

JAN 19 2007

A BILL FOR AN ACT

RELATING TO COURT INTERPRETERS.

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

1 SECTION 1. The legislature finds that federal law requires
2 states to provide language interpretation services to court
3 users with limited English proficiency. Hawaii is a member
4 state of the consortium of court interpreting of the National
5 Center for State Courts, which provides court interpreter
6 certification examinations in thirteen languages. However, of
7 the thirty member states of the consortium, Hawaii is one of
8 only three states that have yet to implement court interpreter
9 certification in any language. As a result, at present, anyone
10 can become a registered interpreter with the judiciary merely by
11 obtaining a general excise tax license and submitting a court
12 interpreter application form, regardless of language ability or
13 interpreting skills. Such a situation invites an applicant pool
14 of untrained and untested interpreters, which not only slows
15 down the judicial process and creates inefficiency, but also
16 jeopardizes the constitutional and civil rights of non-English
17 speaking individuals.



1 The purpose of this Act is to require the judiciary to
2 implement a certification program and to appoint and use
3 certified court interpreters in legal proceedings.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 COURT INTERPRETERS

9 § -1 Policy; intent. It is the policy of this State to
10 secure the rights, constitutional and otherwise, of persons who,
11 because of a non-English speaking cultural background, are
12 unable to understand or communicate adequately in the English
13 language when they appear in state courts or are involved in
14 state justice system proceedings.

15 It is the intent of this Act to provide for the
16 certification, appointment, and use of interpreters to secure
17 the state and federal constitutional rights of non-English
18 speaking persons in all legal and administrative state
19 proceedings.

20 § -2 Definitions. As used in this chapter:



1 "Appointing authority" means a trial judge, administrative
2 hearing officer, or other officer authorized by law to conduct
3 judicial or quasi-judicial proceedings.

4 "Certified interpreter" means a person who:

5 (1) Is readily able to interpret simultaneously and
6 consecutively and to sight translate from English to
7 the language of the non-English speaking person or
8 from the language of that person into English;

9 (2) Is certified according to procedures approved by the
10 Hawaii supreme court committee on certification of
11 court interpreters; and

12 (3) Satisfies the standards prescribed and promulgated
13 pursuant to this chapter and the code of professional
14 responsibility for interpreters.

15 "Legal proceeding" means a civil, criminal, domestic
16 relations, juvenile, traffic, or an administrative proceeding in
17 which a non-English speaking person is a principal party in
18 interest or a witness.

19 "Non-English speaking person" means any principal party in
20 interest or witness participating in a legal proceeding who has
21 limited ability to speak or understand the English language.



1 "Principal party in interest" means a person involved in a
2 legal proceeding who is a named party, or who will be bound by
3 the decision or action, or who is foreclosed from pursuing the
4 person's rights by the decision or action which may be taken in
5 the proceeding.

6 "Witness" means anyone who testifies in any legal
7 proceeding.

8 § -3 **Implementing responsibilities.** (a) Staff and
9 administrative support required by the supreme court to
10 implement the interpreter certification program shall be
11 provided by the administrative office of the courts.

12 (b) Pursuant to supreme court rule, the administrative
13 office of the courts shall administer and manage the operations
14 of the state court interpreter certification program.

15 (c) The administrative director of the courts shall
16 collect and analyze statistics pertinent to interpreter
17 utilization. This report may be made a part of the annual
18 report of the judiciary and contain analyses and recommendations
19 for the improvement of the court interpreter program.

20 § -4 **Certified interpreter required.** (a) When an
21 interpreter is requested or when the appointing authority
22 determines that a principal party in interest or witness has a



1 limited ability to understand and communicate in English, a
2 certified interpreter shall be appointed.

3 (b) The appointing authority may appoint a non-certified
4 interpreter only:

5 (1) Upon a finding that diligent, good faith efforts to
6 obtain a certified interpreter have been made and none
7 has been found to be reasonably available; provided
8 that the failure by the court to make reasonable good
9 faith efforts to obtain the services of a certified
10 interpreter may be grounds for reversal; and

11 (2) After the appointing authority has evaluated the
12 totality of the circumstances including the gravity of
13 the judicial proceeding and the potential penalty or
14 consequence involved.

15 (c) Before appointing a non-certified interpreter, the
16 appointing authority shall make a finding that the proposed non-
17 certified interpreter appears to have adequate language skills,
18 knowledge of interpreting techniques, and familiarity with
19 interpreting in a court or administrative hearing setting, and
20 that the proposed non-certified interpreter has read,
21 understands, and will abide by the code of professional



1 responsibility for language interpreters established in this
2 State.

3 (d) A summary of the efforts made to obtain a certified
4 interpreter and to determine the capabilities of the proposed
5 non-certified interpreter shall be made on the record of the
6 legal proceeding.

7 **§ -5 Waiver of interpreter.** (a) A non-English speaking
8 person, at any point in the proceeding may waive the right to
9 the services of an interpreter, provided that:

- 10 (1) The waiver is approved by the appointing authority
11 after explaining on the record to the non-English
12 speaking person through an interpreter the nature and
13 effect of the waiver;
- 14 (2) The appointing authority determines on the record that
15 the waiver has been made knowingly, intelligently, and
16 voluntarily; and
- 17 (3) The non-English speaking person has been afforded the
18 opportunity to consult with the person's attorney.

19 (b) At any point in any proceeding, for good cause shown,
20 a non-English speaking person may retract the person's waiver
21 and request an interpreter.



1 **§ -6 Interpreter oath.** An interpreter, whether or not
2 certified, shall take an oath, before commencing duties, that
3 the interpreter will make a true and impartial interpretation
4 using the interpreter's best skills and judgment in accordance
5 with the standards and ethics of the interpreter profession.

6 **§ -7 Removal of an interpreter in individual cases.** Any
7 of the following actions of the interpreter shall be good cause
8 for a judge to remove an interpreter:

- 9 (1) Being unable to interpret adequately, including where
10 the interpreter self-reports such inability;
- 11 (2) Knowingly and wilfully making false interpretation
12 while serving in an official capacity;
- 13 (3) Knowingly and wilfully disclosing confidential or
14 privileged information obtained while serving in an
15 official capacity; or
- 16 (4) Failing to follow other standards prescribed by law
17 and the code of professional responsibility for
18 interpreters.

19 **§ -8 Cost of interpreter services.** In all legal
20 proceedings, the cost of providing interpreter services shall be
21 borne by the court or administrative agency in which the legal
22 proceeding originates.



1 § -9 **Wages.** The court interpreter fee schedule shall be
2 amended regularly to ensure that certified interpreters are paid
3 at wages or salaries not less than the wages paid to public
4 officers and employees for similar work. Non-certified
5 interpreters shall be paid at a rate not less than fifty per
6 cent of the rate for certified interpreters.

7 § -10 **Supreme court committee on certification of court**
8 **interpreters established; duties; composition and term;**
9 **meetings; rules.** (a) There is established the supreme court
10 committee on certification of court interpreters, which shall be
11 attached to the judiciary for administrative purposes only.

12 (b) The supreme court committee on certification of court
13 interpreters shall:

14 (1) Be responsible for ensuring language interpreter
15 orientation, certification, continued proficiency, and
16 discipline; and

17 (2) Prescribe standards and procedures for the
18 recruitment, orientation, testing, certification,
19 evaluation, compensation, duties, professional
20 conduct, continuing education, certification renewal,
21 and other matters relating to interpreters as
22 prescribed in this chapter.



1 (c) The supreme court committee on certification of court
2 interpreters shall be comprised of seven members who shall serve
3 one-year terms subject to appointment and reappointment by the
4 chief justice of the supreme court:

5 (1) Two members representing the judiciary, including one
6 member representing the office on equality and access
7 to the courts;

8 (2) Two members representing a labor union that represents
9 or is seeking to represent court interpreters in
10 Hawaii;

11 (3) One member representing the Hawaii State Bar
12 Association;

13 (4) One member representing the office of the public
14 defender; and

15 (5) One member representing the department of the
16 prosecuting attorney of one of the counties of the
17 State.

18 (d) Members shall serve without compensation, but may be
19 reimbursed for the necessary expenses, including travel
20 expenses, incurred in the performance of their duties.

21 (e) The supreme court may issue court rules necessary for
22 purposes of this chapter."



1 SECTION 3. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$, or so
 3 much thereof as may be necessary for fiscal year 2007-2008, and
 4 the same sum, or so much thereof as may be necessary for fiscal
 5 year 2008-2009, for the administrative office of the courts to
 6 establish and operate a statewide court interpreter orientation,
 7 testing, and certification program.

8 The sums appropriated shall be expended by the judiciary
 9 for the purposes of this Act.

10 SECTION 4. If any provision of this Act, or the
 11 application thereof to any person or circumstance is held
 12 invalid, the invalidity does not affect other provisions or
 13 applications of the Act, which can be given effect without the
 14 invalid provision or application, and to this end the provisions
 15 of this Act are severable.

16 SECTION 5. This Act shall take effect on July 1, 2008;
 17 provided that section 3 of this Act shall take effect on July 1,
 18 2007.

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INTRODUCED BY: 



Report Title:

Court Interpreters

Description:

Requires the judiciary to certify court interpreters and to appoint and use certified court interpreters in legal proceedings.

