

## LEGISLATIVE BILL 376

Approved by the Governor May 5, 1987

Introduced by Hall, 7; Remmers, 1; Weihsing, 48;  
Higgins, 9; Nelson, 35; Rogers, 41;  
Moore, 24; Korshoj, 16; Coordsen, 32;  
Schellpeper, 18; Peterson, 21; Chizek, 31;  
Morehead, 30

AN ACT relating to hearing-impaired persons; to amend sections 25-2401 to 25-2405, 71-4720, 71-4721, 71-4724, 71-4725, and 71-4728, Reissue Revised Statutes of Nebraska, 1943; to state intent; to define terms; to provide interpreters for hearing-impaired persons in certain proceedings as prescribed; to provide procedures; to change certain provisions relating to interpreters; to change provisions relating to the Commission for the Hearing Impaired; and to repeal the original sections.

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

Section 1. The Legislature hereby finds and declares that it is the policy of the State of Nebraska to secure the rights of hearing-impaired 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.

Sec. 2. As used in sections 1 to 10 of this act, unless the context otherwise requires:

(1) Appointing authority shall mean the Legislature, a legislative committee, law enforcement personnel, or any court of the state required to provide a qualified interpreter pursuant to sections 1 to 10 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;

(3) Intermediary interpreter shall mean any person, including any hearing-impaired 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 person and a qualified interpreter;

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

(5) Qualified interpreter 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.

Sec. 3. Whenever a hearing-impaired 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 person otherwise eligible for release shall be held in custody solely to await 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 person in reply to a question of any law enforcement officer or any other person having a prosecutorial function may be used against such 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 person waives his or her right to an interpreter, the waiver and statement were made knowingly, voluntarily, and intelligently. The right of a hearing-impaired 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 person was arrested.

Sec. 4. For any proceeding before the Legislature, any legislative committee, any law enforcement agency or department, or any court at which a hearing-impaired person is subpoenaed or requested in writing to attend, the appointing authority shall obtain a qualified interpreter to interpret the proceedings to such person and to interpret his or her testimony or statements.

Sec. 5. If an appointed qualified interpreter is not able to provide effective communication with a hearing-impaired person, the appointing authority shall obtain another qualified interpreter. An oral

interpreter shall be provided upon request of a hearing-impaired 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 person and full participation of the hearing-impaired person in the proceeding.

Sec. 6. When an appointing authority has reason to believe that a person is not hearing impaired 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. The Commission for the Hearing Impaired shall prepare and maintain a list of the various types of qualified interpreters as provided by section 71-4728. Nothing in sections 1 to 10 of this act shall be construed to prevent any appointing authority from contracting with a qualified interpreter on a full-time employment basis.

Sec. 8. In any proceeding in which a hearing-impaired 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. 9. Whenever a 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. A qualified interpreter appointed pursuant to sections 1 to 10 of this act 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. 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. That section 25-2401, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-2401. It is hereby declared to be the policy of this state that the constitutional rights of ~~deaf persons; who because of hearing or speaking impairments; and other persons; who are 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 to provide a procedure for the appointment of such interpreters to avoid injustice and to assist such persons in their own defense.

Sec. 12. That section 25-2402, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

(1) ~~Deaf person shall mean a person who, because of hearing or speaking impairment; Person unable to communicate the English language shall mean a person who cannot readily understand or communicate the English language;~~ and

(2) Proceeding shall mean any legal proceeding or any hearing preliminary thereto involving ~~deaf persons or other persons who cannot~~ unable to communicate the English language.

Sec. 13. That section 25-2403, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-2403. In any proceeding the presiding judge shall appoint an interpreter to assist any ~~deaf person or~~ person unable to communicate the English language for preparation and trial of his or her case.

Sec. 14. That section 25-2404, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-2404. No person shall be appointed as an interpreter pursuant to ~~the provisions of~~ sections 25-2401 to 25-2406 unless such person is readily able to communicate with the ~~deaf person or~~ 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. 15. That section 25-2405, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-2405. Every interpreter appointed pursuant

to the provisions of sections 25-2401 to 25-2406, 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 deaf person or 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. 16. That section 71-4720, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4720. There is hereby created the Commission for the Hearing Impaired which shall consist of nine members to be appointed by the Governor subject to approval by the Legislature. 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 shall mean the Commission for the Hearing Impaired.

Sec. 17. That section 71-4721, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4721. Members of the commission appointed prior to the effective date of this act shall serve for terms of six years and may not be reappointed to the commission after such date. 7 except that of the members first appointed, three shall be appointed for terms of two years, three shall be appointed for terms of four years, and three shall be appointed for terms of six years, as designated by the Governor in the original appointment. After the effective date of this act, no member shall be appointed for or serve for more than six years. The terms of the members shall expire on January 31 of the final year of their appointed term. As the terms of the ~~initial~~ appointees ~~to the commission~~ expire, succeeding appointees shall be representatives of the same segment of the public as the previous

appointee, and such successors, after the effective date of this act, shall be appointed to ~~six-year~~ 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. 18. That section 71-4724, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4724. The commission shall hold at least four meetings a year, at a time and place fixed by the commission, and shall keep a record of its proceedings, which shall be open to the public for inspection. The commission shall make 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 of the members of the commission shall constitute a quorum.

Sec. 19. That section 71-4725, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4725. The commission shall every two years annually elect from its members a chairperson, vice-chairperson, and a secretary. At least one officer shall be a hearing-impaired person, who may hold the same office for a period of not more than four years or until a successor is elected. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson.

Sec. 20. That section 71-4728, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4728. The commission shall serve as the principal state agency responsible for advocating public policies and programs which shall improve the quality and coordination of existing services for the hearing impaired 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 and assist hearing-impaired 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, federal, and private organizations and to any interested

person;

(3) Promote the training of interpreters for the hearing impaired;

(4) Provide counseling to hearing-impaired persons or refer such persons to private or governmental agencies which provide counseling services;

(5) Conduct a voluntary census of hearing-impaired persons in Nebraska and compile a current registry;

(6) Promote expanded adult educational opportunities for hearing-impaired persons;

(7) Serve as an agency for the collection of information concerning the hearing impaired 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 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 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 persons; ~~and~~

(11) Promote awareness and understanding of the rights of hearing-impaired persons; ~~and~~

(12) Promote statewide communication services for hearing-impaired persons.

Sec. 21. That original sections 25-2401 to 25-2405, 71-4720, 71-4721, 71-4724, 71-4725, and 71-4728, Reissue Revised Statutes of Nebraska, 1943, are repealed.