

LEGISLATIVE BILL 851

Approved by the Governor June 10, 1997

Introduced by Crosby, 29; Dw. Pedersen, 39

AN ACT relating to deaf and hard of hearing persons; to amend sections 20-150 to 20-159, 25-2402, 71-4720, 71-4721, 71-4724 to 71-4726, 71-4728 to 71-4729, 71-4731 to 71-4733, and 86-1307, Reissue Revised Statutes of Nebraska, and sections 83-101.14 and 86-1306, Revised Statutes Supplement, 1996; to state intent relating to qualified educational interpreters; to provide duties for the State Department of Education; to define, redefine, and eliminate terms; to change the name, membership, and duties of the Commission for the Hearing Impaired; to rename a fund; 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. The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of ~~hearing-impaired 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, law enforcement personnel, and legislative bodies unless qualified interpreters are available to assist them.

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 and section 7 of this act, unless the context otherwise requires:

(1) Appointing authority ~~shall mean~~ means the Legislature, a legislative committee, law enforcement personnel, or any court of the state required to provide a qualified interpreter pursuant to sections 20-150 to 20-159 and section 7 of this act;

(2) ~~Hearing-impaired person shall mean~~ a person who because of a hearing impairment has difficulty understanding oral communication or who because of any other impairment depends on an interpreter for the hearing impaired to ensure total expressive and receptive communication; Auxiliary aid includes, but is not limited to, qualified sign language interpreters, oral 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 auxiliary aid.

~~(3) (4) Intermediary interpreter shall mean~~ means any person, including any ~~hearing-impaired 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 ~~hearing-impaired deaf or hard of hearing~~ person and a qualified interpreter;

~~(4) (5) Oral interpreter shall mean~~ means a person who interprets language through facial expression, body language, and ~~lip movements~~ mouthings; ~~and~~

(6) ~~(5) 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 shall mean an interpreter who is approved by the Commission for the Hearing Impaired and is sufficiently able to communicate with a hearing-impaired person and to interpret accurately all statements and proceedings.

(7) 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 hearing-impaired deaf or hard of hearing person is arrested and taken into custody for an alleged violation of state law or a local ordinance, the appointing authority shall procure a qualified interpreter for any interrogation, warning, notification of rights, or taking of a statement, unless otherwise waived. No such arrested deaf or hard of hearing person otherwise eligible for release shall be held in custody solely to await the arrival of a qualified interpreter. A qualified interpreter shall be provided as soon as possible. No written or oral answer, statement, or admission made by a hearing-impaired 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 such the deaf or hard of hearing person in any criminal proceeding unless (1) the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or (2) if the hearing-impaired 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 hearing-impaired deaf or hard of hearing person to an interpreter may be waived only in writing. The failure to provide an interpreter pursuant to this section shall not be a defense to prosecution for the violation for which the hearing-impaired deaf or hard of hearing person was arrested.

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

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

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

20-154. If an appointed qualified interpreter is not able to provide effective communication with a hearing-impaired deaf or hard of hearing person, the appointing authority shall obtain another qualified interpreter. An oral interpreter shall be provided upon request of a hearing-impaired 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 hearing-impaired deaf or hard of hearing person and full participation of the hearing-impaired deaf or hard of hearing person in the proceeding.

Sec. 6. Section 20-155; Reissue Revised Statutes of Nebraska, is amended to read:

20-155. When an appointing authority has reason to believe that a person is not hearing impaired deaf or hard of hearing or is not dependent on an interpreter to ensure receptive or expressive communication, the appointing authority may require the person to furnish reasonable proof of his or her need for an interpreter.

Sec. 7. Section 20-157, Reissue Revised Statutes of Nebraska, is amended to read:

20-157. In any proceeding in which a hearing-impaired deaf or hard of hearing person is testifying under oath or affirmation, the interpreter shall take an oath or affirmation that he or she will make a true interpretation of the proceeding in an understandable manner to the best of his or her ability.

Sec. 8. Section 20-156, Reissue Revised Statutes of Nebraska, is amended to read:

20-156. The Commission for the Hearing Impaired Commission for the Deaf and Hard of Hearing shall prepare and maintain a list of the various types of qualified interpreters as provided by section 71-4728. Nothing in

sections 20-150 to 20-159 and section 7 of this act shall be construed to prevent any appointing authority from contracting with a qualified interpreter on a full-time employment basis.

Sec. 9. Section 20-158, Reissue Revised Statutes of Nebraska, is amended to read:

20-158. Whenever a deaf or hard of hearing hearing-impaired person communicates through an interpreter under circumstances in which the communication would otherwise be privileged, the privilege shall apply to the interpreter as well.

Sec. 10. Section 20-159, Reissue Revised Statutes of Nebraska, is amended to read:

20-159. A qualified interpreter appointed pursuant to sections 20-150 to 20-159 and section 7 of this act is ~~shall~~ be 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 hearing impaired deaf and hard of hearing. When the qualified interpreter is appointed by a court, the fee shall be paid out of the general fund of the county in which such proceedings take place. When the qualified 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. 11. Section 25-2402, Reissue Revised Statutes of Nebraska, is amended to read:

25-2402. For the purposes of sections 25-2401 to 25-2406 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 auxiliary aid.

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

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

Sec. 12. Section 71-4720, Reissue Revised Statutes of Nebraska, is amended to read:

71-4720. There is hereby created the Commission for the Hearing Impaired Deaf and Hard of Hearing which shall consist of nine members to be appointed by the Governor subject to approval by the Legislature. The commission members shall include three deaf persons, three hard of hearing persons, and three persons who have an interest in and knowledge of deafness and hearing loss issues. A majority of the commission members who are deaf or hard of hearing shall be able to express themselves through sign language. Employees The members of the commission shall be appointed within thirty days of August 24, 1979. Six of the members of the commission shall be hearing impaired and all members shall be familiar with the problems of the hearing-impaired community in the State of Nebraska. At least four of the six hearing-impaired members shall know manual communication. Hearing-impaired employees of any state agency other than employees of the commission shall be eligible to serve on the commission. When appointing members to the commission, the Governor shall consider recommendations provided by the Nebraska Association of the Deaf.

As used in sections 71-4720 to 71-4732, unless the context otherwise requires, commission means the Commission for the Hearing Impaired, from individuals, organizations, and the public.

On the effective date of this act, all personnel, furniture, equipment, books, files, records, and other property of the Commission for the Hearing Impaired shall be transferred to the Commission for the Deaf and Hard of Hearing.

Sec. 13. For purposes of this section and sections 71-4720 to 71-4733:

(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.

Sec. 14. Section 71-4721, Reissue Revised Statutes of Nebraska, is amended to read:

71-4721. Members of the commission appointed prior to August 30, 1987, shall serve for terms of six three years and may not be reappointed to the commission after such date. After August 30, 1987, no member shall be appointed for or serve for more than six years serve more than two consecutive three-year terms. A former member who has served two consecutive terms may be reappointed to the commission after at least one year of nonservice. The terms of the members shall expire on January 31 of the final year of their appointed term. As the terms of the appointees expire, succeeding appointees shall be representatives of the same segment of the public as the previous appointee, and such successors, after August 30, 1987, shall be appointed to three-year terms, except appointees to vacancies occurring from unexpired terms, in which case the successor shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed.

Sec. 15. Section 71-4724, Reissue Revised Statutes of Nebraska, is amended to read:

71-4724. The commission shall hold at least four meetings a year, at a time and place fixed decided by the commission, and shall keep a record of its proceedings, which shall be open to the public for inspection. The commission shall adopt and promulgate rules and regulations for the holding of special meetings. Written notice of the time and place of all meetings shall be mailed in advance to the office of each member of the commission by the secretary. Six members of the commission shall constitute a quorum.

Sec. 16. Section 71-4725, Reissue Revised Statutes of Nebraska, is amended to read:

71-4725. The commission shall annually elect from its members a chairperson, vice-chairperson, and secretary. At least one officer shall be a hearing-impaired deaf or hard of hearing person. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson.

Sec. 17. Section 71-4726, Reissue Revised Statutes of Nebraska, is amended to read:

71-4726. The commission shall appoint a qualified person to serve as executive director who shall serve with the advice and consent of the commission. When appointing an executive director preference may be given to a hearing-impaired deaf or hard of hearing person.

Sec. 18. Section 71-4728, Reissue Revised Statutes of Nebraska, is amended to read:

71-4728. The commission shall serve as the principal state agency responsible for advocating monitoring public policies and implementing programs which shall improve the quality and coordination of existing services for the hearing impaired 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 the hearing impaired persons with a hearing loss and assist hearing-impaired 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, and private organizations and to any interested person agencies;

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

(4) Provide counseling to hearing-impaired 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 hearing-impaired deaf or hard of hearing persons in Nebraska and compile a current registry;

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

(7) Serve as an agency for the collection of information concerning the hearing impaired 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 the hearing impaired 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 the hearing impaired 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 hearing-impaired deaf or hard of hearing persons;

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

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

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

Sec. 19. Section 71-4728.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-4728.01. The commission shall not deliver direct mental health, alcoholism, and drug abuse services but shall assist in obtaining full access to comprehensive mental health, alcoholism, and drug abuse services for hearing-impaired deaf or hard of hearing persons by providing service coordination for hearing-impaired deaf or hard of hearing persons with mental health, alcoholism, and drug abuse disorders including:

(1) Meeting the communication needs of hearing-impaired deaf or hard of hearing persons including interpreter services and auxiliary aids;

(2) Education and training for persons who provide treatment for mental health, alcoholism, and drug abuse disorders to hearing-impaired deaf or hard of hearing persons; and

(3) Placement of assistive-listening devices for hearing-impaired deaf or hard of hearing persons in mental health, alcoholism, and drug abuse treatment facilities.

Sec. 20. Section 71-4728.02, Reissue Revised Statutes of Nebraska, is amended to read:

71-4728.02. The commission shall appoint a mental health specialist advisor. The specialist shall monitor and provide advice to mental health, alcoholism, and drug abuse programs which provide treatment for hearing-impaired deaf or hard of hearing persons. The specialist shall also serve as the commission's liaison to persons who provide treatment or intervention services for mental health, alcoholism, and drug abuse disorders which provide treatment for hearing-impaired deaf or hard of hearing persons.

Sec. 21. Section 71-4728.03, Reissue Revised Statutes of Nebraska, is amended to read:

71-4728.03. The commission shall implement section 71-4728.02 with the advice of a special advisory committee appointed by the commission. The committee shall consist of five members as follows: Three counselors familiar with mental health, alcoholism, and drug abuse disorders in hearing-impaired deaf or hard of hearing persons and two human services professionals. The Department of Health and Human Services and the commission shall each have a representative who serves on the committee in a nonvoting technical capacity.

Sec. 22. Section 71-4729, Reissue Revised Statutes of Nebraska, is amended to read:

71-4729. The commission shall in fulfilling its responsibilities enumerated in section 71-4728 cooperate with any state agency having authority related to the problems of hearing-impaired deaf or hard of hearing persons. Such agencies shall also cooperate with the commission. Avoidance of unnecessary duplication of state-delivered services to the hearing impaired deaf or hard of hearing persons shall be a primary objective of such cooperation.

Sec. 23. Section 71-4731, Reissue Revised Statutes of Nebraska, is amended to read:

71-4731. The Governor may accept gifts, grants, and donations of money, personal property, and real property for use in expanding and improving services to hearing-impaired deaf or hard of hearing persons of this state.

Sec. 24. Section 71-4732, Reissue Revised Statutes of Nebraska, is amended to read:

71-4732. There is hereby created a Commission for the Hearing Impaired Deaf and Hard of Hearing Fund to consist of such funds as the Legislature shall appropriate and any funds received under section 71-4731. The fund shall be used to administer sections 71-4720 to 71-4732 and section 13 of this act. Any money in the 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. Any money in the Commission for the Hearing Impaired Fund on the effective date of this act

shall be transferred to the Commission for the Deaf and Hard of Hearing Fund.

Sec. 25. Section 71-4733, Reissue Revised Statutes of Nebraska, is amended to read:

71-4733. The Nebraska Commission for the Hearing Impaired Deaf and Hard of Hearing shall join with the Nebraska Educational Telecommunications Commission and the University of Nebraska to provide a daily videotext news and information service for the hearing impaired deaf or hard of hearing persons of Nebraska via line XXI Communications Technology, station KUON-TV, and the Nebraska educational television network. The Commission for the Hearing Impaired Deaf and Hard of Hearing shall employ every appropriate means to encourage the state's hearing impaired deaf or hard of hearing persons to acquire decoding devices in order to take advantage of the informational service.

Sec. 26. Section 83-101.14, Revised Statutes Supplement, 1996, is amended to read:

83-101.14. The Department of Health and Human Services with the assistance of the Commission for the Hearing Impaired Deaf and Hard of Hearing shall adopt and promulgate rules and regulations to define criteria and standards for access by eligible hearing-impaired persons to mental health, alcoholism, and drug abuse treatment programs.

Sec. 27. Section 86-1306, Revised Statutes Supplement, 1996, is amended to read:

86-1306. (1) The commission shall establish standards, procedures, and training specifications for the telecommunications relay system and shall supervise its operation. The system shall assure prompt and accurate relay of all messages seven days per week, twenty-four hours per day, including holidays, and shall provide at least the following services to all hearing-impaired or speech-impaired persons living in Nebraska who possess specialized telecommunications equipment: (a) Statewide in-state calls with charges for long-distance calls billed to the person making the call in a manner which the commission determines will recover the cost of long-distance calls to the system; (b) out-of-state calls with charges billed to the person making the call; and (c) emergency calls. Any person using the system shall not be charged for access to the system other than charges billed for in-state and out-of-state long-distance service.

(2) The commission shall establish standards and criteria and shall determine the eligibility of qualified low-income hearing-impaired and speech-impaired persons applying for specialized telecommunications equipment, which include the following: (a) Only one person per household may be a recipient of the telecommunications equipment; (b) an applicant shall reside in a household that has telephone service; (c) a recipient of equipment may not reapply for assistance more than once every five years; (d) a nursing home or institution resident is eligible for specialized telecommunications equipment only if he or she has personal telephone service; and (e) the eligibility of applicants shall be based upon income levels not in excess of the poverty level as established by the federal Office of Management and Budget. Applications may be approved if they meet the guidelines established by the commission. The commission shall adopt and promulgate rules and regulations necessary for implementation of the Telecommunications Relay System Act and guidelines for the specialized telecommunications equipment program. The commission may enter into contracts with other agencies or private organizations, which may include the Commission for the Hearing Impaired Deaf and Hard of Hearing, to operate the telecommunications relay system and the specialized telecommunications equipment program.

Sec. 28. Section 86-1307, Reissue Revised Statutes of Nebraska, is amended to read:

86-1307. The commission shall administer the Telecommunications Relay System Act with the advice of a special committee appointed by the Commission for the Hearing Impaired Deaf and Hard of Hearing. The special committee shall consist of seven members as follows: Two members shall be hearing-impaired persons, one of whom is deaf; one member shall be a speech-impaired person; one member shall represent the Public Service Commission; one member shall represent the telephone industry; one member shall represent the Commission for the Hearing Impaired Deaf and Hard of Hearing; and one member shall represent the public.

Sec. 29. Original sections 20-150 to 20-159, 25-2402, 71-4720, 71-4721, 71-4724 to 71-4726, 71-4728 to 71-4729, 71-4731 to 71-4733, and 86-1307, Reissue Revised Statutes of Nebraska, and sections 83-101.14 and 86-1306, Revised Statutes Supplement, 1996, are repealed.