

HOUSE BILL 1775

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29 and Title 20, Chapter 9, to enact the “Tennessee Court Reporter Act of 2009”

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 20, Chapter 9, is amended by adding following language as a new, appropriately designated part.

**§ 20-9-601.**

(a) This part shall be known and may be cited as the “Tennessee Court Reporter Act of 2009”.

(b) The general assembly finds and declares that it is the policy of the state to promote the skill, art, and practice of court reporting in order to assure that court reporters possess the necessary skills and qualifications and that a board be established to prescribe the qualifications of court reporters and to issue licenses to persons who demonstrate their ability and fitness for the licenses. This part is intended to establish and maintain a standard of competency for individuals engaged in the practice of court reporting and for the protection of the public, in general, and for the litigants whose rights to personal freedom and property are affected by the competency of court reporters. The examination, licensing, and supervision of the conduct and proficiency of court reporters are integrally related to the effective, impartial, and prompt operation of the judicial system of the state.

**§ 20-9-602.** As used in this part, unless the context otherwise requires:

(1) “Board” means the Tennessee board of court reporting;

(2) "Court reporting" means the making of a verbatim record by means of manual shorthand, machine shorthand, closed microphone voice dictation silencer, or by electronic recording of any testimony given under oath before, or for submission to, any court, referee, or court examiner or by any board, commission, or other body, or in any other proceeding where a verbatim record is required. The taking of a deposition is the making of a verbatim record. "Court reporting" as defined in this section shall not include the following:

(A) Tape recordings made by attorneys under § 20-9-104, or use of video equipment and recordings by attorneys representing parties in any court proceeding, administrative law proceeding, deposition, or any other proceeding;

(B) Use of tape recorders and video equipment and recordings by judges, court officers and employees; administrative agency officials and employees; and officials and employees of any board, commission, or other body; and

(C) Persons before whom depositions may be taken under Tennessee Rules of Civil Procedure Rule 28; and

(3) "Licensed Court Reporter" or "LCR" means any person licensed pursuant to this part to practice court reporting. Licenses shall indicate the method or methods in which the applicant has successfully passed examination of the organization or organizations approved by the Tennessee board of court reporting.

**§ 20-9-603.**

(a) No person, except as otherwise provided by law, shall practice or attempt to practice court reporting in this state or hold such person out as a court reporter unless the person is a licensed court reporter.

(b) Nothing in this part shall be construed to require a court reporter at any court proceeding, administrative proceeding, deposition, or any other proceeding. In the event a court reporter is retained for a proceeding, then such court reporter shall be licensed under this part.

**§ 20-9-604.**

(a) There is created the Tennessee board of court reporting, which shall be attached to the administrative office of the courts, which is authorized to administer all the administrative functions and duties of such board, except those discretionary regulatory duties and powers vested by law in the board members.

(b) The board shall be comprised of seven (7) members, as follows: One (1) circuit or chancery court judge; two (2) attorneys licensed to practice in the state; two (2) freelance court reporters who practice machine shorthand; one (1) official court reporter employed by the state who practices any method of court reporting; and one (1) freelance court reporter who practices electronic court reporting, closed microphone voice dictation silencer reporting, or manual shorthand reporting (pen).

(c) All members of the board shall be citizens of the United States and the state. The initial terms shall begin July 1, 2009, and all appointments shall be made by the governor prior to July 1 of each year for which appointments are to be made. The court reporter members shall be appointed by the governor from a list of nominees submitted by the Tennessee Court Reporters Association for each court reporter member.

(d) The initial members shall serve the following terms as designated by the governor:

- (1) Three (3) members shall serve for two (2) years;
- (2) Two (2) members shall serve for three (3) years; and
- (3) Two (2) members shall serve for four (4) years.

(e) Subsequent terms of office shall be for four (4) years. No member shall serve more than two (2) consecutive terms. In the event of a vacancy, the governor shall fill the vacancy for the unexpired term. Each member shall serve until a successor is duly appointed and qualified.

(f) At its first meeting each calendar year, the board shall elect a chair, vice-chair, and secretary from its membership. No member shall be elected to serve more than two (2) consecutive years in the same office.

(g) After the initial appointments have been made, the board shall meet during July 2009, or as soon thereafter as practicable, for the purpose of organizing and transacting business. Thereafter, the board shall meet not less than twice annually and as frequently as deemed necessary by the chair or a majority of the members. The board shall meet at such time and place as designated by the board. A quorum shall consist of four (4) members.

(h) Board members shall receive travel expenses according to the rules promulgated by the department of finance and administration and approved by the attorney general.

**§ 20-9-605.** The board shall have the duty and responsibility to:

- (1) Act on matters concerning competency licensure only and the process of granting, suspending, reinstating, and revoking a license;

(2) Establish and maintain requirements for the ethical behavior of court reporters, including, but not limited to, conflict of interest provisions, inappropriate relationships with a party or a party's attorney, and failure to honor a contract or commitment to furnish transcripts;

(3) Establish a procedure for the investigation of complaints against licensed court reporters;

(4) Set a fee schedule for granting licenses and renewals of licenses; provided, however, official court reporters employed full-time by the state shall not be required to pay such a fee;

(5) Maintain a current registry of licensed court reporters and a current registry of temporarily licensed court reporters. Registries shall be matters of public record;

(6) Maintain a complete record of all proceedings of the board;

(7) Adopt continuing education requirements no later than October 1, 2010. Requirements shall be implemented no later than January 1, 2011;

(8) Determine the content of and administer examinations to be given to applicants for licensure as licensed court reporters and issue numbered licenses to applicants found qualified;

(9) Maintain records of its proceedings and a registry of all persons licensed by the board, which shall be a public record and open to inspection; and

(10) In the event funds are available to the board from fees after expenses, study and, if feasible, establish the transcript reimbursement fund to assist indigent parties in obtaining transcripts.

**§ 20-9-606.**

(a) All complaints shall be in writing, signed by the person making the complaint, and addressed to the chair of the board. All complaints shall contain the name and address of the person against whom the complaint is brought and a description of the conduct giving rise to the complaint. Complaints shall be submitted within ninety (90) days of the conduct complained about, and a copy shall be provided to the licensed court reporter within five (5) business days of receipt by the board. The copy shall be sent by certified mail or by such other means of delivery to ensure that the licensed court reporter charged in the complaint receives actual notice. After investigation of the charges, the board shall determine if a hearing is warranted, dismiss the complaint, or take other action the board deems appropriate. Any hearing deemed warranted shall be conducted in accordance with the contested cases provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The board may, when it deems appropriate, seek such civil remedies at law or equity to restrain or enjoin any unauthorized practice or violation of this part.

**§ 20-9-607.** The board shall promulgate rules and regulations necessary to implement, administer, and otherwise effectuate the purposes of this part. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The rules and regulations shall be published in the standards of professional practice and made available to all licensees.

**§ 20-9-608.** After January 1, 2010, any person who undertakes or attempts to undertake the practice of court reporting for remuneration without first having procured a license, or who knowingly presents or files false information with the board for the purpose of obtaining a license, or who violates this part shall be subject to a civil fine not

exceeding one thousand dollars (\$1,000). Each day's violation is a separate offense. A person who is not licensed may not bring or maintain an action to recover fees for court reporting services that the person performed in violation of this part.

**§ 20-9-609.**

(a) To be licensed as a court reporter, an applicant shall submit proof of passage of the National Court Reporters Association Registered Professional Reporter examination, the National Verbatim Reporters Association Certified Verbatim Reporter examination, or the American Association of Electronic Reporters and Transcribers Certified Electronic Court Reporter examination. Applications for licensure shall be signed and sworn by the applicants and submitted on forms furnished by the board. All applicants who are found qualified to engage in the practice of court reporting pursuant to this part shall be issued a license as a licensed court reporter and an identifying number. The license shall be valid for two (2) years from the date of issuance. Notwithstanding any other law to the contrary, a licensed court reporter shall not be required to be a notary public to administer oaths to witnesses in the performance of their professional duties as a court reporter.

(b) No licensed court reporter may authorize the use of the court reporter's license number on any transcript not produced through the court reporter's personal effort or supervision, or both. Violation of this subsection (b) may be grounds for license suspension or revocation.

**§ 20-9-610.**

(a) The board shall enter into reciprocal agreements with any state, agency, or other entity that licenses, certifies, or registers court reporters, such as the National Court Reporters Association (NCRA), the National Verbatim

Reporters Association (NVRA), or the American Association of Electronic Reporters and Transcribers (AAERT), if the board finds that the state, agency, or other entity has substantially the same or more stringent requirements as the board.

(b) The reciprocity agreement shall provide that the board shall license a person who is currently licensed, certified, or registered in another state or by another agency or other entity if that state, agency, or other entity agrees to license, certify, or register any licensees licensed pursuant to this part.

(c) Nonresident court reporters desiring to make a verbatim record of any testimony of a proceeding, the jurisdiction of which is within the courts of Tennessee or where appeal to any court of Tennessee is allowable by law, shall make application for a nonresident license. The applicant shall make application on the same forms as required of other applicants, shall pay a fee in an amount determined by the board, and shall present proof that the applicant is a competent licensed court reporter in another state or certified by NCRA, NVRA or AAERT. The board shall issue a nonresident license upon the finding the applicant has met these requirements. The license shall be valid for a period not to exceed two (2) years from the date of issuance. A nonresident court reporter shall reapply for licensure every two (2) years. A licensure fee in an amount determined by the board shall be required.

(d) The board shall establish fees appropriate for processing reciprocal licensing.

**§ 20-9-611.** The fees for licensure pursuant to this part shall be established by the board and shall cover a two-year period from the date of issuance or renewal of the license. All moneys collected pursuant to this part shall be deposited into the board of

court reporting fund. All expenses incurred by the board in implementing and administering this part shall be paid out of the fund, provided that the expenses of the board shall not be in excess of the moneys in the fund. The board may charge and collect the following fees which shall be deposited into the fund:

- (1) An application fee for a temporary or regular license;
- (2) An examination fee, if applicable;
- (3) A renewal fee for a temporary or regular license;
- (4) A reinstatement fee for any application for reinstatement of a temporary or regular license which has been revoked or suspended; and
- (5) A late renewal fee for the renewal of a license after the due date, which shall be payment of the renewal fee plus a penalty as set by the board for each month which elapses before payment is tendered; provided, however, delinquency of more than six (6) months shall result in revocation of licensure.

**§ 20-9-612.** Each person licensed pursuant to this part shall apply for renewal of such license pursuant to dates established by the board. A renewal fee in an amount determined by the board shall be paid for renewal of the license for a two-year period. The board shall require specific continuing education as a condition for license renewal. In order to maintain licensure, all licensed court reporters and holders of a non-resident certificate will be required to obtain a minimum of two (2.0) continuing education credits over a two-year period in courses approved by the board or in compliance with the continuing education requirements of approved national or state associations. The two-year period will begin on July 1 of the year during which the reporter is initially licensed. No credits may be carried over to the following two-year term. The board may provide for the late renewal of a license which has lapsed and may require the payment of a late

fee or an examination, or both, prior to issuing a renewal license. Licensees shall notify the board in writing of any change of address within thirty (30) days of the change.

**§ 20-9-613.**

(a) Any person who is engaged in the practice of court reporting on July 1, 2009, and who provides to the board an affidavit setting forth past education and work experience as a court reporter and an affidavit of a judge for whom the person has worked as an official court reporter or affidavits of three (3) licensed attorneys, unrelated by blood or marriage to the person, and who have utilized the services of the court reporter, which attest to the court reporter's proficiency in court reporting, upon payment of a fee in an amount determined by the board, shall be licensed to practice as a court reporter. The deadline for receiving applications for grandfathering shall be July 1, 2011.

(b)

(1) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter examination designation on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.

(2) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter designation on July 1, 2009, and does not apply for licensure within one (1) year of July 1, 2010, shall be required to pass the licensed court reporter examination and pay applicable licensure fees in order to become a licensed court reporter.

(3) Any member in good standing of the Tennessee Court Reporters Association who holds the Registered Professional Reporter designation, or higher, from the NCRA, NVRA or AAERT, on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.

**§ 20-9-614.** Any person who provides to the board satisfactory proof of graduation from a court reporting program or its equivalent shall, upon application to the board on forms approved by the board and payment of a fee in an amount determined by the board, be issued a temporary license to practice as a court reporter. This temporary license shall expire sixty (60) days following the date upon which the next board-approved examination for licensure is given. No more than three (3) additional temporary licenses shall be issued to any applicant who fails to pass the scheduled examination for licensure.

**§ 20-9-615.** The board shall establish an inactive status for persons who are not actively engaged in the practice of court reporting.

**§ 20-9-616.**

(a) Notwithstanding any other law to the contrary, all moneys collected pursuant to this part shall be deposited in the state treasury in a separate fund to be known as the Tennessee board of court reporting fund.

(b) Disbursements from such fund shall be made solely for the purpose of defraying expenses incurred to the implementation and enforcement of this part.

(c) No such expenses shall be payable from the general fund of the state.

(d) Any part of the Tennessee board of court reporting fund remaining at the end of a fiscal year shall not revert to the general fund of the state, but shall be carried forward until expended in accordance with the provisions of this part.

(e) The board shall budget annually, in advance, its expenditures for programs, services, allocated overhead, or chargebacks and other normal operating expenses as determined by the board. These expenditures so established shall be budgeted at the beginning of the fiscal year by the board, not to exceed the fees to be received by the board, including the excesses accumulated in the fund of the board. The commissioner of finance and administration shall inform the board annually, in advance for budgeting purposes, of the allocation of all overhead or chargebacks to the board.

(f) Subject to approval of the comptroller of the treasury and the commissioner of finance and administration, the board may also contract for services to carry out the provisions of this part.

SECTION 2. Tennessee Code Annotated, Section 4-29-232(a), is amended by inserting the following language as a new, appropriately designated subdivision:

( ) Tennessee board of court reporting, created by § 20-9-604;

SECTION 3. For the purpose of promulgating rules and regulations and appointment of board members, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2010, the public welfare requiring it.