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Senate Bill 25 (Substitute S-1 as reported)
House Bill 4208 (Substitute S-1 as reported)
Sponsor: Senator John J. Gleason (S.B. 25)
Representative Dudley Spade (H.B. 4208)
Senate Committee: Judiciary
House Committee: Regulatory Reform (H.B. 4208)

Date Completed: 5-7-07

RATIONALE

The Deaf Persons' Interpreters Act requires courts, administrative bodies, and law enforcement agencies to appoint certified interpreters in certain situations that include a deaf person's participation or involvement. Although the Federal Americans with Disabilities Act (ADA) and Michigan's Persons with Disabilities Civil Rights Act both require accommodations to be made for people with various disabilities in a broad array of public and private activities, there are no certification standards specified in law for interpreters for the deaf, except regarding the limited situations addressed by the Deaf Persons' Interpreters Act. A hospital, financial institution, law firm, or employer, for instance, may meet the accommodations requirement of the ADA or the Persons with Disabilities Civil Rights Act without using a trained, neutral professional to translate basic information about medical situations, financial transactions, legal matters, or job conditions. Some people believe that qualified interpreters for the deaf should be required to be appointed not only in situations covered by the Deaf Persons' Interpreters Act, but also whenever accommodations are made for a deaf person under the ADA.

In addition, although the Deaf Persons' Interpreters Act requires interpreters for the deaf, a person who is both deaf and blind may need specialized interpretive services. It has been suggested that the Act be extended to provide for qualified interpreters for a deaf-blind person.

CONTENT

The bills would amend the Deaf Persons' Interpreters Act to do all of the following:

- **Provide for interpreters for a "deaf-blind person", as well as a deaf person.**
- **Delete references to a "certified interpreter"; and refer to a "deaf interpreter" and a "qualified interpreter" (who would have to be certified), as well as an "intermediary interpreter".**
- **Require the use of a qualified interpreter in accommodations made under the Americans with Disabilities Act.**
- **Revise a requirement regarding the payment of fees to an interpreter.**
- **Require the Division on Deaf and Hard of Hearing of the Michigan Department of Labor and Economic Growth (DLEG) to promulgate rules, with the advice of particular entities.**
- **Prescribe criminal penalties and administrative sanctions for violations of the Act.**

The bills are tie-barred.

House Bill 4208 (S-1)

Definitions

Under the Act, "deaf person" means a person whose hearing is totally impaired or whose hearing, with or without amplification, is so seriously impaired that

the primary means of receiving spoken language is through other sensory input, including lip reading, sign language, finger spelling, or reading. The bill would retain that definition and define "deaf-blind person" as a person who has 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 the person's dual sensory loss.

"Qualified interpreter" currently means a person who is not a certified interpreter but whose qualifications for interpreting for deaf persons are determined by the Division, with advice from the Michigan Deaf Association and the Michigan Registry of Interpreters for the Deaf or their successor agencies, to be appropriate for interpreting for deaf persons. The bill, instead, would define "qualified interpreter" as a person who is certified through the National Registry of Interpreters for the Deaf or any other national organization recognized by the Division on Deaf and Hard of Hearing or certified through the State, by the Division, with advice from the Michigan Deaf Association and the Michigan Registry of Interpreters for the Deaf or their successor agencies, with the expressive-receptive skills and necessary vocabulary for the situation. (The Act refers to the former Division of Deaf and Deafened of the Department of Labor, which is now the DLEG Division on Deaf and Hard of Hearing.)

Currently, "certified interpreter", depending on the need of the deaf person, means either a "certified oral interpreter" or a "certified sign language interpreter". "Certified oral interpreter" means a person who is able to convey information through facial and lip movement, and is certified by an organization that the DLEG Division on Deaf and Hard of Hearing determines is nationally recognized for the certification of persons who interpret for deaf persons. "Certified sign language interpreter" means an interpreter who uses sign language to convey information and who is certified by an organization the Division determines is nationally recognized for the certification of persons who interpret for deaf persons. The bill would delete all of those definitions.

The bill would define "qualified oral interpreter" as a qualified interpreter who is able to convey information through facial and lip movement. "Qualified sign language

interpreter" would mean a qualified interpreter who uses sign language to convey information.

Application of Act

Under the Act, in an action before a court or a grand jury where a deaf person is a plaintiff, defendant, or witness, the court must appoint a certified interpreter or, in its discretion, a qualified interpreter to interpret the proceedings to the deaf person, interpret his or her testimony or statements, and assist in preparing the action with the deaf person's counsel. In addition, in a proceeding before an appointing authority, other than a court, the appointing authority must appoint a certified interpreter or, in its discretion, appoint a qualified interpreter, to interpret the proceedings to the deaf person and to interpret his or her testimony or statements in any proceeding before the appointing authority.

The bill would extend these provisions to a deaf-blind person. Under the bill, an appointed interpreter would have to be a qualified interpreter, rather than a certified interpreter or qualified interpreter.

The Act defines "appointing authority" as a court or a department, board, commission, agency, or licensing authority of this State or a political subdivision of the State. The bill also would include an entity providing a qualified interpreter in circumstances involving an accommodation made under the ADA (as described below).

Under the Act, the right of a deaf person to a certified or qualified interpreter cannot be waived except by a request for a waiver by deaf person. Also, a certified or qualified interpreter may not be appointed unless the appointing authority and the deaf person make a preliminary determination that the interpreter is readily able to communicate with the deaf person and to interpret the proceedings in which he or she is involved. The bill would extend these provisions to a deaf-blind person, and delete references to a certified interpreter.

Intermediary Interpreter

Under the Act, if a certified or qualified interpreter states that he or she is unable to render a satisfactory interpretation and that an "intermediary interpreter" will improve the quality of interpretation, the appointing

authority must appoint an intermediary interpreter to assist the certified or qualified interpreter. The bill would delete references to a certified interpreter and would require the appointing authority to appoint an intermediary interpreter or "deaf interpreter", if a qualified interpreter stated that he or she was unable to render a satisfactory interpretation and that such an appointment would improve the quality of interpretation.

The Act defines "intermediary interpreter" as any person, including any hearing impaired person, who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a certified interpreter or qualified interpreter. Under the bill, that definition would refer to a deaf or deaf-blind person, rather than a hearing impaired person, and would not refer to a certified interpreter. The definition would apply to an intermediary interpreter or deaf interpreter.

ADA Accommodation

The bill specifies that, if an accommodation were made for a deaf or deaf-blind person in circumstances enumerated in the ADA, the interpreter would have to be a qualified interpreter.

Senate Bill 25 (S-1)

Application of Act

Under the Act, if a deaf person is arrested and taken into custody for any alleged criminal violation, the arresting officer and the officer's supervisor must procure a certified interpreter or qualified interpreter in order to interrogate the deaf person properly and interpret his or her statements. The bill would extend these provisions to a deaf-blind person, and would require the procurement of a qualified interpreter, rather than a certified interpreter or a qualified interpreter.

Under the Act, each deaf person whose appearance in an action or other proceeding entitles the person to a certified interpreter or a qualified interpreter must notify the appointing authority of the need for an interpreter before the appearance. When an appointing authority knows that a deaf person is or will be coming before it, the

authority must notify the person of the right to a certified or qualified interpreter. An appointing authority may require a person requesting the appointment of a certified or qualified interpreter to furnish proof of the person's deafness, if the appointing authority has reason to believe the person is not deaf.

The bill would extend these provisions to a deaf-blind person, and delete references to a certified interpreter.

Currently, the information that an interpreter gathers from a deaf person pertaining to any action or other pending proceeding must remain confidential and privileged at all times, unless the deaf person executes a written waiver allowing the information to be communicated to others and is present when the information is communicated. Under the bill, this also would apply to a deaf-blind person.

Payment of Fees

The Act requires that a court-appointed interpreter be paid a fee, by the court, that the court determines to be reasonable. Any other appointing authority must pay an interpreter a fee under a schedule of fees promulgated by the Division on Deaf and Hard of Hearing under the Administrative Procedures Act, with the advice of the Michigan Registry of Interpreters for the Deaf. An interpreter also must be paid for his or her actual expenses for travel, meals, and lodging. The bill would delete the reference to a promulgated fee schedule.

Promulgation of Rules

The bill would require the Division on Deaf and Hard of Hearing, with the advice of the Michigan Registry of Interpreters for the Deaf and the Michigan Deaf Alliance, the Michigan Department of Education, and the Detroit Chapter of the National Alliance of Black Interpreters, Inc., to promulgate rules to enforce and administer the Deaf Persons' Interpreters Act.

Criminal Penalties & Administrative Sanctions

Under the bill, a person who knew that he or she did not meet the definition of qualified interpreter, and misrepresented himself or herself as a qualified interpreter, would be guilty of a misdemeanor punishable by up to

90 days' imprisonment, a fine of not less than \$500 or more than \$1,000, or both.

An appointing authority, other than a court, that violated the Act would be guilty of a misdemeanor punishable by a fine of not less than \$1,000 and not more than \$10,000. This provision would take effect on the effective date of the rules promulgated under the bill.

An individual who applied to become certified as a qualified interpreter, through the State, by the Division on Deaf and Hard of Hearing, or a qualified interpreter certified by the Division, who violated the Act, would be subject to one or more of the following actions by the Division:

- Rejection of his or her application for certification as a qualified interpreter.
- Revocation, suspension, or limitation of his or her certification as a qualified interpreter.

MCL 393.504 et al. (S.B. 25)
393.502 et al. (H.B. 4208)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Deaf Persons' Interpreters Act, which was enacted in 1982, requires a court to appoint a certified or qualified interpreter for the deaf in an action before a court or grand jury in which a deaf person is a plaintiff, defendant, or witness. A State or local department, board, commission, agency, or licensing authority must appoint a certified or qualified interpreter to interpret proceedings to a deaf person and interpret his or her statements in a proceeding before that body. A law enforcement agency must provide a certified or qualified interpreter to interrogate or take the statement of a deaf person who is arrested.

The ADA, which was enacted in 1990, requires accommodations to be made for people with disabilities, including deaf individuals, in a broad array of circumstances. Title I of the ADA deals with employment; Title II applies to public services and transportation; and Title III addresses public accommodations such as

restaurants, hotels, and retail establishments. Unlike the more limited Deaf Persons' Interpreters Act, however, the ADA does not require that interpreters for the deaf meet professional certification or qualification standards. Reportedly, many entities that are required to make an accommodation for a disabled person under the ADA may meet that requirement by using someone who knows some sign language but is not trained and certified as a professional interpreter. Indeed, according to testimony before the Senate Judiciary Committee, often a deaf adult's child, who may know some rudimentary sign language or have some informal way of communicating with his or her parent, may be called upon to translate complex and technical medical or legal terminology. Typically, this level of interpretation is inadequate for the matter at hand, and relying on interpreters who have not met established levels of qualification may prevent a deaf person from grasping all the details and nuances of the interaction, thereby preventing him or her from participating fully and equally in everyday affairs.

By requiring the use of a qualified interpreter, not only in judicial, administrative, and arrest proceedings, but whenever an accommodation is made under the ADA, the bills would ensure accurate, professional interpretation for deaf individuals in such situations as medical appointments and emergencies, transactions with financial institutions, and the communication of employment-related information. This would allow deaf people to participate in daily activities on an equal footing with the hearing population.

Response: Title I of the ADA deals with employment issues, but applies only to employers of 15 or more employees. Like the ADA, Michigan's Persons with Disabilities Civil Rights Act also requires an accommodation to be made for a person with a disability for purposes of employment, public accommodation, public service, education, or housing, unless the accommodation would impose an undue hardship, but the State statute defines employer as a person who has one or more employees. By referring to an accommodation made under the ADA and not the Persons with Disabilities Civil Rights Act, it appears that the bills would not require the use of a qualified interpreter for the deaf in the case of an accommodation

made by an employer of fewer than 15 employees.

Supporting Argument

The Deaf Persons' Interpreters Act does not directly address interpretation for a person who is deaf and blind. People with those dual disabilities require a more specialized form of interpretation than that required by a person who is deaf but not blind. The bills would extend the current and proposed requirements for using qualified interpreters to situations in which a deaf-blind person needs interpretation.

Supporting Argument

Many people apparently secure appointments as interpreters for the deaf in various situations even though they do not meet professional standards. According to testimony before the Senate Judiciary Committee by the Director of the Division on Deaf and Hard of Hearing, the Division surveyed interpreters working in Michigan in 2004. Of 212 respondents to the survey, 13% were not qualified interpreters. Indeed, the survey found that 24.4% of interpreters working in public schools in Michigan were not qualified. (The Michigan Department of Education apparently is revising its rules to include new standards for interpreters in K-12 schools.)

By requiring the use of qualified interpreters in various settings and prescribing criminal penalties for a person who knowingly misrepresents himself or herself as a qualified interpreter, the bills would discourage people from seeking an appointment as an interpreter without possessing proper credentials. They also would encourage those who wish to work as interpreters to seek the education and training necessary to be a qualified interpreter.

Opposing Argument

The bills would expand greatly the number of situations in which a qualified interpreter for the deaf was required, which could strain limited resources. If the only interpreters who could be used to comply with ADA accommodation requirements were those who met the certification criteria, the demand for their services likely would increase and some appointing authorities, such as local units of government and small businesses, might be unable to find qualified interpreters in a timely manner.

Response: According to the Division on Deaf and Hard of Hearing, there are more than 400 qualified interpreters in Michigan, more than 90 of whom are nationally certified, and the bills should encourage more interpreters to seek qualification credentials. Several institutions of higher education in Michigan offer courses in American Sign Language (ASL), and ASL has been recognized since 1987 as meeting high school foreign language requirements. These educational opportunities should contribute to the number of qualified interpreters in Michigan. Since the Division maintains a database of qualified interpreters, identifying resources available to appointing authorities is easily accomplished. Moreover, new technological capability has resulted in the development of three video call centers in Michigan, so interpretation services may be available even when the interpreter is not physically present.

Opposing Argument

Imposing criminal penalties upon an appointing authority, other than a court, would be unreasonable. If a township board or hospital, for instance, failed to appoint or perhaps even locate a qualified interpreter, it could be subject to a criminal fine. Also, it is unclear who, exactly, would be criminally liable. Perhaps noncompliance should be a civil infraction or administrative violation, rather than a misdemeanor.

In addition, the criminal penalty provision is too broad. It makes no reference to intent or knowledge on the part of the appointing authority. Indeed, if an interpreter misrepresented himself or herself to an appointing authority as a qualified interpreter, the appointing authority could be criminally liable simply because it was duped into appointing the unqualified interpreter.

Response: The criminal penalty would apply to an appointing authority that failed to appoint an interpreter as required by the Act or appointed an interpreter who was not qualified. An appointing agency should never be unable to find a qualified interpreter. In addition to the Division's database and video call centers mentioned above, other organizations match appointing authorities with qualified interpreters. Further, since the penalties would apply only after the Division promulgated rules, appointing authorities would have sufficient time and opportunity to provide input into

how the system would work. Also, the criminal penalty provision would not include courts because of separation of powers concerns.

Opposing Argument

The proposed rule promulgation authority is too broad and unnecessarily would involve private sector entities. The groups with which the Division would consult in promulgating rules should not be listed in statute. Further, the rule promulgation authority should be limited to assessing the qualifications of interpreters, not determining how to enforce and administer the Act.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The Department of Labor and Economic Growth has stated that the bills would have no fiscal impact on State government.

The Senate bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries. To the extent that entities of State or local governments committed violations under the bill, there could be additional costs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.