

---

---

## A BILL FOR AN ACT

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST  
FUND.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 87A, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4           "§87A-A Fiduciary duties; prohibited transactions. (a) A  
5 fiduciary of the trust shall comply, with respect to a plan,  
6 with all fiduciary duties imposed on fiduciaries under title 29  
7 United States Code sections 1001-1191, as amended, and related  
8 regulations.

9           (b) All fiduciaries of the trust shall discharge their  
10 duties with respect to a plan solely in the interest of the  
11 participants and beneficiaries and:

12           (1) For the exclusive purpose of:

13           (A) Providing benefits to participants and their  
14 beneficiaries; and

15           (B) Defraying reasonable expenses of administering  
16 the plan;



1       (2) With the care, skill, prudence, and diligence under  
2       the circumstances that a prudent person acting in a  
3       similar capacity and familiar with those matters would  
4       use in the conduct of an enterprise of a similar  
5       character and with like aims;

6       (3) Diversify the investments of the plan so as to  
7       minimize the risk of large losses, unless, under the  
8       circumstances, it is clearly prudent not to do so; and

9       (4) Act in accordance with the documents and instruments  
10       governing the plan insofar as such documents and  
11       instruments are consistent with the provisions of this  
12       chapter.

13       (c) In addition to any liability that a fiduciary may have  
14       under this chapter, a fiduciary with respect to a plan shall be  
15       liable for a breach of fiduciary responsibility of another  
16       fiduciary with respect to the same plan in the following  
17       circumstances:

18       (1) If the fiduciary participates knowingly in, or  
19       knowingly undertakes to conceal, an act of omission of  
20       the other fiduciary, knowing that act or omission is a  
21       breach;



1           (2) If, by the fiduciary's failure to comply with  
2           subsection (a) or (b), the fiduciary has enabled the  
3           other fiduciary to commit a breach; or

4           (3) If the fiduciary has knowledge of the breach by the  
5           other fiduciary, unless the other fiduciary makes  
6           reasonable efforts under the circumstances to remedy  
7           the breach.

8           If the assets of the plan are held by two or more trustees,  
9           each shall use reasonable care to prevent a co-trustee from  
10          committing a breach, and each shall be responsible for jointly  
11          managing and controlling the assets of the plan.

12          (d) A fiduciary shall not cause a plan to engage in a  
13          transaction, if the fiduciary knows or should know that the  
14          transaction constitutes a direct or indirect:

15          (1) Sale or exchange, or leasing, of any property between  
16          the plan and a party in interest;

17          (2) Lending of money or other extension of credit between  
18          the plan and a party in interest;

19          (3) Furnishing of goods, services, or facilities between  
20          the plan and a party in interest; or



1        (4) Transfer to, or use by or for the benefit of, a party  
2            in interest, of any assets of the plan.

3        (e) A fiduciary shall not:

4        (1) Deal with the assets of the plan in the fiduciary's  
5            own interest or for the fiduciary's own personal  
6            account;

7        (2) In the fiduciary's individual capacity or in any other  
8            capacity act in any transaction involving the plan on  
9            behalf of a party, or represent a party, whose  
10           interests are adverse to the interests of the plan or  
11           the interests of its participants or beneficiaries; or

12       (3) Receive any consideration for the fiduciary's own  
13           personal account from any party dealing with the plan  
14           in connection with a transaction involving the assets  
15           of the plan.

16       For the purposes of this section, a "fiduciary" or  
17       "fiduciary of the trust" shall mean a member of the board of  
18       trustees.

19       **§87A-B Liability for breach of fiduciary duty.** (a) Any  
20       person who is a fiduciary with respect to a plan and who  
21       breaches any of the responsibilities, obligations, or duties



1 imposed on fiduciaries by this chapter shall be personally  
2 liable for reimbursing the plan for any losses to the plan  
3 resulting from each breach, and restoring to the plan any  
4 profits of the fiduciary that have been made through the use of  
5 assets of the plan by the fiduciary, and shall be subject to any  
6 other equitable and remedial relief as a court may deem  
7 appropriate, including removal of the fiduciary.

8 (b) Any provision in any agreement or instrument that  
9 purports to relieve a fiduciary of responsibility or liability  
10 for any responsibility, obligation, or duty under this chapter  
11 shall be void as against public policy; however, nothing in this  
12 section shall preclude:

13 (1) A plan from purchasing insurance for its fiduciaries  
14 or for itself to cover liability or losses occurring  
15 by reason of the act or omission of a fiduciary in the  
16 case of a breach of a fiduciary obligation by the  
17 fiduciary, provided that the insurance permits  
18 recourse by the insurer against the fiduciary in the  
19 case of a breach of fiduciary obligation by the  
20 fiduciary;



- 1        (2) A fiduciary from purchasing insurance to cover
- 2                liability under this chapter from and for the
- 3                fiduciary's own personal account; or
- 4        (3) An employee organization from purchasing insurance to
- 5                cover potential liability of one or more persons who
- 6                serve in a fiduciary capacity with regard to an
- 7                employee welfare benefit plan."

8            SECTION 2. In codifying the new sections added by section  
 9 1 of this Act, the revisor of statutes shall substitute  
 10 appropriate section numbers for the letters used in designating  
 11 the new sections in this Act.

12            SECTION 3. New statutory material is underscored.

13            SECTION 4. This Act shall take effect upon its approval.

14

INTRODUCED BY:  \_\_\_\_\_

JAN 18 2019



**Report Title:**

EUTF; Fiduciary Duties; Prohibited Transactions; Liabilities

**Description:**

Creates a fiduciary duty on EUTF trustees. Prohibits transactions where the trustee has a conflict of interest. Establishes liabilities for breach of fiduciary duty.

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

