

Legislative Analysis



REVISIONS TO DEAF PERSONS' INTERPRETERS ACT

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House Bill 4208 (Substitute H-2)

Sponsor: Rep. Dudley Spade

Committee: Regulatory Reform

First Analysis (3-7-07)

BRIEF SUMMARY: The bill would revise the definition of "qualified interpreter," require that an interpreter appointed under provisions of the federal ADA be a qualified interpreter, grant the Division on Deaf and Hard of Hearing rule-making authority, and create criminal penalties for violations of the act.

FISCAL IMPACT: There is no fiscal impact on the Department of Labor and Economic Growth. The bill would have an indeterminate fiscal impact on local units of government. To the extent that the bill increased the number of misdemeanor convictions, it could increase local costs of incarceration or misdemeanor probation supervision, both of which vary with jurisdiction. To the extent that it increased collections of penal fine revenues, it could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

THE APPARENT PROBLEM:

By the late 1970s, state and federal law required that handicapped persons be provided access to public services. For a deaf or hearing-impaired person, that access most often consists of the provision of an interpreter. In the early-1980s, it was apparent that though Michigan law required that a deaf person accused of a crime be provided with an interpreter, many deaf and hearing impaired persons were not being accommodated adequately when acting as a participant in a criminal case (other than the defendant), in civil cases, and in administrative actions with state and local governmental agencies. Public Act 204 of 1982, which created the Deaf Persons' Interpreter Act, was enacted to address those concerns.

The Deaf Persons' Interpreters Act requires that, in all proceedings before courts, grand juries, or administrative agencies of the state or local governments in which a deaf person is a participant, an interpreter be provided at the expense of the court or agency. The appointed interpreter must be nationally certified by the National Registry of Interpreters for the Deaf or be approved by the state Division on Deaf and Hard of Hearing (DDHH) as being competent to act as an interpreter for deaf persons. The DDHH maintains a list of certified and approved interpreters, and requests for interpreters are channeled through that office. The communication abilities of deaf persons can vary; for instance, not all use conventional American sign language. Some need an interpreter who is a specialist in making the English language clear to a deaf person through facial and lip movements. Others who may not be accomplished in sign language or lip reading may need an "intermediary interpreter," a person who often can communicate successfully with the

deaf person and relay the communication through sign language to a certified or DDHH-approved interpreter; many intermediary interpreters are themselves deaf or hearing impaired. Therefore, the act requires that a preliminary determination be made that the appointed interpreter is capable of communicating adequately with the deaf person.

Several years after the enactment of PA 204, the federal Americans with Disabilities Act (ADA) took effect. The ADA requires that effective communication be provided in employment situations (Title I), where public services are rendered by government agencies (Title II), and when goods and services are provided by public accommodations such as restaurants, medical facilities, banks, retail establishments, and so on (Title III, which is enforced by the U.S. Department of Justice).

According to the Job Accommodation Network (JAN), a service of the Office of Disability Employment Policy, U.S. Department of Labor, public accommodations (such as retail businesses) are required under the ADA to provide auxiliary aids and services when necessary to allow equal access to goods and services for individuals with disabilities unless doing so would pose an undue burden or alteration in services. If a person makes a request under the ADA for an interpreter, the public accommodation is required to determine if an interpreter can be provided. The decision to provide an interpreter is based upon the length and complexity of the communication taking place as well as the communication skills of the individual. If the decision is made to provide an interpreter, the public accommodation, and not the deaf person, is responsible for the costs associated with providing an interpreter. A person can supply his or her own interpreter, but he or she would then be responsible for any costs. In addition, public accommodations cannot place a surcharge on individuals with disabilities to cover the cost of providing accommodations.

The problem that the bill seeks to address arises from the ADA's definition of "qualified interpreter" and the lack of minimum standards to measure an interpreter's ability. Under the ADA, a "qualified interpreter" means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary; however, no measurement of the interpreter's ability is provided. Without minimum standards, such as the certification or approval by the DDHH required under state law for those interpreters used in court and governmental agency proceedings, there is no way to ensure that the interpreter provided to a deaf person is competent to accurately translate communications in the transaction.

Many unfortunate stories have been reported in the past decade of medical and business entities refusing to supply interpreters, providing unqualified interpreters, or forcing family members of the deaf to act as interpreters. In one instance, a hospital tried to fulfill the ADA requirement by utilizing a housekeeper who had some knowledge of sign language to communicate with the deaf adult children of a heart attack victim about their father's medical condition and treatment options. When the daughter declined and the name of a qualified interpreter was recommended, the hospital refused to hire that person or to provide a different qualified individual. A bank had a customer applying for a loan for a tractor act as an interpreter for his deaf father, who had agreed to co-sign the loan.

The father was unaware that in co-signing, his own home would be collateral on the loan and subject to seizure if the loan defaulted. The son fell behind in the payments and the father lost his house. In one tragic instance, a young child was used as an interpreter for his mother at a mental health evaluation. He wanted her to come home with him, and so rather than communicate her answers to the questions, he answered for her. She was released and went home with her son; a few days later, she committed suicide.

Some feel that these stories underscore the difficulties, problems, and even tragedies that the deaf suffer when denied equal access to communication. Translations provided by family members may be affected by their own interests; translations provided by under trained or incompetent interpreters can lead to medical errors, financial or legal liabilities, and decreased access to goods and services. Trying to communicate through note-writing or having a deaf person read through documents is not always an option as some deaf persons are not proficient in written English (i.e., American sign language, and not English, may be their native language). It has been suggested that requiring public accommodations to hire a qualified interpreter as defined in Michigan law in those instances when required to do so under the ADA, as well as creating penalties for violations of the Deaf Persons' Interpreters Act, would go far in protecting the rights of deaf and hearing impaired persons.

THE CONTENT OF THE BILL:

The Deaf Persons' Interpreters Act requires courts and other governmental agencies and boards to hire interpreters for deaf persons who appear in proceedings before them. House Bill 4208 would amend the act (MCL 393.501 et al.) to extend the requirement to appoint a qualified interpreter to instances in which an interpreter must be provided under provisions of the federal American with Disabilities Act. It also would revise current definitions, define new terms, and create criminal penalties for violations of the act.

Deaf-Blind persons. The bill would extend coverage of the law to "deaf-blind" persons – those with a combination of hearing loss and vision loss – in addition to "deaf" persons.

Extension of the Deaf Persons' Interpreters Act. Under the bill, if an accommodation was made for a deaf or deaf-blind person in circumstances enumerated in the Americans with Disabilities Act of 1990, the interpreter would have to be a qualified interpreter.

Qualified Interpreters. The current law distinguishes between "certified interpreters" who have certifications through certain national organizations and "qualified interpreters" who, although not certified, have nevertheless been determined by the state to be appropriate interpreters. Under the bill, there is only one category, "qualified interpreter." A "qualified interpreter" is either (1) a person certified through the National Registry of Interpreters for the Deaf or another national organization recognized by Michigan's Division on Deaf and Hard of Hearing, or (2) a person with the "expressive-receptive skills and necessary vocabulary for the situation" certified through the state by the Division on Deaf and Hard of Hearing, with advice from the Michigan Deaf Association and the Michigan Registry of Interpreters for the Deaf (or their successor

agencies). The bill also provides new definitions of "qualified oral interpreter" and "qualified sign language interpreter."

Intermediary and deaf interpreters. The law currently provides that "intermediary interpreters" are persons, including hearing impaired persons, who assist interpreters in making accurate interpretations. The bill would allow "intermediary interpreters" to also be referred to as "deaf interpreters," and would clarify that intermediary or deaf interpreters may themselves be deaf or deaf-blind persons.

Criminal penalties. The bill prescribes new criminal penalties for violations of the law. A violation of the law by a person who knew that he or she did not meet the definition of qualified interpreter under the act and misrepresented himself or herself as a qualified interpreter would be guilty of a misdemeanor subject to imprisonment for up to 90 days, a fine not less than \$1,000 or more than \$10,000, or both. A violation by an appointing authority would be a misdemeanor punishable by a fine of not less than \$1,000 or more than \$10,000.

ARGUMENTS:

For:

The federal Americans with Disabilities Act already enumerates those situations in which employers, governmental agencies, and public accommodations (e.g., retail establishments, theaters, financial institutions, medical entities, etc.) must provide auxiliary aids and services in providing equal access to goods and services. Though established in the federal statute and case law that the assistance provided may need to be in the form of a "qualified interpreter," the federal law does not specify minimum standards or certification that would demonstrate an interpreter's qualifications.

An interpreter's level of competency is important. A deaf person must rely on an interpreter, who often is a stranger, to accurately translate the communication of a speaker and then accurately translate his or her response back to the speaker. In a medical setting, an interpreter must be able to translate complicated, sensitive, or technical medical information in a way that the deaf person can understand. The interpreter must then be able to accurately translate the deaf person's questions and/or answers to the medical team. Mistakes in translation can lead to an adverse outcome for the deaf person or other individual for whom the deaf person is making decisions (e.g., a child, elderly parent). The same is true for financial, legal, and business transactions. Stories with negative outcomes abound in Michigan and other states in which an interpreter does not have to demonstrate competency.

The bill would rectify this situation. Whenever an entity is required under provisions of the ADA to provide an interpreter, the bill would mandate the interpreter be a "qualified interpreter" as defined in state law. Michigan law already specifies minimum standards for qualified interpreters. These standards ensure that interpreters have the necessary training and demonstrated capability, as well as ethical and confidentiality standards, to meet the communication needs of a deaf person.

For:

The bill would make minor revisions to the definition of "qualified interpreter." The bill would also grant rule-making authority to the Division of Deaf and Hard of Hearing (DDHH). With the ability to promulgate rules, the DDHH will be more effective in administering and enforcing provisions of the Deaf Persons' Interpreters Act.

The bill would also create a criminal penalty for any person posing as a qualified interpreter without the necessary credentials or DDHH approval. In light of the physical, mental, legal, and financial harm to a deaf or deaf-blind person that can arise from inaccurate translations, a person who would deliberately mislead an appointing authority or deaf person as to his or her own qualifications should face consequences. Similarly, an appointing authority who failed to appoint a qualified interpreter as required in the act, or who appointed an interpreter who was not certified or approved by the DDHH would face a criminal fine.

The overall impact of the bill would be to strengthen the intent of both state and federal law in providing equal access to goods and services by providing an equal level of communication between deaf and deaf-blind persons and providers of goods and services.

POSITIONS:

The Michigan Division on Deaf and Hard of Hearing, within the Michigan Department of Labor and Economic Growth, supports the bill. (2-27-07)

The Hearing Loss Association of Michigan supports the bill. (2-26-07)

The Michigan Bankers Association supports the bill. (2-26-07)

A representative of the Michigan Association for Deaf and Hard of Hearing testified in support of the bill. (2-27-07)

A representative of the Michigan Registry of Interpreters for the Deaf testified in support of the bill. (2-27-07)

Michigan Protection and Advocacy indicated support for the bill. (2-27-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.