



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 1107, RELATING TO AMERICAN SIGN LANGUAGE INTERPRETER REFERRAL AGENCIES.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Friday, February 3, 2017

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Mana Moriarty, Deputy Attorney General

Chair Morikawa and Members of the Committee:

The Department of the Attorney General provides the following comments:

This bill establishes licensing requirements for an unregulated profession, American Sign Language interpreter referral agencies. However, the broader purpose of this bill is to trigger a sunrise analysis by the Auditor of the probable effects of establishing licensing requirements for American Sign Language interpreter referral agencies.

Pursuant to section 26H-6, Hawaii Revised Statutes, new measures to license currently unlicensed professions must first be referred to the Auditor to conduct a sunrise analysis of the probable effects of licensing. We note that Senate Concurrent Resolution No. 32 directs the Auditor to “conduct a sunrise review of the probable effects of licensure of American Sign Language interpreters and regulation of interpreter referral agencies as proposed by S.B. No. and S.B. No. , Regular Session of 2017.”

Since the primary purpose of this bill is to trigger the sunrise analysis, this bill served its purpose once it was introduced. Accordingly, we recommend that this bill be held in committee until such time as the Auditor has submitted the sunrise analysis to the Legislature.

Thank you for the opportunity to provide testimony.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 3, 2017

TESTIMONY TO THE HOUSE COMMITTEE ON HUMAN SERVICES

House Bill 1107 - Relating to American Sign Language Interpreter Referral Agencies


The Disability and Communication Access Board (DCAB) supports the intent of House Bill 1107 that would regulate interpreter referral services by requiring registration of agencies providing such services to consumers in the State of Hawaii. It is a consumer protection measure to ensure that those agencies who refer interpreters to assignments in the local community are conforming to best practices for interpreter referral when placing sign language interpreters in a particular assignment.

Currently, there are two private agencies in Hawaii that specialize in the placement of American Sign Language (ASL) interpreters statewide. There are also other local agencies that place ASL interpreters on assignments, even though their primary mission is not interpreter referral. It has recently been brought to DCAB's attention that ASL referral agencies from the mainland are also contacting interpreters directly to request availability for assignments. In addition, there are also spoken language interpreter referral services who contact interpreters directly about interpreting assignments who may not be aware of the complexity of communication needs of the parties involved.

Although DCAB supports the intent of House Bill 1107, we are aware that there is a requirement for a sunrise review to be conducted related to the enactment of new regulatory measures for unregulated professions and vocations per §26H-6, Hawaii Revised Statutes. Due to this requirement, DCAB recommends that this measure be deferred in order for the Auditor to conduct a study to assess, evaluate, review, and analyze the effect of the proposed regulation of ASL interpreter referral agencies to protect consumers (deaf and hearing) when hiring and using an ASL interpreter from a referral agency. We also request that the subject matter of the sunrise review be combined with House Bill 1106. Senate Concurrent Resolution 32 was introduced related to these measures in the Senate version of these bills, but to date, there is no House Concurrent Resolution introduced.

Thank you for the opportunity to testify.

Respectfully submitted,


BARBARA FISCHLOWITZ-JEONG
Chairperson
Legislative Committee



FRANCINE WAI
Executive Director

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) REGARDING H.B. 1107**

February 3, 2017

To: Chairwoman Dee Morikawa and Members of the House Committee on Human
Services:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the
Hawaii Association for Justice (HAJ) regarding H.B. 1107, relating to American Sign
Language Interpreter Referral Agencies.

H.B. 1107 addresses issues stemming from the use of interpreter referral agencies.
In section “-12 Consumer right of action,” there is a provision that states, “In any action
brought under this chapter, the prevailing party shall be entitled to the recovery of costs
of suit, including reasonable attorney’s fees.” We believe that this provision is
unnecessary and could have a chilling effect on those people who may have legitimate
claims.

Two basic underlying purposes of the American legal system are to compensate a
person for damages caused by another and to deter or prevent harmful or irresponsible
behavior. When a person or an entity realizes that they may be held liable, there is a
strong incentive to prevent the occurrence of harm. Said another way, the law
encourages responsible behavior.

The rule in America is for each person to be responsible for their own legal
expenses unless the court determines otherwise. This is to allow the courts to enforce the
laws for both poor and rich. The “loser pays” provision in this bill makes it mandatory
for the court to charge all expenses to the loser. Loser pay favors businesses and the rich

because they can afford to take the risk of loss while it discourages ordinary consumers from pursuing even valid claims because they cannot afford to take the risk of having to pay attorney's fees and costs. That threat alone is an unfair disadvantage for the average person.

Current court rules and laws regarding frivolous cases and the awarding of attorneys' fees and costs already exist. Hawaii Rules of Civil Procedure 54 and 68 provide methods for the recovery of attorneys' fees and expenses. HRS §607-14.5 provides penalties for frivolous lawsuits. We therefore request that this measure be amended to delete the last sentence of that section.

Thank you for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.

February 2, 2017

TESTIMONY TO THE HUMAN SERVICES COMMITTEE

House Bill 1107 – Relating to American Sign Language Interpreter Referral Agencies

Representative Dee Morikawa
Chair, House Committee on Human Services
Hawaii State Capitol
Room 442
415 South Beretania Street
Honolulu, HI 96813

Dear Representative Morikawa,

As owners of a sign language interpreter agency, Isle Interpret, LLC of Honolulu, HI, we agree that Sign Language Interpreter Referral Agencies need to conduct business ethically and be accountable to the consumers they serve. However, we strongly oppose HB 1107 for numerous reasons including:

1. The bill contains errors and inaccurate information
2. There is a lack of transparency on where and how the data was collected
3. The supposed impetus for the bill, the list of concerns on page 2, do not correlate to the “prohibited acts” listed on page 7 and do not actually protect consumers of ASL/English interpreting services.
4. The bill demonstrates the lack of understanding on how an Interpreter Referral Agency operates.
5. The purpose of the bill is not to protect consumers. Rather the real objective shared at Communication Access Committee meeting is to ensure the bill fails so DCAB can request a House Concurrent Resolution that the auditor conduct a sunrise study conducted. We feel a study will find similar evidence of the unwarranted actions being proposed and should not be pursued.

1. The bill contains errors and inaccurate information

Hawaii has two (2) ASL Interpreter Referral Agencies. Page 1, line 4, states, “The disability and communication access board is aware of three interpreter referral agencies that are based and operate in the state.” This is not accurate. Isle Interpret, LLC, is one of two sign language interpreter agencies serving persons who are deaf, hard of hearing and deaf blind. A third agency referenced coordinates spoken language interpreters and refers all sign language interpreter requests to Isle Interpret. There are only two local agencies that specialize in sign language interpreter requests.

Isle Interpret is the current awardee of the State of Hawaii DHS/DVR Interpreter Referral Contract. As part of the state contract, Isle Interpret adheres to contract reporting requirements and has a Quality Control Plan that monitors quality of services and adherence to best practices. The Quality Control Plan ensures interpreters are properly vetted, have credentials in good standing and have complied with all the company requirements (to include: State and FBI checks, HIPAA training, Code of Conduct and Confidential Agreements, acknowledgment of the company Quality Control Plan and Grievance Program). Isle Interpret has stronger state monitoring and accountability measures than are proposed in this bill.

Concern 5, states, "Whether a referral fee is commensurate with the credential level of an interpreter selected for an assignment." Interpreter referral agencies charge an hourly rate. The suggestion of a referral fee is an inaccurate concept that the average interpreter referral agency does not utilize in the operation of their business.

Page 8, Legal rate; computation, states, "any interpreter referral agency that directly or indirectly receives any interest on the payment due to the interpreter, shall remit the interest and the payment due to the interpreter." Interpreter referral agencies pay independent contractors on regular basis, i.e. bimonthly or monthly, regardless if the referral agency is paid or not. This is an inaccurate assumption of how Interpreter referral agencies operate and pay independent contractors.

2. Lack of transparency on where and how the data was collected

What statistics are available that substantiate the bill's "concerns" as legitimate? Page 2-3, states, "Consumers and interpreters have raised concerns about the practices of interpreter referral agencies." No data has been shared with the public or interpreter agencies regarding these alleged concerns. There have been DCAB committee, Deaf Blind Task Force, Deaf and Hard of Hearing Advisory Board (DHHAB), Statewide Independent Living Council (SILC), and other community meetings where these concerns could have been shared and addressed. DCAB has not shared any consumer or interpreter feedback concerns with our agency. As the state interpreter contract awardee, it would have been prudent for DCAB to attempt to address community concerns by having a conversation with us or the DHS/DVR contract administrator. If there are grave concerns, why have they only now been shared in proposed legislation?

3. The stated impetus for the bill does not correlate to the prohibited acts. Seeing them listed side by side makes this glaringly obvious.

Concerns include the following:

1. Whether a deaf, hard of hearing, or deaf blind consumers preferred/requested interpreter is contacted first;
2. Whether a hierarchical order is used to contact interpreters with higher level credential;
3. Whether an interpreter who accepts and assignment is the most qualified;
4. Whether the information related to the assignment is complete and accurate enough for the interpreter to make an informed decision about accepting or declining assignment;
5. whether a referral fee is commensurate with the credential level of an interpreter selected for an assignment: and
6. whether a grievance or complete procedure with sanctions should be established to address and correct violations of the right of consumers to have the most qualified interpreter provide effective communication for an assignment.

Prohibited acts:

1. Referring an interpreter who does not hold a nationally recognized certification or state recognized credential to an interpreter assignment:
2. Failing to notify the requesting agency, within 24 hours of the assignment, of the interpreter who has been selected for specific assignment;
3. Failing to possess a current and valid registration prior to engaging a business or advertising as an interpreter referral agency;
4. Failing to keep all information related to the assignment, including the name parentheses S) of the deaf, hard of hearing, deaf blind, or hearing consumer confidential; or
5. Failing to obtain an agreement for full payment for an interpreting assignment prior to or at the time of the interpreting assignment is booked or placed with the interpreter or within three business days thereafter, except where the reservation specifically provides for direct payment of the amounts owed to the interpreter at the time of the assignment.

The financial penalties proposed are excessive, unreasonable, unjustified and do not correlate the original concerns.

One impetus for the bill seems to be the presence of Spoken (World) Language Agencies and their intermittent referral of sign language interpreter. Page 2, line 7, states, “there are other world language interpreter referral services in Hawaii that are now referring American Sign Language English interpreters for assignments.” This is not a new occurrence. These agencies have been using the DCAB’s online published document, “Sign Language Interpreters Communication Access Providers”* for years to coordinate their sporadic ASL requests. This has typically been addressed by sign language interpreters, as independent contractors, deciding whether an agency is reputable enough to work with. If a spoken language agency offers an assignment to a sign language interpreter, the interpreter as an independent contractor is free to decline the job offer. It is the interpreter’s ethical obligation according to our code of ethics to only accept assignments if they feel they are qualified.

Some mainland interpreter referral agencies have nationwide contracts that include serving Hawaii. Page 2, line 10, states, "...there are interpreter referral agencies based on the mainland that also refer American Sign Language English interpreters for assignments in Hawaii." It is impractical and infeasible for a Hawaii state licensing entity to exercising jurisdiction over a few mainland referral agencies that refer sporadic work to interpreters in Hawaii. If a Hawaii sign language interpreter does not want to work with a mainland agency, they are free to decline the job offer. Again, it is the interpreter's ethical obligation per the RID and HQAS code of ethics to only accept assignments they feel they are qualified to serve.

4. The bill demonstrates the lack of understanding on how an Interpreter Referral Agency operates.

The list of concerns on page 2 are questions of how an agency operates, not substantiated violations of laws, rights, or industry best practices that threaten the health and safety of the public and do not warrant regulation. Similar questions can be asked of any business, but does not warrant asking the government to regulate all businesses as proposed by this bill.

The bill proposes regulations that micromanagement of day to day operations of individual businesses and contractual policies and practices that is beyond the scope of government regulation and show a lack of understanding.

Some of the concerns listed are outside the control of an interpreter referral agency. For example, concern #3, "Whether an interpreter who accepts an assignment is the most qualified." A referral agency has no control over an individual interpreter accepting or declining an assignment. Additionally, #4, "Whether the information related to the assignment is complete and accurate enough for the interpreter to make an informed decision about accepting or declining assignment." Referral agencies request detailed information about assignments. The concept of enough is subjective and unreasonable to think a referral agency would be fined over someone's impression that there was not enough information.

5. The bill's objective is to fail and lead to a House Concurrent Resolution so a study can be conducted.

It was shared at a DCAB Communication Access Committee meeting that the objective of submitting the bill is to have it die in order to be able to request a House Concurrent Resolution for the auditor to conduct a sunrise study of licensure of sign language interpreters and regulation of sign language interpreter agencies. We feel a study will find similar evidence presented in our testimony of the unwarranted actions being proposed. Other states do not regulate sign language interpreter agencies. We ask the committee to vote in opposition to HB 1107 and the House Concurrent Resolution being requesting for a sunrise study to be

conducted. Pursuing a sunrise study would be a poor use of public time and funds for a licensure regulation measure that the community does not support nor need.

In summary, there is no clear evidence supporting the need for HB 1107. There is no valid evidence that a licensing entity would bring value to end consumers.

Mahalo,

Tamar Lani, MBA, CI, CT, NIC, SC:L, President
Susan Kroe-Unabia, CI, CT, Vice President

* DISABILITY AND COMMUNICATION ACCESS BOARD, "Sign Language Interpreters
Communication Access Providers"

link: <https://health.hawaii.gov/dcab/files/2016/10/Communication-Access-Providers-List-Website.pdf>

HB1107

Aloha

My name is Keri Lee. I am an American Sign Language (ASL) Interpreter. I am nationally and state certified. I am also an ASL teacher at Brigham Young University.

I support HB1107. I support it for all the reason mentioned in HB1107. I think having these agency required licensing is considered best practice, also it will provide minimum standards they will need to follow where there are currently none.

As an interpreter I rely on getting work through these agencies. I really appreciate having referral agencies. Some many people benefit from their service. Sometimes request can be made directly to me from the consumer who will be meeting with a Deaf person. I actually prefer getting jobs through the agency instead because if I get sick or my car breaks down for example, I can contact the agency and they will find a sub. It is nice to have their support. It is also nice that I don't have to send out invoices to each consumer. Having referral agencies in my opinion are beneficial to us as interpreters but also to those agencies, business etc. who need an interpreter to facilitate communicate between the hearing and Deaf person.

Again I support HB1107 because having agency required licensing is considered best practice.

Thank you for reading my testimony

Keri Lee

Laie, HI

HUStestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 1, 2017 7:18 PM
To: HUStestimony
Cc: heather.interpreter@gmail.com
Subject: *Submitted testimony for HB1107 on Feb 3, 2017 09:00AM*

HB1107

Submitted on: 2/1/2017

Testimony for HUS on Feb 3, 2017 09:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Benjamin	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

Marcella Alohalani Boido, M. A.

Hawaii State Judiciary Certified Spanish Court Interpreter

2733 Kaaha Street A5
Telephone: 808/946-2558

Honolulu, Hawaii 96826-4736
E-mail: boido@hawaii.edu

TO: Rep. Dee Morikawa, Chair; Rep. Chris Todd, Vice-chair
Members, House Committee on Human Services

FROM: M. Alohalani Boido, M. A.
Hawaii Judiciary Certified Spanish Court Interpreter, Tier 4

HEARING: February 2, 2017, 9:00 a.m., Rm. 329

RE: **OPPOSE, HB 1107** (also SB 973), Relating to ASL Interpreter Referral
Agencies

I am Marcella Alohalani Boido, a certified Spanish/English court interpreter. I am a founding member of Hawaii Interpreter Action Network (HIAN) and Hawaii Interpreters and Translators Association (HITA). Starting in 1989, I have been serving as a court interpreter.

In 2007, under pressure from the Legislature, the Hawaii Judiciary began to offer us the opportunity to take our oral certification exams. I passed my exam. That makes me one of ten (10) certified spoken language court interpreters in Hawaii. I would like to extend my heartfelt gratitude to all the legislators who made this possible.

Although I am both the president of HIAN and its Legislative Action Committee chair, I am submitting this as an individual. There was not enough time to consult HIAN's executive board.

Having read the bills, I reached out to my ASL colleagues and shared with them that I found these bills a matter of concern.

In turn, Susan Kroe-Unabia shared with me the letter that she and Tamar Lani sent to Rep. Morikawa. I agree with their analysis of the multiple flaws in these bills.

HB 1107 is so deeply flawed that it would take more pages to explain the problems than it took to write the bill. Tamar and Sue have done a good job of outlining the situation for you.

HB 1107 is not salvageable. Please hold this bill. Thank you.

February 2, 2017



Representative Dee Morikawa
Chair, House Committee on Human Services
Hawaii State Capitol Room 442
415 South Beretania Street
Honolulu, HI 96813

Testimony to the Human Services Committee regarding
HOUSE BILL 1107—Relating to American Sign Language Interpreter Referral Agencies

Dear Representative Morikawa,

I strongly oppose HB 1107 and oppose the very intent of this bill. I feel this bill is flawed in a number of areas.

I have been a part of the interpreting world for years, as an independent contract interpreter, a business owner, and an educator. I have served on a number of boards, commissions, and committees discussing language access issues and fighting for getting qualified and quality interpreters into our courtrooms and hospitals. I am an advocate for the use of good interpreters, and have been training interpreters for over 20 years at the University of Hawaii and in workshops all over the island and abroad. Through many years of hard work, working on certification issues and in educating public workers, I am proud to say that Hawaii has seen many positive changes in the use of interpreters today.

Americans with Disabilities Act of 1990 and the Hawaii Language Access law of 2006 established the fact that consumers with language communication difficulties have rights. But improvement in interpreter quality in the Hawaii state courts, for example, did not come through laws, but through educating the user, through interpreter training, by offering interpreting exams, and through honest competition. The increase in the quality of spoken language interpreters in the hospitals today has come through regulating hospital requirements, not agencies. It comes through contract negotiations, not law. It comes through an agreement of an understanding of what “quality” is and the contracts requiring it.

The Joint Commission, who is the accreditation board for hospitals and medical facilities, are requiring hospitals to use interpreting agencies who keep good records of their interpreters’ qualifications, and to send the most qualified interpreter when possible. However, with sign language interpreters, this becomes complicated by the consumer who prefers certain interpreters over others. Are they the best qualified just because the consumer likes them better than another interpreter? Is it really a matter of them being able to communicate better,

or is it a personality issue? Is a consumer's preference really a matter of language and interpreting skill, or a matter of personality? How does one look at these complaints and how does one regulate such a subjective issue? It would be nearly impossible to have an objective view on whether or not a company has sent the "best" interpreter. There are various exams that prove one's interpreting and language skills, and it is the ethical duty of the interpreter who should speak up if language is a barrier to communication with their client.

It is the training and certification of interpreters that is causing better interpreters to rise to the surface and get called more. The competition is good for the market. The rise of more interpreters is naturally weeding out untrained interpreters. Consumers are speaking out when they have a poor interpreter. One hospital staff worker told me that since there are now more choices of language service providers, their complaints about certain poor interpreters are now being heard-- precisely due to the fact there is other competition in town, not due to more laws.

This bill is against the very idea of democracy and consumer choice. Our federal and state business laws promote competition to prevent monopolies from forming. Users of interpreters, not government, should deal with their language provider contractors in a proper, legal method. They decide which company they like and which they do not based on a number of business decisions, including financial decisions, ease of cooperation, efficiency, quality and trust. Contracts are drawn up and many regulations govern each party.

Interpreters can ban together and boycott any referral agency which is unethical. There are courts of law to take a business or referral agency if payment is not made according to their contract. And if consumers want to complain about a certain interpreter or not getting a good interpreter, then there are avenues for them to do so. The courts have a complaint process for consumers of poor or no interpreters which will be on their website in various languages in the coming months. The hospitals have patient rights advocates, and the Office of Language Access has their complaint process. If a consumer is unhappy about their interpreter, let's point them in that direction to get assistance in a way that already exists.

Competition is good for the market, for keeping prices in checks and balances, and for encouraging interpreters to pass exams and get more training in order to be more marketable. I don't think the DCAB or another government agency should regulate this, or even regulate how a business operates or how much an interpreter agrees to get paid. Much of this is private contract negotiations and decisions. Regulating this market in this way just seems unethical and illegal.

There are tests and exams that interpreters can take to prove their qualifications. This credentialing process is already in place, and the law allows independent contractors to work for whomever they want. The interpreting profession is a highly ethical profession. If there are

unethical practices happening, the interpreters themselves will speak up. We don't need another government agency who is NOT in the business themselves to tell companies how to run their company or to govern their private business practices.

This law would only serve to over regulate a self-regulating industry, and would scare more companies from doing business in and with Hawaii, thereby limiting this business to fewer companies by subjective and bias methods. It would only do more harm to our consumers, and the lack of competition would serve to create a monopoly.

I urge you to NOT support HB 1107 for the numerous reasons stated above.

Thank you sincerely,

A handwritten signature in cursive script that reads "Suzanne M Zeng".

Dr. Suzanne M Zeng

P.O. Box 160951

Honolulu, HI 96816