

**"CHAPTER 303  
EMPLOYEES' ANNUITY AND CUSTODIAL  
ACCOUNT CONTRACTS**

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## Note

Chapter heading amended by L 1999, c 123, §2(1).

## Cross References

University of Hawaii optional retirement system, see §88-8.

" **§303-1 Purpose.** The purpose of this chapter is to provide the means by which employees of the department of education and the University of Hawaii may qualify for the favorable benefits of section 403(b) of the Internal Revenue Code of 1986, as amended. [L 1967, c 40, pt of §1; HRS §303-1; am L 1999, c 123, §2(2)]

" **§303-2 Contract for purchase of annuity or investment in custodial account.** (a) The department of education and the University of Hawaii, on behalf of any employee of the respective institutions, may enter into a written agreement with any employee to purchase for the employee:

(1) An annuity contract under section 403(b) of the Internal Revenue Code of 1986, as amended, from an insurer who holds a certificate of authority under section 431:3-201 or certificate of registration of dealer in securities under chapter 485A, or both, and who complies with the requirements established by the respective institution and agrees to abide by the terms, conditions, rules, or regulations of the respective institution; or

(2) An annuity contract qualified under section 401(k) of the Internal Revenue Code of 1986, as amended, which provides a nationwide retirement trust for a group of college or university football coaches who, due to the nature of their jobs, change employers frequently.

(b) The University of Hawaii and after December 31, 2003, the department of education may pay amounts to a custodial account established on behalf of the employee pursuant to section 403(b)(7) of the Internal Revenue Code of 1986, as amended. [L 1967, c 40, pt of §1; HRS §303-2; am L 1993, c 77, §3; am L 1999, c 123, §2(3); am L 2001, c 186, §1; am L 2006, c 229, §5]

## Attorney General Opinions

University may make more than one agreement with an employee to purchase annuity contracts for the employee, provided that no

more than one agreement is made during any taxable year of employee. Att. Gen. Op. 71-4.

" **§303-3 Withholding.** (a) The department of education and the University of Hawaii may also enter into an agreement under which the employer shall withhold from the salary of the employee the amount of the premiums payable on account of the annuity contract, and shall make such premium payments on behalf of the employee. The department of education and the University of Hawaii may contract with third parties to administer plans to ensure compliance with the Internal Revenue Code of 1986, as amended, state and federal laws, and for the withholding of amounts from the salaries of their employees payable on account of annuity contracts and for making payments on their behalf. Costs for implementing and administering these plans for the University of Hawaii shall be borne by the employees or service providers maintaining annuity contracts, as determined by the University of Hawaii. Costs for implementing and administering these plans for the department of education shall be borne by the insurance service providers offering the annuity products, or the annuity entity selling or maintaining the annuity contracts on behalf of the employees of the department of education.

(b) The University of Hawaii and after December 31, 2003, the department of education may also enter into an agreement under which the employer shall withhold from the salary of the employee the amount payable on account of the custodial account, and shall make the payments on behalf of the employee. The University of Hawaii and the department of education may contract with third parties to administer plans to ensure compliance with the Internal Revenue Code of 1986, as amended, state and federal laws and, for the withholding of amounts from the salaries of their employees payable on account of custodial accounts and for making payments on their behalf. Costs for implementing and administering the plan for the University of Hawaii shall be borne by the employees or service providers maintaining custodial accounts as determined by the University of Hawaii. Costs for implementing and administering the plan for the department of education shall be borne by the custodial service provider offering the custodial account product, or the custodial entity selling or maintaining the custodial accounts on behalf of employees of the department of education. [L 1967, c 40, pt of §1; HRS §303-3; am L 1999, c 123, §2(4); am L 2001, c 186, §2]

" **§303-3.5 Limitation on liability.** The University of Hawaii, department of education, and the State of Hawaii shall

not be held liable for the sums deferred or the results of any investment product. [L 1999, c 123, §1; am L 2001, c 186, §3]

" **§303-4 Adoption of rules.** Each employer may adopt rules to implement this chapter including but not limited to:

- (1) The method of filing an election to accept an adjustment in earnings and revocation of the election;
- (2) The effective date of an election;
- (3) Changes in the amount of the adjustment in earnings; and
- (4) Selection of the insurance company or companies from which the annuity contracts are to be purchased or to which payments into a qualified custodial account are to be made. [L 1967, c 40, pt of §1; HRS §303-4; am L 1999, c 123, §2(5)]

" **§303-5 Retirement system contribution not affected.** A reduction in salary authorized by an employee under terms of this chapter shall in no way alter the amount of regular compensation or gross salary upon which the employee's contribution to the employees' retirement system is based. [L 1967, c 40, pt of §1; HRS §303-5; gen ch 1985]

" **[§303-6] Participation in qualified football coaches pension plan.** The University of Hawaii, on behalf of any of its football coaches, may enter into a written agreement with any association of football coaches with a qualified coaches plan under the Employee Retirement Income Security Act of 1974, as amended, for the purpose of enabling its football coaches to participate in the association's qualified pension plan. The University of Hawaii may withhold sums from a participating football coach's salary and pay those sums directly to the qualified coaches plan if withholding and payment are required under the plan. [L 1993, c 77, §2]