.

Comment

A well-drafted bill should require no extraneous statement within itself of what it seeks to accomplish or the reasons prompting its enactment.

Rule 22. Severability Clause

Use a severability clause only when there is a possibility of partial invalidity and it is not clear that the intention of the Legislature is that the bill be severed. If used, it should be in a section as follows:

“Section. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.”

Rule 23. Order of Arrangement of Provisions in Bill

(a) Organize the bill in the most useful and logical format for the reader. Avoid an organization that requires an understanding of a later section in order to understand an earlier section. Group all sections dealing with a common subject.

(b) Normally, the division of a bill into chapters and articles is something that is done in the codification process after enactment. That does not mean that a bill cannot be divided into chapters and subdivided into articles and parts if appropriate.

(c) The following is suggested as the order of arrangement of provisions in a bill:

- (1) Synopsis
- (2) Title
- (3) Enacting Clause
- (4) Short title (if any)

- (5) Statement of findings and intent (if necessary)
- (6) Definitions
- (7) Main legal principle or proposition
- (8) Procedural and administrative provisions
- (9) Penalties
- (10) Severability clause (if necessary)
- (11) Repeal clause (if necessary)
- (12) Effective date

Comment

The suggested order of arrangement of provisions is subject to the general requirement that a bill be organized in the format most useful to the reader. For a discussion of each section, see Appendix B.

Rule 24. Revision

If time is available, after the draft of a bill has been completed, revise it carefully and critically. Lay the revision aside for a time. Then revise the revision. Review each use of a defined term to make sure it is used consistently in its defined sense.

Comment

There is no substitute for time and thoroughness.