

**ACT 201**

H.B. NO. 2374

A Bill for an Act Relating to the Office of Language Access.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to improve access to government services and programs for limited English proficient individuals by transferring the office of language access, along with all of the functions and duties of this office, from the department of labor and industrial relations to the department of health.

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

**“CHAPTER  
OFFICE OF LANGUAGE ACCESS**

§ -1 **General purpose; purpose of the office of language access.** Many individuals living in Hawaii read, write, speak, and understand English. There are many individuals, however, who are limited English proficient. Language for limited English proficient persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.

The purpose of this chapter is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons. It is the intent of the legislature that these services be guided by Executive Order No. 13166 and succeeding provisions of federal law, regulation, or guidance.

The purpose of the office of language access is to address the language access needs of limited English proficient persons and ensure meaningful access to services, programs, and activities offered by the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies, and all covered entities, for limited English proficient persons.

**§ -2 Definitions.** As used in this chapter, unless a different meaning clearly appears from the context:

“Access” or “participate” means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

“Covered entity” means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services to the public. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

“Executive director” means the executive director of the office of language access.

“Language” means human speech or the expression of ideas by written characters and includes systems used by nations, people, or other distinct communities.

“Limited English proficient person” means an individual who, on account of national origin, does not speak English as the person’s primary language and self identifies as having a limited ability to read, write, speak, or understand the English language.

“Oral language services” means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.

“Purchase-of-service contract” means any and all types of formal written agreements, regardless of what they may be called, between the State and any person, to purchase or otherwise acquire any service for the purpose of rendering services to the public.

“State” or “state agency” means the executive, legislative, or judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

“Vital documents” means printed documents that provide important information necessary to access or participate in services, programs, and activities of a state agency or covered entity, including but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

“Written language services” means the free provision of written information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.

**§ -3 Oral and written language services.** (a) Each state agency and all covered entities shall take reasonable steps to ensure meaningful access to ser-

VICES, programs, and activities by limited English proficient persons, which will be determined by a totality of circumstances, including the following factors:

- (1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;
- (2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The nature and importance of the services, programs, or activities; and
- (4) The resources available to the State or covered entity and the costs.

(b) Subject to subsection (a), each state agency and covered entity shall provide competent, timely oral language services to limited English proficient persons who seek to access services, programs, or activities.

(c) Subject to subsection (a), each state agency and covered entity shall provide written translations of vital documents to limited English proficient persons who seek to access services, programs, or activities, as follows:

- (1) Written translations of vital documents for each eligible limited English proficient group that constitutes five per cent or one thousand, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered; or
- (2) If there are fewer than fifty persons in a limited English proficient group that reaches the five per cent threshold in paragraph (1), written notice in the primary language to the limited English proficient language group of the right to receive competent oral interpretation of those written materials, free of cost.

(d) To the extent that the State requires additional personnel to provide language services based on the determination set forth in this section, the State shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions.

**§ -4 Additional obligations.** (a) Each state agency and covered entity shall establish a plan for language access.

(b) Each state agency's plan for language access shall be established in consultation with the executive director and the state agency's coordinator for language access. State agencies receiving federal financial assistance that did not file an initial language access plan pursuant to former section 371-34(b) by July 1, 2007, shall file an initial language access plan with the executive director no later than July 1, 2013, and every two years thereafter. All other state agencies that did not file a language access plan pursuant to former section 371-34(b) by July 1, 2008, shall file a language access plan with the executive director no later than July 1, 2014, and every two years thereafter. Agencies that filed initial language access plans pursuant to former section 371-34(b) by July 1, 2007, and July 1, 2008, shall continue to file their plans with the executive director every two years thereafter.

(c) Each state agency shall designate a language access coordinator who shall establish and implement the plan for language access in consultation with the executive director and the language access advisory council.

**§ -5 Public meetings and public hearings.** (a) State agencies to which this chapter applies shall not be required to translate meeting notices, agendas, or minutes.

(b) Subject to section -3, oral language services for public meetings or public hearings held by the legislature shall be provided if requested at least forty-eight hours in advance of the meeting or hearing. When the notice of any public meeting or public hearing is posted less than forty-eight hours in advance

of the meeting or hearing, oral language services shall be provided if requested at least twenty-four hours in advance of the meeting or hearing.

**§ -6 Office of language access; established.** (a) There is established within the department of health, for administrative purposes only, the office of language access. The head of the office shall be known as the executive director of the office of language access. The executive director shall be appointed by the governor without regard to chapter 76. The executive director shall:

- (1) Provide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements under this chapter or under any other law, regulation, or guidance;
- (2) Provide technical assistance to covered entities in their implementation of this chapter;
- (3) Review and monitor each state agency's language access plan for compliance with this chapter;
- (4) Where reasonable access is not provided, endeavor to eliminate the barrier using informal methods such as conference, conciliation, mediation, or persuasion. Where the language access barrier cannot be eliminated by informal methods, the executive director shall submit a written report with the executive director's opinion and recommendation to the state agency or the covered entity. The executive director may request the state agency or the covered entity to notify the executive director, within a specified time, of any action taken on the executive director's recommendation;
- (5) Consult with language access coordinators, the language access advisory council, and state department directors or their equivalent;
- (6) Subject to section -3, create, distribute to the State, and make available to covered entities multilingual signage in the more frequently encountered languages in the State, and other languages as needed, informing individuals of their right to free oral language services and inviting them to identify themselves as persons needing services; and
- (7) Adopt rules pursuant to chapter 91 to address the language needs of limited English proficient persons.

**§ -7 Language access advisory council.** (a) There is established the language access advisory council, which shall be placed within the department of health for administrative purposes only. The council shall consist of the following members to be appointed by the governor:

- (1) One representative from the state government;
- (2) One representative from a covered entity;
- (3) One bilingual worker who is or has been employed by a state-funded immigrant service agency or program;
- (4) One representative of an advocacy organization that provides services to limited English proficient persons;
- (5) One member from the limited English proficient population who has an interest in the provision of oral language services;
- (6) One representative from an accredited institution of higher learning who provides professional training in interpretation and translation;
- (7) One representative of a Hawaiian language advocacy organization;
- (8) One representative of a professional interpreter's organization;
- (9) One representative of a bilingual referral service or program;

- (10) One representative residing in the county of Hawaii who has shown interest in language access;
- (11) One representative residing in the county of Kauai who has shown interest in language access;
- (12) One representative residing in the county of Maui who has shown interest in language access;
- (13) One representative residing in the city and county of Honolulu who has shown interest in language access;
- (14) One member-at-large;
- (15) The executive director of the Hawaii civil rights commission or authorized representative, as an ex-officio member;
- (16) One representative from the disability and communication access board, as an ex-officio member; and
- (17) The executive director, as an ex-officio member.

(b) Members shall be appointed in accordance with section 26-34. The terms of the members shall be for four years. The council shall select one of its members to serve as chair. No member of the council shall receive any compensation for council services, but shall be allowed necessary expenses for travel, board, and lodging incurred in the performance of council duties.

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

- (1) Implementation and compliance with this chapter;
- (2) The quality of oral and written language services provided under this chapter; and
- (3) The adequacy of a state agency or covered entity's dissemination and training of its employees likely to have contact with limited English proficient persons, its policies and procedures for language services, its competency in working effectively with in-person and telephone interpreters, and its understanding of the dynamics of interpretation between clients, providers, and interpreters."

SECTION 3. Part II of chapter 371, Hawaii Revised Statutes, is repealed.

SECTION 4. All rights, powers, functions, and duties of the department of labor and industrial relations relating to the office of language access are transferred to the department of health.

SECTION 5. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

All employees who occupy civil service positions and whose functions are transferred to the department of health by this Act shall retain their permanent or temporary civil service status. Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act; provided that the employees possess the minimum qualifications and public employment requirements for the class or position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act may continue to retain the employee's

exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act; provided that the employees meet legal and public employment requirements for the position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of health may prescribe the duties and qualifications of the exempt employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

**SECTION 6.** All council members serving on the language access advisory council on the day prior to the effective date of this Act shall continue as members of the council and their terms shall be unaffected by this Act.

**SECTION 7.** All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of labor and industrial relations, its agencies, divisions, or offices relating to the office of language access as determined by both the department of labor and industrial relations and the office of language access, which is transferred to the department of health shall be transferred with the functions to which they relate.

**SECTION 8.** All rules, policies, procedures, guidelines, and other material adopted or developed by the office of language access to implement provisions of part II of chapter 371, Hawaii Revised Statutes, that are made applicable to the office of language access established by this Act, shall remain in full force and effect until amended or repealed by the office of language access established by this Act pursuant to chapter 91, Hawaii Revised Statutes.

**SECTION 9.** All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the office of language access transferred or placed for administrative purposes within the department of health shall remain in full force and effect.

**SECTION 10.** All relocation cost or expenses associated with transferring the office of language access to the department of health shall be borne by the appropriations allocation to the office of language access or the department of health with no liabilities or liens arising from such relocation activity accruing to the department of labor and industrial relations.

**SECTION 11.** All privileges and benefits as provided by the department of labor and industrial relations, including parking, that are currently enjoyed by the office of language access shall be forfeited and returned to the providing department upon transfer of the office of language access to the department of health.

**SECTION 12.** There shall be a transition period to facilitate the transfer of the office of language access from the department of labor and industrial relations to the department of health. The year following July 1, 2012, shall serve as a transition period, in which the state agencies affected by this Act shall assist the executive director in implementing the transfer under this Act. Once the transfer is completed, the department of health shall provide public notice

that the transfer is completed in a printed publication or electronic format that is accessible statewide.

**SECTION 13.** The provisions of this Act are to be liberally construed to effectuate its purpose.

**SECTION 14.** All acts passed by the legislature during this regular session of 2012, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

**SECTION 15.** This Act shall take effect on July 1, 2012.

(Approved July 3, 2012.)