

# S.B. NO. 973

JAN 25 2017

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## A BILL FOR AN ACT

RELATING TO AMERICAN SIGN LANGUAGE INTERPRETER REFERRAL  
AGENCIES.

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

1           SECTION 1. The legislature finds that with the passage of  
2 the Americans with Disabilities Act of 1990 (ADA), Public Law  
3 100-336, as amended, the demand for American Sign Language  
4 English interpreters greatly increased, as many public and  
5 private organizations did not provide qualified interpreters  
6 when requested before the passage of the ADA, as amended. The  
7 ADA, as amended, defines a qualified interpreter as one who is  
8 able to interpret effectively, accurately, and impartially.

9           The legislature finds that once an American Sign Language  
10 English interpreter establishes a business in Hawaii, the  
11 interpreter may use an interpreter referral agency to obtain  
12 assignments, similar to the way a person who is unemployed uses  
13 a temporary employment agency to find temporary work. In  
14 interpreter referral situations, the interpreter is an  
15 independent contractor. Businesses and agencies seeking to hire  
16 an interpreter may also decide to use an interpreter referral

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1 agency for convenience and time saving instead of contacting  
2 interpreters directly.

3       There is currently no regulation of American Sign Language  
4 English interpreter referral agencies. The disability and  
5 communication access board is aware of three interpreter  
6 referral agencies that are based and operate in the state. In  
7 addition, there are other world language interpreter referral  
8 services in Hawaii that are now referring American Sign Language  
9 English interpreters for assignments.

10       The legislature finds that there are interpreter referral  
11 agencies based on the mainland that also refer American Sign  
12 Language English interpreters for assignments in Hawaii. These  
13 mainland-based companies may or may not be knowledgeable of some  
14 of the local language needs of Hawaii-based assignments. With  
15 only consumer and interpreter concerns raised about the  
16 practices of interpreter referral agencies, there is no way to  
17 monitor how American Sign Language English interpreters are  
18 contacted or placed on assignments.

19       Consumers and interpreters have raised concerns about the  
20 practices of interpreter referral agencies. Their concerns  
21 include the following:

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1 (1) Whether a deaf, hard of hearing, or deaf-blind  
2 consumer's preferred/requested interpreter is contacted first;

3 (2) Whether a hierarchical order is used to contact  
4 interpreters with higher level credentials;

5 (3) Whether an interpreter who accepts an assignment is  
6 the most qualified;

7 (4) Whether the information related to the assignment is  
8 complete and accurate enough for the interpreter to make an  
9 informed decision about accepting or declining an assignment;

10 (5) Whether a referral fee is commensurate with the  
11 credential level of an interpreter selected for an assignment;  
12 and

13 (6) Whether a grievance or complaint procedure with  
14 sanctions should be established to address and correct  
15 violations of the right of consumers to have the most qualified  
16 interpreter provide effective communication for an assignment.

17 The purpose of this Act is to protect consumers of American  
18 Sign Language English interpreter services by regulating  
19 agencies that place interpreters on assignments in the state.

20 SECTION 2. The Hawaii Revised Statutes is amended by  
21 adding a new chapter to be appropriately designated and to read  
22 as follows:

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1 "CHAPTER

2 AMERICAN SIGN LANGUAGE ENGLISH INTERPRETER REFERRAL

3 AGENCIES

4 § -1 Definitions. For the purposes of this chapter:

5 "Consumer" means a hearing, deaf, hard of hearing, deaf-  
6 blind or speech-disabled person; or a person or an entity  
7 requiring the use of interpreter services to effectively  
8 communicate and comprehend signed, written, and/or speech  
9 discourse.

10 "Department" means the department of \_\_\_\_\_.

11 "Director" means the director of \_\_\_\_\_.

12 "Interpreting" means the process of providing effective  
13 communication between and among persons who are deaf, hard of  
14 hearing or deaf-blind, and those who can hear. The process  
15 includes, but is not limited to, communication between American  
16 Sign Language or other forms of manual communication and  
17 English. The process may also involve various other modalities  
18 that involve visual, gestural and tactile methods.

19 "Interpreter" means a professional who holds a nationally  
20 recognized certification or state recognized credential as such;  
21 using a source language message and, after working through a  
22 complex physical and mental process, expresses an equivalent

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1 message into the target language, maintaining essential elements  
2 of meaning and intent.

3 "Interpreter referral agency" means any organization that  
4 arranges, contracts with or employs interpreters to provide  
5 interpreting services for a third party, including on-site or  
6 video remote interpreting.

7 "Nationally recognized certification" means a certification  
8 or professional credential awarded to an individual who  
9 successfully completes an evaluation of interpreting skills at a  
10 professional level. The term includes a credential issued,  
11 recognized, or both by the registry of interpreters for the  
12 deaf, national association of the deaf or educational  
13 interpreter performance assessment.

14 "Principal" means a corporate officer or director, a  
15 partner in a partnership, a sole proprietor, or an individual  
16 with an ownership interest in the interpreter referral agency  
17 who shall be a signatory of any account of the interpreter  
18 referral agency.

19 "State recognized credential" means a credential awarded by  
20 the state disability and communication access board to an  
21 individual who successfully completes an evaluation of  
22 interpreting skills at a professional level.

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1           § **-2 Registration required.** (a) The interpreter referral  
2 agency shall register with the director prior to engaging in the  
3 business of selling, contracting for, arranging, or advertising  
4 that it can or will arrange, interpreting services which are  
5 rendered by a nationally certified or state credentialed  
6 interpreter. Notwithstanding section - 7, any interpreter  
7 referral agency that violates the provisions of this section or  
8 rules promulgated pursuant thereto shall be fined a sum of \$100  
9 for each day the interpreter referral service is in violation.  
10 The sum shall be collected in a civil suit brought by the  
11 department.

12           (b) Registration shall expire on December 31 of each odd-  
13 numbered year. Before December 31 of each odd-numbered year,  
14 the director or the director's authorized delegate shall mail a  
15 renewal application for registration to the address on record of  
16 the registrant.

17           (c) The director by rule, shall establish fees and  
18 requirements for registration, maintenance of registration,  
19 renewal, restoration of registration, of interpreter referral  
20 agencies.

21           § **-3 Interpreter referral agency principal;**  
22 **responsibilities.** (a) Each interpreter referral agency shall

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1 designate a principal who shall have direct management and  
2 supervision of the interpreter referral agency.

3 (b) The interpreter referral agency shall designate the  
4 interpreter referral agency's principal with each registration  
5 and registration renewal and shall provide notification in  
6 writing to the department within ten days after any change in  
7 the designation of the interpreter referral agency principal.

8 § -3 **Prohibited acts.** No interpreter referral agency  
9 shall engage in any of the following practices:

10 (1) Referring an interpreter who does not hold a national  
11 recognized certification or state recognized credential to an  
12 interpreting assignment;

13 (2) Failing to notify the requesting agency, within  
14 twenty-four hours of the assignment, of the interpreter who has  
15 been selected for a specific assignment;

16 (3) Failing to possess a current and valid registration  
17 prior to engaging in business or advertising as an interpreter  
18 referral agency;

19 (4) Failing to keep all information related to the  
20 assignment, including the name(s) of the deaf, hard of hearing,  
21 deaf-blind, or hearing consumer confidential; or

22 (5) Failing to obtain an agreement for full payment for an

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1 interpreting assignment prior to or at the time the interpreting  
2 assignment is booked or placed with the interpreter or within  
3 three business days thereafter, except where the reservation  
4 specifically provides for direct payment of the amounts owed to  
5 the interpreter at the time of the assignment.

6       § -4 **Payment provisions.** Unless the express written  
7 contract has a provision to the contrary, payment shall be due  
8 and payable thirty days from the date of invoice.

9       § -5 **Legal rate; computation.** Except as otherwise  
10 permitted by existing written contract, any interpreter referral  
11 agency that directly or indirectly receives any interest on the  
12 payment due to the interpreter, shall remit the interest and the  
13 payment due to the interpreter; provided that if the interest  
14 and payment due are not remitted within thirty days from the  
15 date of invoice, interest on the unpaid balance of the interest  
16 and payment due shall accrue at the rate of one per cent per  
17 month from the due date.

18       § -6 **Injunctive relief; suits.** (a) Any interpreter  
19 referral agency may bring suit to enjoin any violation of this  
20 chapter and may sue in the circuit court in the circuit in which  
21 the defendant resides or has an agent or in which the violation  
22 has occurred.



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1 (b) Any interpreter referral agency may bring suit to  
2 enjoin any violation of this chapter and may sue in the circuit  
3 court in the circuit in which the defendant resides or has an  
4 agent or in which the violation has occurred. The relief  
5 available to an interpreter shall be limited to injunctive and  
6 declarative relief and shall not include a right to damages.

7 (c) The prevailing party, in a civil action brought under  
8 this chapter, shall be entitled to recover the costs of the  
9 suit, including reasonable attorney's fees.

10 **§ 7- Action for damages.** Any interpreter referral agency  
11 shall be liable to the interpreter for a violation of this  
12 chapter for any damages, which result from a violation. Damages  
13 shall be awarded at the rate of no less than \$500 for each  
14 violation. Violations shall be calculated as follows:

15 (1) For violations of section -3(1), (2), or (3), by  
16 multiplying the number of days the violations occurred by the  
17 interpreter referral agency where the violations occurred;

18 (2) Notwithstanding paragraphs (1) and (2), not more than  
19 \$1,000 shall be awarded if the interpreter referral agency has  
20 not previously been required to pay damages to an interpreter  
21 pursuant to this section.

22 **§ -8 Requirements for offering discounts.** When a discount

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1 offered for any assignment, it is contingent upon any  
2 requirement that any recipient of the discount, the interpreter  
3 referral agency shall disclose the requirement in writing to the  
4 recipient of the discount before payment is made. Failure to do  
5 so shall constitute a false and deceptive business practice  
6 subject to a civil fine of \$1,000 per day for each occurrence.

7       **§ -9 Violations; fraud.** Any violations by an interpreter  
8 referral agency of any law shall constitute a prima facie  
9 showing of fraud on the part of the interpreter referral agency  
10 and may not be dischargeable as a debt to a consumer or an  
11 interpreter in any bankruptcy proceeding.

12       **§ -10 Restitution.** Any person who engages in an act or  
13 practice that violates any provision of this chapter or rules  
14 adopted pursuant hereto may be ordered by a court of proper  
15 jurisdiction to make restitution to all persons injured by the  
16 act or practice.

17       **§ -11 Injunctions.** In any civil proceeding brought  
18 pursuant to this chapter, the court may also enjoin any activity  
19 that violates this chapter.

20       **§ -12 Consumer right of action.** Any person who suffers  
21 damage as a result of a violation of this chapter shall be  
22 entitled to injunctive relief restraining further violations,

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1 and may sue to recover damages in any circuit court of the  
2 State, and, if successful, shall recover three times the actual  
3 damages or \$1,000, whichever is greater. In any action brought  
4 under this chapter, the prevailing party shall be entitled to  
5 the recovery of costs of suit, including reasonable attorney's  
6 fees.

7       § **-13 Remedies cumulative.** Unless otherwise expressly  
8 provided, the remedies or penalties provided by this chapter are  
9 cumulative to each other and to remedies or penalties available  
10 under other laws of this State.

11       § **-14 Criminal penalties.** A person commits the criminal  
12 offense of theft if the person, being an interpreter referral  
13 agency, knowingly or intentionally violates this chapter.

14       § **-15 Rules.** Subject to chapter 91, the director may  
15 adopt such rules as the director deems necessary for the  
16 effective administration and enforcement of this chapter."

17       SECTION 3. This Act takes effect on July 1, 2018.

18

19

INTRODUCED BY: 

20

BY REQUEST

21

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**Report Title:**

Regulation of Interpreter Referral Agencies

**Description:**

Regulates Interpreter Referral Agencies by requiring registration with the State of Hawaii. Includes sections about agency responsibilities, consumer rights, protections for those harmed by using an interpreter referral agency to obtain an interpreter.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

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## JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT AMERICAN SIGN LANGUAGE INTERPRETER REFERRAL AGENCIES.

PURPOSE: To protect consumers of American Sign Language/English interpreter services by regulating agencies that place interpreters on assignments in the State.

MEANS: Add a new chapter to Hawaii Revised Statutes.

JUSTIFICATION: Currently there is no regulation of interpreter referral agencies in the State. The new chapter will require interpreter referral agencies operating for profit in Hawaii to be regulated.

Impact on the public: Through registration of interpreter referral agencies operating for profit in Hawaii, whether or not they are physically located in the State, consumers who are hearing, deaf, hard of hearing or deaf-blind will be assured that the most qualified interpreter will be selected to provide effective communication for an assignment.

Impact on the department and other agencies: The Department of \_\_\_\_\_ will promulgate rules that require interpreter referral agencies doing business for profit in Hawaii to register, pay a fee for registration, and follow rules governing the provision of interpreter referral services under this chapter.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

OTHER AFFECTED  
AGENCIES:

Department Budget and Finance.

EFFECTIVE DATE: July 1, 2018.