

Legislative Analysis



REVISIONS TO DEAF PERSONS' INTERPRETERS ACT

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House Bill 4208 as enrolled
Public Act 24 of 2007
Sponsor: Rep. Dudley Spade

Senate Bill 25 as enrolled
Public Act 23 of 2007
Sponsor: Sen. John J. Gleason

House Committee: Regulatory Reform
Senate Committee: Judiciary

Second Analysis (8-21-08)

BRIEF SUMMARY: House Bill 4208 would revise the definition of "qualified interpreter," define several new terms, extend coverage of the law to "deaf-blind" persons, and require that an interpreter appointed as an accommodation under state or federal law be a qualified interpreter. Senate Bill 25 would require that reasonable notice be given by a deaf or deaf-blind person to entities required to provide a qualified interpreter; require departmental rules for minimum standards of education, practice, testing, and continuing education for qualified interpreters; establish criminal, administrative, and civil penalties for violations of the Deaf Persons' Interpreters Act; and establish fees for testing and credentialing as a qualified interpreter.

FISCAL IMPACT: The bills would increase State restricted revenue by approximately \$40,000 in the first full year of implementation. Subsequent revenue would depend on whether new interpreters apply for licenses and take the required examination. The bills would have an indeterminate fiscal impact on local units of government. To the extent that the bills increased the number of misdemeanor convictions, they could increase local costs of incarceration or misdemeanor probation supervision, both of which vary with jurisdiction. To the extent that they increased collections of penal fine revenues, they could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

THE APPARENT PROBLEM:

Since the late 1970s, state and federal law has 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. Though Michigan law by the early 1980s 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 an interpreter must be provided at the expense of the court or agency in all proceedings before courts, grand juries, or administrative agencies of the state or local governments in which a deaf person is a participant. 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.

However, 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 through facial and lip movements. Other hearing-impaired individuals who may not be accomplished in sign language or lip reading may need an "intermediary interpreter," a person who 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 bills seek 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 using 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 to use that employee's services and the name of a qualified interpreter was recommended, the hospital refused to hire that person or to provide a different qualified individual. In another situation, a bank had a customer who was 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 the mother's in-patient 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 those relatives' own interests; translations provided by undertrained 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).

To address these concerns, it has been suggested that the Deaf Persons' Interpreters Act be amended to establish minimum educational standards and minimum standards of practice for interpreters, as well as require qualified interpreters meeting those standards to be appointed whenever a qualified interpreter is required to be provided under state and federal law. Supporters of the initiative believe those changes, along with penalties for intentional violations of the act, would go far in protecting the rights of deaf, deaf-blind, and hearing impaired persons.

THE CONTENT OF THE BILLS:

The bills would revise existing provisions of the Deaf Person's Interpreters Act and add several new sections to broaden the application of the act and create penalties for

violations of the act. The bills are tie-barred to each other and took effect June 28, 2007. A detailed discussion of each bill follows:

House Bill 4208

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 393.502, 393.503, and 393.503a) to require that if an interpreter were required as an accommodation for a deaf or deaf-blind person under state or federal law, the interpreter be a qualified interpreter. The bill also would revise current definitions and define new terms.

Extension of the Deaf Persons' Interpreters Act. Under the bill, if an interpreter was required as an accommodation for a deaf or deaf-blind person under state or federal law (for example, the federal Americans with Disabilities Act), the interpreter would have to be a qualified interpreter.

Deaf-Blind Persons. The bill would extend coverage of the law to "deaf-blind" persons in addition to "deaf" persons. The term would be defined to mean a person having a combination of hearing loss and vision loss, such that the combination necessitates specialized interpretation of spoken and written information in a manner appropriate to that person's dual sensory loss.

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 (2) a person certified through the state by the Division on Deaf and Hard of Hearing.

"Qualified oral interpreter" would mean a qualified interpreter who is able to convey information through facial and lip movement and "qualified sign language interpreter" would mean a qualified interpreter who uses sign language to convey information.

Further, 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.

Senate Bill 25

Senate Bill 25 would also amend the Deaf Persons' Interpreters Act (MCL 393.504 et al.). The bill would amend several sections to extend coverage of the law to "deaf-blind" persons – those with a combination of hearing loss and vision loss – in addition to "deaf"

persons. The bill would also require each deaf or deaf-blind person entitled to a qualified interpreter as an accommodation under state or federal law to provide reasonable notice to the appointing authority of the need for a qualified interpreter.

Qualifications. Rules that would govern procedures for application, testing, revocation, suspension or limitation of certification, continuing education, renewals, grievances, minimum credential requirements and levels, and minimum standards of practice would be promulgated by the Division on Deaf and Hard of Hearing (formerly the Division on Deafness) with the advice of the Department of Education. The rules would also have to be coordinated with the Department of Education and the administrative rules for special education, R 340.1793a of the Michigan Administrative Code.

Certification. The bill would "grandfather" individuals possessing state or national certification as a qualified interpreter.

A person certified through and in good standing with the National Registry of Interpreters for the Deaf would be issued a state certification upon filing a complete application and submitting a \$30 application fee.

A person possessing a Michigan Quality Assurance Certification at the level of I, II, or III on the bill's effective date would be considered a qualified interpreter for purposes of the act until the date that certification status expired. He or she could renew the certificate annually until it expired and retesting was required.

A person with credentials as a qualified interpreter from a national organization could be certified upon presentation of his or national certification credentials and payment of a \$30 application fee (which would also fulfill the initial annual fee of \$30); the person would not have to take an examination.

Certification renewal fee. The Division would collect a \$30 annual renewal fee for issuing state certification credentials for all qualified interpreters under the act.

Examination fee. The Division would collect an examination fee of \$125 from residents and \$175 from non-residents applying to take an examination for certification as a qualified interpreter.

Violations. The bill would establish criminal, administrative, and civil penalties for violations of the act.

Any person who misrepresented himself or herself as a qualified interpreter, knowing that he or she did not meet the definition of "qualified interpreter," would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days and/or a fine of at least \$500 but not more than \$1,000. (House Bill 4208 specifies that this provision applies to crimes committed on or after October 1, 2007.)

An applicant for certification or a certified qualified interpreter who violated provisions of the act would face rejection of an application for certification as a qualified interpreter and/or be subject to the revocation, suspension, or limitation of the certification.

An appointing authority that willfully violated Section 3a as added by House Bill 4208, which requires an appointing authority to provide a qualified interpreter when required as an accommodation under state or federal law, would be responsible for a civil 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 the 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 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 where an interpreter does not have to demonstrate competency.

The bill would rectify this situation. Whenever an entity is required under provisions of the ADA or other state or federal law to provide an interpreter, the bill would mandate the interpreter be a "qualified interpreter" as defined in state law. Though Michigan law already specifies minimum standards for qualified interpreters, the bill would require more in-depth rules to govern continuing education and minimum standards of practice, among other things. Such standards would 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:

Senate Bill 25 would 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 deliberately 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 significant civil fine between \$1,000 and \$10,000.

The overall impact of Senate Bill 25 and House Bill 4208 will 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 those who provide the goods and services.

Under the bills, all persons acting as qualified interpreters will possess the training and demonstrated capability, as well as ethics and confidentiality, needed to meet the communication needs of a deaf or deaf-blind person.

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