

HOUSE BILL 206

By Watson

AN ACT to amend Tennessee Code Annotated, Title 20, Chapter 9, Part 6 and Title 24, Chapter 9, Part 1, relative to court reporters.

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

SECTION 1. Tennessee Code Annotated, Section 24-9-136, is amended by deleting the section and by substituting instead the following:

(a)

(1) A deposition shall not be recorded by a court reporter or court reporting entity who:

(A)

(i) Is a person or entity with a contractual relationship with a party or an attorney, representative, agent or insurer of any party; or

(ii) Engages in any action prohibited by subsection (b);

(B) Is a party to the action;

(C) Is a relative, employee or attorney of one (1) of the parties; or

(D) Has a financial interest in the action or its outcome.

(2) As used in this section, "employee" means:

(A) A person who has a contractual relationship with a person or entity interested in the outcome of the litigation, including anyone who may ultimately be responsible for payment to provide court reporting or other court services; and

(B) A person who is employed:

(i) Part time or full time under contract; or

(ii) Otherwise by a person who has a contractual relationship with a party to provide reporting or other court services.

(3) Subdivisions (a)(1)(C) and (D) shall not restrict the ability of an attorney or pro se litigant to hire court reporting services on a case-by-case basis in any case where the attorney is not a party, nor restrict an attorney from reimbursement for such court reporting services.

(4) Before accepting a court reporting assignment, the court reporter or entity providing court reporting services is obligated to make reasonable efforts to ascertain whether any arrangement exists which is prohibited under this section and to make known to the parties or their representatives personally that no agreement or condition prohibited by this section exists. Such disclosure shall be made at the commencement of the deposition and shall be part of the record.

(b) No court reporter or entity that provides court reporting services shall:

(1) Enter into an oral or written contractual agreement for more than one (1) case, action or proceeding with any attorney, party to an action, insurance company, third-party administrator or any other person or entity that has a financial interest in the case, action or proceeding;

(2) Give any economic or other advantage to any party, any party's attorney, representative, agent, insurer or employee without offering it to all parties including, but not limited to, failing to offer comparable services, including price or credit terms, to all parties or otherwise requiring the court reporter or entity providing court reporting services to provide financial terms or other services that are not offered at the same time and on the same terms to all other parties in the legal proceeding;

(3) Base the compensation of the court reporter or entity that provides court reporting services on the outcome of the proceeding or otherwise giving the court reporter or court reporting entity a financial interest in the action;

(4) Offer or provide court reporting services where payment for those services will be made contingent on the outcome of the action;

(5) Enter into an agreement for court reporting services that restricts an attorney from using the court reporter or entity of such attorney's choosing;

(6) Enter into any contract with any insurer, self-insured entity, individual or association wherein the court reporter or entity providing court reporting services agrees to pricing terms, or other terms regarding court reporting costs or services at a discounted rate in exchange for exclusive or preferential treatment with respect to future court reporting services needed or requested by such insurer, self-insured entity, individual or association;

(7) Allow the format, content or body of the original transcript to be manipulated in a manner that increases the cost of the transcript; or

(8) Provide additional advocacy or litigation support services including, but not limited to, trial preparation assistance, deposition summaries and non-published transcript databases.

(c)

(1) At any time during or at the conclusion of a legal proceeding, an attorney or a party to that proceeding has the right to an itemized statement of all rates and charges for all services that have been or will be provided by the court reporter or entity providing court reporting services to any party to the litigation.

(2) Upon request, such information on prices, terms and conditions shall be made available in sufficient time prior to the commencement of the

proceeding which will allow all parties to have the opportunity to effectively negotiate for any changes necessary to ensure that comparable terms and conditions will be made available to all parties.

(d) A violation of this section shall include the following penalties:

(1) The transcript of the legal proceeding shall be deemed void and ineligible for admission into a court of law or for use or submission in any legal or administrative proceeding;

(2) The following fine or sanction by the board of court reporting:

(A) For a first violation, no less than five thousand dollars (\$5,000); and

(B) For a second or subsequent violation, five thousand dollars (\$5,000) plus an additional two thousand five hundred dollars (\$2,500) per violation; and

(3) Disciplinary proceedings before the board of court reporting, wherein potential penalties shall include, but not be limited to, suspension or revocation of the license of the court reporter.

(e) No provision of this section may be waived by disclosure, agreement, stipulation or by any other means for any reason.

(f) A violation of subsections (a) or (b) is a Class C misdemeanor.

(g) Notwithstanding this section, if a videotaped deposition has been agreed to or ordered by the court pursuant to Rule 30 of the Tennessee Rules of Civil Procedure, any lawyer or lawyer's agent may operate the video equipment pursuant to Rules 28.01 and 30.02(4)(B).

(h) This section shall not apply to contracts for court reporting services for the courts, agencies or instrumentalities of the United States or this state.

(i) This section shall apply to any court reporter or entity providing court reporting services conducted in this state, and to any deposition conducted in this state, whether the parties appear in person or by remote means. Any engagement or contract for court reporting services actually performed in this state shall be deemed a contract made in this state and subject to this state's laws and regulations.

SECTION 2. If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2014, the public welfare requiring it.