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# A BILL FOR AN ACT

RELATING TO CIVIL RIGHTS.

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

1 PART I

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

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

15 The legislature further finds that while federal Executive  
16 Order No. 13166 affirmed that Title VI of the Civil Rights Act  
17 of 1964 required federally funded programs to provide  
18 language-accessible services, many departments and state



1 agencies are not in compliance with this order. The legislature  
2 finds that all state agencies and departments need to comply  
3 with federal Executive Order No. 13166.

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

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

11 **"PART LANGUAGE ACCESS**

12 **§368-A Definitions.** Whenever used in this part, unless a  
13 different meaning clearly appears from the context:

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

18 "Covered entity" means any government unit, including the  
19 executive, legislative, and judicial branches of government, and  
20 all state departments, agencies, or programs that furnish  
21 information or render services, programs, or activities directly  
22 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 **§368-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, at least once a year, shall collect  
10          data on and determine the type of oral language services needed  
11          based on:

12          (1) The number or proportion of limited or no-English  
13          proficient persons of the population served or  
14          encountered, or likely to be served or encountered by  
15          the covered entity;

16          (2) The frequency with which limited or no-English  
17          proficient individuals come into contact with the  
18          covered entity;

19          (3) The points of contact in the program or activity where  
20          language assistance is likely to be needed;

21          (4) The importance of the service provided by the covered  
22          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 **§368-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 **§368-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           **§368-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

17 forty-eight hours in advance of the meeting or hearing.

18           **§368-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 successor 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 **§368-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  
 11 much thereof as may be necessary for fiscal year 2006-2007 to  
 12 staff and maintain the office of the language access director  
 13 and 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 PART II

17 The purpose of this part is to prohibit civil rights  
 18 discrimination against limited or non-English proficient  
 19 persons.

20 SECTION 5. Section 368-1.5, Hawaii Revised Statutes, is  
 21 amended to read as follows:

1           **"§368-1.5 Programs and activities receiving state**

2 **financial assistance.** (a) No otherwise qualified individual in  
3 the State shall, solely by reason of [~~his or her~~]:

4           (1) A disability~~[7]~~; or

5           (2) A lack of proficiency in English, be excluded from the  
6 participation in, be denied the benefits of, or be  
7 subjected to discrimination by state or county  
8 agencies, or under any program or activity receiving  
9 state or county financial assistance.

10           (b) As used in this section~~[, the term "disability"]~~:

11           "Disability" means the state of having a physical or mental  
12 impairment which substantially limits one or more major life  
13 activities, having a record of such an impairment, or being  
14 regarded as having such an impairment.

15           "Lack of proficiency in English" means an individual is  
16 unable to adequately understand or communicate in spoken or  
17 written English.

18           ~~[(c) As used in this section, "state]~~ "State or county  
19 financial assistance" means grants, purchase-of-service  
20 contracts, or any other arrangement by which the State or a  
21 county provides or otherwise makes available assistance in the  
22 form of funds to an entity for the purpose of rendering services





1 on behalf of the State or a county. It does not include  
2 procurement contracts, state insurance or guaranty contracts,  
3 licenses, tax credits, or loan guarantees to private businesses  
4 of general concern that do not render services on behalf of the  
5 State or county."

6 PART III

7 SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval;  
10 provided that section 3 shall take effect on July 1, 2006.

SB2914, SD1

**Report Title:**

Civil Rights; Language Discrimination

**Description:**

Prohibits discrimination against persons with a lack of proficiency in English; creates language access law; establishes language access director and language access advisory council in the DLIR; makes appropriation to staff office of language access director and language access advisory council. (SD1)

