

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Sen. Kedzie:

Note that I made some changes to the language that was suggested. For example, see proposed s. 440.032 (3), regarding waiver of the license requirements, in which the substitute amendment requires specifying the circumstances in which services are provided and limits the waiver to those circumstances. I think it's important to impose some limit on the effectiveness of a waiver. There may be other ways to do so. Please let me know if you have any thoughts on this issue.

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The proposal to give a blanket privilege for all confidential communications that an interpreter receives as the result of interpreting between a person who is deaf or hard of hearing seems unnecessary and is in conflict with current law and supreme court rules. Under current law, s. 905.015, stats., allows a person to prevent an interpreter from disclosing information that is privileged, such as information the person disclosed through an interpreter to an attorney or a doctor. However, those privileges are limited and have specific exceptions, such as information about committing a crime or regarding the mental condition of a person in proceedings regarding guardianship. In addition, supreme court rule 63.05 requires a court interpreter to keep confidential all privileged or confidential information, but the notes to that rule state that this privilege does not apply to information that indicates probable imminent harm to someone or to a crime being committed.

Thus, the privileges that have been in place for a long period of time and that were created based on encouraging persons to disclose information in limited situations, such as when talking to a doctor, a minister, or a lawyer, have limits on their applicability. This proposal has no such limits. An interpreter covered by this proposal would be required to maintain confidential certain information that another statute or rule require him or her to not keep confidential. In addition, if the interpreter is interpreting information in a setting that is not privileged, say to a friend, that friend could reveal the information even though the interpreter could not.

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