S T A T E  O F  N E W  Y O R K

4657

2011-2012 Regular Sessions

I N  A S S E M B L Y

February 4, 2011

Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to enacting the "language barrier to justice elimination act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "language barrier to justice elimination act".

S 2. Section 386 of the judiciary law, as amended by chapter 259 of the laws of 1909 and as renumbered by chapter 649 of the laws of 1945, is amended to read as follows:

S 386. Appointment and compensation of court interpreters generally. The county judge and the district attorney of the county may appoint one interpreter, who shall act as and be the court interpreter for such county. Such interpreter shall hold office during the pleasure of the county judge and district attorney and they shall appoint his OR HER successor in office. Said interpreter shall receive a salary to be fixed by the board of supervisors of said county, which shall be a charge upon the county, to be paid monthly, in the same manner as other county officials are paid. Said interpreter so appointed shall, before entering upon his OR HER duties, file in the office of the county clerk, the constitutional oath of office, AND AN AFFIDAVIT UNDER OATH OR AFFIRMATION TO MAKE A TRUE AND IMPARTIAL INTERPRETATION OF PROCEEDINGS IN AN UNDERSTANDABLE MANNER USING SUCH INTERPRETER'S BEST SKILLS AND JUDGMENT IN ACCORDANCE WITH THE STANDARDS FOR PROFESSIONAL CONDUCT AND ETHICAL BEHAVIOR FOUND AND REINFORCED IN THE UCS COURT INTERPRETER MANUAL AND THE COURT INTERPRETER CANONS OF PROFESSIONAL RESPONSIBILITY. COURT INTERPRETERS SHALL PARTICIPATE IN TRAINING PROGRAMS PROVIDED BY THE COURT SYSTEM FOR COURT PERSONNEL ON ETHICS, DOMESTIC VIOLENCE AND CULTURAL SENSITIVITY. The provisions of this section, however, shall not apply to the counties of New York, Kings and Queens, nor to any

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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other county in which the appointment or compensation of court interpreters therein is governed by a special or local act or by any special provision of a general act.

S 3. Section 387 of the judiciary law, as amended by chapter 15 of the laws of 1975, is amended to read as follows:

S 387. Temporary appointment of interpreters. If the services of an interpreter be required in any court and there be no unemployed official interpreter to act therein, the court may appoint an interpreter to act temporarily in such court. Such interpreter shall before entering upon his duties file with the clerk of the court the constitutional oath of office, AND AN AFFIDAVIT UNDER OATH OR AFFIRMATION TO MAKE A TRUE AND IMPARTIAL INTERPRETATION OF PROCEEDINGS IN AN UNDERSTANDABLE MANNER USING SUCH INTERPRETER'S BEST SKILLS AND JUDGMENT IN ACCORDANCE WITH THE STANDARDS FOR PROFESSIONAL CONDUCT AND ETHICAL BEHAVIOR FOUND AND REINFORCED IN THE UCS COURT INTERPRETER MANUAL AND THE COURT INTERPRETER CANONS OF PROFESSIONAL RESPONSIBILITY. COURT INTERPRETERS SHALL PARTICIPATE IN TRAINING PROGRAMS PROVIDED BY THE COURT SYSTEM FOR COURT PERSONNEL ON ETHICS, DOMESTIC VIOLENCE AND CULTURAL SENSITIVITY. The court shall fix the compensation of such interpreter at not more than twenty-five dollars per day for each day's actual attendance by direction of the presiding judge or justice and such compensation shall be paid from the court fund of the county upon the order of the court.

S 4. The judiciary law is amended by adding two new sections 381 and 382 to read as follows:

S 381. STANDARDS AND FUNCTIONS OF COURT INTERPRETERS. 1. A QUALIFIED INTERPRETER IS A PERSON WHO IS: (A) ABLE TO COMMUNICATE WITH NON-ENGLISH SPEAKING PERSONS TO ORALLY TRANSFER THE MEANING OF STATEMENTS TO AND FROM ENGLISH AND THE LANGUAGE SPOKEN BY A NON-ENGLISH SPEAKING PERSON;

(B) INTERPRET IN A MANNER THAT CONSERVES THE MEANING, TONE, LEVEL AND REGISTER OF THE ORIGINAL STATEMENT WITHOUT SUBSTANTIVE ADDITIONS OR OMISSIONS; AND

(C) PERFORMS HIS OR HER DUTIES IN CONFORMANCE WITH THE STANDARDS OF PROFESSIONAL CONDUCT AND ETHICAL BEHAVIOR FOUND AND REINFORCED IN THE UCS COURT INTERPRETER MANUAL AND THE COURT INTERPRETER CANONS OF PROFESSIONAL RESPONSIBILITY.

2. ANY PERSON SERVING AS A COURT INTERPRETER PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL, IN ANY PROCEEDING BEFORE A COURT, STATE AGENCY OR HEARING OFFICER, STATE OR SUBMIT SUCH PERSON'S QUALIFICATIONS ON THE RECORD, UNLESS WAIVED OR OTHERWISE STIPULATED TO BY THE PARTIES OR COUNSEL TO THE PARTIES PRIOR TO SUCH PROCEEDING.

3. A NON-ENGLISH SPEAKING PERSON SHALL BE ENTITLED TO THE SERVICES OF A QUALIFIED COURT INTERPRETER APPOINTED BY A COURT OR STATE AGENCY IN A CRIMINAL OR CIVIL PROCEEDING, AND SUCH COURT OR STATE AGENCY SHALL, UNLESS WAIVED PURSUANT TO SECTION THREE HUNDRED EIGHTY-TWO OF THIS ARTICLE, APPOINT A QUALIFIED COURT INTERPRETER IN A CIVIL OR CRIMINAL PROCEEDING TO: (A) INTERPRET THE PROCEEDINGS TO A NON-ENGLISH SPEAKING PARTY;

(B) INTERPRET THE TESTIMONY OF A NON-ENGLISH SPEAKING PARTY OR WITNESS;

(C) ASSIST THE COURT, AGENCY OR HEARING OFFICER IN PERFORMING DUTIES AND RESPONSIBILITIES OF THE COURT, AGENCY OR HEARING OFFICER IN ANY PROCEEDING INVOLVING ONE OR MORE PARTIES WHO ARE NON-ENGLISH SPEAKING PERSONS.

S 382. WAIVER OF COURT INTERPRETER. 1. WAIVER OF THE RIGHT TO AN INTERPRETER BY A NON-ENGLISH SPEAKING PARTY TO A PROCEEDING SHALL BE EFFECTIVE ONLY WHEN APPROVED BY A JUDGE OR HEARING OFFICER AFTER SUCH

NON-ENGLISH SPEAKING PARTY HAS CONSULTED WITH COUNSEL, RECEIVED ORAL COUNSEL FROM A JUDGE OR HEARING OFFICER IN OPEN COURT AS TO THE NATURE AND EFFECT OF SUCH WAIVER, AND HAS DEMONSTRATED, TO THE SATISFACTION OF SUCH JUDGE OR HEARING OFFICER, COMPREHENSION OF SUCH NATURE AND EFFECT AND THAT SUCH WAIVER IS KNOWINGLY AND VOLUNTARILY MADE. FOLLOWING APPROVAL OF A WAIVER, A JUDGE OR HEARING OFFICER SHALL ENSURE THAT A RECITATION OF THE WAIVER PROCEDURE PURSUANT TO THIS SECTION IS MADE PART OF THE RECORD OF SUCH PROCEEDING.

2. THE FAILURE OF A NON-ENGLISH SPEAKING PERSON TO REQUEST AN INTERPRETER SHALL NOT BE DEEMED A WAIVER OF SUCH RIGHT. ANY NON-ENGLISH SPEAKING PERSON MAY RETRACT A WAIVER MADE PURSUANT TO SUBDIVISION ONE OF THIS SECTION AT ANY TIME DURING THE PROCEEDING AND INDICATE HIS OR HER DESIRE TO BE ASSISTED BY A QUALIFIED INTERPRETER.

S 5. This act shall take effect immediately.