

ACT 113

S.B. NO. 855

A Bill for an Act Relating to Hawaii Retirement Savings Act.

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

SECTION 1. The purpose of this Act is to:

- (1) Clarify the definition of “covered employer” in the Hawaii Retirement Savings Act;
- (2) Amend and align provisions of the Hawaii retirement savings program, the state-facilitated payroll-deduction retirement savings plan for private sector employees in Hawaii who do not have access to employer-sponsored retirement plans, to require automatic enrollment unless the employee opts out; and
- (3) Repeal the limit on the total fees and expenses that can be spent for the program each year.

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

““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]~~ Any employer that has ~~[been maintaining]~~ offered or maintained a retirement plan for some or all employees ~~[during]~~ at any time in 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.”

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

- “(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."

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

1. By amending its title to read:

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

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

"(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.] Each covered employer shall enroll its covered employees in the program and withhold and remit payroll deduction contributions from each covered employee's paycheck unless the covered employee has elected not to participate.

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

- (1) [Allow a] Automatically enroll covered ~~[employee to enroll]~~ employees into the program after [providing] the covered employer provides the ~~[covered employee]~~ employees with a written notice of the ~~[employee's]~~ right of the employees to opt ~~[in;]~~ out; and

- (2) For any covered employee who ~~[has opted in to]~~ is enrolled into the program[:] and has not opted out:
 - (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]~~ the 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 or in lieu of a Roth IRA."

SECTION 5. Section 389-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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].~~"

SECTION 6. Section 389-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any covered employer who fails to enroll a covered employee into the program in accordance with section 389-5(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]~~ should have been enrolled in the program."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2025.

(Approved May 29, 2025.)