



LATE

Testimony by: Cheri Teranishi-Hashimoto, PT
SB 631 Relating to Tort Liability Immunity

Senate CPN, Wednesday January 30, 2013
Room 229, 8:30 am

Position: Support

Chair Baker and Members of the Senate CPN Committee:

I am Cheri Teranishi-Hashimoto, P.T., certified Child Passenger Safety Technician and Legislative Committee member of the Hawaii Chapter – American Physical Therapy Association (HAPTA). HAPTA represents 250-300 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments.

We support this measure that seeks to provide tort liability immunity to Child Passenger Safety Technicians and to assure these technicians would be covered under this law. Such protection is critical because according to the CDC, US Department of Transportation and National Highway Traffic Safety Administration (NHTSA):

1. 1,314 children ages 14 years and younger died as occupants in motor vehicle crashes, and approximately 179,000 were injured in the US in 2009
2. A study by the CDC found that within one year, more than 618,000 children ages 0-12 rode in vehicles without the use of a child safety seat or booster seat or a seat belt at least some of the time

Child Passenger Safety Technicians provide education to parents and caregivers regarding the proper installation of child restraints. It has been shown that approximately 8 out of 10 child restraints are installed incorrectly. Child Passenger Safety Technicians are needed in the community to provide valuable information and instruction to help decrease the number of injuries sustained due to motor vehicle crashes or accidents. This bill, which is law in some mainland states, would encourage people to become Child Passenger Safety Technicians knowing that they would be covered under this law.

I can be reached at 386-7322 if you have any questions. Thank you for the opportunity to testify.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 631**

DATE: Wednesday, January 30, 2013

TIME: 8:30 am

To: Chairperson Rosalyn Baker and Members of the Senate Committee on Commerce
and Consumer Protection:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the
Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 631, relating to Tort
Liability Immunity.

The purpose of this measure is to grant immunity to certified child seat
technicians who provide inspection, adjustment or educational services related to child
seats/restraints. HAJ opposes this measure because there is no known liability crisis
related to child safety seats nor is there sufficient data to justify departure from the basic
principle that all citizens must exercise reasonable care when engaged in conduct that
impacts the safety of others.

A similar measure to provide immunity for the installation and/or inspection of
child seats was heard in the Senate in 2005 (SB1224). It was not passed in the Senate.
There was not, at that time, any litigation crisis or proliferation of lawsuits against child
seat installers in Hawaii. HAJ is unaware of any current litigation crisis concerning child
seat installation or inspection.

The requirement that everyone exercise reasonable care and refrain from engaging
in negligent conduct is based on the strong public policy to avoid unnecessary injury and
harm to others. The liability system exists to encourage safety, deter negligent conduct
and provide for an orderly and civilized process to handle those situations where citizens

are injured by the negligence of others. It is a non-violent replacement for traditions of self-help retribution through eye-for-an-eye violence still found in less civilized areas of the world. Exceptions to this public policy should only be made where there is strong justification and where less drastic alternatives will not suffice.

There is no question that the safety of our children is a high priority or that the proper use of child safety seats/restraints should be encouraged. There are, however, significant questions whether this measure is needed or will even accomplish its stated goals with the granting of immunity. How many lawsuits are there in Hawaii? Are there any? If there is no litigation crisis, why is immunity from lawsuits necessary? If there are, what are the reasons for such cases? Is there a problem with the competence of installers/inspectors? Are certified technicians compensated for their services or are they volunteers? If they are paid, why should they not be subject to the same rules as any other business? If they are volunteers, has there been any real change in the number of volunteers over the many years that organizations have provided child seat assistance attributable to lawsuits?

This measure would sanction negligent installation and inspection of child seats by certified technicians. HAJ submits that this is not good public policy. The safety of our children is a priority, if anything, extra care should be taken in matters concerning child safety - - not the elimination of care through immunity. In this sense, the purpose of this measure (to increase child safety) conflicts with its contents (to sanction negligent installation and inspection of child seats). It would seem, as a matter of sound public policy, that if a person is not able to safely install/inspect child seats, that person should

not be doing that job; instead of giving that person immunity from their own negligent installation/inspection of child seats.

For these reasons, HAJ opposes this measure and asks that this bill be held.

Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.