



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



## BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

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

**PUBLIC ACT 23 of 2007**  
**PUBLIC ACT 24 of 2007**

Date Completed: 8-13-07

**RATIONALE**

The Deaf Persons' Interpreters Act requires courts, administrative bodies, and law enforcement agencies to appoint qualified interpreters in certain situations in which a deaf person participates or is involved. 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 were no qualification 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, could 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. It was suggested that the Deaf Persons' Interpreters Act should require qualified interpreters for the deaf to be appointed not only in situations covered by that Act, but also whenever accommodations must be made for a deaf person under State or Federal law.

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 was suggested that the Act be extended to provide for qualified interpreters for deaf-blind individuals.

Further, application and examination fees for State certification of qualified interpreters are collected but were not specified in statute. Codifying the fees at increased levels was suggested.

**CONTENT**

**The bills amended 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 must be certified), as well as an "intermediary interpreter".
- Require the use of a qualified interpreter in accommodations required to be made under State or Federal law.
- 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 an appointing authority of the need for a qualified interpreter.
- Codify certification and examination fees at increased levels.
- Require the Division on Deaf and Hard of Hearing of the Michigan Department of Labor and Economic Growth (DLEG), with the advice of

**the Michigan Department of Education (MDE), to promulgate rules governing certain procedures and require that the rules be coordinated with MDE rules for special education.**

**-- Prescribe criminal and civil penalties and administrative sanctions for violations of the Act.**

**-- Revise a requirement regarding the payment of fees to an interpreter.**

The bills were tie-barred and took effect on June 28, 2007.

### **House Bill 4208**

#### **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 retains that definition and defines "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" previously meant a person who was not a certified interpreter but whose qualifications for interpreting for deaf persons were 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, defines "qualified interpreter" as a person who is certified through the National Registry of Interpreters for the Deaf or through the State by the Division on Deaf and Hard of Hearing.

Previously, "certified interpreter", depending on the need of the deaf person, meant either a certified oral interpreter or a certified sign language interpreter. "Certified oral interpreter" meant a person who was able to convey information through facial and lip movement, and was certified by an organization that the Division on Deaf and Hard of Hearing determined was

nationally recognized for the certification of people who interpret for deaf persons. "Certified sign language interpreter" meant an interpreter who used sign language to convey information and who was certified by an organization the Division determined was nationally recognized for the certification of people who interpret for deaf persons. The bill deleted all of those definitions.

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

#### **Accommodation under State or Federal Law**

The bill specifies that, if an accommodation is required to be made for a deaf or deaf-blind person under State or Federal law, the interpreter must be a qualified interpreter.

#### **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 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 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 extends these provisions to a deaf-blind person.

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 includes an entity that is required to provide a qualified interpreter in circumstances involving an accommodation made under State or Federal law (described below).

Under the Act, the right of a deaf person to a qualified interpreter cannot be waived except by a request for a waiver by a deaf person. Also, a 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 extends these provisions to a deaf-blind person.

Previously, each of these provisions referred to the appointment of a certified interpreter or a qualified interpreter. Under the bill, an appointed interpreter must be a qualified interpreter.

#### Intermediary Interpreter

Under the bill, if a qualified interpreter states that he or she is unable to render a satisfactory interpretation and that an intermediary interpreter or a deaf interpreter will improve the quality of interpretation, the appointing authority must appoint an intermediary or deaf interpreter to assist the qualified interpreter. Previously, the Act required the appointment of an intermediary interpreter if a certified interpreter or a qualified interpreter stated that he or she was unable to render a satisfactory interpretation and that the appointment would improve the quality of interpretation.

The bill defines "intermediary interpreter" or "deaf interpreter" as any person, including any deaf or deaf-blind 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 deaf or deaf-blind person and a qualified interpreter. Previously, this was the definition of "intermediary interpreter" but it referred to a hearing impaired person, rather than a deaf or deaf-blind person.

### **Senate Bill 25**

#### 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 qualified interpreter in order to interrogate the deaf person properly and interpret his or her statements. The bill extends these provisions to a deaf-blind person.

Under the Act, each deaf person whose appearance in an action or other proceeding

entitles the person to 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 qualified interpreter. An appointing authority may require a person requesting the appointment of a 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 extends these provisions to a deaf-blind person. The bill specifies that a deaf or deaf-blind person entitled to a qualified interpreter as an accommodation under State or Federal law must provide reasonable notice to the appointing authority of the need for a qualified interpreter.

Under the Act, 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 applies to a deaf-blind person.

Previously, each of these provisions referred to the appointment of a certified interpreter or a qualified interpreter. Under the bill, an appointed interpreter must be a qualified interpreter.

#### Certification & Fees

The bill specifies that any person possessing a Michigan quality assurance certification at the level of I, II, or III on the bill's effective date is considered a qualified interpreter for purposes of the Act until that certification status expires. The person may renew the certificate annually until it expires and retesting is required.

Under the bill, a person who is certified through, and is in good standing with, the National Registry of Interpreters for the Deaf must be issued a State certification upon filing a complete application and submitting a \$30 application fee. A qualified interpreter, upon presenting national certification credentials and without examination, must pay the \$30 application

fee, which will fulfill his or her initial certification requirement. The Division must collect a \$30 annual renewal fee for issuing State certification credentials for qualified interpreters.

The bill also requires the Division to collect an examination fee of \$125 from each Michigan resident, and \$175 from each nonresident, applying to take an examination for certification under the Act.

(Previous application, renewal, and examination fees are described in **FISCAL IMPACT**, below.)

#### Promulgation of Rules

The bill requires the Division on Deaf and Hard of Hearing, with the advice of the MDE, to promulgate rules that 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. The rules must be coordinated with the MDE and the administrative rule for special education (R 340.1793a). (That rule requires an interpreter for the deaf to be a certified interpreter, as defined in the Deaf Persons' Interpreters Act; a qualified interpreter, as defined in the Act, who has been approved at quality level II or III; or a high school graduate, or equivalent, with advanced training in a community college, agency, or degree-granting institution in a program approved by the MDE.)

#### Criminal & Civil Penalties; Administrative Sanctions

Under the bill, a person who knows that he or she does not meet the definition of qualified interpreter, and misrepresents himself or herself as a qualified interpreter, is 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 individual who applies 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 violates the Act, is 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.

If an appointing authority willfully violates the requirement (in House Bill 4208) that an interpreter required as an accommodation under State or Federal law be a qualified interpreter, the appointing authority is subject to a civil fine of at least \$1,000 and not more than \$10,000. This provision takes effect on the effective date of the rules promulgated under Senate Bill 25.

#### Payment of Interpreter

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. Previously, the fee had to be paid 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; the bill deleted this requirement.

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 requires a court to appoint a 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 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 qualified interpreter to interrogate or take the statement of a deaf person who is arrested.

The ADA 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. Like the ADA, Michigan's Persons with Disabilities Civil Rights Act (PWDCRA) 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. Unlike the more limited Deaf Persons' Interpreters Act, however, the ADA and the PWDCRA do 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 and the PWDCRA 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.

Interpreters are crucial intermediaries in many settings, including schools, health care facilities, and the work place. In certain situations, having a qualified interpreter is more than just helpful. Accurately interpreting a patient's symptoms and a doctor's instructions, for example, may mean the difference between life and death. By requiring the use of a qualified interpreter, not only in judicial, administrative, and arrest proceedings, but whenever an accommodation is made under State or Federal law, the bills will 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 will allow deaf people to

participate in daily activities on an equal footing with the hearing population.

### **Supporting Argument**

Previously, the Deaf Persons' Interpreters Act did 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 extend the requirements for using qualified interpreters to situations in which a deaf-blind person needs interpretation.

### **Supporting Argument**

Many people apparently have secured appointments as interpreters for the deaf in various situations even though they have not met 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, prescribing criminal penalties for a person who knowingly misrepresents himself or herself as a qualified interpreter, and subjecting appointing authorities that fail to use qualified interpreters to civil fines, the bills will discourage people from seeking an appointment as an interpreter without possessing proper credentials and will encourage appointing authorities to be diligent in ensuring that interpreters are qualified. The bills also will encourage those who wish to work as interpreters to seek the education and training necessary to be a qualified interpreter.

### **Supporting Argument**

Interpreters have had to pay application and examination fees established by the Division. By updating and codifying those fees, Senate Bill 25 will generate increased revenue and give the Legislature control over the fee schedule.

### **Opposing Argument**

The bills expand greatly the number of situations in which a qualified interpreter for the deaf is required, which may strain limited resources. If only interpreters who meet the certification criteria may be used to comply with Federal and State accommodation requirements, the demand for their services likely will 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, which 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.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **Senate Bill 25**

This bill increased the application fee from \$15 to \$30, the renewal fee from \$15 to \$30, the in-State examination fee for in-State residents from \$70 to \$125, and the examination fee for out-of-State residents from \$120 to \$175. There are currently 1,000 interpreters who are identified in Michigan. Of those, approximately 700 will be subject to the renewal fee, and approximately 500 will need to take the examination for certification. Annual revenue generated from the increased renewal fee will be approximately \$10,500 annually, and the additional revenue generated from the examination fee will be approximately \$27,500 in the first year. The

examinations are required every four years and new interpreters may enter the system in the off years, also providing additional revenue. The amount of the revenue depends on the number of new interpreters who apply and complete the examination. The additional revenue will be used to support the administrative responsibilities of the Division and to support additional examinations as needed.

There are no data to indicate how many offenders likely will be convicted of the criminal offenses. Local governments incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries. To the extent that entities of State or local governments commit violations, there may be additional costs.

#### **House Bill 4208**

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

Fiscal Analyst: Lindsay Hollander  
Elizabeth Pratt  
Maria Tyszkiewicz  
Stephanie Yu

A0708\s25ea

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.