

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S2/28/13 S3/12/13 H4/5/13

A Bill

SENATE BILL 442

By: Senator B. King

By: Representative Fite

For An Act To Be Entitled

AN ACT TO PROVIDE FOR LICENSED QUALIFIED INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF, DEAFBLIND, HARD OF HEARING, OR ORAL DEAF; TO CREATE THE ADVISORY BOARD FOR INTERPRETERS BETWEEN HEARING INDIVIDUALS AND INDIVIDUALS WHO ARE DEAF, DEAFBLIND, HARD OF HEARING, AND ORAL DEAF; TO CREATE A FUND; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR LICENSED QUALIFIED INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF, DEAFBLIND, HARD OF HEARING, OR ORAL DEAF.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended to add an additional section to read as follows:

19-6-819. Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue fund to be known as the "Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf Fund".

(b)(1) All moneys collected under § 20-14-801 et seq. shall be deposited into the State Treasury to the credit of the fund as special



revenues.

(2) The fund also shall consist of any other revenues authorized by law.

(c) The fund shall be used by the Department of Health to pay costs related to the Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf and the licensure of licensed qualified interpreters under § 20-14-801 et seq.

SECTION 2. Arkansas Code Title 20, Chapter 14, is amended to add an additional subchapter to read as follows:

Subchapter 8 – Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf.

20-14-801. Findings.

(a) The General Assembly finds that:

(1)(A) The practice of interpreting affects the public health, safety, and welfare and civic, economic, social, academic, and recreational aspects of life.

(B) Therefore, the practice of interpreting should be subject to licensure and regulation to protect the public's interest;

(2) Individuals who are deaf, deafblind, hard of hearing, or oral deaf, individuals with disabilities who use special techniques in order to communicate, and individuals whose primary language is sign language have a civil right to effective communication;

(3) Individuals with hearing disabilities and those with whom they communicate require and are entitled to competent, reliable interpreting services; and

(4) The availability of competent, reliable, credentialed interpreting services is necessary for individuals with hearing disabilities to realize their right to full and equal participation in society.

(b) The purposes of this subchapter are to:

(1) Provide minimum qualifications for interpreters and to ensure that members of the interpreting profession perform with a high degree of competency;

(2) Regulate the practice and licensure of interpreters for individuals who are deaf, deafblind, hard of hearing, or oral deaf; and

(3) Impose penalties for persons who violate this subchapter or the rules adopted under this subchapter.

20-14-802. Definitions.

As used in this subchapter:

(1) "Cued speech" means the system of handshapes that represent groups of consonant sounds and hand placements that represent groups of vowel sounds that is used with natural speech to represent a visual model of spoken language;

(2) "Deaf interpreter" means a deaf individual who facilitates communication between another deaf person and a licensed qualified interpreter or between two (2) or more deaf persons;

(3) "Deaf individual" means an individual who has a documented hearing loss so severe that the individual is unable to process speech and language through hearing, with or without amplification;

(4) "Deafblind individual" means an individual who has a combined loss of vision and hearing that prevents the individual's vision or hearing from being used as a primary source for accessing information;

(5) "Hard of hearing individual" means an individual who has a hearing loss, may primarily use visual communication, and may use assistive devices;

(6) "Interpret" means to provide language equivalency between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf using techniques that include without limitation:

(A) American Sign Language;

(B) English-based sign language;

(C) Cued speech; and

(D) Oral interpreting;

(6) "Interpreting agency" means an entity that provides qualified interpreter services for a fee;

(7) "Oral deaf individual" means an individual whose sense of hearing is nonfunctional for the purpose of communication and whose primary method of communication is speech reading and spoken English;

(8) "Oral interpreting" means the use of oral transliteration with special techniques to make the English language visible for persons who communicate as speech readers;

(9) "Licensed provisional interpreter" means an individual who is deaf licensed under this subchapter; and

(10) "Licensed qualified interpreter" means an individual licensed under this subchapter.

20-14-803. Penalties.

(a)(1) A person who is not licensed under this subchapter and who pleads guilty or nolo contendere to or is found guilty of holding himself or herself out to the public as a licensed qualified interpreter is guilty of a violation and shall be fined not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500).

(2) If a person who pleads guilty or nolo contendere to or is found guilty of a violation under subdivision (a)(1) of this section complies with this subchapter within thirty (30) days after pleading guilty or nolo contendere to or being found guilty of a violation under subdivision (a)(1) of this section, the court shall suspend the fine under subdivision (a)(1) of this section.

(b) An interpreting agency that pleads guilty or nolo contendere to or is found guilty of knowingly hiring or providing interpreting services for an individual who is deaf, deafblind, hard of hearing, or oral deaf through an individual not licensed under this subchapter is guilty of a violation and shall be fined not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

20-14-804. Advisory Board between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf – Creation – Membership.

(a) The Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf is created within the Department of Health.

(b) The board shall consist of seven (7) members appointed by the Director of the Department of Health as follows:

(1) Four (4) licensed qualified interpreters appointed from a list of eight (8) submitted by the Arkansas Registry of Interpreters for the Deaf in conjunction with the Arkansas Association of the Deaf;

(2) Two (2) members appointed from a list of four (4) submitted

by the Arkansas Association of the Deaf in conjunction with the Arkansas Registry of Interpreters for the Deaf who are deaf persons, hard of hearing persons, or oral deaf persons not licensed under this subchapter; and

(3) One (1) member appointed from a list of two (2) submitted by the Arkansas Association of the Deaf in conjunction with the Arkansas Registry of Interpreters for the Deaf who are neither individuals who are deaf, deafblind, hard of hearing, or oral deaf and who are not licensed under this subchapter.

(c)(1) Each member shall serve a term of three (3) years.

(2) A member shall not serve more than two (2) consecutive terms.

(d) Four (4) members of the board constitute a quorum for the transaction of business of the board.

(e) If a vacancy occurs on the board, the director shall appoint to complete the term vacated a person who possesses the same qualifications as those required for the position to which he or she is appointed.

20-14-805. Powers and duties of Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf.

(a) The Advisory Board between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf shall:

(1) Recommend rules for the operation of the Advisory Board between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf to the State Board of Health; and

(2)(A) Hold meetings at the offices of the Department of Health in Little Rock or at other places as the Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf may determine.

(B) The Department of Health shall provide meeting facilities and staff for meetings of the Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf.

(b) The Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf shall review and recommend to the Director of the Department of Health:

(1) Acceptance or rejection of applications for licensure and renewal of licenses for interpreters for the deaf, deafblind, hard of hearing, and oral deaf;

(2) Criteria for issuance and renewal of licenses for licensed qualified interpreters;

(3) Criteria for issuance and continuance of provisional licenses;

(4) Fees for licensure and licensure renewal under this subchapter;

(5) Suspension or revocation of licenses under this subchapter;

(6) Procedures for receiving and investigating complaints under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(7) Rules to ensure that an interpreting agency provides only licensed qualified interpreters for services under this subchapter;

(8) Rules regarding conflicts of interest regarding members of the Advisory Board for Interpreters Between Hearing Individuals and Individuals Who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf;

(9)(A) A code of professional conduct.

(B) The code of professional conduct shall provide, at a minimum, that:

(i) A licensed qualified interpreter shall make a true interpretation in an understandable manner to an individual who is deaf, deafblind, hard of hearing, or oral deaf for whom the licensed qualified interpreter is appointed and that the licensed qualified interpreter will interpret accurately the statements of the individual who is deaf or hard of hearing who desires that his or her statements be made in English to the best of the licensed qualified interpreter's skill and judgment; and

(ii) All information that a licensed qualified interpreter gathers, learns from, or relays to an individual who is deaf, deafblind, hard of hearing, or oral deaf during an administrative, civil, or criminal proceeding shall remain confidential and privileged unless the individual who is deaf, deafblind, hard of hearing, or oral deaf desires that the information be communicated to other persons; and

(10) A continuing education program for licensed qualified interpreters.

20-14-806. Powers and duties of the Director of the Department of Health.

(a) After consideration of the recommendation of the Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf, the Director of the Department of Health shall:

(1) Issue or deny a license or a renewal of license of a licensed qualified interpreter;

(2) Issue or deny a license or a renewal of a licensed provisional interpreter license;

(3) Confirm or overrule a recommendation to revoke or suspend a license for an interpreter between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf;

(4) Create and maintain a registry of licensed qualified interpreters; and

(5) Establish reasonable fees for licensure and renewal of licensure.

(b) Before a rule is promulgated under this subchapter, the proposed rule shall be presented to the Legislative Council.

20-14-807. Licenses.

(a) A licensed qualified interpreter shall meet criteria established under this subchapter for interpreters, including without limitation certification or credentialing by the:

(1) Arkansas Rehabilitation Services Quality Assurance Screening Test;

(2) Educational Interpreter Performance Assessment;

(3) National Association of the Deaf;

(4) National Cued Speech Association;

(5) Registry of Interpreters for the Deaf, Inc.; or

(6) Texas Board for Evaluation of Interpreters.

(b) A licensed provisional interpreter license may be issued to a deaf interpreter who meets criteria established under this subchapter.

(c) A license issued under this subchapter is valid for one (1) year.

20-14-808. Prohibitions.

(a) Except as provided in subsection (b) of this section, it is unlawful for an individual to use the title "licensed qualified interpreter" or "licensed provisional interpreter" or to hold himself or herself out as an interpreter between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf unless the individual using the title holds a license under this subchapter.

(b) Subsection (a) of this section does not apply to:

(1) A person who interprets for an individual who is deaf, deafblind, hard of hearing, or oral deaf during a religious service;

(2) A nonresident interpreter who holds a credential or a certificate valid in another state who interprets in Arkansas less than twenty (20) days per year;

(3) A person who interprets during an emergency; or

(4) A person who is an interpreter intern or a student in training who is:

(A) Enrolled in and pursuing a degree in interpreting at an accredited institution of higher learning; or

(B) Interpreting under the supervision of a licensed qualified interpreter as part of a supervised program of study.

20-14-809. Rules.

The State Board of Health shall adopt rules to implement this subchapter.

SECTION 3. DO NOT CODIFY. Initial Meeting of the Advisory Board Between Hearing Individuals and Individuals Who are Deaf, Deafblind, Hard Of Hearing, or Oral Deaf.

(a) The Director of the Department of Health shall make appointments to the Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf under § 20-14-804 on or before October 1, 2013.

(b) An initial member appointed as a licensed qualified interpreter member shall become licensed as a licensed qualified interpreter under this subchapter on or before January 1, 2014.

(c) The board shall hold its initial meeting within ninety (90) days after the effective date of this act.

(d) At the first meeting, the board shall elect a chair and a secretary who shall serve one-year terms.

(e) At the first meeting, the initial members shall draw lots for staggered terms so that three (3) members serve three-year terms, two (2) members serve two-year terms, and two (2) member serve one-year terms.

SECTION 4. Arkansas Code §§ 25-15-101 and 25-15-102 are amended to read as follows:

25-15-101. Interpreters generally between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf.

(a) As used in this section, "interpreter" means an interpreter as defined in § 25-15-102;

~~(a)(b)~~ Every A person who cannot speak or understand the English language or who because of hearing, speaking, or other impairment has difficulty in communicating with other persons, and who is a party to ~~any a~~ a civil proceeding or a witness ~~therein, shall be~~ in a civil proceeding is entitled to an interpreter to assist that person throughout the proceeding.

~~(b)(c)(1)~~ An interpreter may be retained by the party or witness himself or herself, or, if the person is unable to pay for an interpreter, may be appointed by the administrative board or agency before which the proceeding is pending.

(2) If an interpreter is appointed by the board or agency, the fee for the services of the interpreter shall be set by the board or agency and be paid from ~~any~~ funds available to the board or agency or be paid in any other manner ordered by the board or agency.

~~(e)(d)~~ Any An administrative agency may inquire into the qualifications and integrity of ~~any an~~ an interpreter and may disqualify any person for cause from serving as an interpreter.

~~(d)(e)~~ Every An interpreter for another person who is either a party or a witness in an administrative proceeding ~~as referred to in~~ under this section shall take the following oath:

“Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret to the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this board (agency), so help you God (or under the pains

and penalties of perjury)?”

25-15-102. ~~Interpreters for the deaf~~ between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf.

(a) For the purpose of appointing an interpreter ~~for deaf persons, deafblind persons, hard of hearing persons, and oral deaf persons~~ between a hearing individual and an individual who is deaf, deafblind, hard of hearing, or oral deaf under § 25-15-101:

(1) ~~“Any administrative~~ Administrative proceeding” means ~~any a~~ any a proceeding of ~~any a~~ any a department, board, commission, agency, committee, or licensing authority of the state or of ~~any a~~ any a political subdivision or municipality, ~~and it shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his or her testimony or statements;~~

(2) “Deaf individual” means an individual who has a documented hearing loss so severe that the individual is unable to process speech and language through hearing, with or without amplification;

(3) “Deafblind individual” means an individual who has a combined loss of vision and hearing that prevents the individual’s vision or hearing from being used as a primary source for accessing information;

(4) “Hard of hearing individual” means an individual who has a hearing loss, may primarily use visual communication, and may use assistive devices;

(5) “Interpreter” means a licensed qualified interpreter or a licensed provisional interpreter licensed by the Department of Health under § 20-14-801 et seq.;

(6) “Oral deaf individual” means an individual whose sense of hearing is nonfunctional for the purpose of communication and whose primary communication is by speech reading and spoken English; and

~~(2)(A)(7)~~ (7) “Oral interpreter” means a person who interprets language through facial and lip movements only and who does not use manual communication licensed qualified interpreter or a licensed provisional interpreter who interprets language through facial and lip movements only and who does not use manual communication.

~~(B) An oral interpreter shall be provided upon the request of a deaf person who does not communicate in sign language.~~

~~(C) The right of a deaf person to an interpreter may not be waived except by a deaf person who does not use sign language and who initiates the request for waiver in writing. The waiver is subject to approval of counsel to the deaf person, if existent, and is subject to approval of the appointing authority; and~~

~~(3)(A) "Qualified interpreter" means an interpreter certified by the National Registry of Interpreters for the Deaf, Arkansas Registry of Interpreters for the Deaf, or, in the event an interpreter so certified is not available, an interpreter who is otherwise qualified~~

~~(B) Efforts to obtain the services of a qualified interpreter certified with a Legal Skills Certificate or a Comprehensive Skills Certificate will be made prior to accepting services of an interpreter with lesser certification.~~

~~(C)(b)(1) No An qualified interpreter shall not be appointed unless the appointing authority and the ~~deaf person~~ make individual who is deaf, deafblind, hard of hearing, or oral deaf makes a preliminary determination that the interpreter is able to readily communicate with the ~~deaf person~~ individual who is deaf, deafblind, hard of hearing, or oral deaf and is able to accurately interpret the statements of the ~~deaf person~~ individual who is deaf, deafblind, hard of hearing, or oral deaf and interpret the proceedings in which a ~~deaf person~~ an individual who is deaf, deafblind, hard of hearing, or oral deaf may be involved.~~

~~(D)(2) ~~Every deaf person~~ An individual who is deaf, deafblind, hard of hearing, or oral deaf entitled to an interpreter under § 25-15-101 shall be is entitled to a ~~qualified~~ an interpreter as defined by this subsection.~~

~~(c)(1) An oral interpreter shall be provided upon the request of an individual who is deaf, deafblind, hard of hearing, or oral deaf who does not communicate in sign language.~~

~~(2)(A) The right of an individual who is oral deaf to an interpreter may not be waived except by an individual who is oral deaf who does not use sign language and who initiates the request for a waiver in writing.~~

~~(B) The waiver is subject to approval of counsel to the individual who is oral deaf, if existent, and is subject to approval of the appointing authority.~~

(d) A department, board, commission, agency, committee, or licensing authority of the state or of a political subdivision or municipality shall appoint an interpreter to interpret an administrative proceeding to an individual who is deaf, deafblind, hard of hearing, or oral deaf and to interpret the testimony or statements of the individual who is deaf, deafblind, hard of hearing, or oral deaf.

~~(b)(e)(1) Every deaf person~~ An individual who is deaf, deafblind, hard of hearing, or oral deaf whose appearance before a proceeding entitles him or her to an interpreter ~~should~~ shall notify the appointing authority of ~~his or her need prior to any~~ the need of the individual who is deaf, deafblind, hard of hearing, or oral deaf before an appearance and ~~should~~ shall request at that time the services of an interpreter.

~~(2)(A) When~~ If a deaf person an individual who is deaf, deafblind, hard of hearing, or oral deaf reasonably expects the need for an interpreter to be for a period greater than a single day, ~~he or she should~~ the individual who is deaf, deafblind, hard of hearing, or oral deaf shall notify the appointing authority.

~~(B)~~ This notification shall be sufficient for the duration of ~~his or her~~ the participation of the individual who is deaf, deafblind, hard of hearing, or oral deaf in the proceedings.

~~(e)(f)~~ An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of ~~his or her~~ the deafness of the individual who is deaf, deafblind, hard of hearing, or oral deaf when the appointing authority has reason to believe that the ~~person deaf person, deafblind person, hard of hearing person, or oral deaf person~~ is not deaf, deafblind, hard of hearing, or oral deaf.

~~(d)(g) It shall be the responsibility of the~~ The appointing authority ~~to~~ shall channel requests for qualified interpreters through the Department of Health;

~~(1) The Arkansas Registry of Interpreters for the Deaf;~~

~~(2) The Office for the Deaf and Hearing Impaired of the Arkansas Rehabilitation Services of the Department of Career Education;~~

~~(3) The University of Arkansas at Little Rock Interpreter Education Program; or~~

~~(4) Any community resource wherein the appointing authority or the deaf person is knowledgeable that qualified interpreters can be found.~~

~~(e)~~(h) Before a ~~qualified~~ an interpreter participates in any proceedings subsequent to an appointment under ~~the provisions of~~ this section, the interpreter shall make an oath or affirmation that the interpreter will:

(1) ~~make~~ Make a true interpretation in an understandable manner to the ~~deaf person~~ individual who is deaf, deafblind, hard of hearing, or oral deaf for whom ~~he or she~~ the interpreter is appointed; and

(2) ~~that the interpreter will interpret~~ Interpret the statements of the ~~deaf person~~ individual who is deaf, deafblind, hard of hearing, or oral deaf desiring that statements be made, in the ~~English language to the best of the interpreter's skill and judgment~~ language best suited to the needs of the individual who is deaf, deafblind, hard of hearing, or oral deaf.

~~(f)~~(i) The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter ~~so indicates~~ requests a recess period.

~~(g)~~(j) ~~All information~~ Information that the interpreter gathers, learns from, or relays to the ~~deaf person or person who is unable to communicate in English~~ individual who is deaf, deafblind, hard of hearing, or oral deaf pertaining to ~~any~~ an administrative, civil, or criminal proceeding shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless ~~the deaf person or person who is unable to communicate in English~~ the individual who is deaf, deafblind, hard of hearing, or oral deaf desires that ~~such~~ the information be communicated to other persons.

~~(h)~~(k)(1) An interpreter appointed under ~~the provisions of~~ this section ~~shall be~~ is entitled to a reasonable fee for his or her services.

(2) The fee shall be in accordance with standards established by the ~~Arkansas Registry of Interpreters for the Deaf~~ Department of Health and in addition to actual expenses for travel and transportation.

(3)(A) ~~When~~ If the interpreter is appointed by a court, the fee shall be paid out of general county funds.

(B) ~~When~~ If the interpreter is otherwise appointed, the fee shall be paid out of funds available to the appointing authority.

SECTION 5. EFFECTIVE DATE. Section 20-14-805 is effective on and after

November 1, 2013.

/s/B. King