

ADMINISTRATIVE LAW AND PROCEDURE (2 PA.C.S.) AND JUDICIAL CODE
(42 PA.C.S.) - COURT AND ADMINISTRATIVE PROCEEDINGS INTERPRETERS
Act of Nov. 29, 2006, P.L. 1538, No. 172
Session of 2006
No. 2006-172

Cl. 02

SB 669

AN ACT

Amending Titles 2 (Administrative Law and Procedure) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for court and administrative proceeding interpreters; and repealing related provisions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 101 of Title 2 of the Pennsylvania Consolidated Statutes is amended to read:

§ 101. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Adjudication." Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made. The term does not include any order based upon a proceeding before a court or which involves the seizure or forfeiture of property, paroles, pardons or releases from mental institutions.

"Administrative proceeding." Any proceeding other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law or in which law or regulation is particularized in application to individuals. The term includes an appeal.

"Agency." A government agency.

"Appeal." Includes proceedings on petition for review.

"Certified interpreter." A person who:

(1) is readily able to interpret; and

(2) either:

(i) is certified by the Department of Labor and Industry in accordance with Subchapter C (relating to administrative proceeding interpreters for persons with limited English proficiency); or

(ii) Is certified by the Department of Labor and Industry in accordance with Subchapter D (relating to administrative proceeding interpreters for persons who are deaf) of Chapter 5 or is registered with the department pursuant to the act of July 2, 2004 (P.L.492, No.57), known as the Sign Language Interpreter and Transliterator State Registration Act.

"Commonwealth agency." Any executive agency or independent agency.

"Commonwealth government." The government of the Commonwealth, including the courts and other officers or agencies of the unified judicial system, the General Assembly, and its officers and agencies, the Governor, and the departments, boards, commissions, authorities and officers and agencies of the Commonwealth, but the term does not include any political subdivision, municipal or other local authority, or any officer or agency of any such political subdivision or local authority.

"Court Administrator of Pennsylvania." The court administrator appointed by the Supreme Court under section 10(b) of Article V of the Constitution of Pennsylvania and 42 Pa.C.S. § 1901 (relating to Court Administrator of Pennsylvania).

"Deaf." An impairment of hearing or speech which creates an inability to understand or communicate the spoken English language.

"Department." The Department of Labor and Industry of the Commonwealth.

"Executive agency." The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth government, but the term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, or any independent agency.

"General rule." As defined in 42 Pa.C.S. § 102 (relating to definitions).

"Government agency." Any Commonwealth agency or any political subdivision or municipal or other local authority, or any officer or agency of any such political subdivision or local authority.

"Government unit." The General Assembly and its officers and agencies, any government agency or any court or other officer or agency of the unified judicial system.

"Independent agency." Boards, commissions, authorities and other agencies and officers of the Commonwealth government which are not subject to the policy supervision and control of the Governor, but the term does not include any court or other officer or agency of the unified judicial system or the General Assembly and its officers and agencies.

"Interpret." Either one of the following:

(1) For purposes of Subchapter C of Chapter 5 (relating to administrative proceeding interpreters for persons with limited English proficiency), to convey spoken and written English into the language of the person with limited English proficiency and to convey oral and written statements by the person into spoken English.

(2) For purposes of Subchapter D of Chapter 5 (relating to administrative proceeding interpreters for persons who are deaf), to convey spoken English in a manner understood by the person who is deaf and to convey statements made by the person who is deaf into English through, but not limited to, American Sign Language and transliteration or the use of computer-aided real-time captioning (CART) or similar procedure.

"Interpreter." Includes both a certified interpreter and an otherwise qualified interpreter.

"Judicial proceeding." An "action," "appeal" or "proceeding"

in any "court" of this Commonwealth as those terms are defined in 42 Pa.C.S. § 102 (relating to definitions).

"Limited ability to speak or understand English." The ability to speak exclusively or primarily a language other than English and the inability to sufficiently speak or understand English.

"Local agency." A government agency other than a Commonwealth agency.

"Matter." Action, proceeding or appeal.

"Otherwise qualified interpreter." A person who:

(1) For purposes of Subchapter C of Chapter 5 (relating to administrative proceeding interpreters for persons with limited English proficiency):

(i) is readily able to interpret; and

(ii) has read, understands and agrees to abide by the code of professional conduct for administrative proceeding interpreters for persons with limited English proficiency as established by the Department of Labor and Industry in accordance with Subchapter C of Chapter 5.

(2) For purposes of Subchapter D of Chapter 5 (relating to administrative proceeding interpreters for persons who are deaf):

(i) is readily able to interpret;

(ii) is certified by the National Association of the Deaf, the Registry of Interpreters for the Deaf or similar registry; and

(iii) has read, understands and agrees to abide by the code of professional conduct for administrative proceeding interpreters for persons who are deaf as established by the Department of Labor and Industry in accordance with Subchapter D of Chapter 5.

"Party." Any person who appears in a proceeding before an agency who has a direct interest in the subject matter of such proceeding.

"Person." Includes a government unit or an agency of the Federal Government.

"Person who is deaf." A party or witness who is deaf.

"Person with limited English proficiency." A party or a witness who has limited ability to speak or understand English.

"Presiding officer." An individual appointed by an agency to preside at an administrative proceeding.

"Transliteration." To convey spoken or written English in an English-based sign system and the process of conveying an English-based sign system in spoken or written English.

"Witness." A person who testifies in a proceeding before an agency.

Section 2. Section 505.1 of Title 2 is amended to read:

[§ 505.1. Interpreters for the deaf.

(a) Appointment.--In any proceeding before a Commonwealth agency in which a party is deaf the agency shall appoint an interpreter to assist the party throughout the proceeding.

(b) Oath.--The interpreter shall swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability.

(c) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this

subsection:

"Deaf." Persons who are deaf or whose hearing is so impaired that they are unable to understand or communicate the spoken English language.

"Interpreter." A person qualified and trained to translate for or communicate with deaf persons. Any person certified by the National or Local Registry of Interpreters for the Deaf or similar registry shall be considered qualified for the purposes of this section.]

Section 3. Chapter 5 of Title 2 is amended by adding subchapters to read:

SUBCHAPTER C
ADMINISTRATIVE PROCEEDING INTERPRETERS
FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Sec.

561. Scope of subchapter.

562. Duties of department.

563. Appointment of interpreter.

564. Replacement of interpreter.

565. Oath.

566. Confidential communications in presence of interpreter.

567. Cost of providing interpreter.

568. Funding.

§ 561. Scope of subchapter.

(a) Commonwealth agencies.--Except as provided in subsection (b), this subchapter applies to all Commonwealth agencies.

(b) Exception.--This subchapter does not apply to:

(1) Proceedings before the Department of Revenue, the Department of the Auditor General or the Board of Finance and Revenue involving the original settlement, assessment or determination or resettlement, reassessment or redetermination, review or refund of taxes, interest or payments made into the State Treasury.

(2) Proceedings before the Secretary of the Commonwealth under the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(3) Proceedings before the Department of Transportation involving matters reviewable under 42 Pa.C.S. § 933 (relating to appeals from government agencies).

(4) Proceedings before the State System of Higher Education involving student discipline.

(c) Local agencies.--This subchapter applies to all local agencies.

§ 562. Duties of department.

(a) Interpreter program.--The department shall establish a program to appoint and use certified interpreters in administrative proceedings that is consistent with the program established by the Administrative Office of Pennsylvania Courts pursuant to 42 Pa.C.S. Ch. 44 (relating to court interpreters). As part of the program, the department may grant automatic certification to any interpreter that has been certified pursuant to 42 Pa.C.S. Ch. 44. To certify interpreters, the department may establish a program which may include:

(1) establishing and administering a comprehensive testing and certification program for interpreters;

(2) establishing and adopting standards of proficiency, written and oral, in English and the language to be

interpreted, including, but not limited to, certification by the Court Administrator of Pennsylvania as provided in 42 Pa.C.S. Ch. 44;

(3) conducting periodic examinations to ensure the availability of certified interpreters pursuant to this subchapter;

(4) prescribing, determining and certifying the qualifications of persons who may serve as certified interpreters for persons with limited English proficiency;

(5) charging reasonable fees, as deemed necessary, for testing and certification;

(6) reciprocity of certification for interpreters from other jurisdictions, provided that, in the judgment of the department, the criteria for certification in the foreign jurisdiction is at least as stringent as that established by the department or the Court Administrator of Pennsylvania;

(7) providing for the audio recording of testimony that is the subject of interpretation; and

(8) providing a continuing education requirement for interpreters.

(b) List of certified interpreters.--The department shall compile, maintain and disseminate a current list of interpreters certified by the department to the agencies through any means deemed appropriate by the department, including, but not limited to, a written directory and publication on the official World Wide Web site of the department.

(c) Guidelines for selection of otherwise qualified interpreters.--The department shall provide guidelines to the agencies for the selection and use of otherwise qualified interpreters in order to ensure that the highest standards of accuracy are maintained in all administrative proceedings subject to this subchapter.

(d) Fee schedule.--The department shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by certified interpreters and otherwise qualified interpreters.

(e) Standards of professional conduct.--

(1) The department shall establish and adopt standards for a code of professional conduct for administrative proceeding interpreters for persons with limited English proficiency.

(2) The department shall establish, administer or recommend a process to review and respond to allegations of violations of the code of professional conduct for administrative proceeding interpreters for persons with limited English proficiency, including, but not limited to, decertification and other disciplinary measures.

(f) Certification by courts.--Any interpreter certified by the Administrative Office of Pennsylvania Courts pursuant to 42 Pa.C.S. Ch. 44 shall be deemed certified pursuant to this chapter.

§ 563. Appointment of interpreter.

(a) Appointment of certified interpreter.--Upon request or sua sponte, a presiding officer shall appoint a certified interpreter, unless a certified interpreter is unavailable as provided in subsection (b).

(b) Appointment of otherwise qualified interpreter when

certified interpreter is unavailable.--

(1) An otherwise qualified interpreter shall be appointed by the presiding officer if a good faith effort was made to obtain a certified interpreter and a certified interpreter was not reasonably available, as determined by the presiding officer.

(2) Prior to the appointment of an otherwise qualified interpreter, the presiding officer shall state on the record that the otherwise qualified interpreter:

(i) is readily able to interpret; and

(ii) has read, understands and agrees to abide by the code of professional conduct for administrative proceeding interpreters for persons with limited English proficiency, as established by the department.

(c) Additional interpreters.--After consideration of the length of the administrative proceeding and the number of persons with limited English proficiency involved, a presiding officer may appoint, as provided in subsections (a) and (b), an additional interpreter or provide for additional interpretation in a manner deemed appropriate by the presiding officer.

§ 564. Replacement of interpreter.

A presiding officer shall dismiss the interpreter and obtain the services of another interpreter in accordance with this subchapter if the interpreter:

(1) Fails to follow the standards prescribed by law or by the code of professional conduct for administrative proceeding interpreters for persons with limited English proficiency.

(2) Is unable to effectively communicate with the presiding officer or the person with limited English proficiency, including where the interpreter self-reports such inability.

§ 565. Oath.

Before the commencement of interpreter duties, an interpreter appointed under this subchapter shall take an oath or make an affirmation on the record that the interpreter will make a true interpretation to the person with limited English proficiency in the language which the person with limited English proficiency understands and that the interpreter will repeat the statements of the person with limited English proficiency to the court in English to the best of the interpreter's skill and judgment and in accordance with the code of professional conduct for administrative proceeding interpreters for persons with limited English proficiency.

§ 566. Confidential communications in presence of interpreter.

An interpreter appointed under this subchapter may not be compelled to testify, in any judicial proceeding or administrative proceeding, to statements made by the person with limited English proficiency and interpreted by the interpreter when the person with limited English proficiency is engaged in a confidential communication as provided by any statute or general rule, including, but not limited to:

(1) 42 Pa.C.S. § 5916 (relating to confidential communications to attorney).

(2) 42 Pa.C.S. § 5928 (relating to confidential communications to attorney).

(3) 42 Pa.C.S. § 5942 (relating to confidential

communications to news reporters).

(4) 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen).

(5) 42 Pa.C.S. § 5944 (relating to confidential communications to psychiatrists or licensed psychologists).

(6) 42 Pa.C.S. § 5945 (relating to confidential communications to school personnel).

(7) 42 Pa.C.S. § 5945.1 (relating to confidential communications with sexual assault counselors).

(8) 42 Pa.C.S. § 5945.2 (relating to confidential communications to crime stopper or similar anticrime program).

§ 567. Cost of providing interpreter.

An interpreter appointed in accordance with this subchapter is entitled to a reasonable fee for interpreter services and shall be reimbursed for actual and reasonable expenses by the agency conducting the administrative proceeding.

§ 568. Funding.

Except as provided in section 567 (relating to cost of providing interpreter), the General Assembly shall appropriate to the department such sums as may be necessary to establish a program to facilitate the use of interpreters and otherwise fulfill the provisions of this subchapter. Implementation of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

SUBCHAPTER D
ADMINISTRATIVE PROCEEDING INTERPRETERS
FOR PERSONS WHO ARE DEAF

Sec.

581. Scope of subchapter.

582. Duties of department.

583. Appointment of interpreter.

584. Replacement of interpreter.

585. Oath.

586. Confidential communications in presence of interpreter.

587. Cost of providing interpreter.

588. Funding.

§ 581. Scope of subchapter.

(a) Commonwealth agencies.--Except as provided in subsection (b), this subchapter applies to all Commonwealth agencies.

(b) Exception.--This subchapter does not apply to:

(1) Proceedings before the Department of Revenue, the Department of the Auditor General or the Board of Finance and Revenue involving the original settlement, assessment or determination or resettlement, reassessment or redetermination, review or refund of taxes, interest or payments made into the State Treasury.

(2) Proceedings before the Secretary of the Commonwealth under the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code.

(3) Proceedings before the Department of Transportation involving matters reviewable under 42 Pa.C.S. § 933 (relating to appeals from government agencies).

(4) Proceedings before the State System of Higher Education involving student discipline.

(c) Local agencies.--This subchapter applies to all local agencies.

§ 582. Duties of department.

(a) Interpreter program.--The department shall establish a program to appoint and use certified interpreters in administrative proceedings that is consistent with the program established by the Administrative Office of Pennsylvania Courts pursuant to 42 Pa.C.S. Ch. 44 (relating to court interpreters). As part of the program, the department may grant automatic certification to any interpreter that has been certified pursuant to 42 Pa.C.S. Ch. 44. To certify interpreters, the department may establish a program which may include:

(1) establishing and administering a comprehensive testing and certification program for interpreters pursuant to this subchapter;

(2) establishing and adopting standards of proficiency, including, but not limited to, certification by the Court Administrator of Pennsylvania as provided in 42 Pa.C.S. Ch. 44 and certification by the Registry for Interpreters for the Deaf or similar registry;

(3) conducting periodic examinations to ensure the availability of certified interpreters;

(4) prescribing, determining and certifying the qualifications of persons who may serve as certified interpreters;

(5) charging reasonable fees, as deemed necessary, for testing and certification;

(6) reciprocity of certification for interpreters from other jurisdictions, provided that, in the judgment of the department, the criteria for certification in the foreign jurisdiction is as least as stringent as that established by the department or the Court Administrator of Pennsylvania;

(7) providing for the audio recording of testimony that is the subject of interpretation; and

(8) providing a continuing education requirement for interpreters.

(b) List of certified interpreters.--The department shall compile, maintain and disseminate a current list of interpreters certified by the department to the agencies through any means deemed appropriate by the department, including, but not limited to, a written directory and publication on the official World Wide Web site of the department.

(c) Guidelines for selection of otherwise qualified interpreters.--The department shall provide guidelines to the agencies for the selection and use of otherwise qualified interpreters in order to ensure that the highest standards of accuracy are maintained in all administrative proceedings subject to this subchapter.

(d) Fee schedule.--The department shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by certified interpreters and otherwise qualified interpreters.

(e) Standards of professional conduct.--

(1) The department shall establish and adopt standards for a code of professional conduct for administrative proceeding interpreters for persons who are deaf.

(2) The department shall establish, administer or recommend a process to review and respond to allegations of violations of the code of professional conduct for

administrative proceeding interpreters for persons who are deaf, including, but not limited to, decertification and other disciplinary measures.

(f) Certification by courts.--Any interpreter certified by the Administrative Office of Pennsylvania Courts pursuant to 42 Pa.C.S. Ch. 44 shall be deemed certified pursuant to this chapter.

§ 583. Appointment of interpreter.

(a) Appointment of certified interpreter.--Upon request, a presiding officer shall appoint a certified interpreter unless the certified interpreter is unavailable as provided in subsection (b).

(b) Appointment of otherwise qualified interpreter when certified interpreter is unavailable.--

(1) An otherwise qualified interpreter shall be appointed by a presiding officer if a good faith effort was made to obtain a certified interpreter and a certified interpreter was not reasonably available, as determined by the presiding officer.

(2) Prior to the appointment of an otherwise qualified interpreter, the presiding officer shall state on the record that to the best of the knowledge of the presiding officer, the otherwise qualified interpreter:

(i) is readily able to interpret;

(ii) is certified by the National Association for the Deaf, the Registry of Interpreters for the Deaf or similar registry, to the best of the knowledge of the administrative law judge; and

(iii) has read, understands and agrees to abide by the code of professional conduct for administrative proceeding interpreters for persons who are deaf, as established by the department.

(c) Additional interpreters.--After consideration of the length of the administrative proceeding, the special needs of the person who is deaf and the number of persons involved who are deaf, the presiding officer may appoint, as provided in subsections (a) and (b), an additional interpreter or provide for additional interpretation in a manner deemed appropriate by the presiding officer.

§ 584. Replacement of interpreter.

A presiding officer shall dismiss the interpreter and obtain the services of another interpreter in accordance with this subchapter if the interpreter:

(1) Fails to follow the standards prescribed by law or by the code of professional conduct for administrative proceeding interpreters for persons who are deaf.

(2) Is unable to effectively communicate with the presiding officer or person who is deaf, including where the interpreter self-reports such inability.

§ 585. Oath.

Before the commencement of interpreter duties, an interpreter appointed under this subchapter shall take an oath or make an affirmation on the record that the interpreter will make a true interpretation to the person who is deaf in the manner that the person who is deaf understands and that the interpreter will repeat the statements of the person who is deaf to the court in the spoken English language to the best of the interpreter's

skill and judgment and in accordance with the code of professional conduct for administrative proceeding interpreters for persons who are deaf.

§ 586. Confidential communications in presence of interpreter.

An interpreter appointed under this subchapter may not be compelled to testify, in any judicial proceeding or administrative proceeding, to statements made by the person who is deaf and interpreted by the interpreter when the person who is deaf is engaged in a confidential communication as provided by any statute or general rule, including, but not limited to:

(1) 42 Pa.C.S. § 5916 (relating to confidential communications to attorney).

(2) 42 Pa.C.S. § 5928 (relating to confidential communications to attorney).

(3) 42 Pa.C.S. § 5942 (relating to confidential communications to news reporters).

(4) 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen).

(5) 42 Pa.C.S. § 5944 (relating to confidential communications to psychiatrists or licensed psychologists).

(6) 42 Pa.C.S. § 5945 (relating to confidential communications to school personnel).

(7) 42 Pa.C.S. § 5945.1 (relating to confidential communications with sexual assault counselors).

(8) 42 Pa.C.S. § 5945.2 (relating to confidential communications to crime stopper or similar anticrime program).

§ 587. Cost of providing interpreter.

An interpreter appointed in accordance with this subchapter is entitled to a reasonable fee for interpreter services and shall be reimbursed for actual and reasonable expenses by the agency conducting the administrative proceeding.

§ 588. Funding.

Except as provided in section 587 (relating to cost of providing interpreter), the General Assembly shall appropriate to the department such sums as may be necessary to establish a program to facilitate the use of interpreters and otherwise fulfill the provisions of this subchapter. Implementation of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

Section 4. Title 42 is amended by adding a chapter to read:

Section 5. Sections 7103 and 8701 of Title 42 are amended to read:

[§ 7103. Interpreters for the deaf.

(a) General rule.--In any civil proceeding in which a party is deaf, the court may appoint an interpreter to assist the party throughout the proceeding. Disposition of costs shall be in discretion of the court.

(b) Oath.--The interpreter shall swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability.

(c) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Deaf." Persons who are deaf or whose hearing is so impaired that they are unable to understand or communicate the spoken

English language.

"Interpreter." A person qualified and trained to translate for or communicate with deaf persons. Any person certified by the National or Local Registry of Interpreters for the Deaf or similar registry shall be considered qualified for the purposes of this section.

§ 8701. Interpreters for the deaf.

(a) Interrogation.--Upon the arrest of any deaf person, and prior to interrogation, the arresting officer shall make available to such person an interpreter who shall be present with such person throughout the interrogation.

(b) Criminal proceedings.--In any criminal proceeding in which a defendant is deaf the court shall appoint an interpreter to assist the defendant throughout the proceeding.

(c) Oath.--The interpreter shall swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability.

(d) Definitions.--As used in this section the following words shall have the meanings given to them in this subsection:

"Deaf." Persons who are deaf or whose hearing is so impaired that they are unable to understand or communicate the spoken English language.

"Interpreter." A person qualified and trained to translate for or communicate with deaf persons. Any person certified by the National or Local Registry of Interpreters for the Deaf or similar registry shall be considered qualified for the purposes of this section.]

Section 6. This act shall take effect in 60 days.

APPROVED--The 29th day of November, A. D. 2006.

EDWARD G. RENDELL