

LEGISLATIVE BILL 287

Approved by the Governor May 26, 2015

Introduced by Haar, 21.

A BILL FOR AN ACT relating to civil rights; to amend sections 20-150, 20-151, 20-156, and 20-159, Reissue Revised Statutes of Nebraska, and section 71-4728, Revised Statutes Cumulative Supplement, 2014; to define and redefine terms; to change provisions relating to licensure of interpreters for deaf and hard of hearing persons; to provide for video remote interpreting services; to provide for civil penalties for unlicensed practice; to provide exceptions as prescribed; 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 state agencies and law enforcement personnel unless 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 and section 4 of this act, except that courts and probation officials shall appoint interpreters as provided in sections 20-150 to 20-159 and section 4 of this act and sections 25-2401 to 25-2407 and public school districts and educational service units shall appoint qualified educational interpreters.

(2) ~~The It is the intent of the Legislature that by June 30, 2007, the Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters and video remote interpreting providers pursuant to section 20-156. The~~ Prior to June 30, 2007, 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. ~~The 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 For purposes of sections 20-150 to 20-159 and section 4 of this act, unless the context otherwise requires:

(1) Appointing authority means the state agency or law enforcement personnel required to provide a licensed interpreter pursuant to sections 20-150 to 20-159 and section 4 of this act;

(2) Auxiliary aid includes, but is not limited to, 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 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 an interpreter;

(5) Licensed interpreter means a person who demonstrates proficiencies in interpretation or transliteration as required by the rules and regulations adopted and promulgated by the Commission for the Deaf and Hard of Hearing pursuant to subsection (2) of section 20-150 and who holds a license issued by the commission pursuant to section 20-156. Licensed interpreter includes a licensed video remote interpreting provider;

(6) Oral interpreter means a person who interprets language through facial

expression, body language, and mouthing;

(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; ~~-~~

(9) Video remote interpreting services means the use of videoconferencing technology with the intent to provide effective interpreting services; and

(10) Video remote interpreting provider means a person or an entity licensed to provide video remote interpreting services.

Sec. 3. 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 71-4728.05 to set policies, standards, 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. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters and video remote interpreting providers, including applications, initial competency assessments, renewals, modifications, record keeping, approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159 and section 4 of this act. 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 shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 and section 4 of this act shall be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee is found to have violated any provision of sections 20-150 to 20-159 and section 4 of this act or sections 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 and section 4 of this act or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 and section 4 of this act or rules and regulations of the commission 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.

(6) ~~Any After June 30, 2007, any person or entity providing interpreting services pursuant to sections 20-150 to 20-159 and section 4 of this act without a license issued pursuant to this section may be restrained by temporary and permanent injunctions and on and after January 1, 2016, shall be subject to a civil penalty as provided in section 4 of this act.~~

Sec. 4. (1) Except as otherwise provided in this section, no person or entity shall (a) practice as an interpreter for the deaf or hard of hearing for compensation, (b) hold himself, herself, or itself out as a licensed interpreter for the deaf or hard of hearing, (c) provide video remote interpreting services, (d) use the title Licensed Interpreter for the Deaf or Licensed Transliterater for the Deaf, or (e) use any other title or abbreviation to indicate that the person or entity is a licensed interpreter unless licensed pursuant to section 20-156.

(2) A person rostered as a qualified interpreter on or before the effective date of this act may be issued a license pursuant to section 20-156 upon filing an application and paying the fee established by the Commission for the Deaf and Hard of Hearing. Such person shall meet all applicable licensure requirements of sections 20-150 to 20-159 and section 4 of this act on or before January 1, 2016.

(3)(a) On and after January 1, 2016, any person or entity who practices, offers to practice, or attempts to practice as an interpreter for the deaf or hard of hearing for compensation or as a video remote interpreting provider or holds himself, herself, or itself out as a licensed interpreter without being licensed pursuant to section 20-156 or exempt under this section shall, in addition to any other penalty provided by law, pay a civil penalty to the commission in an amount not to exceed five hundred dollars for each offense as determined by the commission. The civil penalty shall be assessed by the commission after a hearing is held in accordance with section 20-156 and shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(b) The civil penalty shall be paid within sixty days after the date of

the order imposing the civil penalty. The order shall constitute a judgment and may be filed and executed in the same manner as any judgment from any court of record.

(c) The commission may investigate any actual, alleged, or suspected unlicensed activity.

(4) An unlicensed person or entity providing interpreting services is not in violation of the licensure requirements of this section if the person or entity is:

(a) Providing interpreting services as part of a religious service;

(b) Notwithstanding other state or federal laws or rules regarding emergency treatment, providing interpreting services, until the services of a licensed interpreter can be obtained if there is continued need for an interpreter, in an emergency situation involving health care in which the patient or his or her representative and a health care provider or health care professional agree that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the patient;

(c) Currently enrolled in a course of study leading to a certificate or degree in interpreting if such person is under the direct supervision of a licensed interpreter, engages only in activities and services that constitute a part of such course of study, and clearly designates himself or herself as a student, a trainee, or an intern;

(d) Working as an educational interpreter in compliance with rules and regulations adopted and promulgated by the State Department of Education or working for other purposes in a public school or an educational service unit;

(e) Holding either a certificate or a license as an interpreter in his or her state of residence which he or she has submitted to the commission for approval and either (i) providing interpreting services in Nebraska for a period of time not to exceed fourteen days in a calendar year or (ii) providing interpreting services by telecommunicating, or other use of technological means of communication; or

(f) Employed by or under contract with a person or an entity which is a licensed video remote interpreting provider in this state.

Sec. 5. Section 20-159, Reissue Revised Statutes of Nebraska, is amended to read:

20-159 A licensed interpreter appointed pursuant to sections 20-150 to 20-159 and section 4 of this act is entitled to a fee for professional services and other relevant expenses as agreed between the licensed interpreter and the contracting entity approved by the governing body of the appointing authority. When the licensed 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 or from funds, including grant money, made available to the Supreme Court for such purpose. When the 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. 6. Section 71-4728, Revised Statutes Cumulative Supplement, 2014, 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) License interpreters and video remote interpreting providers under sections 20-150 to 20-159 and section 4 of this act and prepare and maintain a roster of licensed interpreters as defined in section 20-151. The roster shall include the type of employment the interpreter generally engages in, the type of license held the interpreter holds, and the expiration date of the license. 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 and video remote interpreting providers;

(3) Promote the training of interpreters and video remote interpreting providers 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. The recommendations submitted to the Legislature shall be submitted electronically;

(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;

(14) Provide licensed interpreters in public and private settings for the benefit of deaf or hard of hearing persons, if 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 a training program as required in subsection (3) of section 20-150, including, but not limited to, testing, training, and grievances; and~~

(15 16) Approve, conduct, and sponsor continuing education programs and other activities to assess continuing competence of licensees. The commission shall establish and charge reasonable fees for such activities. 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.

Sec. 7. Original sections 20-150, 20-151, 20-156, and 20-159, Reissue Revised Statutes of Nebraska, and section 71-4728, Revised Statutes Cumulative Supplement, 2014, are repealed.