

JAN 25 2006

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 be entitled.

14 The purpose of this Act is to provide for effective and
15 timely communication between all levels of government and
16 individuals who are precluded from using public services due to
17 language barriers.



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

4 "PART . LANGUAGE ACCESS

5 §368-A Definitions. Whenever used in this part, unless
6 a different meaning clearly appears from the context:

7 "Access or participate" means to be informed of,
8 participate in, and benefit from public services, programs, and
9 activities offered by a covered entity at a level equal to
10 English proficient individuals.

11 "Covered entity" means any government unit, including the
12 executive, legislative, and judicial branches of government, and
13 all state departments, agencies, or programs that furnish
14 information or render services, programs, or activities directly
15 to the public or contracts with other entities, either directly
16 or indirectly, to conduct or provide programs, services, or
17 activities to the public.

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

21 "Language access director" means the official of the civil
22 rights commission in Hawaii who, pursuant to section 368-F(b),



1 coordinates and supervises the activities of any government
2 unit, department, agency, or program undertaken in compliance
3 with the provisions of this chapter.

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

7 "Oral language services" means the free provision of oral
8 information necessary to enable limited or no-English
9 proficiency persons to access or participate in programs or
10 services offered by a covered entity. The term "oral language
11 services" may include:

- 12 (1) The placement of competent, experienced, and trained
13 bilingual or interpreter staff in public contact
14 positions;
- 15 (2) Arranging or contracting for the use of a telephone
16 interpreter service;
- 17 (3) Contracting with an outside interpreter service for
18 trained and competent interpreters; and
- 19 (4) Arranging formally for the services of voluntary
20 community interpreters who are trained and competent
21 in the skill of interpreting.



- 1 "Vital documents" means:
- 2 (1) Applications and corresponding instructional
- 3 materials;
- 4 (2) Written notices of rights, denial, loss, or decreases
- 5 in benefits or services, and parole or other hearing
- 6 notices;
- 7 (3) Notices that require:
- 8 (A) A direct response for the participant; or
- 9 (B) The participant to appear for an interview or
- 10 submit documentation;
- 11 (4) Notices regarding the rights of participants to a
- 12 conference, a fair hearing, or an appeal;
- 13 (5) Notices describing regulation changes that affect
- 14 benefits;
- 15 (6) Legal contracts;
- 16 (7) Written tests that do not assess English language
- 17 competency, but test competency for a particular
- 18 license or skill for which knowledge of written
- 19 English is not required;
- 20 (8) Complaint forms;



1 (9) Written documents that have the potential for
2 important consequences for the individual seeking
3 services; and

4 (10) Outreach materials published by a covered entity in a
5 tangible format that inform individuals about the
6 services offered, their rights or eligibility
7 requirements for benefits and participation, including
8 notices advising persons of free language assistance.

9 **§368-B Oral language services.** (a) A covered entity
10 shall provide timely oral language services to a person with
11 limited or no English proficiency who seeks to access or
12 participate, whether by phone or in person, the services,
13 programs, or activities offered by the covered entity.

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

16 (1) Upon initial contact, whether in person or by phone,
17 all covered entities shall inform individuals of their
18 right to free language assistance services;

19 (2) All covered entities with recorded telephonic messages
20 about its services or operations shall maintain
21 multilingual messages which, at a minimum, include



1 business hours, office location(s), and the
2 availability of free language assistance services.

3 (c) A covered entity shall, at least once a year,
4 determine the type of oral language services needed based on:

5 (1) The number or proportion of limited or no-English
6 proficient persons of the population served or
7 encountered, or likely to be served or encountered by
8 the covered entity;

9 (2) The frequency with which limited or no-English
10 proficient individuals come into contact with the
11 covered entity;

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

14 (4) The importance of the service provided by the covered
15 entity; and

16 (5) The resources available to the covered entity to
17 provide effective language assistance.

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

21 (1) Federal census data, including the United States
22 Census Bureau's most current report entitled "Language



1 Use and English Ability, Linguistic Isolation" or any
2 successor report;

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

5 (3) Local census data relating to language use and English
6 language ability;

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

9 (5) Data collected and made available by the language
10 access advisory council.

11 (e) Beginning the first fiscal year after the effective
12 date of this Act, the databases and tracking applications of a
13 covered entity shall contain fields that capture information
14 relating to the number or proportion of limited or no-English
15 proficient persons of the population served or encountered, or
16 likely to be served or encountered by the covered entity, and
17 the languages spoken. If it is demonstrated to the language
18 access director that this is not feasible due to budgetary
19 constraints, a covered entity shall make all due efforts to
20 comply with this subsection by the beginning of the next fiscal
21 year. All information collected under subsection (c) shall be



1 provided to the language access director and be made available
2 to the public, upon request.

3 (f) To the extent that a covered entity requires
4 additional personnel to provide oral language services based on
5 the determination set forth in this section, the covered entity
6 shall hire bilingual personnel to fill existing, budgeted vacant
7 public contact positions.

8 **§368-C Written language services.** (a) A covered entity
9 shall provide timely translations of vital documents into any
10 non-English language spoken by a limited or no-English
11 proficient population that constitutes three per cent or five
12 hundred individuals, whichever is less, of the population served
13 or encountered, or likely to be served or encountered, by the
14 covered entity.

15 (b) Notwithstanding subsection (a), a covered entity with
16 fewer than one hundred persons in a language group who are
17 eligible to be served or likely to be directly affected by the
18 covered entity's program is not required to translate written
19 materials but shall provide written notice of the right to
20 receive competent oral translation of written materials, in the
21 primary language of the limited or no-English proficient group.



1 (c) A covered entity shall post conspicuous multilingual
2 signs in all offices in which services are provided to the
3 public to inform individuals of their right to free language
4 assistance services and invite them to identify themselves as
5 persons needing such services.

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

8 **§368-D Additional obligations.** (a) A covered entity
9 shall establish a plan for language access through
10 administrative rules.

11 (b) Each plan for language access shall be established in
12 consultation with the language access director, the language
13 access advisory council, and the entity's coordinator for
14 language access. Each language access plan shall be updated
15 every two years and shall set forth, at a minimum, the
16 following:

- 17 (1) The types of oral language services that the entity
18 will provide and how the determination was reached;
- 19 (2) The titles of translated documents that the entity
20 will provide and how the determination was reached;
- 21 (3) The number of public contact positions in the entity
22 and the number of bilingual employees and competent



1 interpreters in public contact positions, together
2 with a list of languages covered;

3 (4) An evaluation and assessment of the adequacy of the
4 translation and interpreter services to be provided;
5 and

6 (5) A description of the funding and budgetary sources
7 upon which the covered entity intends to rely to
8 implement its language access plan.

9 (c) In establishing and updating the language access plan,
10 the entity shall consult the sources of data set forth in
11 section 368-B (d).

12 (d) A covered entity shall designate a language access
13 coordinator who shall report directly to the director of the
14 entity and shall:

15 (1) Establish and implement the entity's plan for language
16 access in consultation with the language access
17 director and the language access advisory council;

18 (2) Conduct periodic public meetings with appropriate
19 advance notice to the public; and

20 (3) Develop a plan to conduct outreach to communities with
21 limited or no-English proficient populations about



1 their plan for language access and the benefits and
2 services to be offered under this part.

3 **§368-E Public meetings and hearings.** (a) The
4 legislature, commissions, departments, or other covered entities
5 to which this part applies shall not be required to translate
6 meeting notices, agendas, or minutes.

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

11 **§368-F Language access director; duties.** (a) The
12 Hawaii civil rights commission shall provide oversight, central
13 coordination, and technical assistance to covered entities in
14 their implementation of the provisions of this part to ensure
15 that the provision of services by covered entities meets
16 acceptable standards of translation or interpretation.

17 (b) There shall be within the Hawaii civil rights
18 commission a language access director to coordinate and
19 supervise activities under this part. The language access
20 director shall:

21 (1) Review and monitor each covered entity's plan for
22 language access for compliance with this part and



1 Title VI of the Civil Rights Act of 1964, approved
2 July 2, 1964 (78 Stat. 252; 42 U.S.C. Section 2000d et
3 seq.), or any other succeeding provision of federal
4 law, regulation, or guideline;

5 (2) Accept, monitor, and investigate public complaints
6 regarding language access violations at covered
7 entities, and, where necessary, issue warning letters
8 of noncompliance to the covered entities regarding
9 failures to provide language access;

10 (3) Endeavor to eliminate any language access violations
11 by informal methods such as conference, conciliation,
12 mediation, and persuasion; and

13 (4) Consult with language access coordinators, the
14 language access advisory council, and the heads of
15 government offices with limited or no-English
16 proficient populations.

17 **§368-G Language access advisory council.** (a) There is
18 established the language access advisory council within the
19 Hawaii civil rights commission for administrative purposes. The
20 council shall consist of the following members appointed by the
21 governor:

22 (1) One representative from the state government;



- 1 (2) A bilingual case management worker, or an individual
- 2 who is or has been employed by a state-funded
- 3 immigrant service agency or program;
- 4 (3) A representative of an advocacy organization that
- 5 provides services to limited or non-English speaking
- 6 persons;
- 7 (4) A member from the limited or no-English proficient
- 8 population, who has an interest in the provision of
- 9 language services;
- 10 (5) A representative of the University of Hawaii
- 11 department of language and linguistics that provides
- 12 professional training in interpretation and
- 13 translation;
- 14 (6) A representative of a Hawaiian language advocacy
- 15 organization;
- 16 (7) A representative of a bilingual referral service or
- 17 program; and
- 18 (8) The language access director who shall serve in an ex-
- 19 officio capacity.
- 20 (b) Members shall be appointed without the necessity of
- 21 the advice and consent of the senate. After the initial
- 22 formation of the language access advisory council, appointments



1 to the council shall be for staggered terms of four years each.
2 The council shall select one of its members to serve as chair.
3 No member of the council shall receive any compensation for
4 council services, but shall be allowed necessary expenses for
5 travel, board, and lodging incurred in the performance of
6 council duties.

7 (c) The language access advisory council shall serve in an
8 advisory capacity to the language access director, providing
9 community input on:

- 10 (1) Implementation and compliance with this part;
- 11 (2) The quality of oral and written language services
12 provided by covered entities; and
- 13 (3) The adequacy of the covered entity's dissemination and
14 training of its employees likely to have contact with
15 limited or no-English proficient persons, its policies
16 and procedures for language services, competency in
17 working effectively with in-person and telephone
18 interpreters, and understanding of the dynamics of
19 interpretation between clients, providers, and
20 interpreters."

21 SECTION 3. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2006-2007 to staff
2 and maintain the office of the language access director and
3 language access advisory council.

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

6 SECTION 4. In codifying the new sections added by section
7 2 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

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

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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 barriers.

