

By: Representative Green

To: Judiciary A; County  
Affairs

## HOUSE BILL NO. 685

1 AN ACT TO REQUIRE ALL COURTS TO HAVE COURT-APPOINTED  
2 INTERPRETERS TO ASSIST IMMIGRANTS WHO HAVE NEED TO USE THE COURT  
3 SYSTEM; TO ENACT DEFINITIONS; TO PROVIDE THAT INTERPRETERS MAY BE  
4 COMPENSATED OR VOLUNTEERS; TO REQUIRE INTERPRETERS TO TAKE AN  
5 OATH; TO SPECIFY THE SITUATIONS IN WHICH AN INTERPRETER IS NEEDED;  
6 TO SPECIFY THE SITUATIONS IN WHICH A RECORD SHALL BE MADE OF  
7 INTERPRETED TESTIMONY; TO PROVIDE THAT ANY EXPENSE IN COMPENSATING  
8 AN INTERPRETER CAN BE ASSESSED AS COSTS; TO AMEND SECTION 99-17-7,  
9 MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1. Definitions.** The following words and phrases  
12 shall have the meanings ascribed to them unless the context  
13 clearly requires otherwise:

14 (a) "Non-English speaker" means any party or witness  
15 who cannot readily understand or communicate in spoken English and  
16 who consequently cannot equally participate in or benefit from the  
17 proceedings unless an interpreter is available to assist the  
18 individual. The fact that a person for whom English is a second  
19 language knows some English does not prohibit that individual from  
20 being allowed to have an interpreter.

21 (b) "Interpreter" means any person authorized by a  
22 court and competent to translate or interpret oral or written  
23 communication in a foreign language during court proceedings.

24 (c) "Court proceedings" means a proceeding before any  
25 court of this state or a grand jury hearing.

26 **SECTION 2. Interpreter to be Appointed.** All courts of this  
27 state shall appoint an interpreter when required under this act.

28 **SECTION 3. Compensation.** The court may appoint either an  
29 interpreter who is paid or a volunteer interpreter.

30 **SECTION 4.** Oath, Confidentiality and Public Comment. (1)

31 Prior to providing any service to a non-English speaking person,  
32 the interpreter shall subscribe to an oath that he or she shall  
33 interpret all communications in an accurate manner to the best of  
34 his or her skill and knowledge.

35 (2) The oath shall conform substantially to the following  
36 form:

37 INTERPRETER'S OATH

38 "Do you solemnly swear or affirm that you will faithfully  
39 interpret from (state the language) into English and from English  
40 into (state the language) the proceedings before this court in an  
41 accurate manner to the best of your skill and knowledge?"

42 (3) Interpreters shall not voluntarily disclose any  
43 admission or communication that is declared to be confidential or  
44 privileged under state law. Out-of-court disclosures made by a  
45 non-English speaker communicating through an interpreter shall be  
46 treated by the interpreter as confidential or privileged or both  
47 unless the court orders the interpreter to disclose such  
48 communications or the non-English speaker waives such  
49 confidentiality or privilege.

50 (4) Interpreters shall not publicly discuss, report or offer  
51 an opinion concerning a matter in which they are engaged, even  
52 when that information is not privileged or required by law to be  
53 confidential.

54 (5) The presence of an interpreter shall not affect the  
55 privileged nature of any discussion.

56 **SECTION 5.** Record of Interpreter Testimony. (1) No record

57 shall generally be made of the non-English testimonial statements.  
58 Where a challenge is made to the accuracy of a translation, the  
59 court shall first determine whether the interpreter is able to  
60 communicate accurately with and translate information to and from  
61 the non-English speaking person. If it is determined that the  
62 interpreter cannot perform these functions, arrangements for

63 another interpreter shall be made, unless testimony that is  
64 cumulative, irrelevant or immaterial is involved. Where the court  
65 determines that the interpreter has the ability to communicate  
66 effectively with the non-English speaker, the court shall resolve  
67 the issue of the contested translation and the record to be made  
68 of the contested testimony in its discretion. Any transcript  
69 prepared shall consist only of the English language spoken in  
70 court.

71 (2) Whenever a party was denied the right to use an  
72 interpreter of the party's own choosing, the court shall make an  
73 audio or audio-visual recording of any testimony given in a  
74 language other than English. This includes any colloquies between  
75 the court and any non-English speaking persons, statements or  
76 testimony made to the court given by a non-English speaking  
77 person, as well as all translations provided by the interpreter in  
78 the proceedings. This recording shall become part of the record  
79 of the proceeding. There is no requirement to record the  
80 translation for a non-English speaking party of other proceedings  
81 where the party does not directly participate, such as the  
82 translation of testimony of an English speaking witness when the  
83 party is represented by counsel, nor shall a record be made of  
84 private conversations between parties and counsel.

85 (3) In all cases where an audio or audio-visual recording is  
86 not required, the court shall have the discretion to authorize the  
87 making of such a recording.

88 **SECTION 6. Determination of Need for an Interpreter.** (1)  
89 An interpreter is needed and a court interpreter shall be  
90 appointed when the judge determines, after an examination of a  
91 party or witness, that: (a) the party cannot understand and speak  
92 English well enough to participate fully in the proceedings and to  
93 assist counsel; or (b) the witness cannot speak English so as to  
94 be understood directly by counsel, court and jury.

95 (2) The court should examine a party or witness on the  
96 record to determine whether an interpreter is needed if:

97 (a) A party or counsel requests such an examination;

98 (b) It appears to the court that the party or witness  
99 may not understand and speak English well enough to participate  
100 fully in the proceedings; or

101 (c) If the party or witness requests an interpreter.

102 The fact that a person for whom English is a second language  
103 knows some English should not prohibit that individual from being  
104 allowed to have an interpreter.

105 (3) After the examination, the court should state its  
106 conclusion on the record, and the file in the case shall be  
107 clearly marked and data entered electronically when appropriate by  
108 court personnel to ensure that an interpreter will be present when  
109 needed in any subsequent proceeding.

110 (4) Upon a request by the non-English speaking person, by  
111 counsel, or by any other officer of the court, the court shall  
112 determine whether the interpreter provided is able to communicate  
113 accurately with and translate information to and from the  
114 non-English speaking person. If it is determined that the  
115 interpreter cannot perform these functions, the court shall  
116 provide the non-English speaking person with another interpreter.

117 **SECTION 7. Interpreter's Fees and Expenses.** (1) Any  
118 interpreter providing services under this act who is not a  
119 volunteer interpreter shall be compensated by the court.

120 (2) The expenses of providing an interpreter in any court  
121 proceeding may be assessed by the court as costs in the  
122 proceeding.

123 **SECTION 8.** Section 99-17-7, Mississippi Code of 1972, is  
124 amended as follows:

125 99-17-7. Except as provided in Sections 1 through 7 of this  
126 act, in criminal cases, the court may appoint an interpreter when  
127 necessary, sworn truly to interpret, and allow him a reasonable

128 compensation, as set by the court, payable out of the county  
129 treasury.

130         **SECTION 9.** This act shall take effect and be in force from  
131 and after July 1, 2005.