

A Model Plain-Language Act

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Throughout the English-speaking world, the public and politicians have increasingly called for plain language in legal documents. Despite reform efforts, the great mass of legal documentation remains mired in convoluted language and burdened with a format that discourages reading.

The public grows more and more discontented; the judiciary more activist in refusing to enforce hidden terms in tangled text; and politicians more insistent that legal writing must change. Amid this backdrop, I have designed a Model Plain-Language Act. Three key elements underpin this proposed legislation:

- the Act imposes a general duty to communicate clearly in legal documents;
- the Act is comprehensive in scope; and
- the enforcement policy seeks to promote a change in attitude rather than blindly imposing penalties for noncompliance.

The Duty to Communicate Clearly

The proposed Act imposes a general obligation to write legal documents as understandably as the subject matter allows and to use designs that help clarify the text. This combined obligation recognizes the importance of legibility and layout as well as the need for clear writing.

After the Act is passed, the interminable arguments over whether documents can or should be clearly written will end. No longer will we need to advocate clarity in legal documents. The onus will be reversed: those who argue that clear legal documents are neither possible nor necessary can make *their* case for an exemption under the law.

Lawyers pay lip service to the need for clear communication with clients, yet their rules do not mandate such clarity. Having

failed to act, lawyers will find legislatures acting for them. Like lawyers, politicians often call for clear writing. This law takes them at their word, creating a legal obligation to write legislation in plain language.

The Comprehensive Scope of the Act

The Act applies to public laws, including statutes, regulations, and municipal bylaws; to court-filed documents, including pleadings; to forms that create a legal relationship; and to private legal documents.

Exemptions from the Act are limited to opinions by courts, arbitrators, and quasi-judicial bodies. Applicants may seek exemptions for other documents, but the burden of proof will be difficult.

The Act draws no distinction between “consumer” contracts and others, or between contracts involving different dollar amounts. Plain language will be required universally.

The Enforcement Policy

The law seeks to change drafting practices without creating a need to police the drafters. The enforcement mechanisms are sufficiently tough to ensure changes without causing a rash of lawsuits. The self-policing nature of the Act will be achieved by:

- Imposing fines for archaic language. The Act proposes payment to a plain-language committee or institute, but payment could be directed to research funds, literacy programs, or other worthy causes.
- Creating a statutory claim for damage if loss results from noncompliance. A partial defense might be ongoing “reasonable efforts” to make the document plain.
- Empowering courts to prohibit publication, use, or sale of a document, to order an offender to rewrite or

redesign a document, and to require an offender to take writing courses or participate in community service.

- Authorizing nonprofit corporations to bring actions for a declaration of noncompliance. Such actions would publicly embarrass those who have not been persuaded to improve their documents.

Is such a law really needed? Legal writers are capable of mending their ways. And everyone would prefer that they voluntarily change. But without a jolt or catalyst, legal writers will remain complacent. They have had their chance — time is up.

A Model Plain-Language Act

We, the people of _____, make this law:

1. Purpose of the Act

The purpose of this law is to improve the language and design of legal documents by

- (a) changing attitudes about writing legal documents so that the documents communicate their message as clearly as possible;
- (b) putting the obligation for clear communication on the writer of the legal document;
- (c) imposing legal consequences unless there is a genuine attempt to communicate clearly; and
- (d) supporting the research and services of plain-language committees and institutes in improving communication in business, government, and law.

2. Documents to Which the Act Applies

(a) This law applies to

- (1) pleadings and other documents filed with a court;
- (2) statutes, regulations, and municipal bylaws;
- (3) agreements prepared by one person for another;
- (4) wills prepared by one person for another;
- (5) forms containing a certification, declaration, undertaking, or affirmation, or forms that are intended to create a legal relationship; and
- (6) every other document that is intended to create a legal relationship.

(b) This law does not apply to

- (1) a document or class of documents exempted from this law by regulation of the [Governor] [Commissioner] [etc.]; or
- (2) court judgments, arbitration awards, or other decisions having legal effect.

3. Plain Language in Legal Documents

A legal document must

- (a) be written as understandably as the subject matter allows; and
- (b) be designed in a way that helps readers understand the document.

4. Obligation to Create Plain-Language Documents

(a) The obligation to comply with this law is as follows:

- (1) for statutes, the obligation is on the government;

- (2) for regulations, the obligation is on the agency, person, or entity making the regulation;
- (3) for municipal bylaws, the obligation is on the municipality making the bylaw; and
- (4) for other legal documents, the obligation is on the person who publishes the document, the person who offers it for sale, or both, and on
 - (A) the person who writes it, the person who is primarily responsible for its contents, or both, and
 - (B) the corporation, government, or entity that uses the document or proposes to use it.
- (b) When two or more persons, governments, or entities are obliged to comply with this law, the obligation is joint and individual.

5. Paying to Use Gobbledygook

- (a) Those persons, governments, and entities that are obliged to comply with this law must pay the plain-language committee [or other group] the fees set out in the attached schedule.
- (b) The fees payable are a debt due to the plain-language committee [or other group] and can be collected by legal action for debt if they are not paid.

6. Legal Liability and Defense

- (a) A person, government, or entity that does not comply with this law is liable for any loss sustained by another person because of that noncompliance.
- (b) It is a defense if the defendant can show that
 - (1) reasonable efforts were made to comply and maintain compliance with this law and that, when appropriate,

- the results of those efforts were used in the legal document; or
- (2) the language and design of the document in question cannot be significantly improved.

7. Additional Court Powers

- (a) In addition to or instead of any other remedy a court can impose, the court may
 - (1) order a defendant who is responsible for an Act, regulation, or bylaw to rewrite or redesign it;
 - (2) for legal documents other than Acts, regulations, and bylaws
 - (A) order a defendant to rewrite or redesign it;
 - (B) order a defendant to stop using, publishing, or selling it;
 - (C) order a defendant to take courses to improve his or her knowledge of written communication, or document design, or both; and
 - (D) order a person to provide a community service such as explaining legal texts to the public or revising legal documents in plain language.
- (b) The court may make its order conditional.

8. Declarations of Noncompliance

A nonprofit corporation may seek a declaratory judgment that a legal document violates this law and, in addition to the declaration, may ask for an order under section 7.

9. Noncompliance and Waiver Agreements Void

An agreement that tries to limit or waive this law, or to prevent it from applying to a legal document, is against public policy and void.

10. Application of the Act

This law applies to legal documents created after the effective date of this law.

11. Definitions

In this law

- (a) “design” includes the legibility and layout of a document; and
- (b) “legal document” means any document to which this Act applies (see section 2).

12. Repeal of the Act

This law is repealed on 1 January 2003.

13. Date the Act Takes Effect

This law takes effect one year after it is passed.

Schedule

Gobbledygook Fee Scale

1. Gobbledygook List

- (a) For each of the following words, phrases, or abbreviations used in a legal document, the offender must pay the plain-language committee [or other group] the amount indicated:

For Each

above-captioned	\$100
above-referenced	100
above-said	100
A.D. (Anno Domini)	1,000
aforementioned	150
aforesaid	150
all and singular	100
and/or	200
beforementioned	100
came on for consideration	100
come(s) now	200
hath	100
hereby	100
herein	125
hereinabove	150
hereinbefore	200
hereinbelow	150
hereunto	150
inasmuch as	100
<i>inter alia</i>	100
know all men by these presents	200
now come(s)	200
ordered, adjudged, and decreed	100
pursuant to	100
said (for <i>the, this, these, or those</i>)	150
saith	75
same (as pronoun)	175
sayeth	75

ss.	\$100
such (for <i>the, this, these, or those</i>)	150
therefor	150
thereunto	100
to wit	150
viz.	150
wherefore	100
wherein	100
whereof	100
witnesseth	200

(b) If the word, phrase, or abbreviation is repeated in a legal document 10 times or more, the fee for each use in the document is trebled.

2. Addition of Gobbledygook to the List

The [Governor] [Commissioner] [etc.] may, by regulation,

- (a) add to the listed words, phrases, and abbreviations; and
- (b) set the fee payable to the plain-language committee [or other group] for the use of each newly added word, phrase, or abbreviation.

