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# 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) Amend and align provision of the Hawaii Retirement  
3 Savings Program, the state-facilitated payroll-  
4 deduction retirement savings plan for private sector  
5 employees in Hawaii who do not have access to  
6 employer-sponsored retirement plans, to require  
7 automatic enrollment unless the employee opts out; and  
8 (2) Clarify the definition of "covered employer" in the  
9 Hawaii Retirement Savings Act.

10 SECTION 2. Section 389-2, Hawaii Revised Statutes, is  
11 amended by amending the definition of "covered employer" to read  
12 as follows:

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

15 "Covered employer" does not include:

- 16 (1) The United States;  
17 (2) The State or any of its political subdivisions; or



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

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

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

- 12           (1) Establish, implement, and maintain the program;
- 13           (2) Cause the program and arrangements and accounts  
14           established under the program to be designed,  
15           established, and operated:
  - 16           (A) In accordance with best practices for retirement  
17           savings vehicles;
  - 18           (B) To encourage participation, saving, sound  
19           investment practices, and appropriate selection  
20           of default investments;



- 1 (C) To maximize simplicity and ease of administration
- 2 for employers;
- 3 (D) To minimize costs, including by collective
- 4 investment and other measures to achieve
- 5 economies of scale and other efficiencies in
- 6 program design and administration;
- 7 (E) To promote portability of benefits; and
- 8 (F) To avoid preemption of the program by federal
- 9 law;
- 10 (3) Arrange for collective, common, and pooled investment
- 11 of assets of the program;
- 12 (4) Determine the eligibility of an employer, employee, or
- 13 other individual to participate in the program;
- 14 (5) Ensure the program's compliance with all applicable
- 15 laws and regulations;
- 16 (6) Establish procedures for the timely and fair
- 17 resolution of participant and other disputes related
- 18 to accounts or program operation;
- 19 (7) Develop and implement:



- 1 (A) An investment policy that defines the program's
- 2 investment objectives and that is consistent with
- 3 the objectives of the program; and
- 4 (B) Other policies and procedures consistent with
- 5 those investment objectives;
- 6 (8) Cause expenses incurred to initiate, implement,
- 7 maintain, and administer the program to be paid from
- 8 the program and other available sources;
- 9 (9) Establish and collect application, account, and
- 10 administrative fees;
- 11 (10) Accept grants, gifts, donations, legislative
- 12 appropriations, loans, and other moneys from the
- 13 State, any unit of federal, state, or local
- 14 government, or any other person to defray the costs of
- 15 administering and operating the program;
- 16 (11) Enter into contracts pursuant to chapter 103D for
- 17 services that the board deems necessary to carry out
- 18 the purposes of this chapter, including:
- 19 (A) Services of private and public financial
- 20 institutions, depositories, consultants,
- 21 actuaries, counsel, auditors, investment



1 advisors, investment administrators, investment  
2 management firms, other investment firms, third-  
3 party administrators, other professionals and  
4 service providers;

5 (B) Research, technical, financial, administrative,  
6 and other services; and

7 (C) Services of other state agencies to assist the  
8 board in the exercise of its powers and duties;

9 (12) Develop and implement an outreach plan to gain input  
10 and disseminate information regarding the program and  
11 retirement savings in general;

12 (13) Cause moneys to be held and invested and reinvested  
13 under the program;

14 (14) Ensure that all contributions to individual retirement  
15 accounts under the program may be used only to:

16 (A) Pay benefits to participants under the program;

17 (B) Pay the cost of administering the program; and

18 (C) Make investments for the benefit of the program;

19 provided that no assets of the program shall be  
20 transferred to the general fund of the State or to any  
21 other fund of the State or otherwise encumbered or



- 1           used for any purpose other than those specified in  
2           this paragraph;
- 3       (15) Provide for the payment of costs of administration and  
4           operation of the program;
- 5       (16) Evaluate the need for and, if the board deems  
6           necessary, procure:
- 7           (A) Insurance against any and all loss in connection  
8                 with the property, assets, or activities of the  
9                 program; and
- 10          (B) Pooled private insurance;
- 11       (17) Indemnify, including procurement of insurance if and  
12           as needed for this purpose, each board member from  
13           personal loss or liability resulting from the member's  
14           action or inaction as a board member;
- 15       (18) Collaborate with and evaluate the role of financial  
16           advisors or other financial professionals, including  
17           in assisting and providing guidance for covered  
18           employees; [~~and~~]
- 19       (19) Reimburse, when appropriate, the general fund of the  
20           State of Hawaii for the initial expenses incurred for



1           initiating, implementing, maintaining, and  
2           administering the program; and

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

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

11           SECTION 4. Section 389-5, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "~~[§389-5]~~ **Hawaii retirement savings program; due**  
14 **diligence; establishment; payroll deduction** [~~upon election to~~  
15 ~~contribute~~]. (a) There is established within the department,  
16 for administrative purposes only, a Hawaii retirement savings  
17 program. The program shall be administered by the board, in  
18 consultation with the department and the department of budget  
19 and finance. The board may determine the time frame for  
20 development and implementation of the program; provided that



1 prior to implementation of the program, the board shall meet the  
2 requirements of subsections (b) and (c).

3 (b) Prior to implementation of the program, the board may  
4 conduct a detailed implementation and evaluation study and  
5 perform other due diligence tasks to determine the feasibility  
6 of the program parameters established by this chapter and the  
7 resources and time needed to implement the program. Upon  
8 completion of the study, the board shall report its findings and  
9 recommendations, including any proposed legislation and funding  
10 requirements, to the legislature.

11 (c) Upon submittal of its report to the legislature  
12 pursuant to subsection (b) and prior to implementation of the  
13 program, the board may determine the level of staffing necessary  
14 to implement the program, develop an implementation strategy and  
15 timetable, and conduct outreach efforts to potential covered  
16 employers and covered employees.

17 (d) ~~[Any covered employee may elect to contribute a~~  
18 ~~portion of the employee's salary or wages to an individual~~  
19 ~~retirement account provided by the program through payroll~~  
20 ~~deduction.] Each covered employer shall enroll its covered~~  
21 employees in the program and withhold payroll deduction



1 contributions from each covered employee's paycheck unless the  
2 covered employee has elected not to contribute.

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

5 (1) [~~Allow a~~] Automatically enroll covered [~~employee to~~  
6 ~~enroll~~] employees into the program after [~~providing~~]  
7 the program administrator provides the [~~covered~~]  
8 [~~employee~~] employees with a written notice of the  
9 [~~employee's~~] right of the employees to opt [~~in~~] out;

10 and

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

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

16 (B) Transmit the covered employee's payroll deduction  
17 contribution to the program on the earliest date  
18 the amount withheld can reasonably be segregated  
19 from the covered employer's assets, but no later  
20 than the fifteenth day of the calendar month



1 following the month in which the covered  
2 employee's contribution amounts are withheld.

3 (f) The program shall establish for each enrolled employee  
4 a Roth IRA, into which the contributions deducted from ~~an~~ the  
5 employee's payroll shall be deposited. The board may add an  
6 option for all participants to affirmatively elect to contribute  
7 to a traditional IRA in addition to or in lieu of a Roth IRA.

8 (g) The contributions to and earnings on the amounts  
9 contributed to an employee's IRA under the program shall be  
10 owned by the employee. The State and employers shall have no  
11 proprietary interest in the contributions or earnings in an  
12 employee's IRA.

13 (h) Covered employers shall not make contributions,  
14 whether matching or not, to the program.

15 (i) The board may authorize matching contributions of up  
16 to \$500 per participant account from the special fund for the  
17 first 50,000 covered employees who participate in the program  
18 for twelve consecutive months after initial enrollment."

19 SECTION 5. Section 389-14, Hawaii Revised Statutes, is  
20 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. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.



**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. (SD1)

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

