

## **BILL ANALYSIS**

C.S.H.B. 1069  
By: Rodriguez, Eddie  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the lack of a professional interpreter certification program in Texas poses unnecessary and sometimes dangerous challenges for the hearing-impaired population. Although Texas has had an interpreter certification program for more than 20 years, this certification is attained voluntarily and is not a requirement for practicing interpreting in the state. The parties assert that this creates difficulty for providers of services to individuals who are hearing-impaired in assessing the quality of the interpreters the providers use. Texas currently monitors the performance of and provides a complaint process for the approximately 2,000 certified interpreters in the state, but, the parties explain, since being certified is not a prerequisite to employment, it may be impossible to ascertain how many uncertified interpreters are working in the state. The parties contend that since there is no monitoring or complaint process in place for uncertified interpreters, their level of qualification and aptitude cannot be adequately determined or ensured. C.S.H.B. 1069 seeks to address this issue and ensure that the hearing-impaired population has access to interpreters who meet established skill and performance standards.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 9 of this bill.

### **ANALYSIS**

C.S.H.B. 1069 amends the Human Resources Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to require, rather than authorize, the Department of Assistive and Rehabilitative Services (DARS) to establish a program for the certification of interpreters who have reached varying levels of proficiency in communication skills necessary to facilitate communication between persons who are deaf or hard of hearing and persons who are not deaf or hard of hearing. The bill prohibits a person from practicing, offering or attempting to practice, or holding that person out to be practicing as an interpreter for persons who are deaf or hard of hearing unless the person is certified under the DARS interpreter certification program. The bill exempts certain persons from that certification requirement and specifies that a person is not required to hold a certificate until June 1, 2017. The bill authorizes the executive commissioner of the Health and Human Services Commission to adopt rules regarding the investigation and enforcement of prohibited activity relating to the certification requirement. The bill authorizes DARS to suspend the certification of a person who violates a provision governing certification of interpreters for persons who are deaf or hard of hearing or a rule adopted in accordance with those provisions.

C.S.H.B. 1069 authorizes DARS to impose an administrative penalty on a person who violates the bill's certification requirements or a related rule. The bill sets the maximum administrative penalty at \$5,000 for each violation and specifies that each day a violation continues or occurs is a separate violation for such purposes. The bill establishes the factors DARS must consider in imposing a penalty and requires the executive commissioner to adopt rules necessary to implement the bill's provisions governing the administrative penalty. The bill authorizes DARS to reinstate the certificate of a certificate holder whose practice was suspended if the certificate holder demonstrates to DARS that the person has remedied the reason for which the certificate was suspended and is capable of resuming practice in compliance with the certification requirements, all administrative orders entered against the certificate holder, and all applicable rules.

C.S.H.B. 1069 establishes that provisions governing certification of interpreters for persons who are deaf or hard of hearing apply to a court interpreter to the same extent that the provisions apply to any other interpreter and are in addition to Government Code provisions outlining requirements for the certification of court interpreters for hearing-impaired individuals.

C.S.H.B. 1069 authorizes a person who holds an interpreter's license or certificate issued by another jurisdiction or an entity recognized by DARS to have requirements substantially equivalent to the certification requirements of this state to obtain a comparable certificate, as determined by DARS, without an examination. The bill requires the person to pay to DARS a fee for the certificate in an amount determined by the executive commissioner by rule. The bill removes a statutory provision authorizing a person who was certified in Texas, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application to obtain a new certificate without reexamination and requiring the person to pay a certain increased fee.

C.S.H.B. 1069 specifies that DARS is required to develop requirements, in addition to guidelines, for trilingual interpreter certification and to clarify the circumstances under which certified interpreters are qualified to provide services. The bill clarifies that DARS is required to maintain a registry of available certified interpreters, rather than available qualified interpreters. The bill removes the requirement that a determination to revoke or suspend a certificate or to place a certificate holder on probation be based on the recommendation of the Board for Evaluation of Interpreters. The bill requires the executive commissioner, not later than September 1, 2016, to adopt rules necessary to implement the bill's provisions and specifies that its provisions relating to conduct that is grounds for imposition of a disciplinary sanction apply only to conduct that occurs on or after June 1, 2017.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1069 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill and does not indicate difference relating to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.

#### **INTRODUCED**

SECTION 1. Chapter 81, Human Resources Code, is amended by designating

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Chapter 81, Human Resources Code, is amended by designating

Sections 81.001, 81.002, 81.0021, 81.0022, 81.003, 81.004, 81.005, 81.0051, 81.0055, 81.006, 81.008, 81.009, 81.013, 81.014, 81.015, 81.016, 81.017, 81.019, 81.020, and 81.021 as Subchapter A and adding a heading to that subchapter to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; POWERS AND DUTIES

SECTION 2. Section 81.001, Human Resources Code, is amended by adding Subdivisions (5) and (6) to read as follows:

(5) "Department" means the Department of Assistive and Rehabilitative Services.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 3. Section 81.006, Human Resources Code, is amended.

SECTION 4. Chapter 81, Human Resources Code, is amended.

SECTION 5. Section 81.007, Human Resources Code, is transferred to Subchapter B, Chapter 81, Human Resources Code, as added by this Act, redesignated as Section 81.052, Human Resources Code, and amended to read as follows:

Sec. 81.052 [~~81.007~~]. INTERPRETER CERTIFICATION PROGRAM [BOARD FOR EVALUATION OF INTERPRETERS]. (a) The department shall [~~commission may~~] establish a program in accordance with this subchapter [~~section~~] for the certification of interpreters who have reached varying levels of proficiency in communication skills necessary to facilitate communication between persons who are deaf or hard of hearing and persons who are not deaf or hard of hearing.

(b) The department [~~commission~~] shall appoint an advisory board of seven persons to assist in administering the interpreter certification program. A board member may not receive compensation, but is entitled to reimbursement of the travel

Sections 81.001, 81.0055, 81.006, 81.013, 81.015, 81.016, 81.017, 81.019, 81.020, and 81.021, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, as Subchapter A and adding a heading to that subchapter to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; POWERS AND DUTIES

No equivalent provision.

SECTION 2. Substantially the same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Section 81.007, Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is transferred to Subchapter B, Chapter 81, Human Resources Code, as added by this Act, redesignated as Section 81.052, Human Resources Code, and amended to read as follows:

Sec. 81.052 [~~81.007~~]. INTERPRETER CERTIFICATION PROGRAM [BOARD FOR EVALUATION OF INTERPRETERS]. (a) The department shall [~~may~~] establish a program in accordance with this subchapter [~~section~~] for the certification of interpreters who have reached varying levels of proficiency in communication skills necessary to facilitate communication between persons who are deaf or hard of hearing and persons who are not deaf or hard of hearing.

(b) The department shall appoint an advisory board of seven persons to assist in administering the interpreter certification program. A board member may not receive compensation, but is entitled to reimbursement of the travel expenses

expenses incurred by the member while conducting the business of the board, as provided in the General Appropriations Act.

(c) Subject to approval of the department [~~commission~~], the board shall prescribe qualifications for each of several levels of certification based on proficiency and shall evaluate and certify interpreters using these qualifications.

(d) A qualified board member may serve as an evaluator under Subsection (c), and the department [~~commission~~] shall compensate the board member for services performed as an evaluator.

(e) The department [~~commission~~] shall charge fees for written and performance examinations, for annual certificate renewal, and for recertification. The fees must be in an amount sufficient to defray [~~recover~~] the costs of the certification program.

(f) The department [~~commission~~] may waive any prerequisite to obtaining a certificate for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or certificate issued by another jurisdiction that has licensing or certification requirements substantially equivalent to the certification requirements [~~those~~] of this state.

(g) The department [~~commission~~] by executive commissioner rule may adopt a system under which certificates are valid for a five-year period, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year period, an interpreter must be recertified by the department [~~commission~~]. The department [~~commission~~] may recertify an interpreter who:

- (1) receives specified continuing education credits; or
- (2) achieves an adequate score on a specified examination.

(h) The executive commissioner, in consultation with the department, [~~commission~~] shall adopt rules specifying the grounds for denying, suspending, or revoking an interpreter's certificate.

(i) The department [~~commission~~] shall determine the frequency for conducting the interpreter examinations. The department [~~commission~~] shall conduct the interpreter examinations:

incurred by the member while conducting the business of the board, as provided in the General Appropriations Act.

(c) The board shall develop, subject to the department's approval, and the executive commissioner shall adopt qualifications for each of several levels of certification based on proficiency. The board shall evaluate and certify interpreters using these qualifications.

(d) A qualified board member may serve as an evaluator under Subsection (c), and the department shall compensate the board member for services performed as an evaluator.

(e) The executive commissioner by rule shall set and the department shall collect fees for written and performance examinations, for annual certificate renewal, and for recertification. The fees must be in an amount sufficient to defray [~~recover~~] the costs of the certification program.

(f) The department may waive any prerequisite to obtaining a certificate for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or certificate issued by another jurisdiction that has licensing or certification requirements substantially equivalent to the certification requirements [~~those~~] of this state.

(g) The executive commissioner by rule may adopt a system under which certificates are valid for a five-year period, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year period, an interpreter must be recertified by the department. The department may recertify an interpreter who:

- (1) receives specified continuing education credits; or
- (2) achieves an adequate score on a specified examination.

(h) The executive commissioner shall adopt rules specifying the grounds for denying, suspending, or revoking an interpreter's certificate.

(i) The department shall determine the frequency for conducting the interpreter examinations. The department shall conduct the interpreter examinations:

(1) in a space that can be obtained free of charge; or

(2) at a facility selected in compliance with Section 2113.106, Government Code.

(k) The department [~~commission~~] shall compensate an evaluator based on a fee schedule as determined by [~~commission~~] rule.

(l) The department [~~commission~~] shall recognize, prepare, or administer continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by the department [~~commission~~] to keep the person's certificate.

(m) A person who holds an interpreter's license or certificate issued by another jurisdiction, including a foreign country, or an entity recognized by the department to have licensing or certification requirements substantially equivalent to the certification requirements of this subchapter may obtain a comparable certificate, as determined by the department, without an examination. The person shall pay to the department a fee in an amount determined by the department for the certificate.

SECTION 6. Section 81.0071, Human Resources Code, is transferred to Subchapter B, Chapter 81, Human Resources Code, as added by this Act, redesignated as Section 81.053, Human Resources Code, and amended.

SECTION 7. Section 81.0072, Human Resources Code, is transferred to Subchapter B, Chapter 81, Human Resources Code, as added by this Act, redesignated as Section 81.054, Human Resources Code, and amended.

SECTION 8. Section 81.0073, Human Resources Code, is transferred to Subchapter B, Chapter 81, Human Resources Code, as added by this Act, redesignated as Section 81.055, Human Resources Code, and amended.

SECTION 9. Section 81.0074, Human

(1) in a space that can be obtained free of charge; or

(2) at a facility selected in compliance with Section 2113.106, Government Code.

(k) The department shall compensate an evaluator based on a fee schedule as determined by department rule.

(l) The department shall recognize, prepare, or administer continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by the department to keep the person's certificate.

(m) A person who holds an interpreter's license or certificate issued by another jurisdiction, including a foreign country, or an entity recognized by the department to have licensing or certification requirements substantially equivalent to the certification requirements of this subchapter may obtain a comparable certificate, as determined by the department, without an examination. The person shall pay to the department a fee for the certificate in an amount determined by the executive commissioner by rule.

SECTION 5. Substantially the same as introduced version.

SECTION 6. Substantially the same as introduced version.

SECTION 7. Substantially the same as introduced version.

SECTION 8. Substantially the same as

Resources Code, is transferred to Subchapter B, Chapter 81, Human Resources Code, as added by this Act, redesignated as Section 81.056, Human Resources Code, and amended.

SECTION 10. Subchapter B, Chapter 81, Human Resources Code, as added by this Act, is amended by adding Sections 81.057, 81.058, and 81.059 to read as follows:

Sec. 81.057. CERTIFICATION REQUIREMENT. (a) A person may not practice, offer or attempt to practice, or hold that person out to be practicing as an interpreter for persons who are deaf or hard of hearing unless the person is certified under this subchapter.

(b) The executive commissioner, in consultation with the department, may adopt rules related to the investigation and enforcement of activity prohibited under Subsection (a).

(c) This section does not apply to:

(1) a person interpreting in religious, family-oriented, or other social activities as authorized by the department;

(2) a person interpreting in an emergency situation involving health care services in which an ordinarily prudent physician in the same or similar circumstances might reasonably believe that the delay necessary to obtain a certified interpreter is likely to cause injury or loss to the patient, until such time as the services of a certified interpreter can be obtained;

(3) a person enrolled in a course of study leading to a certificate or degree in interpreting, provided that the person is clearly designated as a student, trainee, or intern and that the person engages only in activities and services that constitute a part of a supervised course of study;

(4) a person who is not a resident of this state and who is licensed or certified in another jurisdiction or by an entity recognized by the department, if the person provides interpreting services in this state on fewer than 30 days in a calendar year, except that days on which the person provides services relating to a state of disaster declared by the governor do not count toward the 30-day limit;

(5) a person who engages in video relay interpreting; or

(6) a person providing interpreting services

introduced version.

SECTION 9. Subchapter B, Chapter 81, Human Resources Code, as added by this Act, is amended by adding Sections 81.057, 81.058, and 81.059 to read as follows:

Sec. 81.057. CERTIFICATION REQUIREMENT. (a) A person may not practice, offer or attempt to practice, or hold that person out to be practicing as an interpreter for persons who are deaf or hard of hearing unless the person is certified under this subchapter.

(b) The executive commissioner may adopt rules related to the investigation and enforcement of activity prohibited under Subsection (a).

(c) This section does not apply to:

(1) a person interpreting in religious, family-oriented, or other social activities as authorized by the department;

(2) a person interpreting in an emergency situation involving health care services in which an ordinarily prudent physician in the same or similar circumstances might reasonably believe that the delay necessary to obtain a certified interpreter is likely to cause injury or loss to the patient, until such time as the services of a certified interpreter can be obtained;

(3) a person enrolled in a course of study leading to a certificate or degree in interpreting, provided that the person is clearly designated as a student, trainee, or intern and that the person engages only in activities and services that constitute a part of a supervised course of study;

(4) a person who is not a resident of this state and who is licensed or certified in another jurisdiction or by an entity recognized by the department, if the person provides interpreting services in this state on fewer than 30 days in a calendar year, except that days on which the person provides services relating to a state of disaster declared by the governor do not count toward the 30-day limit;

(5) a person who engages in video relay interpreting; or

(6) a person providing interpreting services

in another setting as determined by the department.

(d) The department may suspend the certificate of a person who violates a provision of this subchapter or a rule adopted under this subchapter.

Sec. 81.058. ADMINISTRATIVE PENALTIES. (a) The department may impose an administrative penalty on a person who violates Section 81.057 or a rule adopted under that section.

(b) A penalty imposed under this section may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) When imposing a penalty under this section, the department must consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other consideration that justice may require.

(d) The executive commissioner, in consultation with the department, shall adopt rules necessary to implement this section.

Sec. 81.059. REINSTATEMENT OF CERTIFICATE AFTER SUSPENSION.

SECTION 11. A person is not required to hold a certificate issued under Section 81.052, Human Resources Code, as redesignated and amended by this Act, until June 1, 2017.

SECTION 12. The changes in law made by this Act relating to conduct that is grounds for imposition of a disciplinary sanction apply only to conduct that occurs on or after June 1, 2017. Conduct that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in

in another setting as determined by the department.

(d) The department may suspend the certificate of a person who violates a provision of this subchapter or a rule adopted under this subchapter.

Sec. 81.058. ADMINISTRATIVE PENALTIES. (a) The department may impose an administrative penalty on a person who violates Section 81.057 or a rule adopted under that section.

(b) A penalty imposed under this section may not exceed \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) When imposing a penalty under this section, the department must consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other consideration that justice may require.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Sec. 81.059. REINSTATEMENT OF CERTIFICATE AFTER SUSPENSION.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

effect for that purpose.

SECTION 13. Not later than September 1, 2016, the executive commissioner of the Health and Human Services Commission in consultation with the Department of Assistive and Rehabilitative Services shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 14. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 12. Not later than September 1, 2016, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 13. Same as introduced version.