
A BILL FOR AN ACT

RELATING TO HAWAII RETIREMENT SAVINGS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The purpose of this Act is to:
- 2 (1) Clarify the definition of "covered employer" in the
- 3 Hawaii Retirement Savings Act;
- 4 (2) Amend and align provisions of the Hawaii retirement
- 5 savings program, the state-facilitated payroll-
- 6 deduction retirement savings plan for private sector
- 7 employees in Hawaii who do not have access to
- 8 employer-sponsored retirement plans, to require
- 9 automatic enrollment unless the employee opts out; and
- 10 (3) Repealing and lapsing the funds appropriated into and
- 11 out of the Hawaii retirement savings special fund in
- 12 Act 296, Session Laws of Hawaii 2022.

13 SECTION 2. Section 389-2, Hawaii Revised Statutes, is

14 amended by amending the definition of "covered employer" to read

15 as follows:



1 "Covered employer" means any person who is in business in
2 the State and has one or more individuals in employment.

3 "Covered employer" does not include:

- 4 (1) The United States;
- 5 (2) The State or any of its political subdivisions; or
- 6 (3) A person that has [~~been maintaining~~] offered or
7 maintained for some or all employees at any time
8 during the preceding two years a retirement plan that
9 is tax-qualified under or is described in and
10 satisfies the requirements of section 401(a), 401(k),
11 403(a), 403(b), 408(k), or 408(p) of the Internal
12 Revenue Code."

13 SECTION 3. Section 389-4, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) The board shall have powers and duties in accordance
16 with law to:

- 17 (1) Establish, implement, and maintain the program;
- 18 (2) Cause the program and arrangements and accounts
19 established under the program to be designed,
20 established, and operated:



- 1 (A) In accordance with best practices for retirement
- 2 savings vehicles;
- 3 (B) To encourage participation, saving, sound
- 4 investment practices, and appropriate selection
- 5 of default investments;
- 6 (C) To maximize simplicity and ease of administration
- 7 for employers;
- 8 (D) To minimize costs, including by collective
- 9 investment and other measures to achieve
- 10 economies of scale and other efficiencies in
- 11 program design and administration;
- 12 (E) To promote portability of benefits; and
- 13 (F) To avoid preemption of the program by federal
- 14 law;
- 15 (3) Arrange for collective, common, and pooled investment
- 16 of assets of the program;
- 17 (4) Determine the eligibility of an employer, employee, or
- 18 other individual to participate in the program;
- 19 (5) Ensure the program's compliance with all applicable
- 20 laws and regulations;



- 1 (6) Establish procedures for the timely and fair
- 2 resolution of participant and other disputes related
- 3 to accounts or program operation;
- 4 (7) Develop and implement:
- 5 (A) An investment policy that defines the program's
- 6 investment objectives and that is consistent with
- 7 the objectives of the program; and
- 8 (B) Other policies and procedures consistent with
- 9 those investment objectives;
- 10 (8) Cause expenses incurred to initiate, implement,
- 11 maintain, and administer the program to be paid from
- 12 the program and other available sources;
- 13 (9) Establish and collect application, account, and
- 14 administrative fees;
- 15 (10) Accept grants, gifts, donations, legislative
- 16 appropriations, loans, and other moneys from the
- 17 State, any unit of federal, state, or local
- 18 government, or any other person to defray the costs of
- 19 administering and operating the program;



- 1 (11) Enter into contracts pursuant to chapter 103D for
- 2 services that the board deems necessary to carry out
- 3 the purposes of this chapter, including:
- 4 (A) Services of private and public financial
- 5 institutions, depositories, consultants,
- 6 actuaries, counsel, auditors, investment
- 7 advisors, investment administrators, investment
- 8 management firms, other investment firms, third-
- 9 party administrators, other professionals and
- 10 service providers;
- 11 (B) Research, technical, financial, administrative,
- 12 and other services; and
- 13 (C) Services of other state agencies to assist the
- 14 board in the exercise of its powers and duties;
- 15 (12) Develop and implement an outreach plan to gain input
- 16 and disseminate information regarding the program and
- 17 retirement savings in general;
- 18 (13) Cause moneys to be held and invested and reinvested
- 19 under the program;
- 20 (14) Ensure that all contributions to individual retirement
- 21 accounts under the program may be used only to:



- 1 (A) Pay benefits to participants under the program;
- 2 (B) Pay the cost of administering the program; and
- 3 (C) Make investments for the benefit of the program;
- 4 provided that no assets of the program shall be
- 5 transferred to the general fund of the State or
- 6 to any other fund of the State or otherwise
- 7 encumbered or used for any purpose other than
- 8 those specified in this paragraph;
- 9 (15) Provide for the payment of costs of administration and
- 10 operation of the program;
- 11 (16) Evaluate the need for and, if the board deems
- 12 necessary, procure:
- 13 (A) Insurance against any and all loss in connection
- 14 with the property, assets, or activities of the
- 15 program; and
- 16 (B) Pooled private insurance;
- 17 (17) Indemnify, including procurement of insurance if and
- 18 as needed for this purpose, each board member from
- 19 personal loss or liability resulting from the member's
- 20 action or inaction as a board member;



1 (18) Collaborate with and evaluate the role of financial
2 advisors or other financial professionals, including
3 in assisting and providing guidance for covered
4 employees; [~~and~~]

5 (19) Reimburse, when appropriate, the general fund of the
6 State of Hawaii for the initial expenses incurred for
7 initiating, implementing, maintaining, and
8 administering the program; and

9 (20) Take any other action the board deems reasonably
10 necessary to carry out the purpose of this chapter.

11 (b) The board may develop and disseminate information
12 designed to educate covered employees about the impacts of
13 [~~opting in to~~] the program on take-home pay, savings strategies,
14 and the benefits of planning and saving for retirement to help
15 covered employees in deciding whether to participate and at what
16 level participation may be appropriate."

17 SECTION 4. Section 389-5, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending its title to read:



1 "~~[+]§389-5[+]~~ Hawaii retirement savings program; due
2 diligence; establishment; payroll deduction [~~upon election to~~
3 ~~contribute~~]."

4 2. By amending subsections (d) to (f) to read:

5 "(d) [~~Any covered employee may elect to contribute a~~
6 ~~portion of the employee's salary or wages to an individual~~
7 ~~retirement account provided by the program through payroll~~
8 ~~deduction.~~] Each covered employer shall enroll its covered
9 employees in the program and withhold payroll deduction
10 contributions from each covered employee's paycheck unless the
11 covered employee has elected not to contribute.

12 (e) Beginning on a date to be determined by the board
13 pursuant to subsection (a), a covered employer shall:

14 (1) [~~Allow a~~] Automatically enroll covered [~~employee to~~
15 ~~enroll~~] employees into the program after [~~providing~~]
16 the program administrator provides the [~~covered~~
17 ~~employee~~] employees with a written notice of the
18 [~~employee's~~] right of the employees to opt [~~in,~~] out;
19 and



1 (2) For any covered employee who [~~has opted in to~~] is
2 enrolled into the program[+], a covered employer
3 shall:

4 (A) Withhold the covered employee's contribution
5 amount from the employee's salary or wages; and

6 (B) Transmit the covered employee's payroll deduction
7 contribution to the program on the earliest date
8 the amount withheld can reasonably be segregated
9 from the covered employer's assets, but no later
10 than the fifteenth day of the calendar month
11 following the month in which the covered
12 employee's contribution amounts are withheld.

13 (f) The program shall establish for each enrolled employee
14 a Roth IRA, into which the contributions deducted from [~~an~~] the
15 employee's payroll shall be deposited. The board may add an
16 option for all participants to affirmatively elect to contribute
17 to a traditional IRA in addition to or in lieu of a Roth IRA."

18 SECTION 5. Section 389-14, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:



1 "(a) Any covered employer who fails to enroll a covered
2 employee into the program in accordance with section 389-5(e)(1)
3 without equitable justification shall be liable:

4 (1) To the covered employee, in an amount equal to the
5 contribution amount that would have been made by the
6 employee into the program and interest at a rate of
7 six per cent per year on the contribution amount,
8 beginning from the date the contribution would have
9 been made into the account; provided that the sum of
10 the contribution amount and interest thereto shall be
11 transmitted by the covered employer to the program to
12 be paid into the covered employee's IRA; and

13 (2) A penalty of:

14 (A) \$25 for each month the covered employee was not
15 enrolled in the program; and

16 (B) \$50 for each month the covered employee continues
17 to be unenrolled in the program after the date on
18 which a penalty has been assessed with respect to
19 the covered employee who ~~[had elected to~~
20 ~~participate]~~ should have been enrolled in the
21 program."



1 SECTION 6. Act 296, Session Laws of Hawaii 2022, is
2 amended by amending section 6 to read as follows:

3 "SECTION 6. [~~There is appropriated out of the general~~
4 ~~revenues of the State of Hawaii the sum of \$25,000,000 or so~~
5 ~~much thereof as may be necessary for fiscal year 2022-2023 to be~~
6 ~~deposited into the Hawaii retirement savings special fund.~~

7 ~~There is appropriated out of the Hawaii retirement savings~~
8 ~~special fund the sum of \$25,000,000 or so much thereof as may be~~
9 ~~necessary for fiscal year 2022-2023 for the State to make~~
10 ~~matching contributions of up to \$500 to the accounts of the~~
11 ~~first 50,000 covered employees who participate in the Hawaii~~
12 ~~retirement savings program for twelve consecutive months after~~
13 ~~initial enrollment.] Repealed."~~

14 SECTION 7. Act 296, Session Laws of Hawaii 2022, section
15 6, in the amount of \$25,000,000, or balance thereof, general
16 funds unallotted, allotted, encumbered, and unrequired, is
17 hereby lapsed.

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 9. This Act shall take effect on July 1, 3000.



Report Title:

Hawaii Retirement Savings Act; Hawaii Retirement Savings Program; Covered Employer; Definition; Automatic Enrollment; Opt-out Option

Description:

Clarifies the definition of "covered employer" under the Hawaii Retirement Savings Act. Requires covered employers to automatically enroll covered employees into the Hawaii Retirement Savings Program unless the employee chooses to opt out. Repeals and lapses the funds appropriated into and out of the Hawaii Retirement Savings Special Fund in Act 296, Session Laws of Hawaii 2022. Effective 7/1/3000. (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

