

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2004

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Legislative Document

No. 1688

S.P. 620

In Senate, December 17, 2003

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### **An Act To Clarify the Law Regarding Interpreting Services for People Who Are Deaf or Hard-of-hearing**

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Submitted by the Department of Labor pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 16, 2003. Referred to the Committee on Labor pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator EDMONDS of Cumberland.  
Cosponsored by Representative NORBERT of Portland and  
Senators: TREAT of Kennebec, TURNER of Cumberland, Representatives: BENNETT of  
Caribou, BULL of Freeport, GERZOFSKY of Brunswick, LUNDEEN of Mars Hill,  
MILLETT of Waterford, PINGREE of North Haven.

Be it enacted by the People of the State of Maine as follows:

2           Sec. 1. 5 MRSA §48, as amended by PL 1999, c. 399, §1 and  
4 affected by §20, is repealed.

6           Sec. 2. 5 MRSA §48-A is enacted to read:

8           §48-A. Communication services for the deaf and hard-of-hearing

10           1. Definitions. As used in this section, unless the  
12 context otherwise indicates, the following terms have the  
13 following meanings.

14           A. "Advocate" means a person who is a nonlawyer who  
16 provides advice or other substantive legal work to the  
17 public that is not prohibited by law or regulation.

18           B. "Agency" means any authority, board, bureau, commission,  
20 department or officer of State Government or of any county,  
21 municipality, school district or any other political or  
22 administrative subdivision.

23           C. "CART" means computer-assisted real-time transcription  
24 using specialized equipment to transcribe real time  
25 word-for-word spoken English into written English that can  
26 be viewed on a computer screen or projected onto a large  
27 screen.

28           D. "CART provider" means a person who provides CART.

30           E. "Client" means a person who is deaf, hard-of-hearing or  
32 hearing and who is provided interpreting services by a  
33 privileged interpreter.

34           F. "Compensation" means the fee for an interpreter's time  
36 of service as provided by an appointed qualified interpreter.

38           G. "Confidential communication" means a communication that  
40 a client has a reasonable expectation is not being disclosed  
41 to persons other than a privileged interpreter and any  
42 client to whom the communication is intended to be made.

43           H. "Deaf interpreter" means a deaf person or  
44 hard-of-hearing person with native or near-native fluency in  
45 American Sign Language who has training in interpreting and  
46 training or experience in the use of gesture, mime, props,  
47 drawings and other tools to enhance communication for deaf  
48 persons with minimal language skills.

2 I. "Deaf person" means a person whose sense of hearing is  
4 nonfunctional for the purpose of communication and who must  
6 depend primarily upon visual communication.

8 J. "Directory" means a listing of all qualified  
10 interpreters in the State.

12 K. "Hard-of-hearing person" means a person who has a  
14 hearing loss resulting in a functional loss, but not to the  
16 extent that the person must depend primarily upon visual  
18 communication.

20 L. "Interpreting agency" means an agency whose function is  
22 to provide qualified interpreter services for a fee,  
24 including travel expenses.

26 M. "Privileged interpreter" means a person identified by  
28 clients as necessary to facilitate accurate communication  
30 between the clients and who otherwise has no substantial  
32 personal or business interest in the communication.

34 N. "Qualified interpreter" means an interpreter who is able  
36 to interpret effectively, accurately and impartially, both  
38 receptively and expressively, using any necessary  
40 specialized vocabulary, and who meets the current licensing  
42 requirements under Title 32, section 1524-C.

44 O. "Travel expenses" means actual expenses for  
46 transportation reimbursable at the usual state mileage rate,  
48 tolls, parking fees or other fees specified in an agreement  
50 between an interpreter or an interpreting agency and an  
agency or court retaining the services of the interpreter at  
a specific date, time and place.

2. Interpreter services required. A qualified interpreter  
is appointed as follows.

A. When any personal or property interest of a deaf person  
or hard-of-hearing person or of a juvenile whose parent or  
guardian is deaf or hard-of-hearing is the subject of a  
proceeding before any agency or court, the presiding officer  
of the proceeding shall, giving primary consideration to the  
request of the deaf person or hard-of-hearing person,  
appoint a qualified interpreter or CART provider.

B. The qualified interpreter or CART provider must be  
appointed after consultation with, and giving primary  
consideration to the request of, the deaf person or  
hard-of-hearing person. If the appointed qualified  
interpreter does not meet the needs of the deaf person or

2 hard-of-hearing person, the presiding officer shall, with  
3 the consent of the deaf person or hard-of-hearing person,  
4 appoint another qualified interpreter. If a qualified  
5 interpreter for the deaf person or hard-of-hearing person  
6 states that the interpretation is not satisfactory and that  
7 a deaf interpreter will improve the quality of  
8 interpretation, the presiding officer shall appoint a deaf  
9 interpreter to assist the qualified interpreter. The  
10 presiding officer shall appoint as many interpreters as are  
11 necessary to meet the needs of the deaf person or  
12 hard-of-hearing person.

13 **3. Interpreting services, CART services and coordination**  
14 **for interpreters and CART providers; request to Bureau of**  
15 **Rehabilitation Services; interpreter and CART provider**  
16 **compensation; continuation of services.** Interpreting services  
17 and coordination for interpreters are governed as follows.

18  
19 A. With the cooperation of the Registry of Interpreters for  
20 the Deaf, Inc., the Department of Labor, Bureau of  
21 Rehabilitation Services is authorized and directed to  
22 prepare and continually update the directory.

23  
24 B. When requested by an agency or court, the Department of  
25 Labor, Bureau of Rehabilitation Services shall furnish the  
26 agency or court with the directory.

27  
28 C. An interpreter or CART provider appointed under this  
29 section must be reimbursed by the agency or court conducting  
30 the proceeding at a rate negotiated with the interpreter or  
31 interpreting agency, plus travel expenses; except that  
32 employees of the State or any of its political subdivisions,  
33 public employees and public or private school, university  
34 and college teachers or administrators for interpreting  
35 services or anyone who receives salary during regular work  
36 hours may not be reimbursed under this section for  
37 interpreter services performed during their regular working  
38 hours. This section does not prevent any agency or court  
39 from employing a qualified interpreter on a full-time basis  
40 or under contract at a mutually agreed-upon compensation  
41 rate.

42  
43 D. It is the responsibility of the agency or court  
44 conducting the proceeding to ensure compliance with the  
45 provisions of this section.

46  
47 **4. Interpreting services and CART for consultation with**  
48 **attorneys and advocates.** When any court appoints an attorney to  
49 represent a person who is deaf or hard-of-hearing or to represent  
50 a juvenile whose parent or guardian is deaf or hard-of-hearing,

2 the court shall provide interpreting services or CART in  
3 accordance with this section to allow for effective consultation  
4 between the attorney and client. Interpreting services or CART  
5 must be paid for directly by the court and is not the  
6 responsibility of the attorney.

7 The Department of Labor, Bureau of Rehabilitation Services shall  
8 maintain a legal interpreting fund, which must be available to  
9 reimburse private attorneys and advocates for the cost of  
10 interpreting services or CART that assists the attorney or  
11 advocate in effectively representing clients who are deaf or  
12 hard-of-hearing. This fund may not be used to cover interpreting  
13 services or CART for actual proceedings pursuant to subsection 2,  
14 paragraph A.

15 5. Privileged communication. Except when a court in the  
16 exercise of sound discretion determines the disclosure necessary  
17 to the proper administration of justice, a privileged interpreter  
18 may not disclose any aspect of a confidential communication  
19 facilitated by that interpreter unless all clients of the  
20 privileged interpreter privy to that communication consent to the  
21 disclosure.

22 6. Oath. Every appointed interpreter shall, before  
23 performing the interpreter's duties, take an oath that the  
24 interpreter will make a true interpretation in an understandable  
25 manner to the person for whom the interpreter is appointed, and  
26 that the interpreter will repeat the statements of the person in  
27 the English language to the best of the interpreter's skill and  
28 judgment.

29 7. Provide information. The Department of Labor, Bureau of  
30 Rehabilitation Services, Division of Deafness shall provide  
31 information to the public, including state agencies and  
32 individuals who work with interpreters, regarding the licensure  
33 requirements provided under Title 32, section 1524-C.

34 **Sec. 3. 32 MRSA §1523**, as amended by PL 1999; c. 399, §9 and  
35 affected by §20, is further amended to read:

36 **§1523. Privileged communication**

37 Individuals licensed under this chapter are included under  
38 the evidentiary communications privilege outlined in Title 5,  
39 section 48 48-A, subsection 4 5.

40 **Sec. 4. 32 MRSA §1524-C** is enacted to read:

41 **§1524-C. Qualifications to interpret in legal settings**

2 1. Hearing interpreter; qualifications. To be qualified to  
interpret in legal settings, an interpreter who is hearing must  
4 hold a current Specialist Certificate: Legal from the Registry of  
Interpreters for the Deaf, Inc. on or before January 1, 2012 or  
6 satisfy the eligibility criteria for taking the Specialist  
Certificate: Legal exam or its successor on or before January 1,  
8 2006.

10 2. Deaf interpreter; qualifications. To be qualified to  
interpret in legal settings, an interpreter who is deaf must hold  
12 a current Registry of Interpreters for the Deaf, Inc. Certificate  
of Interpretation or a Reverse Skills Certificate. The person  
14 must satisfy the eligibility criteria for taking the Specialist  
Certificate: Legal exam or its successor on or before January 1,  
16 2006.

18 3. List of interpreters. The Department of Labor, Bureau  
of Rehabilitation Services, Division of Deafness shall maintain a  
20 directory of all interpreters qualified to work in a legal  
setting.

22 **Sec. 5. Appropriations and allocations.** The following  
24 appropriations and allocations are made.

26 **JUDICIAL DEPARTMENT**

28 **Administrative Office of the Courts**

30 Initiative: Transfers funds from the Department of Labor, Bureau  
of Rehabilitation Services to the Administrative Office of the  
32 Courts for the purpose of funding American Sign Language  
interpreting and computer-assisted real-time transcription for  
34 people who are deaf or hard-of-hearing who appear before the  
courts.

36 <b>General Fund</b>	<b>2003-04</b>	<b>2004-05</b>
All Other	\$80,000	\$0
38		
General Fund Total	\$80,000	\$0

40 **JUDICIAL DEPARTMENT**

42 <b>DEPARTMENT TOTALS</b>	<b>2003-04</b>	<b>2004-05</b>
44 <b>GENERAL FUND</b>	<b>\$80,000</b>	<b>\$0</b>
46 <b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$80,000</b>	<b>\$0</b>

48 **LABOR, DEPARTMENT OF**

50 **Rehabilitation Services**

2 Initiative: Deappropriates funds from the Department of Labor,  
3 Bureau of Rehabilitation Services to the Administrative Office of  
4 the Courts for the purpose of funding American Sign Language  
5 interpreting and computer-assisted real-time transcription for  
6 people who are deaf or hard-of-hearing who appear before the  
7 courts.

8	<b>General Fund</b>	<b>2003-04</b>	<b>2004-05</b>
10	All Other	(\$80,000)	\$0
12	General Fund Total	(\$80,000)	\$0
14	<b>LABOR, DEPARTMENT OF</b>		
15	<b>DEPARTMENT TOTALS</b>	<b>2003-04</b>	<b>2004-05</b>
16	<b>GENERAL FUND</b>	<b>(\$80,000)</b>	<b>\$0</b>
18	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>(\$80,000)</b>	<b>\$0</b>
20	<b>SECTION TOTALS</b>	<b>2003-04</b>	<b>2004-05</b>
22	<b>GENERAL FUND</b>	<b>\$0</b>	<b>\$0</b>
24	<b>SECTION TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$0</b>

28 **SUMMARY**

30 This bill clarifies the law regarding interpreting services  
that are available for people who are deaf or hard-of-hearing.