S T A T E O F N E W Y O R K

5733

2011-2012 Regular Sessions

I N S E N A T E

June 14, 2011

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to requiring state agencies that directly serve the public to enact policies to ensure that people who do not speak English well receive the interpretation and translation services they need in order to access vital government programs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 301 of the executive law is renumbered section 302 and a new section 301 is added to read as follows:

S 301. AGENCY LANGUAGE INTERPRETATION. 1. DEFINITIONS. AS USED IN THIS SECTION: (A) "AGENCY COVERED LANGUAGE" SHALL MEAN EVERY NON-ENGLISH LANGUAGE USED BY A LIMITED ENGLISH PROFICIENT POPULATION THAT CONSTITUTES FIVE PERCENT OR ONE THOUSAND INDIVIDUALS, WHICHEVER IS LESS, OF THE POPULATION SERVED OR ENCOUNTERED, OR LIKELY TO BE SERVED OR ENCOUNTERED, BY THE AGENCY.

(B) "AGENCY" SHALL MEAN ANY STATEWIDE GOVERNMENT AGENCY, DEPARTMENT, OR PROGRAM THAT FURNISHES INFORMATION OR RENDERS SERVICES, PROGRAMS, OR ACTIVITIES DIRECTLY TO THE PUBLIC OR CONTRACTS WITH OTHER ENTITIES, EITHER DIRECTLY OR INDIRECTLY, TO CONDUCT PROGRAMS, SERVICES, OR ACTIVITIES, AND ALL POLITICAL SUBDIVISIONS AND LOCAL ENTITIES OF SUCH STATEWIDE GOVERNMENT AGENCY, DEPARTMENT, OR PROGRAM. AGENCIES INCLUDE, BUT ARE NOT LIMITED TO: THE OFFICE FOR THE AGING; THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES; THE OFFICE OF ATTORNEY GENERAL; THE OFFICE OF CHILDREN AND FAMILY SERVICES; THE CITY UNIVERSITY OF NEW YORK; THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION; THE OFFICE OF COURT ADMINISTRATION; THE DIVISION OF CRIMINAL JUSTICE SERVICES; THE DEPARTMENT OF EDUCATION; THE BOARD OF ELECTIONS; DEPARTMENT OF FAMILY ASSISTANCE; THE DEPARTMENT OF HEALTH; THE DIVISION OF HOUSING AND COMMUNITY RENEWAL; THE DIVISION OF HUMAN RIGHTS; THE DEPARTMENT OF FINANCIAL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SERVICES; THE DEPARTMENT OF LABOR; THE METROPOLITAN TRANSPORTATION AUTHORITY; THE DEPARTMENT OF MOTOR VEHICLES; THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION; THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY; OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE; OFFICE OF PROBATION AND CORRECTIONAL ALTERNATIVES; THE DIVISION OF STATE POLICE; THE STATE UNIVERSITY OF NEW YORK; THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE; AND THE DIVISION OF VETERAN'S AFFAIRS.

(C) "COMPETENT INTERPRETATION" SHALL MEAN A TRANS-LANGUAGE RENDITION OF A SPOKEN MESSAGE IN WHICH THE INTERPRETER COMPREHENDS THE SOURCE LANGUAGE AND CAN SPEAK COMPREHENSIVELY IN THE TARGET LANGUAGE TO CONVEY THE MEANING INTENDED IN THE SOURCE LANGUAGE. THE INTERPRETER KNOWS RELEVANT TERMINOLOGY AND PROVIDES ACCURATE INTERPRETATIONS BY CHOOSING EQUIVALENT EXPRESSIONS THAT CONVEY THE BEST MATCHING AND MEANING TO THE SOURCE LANGUAGE AND CAPTURES, TO THE GREATEST POSSIBLE EXTENT, ALL NUANCES INTENDED IN THE SOURCE MESSAGE.

(D) "COMPETENT TRANSLATION" SHALL MEAN A TRANS-LANGUAGE RENDITION OF A WRITTEN MESSAGE IN WHICH THE TRANSLATOR COMPREHENDS THE SOURCE LANGUAGE AND CAN WRITE COMPREHENSIVELY IN THE TARGET LANGUAGE TO CONVEY THE MEANING INTENDED IN THE SOURCE LANGUAGE. THE TRANSLATOR KNOWS RELEVANT TERMINOLOGY AND PROVIDES ACCURATE TRANSLATIONS BY CHOOSING EQUIVALENT EXPRESSIONS THAT CONVEY THE BEST MATCHING AND MEANING TO THE SOURCE LANGUAGE AND CAPTURES, TO THE GREATEST POSSIBLE EXTENT, ALL NUANCES INTENDED IN THE SOURCE MESSAGE. COMPETENT TRANSLATION SHALL NOT INCLUDE ONLINE TRANSLATION TOOLS SUCH AS GOOGLE TRANSLATE, YAHOO! BABEL FISH, AND COMPARABLE SERVICES.

(E) "LANGUAGE ASSISTANCE SERVICES" SHALL MEAN COMPETENT INTERPRETATION AND TRANSLATION SERVICES.

(F) "LIMITED ENGLISH PROFICIENT INDIVIDUAL" OR "LEP INDIVIDUAL" SHALL MEAN AN INDIVIDUAL WHO DOES NOT READ, WRITE, SPEAK, AND/OR UNDERSTAND THE ENGLISH LANGUAGE AT A LEVEL THAT PERMITS HIM OR HER TO COMMUNICATE EFFECTIVELY WITH THE AGENCY.

(G) "PRIMARY LANGUAGE" SHALL MEAN THE LANGUAGE IN WHICH A LIMITED ENGLISH PROFICIENT INDIVIDUAL PREFERS TO COMMUNICATE.

(H) "VITAL DOCUMENTS" SHALL MEAN PRINTED AND ONLINE DOCUMENTS THAT PROVIDE INFORMATION NECESSARY TO ACCESS OR PARTICIPATE IN SERVICES, PROGRAMS, AND ACTIVITIES OF AN AGENCY, INCLUDING BUT NOT LIMITED TO APPLICATIONS, CORRESPONDING INSTRUCTIONAL MATERIALS, LEGAL CONTRACTS, STIPULATIONS, OUTREACH MATERIALS, AND WRITTEN NOTICES OR LETTERS THAT AFFECT OR RELATE TO THE LEGAL RIGHTS OR BENEFITS OF AN INDIVIDUAL OR THE AGENCY'S SERVICES, PROGRAMS OR BENEFITS AND WHICH ARE USED OR INTENDED TO BE USED FOR COMMUNICATING WITH INDIVIDUALS OR THE PUBLIC.

2. INTERPRETATION SERVICES. (A) EVERY AGENCY SHALL PROVIDE COMPETENT INTERPRETATION AT ALL STAGES OF THE LEP INDIVIDUAL'S INTERACTION WITH THE AGENCY AND AT NO COST TO THE LEP INDIVIDUAL. SUCH COMPETENT INTERPRETATION MUST BE PROVIDED PROMPTLY BUT NEED NOT BE PROVIDED IN PERSON OR FACE-TO-FACE IN ORDER TO MEET THE REQUIREMENTS OF THIS SECTION.

(B) MINOR CHILDREN SHALL NOT BE USED TO INTERPRET AT ANY TIME, EXCEPT IN AN EXTREME EMERGENCY. IF MINOR CHILDREN ARE USED TO INTERPRET, A RECORD SHALL BE KEPT OF THE INCIDENT IN THE INDIVIDUAL'S CASE FILE, IF ONE EXISTS.

(C) THE AGENCY IS PROHIBITED FROM REQUIRING THAT AN LEP INDIVIDUAL PROVIDE HIS OR HER OWN INTERPRETATION SERVICES.

(D) USE OF UNTRAINED OR INFORMAL INTERPRETERS SUCH AS THE FAMILY OR FRIENDS OF AN LEP INDIVIDUAL SHALL BE ACTIVELY DISCOURAGED. IF AN LEP INDIVIDUAL CHOOSES TO USE AN INFORMAL INTERPRETER AFTER BEING NOTIFIED OF THE AVAILABILITY OF FREE, TIMELY AND COMPETENT INTERPRETATION, HE OR

SHE MUST COMPLETE A WAIVER THAT IS SIGNED BY A MANAGER AT THE AGENCY AND BY THE LEP INDIVIDUAL.

3. LANGUAGE ACCESS PLAN. (A) EACH AGENCY SHALL PUBLISH, AND UPDATE EVERY TWO YEARS, WITH THE FIRST PLAN BEING DEVELOPED WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, A LANGUAGE ACCESS PLAN THAT WILL REFLECT HOW THE AGENCY WILL COMPLY WITH THE PROVISIONS OF THIS SECTION AND ALL PROGRESS MADE SINCE THE AGENCY LAST SUBMITTED A LANGUAGE ACCESS PLAN.

(B) EACH LANGUAGE ACCESS PLAN SHALL BE WRITTEN IN CONSULTATION WITH THE STATE CHIEF DIVERSITY OFFICER, THE STATEWIDE LANGUAGE ACCESS DIRECTOR, THE AGENCY'S LANGUAGE ACCESS COORDINATOR, THE LOCAL SUBDIVISIONS' LANGUAGE ACCESS COORDINATORS, AND THE DIRECTORS THAT CONDUCT OUTREACH TO LIMITED ENGLISH PROFICIENT POPULATIONS.

(C) EACH LANGUAGE ACCESS PLAN SHALL SET FORTH, AT MINIMUM, THE FOLLOWING:

(1) WHEN AND BY WHAT MEANS THE AGENCY WILL PROVIDE LANGUAGE ASSISTANCE SERVICES AND AN EXPLANATION AS TO HOW THIS DETERMINATION WAS REACHED;

(2) THE TITLES OF ALL AVAILABLE TRANSLATED DOCUMENTS AND THE CORRESPONDING LANGUAGES INTO WHICH THEY HAVE BEEN TRANSLATED;

(3) THE NUMBER OF PUBLIC CONTACT POSITIONS IN THE AGENCY AND THE NUMBER OF BILINGUAL EMPLOYEES IN PUBLIC CONTACT POSITIONS, INCLUDING THE LANGUAGES THEY SPEAK;

(4) DOCUMENTATION OF THE LANGUAGE NEEDS OF THE POPULATION SERVED AND THE POPULATION ELIGIBLE TO BE SERVED BY THE AGENCY;

(5) FOR AGENCIES THAT PROVIDE INDIVIDUALIZED PROGRAMS AND SERVICES, A SYSTEM FOR TRACKING THE PRIMARY LANGUAGE OF EVERY INDIVIDUAL WHO SEEKS OR RECEIVES SERVICES FROM THE AGENCY;

(6) A TRAINING PLAN FOR AGENCY EMPLOYEES WHICH INCLUDES, AT MINIMUM, ANNUAL TRAINING ON THE LANGUAGE ACCESS POLICIES OF THE AGENCY AND HOW TO PROVIDE LANGUAGE ASSISTANCE SERVICES;

(7) A LANGUAGE ACCESS COORDINATOR AT THE AGENCY, WHO SHALL BE PUBLICLY IDENTIFIED;

(8) IF OUTREACH IS CONDUCTED BY THE AGENCY, A MULTI-LINGUAL OUTREACH PLAN TO LEP COMMUNITIES REGARDING THE BENEFITS AND SERVICES OFFERED BY THE AGENCY AND THE LANGUAGE SERVICES PROVIDED;

(9) A DESCRIPTION OF THE FUNDING AND BUDGETARY SOURCES UPON WHICH THE AGENCY INTENDS TO RELY TO IMPLEMENT ITS LANGUAGE ACCESS PLAN;

(10) A DETAILED PLAN FOR ANNUAL INTERNAL MONITORING OF THE AGENCY'S COMPLIANCE WITH THIS ORDER; AND

(11) AN EXPLANATION OF ANY AREAS OF CURRENT NON-COMPLIANCE, INCLUDING COMPLAINTS RECEIVED AND THEIR DISPOSITION, THE REASONS FOR NON-COMPLIANCE AND STEPS TO BE TAKEN TO REMEDY AREAS OF NON-COMPLIANCE, AND A REQUEST FOR APPROVAL OF EXPECTED FUTURE NON-COMPLIANCE, TO WHICH THE STATEWIDE LANGUAGE ACCESS DIRECTOR SHALL RESPOND WITHIN SIXTY DAYS OF THE REQUEST.

(D) AT A MINIMUM EACH AGENCY SHALL MAINTAIN RECORDS OF ALL INFORMATION NECESSARY TO COMPLETE AND VERIFY THE INFORMATION SET FORTH IN THE LANGUAGE ACCESS PLAN.

4. AGENCY'S LANGUAGE ACCESS COORDINATOR. EACH AGENCY SHALL DESIGNATE A LANGUAGE ACCESS COORDINATOR, WHO SHALL REPORT DIRECTLY TO THE DIRECTOR OF THE AGENCY. THE RESPONSIBILITIES OF THE AGENCY'S LANGUAGE ACCESS COORDINATOR SHALL INCLUDE:

(A) GENERAL OVERSIGHT OF THE AGENCY'S LANGUAGE ACCESS PLAN;

(B) FOR STATEWIDE AGENCIES, OVERSIGHT, CENTRAL COORDINATION, AND TECHNICAL ASSISTANCE TO THE AGENCY'S POLITICAL SUBDIVISION AND LOCAL ENTITIES IN THEIR IMPLEMENTATION OF THE PROVISIONS OF THIS SECTION;

(C) ENSURING THAT THE PROVISION OF LANGUAGE ASSISTANCE SERVICES BY THE AGENCY MEETS ACCEPTABLE STANDARDS OF TRANSLATION OR INTERPRETATION;

(D) PROCUREMENT OF CONTRACT LANGUAGE SERVICES WHERE APPROPRIATE AND MANAGEMENT OF THE RELATIONSHIP WITH ALL LANGUAGE SERVICE CONTRACTORS;

(E) TRACKING, MONITORING AND INVESTIGATING PUBLIC COMPLAINTS REGARDING LANGUAGE ACCESS SERVICES AT THE AGENCY;

(F) OVERSEEING STAFF TRAINING ON THE LANGUAGE ACCESS PLAN, LANGUAGE POLICY, AND HOW TO OBTAIN LANGUAGE SERVICES FOR LEP INDIVIDUALS;

(G) ENSURING THAT RECORDKEEPING AND MONITORING REQUIREMENTS OF THIS SECTION ARE COMPLIED WITH;

(H) COMPILING, MAINTAINING, AND DISSEMINATING ALL TRANSLATED DOCUMENTS TO BE USED BY OTHER AGENCY ENTITIES, INCLUDING ALL LOCAL OFFICES AND POLITICAL SUBDIVISIONS; AND

(I) OVERSEEING AND COORDINATING THE AGENCY'S ANNUAL INTERNAL MONITORING, TESTING AND TRAINING ACTIVITIES.

5. MONITORING AND COMPLAINTS. (A) THE AGENCY SHALL MONITOR ITS OWN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION BY ANNUALLY COLLECTING DATA ON THE PROVISION OF LANGUAGE ASSISTANCE SERVICES, THE AVAILABILITY OF TRANSLATED MATERIALS, WHETHER SIGNAGE IS PROPERLY POSTED, AND ANY OTHER RELEVANT MEASURES. THIS INFORMATION AND ANY OTHER COLLECTED DURING THE INTERNAL MONITORING PROCESS SHALL BE MADE AVAILABLE TO THE STATEWIDE LANGUAGE ACCESS DIRECTOR. THE MONITORING PLAN SHALL INCLUDE FEEDBACK FROM THE PUBLIC, COMMUNITY GROUPS AND OTHER STAKEHOLDERS.

(B) THE AGENCY SHALL ESTABLISH A SYSTEM WHEREBY LEP INDIVIDUALS MAY SUBMIT COMPLAINTS TO THE AGENCY REGARDING LANGUAGE ACCESS SERVICES PROVISION OR LACK THEREOF, AND ALL SUCH COMPLAINTS SHALL BE INVESTIGATED BY THE AGENCY LANGUAGE ACCESS COORDINATOR AND/OR SUCH INDIVIDUALS WITHIN THE AGENCY AS THE LANGUAGE ACCESS COORDINATOR SHALL DETERMINE. THE AGENCY MUST PROVIDE ALL LEP INDIVIDUALS SUBMITTING COMPLAINTS WRITTEN NOTIFICATION OF THE RESULTS OF ANY INVESTIGATIONS RESULTING FROM SUCH COMPLAINTS, INCLUDING A DESCRIPTION OF THE CORRECTIVE ACTION TO BE TAKEN IN RESPONSE TO THE COMPLAINT, IF SUCH CORRECTIVE ACTION IS REQUIRED.

6. GOOD CAUSE. IT SHALL BE GOOD CAUSE FOR AN INDIVIDUAL'S FAILURE TO RESPOND TO AN AGENCY INQUIRY OR REQUIREMENT, FAILURE TO CERTIFY OR RE-CERTIFY FOR BENEFITS, FAILURE TO ATTEND MANDATORY APPOINTMENTS OR FOR AN UNTIMELY RESPONSE, IF THE LEP INDIVIDUAL IS DENIED LANGUAGE SERVICES AS REQUIRED UNDER THIS SECTION.

7. STATEWIDE OVERSIGHT, COORDINATION AND ASSISTANCE. (A) THE DIRECTOR OF STATE OPERATIONS SHALL PROVIDE OVERSIGHT, CENTRAL COORDINATION AND TECHNICAL ASSISTANCE TO AGENCIES IN THEIR IMPLEMENTATION OF THE PROVISIONS OF THIS ORDER AND ENSURE THAT THE PROVISION OF SERVICES BY AGENCIES MEETS ACCEPTABLE STANDARDS OF TRANSLATION OR INTERPRETATION.

(B) THERE SHALL BE A STATEWIDE LANGUAGE ACCESS DIRECTOR WITHIN THE OFFICE OF THE DIRECTOR OF STATE OPERATIONS, WHO IS CHARGED WITH OVERSIGHT WITH ALL AGENCIES' COMPLIANCE WITH THE PROVISIONS OF THIS SECTION. THE STATEWIDE LANGUAGE ACCESS DIRECTOR SHALL:

(1) REVIEW AND MONITOR EACH AGENCY'S LANGUAGE ACCESS PLAN FOR COMPLIANCE WITH THIS SECTION AND TITLE VI OF THE CIVIL RIGHTS ACT OF 1964;

(2) TRACK AND MONITOR PUBLIC COMPLAINTS REGARDING LANGUAGE ACCESS VIOLATIONS AT EACH AGENCY AND, WHERE NECESSARY, ISSUE WRITTEN FINDINGS OF NONCOMPLIANCE TO THE AGENCY REGARDING FAILURES TO PROVIDE LANGUAGE ACCESS;

(3) REVIEW AND MONITOR THE LANGUAGE ACCESS COORDINATORS WITH RESPECT TO THEIR PERFORMANCE OF RESPONSIBILITIES UNDER THIS SECTION; AND

(4) FACILITATE SHARING OF BEST PRACTICES AND INTERAGENCY COLLABORATION TO IMPROVE COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

(C) EVERY AGENCY SHALL COOPERATE WITH THE STATEWIDE LANGUAGE ACCESS DIRECTOR AND SHALL FURNISH SUCH INFORMATION AND ASSISTANCE AS THE STATEWIDE LANGUAGE ACCESS DIRECTOR DETERMINES IS REASONABLY NECESSARY TO FULFILL THESE DUTIES.

8. PRIVATE RIGHT OF ACTION; COMPLAINTS. INDIVIDUALS SHALL HAVE A PRIVATE RIGHT OF ACTION TO ENFORCE THE RIGHTS GRANTED UNDER THIS SECTION AS SET FORTH UNDER SUBDIVISIONS ONE THROUGH SIX OF THIS SECTION.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.