

JAN 18 2019

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# A BILL FOR AN ACT

RELATING TO RETIREMENT SAVINGS.

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

1           SECTION 1. The legislature finds that there is an imminent  
2 retirement security crisis in the State, as many individuals do  
3 not have access to an employer-sponsored retirement plan.  
4 Individuals without a retirement plan are at significant risk of  
5 not having enough retirement income to meet basic expenses  
6 during retirement. A retirement savings plan can help employees  
7 achieve economic security, improve economic mobility, and reduce  
8 wealth disparity.

9           In 2017, Oregon was the first state to implement a  
10 retirement saving plan that covers private sector workers who do  
11 not otherwise have access to a savings plan provided by their  
12 employer. With many small businesses operating in Oregon, the  
13 state calculated that it had more than one million employers who  
14 did not offer any form of retirement savings. The plan was  
15 actually adopted earlier in 2015, as the Obama administration  
16 tried to encourage states to promote retirement savings. Other



1 states, including California, Connecticut, Illinois, Maryland,  
2 Massachusetts, New Jersey, and Vermont, have similar programs.

3       The legislature also finds that individuals need a lifelong  
4 savings system that provides them with the opportunity to build  
5 their assets and attain future financial stability. Private  
6 sector employees with access to employer-sponsored retirement  
7 plans have a reliable way to accumulate savings needed for a  
8 secure retirement. However, the legislature further finds that  
9 approximately fifty per cent of the State's private sector  
10 employees work for an employer that does not offer a retirement  
11 plan or are not eligible for the plan offered. The lack of  
12 opportunity to participate in an employer-provided retirement  
13 plan spans all levels of education and earnings. Employees of  
14 Hawaii businesses with fewer than one hundred employees are less  
15 likely to have access to a retirement plan than employees of  
16 larger businesses. Employees who are offered the opportunity to  
17 save through the employee's place of employment are  
18 significantly more likely to participate and make steady  
19 contributions to build retirement savings.

20       The purpose of this Act is to require the legislative  
21 reference bureau to:



- 1           (1) Conduct a study on the feasibility of implementing a
- 2           Hawaii retirement savings program for private sector
- 3           employees;
- 4           (2) Report to the legislature with its findings and
- 5           proposals, if any; and
- 6           (3) If the results of the study support it, to establish a
- 7           Hawaii retirement savings board to administer the
- 8           Hawaii retirement savings program for private sector
- 9           employees.

10           SECTION 2. (a) Before establishing the Hawaii retirement

11 savings board and the Hawaii retirement savings program pursuant

12 to section 3 of this Act, the legislative reference bureau shall

13 conduct a feasibility study by:

- 14           (1) Conducting a market analysis to determine:
  - 15           (A) The feasibility of the Hawaii retirement savings
  - 16           program; and
  - 17           (B) Whether and to what extent plans or programs with
  - 18           the characteristics described in section -4,
  - 19           Hawaii Revised Statutes, currently exist in the
  - 20           private market;



- 1           (2)    Obtaining legal advice regarding the applicability of  
2                    the Employee Retirement Income Security Act of 1974,  
3                    as amended, and the Internal Revenue Code of 1986, as  
4                    amended, to the Hawaii retirement savings program;
- 5           (3)    Investigating whether employers that are not required  
6                    to participate in the Hawaii retirement savings  
7                    program can make the program available to their  
8                    employees;
- 9           (4)    Investigating methods to allow individuals who are not  
10                    automatically enrolled in the Hawaii retirement  
11                    savings program to opt in to the program and make  
12                    contributions to an account, either through payroll  
13                    contributions or another method of contribution;
- 14           (5)    Conducting an analysis of the potential costs to  
15                    employers, including administrative costs, and costs  
16                    associated with providing automatic payroll deductions  
17                    for participation in the Hawaii retirement savings  
18                    program, as well as making recommendations on how to  
19                    eliminate or reduce those costs through incentives,  
20                    tax credits, or other means;



- 1           (6) Examining the potential effects of a state-run  
2           retirement savings plan or program for private  
3           employees on the private market;
- 4           (7) Examining other states with other voluntary, market-  
5           based retirement savings plans or programs, including  
6           New Jersey and Washington;
- 7           (8) Preparing a timeline for implementation of the Hawaii  
8           retirement savings program; and
- 9           (9) Making recommendations to the legislature regarding  
10          ways to increase financial literacy in the State.

11 The legislative reference bureau may issue a request for  
12 proposals for a third party to conduct the market analysis  
13 pursuant to paragraph (1).

14          (b) A preliminary report, including any proposed  
15 legislation, shall be submitted to the legislature no later than  
16 twenty days prior to the convening of the regular session of  
17 2020, and a final report, including any proposed legislation,  
18 shall be submitted to the legislature no later than twenty days  
19 prior to the convening of the regular session of 2021.



1 SECTION 3. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 HAWAII RETIREMENT SAVINGS PROGRAM

6 § -1 Definitions. As used in this chapter, unless the  
7 context otherwise requires:

8 "Board" means the Hawaii retirement savings board.

9 "Employee" means a person who is eligible to participate in  
10 the program established pursuant to section -4.

11 "Employer" includes any individual, partnership,  
12 association, joint-stock company, trust, corporation, the  
13 personal representative of the estate of a deceased individual  
14 or the receiver, trustee, or successor of any of the same,  
15 employing any person, but shall not include the State or any  
16 political subdivision thereof or the United States.

17 "Program" means the Hawaii retirement savings program.

18 § -2 Hawaii retirement savings board; establishment.

19 (a) There is established within the department of budget and  
20 finance for administrative purposes the Hawaii retirement  
21 savings board.



- 1           (b) The board shall consist of the following eleven  
2 members:
- 3           (1) The director of finance or the director's designee;  
4           (2) The director of commerce and consumer affairs or the  
5           director's designee;  
6           (3) The comptroller or the comptroller's designee;  
7           (4) A member of the senate to be selected by the president  
8           of the senate;  
9           (5) A member of the house of representatives to be  
10           selected by the speaker of the house of  
11           representatives;  
12           (6) A representative of the employees' retirement system  
13           to be selected by the governor pursuant to section  
14           26-34;  
15           (7) A representative of a chamber of commerce representing  
16           a variety of business interests in the State to be  
17           selected by the governor pursuant to section 26-34;  
18           (8) Two members from the small business industry to be  
19           selected by the governor pursuant to section 26-34;  
20           and



1           (9) Two representatives of the community, one to be  
2           selected by the president of the senate and one to be  
3           selected by the speaker of the house of  
4           representatives.

5           (c) The representative of the employees' retirement  
6           system, the representative of the chamber of commerce, the  
7           members from the small business industry, and the  
8           representatives of the community shall serve terms of  
9           years; provided that the members shall serve no more than  
10          consecutive terms. The senate member shall serve at the  
11          pleasure of the president of the senate. The member of the  
12          house of representatives shall serve at the pleasure of the  
13          speaker of the house of representatives. All other members  
14          shall serve in an ex officio capacity.

15          (d) The members of the board shall serve without pay but  
16          shall be entitled to reimbursement for necessary expenses,  
17          including travel and board and lodging expenses, while attending  
18          meetings of the board or when engaged in business relating to  
19          the work of the board.

20          (e) The director of finance or the director's designee  
21          shall serve as chairperson of the board.





1           (f) The board may employ, without regard to chapter 76,  
2 staff necessary for the performance of its functions and fix  
3 their compensation.

4           § -3 Duties of the board. The board shall:

- 5           (1) Establish, implement, and maintain the program  
6                established pursuant to section -4;
- 7           (2) Adopt rules pursuant to chapter 91 for the general  
8                administration of the program in accordance with  
9                section -5;
- 10          (3) Direct the investment of the funds contributed to  
11                accounts in the program consistent with the investment  
12                restrictions established by the board; provided that  
13                the restrictions shall be consistent with the  
14                objectives of the program and the board shall exercise  
15                the judgment and care then prevailing that persons of  
16                prudence, discretion, and intelligence exercise in the  
17                management of their own affairs with due regard to the  
18                probable income and level of risk from certain types  
19                of investments of money, in accordance with the  
20                policies established by the board;



- 1           (4) Collect application, account, or administrative fees
- 2           to defray the costs of administering the program;
- 3           (5) Make and enter into contracts, agreements, or
- 4           arrangements, and retain, employ, and contract for any
- 5           of the following services considered necessary or
- 6           desirable for carrying out the purposes set forth by
- 7           this chapter:
- 8           (A) Services of private and public financial
- 9           institutions, depositories, consultants,
- 10           investment advisers, investment administrators,
- 11           and third-party plan administrators;
- 12           (B) Research, technical, and other services; and
- 13           (C) Services of other state agencies to assist the
- 14           board in its duties;
- 15           (6) Evaluate the need for, and procure as needed, pooled
- 16           private insurance for the program; and
- 17           (7) Develop and implement an outreach plan to gain input
- 18           and disseminate information regarding the program and
- 19           retirement savings in general.

20           § -4 Establishment of the Hawaii retirement savings  
21 program. (a) There is established the Hawaii retirement



1 savings program to be administered by the board. The program  
2 shall:

3 (1) Allow employees in the State to contribute to an  
4 account established under the program through payroll  
5 deduction;

6 (2) Require an employer to offer its employees the  
7 opportunity to contribute to an account in the program  
8 through payroll deductions unless the employer offers  
9 a qualified retirement plan, including but not limited  
10 to a plan qualified under section 401(a), section  
11 401(k), section 403(a), section 403(b), section  
12 408(k), section 408(p), or section 457(b) of the  
13 Internal Revenue Code of 1986, as amended;

14 (3) Provide for automatic enrollment of employees and  
15 allow employees to opt-out of the program;

16 (4) Offer a default contribution rate set by the board;

17 (5) Offer default escalation of contribution levels that  
18 can be increased or decreased within the limits  
19 allowed by the Internal Revenue Code of 1986, as  
20 amended;



- 1           (6)   Provide for contributions to accounts in the program
- 2                   to be deposited directly with the investment
- 3                   administrator of the program;
- 4           (7)   Whenever possible, use existing employer and public
- 5                   infrastructure to facilitate contributions to the
- 6                   program, recordkeeping, and outreach;
- 7           (8)   Prohibit any employer contributions to employee
- 8                   accounts;
- 9           (9)   Have its records and its program accounts maintained
- 10                   and accounted for separately;
- 11          (10)   Provide reports on the status of program accounts to
- 12                   program participants at least annually;
- 13          (11)   Allow account owners to maintain an account,
- 14                   regardless of their place of employment, and roll over
- 15                   funds into other retirement accounts;
- 16          (12)   Pool accounts established under the program for
- 17                   investment;
- 18          (13)   Be professionally managed;
- 19          (14)   Provide that the State and employers that participate
- 20                   in the program have no proprietary interest in the



1 contributions to or earnings on amounts contributed to  
2 accounts established under the program;

3 (15) Provide that the investment administrator for the  
4 program shall be the trustee of all contributions and  
5 earnings on amounts contributed to accounts  
6 established under the program;

7 (16) Not impose on employers any duties that are otherwise  
8 prohibited under the Employee Retirement Income  
9 Security Act of 1974, as amended;

10 (17) Minimize program administration fees;

11 (18) Allow the use of private sector partnerships to  
12 administer and invest the contributions to the program  
13 under the supervision and guidance of the board; and

14 (19) Allow employers to establish an alternative retirement  
15 program for some or all employees.

16 (b) The program, the board, each board member, and the  
17 State shall not guarantee any rate of return or any interest  
18 rate on any contribution; provided that the program, the board,  
19 each board member, and the State shall not be liable for any  
20 loss incurred by any person as a result of participating in the  
21 program.



1           §   -5   **Rules.**   The board shall adopt rules, pursuant to  
2 chapter 91, necessary for the purposes of this chapter.

3           §   -6   **Confidentiality.**   Individual account information  
4 for accounts under this program, including but not limited to  
5 names, addresses, telephone numbers, personal identification  
6 information, or amounts contributed, shall be confidential and  
7 maintained as confidential:

8           (1)   Except to the extent necessary to administer the  
9                program in a manner consistent with this chapter, the  
10              applicable tax laws of the State, and the Internal  
11              Revenue Code of 1986, as amended; or

12          (2)   Unless the person who provides the information or is  
13                the subject of the information expressly agrees in  
14                writing that the information may be disclosed.

15          §   -7   **Hawaii retirement savings program administrative**  
16 **fund.**   (a)   There is established in the state treasury a special  
17 fund to be known as the Hawaii retirement savings program  
18 administrative fund, into which shall be deposited:

19          (1)   All interest collected under this chapter on and after  
20                the establishment of the program;

21          (2)   Appropriations made by the legislature to the fund;



1 (3) All fees collected pursuant to section -3; and

2 (4) Moneys transferred to the fund from the federal  
3 government, other state agencies, or local  
4 governments.

5 (b) The director of finance shall be the treasurer and  
6 custodian of the special fund.

7 (c) Moneys in the special fund shall be used to pay the  
8 administrative costs and expenses by the board and program and  
9 for any other purposes to implement this chapter.

10 § -8 Annual report. The board shall prepare an annual  
11 report detailing the board's activities for the previous fiscal  
12 year. The annual report shall be submitted to the governor and  
13 legislature no later than twenty days prior to the convening of  
14 each regular session."

15 SECTION 4. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$ or so  
17 much thereof as may be necessary for fiscal year 2019-2020 and  
18 the same sum or so much thereof as may be necessary for fiscal  
19 year 2020-2021 for the legislative reference bureau to conduct  
20 the market analysis under section 2(a)(1) of this Act.



1           The sums appropriated shall be expended by the legislative  
2 reference bureau for the purposes of this Act.

3           SECTION 5. This Act shall take effect on July 1, 2019;  
4 provided that:

5           (1) Subject to a positive finding in the feasibility study  
6 pursuant to section 2 of this Act, the Hawaii  
7 retirement savings board established pursuant to  
8 section 3 of this Act shall establish the Hawaii  
9 retirement savings program so that individuals may  
10 begin making contributions to the program no later  
11 than July 1, 2021;

12           (2) If the legislative reference bureau determines that  
13 the program would qualify as an employee benefit plan  
14 under the Employee Retirement Income Security Act of  
15 1974, as amended, the Hawaii retirement savings board  
16 and Hawaii retirement savings program shall not be  
17 established; and

18





# S.B. NO. 1028

1 (3) No employer with a retirement plan or program for  
 2 their employees shall cancel their retirement plan or  
 3 program for \_\_\_\_\_ years from the effective date of  
 4 this Act.  
 5

INTRODUCED BY:

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# S.B. NO. 1028

**Report Title:**

Kupuna Caucus; Hawaii Retirement Savings Program; Hawaii Retirement Savings Board; Feasibility Study; Legislative Reference Bureau; Appropriation

**Description:**

Requires the legislative reference bureau to conduct a feasibility study to determine the feasibility of establishing a Hawaii retirement savings program. Subject to a positive finding in the feasibility study, establishes the Hawaii retirement savings board to establish, implement, and maintain the Hawaii retirement savings program to cover private sector employees who are not provided a retirement savings plan by their employers. Appropriates funds to the legislative reference bureau to conduct a market analysis. Prohibits employers that offer retirement savings plans or programs to employees from canceling these plans or programs for an unspecified number of years after July 1, 2019.

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

