HOUSE DOCKET, NO. 3616 FILED ON: 1/20/2023

HOUSE . . . . . No. 3084

The Commonwealth of Massachusetts

PRESENTED BY:

Adrian C. Madaro and Carlos González

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to language access and inclusion.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Adrian C. Madaro	*1st Suffolk*	*1/20/2023*
Carlos González	*10th Hampden*	*1/20/2023*
Steven Ultrino	*33rd Middlesex*	*1/30/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*1/25/2023*
Sal N. DiDomenico	*Middlesex and Suffolk*	*1/25/2023*
Michael D. Brady	*Second Plymouth and Norfolk*	*1/26/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/26/2023*
Frank A. Moran	*17th Essex*	*1/30/2023*
Christine P. Barber	*34th Middlesex*	*1/30/2023*
Sean Garballey	*23rd Middlesex*	*1/30/2023*
Jack Patrick Lewis	*7th Middlesex*	*1/30/2023*
David Henry Argosky LeBoeuf	*17th Worcester*	*1/30/2023*
Mindy Domb	*3rd Hampshire*	*1/31/2023*
Russell E. Holmes	*6th Suffolk*	*1/31/2023*
Daniel Cahill	*10th Essex*	*2/1/2023*
Tackey Chan	*2nd Norfolk*	*2/2/2023*
Thomas M. Stanley	*9th Middlesex*	*2/2/2023*
Mike Connolly	*26th Middlesex*	*2/2/2023*

Antonio F. D. Cabral	*13th Bristol*	*2/2/2023*
Jon Santiago	*9th Suffolk*	*2/13/2023*
William C. Galvin	*6th Norfolk*	*2/13/2023*
Michelle M. DuBois	*10th Plymouth*	*2/13/2023*
Patricia A. Duffy	*5th Hampden*	*2/13/2023*
Samantha Montaño	*15th Suffolk*	*2/13/2023*
Walter F. Timilty	*Norfolk, Plymouth and Bristol*	*2/13/2023*
Kay Khan	*11th Middlesex*	*2/13/2023*
Jason M. Lewis	*Fifth Middlesex*	*2/13/2023*
Natalie M. Higgins	*4th Worcester*	*2/13/2023*
James C. Arena-DeRosa	*8th Middlesex*	*2/13/2023*
James B. Eldridge	*Middlesex and Worcester*	*2/13/2023*
Erika Uyterhoeven	*27th Middlesex*	*2/13/2023*
Steven Owens	*29th Middlesex*	*2/13/2023*
Vanna Howard	*17th Middlesex*	*2/15/2023*
Jay D. Livingstone	*8th Suffolk*	*2/15/2023*
Tram T. Nguyen	*18th Essex*	*2/15/2023*
Jennifer Balinsky Armini	*8th Essex*	*2/24/2023*
Rob Consalvo	*14th Suffolk*	*2/24/2023*
Simon Cataldo	*14th Middlesex*	*2/24/2023*
Michelle L. Ciccolo	*15th Middlesex*	*3/6/2023*
Margaret R. Scarsdale	*1st Middlesex*	*3/6/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*3/14/2023*
Dylan A. Fernandes	*Barnstable, Dukes and Nantucket*	*3/14/2023*
Christopher J. Worrell	*5th Suffolk*	*3/14/2023*
Tommy Vitolo	*15th Norfolk*	*3/15/2023*
Judith A. Garcia	*11th Suffolk*	*3/16/2023*
Danillo A. Sena	*37th Middlesex*	*3/31/2023*
Rita A. Mendes	*11th Plymouth*	*4/5/2023*
Marjorie C. Decker	*25th Middlesex*	*5/11/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*6/13/2023*
Chynah Tyler	*7th Suffolk*	*7/17/2023*
Liz Miranda	*Second Suffolk*	*10/3/2023*

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HOUSE . . . . . No. 3084

By Representatives Madaro of Boston and González of Springfield, a petition (accompanied by bill, House, No. 3084) of Adrian C. Madaro, Carlos González and others for legislation to require state agencies to provide timely, culturally competent oral language services to all limited English proficiency individuals who seek to access services, programs, or activities. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to language access and inclusion.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Title II of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by inserting after Chapter 6D the following chapter:-

CHAPTER 6E. LANGUAGE ACCESS AND INCLUSION.

Section 1. Definitions. For the purposes of this act, the following terms shall have the following meanings—

"Auxiliary aids and services" mean items, equipment or services that assist effective communication between a deaf or hard of hearing individual and an individual who is not deaf or hard of hearing.

"Culturally competent" means having a set of congruent behaviors, attitudes and policies that enables effective work in cross-cultural situations, in a manner which respects the beliefs, interpersonal styles, attitudes, language and behaviors of service recipients.

"Equal access" means to be informed of, participate in, and benefit from public services offered by a state agency, at a level equal to English proficient individuals.

"Language access plan" means an administrative blueprint by which an agency complies with language access requirements. The plan shall outline the tasks to be undertaken, establish deadlines by which actions will be taken, identify responsible personnel assigned to implement the plan, and establish priorities relative to the implementation of these plans.

"Language access services" means oral interpretation services, oral language services, and written translation services, including auxiliary aids and services.

"Limited English proficient" or "LEP" individuals means individuals who do not speak English as their primary language and have a limited ability to speak, read, write, or understand English.

"Machine translation" means automated translation by computer software which translates a text from the source language into the target language without human intervention.

"Oral interpretation" means the act of listening to something in one language (source language) and orally translating it into another (target language).

"Oral language services" means various methods of providing verbal information and interpretation through staff interpreters, bilingual or multilingual staff, telephone interpreter services, and private interpreter services.

"Outside service providers" include, but are not limited to, an organization that formally or informally contracts with, routinely provides, or administers services the relevant state agency requires, recommends, or to which it refers its clients.

"Primary language" means the preferred language of the LEP individual.

"Public contact position" means a position determined by the state agency to be one that includes meeting, contacting and dealing with the public in the performance of the agency's functions.

"Qualified bilingual employee" means a staff person who is proficient in both the English language and the non-English language to be used. Qualified bilingual employees may be categorized as Tier 1 Bilingual Employees, or Tier 2 Bilingual Employees.

"Qualified interpreter" is a person who is fluent in both the English language and the non-English language to be used, and who, either by certification, training or experience, is skilled in simultaneous interpretation.

"Qualified multilingual employee" means a staff person who is proficient in the English language and more than one non-English language to be used. Qualified multilingual employees may be categorized as Tier 1 Multilingual Employees, or Tier 2 Multilingual Employees.

"Qualified translator" means a person who has a thorough knowledge of writing, reading and proofreading in both the English language and the non-English language to be used, either by certification, training or experience, and thereby is able to render a text from one language into another, maintaining its tone, style and complex meaning, observing the cultural nuances, and remaining impartial to the content.

"State agency" means an agency or executive department of state government.

"Vital document" means a document containing information which, if not provided accurately or in a timely manner, would have adverse consequences for the intended recipient, including, but not limited to, documents that affect or relate to legal rights, privileges, or duties, as well as applications, informational materials, notices, and complaint forms.

"Written translation" means the replacement of a written text from one language (source language) into an equivalent written text into another language (the target language).

Section 2. Communications with the Public.

A state agency shall provide equal access to services, programs, and activities serving limited English proficient individuals in a reasonable timeframe, including:

(a) Oral interpretation

1. A state agency shall provide timely, culturally competent oral language services to all LEP individuals who seek to access services, programs, or activities. State agencies may, utilizing existing funds, contract with telephone-based interpretation services or community-based organizations that provide interpretation to LEP individuals, in addition to utilizing qualified Tier 1 bilingual or multilingual employees.

2. A state agency shall notify every person inquiring about services, every applicant, and every recipient of services of their right to timely oral interpretation in their primary language.

3. A state agency that significantly relies on outside service providers to fulfill the agency's responsibilities to the public shall ensure the implementation of the requirements of Section 2(a)(1) and Section 2(a)(2) within those outside organizations' policies and practices.

(b) Written translation

1. A state agency shall issue vital documents in the following languages: Arabic, Cape Verdean Creole, Chinese (Simplified and Traditional), French, Haitian Creole, Khmer, Korean, Portuguese, Russian, Spanish, Vietnamese and any other languages deemed necessary by the agency's language access survey.

2. A state agency shall translate all notices and materials that explain its services in the languages stated above.

3. A state agency shall utilize qualified translators or Tier 1 bilingual or multilingual employees, to translate notices, materials, and vital documents. Agencies shall not rely solely on machine translation of notices, materials, and vital documents. A state agency that significantly relies on outside service providers to fulfill the agency's responsibilities to the public shall ensure the implementation of the requirements of Section 2(b)(1) and Section 2(b)(2) by the outside service provider.

4. LEP individuals whose primary language is not covered under Section 2(b)(1) or Section 2(b)(2) are entitled to the oral interpretation of vital documents into their primary language.

(c) Websites

1. If a state agency maintains one or more websites for use by the public, the agency shall provide the website in the following languages: Arabic, Cape Verdean Creole, Chinese (Simplified and Traditional), French, Haitian Creole, Khmer, Korean, Portuguese, Russian, Spanish, Vietnamese and any other languages deemed necessary by the agency's language access survey. The state agency shall ensure that its websites and online application materials are mobile compatible and that they satisfy or exceed the official Federal Plain Language Guidelines, March 2011, Rev. 1, May 2011 for the Plain Writing Act of 2010.

2. Agencies shall not rely solely on machine translation for the translation of its websites. A state agency shall utilize qualified translators or Tier 1 bilingual or multilingual employees to translate its websites.

3. A state agency that maintains one or more websites for use by the public shall provide forms and processes for submitting complaints of alleged violations of this act on the homepage of the website. The forms and processes shall be translated into the languages stated above.

Section 3. Language Access Plans

(a) Requirements of language access plans

1. A state agency shall develop a language access plan to implement protocols for providing services to LEP individuals and deaf or hard of hearing individuals in accordance with this act. After the language access plan is implemented, the agency shall update its language access plan every two years based upon the most recent language access survey. The language access plan shall include:

i. The state agency shall conduct a needs assessment that includes data on the language composition of the population served by the agency, including American Sign Language. The agency shall determine the percentage of the eligible service population who are non-English speakers, LEP, or deaf or hard of hearing; the frequency with which the agency provides services to non-English speakers and LEP and deaf or hard of hearing individuals; and the primary languages used by non-English or LEP individuals in the agency's service area. The needs assessment shall also identify all points of contact between the agency and the public, and all potential language or language-related barriers to services and programs, including the location of offices.

ii. The state agency shall identify available language resources and staff to deliver services, programs, and activities to LEP individuals and deaf or hard of hearing individuals who require auxiliary aids and services, including existing staff who can provide linguistically, culturally, and technically proficient interpretation services. The language resources assessment shall detail the language services available under existing state contracts for in-person interpretation, telephone interpretation, and translation, and determine the steps needed to make these services available for staff use, including equipment and training.

iii. Language service protocols shall provide staff with procedures and instructions for securing or procuring language services, and designed for ease of use, with minimal approval or documentation required.

2. To complete its needs assessment and language resources assessment, a state agency shall conduct a language survey of each of its statewide and local offices every three years to provide the following:

i. a calculation of the percentage of LEP individuals served by the agency's central and local offices, categorized by primary language.

ii. a determination of whether the use of oral language services and written translation is reliably serving the language needs of the individuals served by the agency.

iii. a determination of whether the use of auxiliary aids and services is reliably serving the language needs of the individuals served by the agency.

iv. an evaluation of whether contracted interpreter services are working effectively.

v. an evaluation of the effectiveness of annual language access training.

vi. a description of the agency's procedures for identifying language needs at central and local offices and assigning qualified bilingual or multilingual employees to those offices.

vii. a description of agency procedures for recruiting and retaining qualified bilingual or multilingual employees in central and local offices.

viii. the number of qualified bilingual or multilingual employees, in public contact positions in each central and local office, and the languages they speak other than English.

ix. a description of any training the agency provides to its staff on the provision of services to LEP and deaf or hard of hearing individuals, frequency of training, and date of most recent training.

x. a description of complaints regarding language access received by the agency since submitting its most recent report under Section 6, and the agency's procedures for accepting and resolving these complaints.

xi. a description of the agency's procedures for identifying vital documents for translation.

Section 4. Personnel.

Coordinators

1. A state agency shall designate a language access coordinator whose sole responsibility is to focus upon language access needs and the agency's compliance with this act, in consultation with the language access advisory board. State agencies with multiple offices or divisions shall designate regional language access coordinators who shall address the language access needs of the relevant region and train the regions' staff on compliance with this act. Regional language access coordinators shall report to the language access coordinator.

2. Language access coordinators shall maintain a centralized, electronic, searchable language access database containing the following data, which shall be submitted to the office of access and opportunity, and to the language access advisory board, including:

i. all formal and informal requests for language access services and the status of those requests;

ii. all language access-related complaints, including complaints of language discrimination and/or disability discrimination in cases of the deaf or hard of hearing;

iii. the status and progress of all such requests and complaints;

iv. the resolution of all such requests and complaints, including decisions by the regional and central offices;

v. the reasons for full and partial denials of requests for language services;

vi. the office(s) handling the relevant case/service.

(b) Staffing

1. A state agency shall employ a sufficient number of qualified bilingual or multilingual employees in public contact positions or as interpreters to assist employees in public contact positions, to ensure provision of information and services in a person's preferred languages.

2. A bilingual or multilingual staff member shall not provide interpretation in adversarial proceedings when the state agency that employs the bilingual staff member is a party to the proceedings.

3. A bilingual or multilingual staff member may provide language services to LEP individuals and those who are deaf or hard of hearing, in accordance with their skill level as determined by the applicable regional language access coordinator. A bilingual employee shall be classified into one of the following two tiers, and shall provide interpretation in accordance with that tier.

i. Tier 1 bilingual or multilingual employee: Tier 1 employees must have formal certification, training in interpretation, or sufficient experience with interpreting in the specific subject matter. If the employer does not regularly employ a person that may be classified as a Tier 1 employee, the employer must hire a third-party contractor or service to fulfill these interpreting needs.

ii. Tier 2 bilingual or multilingual employee: Tier 2 employees have the skill and capacity to communicate directly with clients regarding routine or common business matters. Tier 2 employees need not have formal certification, but shall be proficient in the non-English language.

iii. Tier 1 and Tier 2 employees must be capable of communicating both receptively and expressively in English and the non-English language, and be without interest in the matter or outcome. Qualified bilingual or multilingual employees shall agree in writing to, the ethical and confidentiality requirements associated with interpreting pursuant to the American Translators Association Code of Ethics and Professional Practice.

4. Any employee who is regularly acting as an interpreter or translator must be reasonably compensated for that additional work.

(c) Training

1. Regional language access coordinators and the language access coordinators shall train all employees of a state agency to effectively obtain and utilize the services of language interpreters and translators. A state agency may provide language access trainings for outside service providers they have engaged; provided that the outside service providers lack sufficient resources or capacity to hold such trainings independently.

2. Regional language access coordinators, in conjunction with the language access coordinator, shall conduct training for every new hire and for every employee annually thereafter on the language access plan, and provide any materials necessary for staff to readily access the language access plan as needed.

Section 5. Language Access Advisory Board.

(a) There is established, for oversight and the provision of technical assistance, a language access advisory board to ensure equal access to services, programs, and activities offered by a state agency for LEP and deaf or hard of hearing individuals. The board shall be co-chaired by a staff member from the office of access and opportunity, and one other member of the advisory board voted upon by the board itself. The members of the advisory board shall be appointed within 90 days after the effective date of this act, and shall serve 4-year terms. Members whose terms have expired may serve until a successor is duly chosen. The board shall meet no less than 4 times annually.

(b) Composition

The language access advisory board shall include:

1. three members appointed by the Massachusetts Immigrant and Refugee Advocacy Coalition from prevalent LEP populations within Massachusetts, as determined by the most recent United States Census data, who has an interest in language access reform;

2. one member from the deaf or hard of hearing community who has an interest in language access reform, appointed by the Disability Law Center;

3. one member appointed by the Massachusetts Law Reform Institute;

4. one member appointed by the Massachusetts Appleseed Center for Law & Justice;

5. one member appointed by the Massachusetts Language Access Coalition;

6. one member appointed by Greater Boston Legal Services;

7. one member appointed by the Justice Center of Southeast Massachusetts;

8. one member appointed by MetroWest Legal Services;

9. one member appointed by the Central West Justice Center;

10. one member appointed by the Northeast Justice Center; and

11. one member appointed by the New England Translators Association, or by a similar professional association promoting best practices in translation and interpretation, who is a translation or interpretation specialist.

(c) Advisory board responsibilities

The advisory board shall support the relevant state agencies to achieve compliance with this act by:

providing guidance and technical assistance to the state agencies;

advising language access coordinators of the state agencies in the development and review of their language access plan;

reviewing biennial reports from the state agencies, and make recommendations for steps toward compliance.

disseminating recommendations to state agencies to reduce identified barriers for serving the LEP and deaf or hard of hearing population. The language access advisory board, in

formulating its recommendations, shall take into account the best practices and policies in other states and jurisdictions; and

other activities to help state agencies achieve compliance with this act.

Section 6. Reporting.

(a) Reporting requirements

1. Every 3 years following a state agency's full implementation of this act, the State agency shall submit to the joint committee on ways and means, the joint committee on state administration and regulatory oversight, the language access advisory board and the office of access and opportunity, a report on the data collected under Section 3(a)(2).

2. The report shall be disaggregated and cross tabulated by:

i. primary language;

ii. disability status;

iii. race;

iv. ethnicity;

v. age;

vi. gender; and

vii. low-income status

3. The report shall be publicly available in multiple languages, and be provided in plain language that community members can understand; and

4. The report shall be presented in a manner that protects the privacy of individuals.

Section 7. Relief.

(a) Relief potentials

1. Any person or class of persons claiming to be aggrieved by a state agency for failure to provide language access for benefits or services according to the terms of this act shall have the right to institute and prosecute a civil action in the district, superior, housing, probate or land court department for injunctive and other appropriate equitable relief including an award of actual and consequential damages. Should the person or persons prevail, they shall be entitled to an award of the costs of the litigation including expert witness fees, reasonable attorneys' fees in an amount to be fixed by the court, and prejudgment and post judgment interest.

2. The Massachusetts commission against discrimination may commence a civil action to seek relief for a violation of this act.

3. The attorney general may also commence a civil action to seek relief for a violation of this act.

Section 8. Office of access and opportunity.

The office of access and opportunity of the executive office for administration and finance shall have the following responsibilities:

1. Accept and investigate complaints submitted to the office of access and opportunity by individuals who have been unable to obtain timely language access services in any state agency.

2. Annually provide copies of all complaints as detailed in Section 8(a)(1)(i) to the language access advisory board.

3. Where an agency does not provide equal access, eliminate the language access barrier using informal methods, including conference, conciliation, mediation, or persuasion. Where the language access barrier cannot be eliminated by informal methods, the office of access and opportunity shall submit written compliance requirements to the state agency. The office of access and opportunity may request the state agency to notify it within a specified time, of any action taken on its requirements. Further, the office of access and opportunity may require a state agency to increase the frequency of the reporting every six months, as it deems necessary, or as requested by the language access advisory board.

4. In consultation with the language access advisory board, create multilingual signage informing LEP individuals of their right to free oral language services, for dissemination to state agencies.

(a) Conflicting law

1. It is the intent of the legislature that the provisions of this act be guided by Title VI of the Civil Rights Act of 1964, Executive Order No. 13166, and the federal rules and regulations adopted in implementation thereof, except that if the laws of the commonwealth prescribe stronger protections and prohibitions, the programs and activities subject to this act shall be subject to the stronger protections and prohibitions.

Section 9. Language Access Implementation Schedule

1. On or before 1 year after this bill is enacted, there shall be full implementation by:

i. MassHealth

ii. the department of children and families

iii. the department of early education and care

iv. the department of elementary and secondary education

v. the department of housing and community development

vi. the department of transitional assistance

vii. the department of unemployment assistance

viii. the registry of motor vehicles

ix. the department of public health

x. Massachusetts office for victim assistance

xi. the department of mental health

xii. the office of access and opportunity

2. On or before 2 years after this bill is enacted, there shall be full implementation by all agencies or departments within:

i. the executive office of education

ii. the executive office of health and human services

iii. the executive office of housing and economic development

iv. the department of revenue child support enforcement division

v. the district attorneys of Massachusetts

vi. the executive office of public safety and security

vii. the Massachusetts commission against discrimination

3. On or before 3 years after this bill is enacted, there shall be full implementation by all agencies or departments within:

i. the executive office for administration and finance

ii. the executive office of energy and environmental affairs

iii. the executive office of labor and workforce development

iv. the executive office of public safety and security

v. the executive office of technology services and security

vi. the executive office of transportation and public works

vii. the department of revenue

viii. the disabled protection commission

ix. the sheriffs of Massachusetts

x. the Massachusetts office of consumer affairs and business regulation

xi. the cannabis control commission

4. Additional state agencies may be beholden to this statute as determined by the language access advisory board, in consultation with the office of access and opportunity.