

## LEGISLATIVE BILL 22

Approved by the Governor April 17, 2002

Introduced by Suttle, 10

AN ACT relating to deaf and hard of hearing persons; to amend sections 20-150 to 20-154, 20-156, 25-2401, 25-2404, 25-2405, and 55-424, Reissue Revised Statutes of Nebraska, sections 20-159, 25-2402, 25-2407, and 71-4728, Revised Statutes Supplement, 2000, and sections 71-4720.01, 71-4727, and 71-4732, Revised Statutes Supplement, 2001; to provide for the licensing and evaluation of interpreters; to state intent; to define and redefine terms; to create a board; to provide powers and duties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 20-150, Reissue Revised Statutes of Nebraska, is amended to read:

20-150. (1) The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of deaf and hard of hearing persons who cannot readily understand or communicate in spoken language and who consequently cannot equally participate in or benefit from proceedings, programs, and activities of ~~the courts,~~ state agencies and law enforcement personnel, and legislative bodies unless qualified interpreters are available to assist them. State agencies and law enforcement personnel shall appoint licensed interpreters as provided in sections 20-150 to 20-159, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and 25-2401 to 25-2407 and public school districts and educational units shall appoint qualified educational interpreters.

(2) It is the intent of the Legislature that by September 1, 2002, the Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. Prior to September 1, 2002, the commission shall (a) develop licensed interpreter guidelines for distribution, (b) develop training to implement the guidelines, (c) adopt and promulgate rules and regulations to implement the guidelines and requirements for licensed interpreters, and (d) develop a roster of interpreters as required in section 71-4728.

(3) It is the intent of the Legislature to assure that qualified educational interpreters are provided to deaf and hard of hearing children in kindergarten-through-grade-twelve public school districts and educational service units. Prior to September 1, 1998, the State Department of Education, in cooperation with the Commission for the Deaf and Hard of Hearing, shall develop qualified educational interpreter guidelines for distribution as well as a training program to implement the guidelines. By September 1, 2000, the State Department of Education shall adopt and promulgate rules and regulations to implement the guidelines and requirements for qualified educational interpreters, and such rules and regulations shall apply to all qualified educational interpreters employed for the 2001-02 school year and all school years thereafter.

Sec. 2. Section 20-151, Reissue Revised Statutes of Nebraska, is amended to read:

20-151. As used in sections 20-150 to 20-159, unless the context otherwise requires:

(1) Appointing authority means the Legislature, a legislative committee, state agency or law enforcement personnel, or any court of the state required to provide a qualified licensed interpreter pursuant to sections 20-150 to 20-159;

(2) Auxiliary aid includes, but is not limited to, qualified sign language interpreters, oral interpreters, tactile interpreters, other interpreters, notetakers, transcription services, written materials, assistive listening devices, assisted listening systems, videotext displays, and other visual delivery systems;

(3) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or ~~an~~ other auxiliary aid;

(4) Intermediary interpreter means any person, including any deaf or hard of hearing person, who is able to assist in providing an accurate

interpretation between spoken English and sign language or between variants of sign language in order to facilitate communication between a deaf or hard of hearing person and a qualified interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the guidelines established by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150;

(6) Oral interpreter means a person who interprets language through facial expression, body language, and mouthing;

~~(6) Qualified interpreter means a person who demonstrates proficiencies in interpretation or transliteration and is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary; and~~

(7) State agency means any state entity which receives appropriations from the Legislature and includes the Legislature, legislative committees, executive agencies, courts, and probation officials but does not include political subdivisions; and

(8) Tactile interpreter means a person who interprets for a deaf-blind person. The degree of deafness and blindness will determine the mode of communication to be used for each person.

Sec. 3. Section 20-152, Reissue Revised Statutes of Nebraska, is amended to read:

20-152. Whenever a deaf or hard of hearing person is arrested and taken into custody for an alleged violation of state law or local ordinance, the appointing authority shall procure a qualified licensed interpreter for any interrogation, warning, notification of rights, or taking of a statement, unless otherwise waived. No arrested deaf or hard of hearing person otherwise eligible for release shall be held in custody solely to await the arrival of a qualified licensed interpreter. A qualified licensed interpreter shall be provided as soon as possible. No written or oral answer, statement, or admission made by a deaf or hard of hearing person in reply to a question of any law enforcement officer or any other person having a prosecutorial function may be used against the deaf or hard of hearing person in any criminal proceeding unless (1) the statement was made or elicited through a qualified licensed interpreter and was made knowingly, voluntarily, and intelligently or (2) the deaf or hard of hearing person waives his or her right to an interpreter and the waiver and statement were made knowingly, voluntarily, and intelligently. The right of a deaf or hard of hearing person to an interpreter may be waived only in writing. The failure to provide ~~an~~ a licensed interpreter pursuant to this section shall not be a defense to prosecution for the violation for which the deaf or hard of hearing person was arrested.

Sec. 4. Section 20-153, Reissue Revised Statutes of Nebraska, is amended to read:

20-153. (1) ~~For any proceeding before the Legislature, any legislative committee, any law enforcement agency or department, or an appointing authority including any court at which a deaf or hard of hearing person is subpoenaed or requested in writing to attend, the appointing authority shall obtain a qualified licensed interpreter to interpret the proceedings to the deaf or hard of hearing person and to interpret his or her testimony or statements.~~

(2) Whenever any state agency uses the services of a qualified interpreter, as defined in federal law, to comply with sections 42 U.S.C. 12102, 12131, and 12132, and any regulations adopted thereunder, as such sections and regulations existed on the effective date of this act, the state agency shall obtain a licensed interpreter to act as a qualified interpreter for such purposes.

Sec. 5. Section 20-154, Reissue Revised Statutes of Nebraska, is amended to read:

20-154. ~~If an appointed qualified a licensed interpreter appointed under section 20-153 is not able to provide effective communication with a deaf or hard of hearing person, the appointing authority shall obtain another qualified licensed interpreter.~~ An oral interpreter shall be provided upon request of a deaf or hard of hearing person who chooses not to communicate in sign language. If an interpreter is unable to render a satisfactory interpretation, the appointing authority shall then obtain an intermediary interpreter to assist the appointed interpreter. The appointing authority shall ensure that any interpreter is properly situated so as to permit effective communication with the deaf or hard of hearing person and full participation of the deaf or hard of hearing person in the proceeding.

Sec. 6. Section 20-156, Reissue Revised Statutes of Nebraska, is amended to read:

20-156. (1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 17 of this act to set policies and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters, including applications, renewals, modifications, and record keeping, pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The Commission for the Deaf and Hard of Hearing commission shall prepare and maintain a list roster of the various types of qualified licensed interpreters as provided by section 71-4728. Each qualified interpreter shall provide his or her social security number to the commission. Nothing in sections 20-150 to 20-159 shall be construed to prevent any appointing authority from contracting with a qualified licensed interpreter on a full-time employment basis.

(4) The commission may revoke an interpreter's license if the interpreter has violated rules and regulations of the commission. The Interpreter Review Board shall serve as a board of inquiry in matters of license revocation. The commission through the Interpreter Review Board shall investigate claims of the use of interpreters in violation of sections 20-150 to 20-159 by any appointing authority. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

Sec. 7. Section 20-159, Revised Statutes Supplement, 2000, is amended to read:

20-159. A qualified licensed interpreter appointed pursuant to sections 20-150 to 20-159 is entitled to a fee for professional services and other relevant expenses as approved by the governing body of the appointing authority. When appropriate, the appointing authority may use fee guidelines established by a recognized registry of interpreters for the deaf and hard of hearing. When the licensed qualified interpreter is appointed by a court, the fee shall be paid out of the General Fund with funds appropriated to the Supreme Court for that purpose. When the qualified licensed interpreter is appointed by an appointing authority other than a court, the fee shall be paid out of funds available to the governing body of the appointing authority.

Sec. 8. Section 25-2401, Reissue Revised Statutes of Nebraska, is amended to read:

25-2401. It is hereby declared to be the policy of this state that the constitutional rights of persons unable to communicate the English language cannot be fully protected unless interpreters are available to assist such persons in legal proceedings. It is the intent of sections 25-2401 to ~~25-2406~~ 25-2407 to provide a procedure for the appointment of such interpreters to avoid injustice and to assist such persons in their own defense.

Sec. 9. Section 25-2402, Revised Statutes Supplement, 2000, is amended to read:

25-2402. For the purposes of sections 25-2401 to ~~25-2406~~ 25-2407 unless the context otherwise requires:

(1) Deaf or hard of hearing person means a person whose hearing impairment, with or without amplification, is so severe that he or she may have difficulty in auditorily processing spoken language without the use of an interpreter or a person with a fluctuating or permanent hearing loss which may adversely affect the ability to understand spoken language without the use of an interpreter or an other auxiliary aid;

(2) Person unable to communicate the English language means a person who cannot readily understand or communicate the English language; and

(3) Proceeding means any legal proceeding or any hearing preliminary thereto involving persons unable to communicate the English language or deaf or hard of hearing persons unable to communicate by a spoken language.

Sec. 10. Section 25-2404, Reissue Revised Statutes of Nebraska, is amended to read:

25-2404. No person shall be appointed as an interpreter pursuant to sections 25-2401 to ~~25-2406~~ 25-2407 unless such person is readily able to communicate with the person unable to communicate the English language, translate the proceedings for him or her, and accurately repeat and translate

the statements of such person to the jury, judge, and officials before whom such proceeding takes place.

Sec. 11. Section 25-2405, Reissue Revised Statutes of Nebraska, is amended to read:

25-2405. Every interpreter appointed pursuant to sections 25-2401 to ~~25-2406~~ 25-2407, before entering upon his or her duties as such, shall take an oath that he or she will, to the best of his or her skill and judgment, make a true interpretation to such person unable to communicate the English language of all the proceedings in a language which such person understands and that he or she will, in the English language, repeat the statements of such person to the court, jury, or officials before whom such proceeding takes place.

Sec. 12. Section 25-2407, Revised Statutes Supplement, 2000, is amended to read:

25-2407. Any person who serves as an interpreter for persons unable to communicate the English language in court proceedings or probation services as provided in subsection (6) of section 29-2259 shall meet the standards adopted by the Supreme Court. Such standards shall require that interpreters demonstrate the ability to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary special vocabulary. ~~Any~~ A person appointed to interpret for deaf and hard of hearing persons shall be a licensed interpreter as defined in section 20-151 or, if a licensed interpreter is unavailable, an qualified interpreter as defined in subdivision (6) of section 20-151 licensed under the laws of another state.

Sec. 13. Section 55-424, Reissue Revised Statutes of Nebraska, is amended to read:

55-424. Under such regulations as the Governor may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission. Any person appointed to interpret for deaf and hard of hearing persons shall be a licensed interpreter as defined in section 20-151.

Sec. 14. Section 71-4720.01, Revised Statutes Supplement, 2001, is amended to read:

71-4720.01. For purposes of sections 71-4720 to 71-4732.01 and section 17 of this act:

- (1) Commission means Commission for the Deaf and Hard of Hearing;
- (2) Deaf means a hearing impairment, with or without amplification, which is so severe that the person with the impairment may have difficulty in auditorily processing spoken language without the use of an interpreter; ~~and~~
- (3) Hard of hearing means a hearing loss, permanent or fluctuating, which may adversely affect the ability to understand spoken language without the use of an interpreter or auxiliary aid; and
- (4) Licensed interpreter has the same meaning as in section 20-151.

Sec. 15. Section 71-4727, Revised Statutes Supplement, 2001, is amended to read:

71-4727. The commission may employ any employees, including interpreters, it considers necessary to carry out the purposes of sections 71-4720 to 71-4732.01 and section 17 of this act.

Sec. 16. Section 71-4728, Revised Statutes Supplement, 2000, is amended to read:

71-4728. The commission shall serve as the principal state agency responsible for monitoring public policies and implementing programs which shall improve the quality and coordination of existing services for deaf or hard of hearing persons and promote the development of new services when necessary. To perform this function the commission shall:

- (1) Inventory services available for meeting the problems of persons with a hearing loss and assist such persons in locating and securing such services;
- (2) Prepare and maintain a statewide list of persons qualified in various types of interpreting and make this information available to local, state, and federal agencies License interpreters under sections 20-150 to 20-159 and prepare and maintain a roster of licensed interpreters. The roster shall include the type of employment the interpreter generally engages in. Each interpreter included on the roster shall provide the commission with his or her social security number which shall be kept confidential by the commission. The roster shall be made available to local, state, and federal agencies and shall be used for referrals to private organizations and individuals seeking interpreters;

(3) Promote the training of interpreters for deaf or hard of hearing persons;

(4) Provide counseling to deaf or hard of hearing persons or refer such persons to private or governmental agencies which provide counseling services;

(5) Conduct a voluntary census of deaf or hard of hearing persons in Nebraska and compile a current registry;

(6) Promote expanded adult educational opportunities for deaf or hard of hearing persons;

(7) Serve as an agency for the collection of information concerning deaf or hard of hearing persons and for the dispensing of such information to interested persons by collecting studies, compiling bibliographies, gathering information, and conducting research with respect to the education, training, counseling, placement, and social and economic adjustment of deaf or hard of hearing persons and with respect to the causes, diagnosis, treatment, and methods of prevention of impaired hearing;

(8) Appoint advisory or special committees when appropriate for indepth investigations and study of particular problems and receive reports of findings and recommendations;

(9) Assess and monitor programs for services to deaf or hard of hearing persons and make recommendations to those state agencies providing such services regarding changes necessary to improve the quality and coordination of the services;

(10) Make recommendations to the Governor and the Legislature with respect to modification in existing services or establishment of additional services for deaf or hard of hearing persons;

(11) Promote awareness and understanding of the rights of deaf or hard of hearing persons;

(12) Promote statewide communication services for deaf or hard of hearing persons;

(13) Assist deaf or hard of hearing persons in accessing comprehensive mental health, alcoholism, and drug abuse services; and

(14) Provide qualified licensed interpreters in public and private settings for the benefit of deaf or hard of hearing persons, if qualified private-practice licensed interpreters are not available, and establish and collect reasonable fees for such interpreter services; and

(15) Make recommendations to the State Department of Education, public school districts, and educational service units regarding policies and procedures for qualified educational interpreter guidelines and training program as required in subsection (3) of section 20-150, including, but not limited to, testing, training, and grievances.

Sec. 17. The commission shall appoint the Interpreter Review Board as required in section 20-156. The board shall consist of the following members who have knowledge of sign language:

(1) The Director of Health and Human Services or his or her designee;

(2) The executive director of the commission or his or her designee;

(3) Two deaf or hard of hearing persons;

(4) For the initial appointments, two qualified interpreters who must become licensed interpreters within one year of their appointment or they will be disqualified. For subsequent appointments, two licensed interpreters; and

(5) Two members representing local government.

The board shall establish policies and procedures for evaluating and licensing interpreters, including, but not limited to, testing, training, grievances, and license revocation pursuant to section 20-156. Except for members listed in subdivisions (1) and (2) of this section, a member shall not serve on the board for more than three consecutive years. Members of the board may be removed by the commission for inefficiency, neglect of duty, or misconduct in office but only after delivering to such member a copy of the charges and affording such member an opportunity to be publicly heard in person, or by counsel, in his or her own defense, upon not less than ten days' notice. If a vacancy occurs on the board, the commission shall appoint another member with the same qualifications as the vacating member to serve the remainder of the term. The members of the board shall receive no compensation but shall be reimbursed for their actual and necessary expenses in attending meetings of the commission and in carrying out their official duties as provided in this section and section 20-156.

Sec. 18. Section 71-4732, Revised Statutes Supplement, 2001, is amended to read:

71-4732. There is hereby created a Commission for the Deaf and Hard of Hearing Fund to consist of such funds as the Legislature shall appropriate,

any funds received under ~~section~~ sections 20-156 and 71-4731, and any fees collected for interpreter services as provided in section 71-4728. The fund shall be used to administer sections 20-156 and 71-4720 to 71-4732.01 and section 17 of this act, except that (1) money in the fund from fees collected for interpreter services shall be used only for expenses related to the provision of such services and (2) money in the fund may only be used to provide services pursuant to section 71-4728.04 if there is no money in the Telehealth System Fund. Any money in the Commission for the Deaf and Hard of Hearing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 19. Original sections 20-150 to 20-154, 20-156, 25-2401, 25-2404, 25-2405, and 55-424, Reissue Revised Statutes of Nebraska, sections 20-159, 25-2402, 25-2407, and 71-4728, Revised Statutes Supplement, 2000, and sections 71-4720.01, 71-4727, and 71-4732, Revised Statutes Supplement, 2001, are repealed.