

HOUSE BILL REPORT

HB 1511

As Reported by House Committee On:
Judiciary

Title: An act relating to court reporting, communication access real-time translation, and real-time captioning services.

Brief Description: Concerning court reporters, communication access real-time translation, and real-time captioning services.

Sponsors: Representatives Goodman, Kirby, Rodne and Ryu.

Brief History:

Committee Activity:

Judiciary: 2/12/13, 2/21/13 [DPS].

Brief Summary of Substitute Bill

- Adds business and professional certification provisions for providers of communication access real-time translation and real-time captioning.
- Prohibits a variety of practices with respect to court reporting.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Cece Clynch (786-7195).

Background:

Court Reporters and Court Reporting.

The "practice of court reporting" is defined as "the making by means of written symbols or abbreviations in shorthand or machine writing or oral recording by a stenomask reporter of a verbatim record of any oral court proceeding, deposition, or proceeding before a jury, referee,

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court commissioner, special master, governmental entity, or administrative agency and the producing of a transcript from the proceeding."

Generally, no person may represent himself or herself as a court reporter without first being so certified by the Department of Licensing (DOL). Court reporters appointed to the superior court are exempt, as are certain practices, including:

- the practice of court reporting by individuals who are licensed under other laws of this state and who are performing services within their authorized scope of practice;
- the practice of court reporting by a United States government employee; or
- the introduction of alternate technology in court reporting practice.

The DOL is authorized to issue a court reporter certificate to any applicant who meets certain professional standards established by the DOL *and* either the first or second criteria below:

1. Holds one of the following:
 - a. certificate of proficiency, registered professional reporter, registered merit reporter, or registered diplomate reporter from the National Court Reporter Association;
 - b. certificate of proficiency or certificate of merit from the National Stenomask Verbatim Reporters Association; *or*
 - c. current Washington State Court Reporter Certification.
2. Has passed an examination approved by the DOL Director or an examination that meets or exceeds the standards established by the DOL Director.

Pursuant to the professional standards set forth in the DOL's administrative regulations, a certified court reporter must offer services and fee arrangements in a case to all parties on equal terms and disclose conflicts and potential conflicts to all parties.

Court Rules.

In addition, several court rules govern various aspects of court reporting, including:

- CR 28(c) No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.
- CR 28(d) Any arrangement concerning court reporting services or fees in a case must be offered to all parties on equal terms.
- CR 30(f)(2) Upon payment of *reasonable* charges, the court reporter shall furnish a copy of the deposition transcript to any party or the deponent.
- CR 80 In any proceeding, electronic or mechanical recording devices approved by the Administrator for the Courts may be used to record oral testimony in lieu of or supplementary to causing shorthand notes to be taken and sole discretion as to the use of such devices rests with the court.

Summary of Substitute Bill:

Communication Access Real-time Translation and Real-time Captioning Services.

Communication access real-time translation (CART) and real-time captioning services are added to the chapter governing court reporters. These terms are defined as "the immediate,

verbatim translation of the spoken word into English text using a stenographic machine or voice recognition software, and a computer and real-time captioning software."

New certification provisions are put in place for CART providers and real-time captioners. Nothing prohibits, however, these practices by individuals who are licensed, certified, or registered under other laws and who are performing services within their authorized scope of practice or who are employed by the United States government and performing such duties.

Prohibitions Relative to Court Reporters.

Court reporters are specifically prohibited from a variety of practices, none of which may be waived. Among other things, court reporters must not:

- provide or arrange for court reporting services if financially interested in the litigation;
- enter into or arrange a relationship that:
 - provides special financial terms or services that are not offered to all other parties in the litigation;
 - gives an economic or other advantage to any party, or their attorney, representative, agent, or insurer; or
 - creates an appearance of bias;
- enter into a contract that restricts the ability of an attorney or party to use the services of another reporter;
- provide or arrange for the provision of a no-cost copy to one but not all parties in a proceeding, except that this does not preclude providing a courtesy copy to a nonparty witness;
- deviate from the DOL rules regarding formatting or manipulate the transcript to affect the overall cost;
- provide advocacy support services to one party that are not offered to all parties to a proceeding; and
- enter into a contract for the provision of court reporting services if:
 - the services relate to any contract for court reporting services offered by a party litigant through a third-party administrator;
 - the impartiality of the reporter may be reasonably questioned; or
 - with regard to cases venued in Washington, the reporter is required to relinquish control of the final original transcript and copies before the transcript is certified and delivered to any party ordering the transcript, however, this does not preclude sending rough draft copies in advance of the final transcript.

The above prohibitions are not applicable to services to a governmental body or the courts, or that are unrelated to litigation, or to those that are bidding reasonable court reporting fees, equal to all parties, on a case by case basis with full disclosure to all parties of such negotiations.

The provisions of CR 28(c) with respect to prohibitions related to family, employment and financial relationships are duplicated in statute.

A judicial officer is authorized to declare a deposition void "if a certified reporter with an association to a matter, as described in [the new section setting forth prohibited practices] takes a deposition."

Substitute Bill Compared to Original Bill:

The substitute makes the following changes:

- Definitions and references to "court reporting firm" are stricken.
- A separate certification is made available to CART providers and real-time captioners, in addition to the already existing court reporter certificate that is expanded to include CART providers and real-time captioners.
- Changes are made relative to prohibited practices, as follows:
 - The prohibition against expressly or impliedly requiring reporters or reporting firms in one case to perform reporting services in another case at a specific rate of compensation is stricken.
 - The provision of a courtesy copy to a nonparty witness is expressly permitted.
 - Deviation from the DOL rules regarding formatting is a prohibited practice.
 - Contracts that are prohibited include those in which the court reporting services relate to any contract for court reporting services offered by a party litigant directly or indirectly through a third-party administrator (rather than those that relate to litigation that has not been commenced).
 - With respect to cases venued (rather than domiciled) in Washington, it is the "final" original transcript that the court reporter may not relinquish prior to certifying and delivering it to the custodial attorney and those ordering the transcript but this does not preclude sending rough draft copies, real-time feeds, or excerpts in advance of delivery of the final transcript.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was brought forward by the National Court Reporters Association of Washington after their vote to approve this piece of legislation. The bill addresses certification of CART and real-time captioning to ensure accuracy and reliability. It also prohibits certain practices that are biased. It is necessary to provide equal access to justice for all. Current rules are being ignored. Insurance companies and others are rigging the system and court reporters are having to compromise their ethical standards in order to get

work. Some may say that court reporting firms should be licensed, but the DOL is not urging that. Two important areas of consumer protection are addressed, requiring proficiency and eliminating the practice of contracting in areas of court reporting. Already, 26 states do the latter. This is designed to ensure the court reporters produce an unbiased record. As for establishing minimum levels of competency for CART and real-time captioning providers, this only makes sense. They use the same tools and techniques as court reporters to convert spoken words to text. The tools used in testing are the same as well. With progressive sensory neural hearing loss comes an inability to distinguish consonants, which made it impossible for one college student to take notes until a person skilled in CART was able to assist. Subsequently, someone who was just learning CART and was not yet very skilled was unable to provide the services necessary to allow the student to comprehend and complete college course work. There is a need for qualified CART providers and there needs to be a way for consumers to distinguish between those who are qualified and those who are just learning.

(Opposed) There are concerns with the fact that there is no mention of regulatory authority by the DOL, and work is being done on an amendment to address that. Without this piece, the regulatory authority may lie with the Office of the Attorney General Consumer Protection division. Also, the production process should be here rather than in Florida and other states. While requiring proficiency with respect to CART and real-time captioning is favored, this should be done in chapter 2.42 RCW regarding interpreters in legal proceedings rather than in this chapter dealing with court reporters. It is understood that there is amenity to working out these issues.

This mixes apples and oranges. Chiropractors do not do medical surgery. Accountants do not do the work of certified public accountants. This bill blends the borders, and is opening up this system to things that are not court reporting. Court reporting is very specific. The anti-contracting language would prohibit the provision of a free copy on a pro bono basis. It would not permit court reporters to accommodate nonparty witnesses who live out-of-state and want to read the transcript, as is their right, since it would prohibit the reporter from sending a courtesy copy to review.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Phyllis Lykra, Steve Crandall, and Louise Becker, Washington Community Reinvestment Association; Janis Moore; and Dave Storey.

(Opposed) Roger Flygare, Flygare & Associates; Michael Weekly; and Zoya Spencer, Spencer & Associates.

Persons Signed In To Testify But Not Testifying: None.