
A BILL FOR AN ACT

RELATING TO LANGUAGE ACCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the effective
2 maintenance and development of a free and democratic society
3 depends on the right and ability of its citizens or residents,
4 and government to communicate with each other.

5 The legislature further finds that substantial numbers of
6 people who live, work, and pay taxes in this state are unable to
7 communicate effectively with their government, either because
8 they do not speak or write English, or because their primary
9 language is not English. Likewise, employees of state and local
10 government agencies are often unable to communicate with these
11 individuals who require their services. Consequently, a
12 significant portion of our population is essentially denied the
13 rights and benefits to which they would otherwise receive.

14 The legislature further finds that while federal Executive
15 Order No. 13166 affirmed that Title VI of the Civil Rights Act
16 of 1964 required federally funded programs to provide language-
17 accessible services, many departments and state agencies are not
18 in compliance with this order. The legislature finds that all



1 state agencies and departments must comply with federal
2 Executive Order No. 13166.

3 The purpose of this Act is to provide for effective and
4 timely communication between all levels of government and
5 individuals who are precluded from using public services due to
6 language barriers.

7 SECTION 2. Chapter 368, Hawaii Revised Statutes, is
8 amended by adding a new part to be appropriately designated and
9 to read as follows:

10 **"PART . LANGUAGE ACCESS**

11 **§371-A Definitions.** Whenever used in this part, unless
12 a different meaning clearly appears from the context:

13 "Access or participate" means to be informed of,
14 participate in, and benefit from public services, programs, and
15 activities offered by a covered entity at a level equal to
16 English-proficient individuals.

17 "Covered entity" means any government unit, including the
18 executive, legislative, and judicial branches of government, and
19 all state departments, agencies, or programs that furnish
20 information or render services, programs, or activities directly
21 to the public or contracts with other entities, either directly



1 or indirectly, to conduct or provide programs, services, or
2 activities to the public.

3 "Language" means human speech or the expression of ideas by
4 written characters or by means of sign language and includes
5 systems used by nations, people, or other distinct communities.

6 "Language access director" means the official of the
7 department of labor and industrial relations who, pursuant to
8 section 368-F(b), coordinates and supervises the activities of
9 any government unit, department, agency, or program undertaken
10 in compliance with the provisions of this chapter.

11 "Limited or no-English proficiency" means an individual who
12 identifies as being or is unable to adequately understand or to
13 express oneself in the spoken or written English language.

14 "Oral language services" means the free provision of oral
15 information necessary to enable limited or no-English
16 proficiency persons to access or participate in programs or
17 services offered by a covered entity. The term "oral language
18 services" may include:

19 (1) The placement of competent, experienced, and trained
20 bilingual or interpreter staff in public contact
21 positions;



- 1 (2) Arranging or contracting for the use of a telephone
2 interpreter service;
- 3 (3) Contracting with an outside interpreter service for
4 trained and competent interpreters; and
- 5 (4) Arranging formally for the services of voluntary
6 community interpreters who are trained and competent
7 in the skill of interpreting.

8 "Vital documents" means:

- 9 (1) Applications and corresponding instructional
10 materials;
- 11 (2) Written notices of rights, denial, loss, or decreases
12 in benefits or services, and parole or other hearing
13 notices;
- 14 (3) Notices that require:
- 15 (A) A direct response for the participant; or
16 (B) The participant to appear for an interview or
17 submit documentation;
- 18 (4) Notices regarding the rights of participants to a
19 conference, a fair hearing, or an appeal;
- 20 (5) Notices describing regulation changes that affect
21 benefits;
- 22 (6) Legal contracts;



- 1 (7) Written tests that do not assess English-language
2 competency but test competency for a particular
3 license or skill for which knowledge of written
4 English is not required;
- 5 (8) Complaint forms;
- 6 (9) Written documents that have the potential for
7 important consequences for the individual seeking
8 services; and
- 9 (10) Outreach materials published by a covered entity in a
10 tangible format that inform individuals about the
11 services offered, their rights, or eligibility
12 requirements for benefits and participation, including
13 notices advising persons of free language assistance.

14 **§371-B Oral language services.** (a) A covered entity
15 shall provide timely oral language services to a person with
16 limited or no English proficiency who seeks to access or
17 participate, whether by phone or in person, the services,
18 programs, or activities offered by the covered entity.

19 (b) The covered entity shall inform the public about the
20 availability of these services as follows:



- 1 (1) Upon initial contact, whether in person or by phone,
2 all covered entities shall inform individuals of their
3 right to free language assistance services;
- 4 (2) All covered entities with recorded telephonic messages
5 about their services or operations shall maintain
6 multilingual messages which, at a minimum, include
7 business hours, office location(s), and the
8 availability of free language assistance services.
- 9 (c) A covered entity shall, at least once a year,
10 determine the type of oral language services needed based on:
- 11 (1) The number or proportion of limited or no-English
12 proficient persons of the population served or
13 encountered, or likely to be served or encountered by
14 the covered entity;
- 15 (2) The frequency with which limited or no-English
16 proficient individuals come into contact with the
17 covered entity;
- 18 (3) The points of contact in the program or activity where
19 language assistance is likely to be needed;
- 20 (4) The importance of the service provided by the covered
21 entity; and



1 (5) The resources available to the covered entity to
2 provide effective language assistance.

3 (d) In determining the type of oral language services
4 needed under subsection (c), the covered entity may consider
5 reviewing the following sources of information:

6 (1) Federal census data, including the United States
7 Census Bureau's most current report entitled "Language
8 Use and English Ability, Linguistic Isolation" or any
9 successor report;

10 (2) Census language data, indicating that individuals
11 speak English "less than very well";

12 (3) Local census data relating to language use and
13 English-language ability;

14 (4) Other governmental data, including intake and service
15 data collected by other covered entities; and

16 (5) Data collected and made available by the language
17 access advisory council.

18 (e) Beginning the first fiscal year after the effective
19 date of this Act, the databases and tracking applications of a
20 covered entity shall contain fields that capture information
21 relating to the number or proportion of limited or no-English
22 proficient persons of the population served or encountered, or



1 likely to be served or encountered by the covered entity, and
2 the languages spoken. If it is demonstrated to the language
3 access director that this requirement is not feasible due to
4 budgetary constraints, a covered entity shall make all due
5 efforts to comply with this subsection by the beginning of the
6 next fiscal year. All information collected under subsection
7 (c) shall be provided to the language access director and be
8 made available to the public upon request.

9 (f) To the extent that a covered entity requires
10 additional personnel to provide oral language services based on
11 the determination set forth in this section, the covered entity
12 shall hire bilingual personnel to fill existing, budgeted vacant
13 public contact positions.

14 **§371-C Written language services.** (a) A covered entity
15 shall provide timely translations of vital documents into any
16 non-English language spoken by a limited or no-English
17 proficient population that constitutes three per cent or five
18 hundred individuals, whichever is less, of the population served
19 or encountered, or likely to be served or encountered, by the
20 covered entity.

21 (b) Notwithstanding subsection (a), a covered entity with
22 fewer than one hundred persons in a language group who are



1 eligible to be served or likely to be directly affected by the
2 covered entity's program is not required to translate written
3 materials but shall provide written notice of the right to
4 receive competent oral translation of written materials, in the
5 primary language of the limited or no-English proficient group.

6 (c) A covered entity shall post conspicuous multilingual
7 signs in all offices in which services are provided to the
8 public to inform individuals of their right to free language
9 assistance services and invite them to identify themselves as
10 persons needing such services.

11 (d) If the provisions of this part are contractually
12 imposed on a non-covered entity, this section shall apply.

13 **§371-D Additional obligations.** (a) A covered entity
14 shall establish a plan for language access through
15 administrative rules.

16 (b) Each plan for language access shall be established in
17 consultation with the language access director, the language
18 access advisory council, and the entity's coordinator for
19 language access. Each language access plan shall be updated
20 every two years and shall set forth, at a minimum, the
21 following:



- 1 (1) The types of oral language services that the entity
2 will provide and how the determination was reached;
- 3 (2) The titles of translated documents that the entity
4 will provide and how the determination was reached;
- 5 (3) The number of public contact positions in the entity
6 and the number of bilingual employees and competent
7 interpreters in public contact positions, together
8 with a list of languages covered;
- 9 (4) An evaluation and assessment of the adequacy of the
10 translation and interpreter services to be provided;
11 and
- 12 (5) A description of the funding and budgetary sources
13 upon which the covered entity intends to rely to
14 implement its language access plan.
- 15 (c) In establishing and updating the language access plan,
16 the entity shall consult the sources of data set forth in
17 section 368-B (d).
- 18 (d) A covered entity shall designate a language access
19 coordinator who shall report directly to the director of the
20 entity and shall:



- 1 (1) Establish and implement the entity's plan for language
2 access in consultation with the language access
3 director and the language access advisory council;
- 4 (2) Conduct periodic public meetings with appropriate
5 advance notice to the public; and
- 6 (3) Develop a plan to conduct outreach to communities with
7 limited or no-English proficient populations about
8 their plan for language access and the benefits and
9 services to be offered under this part.

10 **§371-E Public meetings and hearings.** (a) The
11 legislature, commissions, departments, or other covered entities
12 to which this part applies shall not be required to translate
13 meeting notices, agendas, or minutes.

14 (b) Oral interpretation for any public meeting or hearing
15 held by the legislature, commissions, departments, or other
16 covered entities shall be provided if requested at least forty-
17 eight hours in advance of the meeting or hearing.

18 **§371-F Language access director; duties.** (a) The
19 department of labor and industrial relations shall provide
20 oversight, central coordination, and technical assistance to
21 covered entities in their implementation of the provisions of
22 this part to ensure that the provision of services by covered



1 entities meets acceptable standards of translation or
2 interpretation.

3 (b) There shall be within the department of labor and
4 industrial relations a language access director to coordinate
5 and supervise activities under this part. The language access
6 director shall:

- 7 (1) Review and monitor each covered entity's plan for
8 language access for compliance with this part and
9 Title VI of the Civil Rights Act of 1964, approved
10 July 2, 1964 (78 Stat. 252; 42 U.S.C. Section 2000d et
11 seq.), or any other succeeding provision of federal
12 law, regulation, or guideline;
- 13 (2) Accept, monitor, and investigate public complaints
14 regarding language access violations at covered
15 entities, and, where necessary, issue warning letters
16 of noncompliance to the covered entities regarding
17 failures to provide language access;
- 18 (3) Endeavor to eliminate any language access violations
19 by informal methods such as conference, conciliation,
20 mediation, and persuasion; and
- 21 (4) Consult with language access coordinators, the
22 language access advisory council, and the heads of



1 government offices with limited or no-English
2 proficient populations.

3 **§371-G Language access advisory council.** (a) There is
4 established the language access advisory council within the
5 department of labor and industrial relations for administrative
6 purposes. The council shall consist of the following members
7 appointed by the governor:

8 (1) One representative from the state government;

9 (2) A bilingual case management worker, or an individual
10 who is or has been employed by a state-funded
11 immigrant service agency or program;

12 (3) A representative of an advocacy organization that
13 provides services to limited or non-English-speaking
14 persons;

15 (4) A member from the limited or no-English proficient
16 population who has an interest in the provision of
17 language services;

18 (5) A representative of the University of Hawaii
19 department of language and linguistics that provides
20 professional training in interpretation and
21 translation;



1 (6) A representative of a Hawaiian language advocacy
2 organization;

3 (7) A representative of a bilingual referral service or
4 program; and

5 (8) The language access director, who shall serve in an
6 ex-officio capacity.

7 (b) Members shall be appointed without the necessity of
8 the advice and consent of the senate. After the initial
9 formation of the language access advisory council, appointments
10 to the council shall be for staggered terms of four years each.
11 The council shall select one of its members to serve as chair.
12 No member of the council shall receive any compensation for
13 servicing on the council but shall be allowed necessary expenses
14 for travel, board, and lodging incurred in the performance of
15 council duties.

16 (c) The language access advisory council shall serve in an
17 advisory capacity to the language access director, providing
18 community input on:

19 (1) Implementation and compliance with this part;

20 (2) The quality of oral and written language services
21 provided by covered entities; and



1 (3) The adequacy of the covered entity's dissemination and
2 training of its employees likely to have contact with
3 limited or no-English proficient persons, its policies
4 and procedures for language assistance services,
5 competency in working effectively with in-person and
6 telephone interpreters, and understanding of the
7 dynamics of interpretation between clients, providers,
8 and interpreters."

9 SECTION 3. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so much
11 thereof as may be necessary for fiscal year 2006-2007 to staff
12 and maintain the office of the language access director and
13 language access advisory council.

14 The sum appropriated shall be expended by the department of
15 labor and industrial relations for the purposes of this Act.

16 SECTION 4. In codifying the new sections added by section
17 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 5. This Act shall take effect on July 1, 2006.



HB2778 HD1

Report Title:

Language Access

Description:

Provides for effective and timely communication between all levels of government and individuals who are precluded from using public services due to language-proficiency barriers.

(HB2778 HD1)

