

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2005

By: Askins, Duncan, Kiesel and
Wilt of the House

and

Cain of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414 and 2415, which relate to the Oklahoma Interpreter for the Deaf Act; modifying name of act; modifying definitions; expanding circumstances for appointment of qualified legal interpreters; modifying appointment process for interpreters; providing for construction of appointment process in conjunction with certain legislation; modifying notice requirements; modifying oath; modifying fees; providing for recess periods; amending 12 O.S. 2001, Section 2506.1, as amended by Section 37, Chapter 468, O.S.L. 2002, and as renumbered by Section 78, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2004, Section 2503.1), which relates to the interpreter for the deaf privilege; modifying definitions; including privilege for communications concerning hard-of-hearing persons; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2001, Section 2407, is amended to read as follows:

Section 2407. ~~This act~~ Sections 2407 through 2415 of this title shall be known and may be cited as the "Oklahoma Legal Interpreter for the Deaf and Hard-of-Hearing Act".

SECTION 2. AMENDATORY 63 O.S. 2001, Section 2408, is amended to read as follows:

Section 2408. As used in ~~this act~~ the Oklahoma Legal Interpreter for the Deaf and Hard-of-Hearing Act:

1. "Deaf person" or "hard-of-hearing person" means ~~one~~ an individual whose sense of hearing is nonfunctional for the ordinary purposes of life, and also may include a person who is deaf-blind, meaning a deaf or hard-of-hearing person whose vision is also nonfunctional for the ordinary purposes of life;

2. "Qualified legal interpreter" means ~~an interpreter certified by the National Registry of Interpreters for the Deaf, Oklahoma Registry of Interpreters for the Deaf, or, in the event an interpreter so certified is not available, an interpreter whose qualifications are otherwise determined;~~

3. ~~"Oral interpreter" means a person who interprets language through facial and lip movements; and:~~

a. an individual certified by the State Board of Examiners of Certified Courtroom Interpreters, or

b. (1) an individual who possesses the knowledge and skills necessary to accurately and impartially interpret spoken English into the equivalent visual languages and modes, and currently certified by the National Registry of Interpreters for the Deaf as one of the following:

(a) Specialist Certificate: Legal (SC:L). In the event none are available, then

(b) Certificate of Interpretation and Certificate of Transliteration (CI & CT), Comprehensive Skills Certificate (CSC), or National Association of the Deaf Certificate Level 5 (NAD5),

(2) an individual who possesses the knowledge and skills necessary to accurately and impartially transliterate for a person who is oral or nonsigning using the equivalent oral or captioned

mode, and is currently certified by the National Registry of Interpreters for the Deaf as one of the following:

(a) Specialist Certificate: Oral

Transliteration Certificate (OTC). In the event none are available, then

(b) Specialist Certificate: Legal (SC:L). In the event none are available, then

(c) Certificate of Interpretation and Certificate of Transliteration (CI & CT), Comprehensive Skills Certificate (CSC), or National Association of the Deaf Certificate Level 5 (NAD5). In the event none are available, then a recognized national or state certifying body of captionists, or

(3) an individual who:

(a) is deaf or hard-of-hearing who possesses the knowledge, skills, specialized training and experience to enhance communication with persons who are deaf or hard-of-hearing and whose communication modes are so unique that they cannot be adequately assessed by interpreters who are hearing, and

(b) holds the following qualifications as a deaf interpreter: National Registry of Interpreters for the Deaf, Certified Deaf Interpreter (CDI); in the event none are available, then an Oklahoma QAST Deaf Evaluator may be utilized; and

~~4.~~ 3. "Appointing authority" means any court, department, board, commission, agency, licensing authority, political

subdivision or municipality of the state ~~required to provide an interpreter.~~

SECTION 3. AMENDATORY 63 O.S. 2001, Section 2409, is amended to read as follows:

Section 2409. A. In any case before any state or local court or grand jury, wherein a person who is ~~unable to hear the proceedings due to physical disability, such as deafness or other physical conditions, and is a complainant~~ deaf or hard-of-hearing is a litigant, defendant or, spectator as required by subtitle A of Title II of the Americans with Disabilities Act, Pub. L. 101-336, witness, party, prospective juror, or juror, the court shall, upon request, appoint a qualified legal interpreter to interpret the proceedings to the deaf or hard-of-hearing person and interpret ~~his~~ testimony or statements and to assist in preparation with counsel. The court shall also appoint ~~an~~ a qualified legal interpreter, upon request, for any party proceeding in forma pauperis in an action before the court. The individual who is deaf or hard-of-hearing shall determine which type of qualified legal interpreter best fits the needs of the individual.

B. Efforts to obtain the services of a qualified legal interpreter with the highest available level of certification, skill and specialized training in the area of legal interpretation for the deaf or hard-of-hearing will be made prior to accepting services of an interpreter with lesser certification and skill. ~~No~~ Once a qualified legal interpreter ~~shall be~~ is appointed ~~unless a preliminary determination is made that the interpreter is able to communicate readily with the deaf person and is able to interpret accurately the statements of the deaf person and interpret the proceedings in which a deaf person may be involved. It shall be the responsibility of the Department of Rehabilitation Services to assist the appointing authority and the deaf person in the determination of interpreter qualifications,~~ the interpreter shall

be afforded the time necessary to make a language assessment in order to ensure effective communication, and to assess whether a deaf interpreter may also be necessary. Based on the language assessment, the interpreter will make recommendations to the court.

C. The provisions of this section shall be construed in conjunction with Sections 1 through 10 of Senate Bill No. 779 of the 1st Session of the 50th Oklahoma Legislature, if that bill is enacted.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 2410, is amended to read as follows:

Section 2410. A. In the event a person who is deaf or hard-of-hearing is arrested and taken into custody for any alleged violation of a criminal law of this state or for civil contempt, ~~the arresting officer or his superiors shall procure~~ a qualified legal interpreter shall be obtained through any interpreter service agency providing qualified legal interpreting services for the deaf and hard-of-hearing or with individuals who meet the qualifications for a qualified legal interpreter in order to communicate to the person that person's legal rights and to interview and interrogate properly such deaf person and to interpret such person's statements. No statement taken from such deaf or hard-of-hearing person before ~~an~~ a qualified legal interpreter is present ~~may~~ shall be admissible in court. The individual who is deaf or hard-of-hearing shall determine which type of qualified legal interpreter best fits the needs of the individual.

~~B. An oral interpreter shall be provided upon the request of a deaf person entitled to an interpreter under this act, but who does not communicate in sign language. 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 such request for waiver in writing. Such waiver is subject to approval of legal counsel for such deaf person, if any, and is subject to approval of the~~

~~appointing authority~~ The provisions of this section shall be construed in conjunction with Sections 1 through 10 of Senate Bill No. 779 of the 1st Session of the 50th Oklahoma Legislature, if that bill is enacted.

SECTION 5. AMENDATORY 63 O.S. 2001, Section 2411, is amended to read as follows:

Section 2411. ~~A. In any proceeding before any department, board, commission, agency or licensing authority of the state, in any political subdivision or municipality, wherein any deaf person is a defendant, such department, board, commission, agency, licensing authority, political subdivision or municipality shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements if said deaf person requests an interpreter. It shall be the duty of the appointing authority to inform the deaf person of his rights to the services of an interpreter.~~

~~B.~~ In any proceeding before any department, board, commission, agency or licensing authority of the state, in any political subdivision or municipality, wherein any deaf or hard-of-hearing person is ~~an~~ a defendant, applicant, spectator as required by subtitle A of Title II of the Americans with Disabilities Act, Pub. L. 101-336, complainant ~~or,~~ principal witness or party, such department, board, commission, agency, licensing authority, political subdivision or municipality shall appoint a qualified legal interpreter ~~to interpret the proceedings to the deaf person and to interpret his testimony or statements if said deaf person requests an interpreter~~ upon request of the deaf or hard-of-hearing individual. The individual who is deaf or hard-of-hearing shall determine which type of qualified legal interpreter best fits the needs of the individual. It shall be the duty of the appointing authority to inform the deaf or hard-of-hearing person of ~~his~~ the rights of that person to the services of an interpreter.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 2412, is amended to read as follows:

Section 2412. Every deaf or hard-of-hearing person whose appearance in any proceeding entitles ~~him~~ that person to ~~an~~ a qualified legal interpreter shall make a good faith effort to notify the appointing authority of ~~his~~ the desire of the person for an interpreter ~~at least forty-eight (48) hours prior to any appearance and may request at such time the services of an interpreter;~~ ~~provided, that if a deaf person reasonably expects the need for an interpreter for a period greater than a single day, he shall notify the appointing authority and such notification shall be sufficient for the duration of his participation in the proceedings.~~ An appointing authority may require a person requesting the appointment of an interpreter to furnish reasonable proof of ~~his deafness~~ hearing loss when the appointing authority has reason to believe that the person ~~is not deaf~~ does not have a hearing loss.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 2413, is amended to read as follows:

Section 2413. It shall be the responsibility of the appointing authority to ~~channel requests for qualified interpreters through either the Department of Rehabilitation Services or any community service agency contracting for~~ request interpreter services ~~with the Department or any local rehabilitation service office wherein the appointing authority or the deaf person knows that such qualified interpreters may be retained. It shall be the responsibility of the Department of Rehabilitation Services to compile and update annually a listing of qualified interpreters. This listing shall be made available to authorities in possible need of interpreter service as provided in this act~~ through any interpreter service agency providing qualified legal interpreting services for the deaf and hard-of-hearing or with individuals who meet the qualifications for a qualified legal interpreter.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 2414, is amended to read as follows:

Section 2414. Before a qualified legal interpreter may participate in any proceedings under the provisions of ~~this act~~ the Oklahoma Legal Interpreter for the Deaf and Hard-of-Hearing Act, such interpreter shall make an oath or affirmation that ~~he~~ the interpreter will make a true interpretation in ~~an understandable~~ the manner to the deaf person for whom he is appointed and that he will interpret the statements of the deaf person desiring that statements be made, in the English language, to the best of his skill and judgment. The appointing authority shall provide recess periods as necessary for the interpreter when the interpreter so indicates. Any and all information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, or on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons most readily understood by the person who is deaf or hard-of-hearing.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 2415, is amended to read as follows:

Section 2415. ~~An~~ A. A qualified legal interpreter appointed under the provisions of the Oklahoma Legal Interpreter for the Deaf and Hard-of-Hearing Act shall be entitled to ~~a reasonable fee for such services~~ the prevailing rate for qualified legal interpreters in this state; provided, any interpreter who is appointed pursuant to Section 2409 or 2410 of this title shall be paid in accordance with the fee schedule established pursuant to Section 7 of Senate Bill No. 779 of the 1st Session of the 50th Oklahoma Legislature, if that bill is enacted. Prior to the establishment of a fee schedule or if Senate Bill No. 779 of the 1st Session of the 50th Oklahoma Legislature is not enacted, payment shall be the prevailing rate for qualified legal interpreters in this state. ~~The Chief Justice of~~

~~the Supreme Court shall consider the prevailing rate of the Department of Rehabilitation Services, and establish a rate pursuant to the provisions of Sections 2409 and 2410 of this title.~~ When the interpreter is appointed by a court, the fee shall be paid out of the local court fund as provided for in Section 1304 of Title 20 of the Oklahoma Statutes and when the interpreter is otherwise appointed, the fee shall be paid ~~out of funds available to~~ by the appointing authority. The person for whom the interpreter is appointed shall not be assessed a reimbursement fee.

B. The appointing authority shall provide recess periods as necessary for the qualified legal interpreter as determined by the interpreter.

SECTION 10. AMENDATORY 12 O.S. 2001, Section 2506.1, as amended by Section 37, Chapter 468, O.S.L. 2002, and as renumbered by Section 78, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2004, Section 2503.1), is amended to read as follows:

Section 2503.1 A. As used in this section:

1. An "interpreter" is ~~an~~ a qualified legal interpreter for the deaf or hard-of-hearing ~~who is an interpreter certified by an association or board recognized by the Office of Services to the Deaf, Rehabilitative Services Division of the Department of Human Services,~~ as defined by Section 2408 of Title 63 of the Oklahoma Statutes;

2. A "deaf" or "hard-of-hearing person" is a person whose ~~preferred mode of communication is by other than auditory means~~ sense of hearing is nonfunctional for the ordinary purposes of life; and

3. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent an interpreter from disclosing such person's confidential

communication made while such interpreter is acting in the capacity as an interpreter for persons who are deaf or hard-of-hearing.

C. The privilege may be claimed by the interpreter, by the deaf or hard-of-hearing person, by the ~~deaf person's~~ guardian or conservator of the deaf or hard-of-hearing person, or by the ~~deaf person's~~ personal representative of the deaf or hard-of-hearing person if the deaf or hard-of-hearing person is deceased.

D. An interpreter who is employed to interpret, transliterate or relay a conversation between a person who can hear and a deaf or hard-of-hearing person is a conduit for the conversation and may not disclose or be compelled to disclose, through reporting or testimony or by subpoena, the contents of a confidential communication.

E. There is no privilege pursuant to this section for communications:

1. If the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the deaf or hard-of-hearing person knew, or reasonably should have known, to be a crime or fraud or physical injury to the deaf or hard-of-hearing person or another individual;

2. In which the deaf or hard-of-hearing person has expressed an intent to engage in conduct likely to result in imminent death or serious bodily injury to the deaf or hard-of-hearing person or another individual;

3. Relevant to an issue in a proceeding challenging the competency of the interpreter;

4. Relevant to a breach of duty by the interpreter; or

5. That are subject to a duty to disclose under statutory law.

SECTION 11. This act shall become effective November 1, 2005.