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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 12, 2021

To: The Honorable Brian T. Taniguchi, Chair,
The Honorable Les Ihara, Jr. Vice Chair, and
Members of the Senate Committee on Labor, Culture and the Arts

Date: Friday, February 12, 2021
Time: 3:20 p.m.
Place: Conference Room 225, State Capitol

From: Anne Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 936 RELATING TO PUBLIC HEALTH

I. OVERVIEW OF PROPOSED LEGISLATION

SB936 adds a new section to Chapter 396 "Occupational Safety and Health," Hawaii Revised Statutes (HRS), to require the creation and dissemination of information on and enforcement for employers to post information regarding seizure first aid by the department, specifically:

- Provide employers, employees, and the general public with information with respect to rendering seizure first aid (exhibitions, broadcasts, lectures, posters, flyers, pamphlets, etc.),
- Require employers to post information and procedures on seizure first aid provided by the department in a prominent position in the employer's workplace, and
- Adoption of rules in accordance with chapter 91 to implement the above with the term "seizure first aid" defined as procedures to respond, attend and provide comfort and safety to a person suffering from a primary generalize tonic-clonic seizure or complex partial seizure but, does not include training to medically treat the person.

The Department strongly opposes the measure because it creates a possible statutory conflict and strain on already limited resources on the HIOSH program.

II. CURRENT LAW

The Occupational Safety and Health Division (HIOSH) is statutorily assigned to administer Chapter 396. The purpose of HIOSH is to ensure that employees have a safe and healthful workplace by reducing employee injuries arising out and

during the course of employment through the adoption of safety and health standards (administrative rules) in accordance with Chapter 91, HRS. HIOSH generally adopts Federal OSHA Standards via rule-making in their entirety as the floor but in some cases adopts higher standards.

The rules and standards are enforced through workplace inspections. Inspections are also conducted as a part of an inspection scheduling system (ISS) that identifies industries or work processes that are considered “high-hazard”. Inspections are also conducted in response to an event (i.e. accident, complaint, referral, or results from a previous inspection).

The Consultation and Training Branch provides free on-site consultations to assist employers in identifying workplace hazards, recommend corrective actions to ensure workplace safety for employees, and evaluates and makes recommendations to improve an employer’s safety and health management system to prevent future hazards that an employee may encounter. Priority for this service is given to smaller employers in high-hazard industries, or with high-hazard processes.

III. COMMENTS ON THE SENATE BILL

The DLIR appreciates the intent of this measure, but opposes the measure due to concerns about the statutory placement and existing constraints on limited resources.

The measure is intended to provide employers, employees, and the general public information about seizure first aid, which includes procedures on how to respond and provide comfort and safety to the person suffering a seizure. Under the current law, HIOSH does not have jurisdiction to enforce or require seizure first aid training for the public.

HIOSH’s jurisdiction is limited to ensuring that every employer furnishes employees with a workplace that is safe and free from recognized hazards (HRS, §396-6). OSHA and HIOSH do not consider seizures as a workplace hazard but rather a medical condition and are limited in their capacity to create standards only for recognized workplace hazards.

Further, in order to create an enforceable standard pursuant to Chapter 91, HRS, HIOSH must ensure that the hazard is recognized, that the recognized hazard can cause or is likely to cause a workplace injury or illness, and that the hazard is able to be identified and controlled (feasible means of abatement). These requirements are developed from congressional research and studies that found that the number of industrial accidents that take place in the United States can be reduced if certain minimum standards are established and enforced. Seizures that are not work-related are not an identified hazard under the above requirements and more

importantly, do not have a feasible means of control (§396-2).

This measure requires HIOSH to create rules to enforce the creation and dissemination of information and employers to post information. HIOSH cannot create a rule to enforce itself to create and disseminate information on seizure first aid. Regarding posting requirements of information on seizure first aid, HIOSH would be required to follow rule promulgation laws including justification for the rule creation including recognition that a hazard is a quantifiable trend of concern in the industry, is a workplace hazard, and would also have to go through stakeholder vetting and public hearings. Since seizures that are not work related or under the public do not fall under the employer-employee-workplace jurisdiction of HIOSH it is unlikely that the rule would be able to be created for enforcement. Within the past 10 years, HIOSH has not had any complaints nor reported accidents, fatalities or catastrophes involving workplace seizures.

HIOSH is currently a small state OSHA program, with approximately 18 inspectors and four consultants covering the State of Hawaii's private and public sectors. HIOSH receives two Federal OSHA grants, one for consultation and training in the amount of \$490,900 and one for enforcement in the amount of \$1,584,700. As a condition of these grants, the programs select establishments with high rates of injury and illness. Under the exception in 29 CFR §1904.5(b)(2)(ii), adopted under §12-51.1, HAR, epileptic seizures or other seizures not directly caused by a workplace exposure(s), are not considered as a workplace injury or illness by OSHA or HIOSH, neither are any injuries resulting solely from the seizures. Therefore, any enforcement of or information creation and dissemination would not fall under the condition of the two Federal grants and would require 100% use of state funds for time, materials, and any other relating resource used for requirements under this measure.

Currently, the Governor has restricted state funds for the department, with increased restrictions likely coming in the future and HIOSH would be required to complete the Federal OSHA grant requirements as well as requirements under this measure. HIOSH does not have the resources to undertake the requirements of this measure.

Currently, HIOSH does have a standard for both general industry and construction establishments that requires the employer to ensure the ready availability of medical personnel for advice and consultation on matters of plant health and/or when there is an absence of an infirmary, clinic or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Through standard interpretations (November 11, 2005), employers are required to train their designated person(s) with first aid skills specific to the needs of their workplace(s). Employers who knowingly have staff with seizure conditions or workplaces where a seizure from a workplace exposure could occur, could fall under the standard

already in place, requiring first aid training to include workplace seizure and employee-specific situations. The requirement for response to seizures is also outlined in the OSHA publication “Best Practices Guide: Fundamentals of a Workplace First-Aid Program.”

HIOSH does currently have some enforceable posting requirements. These requirements were created to ensure employees and employers understand their rights and responsibilities, including protections when bringing up safety and health issues. Other posting requirements currently under HIOSH standards are directly related to the prevention and control of injury and illness that, again, are work-related, foreseeable, and therefore, controllable. OSHA and HIOSH, through published standard interpretations (August 12, 2012) recognize first aid training as hands on training provided by the employer which could include outlined from organizations such as ANSI and the American Red Cross.

Considering the above discussion in the context of the Federal-State cooperative agreement for safety and health, especially as it applies to workplace safety and health standards, renders the placement of the proposed legislation in Chapter 396 inappropriate. Further this proposal, especially in light of the above, would create significant, additional responsibilities on HIOSH, which has limited resources and is already over-burdened with over 40,000 plus employers that it must inspect and put undue burden on HIOSH's limited budget.

Brennan Yamaguchi

State of Hawaii Student (Age 12)

Date: February 2021

Support for SB 936 Regarding Public Health

As a student and citizen in the State of Hawaii, I want to make sure members of the community, especially my friends who work in or visit state offices and buildings have access to first aid seizure charts and information. I strongly support SB 936 which would put first aid seizure charts in Hawaii workplaces, starting with State of Hawaii buildings. I would also like brochures and other materials about seizures available in those areas.

Many citizens in the State of Hawaii may not think seizure care applies to them but it does. One in 26 people may be affected by Epilepsy or a similar seizure condition in their life. As of 2019, over 15,000 people in the State of Hawaii and over 3 million in the United States are living in with Epilepsy. Even if they don't have Epilepsy, ten percent of the population may also experience a seizure in their lifetime from a head injury like a fall or car accident, or even a high fever. Those with diabetes or those who take a wrong dose of medicine can also have seizures.

With the onset of COVID -19, The Boston Medical center, Cleveland Clinic, and other medical institutes have confirmed that seizures and strokes are becoming more common with the virus. Because of the side effects caused by this illness, any of us have now become at risk for a seizure and could benefit from life-saving first aid.

This bill passed the Judiciary in 2020 but was halted due to the pandemic. When I first introduced this bill in person to the Committee for Labor, Culture, and the Arts, in February 2020 I asked the senators in the room to raise their hands. I also asked the audience to raise their hands if they were a visitor to the State Capitol With so many staff people and visitors coming to the State Capitol, State libraries, or offices, even more people could experience a seizure while they are at a state building. Now imagine all work places. Think of how many people working all over the state could be affected!

People should be able to feel secure in their place of employment. Everyone, no matter where they are working should be able to feel that way. I thought of our state offices, libraries, and other buildings first, because are used by hundreds of members of the community daily. However I also think about my parents, my teachers, my coaches who have to work daily to provide for their families, and I want them to be safe. It is our duty to make sure everyone feels safe in these spaces.

My proposal is simple. Make sure first aid seizure information is placed in the work place for a safer work environment. I would love to see this start at state offices and buildings in areas such as libraries, break rooms, bulletin boards, and other shared spaces. These materials can even be through downloads or electronic mail to make it simple. I want to create a healthy work environment for everyone. I urge the committee to please pass SB 936. Thank you for giving me the opportunity to testify.

SB-936

Submitted on: 2/10/2021 4:13:54 AM

Testimony for LCA on 2/12/2021 3:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Colby Takeda	Individual	Support	No

Comments:

This bill can can save lives. Thank you for this opportunity to show my support for this measure.

Please consider passing this bill.

-Colby T.

Resident of Kakaako

SB-936

Submitted on: 2/9/2021 7:53:19 PM

Testimony for LCA on 2/12/2021 3:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Cheri Badua	Individual	Support	No

Comments:

To Whom It May Concern:

My name is Cheri Badua and I wanted to write in support of SB936. I work as a pharmacy tech at Kaiser Permanente's Honolulu clinic and come into contact with many different types of individuals. We've had several instances of patients having seizures in front of us and we have codes that we can call overhead to alert the medical staff. But I would like our company to provide seizure information and training so that we know what to do instead of feeling scared and helpless. Information is power and if we can help out others in their time of need, and feel more confident in helping then it's a win win for everybody.

Thank you for your time!

Cheri Badua

Senator Brian T. Taniguchi, Chair
Senator Les Ihara Jr., Vice Chair
Senate Committee on Labor, Culture and the Arts

February 9, 2021

Support for Senate Bill No. 936 – Seizure First Aid

My name is Julie Matsumoto, was born and raised in Waianae and Aiea, and currently live in Seattle, WA with my husband and eight-year-old daughter. **I am submitting written testimony in favor of passing Senate Bill No. 936 – Seizure First Aid.**

In May of 2018, my previously healthy daughter, Nora, started having generalized tonic-clonic seizures and other neurological problems, with no specific diagnosis to date. It came on suddenly and turned our whole lives upside down as we quickly learned how to provide care for her. We had to make many sacrifices and changes to our previous way of life, however one thing that we have stayed committed to is regularly visiting Hawaii to see family and friends. Before the COVID-19 pandemic, we would travel to Hawaii at least once or twice a year, and frequently still have conversations about moving back (though haven't quite made the official decision yet!).

During our most recent trip to Hawaii in February 2020, Nora had a seizure while we were in the water at Waikiki Beach. Thankfully, I noticed the start of her seizure in time and was able to pick her up and get her out of the water before her head went under. Her seizures typically last about four minutes. As Nora's seizure progressed on the sand, I spent half of the time making sure she was safe. The other half of the time was spent advising and coaching the well-meaning bystanders about what was happening, what to do and what not to do. Despite my coaching, it did not stop a gentleman from putting his hand on Nora's head and legs to pray. I thanked him for trying to help but had to firmly ask him to stop trying to restrain her.

I know firsthand that greater knowledge about seizure first aid is desperately needed. Perhaps our experience on Waikiki Beach could have been avoided. While no actual harm was done, it certainly added stress to an already stressful situation.

I will also admit that before the onset of Nora's medical issues, I knew absolutely nothing about seizure first aid and never took the time to learn about it. It wasn't that I didn't care, it just never crossed my mind as something that would affect me. Now that I'm a mom to an epileptic child, it would give me great comfort to know that the greater 'ohana of the Hawaii community is armed with accurate information to keep Nora safe in the event of a seizure. I'd be proud to know that my home state is leading by example to support the thousands of people affected by epilepsy – both kama'aina and visitors.

I have nothing but gratitude for the young activist who's reach has extended all the way to help a little girl in Seattle, and I wholeheartedly support the passing of Senate Bill No. 936.

Thank you for this opportunity to submit this written testimony.

Julie Matsumoto
Seattle, WA
julie.matsumoto@gmail.com

SB-936

Submitted on: 2/9/2021 6:33:40 PM

Testimony for LCA on 2/12/2021 3:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen DeMay	Individual	Support	No

Comments:

In the early 2000's my children attended Pearl Harbor Elementary. My daughter had an IEP and was in a special needs class with an autism diagnosis. She also lives with a grapefruit sized arachnid cyst, enlarged pituitary gland, and has a history of seizures. Resources at PHES were low for special needs keiki and I was self-required to educate/aid/inform. "I need you to do x.y, and z should you suspect or see a seizure," I gently reminded her teachers and school staff. There were no resources in place giving teachers, aides, faculty, and staff any idea how to properly assist a student suffering from a seizure during school hours. Implementing Brennan's bill - making it part of HRS - will provide 1) peace of mind for parents who release their keiki to the care of faculty and staff during the school day as well as 2) give confidence to faculty and staff who are charged with providing a safe space at school for students in their care, control, and custody. Passing this bill is the right thing to do.

Aloha, K.DeMay

SB-936

Submitted on: 2/10/2021 10:44:37 AM

Testimony for LCA on 2/12/2021 3:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gloria Matsumoto	Individual	Support	No

Comments:

My name is Gloria Matsumoto and I have lived in Kalihi, Waianae and currently live in Aiea.

I am submitting written testimony in favor of passing Senate Bill No.936 - Seizure First Aid.

I had never experienced nor known anyone having a seizure until May 2018 when my six year old granddaughter had her first seizure and continues to have seizures. Nora lives in Seattle but pre COVID-19 I had been visiting her about four to five times a year and she would come to Hawaii two or three times a year. I have never witnessed Nora having a seizure but I need to be aware of what to do in the event she has one when I am caring for her. That's why I strongly support the passing of Senate Bill No. 936 so others who might have their loved ones suffer from seizures know about seizure first aid.

I commend the young activist who recommended the passage of this bill.

Thank you for this opportunity to submit this written testimony.

SB-936

Submitted on: 2/10/2021 9:13:02 PM

Testimony for LCA on 2/12/2021 3:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andee Lau	Individual	Support	No

Comments:

Dear Senators,

i write to you in support of SB936 and all of the children and adults affected by this disease. One of my three children came very close to being diagnosed with epilepsy, but thankfully, by the grace of God, he grew out of his seizures. Some children and families, are not so lucky.

i will never forget the first time I saw his eyes roll back and start to shake and drool - he was 3 yrs old. I will never forget the second time I got a call from his preschool telling me, "I think your son is having a seizure." I will never forget the third time he was sitting on the couch and I was trying to get his attention (he was five) but couldn't. I went over to talk to him and he had a blank stare and started to shake. I remember feeling helpless as I drove him to the hospital and he was shaking in his car seat and in the ER as he was shaking in the bed and all I could do was try to comfort him and tell him he was going to be okay. Today, he is a thriving 11 yr old who loves basketball (sorry Yamaguchi's), video games, and spending time with his friends and family.

As I'm sure you all know, seizures can happen anywhere and anytime. Knowing what to do in the event someone around you is having one can save their life. Besides calling 911, there are things you can do to help the person and also be able to help the paramedics when they get there.

Many children and adults with epilepsy and seizures seem to lead normal lives and maybe that's why it gets overlooked. By making more and more people aware of the disease and what they can do to help, many lives could be saved. Thank you for your consideration of this bill. Please vote yes and be a part of saving lives.

From 2011 – 2013, I worked as a CPR Instructor for AED Institute and Hawaii Heart Foundation (HHF). HHF was founded after a local teacher collapsed during a school meeting and passed away from cardiac arrest. HHF provided free hands only CPR/AED training at local schools, teaching students and anyone willing to learn, what to do if someone has a cardiac arrest. Community education & awareness is the key when it comes to saving a life during a medical emergency. The same applies to Epilepsy and seizure first aid and awareness.

Becoming familiar with Epilepsy and seizures also removes the stigma and fear that may come with dealing with an episode. I strongly believe that teaching seizure first aid at any level not only puts a safety net in place for those who may have this medical condition, but empowers our community and our keiki.

I highly encourage those in leadership positions in our state to support Bill SB936 and allow our community to be stronger and safer for those with Epilepsy/seizures and to support their family and friends as well. Knowledge is always the most powerful thing you can share.

SB-936

Submitted on: 2/11/2021 2:03:31 PM

Testimony for LCA on 2/12/2021 3:20:00 PM

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

Comments:

This bill could be very beneficial to the safety of the people of Hawaii. If this bill was passed it would require basically everyone in theory except children unless they have a job to know how to stabilize/treat someone with epilepsy or someone having a seizure. I am writing this testimony in support of my friend and also to the benefit of people with epilepsy. I understand that this could prove to be very tedious but in spite of that, taking some time to teach people how to help someone having a seizure could be largely beneficial to the safety of our community. As I am only 12 years old, I may be missing something but I also think that the bill implies that anyone who is being employed or is the employer must know how to treat someone having a seizure therefor if at least one person in the vicinity of someone having a seizure has a job which is very likely then that person could be saved and live to see another day. Please consider passing this bill. It could help people with epilepsy insurmountably should there be any instance where oneself has an episode of epilepsy.

It would be of great benefit to my friends baseball teammate/friend and it would mean a lot to my friend as well, for him to see he has made such a big impact that could help not only his friend but other people as well.

Thank you for reading my testimony and I implore you to please pass this bill.

SB-936

Submitted on: 2/11/2021 11:29:20 PM

Testimony for LCA on 2/12/2021 3:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Witte	Individual	Support	No

Comments:

I've worked as a registered nurse in California for the past 5 years. A few months after I gained my license and was waiting to hear back from job postings, I was sitting in a bar in Berkeley watching a prime time NFL game. About 20 minutes into the game, I saw a commotion happening near some of the dining tables. I got up to see what was going on and saw a customer give the Heimlich to another customer. I went over to see if I could help in any way and noticed that the customer was not choking, but was having a seizure. I immediately told the other customer to stop what he was doing and get the man on the ground onto his side. The customer neglected to listen to my advice so I took matters into my own hands and grabbed the man from the front and laid him on his side. His seizure subsided shortly after and it took him a few minutes to come to. It is examples like this one that I feel that if there were more proper education on recognizing the signs and steps to take involving a seizure, that we can help those who suffer from them.

SB-936

Submitted on: 2/11/2021 8:16:17 PM

Testimony for LCA on 2/12/2021 3:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jared Sham	Individual	Support	No

Comments:

Aloha!

My name is Jared Sham and my ohana and I 100% support this bill. I think it's very important for a bill like this to pass because it makes the public aware of warning signs that an epileptic seizure may come and how to respond to it. We fell in love with the idea when we played in our seizure awareness baseball game and we applaud Brennan and his ohana for coming up with this bill. Thank you for your time and we look forward to seeing a positive outcome.

Aloha,

Jared, Korin, Noah(12) & Isaac(10)