

ACT 296

S.B. NO. 3289

A Bill for an Act Relating to Hawaii Retirement Savings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to establish a state-facilitated payroll-deduction retirement savings plan for private sector employees in Hawaii who do not have access to employer-sponsored retirement plans.

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

**“CHAPTER  
HAWAII RETIREMENT SAVINGS**

§ -1 **Short title.** This chapter shall be known and may be cited as the Hawaii Retirement Savings Act.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Board” means the Hawaii retirement savings board established under section -3.

“Covered employee” means an individual who:

- (1) Is a resident of the State;
- (2) Is eighteen years of age or older;
- (3) Is in the employ of a covered employer; and
- (4) Receives wages or other remunerations from a covered employer for services rendered that are subject to income tax as compensation paid in the State pursuant to section 235-34.

“Covered employee” does not include an individual covered under the federal Railway Labor Act (45 United States Code chapter 8) or on whose behalf the employer makes contributions to a Taft-Hartley multiemployer pension trust fund.

“Covered employer” means any person who is in business in the State and has one or more individuals in employment. “Covered employer” does not include:

- (1) The United States;

- (2) The State or any of its political subdivisions; or
- (3) A person that has been maintaining for all employees during the preceding two years a retirement plan that is tax-qualified under or is described in and satisfies the requirements of section 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code.

“Department” means the department of labor and industrial relations.

“Director” means the director of labor and industrial relations.

“Individual retirement account” or “IRA” means a traditional or Roth individual retirement account or individual retirement annuity under section 408(a), 408(b), or 408A of the Internal Revenue Code.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended (title 26 of the United States Code).

“Participant” means an individual who is contributing to an IRA under the program or has an IRA account balance under the program.

“Person” means any individual, firm, association, organization, sole proprietorship, partnership, company, corporation, joint venture, trust, or any other form of business, legal entity, or group of individuals.

“Program” means the Hawaii retirement savings program established pursuant to this chapter.

“Roth IRA” means a Roth individual retirement account or individual retirement annuity under section 408A of the Internal Revenue Code.

“Special fund” means the Hawaii retirement savings special fund established in section -8.

“Total fees and expenses” means all fees, costs, and expenses, including but not limited to administrative expenses, investment expenses, investment advice expenses, accounting costs, actuarial costs, legal costs, marketing expenses, education expenses, trading costs, insurance annuitization costs, and other miscellaneous costs.

“Traditional IRA” means a traditional individual retirement account or traditional individual retirement annuity under section 408(a) or (b) of the Internal Revenue Code.

“Wages” has the same meaning as in section 388-1.

### § -3 Hawaii retirement savings board; establishment; purpose. (a)

There is established within the department for administrative purposes only, a Hawaii retirement savings board to implement and administer a state-facilitated payroll-deduction retirement savings program for private-sector employees who do not have access to employer-sponsored retirement plans.

(b) The board shall consist of nine members as follows:

- (1) Two ex officio, voting members who shall serve as the co-chairs of the board, consisting of:
  - (A) The director or the director’s designee; and
  - (B) The director of finance or the director’s designee;
- (2) Two ex officio, nonvoting members, consisting of:
  - (A) A member of the house of representatives appointed by the speaker of the house of representatives; and
  - (B) A member of the senate appointed by the president of the senate; and
- (3) Five voting members who shall hold no other public office, to be appointed by the governor and serve on the board in accordance with section 26-34, consisting of:

- (A) One member with professional knowledge and experience in establishing retirement savings plans and retirement investment products;
- (B) One member representing the interests of small businesses in Hawaii;
- (C) One member with professional knowledge and experience in representing the interests of employers in terms of retirement savings;
- (D) One member with professional knowledge and experience in representing the interests of employees in terms of retirement savings; and
- (E) One member who is a retiree who resides in Hawaii, representing retirees in Hawaii.

(c) The terms of board members shall be four years; provided that the initial appointments shall be for staggered terms, as determined by the governor; provided further that ex-officio board members shall serve at the pleasure of the appointing authority.

(d) A simple majority of voting members of the board shall constitute quorum to do business. Any action taken by the board shall be approved by a simple majority of the voting members present. Any vacancy on the board shall not impair the authority of the remaining members to exercise all the powers of the board. All decisions of the board shall be reduced into writing and shall state separately the board's findings of fact and conclusions.

(e) The members of the board shall serve without compensation but shall be reimbursed for their actual and necessary expenses, including travel expenses, incurred in carrying out their duties.

(f) The board, or its co-chairs with the approval of the board, may employ an executive director exempt from chapters 76 and 89, and other staff necessary to perform its duties.

**§ -4 Hawaii retirement savings board; powers; duties.** (a) The board shall have powers and duties in accordance with law to:

- (1) Establish, implement, and maintain the program;
- (2) Cause the program and arrangements and accounts established under the program to be designed, established, and operated:
  - (A) In accordance with best practices for retirement savings vehicles;
  - (B) To encourage participation, saving, sound investment practices, and appropriate selection of default investments;
  - (C) To maximize simplicity and ease of administration for employers;
  - (D) To minimize costs, including by collective investment and other measures to achieve economies of scale and other efficiencies in program design and administration;
  - (E) To promote portability of benefits; and
  - (F) To avoid preemption of the program by federal law;
- (3) Arrange for collective, common, and pooled investment of assets of the program;
- (4) Determine the eligibility of an employer, employee, or other individual to participate in the program;
- (5) Ensure the program's compliance with all applicable laws and regulations;
- (6) Establish procedures for the timely and fair resolution of participant and other disputes related to accounts or program operation;

- (7) Develop and implement:
  - (A) An investment policy that defines the program's investment objectives and that is consistent with the objectives of the program; and
  - (B) Other policies and procedures consistent with those investment objectives;
- (8) Cause expenses incurred to initiate, implement, maintain, and administer the program to be paid from the program and other available sources;
- (9) Establish and collect application, account, and administrative fees;
- (10) Accept grants, gifts, donations, legislative appropriations, loans, and other moneys from the State, any unit of federal, state, or local government, or any other person to defray the costs of administering and operating the program;
- (11) Enter into contracts pursuant to chapter 103D for services that the board deems necessary to carry out the purposes of this chapter, including:
  - (A) Services of private and public financial institutions, depositories, consultants, actuaries, counsel, auditors, investment advisors, investment administrators, investment management firms, other investment firms, third-party administrators, other professionals and service providers;
  - (B) Research, technical, financial, administrative, and other services; and
  - (C) Services of other state agencies to assist the board in the exercise of its powers and duties;
- (12) Develop and implement an outreach plan to gain input and disseminate information regarding the program and retirement savings in general;
- (13) Cause moneys to be held and invested and reinvested under the program;
- (14) Ensure that all contributions to individual retirement accounts under the program may be used only to:
  - (A) Pay benefits to participants under the program;
  - (B) Pay the cost of administering the program; and
  - (C) Make investments for the benefit of the program; provided that no assets of the program shall be transferred to the general fund of the State or to any other fund of the State or otherwise encumbered or used for any purpose other than those specified in this paragraph;
- (15) Provide for the payment of costs of administration and operation of the program;
- (16) Evaluate the need for and, if the board deems necessary, procure:
  - (A) Insurance against any and all loss in connection with the property, assets, or activities of the program; and
  - (B) Pooled private insurance;
- (17) Indemnify, including procurement of insurance if and as needed for this purpose, each board member from personal loss or liability resulting from the member's action or inaction as a board member;
- (18) Collaborate with and evaluate the role of financial advisors or other financial professionals, including in assisting and providing guidance for covered employees; and

- (19) Reimburse, when appropriate, the general fund of the State of Hawaii for the initial expenses incurred for initiating, implementing, maintaining, and administering the program; and
  - (20) Take any other action the board deems reasonably necessary to carry out the purpose of this chapter.
- (b) The board may develop and disseminate information designed to educate covered employees about the impacts of opting in to the program on take-home pay, savings strategies, and the benefits of planning and saving for retirement to help covered employees in deciding whether to participate and at what level participation may be appropriate.
- (c) Board members, the executive director, and other staff of the board shall not:
- (1) Have any interest, directly or indirectly, in the making of any investment under the program or in gains or profits accruing from any investment;
  - (2) Borrow any program-related funds or deposits, or use any program-related funds or deposits in any manner, for themselves or as an agent or partner of others; or
  - (3) Become an endorser, surety, or obligor on investments made under the program.

**§ -5 Hawaii retirement savings program; due diligence; establishment; payroll deduction upon election to contribute.** (a) There is established within the department, for administrative purposes only, a Hawaii retirement savings program. The program shall be administered by the board, in consultation with the department and the department of budget and finance. The board may determine the time frame for development and implementation of the program; provided that prior to implementation of the program, the board shall meet the requirements of subsections (b) and (c).

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

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

(d) Any covered employee may elect to contribute a portion of the employee's salary or wages to an individual retirement account provided by the program through payroll deduction.

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

- (1) Allow a covered employee to enroll into the program after providing the covered employee with a written notice of the employee's right to opt in; and
- (2) For any covered employee who has opted in to the program:
  - (A) Withhold the covered employee's contribution amount from the employee's salary or wages; and
  - (B) Transmit the covered employee's payroll deduction contribution to the program on the earliest date the amount withheld

can reasonably be segregated from the covered employer's assets, but no later than the fifteenth day of the calendar month following the month in which the covered employee's contribution amounts are withheld.

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

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

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

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

**§ -6 Hawaii retirement savings program; contribution amount; rates.**

The default contribution amount deducted from the payroll of a covered employee who has elected to contribute to the program shall be equal to five per cent of the covered employee's salary or wages; provided that an employee may elect to contribute a higher or lower percentage of compensation as long as the amount does not exceed the applicable contribution dollar limits under the Internal Revenue Code.

**§ -7 Hawaii retirement savings program; program manager.**

(a) The program shall be managed by a program manager that shall be a financial institution with professional knowledge and experience in managing payroll deduction IRAs, contracted by the board in compliance with chapter 103D.

(b) The program manager shall keep total fees and expenses as low as practicable; provided that the total fees and expenses of the program each year shall not exceed seventy-five basis points of the total assets of the program; provided further that this limit shall not apply during the initial three-year period following the establishment of the program.

(c) The program manager shall prepare and make available to all participants a report on the status of each participant's account at least once every calendar year.

**§ -8 Hawaii retirement savings special fund.**

(a) There is established within the state treasury a Hawaii retirement savings special fund, into which shall be deposited:

- (1) Moneys appropriated to the fund by the legislature;
- (2) Moneys transferred to the fund from the federal government, other states, and their political subdivisions;
- (3) Fees collected by the board in relation to the administration and operation of the program;
- (4) Grants, gifts, and donations made to the board for deposit into the fund;
- (5) Moneys collected for the fund from:
  - (A) Contributions to, or investment returns or assets of, the program; or

- (B) Other moneys collected by or for the program or pursuant to arrangements established under the program, to the extent permitted under federal and state law;
- (6) Interest earned or accrued on moneys deposited in the fund; and
- (7) Penalties collected pursuant to section -14.
- (b) All moneys in the special fund are appropriated for the purposes of and shall be expended by the department to pay the administrative costs and expenses of the program, program manager, matching contributions to participant accounts, and the administrative costs and expenses that the board incurs in the performance of its duties under this chapter, and to reimburse the general fund of the State of Hawaii for the initial expenses incurred for initiating, implementing, maintaining, and administering the program.

**§ -9 Protection from liability; employers.** (a) No covered employer or other employer shall be liable for or bear responsibility for:

- (1) An employee's decision to opt in or not participate in the program;
- (2) Investment decisions made by the participants and the board;
- (3) The administration, investment, investment returns, or investment performance of the program, including any interest rate or other rate of return earned on any contribution or account balance; provided that the employer played no role in the investment;
- (4) The program design or the benefits paid to participants;
- (5) Individuals' awareness of or compliance with the conditions and other provisions of the tax laws that determine:
  - (A) Which individuals are eligible to make tax-favored contributions to IRAs;
  - (B) The permissible amount of contributions; and
  - (C) The time frame and manner within which contributions are to be made;
- (6) Any loss, failure to realize any gain, or any other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any person as a result of program participation; or
- (7) Any loss, deficiency, or damages caused by or related to the action or inaction of the program manager.
- (b) No covered employer or other employer shall be, or shall be considered to be, a fiduciary in relation to the program or any other arrangement under the program.

**§ -10 Protection from liability; State.** (a) The State, department of labor and industrial relations, Hawaii retirement savings board, Hawaii retirement savings program, and other departments, agencies, boards, commissions, and programs of the State and any officers or employees thereof:

- (1) Shall not be responsible for compliance by covered employers or other individuals with the conditions and other provisions of the Internal Revenue Code that determine:
  - (A) Which covered employees or other individuals are eligible to make tax-favored contributions to IRAs;
  - (B) The permissible amount of contributions; and
  - (C) The time frame and manner within which contributions are to be made;
- (2) Shall have no duty, responsibility, or liability to any party for the payment of any benefits under the program, regardless of wheth-



er sufficient funds are available under the program to pay those benefits;

- (3) Shall not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and
- (4) Shall not be liable or responsible for any loss, deficiency, failure to realize any gain, or any other adverse consequences, including any adverse tax consequences or loss of favorable tax treatment, public assistance, or other benefits, incurred by any covered employees or other person as a result of participating in the program.

(b) The debts, contracts, and obligations of the program or the board are not the debts, contracts, and obligations of the State, and neither the faith and credit nor the taxing power of the State is pledged directly or indirectly to the payment of the debts, contracts, and obligations of the program or the board.

**§ -11 Confidentiality of participant and account information.** Individual account information relating to accounts under the program and relating to individual participants, including but not limited to names, addresses, telephone numbers, email addresses, personal identification information, investments, contributions, and earnings, is confidential and shall be maintained as confidential:

- (1) Except to the extent necessary to administer the program in a manner consistent with this chapter, the tax laws of the State, and the Internal Revenue Code; or
- (2) Unless the participant who provides the information or is the subject of the information expressly agrees in writing to the disclosure of the information.

**§ -12 Collaboration and cooperation; intergovernmental; interstate.** (a) The board may enter into an intergovernmental agreement or memorandum of understanding with the State or any agency of the State to receive outreach, technical assistance, enforcement and compliance services, or collection or dissemination of information pertinent to the program, subject to a confidentiality agreement deemed appropriate by the board and other agencies of the State.

(b) The State and any department, board, commission, or agency that enter into an agreement or memorandum of understanding pursuant to this section shall collaborate to provide the outreach, assistance, information, and compliance or other services or assistance to the board. Memoranda of understanding executed pursuant to this section may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

(c) The board may enter into a contract, agreement, memorandum of understanding, or other arrangement to collaborate, cooperate, coordinate, contract, or combine resources, investments, or administrative functions with other governmental entities, including other states or any of their agencies or instrumentalities that maintain or are establishing retirement savings programs compatible with the program, including collective, common, or pooled investments with other funds of other states' programs with which the assets of the program and trust are permitted by law to be collectively invested, to the extent necessary or desirable for the effective and efficient design, administration, and implementation of the program consistent with the purposes set forth in this chapter, including the purpose of achieving economies of scale and other efficiencies designed to minimize costs for the program and its participants.



§ -13 **Civil actions.** Any covered employee denied enrollment into the program in violation of section -5(e)(1) may file a civil action against the covered employer to require the covered employer to enroll the covered employee into the program and recover costs, including reasonable attorneys' fees, incurred in the civil action.

§ -14 **Penalties.** (a) Any covered employer who fails to enroll a covered employee into the program in accordance with section -5(e)(1) without equitable justification shall be liable:

- (1) To the covered employee, in an amount equal to the contribution amount that would have been made by the employee into the program and interest at a rate of six per cent per year on the contribution amount, beginning from the date the contribution would have been made into the account; provided that the sum of the contribution amount and interest thereto shall be transmitted by the covered employer to the program to be paid into the covered employee's IRA; and
- (2) A penalty of:
  - (A) \$25 for each month the covered employee was not enrolled in the program; and
  - (B) \$50 for each month the covered employee continues to be unenrolled in the program after the date on which a penalty has been assessed with respect to the covered employee who had elected to participate in the program.

(b) Any covered employer who fails to timely transmit a covered employee's payroll deduction contribution to the program pursuant to section -5(e)(2) shall be subject to the same sanctions imposed on an employer for misappropriation of employee wage withholdings and the penalties pursuant to chapter 388.

(c) No penalty under subsections (a)(2) and (b) shall be imposed on a covered employer if the covered employer can establish by a preponderance of the evidence that the covered employer:

- (1) Exercised reasonable diligence to meet the requirements of section -5(e);
- (2) Did not know or reasonably should not have known that the failure existed; and
- (3) Cures the failure within ninety days of the day the covered employer was given actual notice of the failure or should have known that the failure existed, whichever is earlier.

(d) Any covered employer who otherwise violates or fails to comply with any provision of this chapter or rules adopted pursuant to this chapter shall be liable for a penalty of no less than \$500 for each violation or failure; provided that the penalties shall not exceed \$5,000 per calendar year.

(e) All or part of the penalties imposed under subsections (a)(2) and (b) may be waived to the extent that the payment of the penalties would be excessive or otherwise inequitable relative to the violation or failure involved; provided that the covered employer can establish, by a preponderance of the evidence, the existence of equitable justification for the violation or failure.

(f) The penalties under this section shall be deposited into the special fund.

§ -15 **Rulemaking.** (a) The department, in consultation with the department of budget and finance, may adopt rules pursuant to chapter 91 to govern the actions of the board.

(b) The board, in consultation with the department and department of budget and finance, may adopt rules pursuant to chapter 91 to carry out the purposes of this chapter. The rules adopted by the board may include but not be limited to rules and procedures governing:

- (1) Enrollment and contributions to an IRA under the program, including withholding by covered employers of employee payroll, rights of covered employees, and obligations of covered employers;
- (2) Withdrawals, rollovers, and direct transfers from an IRA under the program in the interest of facilitating portability and maximization of benefits;
- (3) Phasing in the enrollment of eligible covered employees by the size or type of covered employer, beginning with the initial applicability date specified in this chapter;
- (4) Outreach to covered employees, covered employers, other stakeholders, and the public regarding the program;
- (5) Actions of the program manager;
- (6) Distribution of funds from the program;
- (7) Portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the program to other IRAs or to tax-qualified plans that accept rollovers; and
- (8) Prescribed forms to be used by covered employers and covered employees.

**§ -16 Audits and annual reports.** (a) The board shall cause an accurate account of all activities, operations, receipts, and expenditures to be maintained in relation to the program and the board. Each year, after the first full fiscal year following program implementation, a full audit of the books and accounts of the board pertaining to the activities, operations, receipts and expenditures, personnel, services, or facilities of the program and the board shall be conducted by a certified public accountant. The audit shall include but not be limited to the review of direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees for the administration of the program. For purposes of the audit, the auditors shall have access to the properties and records of the program and board and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the program.

(b) No later than twenty days before the convening of each regular session, the board shall prepare and submit to the governor and the legislature, and make available to the public, an annual report that shall include but not be limited to:

- (1) The audited financial report prepared in accordance with generally accepted accounting principles, detailing the activities, operations, receipts, and expenditures of the program and board during the preceding calendar year; and
- (2) The progress and accomplishments made by the board during the preceding year and projected activities of the program for the current calendar year;

provided that the annual report for the first full fiscal year following program implementation shall include the board's findings and recommendations, including any proposed legislation, relating to the feasibility of expanding the program's eligibility to Hawaii's independent workforce, including self-employed workers."

**SECTION 3.** The governor, president of the senate, and speaker of the house of representatives shall appoint members to the Hawaii retirement savings

board no later than sixty days after enactment of this Act, for terms of office beginning in October 2022.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,255,000 or so much thereof as may be necessary for fiscal year 2022-2023 for the implementation and operation of the Hawaii retirement savings program, including funds for the hiring of an executive director without regard to chapters 76 and 89, Hawaii Revised Statutes, a program specialist, and an office assistant.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2022-2023 for the department of labor and industrial relations to provide outreach and education on the Hawaii retirement savings program.

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

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

SECTION 7. The sums appropriated in sections 4 to 6 of this Act shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. This Act shall take effect upon its approval; provided that sections 4, 5, 6, and 7 shall take effect on July 1, 2022.

(Approved July 12, 2022.)