

HB 4771

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

— • —

ENROLLED

Com. Sub. For
HOUSE BILL No. 4771

(By Delegate *Mezzatesta*)

— • —

Passed *March 9,* 1996

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4771
(BY DELEGATE MEZZATESTA)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article fourteen-a, all relating to establishing the West Virginia interpreter for the deaf act; defining terms; requiring appointment of interpreters for deaf persons in certain proceedings; providing for notification of need; requiring interpreters to make oaths of true interpretation; providing for fee schedule to be promulgated by legislative rule; and changing the name of the West Virginia commission for the hearing-impaired to the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article fourteen-a, all to read as follows:

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF
AND HARD-OF-HEARING.**

§5-14-3. Continuation of commission; membership.

RECEIVED
MAR 14 1996
LEGISLATIVE
SERVICES
DIVISION

1 There is hereby continued within the executive
2 department the "West Virginia Commission for the
3 Hearing-Impaired" which shall be known as the "West
4 Virginia Commission for the Deaf and Hard-of-Hearing"
5 consisting of fifteen persons, eight of whom shall serve ex
6 officio, to be appointed by the governor within sixty days
7 after the effective date of this article by and with the
8 advice and consent of the Senate. The commission shall
9 meet no less than four times annually. All meetings and
10 activities held by the commission shall be attended by at
11 least two qualified interpreters who shall be hired at the
12 commission's expense or provided free of charge by
13 agencies, organizations or individuals willing to volunteer
14 qualified interpreters. The members are:

15 (a) The commissioner, or his or her designee, of the
16 bureau of human resources; the commissioner, or his or
17 her designee, of the division of labor; the director, or his
18 or her designee, of the bureau of public health; the state
19 superintendent of schools, or his or her designee, of the
20 state board of education; the director, or his or designee,
21 of the division of rehabilitation; the director, or his or her
22 designee, of the division of handicapped children's
23 services in the division of human services; the chairman, or
24 his or her designee, of the advisory council for the
25 education of exceptional children; and the superintendent,
26 or his or her designee, of the West Virginia school for the
27 deaf, all of whom shall serve ex-officio;

28 (b) Seven persons appointed by the governor, at least
29 three of whom are deaf or hard-of-hearing, one of whom
30 is the parent of a deaf child, one of whom is a certified
31 teacher of the hearing-impaired, one audiologist and one
32 otolaryngologist. Of the three deaf people, at least two
33 shall be selected from a list of four people recommended
34 by the board of the West Virginia association of the deaf.

**ARTICLE 14A. WEST VIRGINIA INTERPRETER FOR THE DEAF
ACT.**

§5-14A-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Interpreter for the Deaf Act."

§5-14A-2. Definitions.

1 As used in this article:

2 (a) "Deaf person" means one whose sense of hearing is
3 nonfunctional for the ordinary purposes of life;

4 (b) "Qualified interpreter" means an interpreter
5 certified by the national association of the deaf (NAD) or
6 registry of interpreters for the deaf (RID), or, in the event
7 an interpreter so certified is not available, an interpreter
8 whose qualifications are otherwise determined;

9 (c) "Oral interpreter" means a person who interprets
10 language through facial and lip movements; and

11 (d) "Appointing authority" means any court,
12 department, board, commission, agency, licensing
13 authority, political subdivision or municipality of the state
14 required to provide an interpreter.

**§5-14A-3. Appointment of interpreter in court action or
grand jury proceeding.**

1 (a) In any case before any court or the grand jury,
2 wherein any deaf person is a complainant, defendant or
3 witness, a qualified interpreter to interpret the proceedings
4 to the deaf person and interpret his or her testimony or
5 statements and to assist in preparation with counsel shall
6 be appointed as provided under the provisions of section
7 seven, article five, chapter fifty-seven of this code. The
8 court shall work closely with West Virginia commission
9 for the deaf and hard-of-hearing in finding the right
10 interpreter for any duty in court.

11 (b) Efforts to obtain the services of a qualified
12 interpreter certified with a legal skills certificate, or a
13 comprehensive oral interpreting certificate will be made
14 prior to accepting services of an interpreter with lesser
15 certification. No qualified interpreter shall be appointed
16 unless the appointing authority and the deaf person make
17 a preliminary determination that the interpreter is able to
18 communicate readily with the deaf person and is able to
19 interpret accurately the statement of the deaf person and
20 interpret the proceedings in which a deaf person may be

21 involved.

§5-14A-4. Arrests — Appointment of an interpreter.

1 (a) In the event a person who is deaf is arrested and
2 taken into custody for any alleged violation of a criminal
3 law of this state, the arresting officer or his or her
4 superiors shall procure a qualified interpreter in order to
5 interrogate properly such deaf person and to interpret
6 such person's statements. No statement taken from the
7 deaf person before an interpreter is present may be
8 admissible in court.

9 (b) An oral interpreter shall be provided upon the
10 request of a deaf person entitled to an interpreter under
11 this article, but who does not communicate in sign
12 language. The right of a deaf person to an interpreter
13 may not be waived except by a deaf person who does not
14 use sign language and who initiates the request for waiver
15 in writing. The waiver is subject to approval of legal
16 counsel for the deaf person, if any, and is subject to
17 approval of the appointing authority.

§5-14A-5. Administrative proceedings — Appointment of interpreter.

1 (a) In any proceeding before any department, board,
2 commission, agency or licensing authority of the state, in
3 any political subdivision or municipality, wherein any deaf
4 person is a defendant, the department, board, commission,
5 agency, licensing authority, political subdivision or
6 municipality shall appoint a qualified interpreter to
7 interpret the proceedings to the deaf person and to
8 interpret his or her testimony or statements if said deaf
9 person requests an interpreter.

10 (b) In a proceeding before any department, board,
11 commission, agency or licensing authority of the state, in
12 any political subdivision or municipality, wherein any deaf
13 person is an applicant, complainant or principal witness,
14 the department, board, commission, agency, licensing
15 authority, political subdivision or municipality may
16 appoint a qualified interpreter to interpret the proceedings
17 to the deaf person and to interpret his or her testimony or

18 statements if said deaf person requests an interpreter.

§5-14A-6. Notice of necessity of interpreter — Proof of deafness.

1 Every deaf person whose appearance in any
2 proceeding entitles him or her to an interpreter shall
3 notify the appointing authority of his or her desire for an
4 interpreter at least forty-eight hours prior to any
5 appearance and may request at the time the services of an
6 interpreter: *Provided*, That if a deaf person reasonably
7 expects the need for an interpreter for a period greater
8 than a single day, he or she shall notify the appointing
9 authority and the notification shall be sufficient for the
10 duration of his or her participation in the proceedings.

11 An appointing authority may require a person
12 requesting the appointment of an interpreter to furnish
13 reasonable proof of his or her deafness when the
14 appointing authority has reason to believe that the person
15 is not deaf.

§5-14A-7. Processing request for interpreter — Duties and responsibilities.

1 It shall be the responsibility of the appointing
2 authority to channel requests for qualified interpreters
3 through the West Virginia commission for the deaf and
4 hard-of-hearing except as provided under the provisions
5 of section seven, article five, chapter fifty-seven of this
6 code. This listing shall be made available to authorities in
7 possible need of interpreter service as provided in this
8 article.

§5-14A-8. Confirmation of accuracy of interpretation.

1 Before a qualified interpreter may participate in any
2 proceedings under the provisions of this article, the
3 interpreter shall make an oath or affirmation that he or she
4 will make a true interpretation in an understandable
5 manner to the deaf person for whom he or she is
6 appointed and that he or she will interpret the statements
7 of the deaf person desiring that statements be made, in the
8 English language to the best of his or her skill and
9 judgment. The appointing authority shall provide recess

10 periods as necessary for the interpreter when the
11 interpreter so indicates. Any and all information that the
12 interpreter gathers from the deaf person pertaining to any
13 proceeding then pending shall at all times remain
14 confidential and privileged, or on a equal basis with the
15 attorney-client privilege, unless the deaf person desired
16 that the information be communicated to other persons.

§5-14A-9. Interpreter fee; authority for legislative rules.

1 Notwithstanding the provisions of section seven,
2 article five, chapter fifty-seven with respect to fees, an
3 interpreter appointed under the provisions of this article
4 shall be entitled to a reasonable fee to be established by
5 the West Virginia commission for the deaf and
6 hard-of-hearing under a fee schedule promulgated by
7 legislative rule pursuant to the provisions of chapter
8 twenty-nine-a of this code. When the interpreter is
9 appointed, the fee shall be paid out of funds available to
10 the appointing authority.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Barry S. Sponner
Chairman Senate Committee

Rudy Deane
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll E. Rhea
Clerk of the Senate

Gregory M. Bag
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Paul E. C. C.
Speaker of the House of Delegates

The within *is approved* this the *1st*
day of *April*, 1996.

Winston Caperton
Governor

PRESENTED TO THE

GOVERNOR/

Date

3/27/96

Time

2:57 pm