

**SB 2333**

**SD-2**

**RELATING TO  
RETIREMENT  
SAVINGS**

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

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 provides a reliable way to accumulate savings needed for a  
8 secure retirement.

9 The legislature further finds that approximately fifty per  
10 cent of the State's private sector employees work for an  
11 employer that does not offer a retirement plan or are not  
12 eligible for the plan offered. The lack of opportunity to  
13 participate in an employer-provided retirement plan spans all  
14 levels of education and earnings. Employees of Hawaii  
15 businesses with fewer than one hundred employees are much less  
16 likely to have access to a retirement plan than employees of  
17 larger businesses. Employees who are offered the opportunity to  
18 save through the employee's place of employment are  
19 significantly more likely to participate and make steady  
20 contributions to build retirement savings.



1           The purpose of this Act is to require the department of  
2 budget and finance to conduct a study on the feasibility of  
3 implementing a Hawaii retirement savings plan for private sector  
4 employees; to report to the legislature with its findings and  
5 proposals, if any; and, if the results of the study support it,  
6 to establish a Hawaii retirement savings board to administer the  
7 Hawaii retirement savings plan for private sector employees.

8           SECTION 2. (a) Before establishing the Hawaii retirement  
9 savings board and the Hawaii retirement savings plan, the  
10 department of budget and finance shall:

11           (1) Conduct a market analysis to determine:

12                   (A) The feasibility of the plan; and

13                   (B) Whether and to what extent plans with the

14                           characteristics described in section -4,

15                           Hawaii Revised Statutes, currently exist in the

16                           private market;

17           (2) Obtain legal advice regarding the applicability of the  
18 Employee Retirement Income Security Act of 1974, as  
19 amended, and the Internal Revenue Code of 1986, as  
20 amended, to the plan;



- 1 (3) Investigate whether employers that are not required to  
2 participate in the plan can make the plan available to  
3 their employees;
- 4 (4) Investigate methods to allow individuals who are not  
5 automatically enrolled in the plan to opt in to the  
6 plan and make contributions to an account, either  
7 through payroll contributions or another method of  
8 contribution;
- 9 (5) Conduct an analysis of the potential costs to  
10 employers, including administrative costs, and costs  
11 associated with providing automatic payroll deductions  
12 for participation in the plan, as well as  
13 recommendations on how to eliminate or reduce those  
14 costs through incentives, tax credits, or other means;
- 15 (6) Prepare a timeline for implementation of the Hawaii  
16 retirement savings plan; and
- 17 (7) Make recommendations to the legislature regarding ways  
18 to increase financial literacy in the State.
- 19 The department of budget and finance may issue a request for  
20 proposals for a third party to conduct the market analysis under  
21 paragraph (1).



1 (b) A preliminary report shall be submitted to the  
2 legislature no later than twenty days prior to the convening of  
3 the regular session of 2019, and a final report shall be  
4 submitted to the legislature no later than twenty days prior to  
5 the convening of the regular session of 2020.

6 (c) The department of budget and finance may adopt interim  
7 rules exempt from the public notice and public hearing  
8 requirements of chapter 91, Hawaii Revised Statutes, necessary  
9 to implement this section.

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

13 **"CHAPTER**

14 **HAWAII RETIREMENT SAVINGS PLAN**

15 **§ -1 Definitions.** As used in this chapter, unless the  
16 context otherwise requires:

17 "Board" means the Hawaii retirement savings board.

18 "Employee" means a person who is eligible to participate in  
19 the plan as established in section -4.

20 "Employer" includes any individual, partnership,  
21 association, joint-stock company, trust, corporation, the



1 personal representative of the estate of a deceased individual  
2 or the receiver, trustee, or successor of any of the same,  
3 employing any person, but shall not include the State or any  
4 political subdivision thereof or the United States.

5 "Plan" means the Hawaii retirement savings plan.

6 **§ -2 Hawaii retirement savings board; establishment.**

7 (a) There is established within the department of budget and  
8 finance for administrative purposes the Hawaii retirement  
9 savings board.

10 (b) The board shall consist of the following eleven  
11 members:

- 12 (1) The director of finance or the director's designee;  
13 (2) The director of commerce and consumer affairs or the  
14 director's designee;  
15 (3) The comptroller or the comptroller's designee;  
16 (4) A member of the senate to be selected by the president  
17 of the senate;  
18 (5) A member of the house of representatives to be  
19 selected by the speaker of the house of  
20 representatives;



1 (6) A representative of the employees' retirement system  
2 to be selected by the governor pursuant to section  
3 26-34;

4 (7) A representative of the Chamber of Commerce Hawaii to  
5 be selected by the governor pursuant to section 26-34;

6 (8) Two members from the small business industry to be  
7 selected by the governor pursuant to section 26-34;  
8 and

9 (9) Two representatives of the community, one to be  
10 selected by the president of the senate and one to be  
11 selected by the speaker of the house of  
12 representatives.

13 (c) The representative of the employees' retirement  
14 system, the representative of the Chamber of Commerce Hawaii,  
15 and the members from the small business industry shall serve  
16 terms of            years; provided that the members shall serve no  
17 more than           consecutive terms. The senate member shall  
18 serve at the pleasure of the senate president. The member of  
19 the house of representatives shall serve at the pleasure of the  
20 speaker of the house of representatives. All other members  
21 shall serve in an ex officio capacity.





1 (d) The members of the board shall serve without pay but  
2 shall be entitled to reimbursement for necessary expenses,  
3 including travel and board and lodging expenses, while attending  
4 meetings of the board or when engaged in business relating to  
5 the work of the board.

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

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

11 **§ -3 Duties of the board.** The board shall:

12 (1) Establish, implement, and maintain the Hawaii  
13 retirement savings plan pursuant to section -4;

14 (2) Adopt rules pursuant to chapter 91 for the general  
15 administration of the plan as provided in section

16 -5;

17 (3) Direct the investment of the funds contributed to  
18 accounts in the plan consistent with the investment  
19 restrictions established by the board; provided that  
20 the restrictions shall be consistent with the  
21 objectives of the plan and the board shall exercise



1 the judgment and care then prevailing that persons of  
2 prudence, discretion, and intelligence exercise in the  
3 management of their own affairs with due regard to the  
4 probable income and level of risk from certain types  
5 of investments of money, in accordance with the  
6 policies established by the board;

7 (4) Collect application, account, or administrative fees  
8 to assist the costs of administering the plan;

9 (5) Make and enter into contracts, agreements, or  
10 arrangements, and retain, employ, and contract for any  
11 of the following services considered necessary or  
12 desirable, for carrying out the purposes set forth by  
13 this chapter:

14 (A) Services of private and public financial  
15 institutions, depositories, consultants,  
16 investment advisers, investment administrators,  
17 and third-party plan administrators;

18 (B) Research, technical, and other services;

19 (C) Services of other state agencies to assist the  
20 board in its duties;



1 (6) Evaluate the need for, and procure as needed, pooled  
2 private insurance for the plan; and

3 (7) Develop and implement an outreach plan to gain input  
4 and disseminate information regarding the plan and  
5 retirement savings in general.

6 **§ -4 Establishment of the Hawaii retirement savings**

7 **plan.** (a) There is established the Hawaii retirement savings  
8 plan to be administered by the board. The plan shall:

9 (1) Allow employees for compensation in the State to  
10 contribute to an account established under the plan  
11 through payroll deduction;

12 (2) Require an employer to offer its employees the  
13 opportunity to contribute to an account in the plan  
14 through payroll deductions unless the employer offers  
15 a qualified retirement plan, including but not limited  
16 to a plan qualified under section 401(a), section  
17 401(k), section 403(a), section 403(b), section  
18 408(k), section 408(p), or section 457(b) of the  
19 Internal Revenue Code of 1986, as amended;

20 (3) Provide for automatic enrollment of employees and  
21 allow employees to opt out of the plan;



- 1           (4) Offer a default contribution rate set by the board;
- 2           (5) Offer default escalation of contribution levels that
- 3                 can be increased or decreased within the limits
- 4                 allowed by the Internal Revenue Code of 1986, as
- 5                 amended;
- 6           (6) Provide for contributions to accounts in the plan to
- 7                 be deposited directly with the investment
- 8                 administrator for the plan;
- 9           (7) Whenever possible, use existing employer and public
- 10                infrastructure to facilitate contributions to the
- 11                plan, recordkeeping, and outreach;
- 12           (8) Require no employer contributions to employee
- 13                accounts;
- 14           (9) Have its records and its plan accounts maintained and
- 15                accounted for separately;
- 16           (10) Provide reports on the status of plan accounts to plan
- 17                participants at least annually;
- 18           (11) Allow account owners to both maintain an account
- 19                regardless of their place of employment and to roll
- 20                over funds into other retirement accounts;



- 1 (12) Pool accounts established under the plan for  
2 investment;
- 3 (13) Be professionally managed;
- 4 (14) Provide that the State and employers that participate  
5 in the plan have no proprietary interest in the  
6 contributions to or earnings on amounts contributed to  
7 accounts established under the plan;
- 8 (15) Provide that the investment administrator for the plan  
9 shall be the trustee of all contributions and earnings  
10 on amounts contributed to accounts established under  
11 the plan;
- 12 (16) Not impose on employers any duties that are otherwise  
13 prohibited under the Employee Retirement Income  
14 Security Act of 1974, as amended;
- 15 (17) Keep administration fees in the plan low;
- 16 (18) Allow the use of private sector partnerships to  
17 administer and invest the contributions to the plan  
18 under the supervision and guidance of the board; and
- 19 (19) Allow employers to establish an alternative retirement  
20 plan for some or all employees.



1 (b) The plan, the board, each board member, and the State  
2 shall not guarantee any rate of return or any interest rate on  
3 any contribution; provided that the plan, the board, each board  
4 member, and the State shall not be liable for any loss incurred  
5 by any person as a result of participating in the plan.

6 **§ -5 Rules.** The board shall adopt rules, pursuant to  
7 chapter 91, necessary for the purposes of this chapter.

8 **§ -6 Confidentiality.** Individual account information  
9 for accounts under this plan, including but not limited to  
10 names, addresses, telephone numbers, personal identification  
11 information, amounts contributed, shall be confidential and  
12 shall be maintained as confidential:

13 (1) Except to the extent necessary to administer the plan  
14 in a manner consistent with sections -2 to -8,  
15 the tax laws of the State, and the Internal Revenue  
16 Code of 1986, as amended; or

17 (2) Unless the person who provides the information or is  
18 the subject of the information expressly agrees in  
19 writing that the information may be disclosed.

20 **§ -7 Hawaii retirement savings plan administrative fund.**

21 (a) There is established in the state treasury a special fund



1 to be known as the Hawaii retirement savings plan administrative  
2 fund, into which shall be deposited:

3 (1) All interest collected under this chapter on and after  
4 the establishment of the plan;

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

6 (3) All fees collected as provided in section -3; and

7 (4) Moneys transferred to the fund from the federal  
8 government, other state agencies, or local  
9 governments.

10 (b) The director of finance shall be the treasurer and  
11 custodian of the administrative fund.

12 (c) Moneys in the Hawaii retirement savings plan  
13 administrative fund shall be used to pay the administrative  
14 costs and expenses by the board and plan and for any other  
15 purpose described in sections -2 to -8.

16 **§ -8 Annual report.** The board shall prepare an annual  
17 report detailing the board's activities for the previous fiscal  
18 year. The annual report shall be submitted to the governor and  
19 legislature no later than twenty days prior to the convening of  
20 each regular session."



1 SECTION 4. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$ or so  
3 much thereof as may be necessary for fiscal year 2018-2019 to be  
4 deposited into the Hawaii retirement savings plan administrative  
5 fund.

6 SECTION 5. There is appropriated out of the Hawaii  
7 retirement savings plan administrative fund the sum of  
8 \$ or so much thereof as may be necessary for fiscal  
9 year 2018-2019 for administrative and operating expenses for the  
10 Hawaii retirement savings board.

11 The sum appropriated shall be expended by the department of  
12 budget and finance for the purposes of this Act.

13 SECTION 6. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$ or so much  
15 thereof as may be necessary for fiscal year 2018-2019 for the  
16 market analysis under section 2(a)(1) of this Act.

17 The sum appropriated shall be expended by the department of  
18 budget and finance for the purposes of this Act.

19 SECTION 7. This Act shall take effect on January 1, 2050;  
20 provided that, subject to a positive findings in the feasibility  
21 study pursuant to section 2 of this Act, the Hawaii retirement





1 savings board established pursuant to section 3 of this Act  
2 shall establish the Hawaii retirement savings plan so that  
3 individuals may begin making contributions to the plan no later  
4 than July 1, 2021; provided further that if the department  
5 determines that the plan would qualify as an employee benefit  
6 plan under the Employee Retirement Income Security Act of 1974,  
7 as amended, the department shall not establish the plan.



**Report Title:**

Retirement Savings Plan; Retirement Savings Board; B&F; Private Sector; Market Analysis; Appropriation

**Description:**

Requires the Department of Budget and Finance to conduct a study on the feasibility of implementing the Hawaii retirement savings plan and to submit to the Legislature a report detailing its findings and proposals. If the results of the study are positive, establishes a retirement savings board to administer the Hawaii retirement savings plan and the Hawaii retirement savings plan administrative fund, and requires the board to annually report to the Governor and Legislature. Gives the Department of Budget and Finance interim rule making authority. Appropriates moneys. Effective 1/1/2050. (SD2)

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

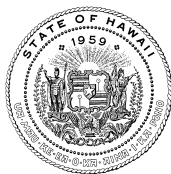


**SB 2333**

**SD-2**

**TESTIMONY**

DAVID Y. IGE  
GOVERNOR



LAUREL A. JOHNSTON  
DIRECTOR

KEN N. KITAMURA  
ACTING DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150  
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ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**

**TESTIMONY BY LAUREL A. JOHNSTON  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT  
ON  
SENATE BILL NO. 2333, S.D. 2**

**March 22, 2018  
9:15 a.m.  
Room 309**

**RELATING TO RETIREMENT SAVINGS**

Senate Bill No. 2333, S.D. 2: requires the Department of Budget and Finance (Department) to conduct a study on the Hawai'i Retirement Savings Plan concept and report its findings and recommendations to the Legislature; establishes the Hawai'i Retirement Savings Plan; establishes a Hawai'i Retirement Savings Board to administer the plan; and sets operating requirements for the plan and the board. The bill also establishes a Hawai'i Retirement Savings Plan Administrative Fund and appropriates general funds and special funds in FY 19 for administrative and operating expenses and to conduct the required study.

The Department appreciates the intent of this measure, but strongly believes it is premature to permanently establish in law the retirement savings plan, governing board, and financing structure prior to the completion of a feasibility study as identified in Section 2 of this measure. The Department also believes there is an inherent conflict in requiring us to conduct the feasibility study and instead recommends that the study be performed by a legislative branch agency, such as the Office of the Auditor or the Legislative Reference Bureau.

Thank you for your consideration of our comments.



House Committee on Labor & Public Employment  
March 22, 2018 – 9:15 am – Rm 309

**RE: SB 2333, SD2 -- RELATING TO RETIREMENT SAVINGS**

Chair Johanson, Vice Chair Holt, and members of the Committee, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is made up of life insurance agents and financial advisors throughout Hawaii, who primarily market life, annuities, long term care, and disability income insurance products.

SB 2333, SD2, will enact a Hawaii Retirement Savings Board made of eleven members that will establish, implement and maintain a Hawaii retirement savings plan via voluntary payroll deductions provided that the employer does not offer a qualified retirement plan. This measure also requires a market analysis on the feasibility of a plan, cost to employers, a timeline for implementation, a blank appropriation, and that contributions start no later than July 1, 2021.

We respectfully do not support SB 2333, SD2.

Both policymakers and media attention have focused on workers not saving enough for retirement. States have considered bills that would implement state run IRA type retirement plans options available to workers at small and medium companies. NAIFA understands the importance of retirement security and acknowledges that many Americans are not saving enough for retirement.

A lack of financial education about the need to save for retirement, competing financial needs which cause many to live from paycheck to paycheck with nothing left over each month to put away in a retirement account, as well as a lack of discipline needed to place long term security over immediate wants all play a large role in our country's retirement savings.

We do not believe that a state-run plan that competes with private market plans is the answer. Availability and access to retirement savings options are not the problem— there already exists a strong, vibrant private sector retirement plan market that offers diverse, affordable options to individuals and employers. If a retirement plan is not offered in the workplace, employees have ready access to low cost IRAs through financial institutions and financial advisors.

Analyzing the potential effectiveness of legislative proposals to address the real reasons behind the low rates of retirement savings, policy makers need to carefully consider the potential costs of this proposal and the impact it will have on already over-extended state budget.

Massachusetts has established their Security Choice Savings Program but only for small non-profit organizations. Oregon became the first state last year to receive contributions from private sector

employees. California, Connecticut, Illinois, Maryland, and Vermont are implementing similar plans with full roll out over the next few years.

The use of state funds for the start-up, operating costs, state responsibilities and obligations under ERISA would be better served by using scarce state resources for education and outreach efforts designed to educate our citizens about the importance of saving for retirement, rather than implementing a costly state-run plan. Additionally, a mandate for employers to participate in state plans and facilitate payroll deductions will be an administrative burden.

The bill also requires a study by Department of Budget and Finance on the “feasibility of implementing a Hawaii retirement savings plan for the private sector employees”. We ask that the study also include other optional programs. States like New Jersey and Washington have enacted plans with a voluntary, market-based program focused on the real problems of education and outreach and establishes a web-based clearinghouse to connect employers and employees with appropriate private sector options. The implementation and staffing costs are much lower than what’s called for in this measure.

On April 6, 2016, the U.S. Department of Labor issued its final fiduciary rule that affects financial advisors and their clients’ retirement plans. Since the Trump administration the fiduciary rule is partially final with a transition period of eighteen months from January 1, 2018 to July 1, 2019. The “retirement savings board” must take into account this new fiduciary standard rule, the legal term for “putting customers’ interest first” and be fully aware of the compliance requirements.

Finally, in August 2016 the U.S. Department of Labor under the Obama administration adopted a rule that would facilitate the enactment of state-run retirement plan legislation by exempting such plans from coverage under ERISA. Under this DOL rule, these state programs would not be considered a “employee pension benefit plan” under ERISA and participating employers would therefore not be subject to the duties and responsibilities required by ERISA.

However, **in early 2017 the Congress utilized the Congressional Review Act to override this DOL action and nullify this rule.** President Trump signed the repeal into law in May 2017. As a result, many open questions exist as to whether and to what extent these state-run plans will be subject to duties, responsibilities and potential liability under the federal ERISA law. **The “safe harbor” under the ERISA exemption is no longer in effect and now, participating employers may be subject to the duties and responsibilities currently required by ERISA and liability issues for the employer as a fiduciary.**

Thank you for allowing us to share our views.

Cynthia Takenaka  
Executive Director  
Phone: 394-3451

House of Representatives  
Committee on Labor and Public Employment  
Thursday, March 22, 2018  
9:15 a.m.  
Conference Room 309

To: Representative Aaron Ling Johnason, Chair  
Re: S.B. No. 2333, S.D. 2, Relating to Retirement Savings

Dear Chair Johanson, Vice-Chair Holt, and Members of the Committee,

My name is Kerry M. Komatsubara and I am the Advocacy Director for AARP Hawai'i. AARP is a membership organization of people age fifty and over with about 150,000 members in Hawai'i. AARP advocates for issues that matter to Hawai'i families, including the high cost of long-term care; access to affordable, quality health care for all generations; and serving as a reliable information source on issues critical to people over the age of fifty.

AARP Hawai'i strongly supports S.B. No. 2333, S.D. 2, which establishes a retirement savings board to administer the Hawai'i retirement savings plan, establishes the Hawaii retirement savings plan and administrative fund, requires the board to report to the legislature before establishment of the Hawai'i retirement savings plan, and appropriate funds for the purposes of the bill.

About half of Hawai'i workers ages 18 to 64 in the private sector – roughly 216,000 people – do not have access to a 401K or other retirement plan at work and are not able to save through payroll deduction. This is critical because studies show that people are 15 times more likely to save if they have access to a payroll deduction savings plan.

A 2014 Employee Benefit Research Institute study found that about 62 percent of employees with access to a retirement plan had more than \$25,000 in total savings and investments, and 22 percent had \$100,000 or more. However, only 6 percent of those without access to such a plan had over \$25,000 saved, and only 3 percent had \$100,000 or more. (See, AARP's Fact Sheet, dated August 2015 and is attached to this testimony.)

When people save for retirement they are less likely to rely on public assistance programs later in life. An AARP and University of Maine study estimates Hawai'i would save \$32.7 million on public assistance programs through 2032 if lower-income retirees saved enough to increase their retirement income by \$1,000 more per year. This information is reported in AARP's Fact Sheet dated May 2017, and is attached to this testimony.

Nine states have already passed legislation that improves workers' access to a retirement program, and 22 more are in progress to help their future retirees. Oregon, the first state to implement a state retirement program for private-sector employees, started its program to enroll eligible workers into the OregonSaves program in October of 2017. As of March 1, 2018, 26,361 Oregon workers have active accounts (80% participation) and about \$1.2 million have been contributed toward their retirements. (See, OregonSaves Communication Update – March 1, 2018, at page 4.) Hawai'i must join in this

national effort to identify solutions to help our future retirees to be retirement ready, and AARP Hawaii stands ready to work with the Legislature to determine the appropriate details for a Hawai'i Saves program.

We believe concerns raised by opponents regarding the Employee Retirement Income Security Act of 1974 are a red-herring. Oregon's program has been live for six months, and to date the standing of the program as being outside of ERISA has not been challenged. More specifically we believe these programs fall under longstanding guidance: the 1999 guidance issued by the Department of Labor, [Interpretative Bulletin 99-1](#), and 1975 safe harbor (See 29 CFR 2510.3-2(d); 40 FR 34526 (Aug. 15, 1975)) noting that payroll deduction IRAs would not be treated as ERISA plans if provided voluntarily by employers.

Attached is a copy of the legal opinion from K&L Gates which opines that the California Secure Choice Retirement Savings Trust Act, which is similar to S.B. No. 2333, S. D. 2, is drafted so as to avoid ERISA preemption. Hawai'i has the benefit of the experiences of Oregon, California, Illinois, Maryland and Connecticut regarding this ERISA question. In all five of these states, laws to start a payroll deduction IRA plan were enacted over the objections of ACLI which also claimed this same ERISA preemption concern.

We suggest for this Committee's consideration the following changes to S.B. No. 2333, S.D. 2:

1. Three sections within Section 4(a) of the bill:
  - a. Section 8 reads: "Require no employer contributions to employee accounts." We suggest that the legislature should make clear that it will *allow* no employer contributions . . . rather than *require* none.
  - b. Section 16 reads: "Not impose on any employers any duties that are otherwise prohibited under the Employee Retirement Income Security Act of 1974, as amended." We suggest that the legislature expressly make clear that it will not impose any duties on employers "that would cause preemption under ERISA."
  - c. Section 19 reads: "Allow employers to establish an alternative retirement plan for some or all employees." Perhaps this provision should be eliminate from the legislation since the legislation is not intended to preempt any other retirement arrangements employers might make for their employees.
2. We suggest that the word "plan" be changed to "program" throughout the legislation. This change will further strengthen the claim that the legislation is a non-ERISA covered program.

Thank you for the opportunity to testify in support of S.B. No. 2333, S. D. 2.

Attachments: AARP Fact Sheet: Workplace Retirement Plans Will Help Workers Build Economic Security, August 2015.  
AARP Fact Sheet: Hawai'i Could Save \$32.7 Million by Helping People Save for their Own Retirement, May 2017.  
K&L Gates opinion letter dated May 16, 2017



## Fact Sheet: Hawaii

# Workplace Retirement Plans Will Help Workers Build Economic Security

David John and Gary Koenig  
AARP Public Policy Institute

*Access to an employer-based retirement plan is critical for building financial security later in life. Yet, about 50 percent of Hawaii's private sector employees—roughly 216,000—work for an employer that does not offer a retirement plan. Significant numbers of workers at all levels of earnings and education do not have the ability to use payroll deductions to save for retirement.*

Currently in Hawaii, workers of larger employers are more likely to have a retirement plan than workers of smaller employers. The probability of having a workplace retirement plan also differs considerably by workers' earnings level, education, and race and ethnicity. The lack of ability to participate in an employer-provided retirement plan, however, spans all levels of education and earnings, and cuts across all groups.

### Hawaii's Situation by the Numbers

About 50 percent of Hawaii workers ages 18 to 64 in the private sector work for businesses that do not offer a retirement plan.

- **Small-business employees are less likely to have a plan:** Workers in Hawaii businesses with fewer than 100 employees are much less likely to have access to a plan (66 percent) than workers in larger businesses (34 percent). In raw numbers, about 139,000 small business employees do not have access to a retirement plan compared with about 77,000 in businesses with 100 or more workers.
- **Workers at all education levels do not have a plan:** About 72 percent of workers who did not have a high school degree did not have an employer-provided retirement plan—a much higher percentage than workers with some college (49 percent) or a bachelor's degree or higher (40 percent). But in raw numbers, workers with at least some college who did not have access to an employer plan exceeded those workers without a high school degree who did not have access to an employer plan (117,000 versus 14,000).

- **Workers at all earnings levels do not have a plan:** More than 167,000 of Hawaii employees with annual earnings of \$40,000 or less did not have access to a workplace plan. These workers represent about 78 percent of the 216,000 employees without an employer-provided retirement plan.
- **Access to a plan differs substantially by race and ethnicity:** About 62 percent of Hispanic workers and about 62 percent of African Americans lacked access to an employer provided retirement plan. Minorities accounted for about 84 percent (182,000) of the roughly 216,000 employees without a workplace retirement plan.

### Why Access to Payroll Deduction Retirement Savings Plans Is Important

- **Makes saving easier:** About 90 percent of households participating in a workplace retirement plan today report that payroll deductions are very important and make it easier to save.<sup>3</sup> Saving at work appears to be critical: Few households eligible to contribute to an Individual Retirement Account outside of their jobs regularly do so.<sup>4</sup>
- **Helps increase retirement income:** Social Security is essential to retirement security, but its



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average retirement benefit is only \$1,300 a month. Most retirees will need additional resources. Providing workers with a convenient way to save is an important step to increase the amount of assets a person will have at retirement: A 2014 Employee Benefit Research Institute study found that about 62 percent of employees with access to a retirement plan had more than \$25,000 in total savings and investments, and 22 percent had \$100,000 or more. However, only 6 percent of those without access to such a plan had over \$25,000 saved, and only 3 percent had \$100,000 or more.<sup>1</sup>

- **Allows individuals to build their own economic security:** Retirement savings plans help workers achieve economic security through their own efforts. Greater access could also help improve economic mobility and reduce wealth disparity.

**Hawaii: Who is NOT Covered by a Workplace Retirement Plan?**  
(percentage and number of private wage and salary workers ages 18-64 whose employer does not offer a retirement plan)

Item	Group	%	Number
	ALL	49.8%	215,596
Age	18-34 years	58.0%	96,730
	35-44 years	46.5%	41,514
	45-54 years	42.2%	39,499
	55-64 years	44.9%	35,852
Race & Ethnicity*	Hispanic	61.5%	27,059
	Asian (non Hispanic)	48.8%	88,843
	Black (non Hispanic)	61.8%	2,049
	White (non Hispanic)	46.6%	13,966
Education	Less than high school	72.4%	13,847
	High school	56.7%	84,285
	Some college	49.3%	72,954
Gender	Bachelor's or higher	40.4%	44,510
	Male	50.4%	114,782
	Female	49.1%	100,814
	Under 10	75.2%	56,969
Employer Size	10-49	62.0%	57,145
	50-99	55.0%	24,458
	100-499	43.5%	29,549
	500-999	34.0%	8,260
	1,000+	29.9%	39,216
Earnings Quintile	\$14,000 or less	75.4%	63,215
	\$14,001 to \$25,000	62.9%	61,301
	\$25,001 to \$40,000	43.6%	42,771
	\$40,001 to \$63,500	36.3%	32,073
	Over \$63,500	25.0%	16,245

Source: U.S. Census Bureau's Current Population Survey, March Supplements 2012-2014

Note: The results are based on three year averages from 2011-2013. The sample includes workers whose longest-held job was in the private sector. Earnings quintiles are based on all wages and salary earned by U.S. workers, whether or not they were covered by a retirement plan.

\* Other non Hispanic category is not shown, so sum of race & ethnicity categories may not sum to total

- 1 Jack VanDerhei, "The Impact of Modifying the Exclusion of Employee Contributions for Retirement Savings Plans from Taxable Income: Results from the 2011 Retirement Confidence Survey," Employee Benefit Research Institute (EBRI) Notes, March 2011. Available at [http://www.ebri.org/pdfs/notes/pdf/EBRI\\_Notes\\_03\\_Mar\\_11\\_KTrass\\_Acct\\_HP.pdf](http://www.ebri.org/pdfs/notes/pdf/EBRI_Notes_03_Mar_11_KTrass_Acct_HP.pdf).
- 2 For workers earning between \$30,000 and \$50,000, about 72 percent participated in an employer provided retirement savings plan when one was available, compared with less than 5 percent without an employer plan who contributed to an Individual Retirement Account. Unpublished estimates from EBRI of the 2004 Survey of Income and Program Participation Wave 7 Topical Module (2006 data).
- 3 2014 RCS Fact Sheet #6 "EBRI Analysis of [http://www.ebri.org/pdfs/survey/2014/RCS14-ES-6\\_ProvRetEna.pdf](http://www.ebri.org/pdfs/survey/2014/RCS14-ES-6_ProvRetEna.pdf)

State Fact Sheet HI, #332, August 2015

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**Public Policy Institute**

## Fact Sheet: Hawaii

# Hawaii Could Save \$32.7 Million by Helping People Save for Their Own Retirement

William Shiflett and Catherine Harvey  
AARP Public Policy Institute

When individuals save for retirement they are less likely to rely on public assistance programs later in life. State-facilitated retirement savings plans for small-business employees would help people save more for retirement and, in turn, save significant taxpayer dollars for programs like Medicaid, Supplemental Security Income, the Supplemental Nutrition Assistance Program, and housing assistance. More than 30 states are considering creating retirement plans for private-sector workers whose employers do not already offer one. New research finds that Hawaii would save \$32.7 million on public assistance programs between 2018 and 2032 if lower-income retirees save enough to increase their retirement income by \$1,000 more per year.

### Fiscal Savings to States of \$1,000 More in Retirement Income for the Bottom Two Retirement Income Quintiles

State	Total Savings, Combined Federal and State, 2018-32	Savings to State, 2018-32
Alabama	\$156,459,591	\$17,652,790
Alaska	\$40,947,013	\$13,051,329
Arizona	\$396,596,440	\$89,210,583
Arkansas	\$129,450,257	\$27,611,939
California	\$5,383,081,091	\$1,393,743,339
Colorado	\$472,289,002	\$154,864,156
Connecticut	\$421,454,107	\$89,974,509
Delaware	\$69,140,518	\$18,176,268
Florida	\$1,404,379,386	\$290,543,822
Georgia	\$338,628,931	\$52,545,035
Hawaii	\$160,312,439	\$32,749,675
Idaho	\$54,198,256	\$11,508,077
Illinois	\$758,140,927	\$139,013,992
Indiana	\$268,263,150	\$55,927,866
Iowa	\$264,687,543	\$67,574,339
Kansas	\$195,565,665	\$51,724,322
Kentucky	\$319,759,599	\$46,163,299
Louisiana	\$201,858,462	\$32,884,222
Maine	\$135,574,464	\$22,980,536
Maryland	\$331,624,472	\$69,676,767

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State	Total Savings, Combined Federal and State, 2018-32	Savings to State, 2018-32
Massachusetts	\$1,318,605,436	\$333,548,142
Michigan	\$496,846,112	\$81,681,041
Minnesota	\$796,004,880	\$257,527,390
Mississippi	\$195,911,435	\$29,494,258
Missouri	\$403,926,297	\$99,087,689
Montana	\$46,325,459	\$8,374,620
Nebraska	\$130,684,259	\$40,763,572
Nevada	\$127,056,172	\$24,048,205
New Hampshire	\$62,650,543	\$15,672,254
New Jersey	\$809,192,172	\$193,934,233
New Mexico	\$49,319,790	\$7,424,601
New York	\$4,952,709,650	\$1,467,056,431
North Carolina	\$617,668,545	\$127,363,525
North Dakota	\$26,421,294	\$5,652,108
Ohio	\$1,093,070,035	\$240,600,349
Oklahoma	\$83,792,496	\$20,526,999
Oregon	\$453,533,958	\$98,930,353
Pennsylvania	\$1,359,355,285	\$330,156,349
Rhode Island	\$171,075,417	\$25,439,603
South Carolina	\$212,798,415	\$37,450,871
South Dakota	\$81,640,098	\$14,053,954
Tennessee	\$1,142,228,011	\$260,188,825
Texas	\$1,381,708,267	\$340,644,794
Utah	\$147,106,849	\$26,089,868
Vermont	\$53,543,140	\$12,722,408
Virginia	\$481,686,611	\$135,330,635
Washington	\$1,030,924,340	\$297,935,294
West Virginia	\$132,024,966	\$17,217,926
Wisconsin	\$684,324,456	\$139,334,771
Wyoming	\$50,305,916	\$17,966,328
United States	\$32,978,295,282	\$7,793,556,409

Source: AARP Public Policy Institute analysis of Philip Tranel, The Fiscal Implications of Inadequate Retirement Savings in Maine (Orono, ME: The University of Maine Margaret Chase Smith Policy Center, February 2017). [https://nu.spolic.ycenter.umaine.edu/wp-content/uploads/sites/122/2017/03/final\\_aarp-report.pdf](https://nu.spolic.ycenter.umaine.edu/wp-content/uploads/sites/122/2017/03/final_aarp-report.pdf).

Fact Sheet 463, May 2017

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May 16, 2017

David E. Morse  
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**By E-mail and FedEx**

Katie Selenski  
Executive Director  
California Secure Choice  
915 Capitol Mall, Room 110  
Sacramento, CA 95814

**Re: California Secure Choice**

Dear Ms. Selenski:

The California Secure Choice Retirement Savings Trust Act (the “Act”) established the Secure Choice Retirement Savings Board (“Board”) and instructed the Board to design and establish a retirement savings program for private sector workers (“Secure Choice” or the “Program”).<sup>1</sup> The Act provides that the Board may not implement Secure Choice if it would be considered an employee benefit plan under the Employee Retirement Income Security Act (“ERISA”).<sup>2</sup> In addition, the Act expressly required that the Program qualify as a non-ERISA plan under an anticipated Department of Labor (“DOL”) “safe harbor” regulation covering state-based IRA savings programs. Such a regulation was issued as DOL Regulation Section 2510.3-2(h) (“2016 Safe Harbor”). However, the 2016 Safe Harbor is expected to be revoked under the Congressional Review Act (“CRA”).<sup>3</sup> While I understand that the California legislature intends to eliminate the reference to the 2016 Safe Harbor from the Act, the requirement that Secure Choice may not be an ERISA-regulated plan is expected to remain.

You have asked my advice on the effect of the CRA disapproval resolution on Secure Choice, in particular the Board’s efforts to develop the Program as a non-ERISA savings vehicle. Subject to the discussion and assumptions below, I believe that pre-2016 DOL safe harbor guidance and applicable case law provide firm grounds for the Board to accomplish its mission to design and implement Secure Choice as a non-ERISA savings program for private sector workers in California. In addition, I believe that current law should not impede the Board if it chooses to consider Program designs using an “opt out” negative election approach.

My analysis assumes that the description of the Program below is accurate; the Act will be amended to remove references to the 2016 Safe Harbor; and the Board intends to design, implement and administer the Program in accordance with the conditions in the remaining safe harbor guidance. Please note that the final authority to determine whether the Program as it is ultimately designed is not an ERISA employee benefit plan rests with the courts and it is possible that a court could take a different view than expressed in the 1975 Safe Harbor (as defined below) or in my analysis. Further, my advice is based on an analysis of relevant provisions of applicable laws, regulations and regulatory interpretations currently in effect. Because such laws, regulations and interpretations are subject to change, either prospectively or retroactively, the Board should continue to monitor developments in this area to determine whether future judicial or regulatory developments may affect the analysis or conclusions in this letter.

What follows is a brief description of the Program; a summary of the 1975 Safe Harbor; the application of such safe harbor to the Program as currently envisioned; and the impact of the CRA resolution recently passed by Congress, which the President is expected to sign, disapproving the 2016 Safe Harbor and a brief summary of applicable case law.

#### **Expected Secure Choice Design**

Under the Act, Secure Choice will be a state-based payroll withholding savings program using individual retirement accounts (“IRAs”) under Sections 408 and 408A of the Internal Revenue Code of 1986, as amended. Under the Act, certain employers will be required to provide access to the Program to their Californian employees, who are not covered by a 401(k) or other workplace retirement plan. All IRA assets will be held in a trust fund established under California law (the “Trust Fund”). Trust Fund assets will be invested in investments selected by the Board or by third-party investment advisers or managers retained by the Board pursuant to Board-established policies and guidelines.

The Board has broad discretion to “design and implement” the Program and adopt regulations governing the Program.<sup>4</sup> The Board intends to retain retirement and investment consultants, recordkeepers/administrators, legal counsel and other experts to assist in the design, implementation and operation of its Program.

Employer involvement in Secure Choice will be limited and employers will be prohibited from receiving any compensation in connection with the Program. Employers will be required only to provide census information for their California employees, distribute the disclosure documents and withhold and remit employee contributions to the Trust Fund.<sup>5</sup> Employers will not be liable for an employee’s decision to participate in, or opt out of, the Program or for employee’s investment decisions.<sup>6</sup> While the Act provides the Board with discretion to permit employer contributions if such contributions would not result in the Program being considered an

employee benefit plan under ERISA, the Board does not intend to permit employer contributions.

The Board currently intends to select a “default” contribution rate and investment vehicle for eligible employees. Under this approach, no amounts will be withheld from an eligible employee or contributed to the Program unless the employee submits to the Board or its designee an acknowledgment that he or she has read and understood the Program disclosures. Such disclosures will include a plain English description of the default contribution rate and investment vehicle and instructions on how to select a different contribution rate and, if employees are offered a choice of investments, other investment vehicles. Program disclosures also will explain to employees that: (i) the Program is not sponsored by their employer and the employer is not responsible for the Program or liable as a plan sponsor; (ii) their employer will not provide financial advice and they should contact their own financial advisors for advice; and (iii) their employer is not liable for any decisions that the employees make regarding whether to participate in the Program or how to invest their IRAs under the Program.<sup>7</sup> As currently envisioned, an employee who does not submit the disclosure form will not be permitted to contribute to the Program.

## **ERISA**

**ERISA Coverage.** ERISA covers employee benefit plans “established or maintained by an employer.”<sup>8</sup> The typical IRA is not regulated by ERISA because it is set up and funded by an individual, not his or her employer. However, an IRA program that is offered through the workplace to employees could be considered an ERISA plan if, for example, there is significant employer involvement.

The DOL has issued two sets of ERISA “safe harbors” covering payroll deduction IRA programs. First, a 1975 DOL regulation established a general safe harbor ERISA for payroll withholding IRAs satisfying certain conditions including most notably that employers refrain from endorsing the program so employee participation is completely voluntary.<sup>9</sup> (This regulation, together with subsequent DOL interpretative guidance and advisory opinions, will be referred to as the “**1975 Safe Harbor**”). The 1975 Safe Harbor predated the efforts by California and other states to establish a state-run mandated payroll withholding IRA savings program for private sector workers. The second DOL regulation was the 2016 Safe Harbor, which provided additional safe harbor protection specifically for state automatic enrollment IRA programs. However, the 2016 Safe Harbor would be repealed upon the President’s signature (or non-action) on the CRA disapproval resolution.<sup>10</sup>

**1975 Safe Harbor.** DOL Regulation Section 2510.3-2(d) provides that a payroll deduction IRA program will not be considered a pension plan subject to ERISA if: (i) no contributions are made by the employer; (ii) the sole employer involvement is collecting contributions through payroll

deductions, remitting them to the IRA sponsor and publicizing the program to employees without employer-endorsement; (iii) the employer receives no compensation (other than for certain permitted services actually performed); and (iv) employee participation is completely voluntary.

The DOL expanded the scope of this four-part regulatory safe harbor by issuing Interpretive Bulletin 99-1 (the “**Bulletin**”) as part of its efforts “to encourage retirement savings through payroll deduction IRAs.” The Bulletin noted that “over half of the private wage and salary workforce does not have employment-based retirement coverage” and that this lack of coverage was most prevalent among employers with fewer than 100 employees. The Bulletin then observed that small employers do not sponsor retirement plans in part due to the “administrative complexity and burden” and the “risk of commitment to an ongoing expense in the face of financial uncertainties.” Although the DOL recognized that employees could always set up their own IRAs, it concluded that employees are more likely to “make use of an individual retirement savings vehicle that is offered in an employment setting and features regular withholding.” The Bulletin stressed the DOL’s “long-held view that an employer who simply provides employees with the opportunity for making contributions to an IRA through payroll deductions does not thereby establish a pension plan.”

The Bulletin discussed that the non-employer endorsement and voluntary participation requirements are interrelated. Thus, the Bulletin stated that to be “completely voluntary” the employer cannot endorse or recommend either the IRA sponsor or the funding media” and should inform employees that other IRA vehicles are available outside the program and that an IRA may not be appropriate for all employees. On the other hand, an employee’s participation would not be voluntary if he or she was coerced into contributing.<sup>11</sup>

Some employer involvement is allowed in a payroll deduction IRA without jeopardizing the ERISA exemption. Thus, in a payroll IRA program that was invested in a group annuity contract, the DOL permitted the employer, as contract holder, to vote on the annuity provider’s upcoming plan of demutualization and elect the method for allocating the demutualization proceeds among IRA participants.<sup>12</sup> The DOL based its ruling on three factors: (i) the actions of an independent third party caused the need for the employer to act; (ii) the employer would be acting in accordance with New Jersey insurance law; and (iii) the employer’s actions were one-time acts that would not involve the employer retaining any on-going discretion in administering or operating the IRAs.

An even greater and ongoing level of employer involvement was allowed by the DOL when it ruled that an employer could select three IRA sponsors from a pool of applicants, periodically review each sponsor’s performance, replace any underperformers and negotiate for and receive a written indemnification from each sponsor.<sup>13</sup> The DOL found that these activities “would not result in endorsement or involvement beyond that permitted under the regulation” and would not



prevent the program from qualifying under the 1975 Safe Harbor.

**Scope of CRA.** The CRA provides Congress with a simplified procedure to issue a “disapproval resolution” revoking certain recent federal regulations and prohibiting federal agencies from issuing a new rule that is “substantially the same” as the revoked regulation.<sup>14</sup> The disapproval resolution states that the 2016 Safe Harbor will have “no force or effect” and also appears to revoke the related “preambles” published by the DOL with the regulation.<sup>15</sup> (The CRA resolution cites to the first page of the Federal Register entry as opposed to the page where the actual Safe Harbor regulation begins and the CRA defines the disapproved rule as including “an agency statement of general or particular applicability.”<sup>16</sup>) The disapproval resolution revoking the 2016 Safe Harbor does not reference the 1975 Safe Harbor.

**1975 Safe Harbor and Secure Choice.** Based on our understanding of the expected terms and conditions, the Secure Choice Program should be able to qualify for the 1975 Safe Harbor exemption from ERISA regulation. Employer contributions will not be allowed; employer involvement will be limited to certain ministerial acts such as distributing information and collecting and remitting payroll withholding; employers will receive no compensation or other amounts for participating in the Program; and employee contributions will be made pursuant to employee elections. Program disclosures to employees will highlight the employer’s limited involvement and that the Program is not intended to be an ERISA-governed retirement plan and employees should consider alternative IRA and other savings arrangements and consult with their own advisors for tax and investment advice.

**Automatic Enrollment; Alternatives to 1975 Safe Harbor.** While the Board has not yet developed the contribution election process, there are strong arguments that a program using automatic enrollment with *opt out* elections also could satisfy the 1975 Safe Harbor. In deliberating whether and under what terms to issue the 2016 Safe Harbor, the DOL argued that a payroll withholding program that nudged employees into savings through automatic enrollment elections would not satisfy the “completely voluntary” condition of the 1975 Safe Harbor. (For purposes of this discussion, the term “automatic enrollment” includes both automatic enrollment and automatic escalation of contribution rates with an employee opt out.) While this position was enunciated in the presumably revoked preambles to the proposed and final 2016 Safe Harbor, it would remain relevant to the extent it reflects the DOL’s reading of the 1975 Safe Harbor and the nature of negative elections with an opt out.<sup>17</sup>

The preambles to the proposed and final 2016 Safe Harbor explained the DOL’s view that a program’s auto-enrollment/escalation feature could cause an employer to exercise undue influence over an employee’s participation and that contributions made without an affirmative election might not be completely voluntary. The DOL emphasized the relationship between the employer endorsement and the completely voluntary conditions in the preamble to the proposed

2016 Safe Harbor. For example, according to the DOL, the “completely voluntary” requirement means that the decision to enroll in an IRA program established under the 1975 Safe Harbor must be “self-initiated” (i.e., not coerced by the employer) “**where the employer is acting on his or her own volition** to provide the benefit program, the employer’s actions—e.g., requiring an automatic enrollment arrangement—would constitute its ‘establishment’ of a plan within the meaning of ERISA ... .”<sup>18</sup> Under the DOL’s statements such differing requirements (assuming there is a difference between a voluntary and completely voluntary election) would be unnecessary if the employer’s offering of the program is required by state law and the employer has no say in its terms or conditions; in such case the element of “employer volition” would be absent, with the result that any employee participation in the program should be viewed as “[completely] voluntary.”

Finally, a regulatory safe harbor is just that: it provides a bright-line standard for identifying programs that are not covered by ERISA, but does not cover the landscape for what is or is not an ERISA plan. Thus, a state-mandated IRA savings program, using either opt out or opt in contribution elections, should be considered to be a non-ERISA plan if the element of employer volition in the process of establishment or maintenance of the program is absent.<sup>19</sup>

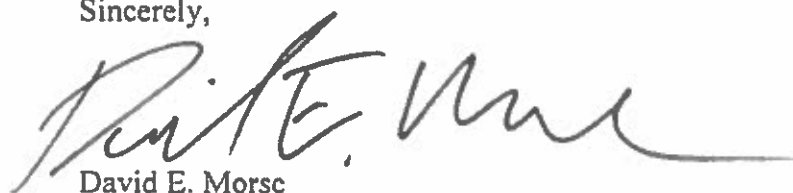
**Federal Case Law.** ERISA’s regulation of employee benefit plans presumes a level of administrative and operational activity, as it is the employer’s activities with respect to a plan that are vulnerable to abuse.<sup>20</sup> The purpose of the “established or maintained” requirement is to “ascertain whether the plan is part of an employment relationship by looking at the degree of participation by the employer in the establishment or maintenance of the plan.”<sup>21</sup> A plan is established when the employer has taken affirmative steps to extend benefits by, for example, financing or arranging financing to fund benefits, establishing a procedure for disbursing benefits or representing to employees that a plan exists.<sup>22</sup> Without documentary evidence, even an employer’s alleged promise to provide benefits does not establish an ERISA plan.<sup>23</sup>

The Supreme Court has found that a plan does not exist when an employer assumes no responsibility to pay benefits on a regular basis such that there is no need for ongoing administrative practices associated with the provision of benefits.<sup>24</sup> The question of whether a plan is “established or maintained by an employer” is one of fact “to be answered in light of all the surrounding facts and circumstances from the point of view of a reasonable person.”<sup>25</sup> In applying this test, the crucial factor is whether the employer intends to provide benefits on a regular and long-term basis.<sup>26</sup> To ascertain whether an employer has established an ERISA benefits plan courts will look to: (1) internal or distributed documents; (2) oral representations; (3) the existence of a fund or account to pay benefits; (4) actual payment of benefits; (5) a deliberate failure to correct known perceptions of a plan’s existence; (6) the reasonable understanding of employees; and (7) the intentions of the putative sponsor.<sup>27</sup> These and similar

judicial precedents support a conclusion that IRAs established pursuant to the Program should not be considered ERISA plans “established or maintained” by covered California employers

As Secure Choice coalesces over the next several months, I would be pleased to discuss these issues further.

Sincerely,



David E. Morse

cc: Robert Hedrick  
William P. Wade

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<sup>1</sup> California legislation enacted in 2012 established the Secure Choice Retirement Board and authorized the Board to conduct a detailed market analysis and make recommendations for an IRA-based program. Based on the Board's recommendations (see footnote 6), the California legislature in 2016 enacted SB 1234, which officially established the Program. CA Gov't Code (“CA Law”) §§ 100000-44 (West 2016 Supp.).

<sup>2</sup> Act § 100043(a).

<sup>3</sup> Congress has passed the disapproval resolution, H.J. Res 66, 115th Cong. (2017), and the President is expected to either sign the resolution or allow it to become law through non-action.

<sup>4</sup> Act. §§ 100002(e), 100048.

<sup>5</sup> *Id.* § 100014(c).

<sup>6</sup> CA Law § 100034(a).

<sup>7</sup> Act § 100014(c).

<sup>8</sup> ERISA § 3(3).

<sup>9</sup> DOL Reg. § 2510.3-2(d).

<sup>10</sup> H.J. Res 66, 115th Cong. (2017).

<sup>11</sup> DOL Interpretive Bulletin 99-1.

<sup>12</sup> DOL Advisory Opinion 2001-03A (Feb. 15, 2001).

<sup>13</sup> DOL Advisory Opinion 82-27A (Jun. 16, 1982).

<sup>14</sup> CRA § 801(b)(2).

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<sup>15</sup> H.J. Res 66, 115th Cong. (2017).

<sup>16</sup> U.S.C. § 551(4).

<sup>17</sup> We are assuming (without expressing our view) for this portion of our advice that the CRA's proscription against the DOL's issuing new rules similar to the 2016 Safe Harbor would not affect the DOL's ability to issue regulatory guidance concerning whether a payroll withholding IRA program would fall within the 1975 Safe Harbor or otherwise be subject to ERISA.

<sup>18</sup> Proposed Safe Harbor, 80 Fed. Reg. 72006, 72008 (Nov. 18, 2015) (emphasis added).

<sup>19</sup> ERISA §§ 3(2)(A), 3(3), 4(a).

<sup>20</sup> *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 16 (1987).

<sup>21</sup> *Peckham v. GEM State Mut. of Utah*, 964 F.2d 1043, 1049 (10th Cir. 1992) (holding that an employer's subscription to a multi-employer group insurance trust that provides employers with insurance for their employees, the purchase of insurance for its employees and the listing of insurance in the company manual as an employee benefit created an employment relationship in satisfaction of the "established or maintained" requirement).

<sup>22</sup> *Ed Miniat, Inc. v. Globe Life Ins. Group, Inc.*, 805 F.2d 732, 739 (7th Cir. 1986).

<sup>23</sup> See, e.g., *Harris v. Arkansas Book Co.*, 794 F.2d 358, 360 (8th Cir. 1986) (holding that an employer's alleged promise to provide retirement benefits did not constitute the establishment of an employee pension plan despite making payments to another employee following that employee's retirement).

<sup>24</sup> *Halifax Packing Co.*, 482 U.S. at 12.

<sup>25</sup> *Deibler v. United Food & Commercial Workers' Local Union 23*, 973 F.2d 206, 209 (3d Cir. 1992).

<sup>26</sup> See *Deibler*, 973 F.2d at 209 (citing *Wickman v. Nw. Nat'l Ins. Co.*, 908 F.2d 1077, 1083 (1st Cir. 1990)).

<sup>27</sup> *Henglein v. Informal Plan for Plant Shutdown Benefits for Salaried Employees*, 974 F.2d 391, 400 (3d Cir. 1992).

House of Representatives  
Committee on Labor and Public Employment  
22 March 2018  
9:15 a.m., Conference Room 309

To: Representative Aaron Ling Johnason, Chair  
Re: S.B. No. 2333, S.D. 2, Relating to Retirement Savings

Dear Chair Johanson, Vice-Chair Holt, and Members of the Committee,

My name is Clementina Ceria-Ulep, and I am the Chairperson for the Long-Term Care Taskforce of Faith Action for Community Equity (FACE). FACE is a grassroots, interfaith 501(c)3 non-profit organization working to improve the quality of life for our members and all the people of Hawai'i. FACE is also an active member of the People Improving Communities (PICO) National Network.

FACE supports SB 2333, SD2, which establishes a program for private-sector workers in Hawai'i to have a retirement savings account. This bill is modeled after the OregonSaves program which is helping many Oregon workers to start to save for their retirement.

Many of our older citizens in Hawai'i who do not have retirement savings struggle to survive on social security payments. For some of them, it is too late to start a retirement savings program. Studies show that about half of Hawai'i workers ages 18 to 64 in the private sector (about 216,000 people) do not have access to a 401K or other retirement plan at work and are not able to save through payroll deduction. Nationwide studies show that people are 15 times more likely to save if they have access to a payroll deduction savings plan.

Help from government is needed to help private-sector employers to provide to their workers a retirement savings program. Other states have already passed legislation that improves workers' access to a retirement program. In Oregon, a state retirement program for private-sector employees was recently started and many of Oregon's workers now have a retirement savings program.

Hawai'i must take action now and join in the movement to find ways to help our future retirees. Please help our workers by providing a retirement savings opportunity similar to what Oregon has done for its workers. Thank you for the opportunity to testify in support of SB 2333, SD2.

Thank you for considering my testimony.

Sincerely,

*Clementina D. Ceria-Ulep*

**Clementina D. Ceria-Ulep**  
**211 Hoomalu Street; Pearl City, HI 96782**

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN OPPOSITION TO SB 2333, SD 2, SD 2, RELATING TO RETIREMENT SAVINGS

March 22, 2018

Honorable Representative Aaron Ling Johanson, Chair  
Committee on Labor and Public Employment  
State House of Representatives  
Hawaii State Capitol, Conference Room 309  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Johanson and Committee Members:

Thank you for the opportunity to testify in opposition to SB 2333, SD 2, Relating to Retirement Savings.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the policyholders that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. Two hundred twenty-one (221) ACLI member companies currently do business in the State of Hawaii; and they represent 96% of the life insurance premiums and 100% of the annuity considerations in this State.

Section 1 of SB 2333, SD 2, states the purpose of the bill “is to require the department of budget and finance to conduct a study on the feasibility of implementing a Hawaii retirement savings plan for private sector employees . . . and to establish a Hawaii retirement savings board to administer the Hawaii retirement savings plan for private sector employees.”

The proposed retirement savings plan is an AARP branded state-run retirement plan called “Work and Save.” This AARP plan has been introduced in approximately 30 states, most of which have rejected it. It is an expensive employer mandate that requires the business owner to offer the state plan and automatically enroll their workers. It also creates significant liabilities for the state.

By way of background, since 2012, five states have adopted state created and run retirement plans similar to that proposed in SB 2333, SD 2, namely, California, Connecticut, Illinois, Maryland and Oregon. At least 10 other states have passed legislation studying the AARP plan, and those states have not moved forward to implement the plan they studied.

While ACLI is strongly committed to promoting retirement security both at the state and federal levels, ACLI joins with many employer groups in opposing enactment of the proposed AARP plan set forth in this bill.

Of the five states who have adopted the plan only one, Oregon, has begun to implement its plan, though that plan has already been challenged in court. The remaining four states have not yet moved forward and for good reasons.

These plans are costly, complex and potentially in conflict with federal law.

The costs of implementing these plans have ranged from \$18M in Illinois to \$45M in Connecticut and \$170M in California.

While the State of Hawaii should as a matter of policy encourage all of its residents to accumulate the savings they need to secure their own retirement, the wisdom of the State's spending its scarce resources to fund the cost of a state-run retirement plan may be questioned. Indeed, as this Committee is well aware, funding the state's own employees' retirement plan and other costly government funded programs has been and continues to be challenging.

Secondly, the legal status of the proposed retirement savings plan creates both conflicts and potentially large state liabilities.

The employer mandate in the state-run and administered retirement savings plan proposed by SB 2333, SD 2, is likely pre-empted by federal law. In addition, the auto-enrollment provisions in the bill will very likely subject business owners to liabilities under ERISA.

While in 2016 the Department of Labor (DOL) adopted ERISA safe harbor rules that could have allowed these plans, the rules also required the sponsoring state to meet certain requirements that would add even more costs. For example, the state had to take responsibility (i.e., assume liability) for the safety of the plan's investments and was required to provide a mechanism for enforcement of worker rights under the plan. In 2017, however, Congress determined that all private workers deserve the protection of ERISA and disapproved the DOL safe harbor in a resolution passed under the Congressional Review Act. Thus, there is no longer any ERISA safe harbor for these state-run plans.

The U.S. Chamber of Commerce has since received a definitive legal opinion that the AARP plan will likely be determined to be an employer-sponsored plan subject to and governed by ERISA. The opinion also concludes that the plan's provisions will most likely be found to be pre-empted by ERISA and therefore the plan could be challenged in court – in which case the state's money spent on implementing the plan will have been wasted. At the very least employers will be found to be the fiduciaries of the plan and become responsible for all of the obligations under ERISA that the sponsoring state refused to assume<sup>1</sup>. The Courts will ultimately determine the legal status of these plans. The State's adoption of SB 2333, SD 2, will, therefore, force the small business owner, his or her employees and the State of Hawaii to enter into a costly program that may create enormous liabilities for both.

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<sup>1</sup> By its terms SB 2333, SD 2, states that the plan, each board member of the Hawaii Retirement Savings Board established under the plan and the State of Hawaii "shall not guarantee any rate of return or any interest rate on any contribution; provided that the plan, the board, each board member, and the State shall not be liable for any loss incurred by any person as a result of participating in the plan." See page 13, lines 1 through 5, SB 2333, SD 2.

The flawed assumption underlying SB 2333's proposed State run retirement savings plan is that there is a lack of access to retirement plans in the private sector.

To the contrary, the current market place offers a wide variety of low cost and affordable vehicles that facilitate worker retirement savings. These include, for example, individual and payroll deduction IRAs, SIMPLE plans for small employers, and individual annuities

The need, therefore, for mandating a state-sponsored and state-run retirement plan that competes with the private sector and could cost millions of dollars to implement and run has not been shown by the bill's proponents.

ACLI submits that the focus of the state's efforts should not be creating a costly state-sponsored and run retirement plan but rather by addressing the real obstacles to retirement savings – job insecurity, debt and lack of funds to invest. ACLI is also prepared to support the alternative concept of a voluntary, private-sector based marketplace approach, such as the one adopted in the State of Washington.

In May 2015, Washington State enacted and funded the first voluntary small business retirement plan "Marketplace" in the nation, which establishes a web-portal structure to connect private sector employers with qualifying plan vendors. Additionally, the Washington State plan does mailings and outreach to eligible employers or other organizations that interact with these employers. A second-in-the-nation Marketplace was established in New Jersey shortly thereafter (January 2016) and was largely based on the Washington State law.

The Washington State plan provides a good model for small business private market place programs.

For the foregoing reasons ACLI must respectfully oppose SB 2333, SD 2, and urges this Committee to defer passage of this bill.

Again, thank you for the opportunity to testify in opposition to SB 2333, SD 2, Relating to Retirement Savings.

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Aloha Chair Johanson, Vice Chair Holt and Members of the House Labor Committee,

On behalf of the nearly 600 registered members of the Young Progressives Demanding Action – Hawai‘i, I would like to voice my **strong support** for SB2333 SD2, which lays the groundwork to implement a Hawai‘i retirement savings program similar to the OregonSaves program.

Contrary to what some might have you believe, millennials understand the importance of saving early for their retirement. We currently witness the distress of many elderly citizens who struggle to survive on social security payments, and we also recognize the threats to the continuation of these benefits in the long run. Understanding the need to save for retirement, however, is just the starting point, and government action is needed to help private-sector workers to participate in a valid and sustainable retirement savings program.

Studies show that about half of Hawai‘i workers ages 18–64 working in the private sector (about 216,000 people) do not have access to a 401K or other retirement plan at work and are not able to save through payroll deduction. Nationwide, studies show that people are 15 times more likely to save if they have access to a payroll deduction savings plan.

Other states have already passed legislation that improves workers’ access to a retirement program. For example, Oregon implemented a state retirement program for private-sector employees, and since its rollout in October of 2017, OregonSaves has enjoyed an 80 percent participation rate of eligible workers.

Hawai‘i must take action now and join in the movement to find ways to help our future retirees to be retirement-ready. YPDA stands ready to work with the Legislature to determine the appropriate details for an appropriate program under SB2333 SD2.

Please help us to protect our future, and pass this bill.

Mahalo,

Will Caron  
Social Justice Action Committee Chair  
Young Progressives Demanding Action – Hawaii

TO: Senate [Committee On Ways And Means](#)  
Senator Donovan M. Dela Cruz, Chair

DATE: Friday, February 23, 2018  
TIME: 10:30 A.M.

Thank you for the opportunity to submit written testimony in SUPPORT of [SB 2333](#), SD 1, Relating to Retirement Savings. My name is Linda Dorset and I am a concerned aging resident living in the Wailuku area.

When individuals save for retirement they are less likely to rely on public assistance programs later in life. These fact sheets show the fiscal savings to state governments that could result from lower-income retirees having saved through Work and Save programs during their working years. According to research by AARP Public Policy Institute [Hawaii Could Save \\$32.7 Million by Helping People Save for Their Own Retirement](#); specifically if between 2018 and 2032 if lower-income retirees save enough to increase their retirement income by \$1,000 more per year.

When individuals save for retirement they are less likely to rely on public assistance programs later in life. State-facilitated retirement savings plans for small-business employees would help people save more for retirement and, in turn, save significant taxpayer dollars for programs like Medicaid, Supplemental Security Income, the Supplemental Nutrition Assistance Program, and housing assistance.

between 2018 and 2032 if lower-income retirees save enough to increase their retirement income by \$1,000 more per year.

Mahalo



# HAWAII APPLESEED

## CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai‘i Appleseed Center for Law and Economic Justice  
Supporting SB 2333 SD2 – Relating to Retirement Savings  
House Committee on Labor & Public Employment  
Scheduled for hearing on Thursday, March 22, 2018, 9:15 AM, in Conference Room 309

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Dear Chair Johanson, Vice Chair Holt, and members of the Committee:

Thank you for the opportunity to testify in SUPPORT of **SB 2333 SD2**, which would require the Department of Budget and Finance to conduct a study on the feasibility of implementing the Hawaii retirement savings plan. If the results are positive, establishes a retirement savings board to administer the plan and its fund.

While Hawai‘i’s official elderly poverty rate of 8 percent is lower than the national average, it is the 22<sup>nd</sup> highest rate among the states. More importantly, if you look at the U.S. Census Bureau’s arguably more accurate supplemental poverty measure, Hawai‘i’s senior poverty rate rises to 17 percent, the 6<sup>th</sup> highest rate in the nation. Much of this difference is due to the fact that the supplemental measure factors in the cost of living (which are higher in Hawai‘i than in any other state in the nation).<sup>i</sup>

In addition, if you look at people aged 65 and older with incomes below 200 percent of the poverty level, Hawai‘i’s indicators worsen considerably. Even by the official measure, over one quarter (27 percent) of Hawai‘i’s elderly live below twice the official poverty threshold. Astoundingly, over half (54 percent) of Hawai‘i’s seniors have incomes below 200 percent of the supplemental measure, which is the 2<sup>nd</sup> highest rate among the states.

Meanwhile, 86.1 percent, or about 210,000, Hawai‘i residents aged 65 or older received Social Security benefits in 2016, which was lower than the national average of 90.4 percent.<sup>ii</sup> Hawai‘i seniors received a median monthly Social Security benefit of \$1,332, just below to the national average of \$1,347.<sup>iii</sup> However, as noted above, our seniors have to contend with the highest cost of living among all the states.

With our ever-growing senior population facing statistics like that, encouraging and enabling our working-age population to save for retirement is crucial to our state’s future economic health.

According to the AARP, half of our state’s private sector workers do not have access to an employer-sponsored retirement plan, and very few who are eligible to contribute to an individual retirement account actually do so. Low-wage workers are especially unlikely to have a retirement plan available to them at their workplace.

The vast majority of Hawai'i registered voters polled by AARP wish that they had more retirement savings, are concerned that some of their fellow residents will end up on public assistance programs in retirement, and agree that lawmakers should do more to make it easier for small business owners to offer their employees a way to save for retirement.<sup>iv</sup>

Dozens of states have been considering the ways that they could help their workers save more via state-managed retirement plans. In fact, five states – California, Connecticut, Illinois, Maryland, and Oregon – have enacted legislation to create automatic enrollment retirement savings plans for their workers.

According to the Center for Economic and Policy Research, one major advantage of state plans is that workers could keep their accounts with them when they change jobs.<sup>v</sup> In addition, the fees of state-managed plans would likely be just a fraction of those levied by private 401(k)s:

*This may seem like a small difference, but it adds up over a worker's career. Imagine a person earning \$60,000 a year and putting 6 percent of their pay, or \$3,600 a year, into a 401(k) for thirty years. At the end of thirty years, the difference between a plan with annual administrative costs of 0.3 percent and a plan with costs of 1.0 percent would be almost \$30,000. (This calculation assumes a 5.0 percent average annual nominal return.)*

*The difference would be even larger if we factored in that private accounts are likely to charge between 10 to 20 percent of savings to convert the sum into an annuity when workers retire. A public plan would charge considerably less.*

Another important feature of many of these types of plans is automatic enrollment. According to the AARP, 90 percent of those who are participating in employer-sponsored retirement programs state having their savings automatically deducted from their paychecks is very important and makes it easier for them to save.

We need to start now to ensure that as few of our future retirees as possible end up struggling in poverty. Mahalo for your consideration of this testimony.

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<sup>i</sup> <https://www.kff.org/report-section/poverty-among-seniors-issue-brief/>

<sup>ii</sup> [https://www.ssa.gov/policy/docs/statcomps/oasdi\\_sc/](https://www.ssa.gov/policy/docs/statcomps/oasdi_sc/)

<sup>iii</sup> <https://www.ssa.gov/policy/docs/statcomps/supplement/2017/index.html>

<sup>iv</sup> [https://www.aarp.org/content/dam/aarp/research/surveys\\_statistics/econ/2016/2016-Hawaii-Work-and-Save-Onepager-AARP-res-econ.pdf](https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2016/2016-Hawaii-Work-and-Save-Onepager-AARP-res-econ.pdf)

<sup>v</sup> <http://cepr.net/blogs/beat-the-press/the-paul-ryan-small-savers-tax>



**TESTIMONY OF TINA YAMAKI**  
**PRESIDENT**  
**RETAIL MERCHANTS OF HAWAII**  
March 22, 2018

Re: SB 2333 SD2 Relating to Retirement Savings

Good morning Chair Johanson and members of the House Committee on Labor. I am Tina Yamaki, President of the Retail Merchants of Hawaii.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization committed to supporting the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

We support SB 2333 SD2 that would conduct a study on the feasibility of implementing the Hawaii retirement savings plan and if the results of the study are positive, establishes a retirement savings board to administer the Hawaii retirement savings plan and the Hawaii retirement savings plan administrative fund.

Currently many companies in Hawaii, especially smaller local businesses are unable to afford to administer retirement or even 401K plans. It is our understanding that a Hawaii retirement savings plan could help to lessen the fiduciary burdens and would help many businesses provided an added benefit to their employees by offering a retirement savings plan through a payroll deduction program. This may be the incentive that many employees need to begin saving for retirement that may be years down the line.

Businesses like everyone want to see our kapuna enjoy retirement and not having to rely on public assistance programs and this bill would help to accomplish this.

We hope that you support this measure.

Mahalo for the opportunity to testify.



**Before the House Committee on Labor & Public Employment**

DATE: March 22, 2018

TIME: 9:15 a.m.

PLACE: Conference Room 309

**Re: SB 2333, SD2, Relating to Retirement Savings**

Testimony of Melissa Pavlicek for NFIB Hawaii

Aloha Chair Johanson, Vice Chair Holt and members of the committee:

We are testifying on behalf of the National Federation of Independent Business (NFIB) in opposition to Senate Bill 2333, SD2, relating to retirement savings. We recognize and acknowledge concerns about retirement security in the State, as many individuals either do not have access to or do not participate in an employer-sponsored retirement plan. Therefore, we do not oppose *study* of this issue.

This bill, however, is not just a study bill.

It establishes a permanent board in state government whose purpose is to create, establish and implement a mandatory state-run auto-enrollment IRA plan. After the board conducts a study, it has full power to move ahead with establishing the plan. The state may spend considerable resources on this study and developing a proposed plan, only to conclude that it will subject employers and the state to Employee Retirement Security Act of 1974 (ERISA) regulation. A potential consequence of ERISA regulation could be that the law implementing the plans are found to be pre-empted by ERISA and, therefore, prohibited. Another potential impact could be that employers would be found to be the fiduciaries of the plans and become responsible for all of the obligations under ERISA.

A study's outcome should not be pre-determined. Please defer this measure.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 750 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

House of Representatives  
Committee on Labor & Public Employment  
Thursday, March 22, 2018  
9:15 a.m., Conference Room 309

March 20, 2018

Representative Aaron Ling Johanson  
Chair, House Committee on Labor & Public Employment

Re: S.B. No. 2333, S.D. 2, Relating to Retirement Savings

Dear Chair Johanson and Members of this Committee,

My name is Dean Teramoto of Nisei Building Maintenance (Nisei), a family-owned business with about 75 workers in the office cleaning business in Hawaii. I am writing in support of S.B. No. 2333, S.D. 2.

Nisei has been searching to find ways to start a retirement savings plan for our workers. Many of our workers need the help to save money regularly, and we have looked at doing 401K or IRA plans for them, but Nisei is too small to afford the costs to administer these types of plans and the fiduciary obligations are too great.

Nisei is very interested in what is happening in the State of Oregon and how a new law there is helping businesses help their employees to participate in a payroll deduction plan. The State of Oregon does "the heavy lifting" in implementing the savings plan and the Oregon plan was supported by many small businesses. S.B. No. 2333, S.D. 2, is modeled after this Oregon law.

Small businesses like Nisei really want to help its workers start a retirement savings plan, and the program in S.B. No. 2333, S.D. 2 seems to be a good way to get this done.

Thank you for allowing Nisei to submit this testimony on S.B. No. 2333, S.D. 2.

Sincerely,



Dean Teramoto



**SB-2333-SD-2**

Submitted on: 3/21/2018 9:02:57 AM

Testimony for LAB on 3/22/2018 9:15:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marc Barra	Individual	Support	No

Comments:

Aloha WAM Committee,

I am in strong support of SB2333. This bill is the first step in creating a savings plan that covers private sector workers like myself who do not have access to a employer initiated retirement plan. I work for a family run small business which can not afford the fees associated with setting up retirement plans for their employers. This puts me at a disadvantage in saving for retirement. Being able to have my money deducted pre-tax directly from my payroll is a huge advantage that only those with dedicated programs can access.

Years ago the state determined it was important for people to save for college and created the hi529 college saving plan.

With many states enacting similar plans, Hawaii should join the effort to help its residents and tax payers save for retirement. Mahalo.

# LATE Testimony

House of Representatives  
Committee on Labor and Public Employment  
Thursday, March 22, 2018  
9:15 a.m.  
Conference Room 309

To: Representative Aaron Ling Johnason, Chair  
Re: S.B. No. 2333, S.D. 2, Relating to Retirement Savings

Dear Chair Johanson, Vice-Chair Holt, and Members of the Committee,

My name is Grant Tabura, also known as "Lanai." I am a life-long resident of Hawai'i with experience as a small-business owner and entrepreneur and as a working employee for over 25 years.

I recently heard that Oregon has a new program to help its private-sector workers save for their retirement through a program called OregonSaves. S.B. No. 2333, S.D. 2, establishes a similar program for private-sector workers in Hawai'i, and I support of this idea and the passage of S.B. No. 2333, S.D. 2.

Recent studies show that about half of Hawai'i workers ages 18 to 64 in the private sector (about 216,000 workers) do not have access to a retirement plan at work and are not able to save through payroll deduction. Nationwide studies show that people are 15 times more likely to save if they have access to a payroll deduction savings plan.

As an employee, I wish I had a payroll deduction saving plan, but as a small business owner I understand why I can't offer it to workers. There are problems with high costs and fees and fiduciary duties that make it unaffordable to offer workers a retirement savings program.

The workers in Oregon have this opportunity because of OregonSaves, and I would like to have this opportunity here in Hawaii too. I support this bill which would help private-sector employers to provide to their workers a retirement savings program. I hear that other states have already passed legislation that takes action on this topic and I ask that this Legislature do the same.

Thank you for giving me the chance to express my views on this topic and to support the passage of S.B. No. 2333, S. D. 2.



March 21, 2018

**SB 2333**

**SD-2**

**LATE  
TESTIMONY**



# CARING ACROSS GENERATIONS

**Rep. Aaron Ling Johanson, Chair**  
**Rep. Daniel Holt, Vice Chair**  
**House Committee on Labor**

**Thursday, March 22, 2018, 09:15 a.m. Conference Room 309**

## **TESTIMONY IN SUPPORT OF S.B. No. 2333, S.D. 2, Relating to Retirement Savings**

Caring Across Generations in strong support of Sente Bill 2333, Senate Draft 2.

Caring Across Generations is a national movement of families, caregivers, people with disabilities and aging Americans working to transform the way we care in this country, calling for policy solutions that enable all of us to live and age with dignity and independence. Caring Across Generations has worked with partners in Hawai'i for years in support of legislation that will help make quality long-term care accessible to everyone.

Hawaii has the fastest growing aging population in the nation. Our senior (age 65+) population is expected to grow 81 percent by 2030. Approximately 247,000 Hawaii workers serve as the primary caregiver for a family member.

Approximately fifty per cent of the State's private sector employees work for an employer that does not offer a retirement plan or are not eligible for the plan offered. The lack of opportunity to participate in an employer-provided retirement plan spans all levels of education and earnings. Employees of Hawaii businesses with fewer than one hundred employees are much less likely to have access to a retirement plan than employees of larger businesses. Employees who are offered the opportunity to save through the employee's place of employment are significantly more likely to participate and make steady contributions to build retirement savings.

Because of the reasons stated above and many others, we are in strong support of Senate Bill 2333, Senate Draft 2.

Thank you for considering my testimony.

Sincerely,

**Pedro Haro**  
**Hawai'i Advocacy Director**  
**Caring Across Generations**  
**[pedro@caringacross.org](mailto:pedro@caringacross.org)**

**LATE**

Presentation To The  
Committee on Labor & Public Employment  
March 22, 2018 at 9:15 AM  
State Capitol Conference Room 309

**Testimony on Senate Bill 2333**

TO: The Honorable Aaron Ling Johanson, Chair, Committee on Labor & Public Employment  
The Honorable Daniel Holts, Vice Chair  
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing banks with branches in Hawaii. Thank you for permitting this late testimony.

HBA offers comments on this bill. HBA recognizes that there is a national and Hawaii concern on the retirement resources available to a large segment of the population. The Hawaii banks do offer many retirement services, whether it be IRAs or a 401K plan for a company's employees. However, we do recognize that for some small businesses, the services of a bank are beyond the ken of the small businesses.

This bill seeks to establish a study on the possibility of establishing a state sponsored retirement plan for private sector employees. We do not object to the study but we are concerned that sections 3 and 4 of the bill offers a framework of any state sponsored retirement plan should the state decide to enact one. HBA believes that rather than prejudging the plan, it be preferable that the body studying the issue recommend the state framework for a state sponsored retirement plan, subject to such conditions encompassed in this bill. Therefore, we recommend that sections 3 and 4 of the bill be deleted.

One concern for Hawaii banks is the potential for the entrance of a public sector in a field that is effectively and efficiently served by the private sector. One condition of the bill should be that the government not intrude in a private sector matter. For example, we are concerned that an employer who already offers a qualified retirement plan may, because of cost, administrative burden and fiduciary duty, be incentivized to terminate its present qualified retirement plan and offer the state retirement plan instead. To alleviate this possibility, thought should be given to an eligibility requirement that the employer shall not have terminated a qualified retirement plan within a prior period, at least three years. Another possibility is to make only small business employers eligible for this plan; such as those with fifty or less employees.

Thank you for the opportunity to submit this testimony on SB 2062 and please let us know if we can provide further information.

Neal K. Okabayashi

