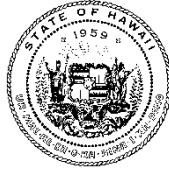


DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
BONNIE KAHAKUI  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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**TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE HOUSE COMMITTEE  
ON  
LABOR AND PUBLIC EMPLOYMENT  
Thursday, March 12, 2020 at 9:00 AM**

**SB 2490 SD2  
RELATING TO RETIREMENT SAVINGS**

Chair Johanson, Vice Chair Eli, and members of the committee, thank you for the opportunity to submit testimony on SB2490 SD2. The State Procurement Office (SPO) appreciates the intent of the bill.

The SPO, however, has strong concerns on the request to exempt the procurement of a third-party consultant (Section 2, Page 4, lines 12-15). There are many consulting firms that would be able to compete for this work.

The Hawaii Public Procurement Code (code) is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both HRS chapter 103D and 103F conveys a sense of disproportionate equality in the law's application.

Exemptions to the code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code

are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

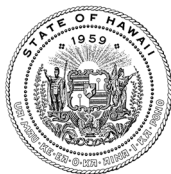
The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

When public bodies, are removed from the state's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year, new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Thank you.

DAVID Y. IGE  
GOVERNOR



CRAIG K. HIRAI  
DIRECTOR

ROBERT YU  
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)

TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT  
ON  
SENATE BILL NO. 2490, S.D.2

MARCH 12, 2020  
9:00 A.M.  
Conference Room 309

RELATING TO RETIREMENT SAVINGS

Chair Johanson, Vice Chair Eli, and Members of the Committee on Labor and Public Employment:

The Department of Budget and Finance supports the intent of SB 2490 S.D.2 (SSCR 3044) which establishes the Hawaii Retirement Savings Program task force, tasked with evaluating a retirement savings plan for non-governmental employees and report findings and recommendations to the Legislature.

A qualified task force should investigate the viability of state sponsored retirements savings plans that have been adopted in other states as well as understand the role that state government may have in supporting employers that are interested in offering retirement plans under the provisions of the Setting Every Community Up for Retirement Enhancement SECURE Act of 2019 that was signed into federal law on December 20, 2019.

Thank you for the opportunity to provide our testimony on this bill.

**SB-2490-SD-2**

Submitted on: 3/10/2020 1:36:40 PM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Will Caron	Young Progressives Demanding Action	Support	No

Comments:



House Committee on Labor & Public Employment  
March 12, 2020 – 9:00 am – Room 309

**SB 2490, SD2: Relating to the Hawaii Retirement Savings Program**

Chair Johanson, Vice Chair Eli and members of the Committee, my name is Cynthia Takenaka representing NAIFA Hawaii, an organization of life insurance agents and financial advisors throughout Hawaii who primarily market life, annuities, long term care and disability income insurance products.

The purpose of SB 2490, SD2, is to establish the Hawaii Retirement Security Task Force to “select a research entity to draft an implementation plan for the Hawaii Retirement Savings Program for private sector employees” who are not currently covered by an existing employer sponsored retirement plan. The task force is being asked to gather “information from other state experiences and educational institutions with expertise on existing programs”.

The task force members are from government, financial services industry, small business, retirees, employees and a consumer group. There’s a blank appropriation for fiscal year 2020-2021 to be expended by Department of Budget and Finance. The task force shall report to the Legislature prior to the convening of the regular session of 2021 and dissolve on March 15, 2021.

**We respectfully do not support SB 2490, SD2.** A similar measure, HB 2251 was heard in this committee on 2/4/2020 and deferred in Human Services & Homelessness Committee.

Proposals to implement a state-run retirement programs appear designed to address issues of availability and access. However, availability of and access to the many retirement savings options are not the problems. 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 understand the importance of retirement security and acknowledge that many Americans are not saving enough for retirement. However, we do not believe that a state-run plan that competes with private market plans is the answer. Additionally, the existence of a state-run retirement plan could result in employers with strong existing 401k and other types of plans dropping them and allowing the state-run program to take the place of the existing plan. This

would lead to more plans with lower contribution limits and a loss of matching contributions by employers.

There is a federal lawsuit in California -- **Howard Jarvis Taxpayers Association et al vs The California Secure Choice Retirement Savings Program filed in 2018**. The plaintiffs maintain that the California plan is subject to ERISA and therefore is in violation of its provisions. **Having a state law requiring participating employers to set up an employee retirement plan that may be subject to or pre-empted by ERISA will depend on how the courts will interpret the plan design.**

In September 2019, the U.S. Department of Justice filed an *amicus* brief challenging the legality of California's Secure Choice Program citing preemption by ERISA and that the program does not qualify for "safe harbor" status under ERISA regulations. If the plaintiffs prevail, employers will be considered "fiduciaries" and will then be responsible for ERISA obligations including liability since under this proposed program since the State of Hawaii is denying any liability for any losses incurred.

Most likely the U.S. Supreme Court will have the final ruling.

As much as the proponents point to a state like Oregon that has implemented their retirement savings program and considers their program protected under the 1975 "safe harbor" regulation and therefore, exempt from ERISA, is where **we do not agree**.

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 and respectfully **ask that this measure be held in committee**.

**SB-2490-SD-2**

Submitted on: 3/10/2020 10:23:31 PM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
GARY SIMON	Hawaii Family Caregiver Coalition	Support	No

Comments:

Dear Chair Johanson, Vice Chair Eli, and Honorable Members of the House Committee on Labor and Public Employment:

I am Gary Simon, President of the Hawaii Family Caregiver Coalition, whose mission is to improve the quality of life of those who give and receive care by increasing community awareness of caregiver through continuing advocacy, education, and training.

The Hawaii Family Caregiver Coalition strongly supports SB 2490 SD 2, which establishes the Hawaii Retirement Savings Program task force which is tasked with evaluating a retirement savings plan for non-government employees and reporting its findings and recommendations to the legislature; and which appropriates funds.

We encourage you to establish the task force as soon as possible.

Employees are fifteen times more likely to save when they can do so at work.

A Hawaii retirement savings program will make it easier for businesses to offer employees a way to save out of their regular paychecks, helping them take charge of their financial futures and live independently as they age.

It is their own money that they can take with them from job to job.

It is their own money that they can rely on in later years for a more secure future.

Contributions can be made with an automatic deduction from their paychecks.

Providing employees a simple way to save for retirement will mean fewer will need to rely on public assistance later in life, which will save taxpayer dollars.

We urge you to support SB 2490 SD 2, and we urge you to recommend its passage.

We thank you for seriously considering the Bill.

Very sincerely,

Gary Simon

President

Hawaii Family Caregiver Coalition





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facebook.com/AARPHawaii

THE HOUSE OF REPRESENTATIVES  
Committee on Labor and Public Employment  
Thursday, March 12, 2020  
9:00 a.m.  
Conference Room 309

To: Representative Aaron Ling Johanson, Chair  
Re: S.B. 2490 SD2, Relating to Retirement Savings

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

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a membership organization of people age fifty and over, with nearly 145,000 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. 2490 SD2** which establishes a retirement savings task force to select a research entity to draft an implementation plan for a Hawai'i retirement savings program for private sector employees utilizing information from other states' experiences and educational institutions with expertise on existing programs, and study the costs involved. The task force will report the findings and recommendations to the legislature including legislation to authorize the implementation of the program.

**A. Need for a government-facilitated retirement savings program for private-sector workers**

Today, the typical working household has only \$2,500 in retirement assets and those close to retirement have only \$14,500. The average Social Security benefit for an older family household (age 65+) in Hawai'i is about \$17,898 a year, while they spend \$25,400 a year on food, utilities and health care alone.

In the Aloha United Way's ALICE Report, 37% of senior households qualify as ALICE families. ALICE families – an acronym for Asset Limited, Income Constrained, Employed – have income above the Federal Poverty Level (FPL), but not high enough to afford a basic household budget that includes housing, child care, food, transportation, and health care. These ALICE families include households of all ages that are struggling to make ends meet in Hawai'i. However, there is a specific reference to Hawai'i's aging population in the report. This 2017 Report states, "There is a concern for the financial stability of aging Baby Boomer as well as the health of the wider economy as the population ages. Recent studies have shown that U.S. workers are woefully unprepared for retirement:

- o 39% of workers nationally give little or no thought to financial planning for retirement
- o 31% have no retirement savings or pension
- o 75% of Americans nearing retirement have less than \$30,000 in savings"

(Reference: ALICE: A Study of Financial Hardship in Hawai'i 2017 Report – Project of Aloha United Way)

We know that fewer and fewer people have a pension plan and many workers – **about 216,000 people in Hawai'i** -- currently have no easy access to a 401K, or other ways to save for retirement at work. Without an easy access way to save at work, a secure retirement is out of reach for about half of Hawai'i's private-sector workers, especially those who work for small business.

While individuals can establish and contribute to a retirement savings program on their own; many do not. The fact is only **1 in 20 people** will go out on their own to do the research and complete the process to set up IRAs (Individual Retirement Account) for themselves. Studies show that workers are **15 times** more likely to save for their future if they can save through payroll deduction at work.

Many small businesses often choose not to offer retirement programs to their workers due to the costs, complexity and burden to manage this benefit. Establishing a government-facilitated program would help small businesses offer this savings option to their employees.

#### **B. Cost-savings and benefits to taxpayers if more workers begin to save for their retirement**

When people save for retirement, they are less likely to rely on public assistance programs later in life. AARP Public Policy Institute 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. The combined state and federal savings are more than \$160 million.(AARP Hawai'i Fact Sheet, May 2017)

#### **C. Other states are addressing this national crisis for future retirees**

Ten states have already passed legislation that improves workers' access to a retirement program, and 30 more are in progress to help their future retirees. Oregon, the first state to implement a state retirement program for private-sector employees, started enrolling eligible workers into the OregonSaves program in October of 2017. Since its inception, more than 66,000 workers have enrolled into OregonSaves and are saving for their future retirement needs. They are saving at an average rate of \$128 per month and program assets currently top \$42 million. Hawai'i must join in this national effort to identify solutions to help our working families be retirement ready, and AARP Hawai'i stands ready to work with the Legislature to do this through a Hawai'i Saves program.

#### **D. Federal Legislation– Passage of SECURE Act**

Congress recently passed the Setting Every Community up for Retirement Act of 2019 (SECURE Act) which expands access to retirement savings to over 27 million part-time workers in the U.S. The bill also makes it easier for smaller employers to join to offer a retirement program to their workers and expands the selection of lifetime income options for retirees. However, it does not have some of the key features that state automatic IRA programs do, such as plug and play retirement programs that small businesses can use without having to run or pay for it.

AARP supports the SECURE Act as part of a larger effort to improve retirement security. It does not provide provisions that will inhibit states from moving forward on establishing retirement savings programs. Therefore, states such as Hawai'i can and should continue to work towards establishing this program for our private sector workers. The SECURE Act does not create the framework to develop a formal savings program at the local level; it only compliments existing or future state efforts. In a recent CNBC report, J. Mary Iwry, Senior Fellow at the Brookings Institution, states, "There is no way the SECURE Act comes close to solving the coverage gap in

the United States, but the Act is a good, constructive and necessary step forward". ("New Programs aim to help the 55 million people without workplace retirement savings plans", Jan 30, 2020). Having both national and state level efforts will give more individuals access to a retirement saving program.

### E. Commonly Raised Questions and Issues

The **Employee Retirement Income Security Act of 1974 (ERISA)** is sometimes voiced as a barrier to establishing a state-facilitated retirement program. ERISA is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these programs. However, state-facilitated retirement programs are not the same as an employer-sponsored plan which must abide with the ERISA regulations. Instead the public programs would likely fall under the 1975 safe harbor regulation providing that voluntary payroll deduction IRAs will not be treated as ERISA plans so long as they are merely *facilitated* by employers and not directly sponsored. (Source: 29 CFR 2510.3-2(d); 40 FR 34526 (Aug. 15, 1975).) These programs also come within longstanding Department of Labor guidance: (1999 DOL guidance issued by [Interpretative Bulletin 99-1](#).) Oregon's program has been live for more than two years, and there is no active challenge to ERISA.

Hawai'i has the benefit of the experiences of Oregon, Illinois, and Maryland regarding this ERISA question. In all these states, laws to start a payroll deduction IRA plan were enacted over the objections of American Council of Life Insurers (ACLI), and each program is currently or will be accepting contributions by the end of 2020. ERISA concerns have not stopped them from helping their residents save for retirement.

**A common misconception is that lower-income workers are unable** to contribute to a retirement savings program because they don't have any extra money once they pay for their basic household necessities.

State programs are designed to put the worker in the driver's seat. The worker always decides if they want to save, how much they want to save and what they want to save in. They may opt out because of income concerns, but most are likely to stay in once enrolled. OregonSaves is demonstrating that lower income workers will participate. The average income of Oregon's new savers is **\$29,000** and the average amount saved is \$128 a month. Since its inception in 2017, 70 percent of eligible workers have signed up for OregonSaves and \$42 million has been saved collectively by the participants.

Some of the questions raised by opponents, however, are not intended to solve the problem at hand, which is: how do you help Hawai'i's workers save for their retirement? Opponents to a Hawai'i Saves program raise objections with no alternative solution – in essence, the opponents advocate for a **status quo** approach to address a crisis that is growing in Hawai'i and across the Nation.

The Hawai'i Financial Health Pulse: 2019 Survey Results shows that the 69% of people in Hawai'i are facing financial challenges due to various factors such as the high cost of living. This makes it harder for people to spend, save, borrow and plan for their future that would allow them to be resilient and financially sound. If working families are struggling now, imagine what their financial outlook will be when they retire and have not saved sufficiently.

The report recommends "different actionable solutions that Hawai'i's stakeholders such as the financial institutions, employers, colleges and universities, and policymakers should take to improve the financial health of Hawai'i's people. One key recommendation is that policy makers can promote initiatives that help Hawai'i residents to save, access affordable credit, manage finances and plan for retirement." This bill offers a solution.

Yes, there are still questions that need to be studied and answered, and that is the purpose of having a task force to oversee an implementation plan. The plan will include a study to evaluate the costs involved, propose an implementation plan with timelines, and explore the use of interstate partnerships and agreement. Ultimately, the plan will propose the best retirement savings program that can be successfully operational and sustainable for Hawai'i's people.

Thank you for the opportunity to testify in **strong support** of S.B.2490 SD2.

Attachments: AARP Fact Sheet: Hawai'i Could Save \$32.7 Million by Helping People Save for their Own Retirement, May 2017.  
ALICE: A Study of Financial Hardship in Hawai'i 2017 Report – Project of Aloha United Way (Excerpt)

## 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
<b>United States</b>	<b>\$32,978,295,282</b>	<b>\$7,793,556,409</b>

Source: AARP Public Policy Institute analysis of Philip Trostel, The Fiscal Implications of Inadequate Retirement Savings in Maine (Orono, ME: The University of Maine Margaret Chase Smith Policy Center, February 2017), <https://mcspolicycenter.umaine.edu/wp-content/uploads/sites/122/2017/03/final-aarp-report.pdf>.

Fact Sheet 463, May 2017

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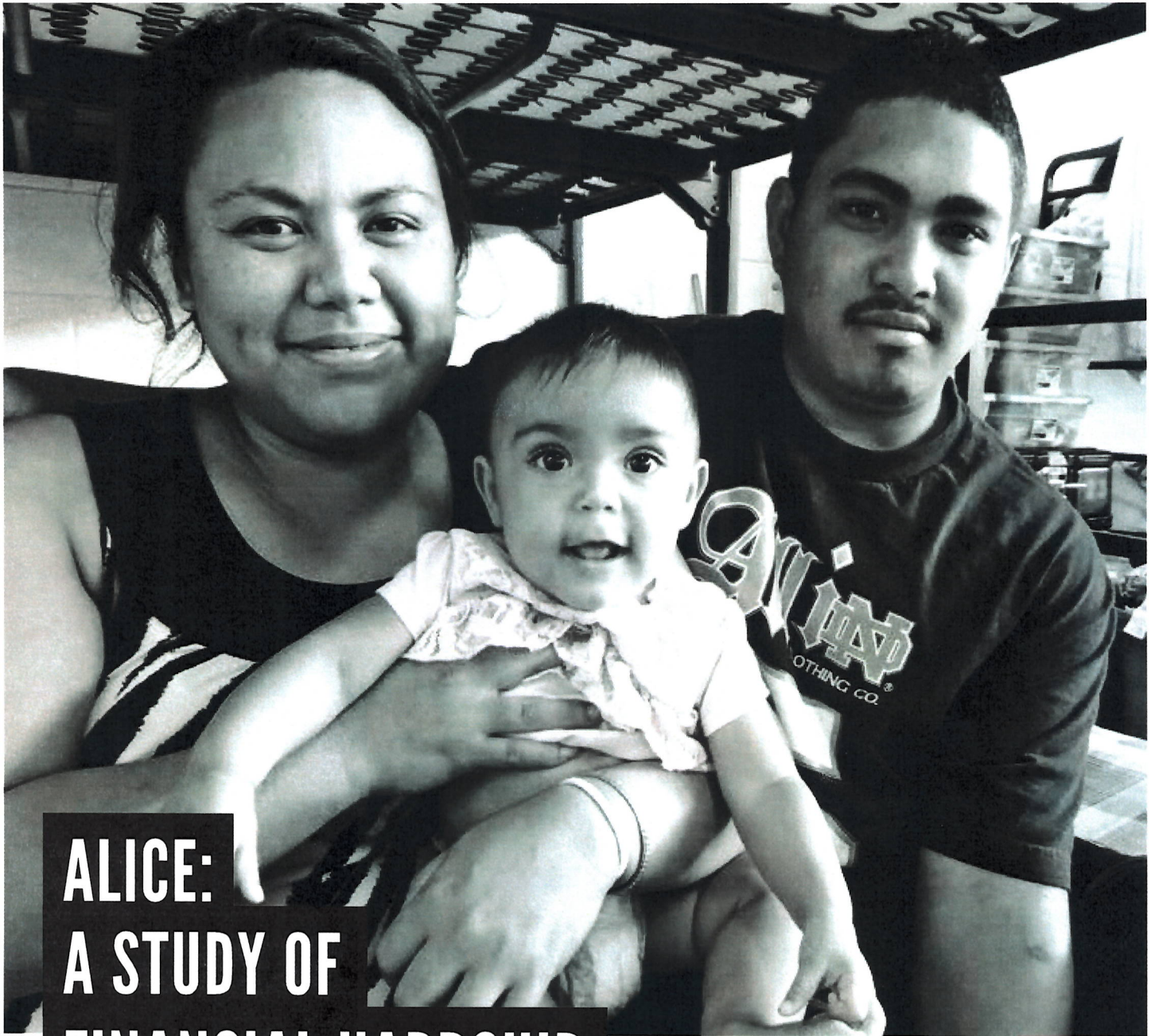
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**ALICE:  
A STUDY OF  
FINANCIAL HARDSHIP  
IN HAWAI'I**

LIVE UNITED

2017  
REPORT



ALICE® is an acronym for **A**sset **L**imited, **I**ncome **C**onstrained, **E**mployed. This is a project of United Ways in Connecticut, Florida, Hawai'i, Idaho, Indiana, Iowa, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Oregon, Virginia, Washington, and Wisconsin.



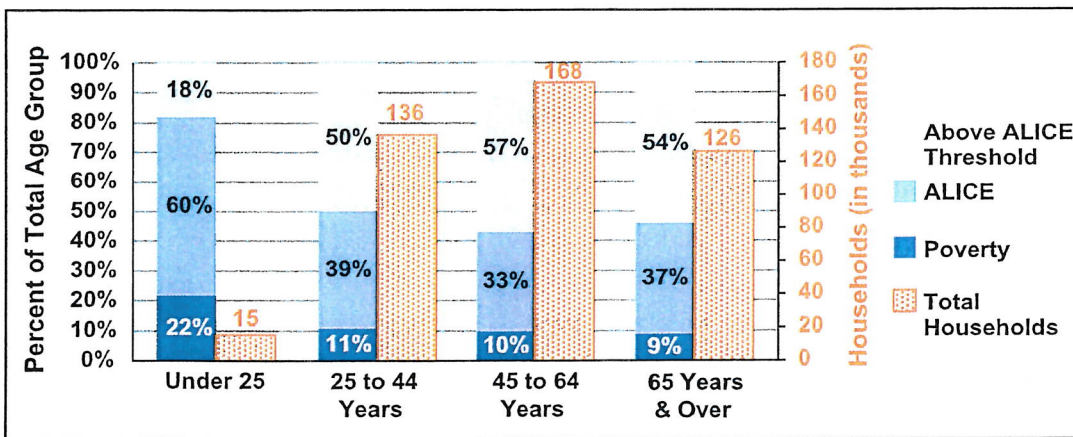
Apart from for a few notable exceptions, ALICE households generally reflect the demographics of the overall state population. Differences are most striking for those groups who traditionally have the lowest wages: women; lesbian, gay, bisexual, and transgender (LGBT) people; recent immigrants who are undocumented, unskilled, or in limited English-speaking households (all household members 14 years old and over have at least some difficulty with English); people with low levels of education; people with a disability; formerly incarcerated people; and younger veterans. County statistics for race/ethnicity and age are presented at [unitedwayalice.org/hawaii](http://unitedwayalice.org/hawaii).

*“Apart from for a few notable exceptions, ALICE households generally reflect the demographics of the overall state population.”*

## Age

There are ALICE households in every age bracket in Hawai'i (Figure 7). Within each age bracket, the number of ALICE households and households in poverty generally reflect their proportion of the overall population. Where they differ, the youngest are overrepresented in both poverty and the ALICE population.

**Figure 7.**  
**Household Income by Age, Hawai'i, 2015**



Source: American Community Survey, 2015, and the ALICE Threshold, 2015

Within the youngest Hawai'i age group (under 25), 22 percent are in poverty, while an additional 60 percent are ALICE households. As households get older, a smaller percentage of them are in poverty and are ALICE. Middle-aged households (25 to 44 years) have the second highest percentage of ALICE households, and those aged 45 to 64 years have the lowest. Senior households (65 years and older) are less likely to be in poverty (9 percent) but still have a high share of ALICE households (37 percent).

The comparatively low rate of senior households in poverty (9 percent) provides evidence that government benefits, including Social Security, are effective at reducing poverty among seniors (Haskins, 2011). But the fact that 37 percent of senior households qualify as ALICE highlights the reality that these same benefits are often not at a level that enables financial stability. This is especially true in Hawai'i, where the cost of living is high. This is reinforced by the fact that many senior households continue to work, some by choice and others because of low income. In Hawai'i's 65- to 74-year-old age group, 26 percent are in the labor force, as are 7 percent of those 75 years and over (American Community Survey, 2015).



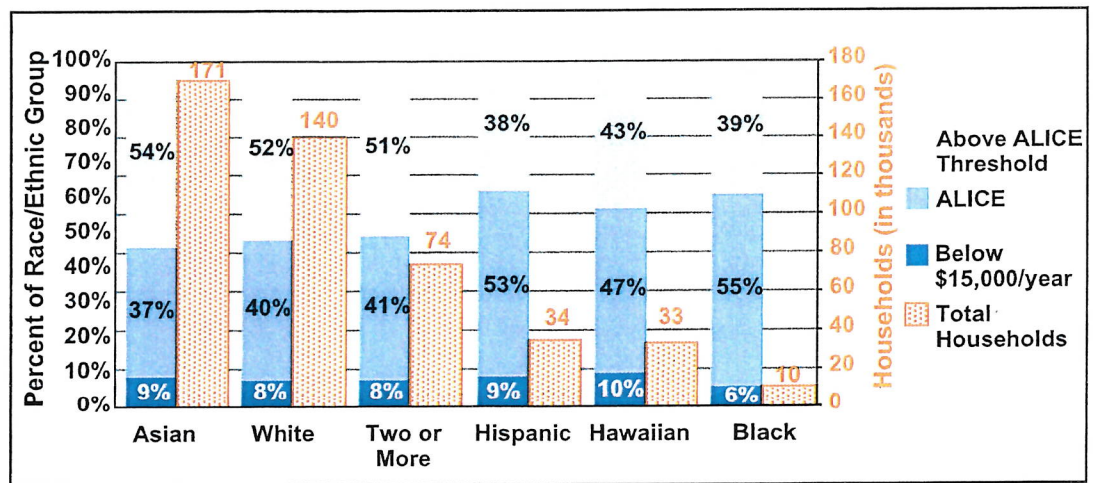
*“Earning enough income to reach the ALICE Threshold is especially challenging for young households in Hawai‘i, as illustrated by the high numbers of younger households below the ALICE Threshold.”*

Earning enough income to reach the ALICE Threshold is especially challenging for young households in Hawai‘i, as illustrated by the high numbers of younger households below the ALICE Threshold. The same is true in many parts of the country, and the response has typically been a decrease in the number of households headed by someone under the age of 25 as young workers move back in with their parents or find roommates to save money. From 2007 to 2015, the number of Hawai‘i’s households headed by someone under 25 decreased by 21 percent (Vespa, Lewis, & Kreider, 2013; American Community Survey, 2007, 2010, 2012, and 2015).

## Race/Ethnicity

Of Hawai‘i’s 445,900 households, 37 percent are headed by someone who is Asian (Asian alone, not Hispanic or Latino, U.S. Census classification), 30 percent by someone who is White, 16 percent by someone reporting Two or More Races, 7 percent by someone who is Hispanic, 7 percent by someone who is Native Hawaiian and Other Pacific Islander, and 2 percent by someone who is Black. At least 46 percent of households in each racial/ethnic group have income below the ALICE Threshold. Rates for Asians, Whites, and people of Two or More Races (a large population in Hawai‘i) are between 46 and 49 percent, while rates for Hispanics, Native Hawaiians, and Blacks are 57 percent or higher (Figure 8).

**Figure 8.**  
**Households by Race/Ethnicity and Income, Hawai‘i, 2015**



Source: American Community Survey, 2015, and the ALICE Threshold, 2015

Note: Data in all categories except Two or More Races is for one race alone. Because race and ethnicity are overlapping categories and Hawai‘i is a state with many races and ethnicities, the totals for each income category do not add to 100 percent exactly. This data is for households; because household size varies for different racial/ethnic groups, population percentages may differ from household percentages. Because household poverty data is not available for the American Community Survey’s Race/Ethnicity categories, annual income below \$15,000 is used as a proxy.

In terms of race and ethnicity, Hawai‘i is one of the most diverse states in the country and one of the few “majority minority” states, with 70 percent of the population being non-White. Within racial/ethnic groups, there is additional diversity in national origin.

Before Captain James Cook’s ships reached Hawai‘i in 1778, the Native Hawaiian population was sizable, with estimates ranging from 110,000 to 1 million. Disease and war reduced that population to less than 40,000 by the turn of the 20<sup>th</sup> century. But the Native Hawaiian

Population growth in Hawai'i will vary across counties with the slowest rate of 0.5 percent annually in the City and County of Honolulu, while Hawai'i County is projected to grow at about 1.7 percent annually, Maui County at 1.2 percent, and Kaua'i County at 1.0 percent (State of Hawai'i Executive Office on Aging, 2011; Yahirun and Zan, 2016).

Hawai'i's population will continue to become both older and more diverse. The aging of the Baby Boomers has wide implications, including a smaller proportion of younger families and a decrease in the working-age population.

Hawai'i's low unemployment rate and growing economy will provide ongoing opportunities for both interstate migration and international immigration to Hawai'i, but because there are still obstacles to economic stability for immigrants, they may be harder to attract. There is more domestic migration than international immigration to the state, though the foreign-born population increased from 15 percent of the overall population in 1990 to 18 percent in 2015 (Migration Policy Institute, 2015).

## An Aging Population

The composition of Hawai'i's aging population is as diverse as the overall state population but with a slightly different composition, and it varies by county. Across the state, the percentage of seniors who are Asian is 14 times the national average – 54 percent compared to 3 percent – with Japanese and Filipino ethnicities being the most common. The share of older adults who are Native Hawaiian or Other Pacific Islander is also higher than the national average, as is the share who identify as being of Two or More Races. A large percentage of Hawai'i seniors are foreign-born – 24 percent, nearly twice the national average of 13 percent. In Hawai'i, 28 percent of seniors speak a language other than English at home, and among those, 16 percent report that they do not speak English at all or do not speak English well. Breakdown by county shows that the city and county of Honolulu contain the lowest share of White seniors (20 percent); Hawai'i County has the highest, at 47 percent (Yahirun and Zan, 2016).

Overall, in 2015 Hawai'i ranked first in the U.S. on the well-being of its 55-and-older population, particularly with regard to a sense of purpose (liking what you do each day and being motivated to achieve your goals), community (liking where you live, feeling safe and having pride in your community), and physical well-being (having good health and enough energy to get things done daily), according to the Gallup-Healthways Well-Being Index. In addition, Baby Boomers in Hawai'i represent the healthiest and best-educated generation to retire (Gallup-Healthways Well-Being Index, 2015; State of Hawai'i Executive Office On Aging, 2011; Yahirun and Zan, 2016).

Even with these good conditions, there is concern for the financial stability of aging Baby Boomers as well as for the health of the wider economy as the population ages. Recent studies have shown that U.S. workers are woefully unprepared for retirement:

- 39 percent of non-retirees nationally give little or no thought to financial planning for retirement
- 31 percent have no retirement savings or pension
- 75 percent of Americans nearing retirement have less than \$30,000 in savings

*“There is concern for the financial stability of aging Baby Boomers as well as for the health of the wider economy as the population ages. Recent studies have shown that U.S. workers are woefully unprepared for retirement.”*

*“The second consequence of Hawai‘i’s aging population will be increased demand for geriatric health services, including assisted living and nursing facilities and home health care. But without sufficient savings, many families will not be able to afford these services.”*

In this landscape, the number of senior ALICE households will likely increase. During unemployment, many people draw down their retirement accounts to augment their household’s cash flow. However, this strategy comes with both short- and long-term costs. Penalties are charged for early withdrawals and retirement savings are diminished, putting future financial stability at risk. In addition, retirement plan participation has continued to decrease since the Great Recession for families in the bottom half of the income distribution. Participation rebounded slightly only for upper-middle-income families from 2010 to 2013, but it did not return to the levels seen in 2007 (Bricker, et al., 2014; Barnes, 2014; Saad-Lessler and Ghilarducci, 2012).

This shift in demographics, as well as the impact of the stock market crash, falling house prices, and periods of unemployment will likely produce more senior ALICE households and increase their economic challenges. Many aging Hawai‘i residents have seen the value of their homes decline and their retirement assets dwindle at the same time that their wages – and ability to save – have also decreased. The rate of homeownership for seniors is 78 percent, lower than the national average of 81 percent. A recent AARP report on working-age adults (18 to 64 years old) found that half of Hawai‘i’s private sector employees work for an employer that does not offer a retirement plan; more than 80 percent of these employees earn less than \$40,000 per year (Federal Reserve, 2015; Yahirun and Zan, 2016).

More of the ALICE seniors will be women. Generally, women have worked less and earned less than men, and therefore have smaller or no pensions and lower Social Security retirement benefits. And since women generally outlive their male counterparts, they are more likely to be single and depend on one income as they get older. In Hawai‘i, 48 percent of senior women were married compared to 71 percent of senior men – close to the national rate of 46 percent of women and 73 percent of men (Waid, 2013; Bureau of Labor Statistics (BLS), 2015; Hounsell, 2008; U.S. Census Bureau, 2012; Yahirun and Zan, 2016).

### Infrastructure

The aging population, combined with other trends, will have significant consequences for ALICE households and the wider community. First, there will be increased pressure on the state’s infrastructure, especially the housing market for smaller, affordable rental units. These units will need to be close to family, health care, and other services, or transportation options will need to be expanded for older adults who cannot drive, especially those in rural areas. Unless changes are made to Hawai‘i’s housing stock, the current shortage will increase, pushing up prices for low-cost units and making it harder for ALICE households of all ages to find and afford basic housing. In addition, homeowners trying to downsize may have difficulty realizing home values they had estimated in better times, which they had thought would support their retirement plans (U.S. Department of Transportation, 2015; State of Hawai‘i Executive Office On Aging, 2011; Kupuna Education Center, 2013).

### Senior Living and Eldercare

The second consequence of Hawai‘i’s aging population will be increased demand for geriatric health services, including assisted living and nursing facilities and home health care. But without sufficient savings, many families will not be able to afford these services. The median annual cost of a private room in a nursing home in Hawai‘i is \$145,270, representing 263 percent of the median household income for seniors in the state, according to the AARP Scorecard on Long-Term Services and Supports. In terms of other aspects of access to long-term care, Hawai‘i compares

well to the rest of the country, ranking sixth on a national index that includes information, awareness, counseling, and quality (Reinhard, et al., 2014).

The need for quality elder caregiving is already apparent. In 2014, Hawai'i's Adult Protective and Community Services Branch reported more than 800 cases of elder abuse – a term that applies to people over 60 years of age and includes treatment without consent, physical and sexual abuse, emotional abuse, neglect, and financial exploitation. Given the extent of suspected underreporting, estimates of total incidents in the state range between 10,000 and 24,000 per year, and an increasing volume of research suggests that about 10 percent of elders experience abuse over the course of their lives. Nationally, the reported incidence of abuse is increasing, even though seniors are often reluctant or unable to come forward (Quinn & Benson, Fall 2012; Anetzberger, October 2012; Lifespan of Greater Rochester et al., 2011; Galiher DeRobertis & Waxman LLP, 2014).

In terms of health services, older adults frequently don't receive recommended preventative care. In 2015, 15 percent of Hawai'i's at-risk adults (who are age 50 or older, in fair or poor health, or have ever been told they have diabetes or pre-diabetes, acute myocardial infarction, heart disease, stroke, or asthma) had not visited a doctor for a routine checkup in the past two years, slightly better than the national average of 13 percent (McCarthy, Radley, & Hayes, 2015).

Aside from the predictable decline in physical health, seniors in Hawai'i can be susceptible to mental health issues, but less so than many other areas of the country. According to the 2011 Behavioral Risk Factor Surveillance System (BRFSS) survey, in Hawai'i, 11 percent of 50- to 64-year-olds and only 4 percent of those 65 and older report mental distress, lower than the national averages of 13 percent of 50- to 64-year-olds and 7 percent of those 65 and older. These seniors are also more likely to report poor or fair physical health (Substance Abuse and Mental Health Services Administration in partnership with the U.S. Administration on Aging, 2012).

## Caregiving

The third trend as Hawai'i's population ages will be an increasing need for caregivers, both paid home health aides and unpaid family members, and both are more likely to be ALICE. Nursing assistants are in the top 25 growth jobs in Hawai'i, followed by personal care aides and home health aides. These jobs involve substantial responsibility for the health of vulnerable clients, yet they pay only about \$13 to \$14 per hour and are not well regulated. They also require the worker to be there in person, which can mean travelling great distances even in bad weather and with variable hours (O'Keeffe and Wiener, 2011; Bercovitz, Moss, Park-Lee, Jones, & Harris-Kojetin, 2011; Redfoot, Feinberg, & Houser, 2013; Hardway, et al., 2011).

Hawai'i has one of the lowest rates of professional caregivers per senior. From 2010 to 2012, there were only 19 personal care, psychiatric, and home health aide direct care workers per 1,000 seniors – the second lowest rate in the country, and well below the national average of 40 per 1,000. Except for Honolulu, most of the Hawai'i is considered to be medically underserved and is designated a Health Professions Shortage Area by the U.S. Department of Health and Human Services (Reinhard, et al., 2014; Hardway, et al., 2011).

*“The third trend as Hawai'i's population ages will be an increasing need for caregivers, both paid home health aides and unpaid family members, and both are more likely to be ALICE.”*

*“Hawai‘i is actually attracting large numbers of college students; some return home with their degrees, but many stay, work, and have children.”*

ALICE families in Hawai‘i will likely take on more caregiving responsibilities for their own relatives, often because they cannot afford other care options. Currently, approximately 20 percent of U.S. households have a family caregiver, with half of those reporting income less than \$50,000, or close to the ALICE Threshold. The demand for caregivers is projected to rise across the country. At the same time, fewer family members are likely to be available to provide care because of the financial burdens that caregiving imposes. The Caregiver Support Ratio, which measures the number of people in Hawai‘i aged 45 to 64 for each person aged 80 and older, was 6.1 in 2010 and is projected to fall to 2.0 by 2030 and 2.3 in 2050. This means that the overall pool of middle-aged people who could potentially serve as caregivers to Hawai‘i’s seniors is shrinking significantly (AARP Public Policy Institute, 2015; Redfoot, Feinberg, & Houser, 2013).

There are serious health and financial consequences for caregivers. In addition to the toll that caregiving takes on mental and physical health, caregivers also risk future financial instability because of both reduced work opportunities and lost Social Security benefits and reduced pensions. This reality is reflected in the high percentage of caregivers who report stress: A recent study found that in Hawai‘i, more than a quarter of caregivers (27 percent) reported high levels of stress, or were not well-rested – and this large percentage is actually the lowest rate in the country (Reinhard, et al., 2014).

The 5.5 million military caregivers in the United States are especially vulnerable. Military caregivers helping veterans from earlier eras tend to resemble civilian caregivers in many ways; by contrast, post-9/11 military caregivers (accounting for 20 percent of military caregivers) differ systematically, according to a RAND Corporation survey. These caregivers are more likely to be overseeing a younger individual with a mental health or substance use condition. The caregivers themselves tend to be younger (more than 40 percent are aged 18 to 30), non-White, also a veteran of military service, employed, and perhaps most significantly, not connected to a support network (Ramchand, et al., 2014).

## Migration

The perception of Hawai‘i is often as a state with a low immigration rate and small population growth, facing a brain drain and an outflow of income. However, the large flows of people coming into and out of the state, broken down by age group, tell a different story (Figure 42). Hawai‘i is actually attracting large numbers of college students; some return home with their degrees, but many stay, work, and have children. Some older residents of Hawai‘i leave their high-paying jobs there for jobs in other states, but most stay in Hawai‘i and retire. These population flows present both opportunities and challenges for ALICE families.

In 2015, the largest movement of people in Hawai‘i was among those aged 18 to 24 years old. That year, 15,583 people aged 18 to 24 moved to Hawai‘i, 19 percent of them from outside the U.S. (light blue portion of the inflow bar in Figure 42). Another 14,671 people in this age group left the state. Only 13 percent of Hawai‘i’s migrants were college students, while almost a quarter of those leaving (24 percent) were high-school graduates going to college in other states (National Center for Education Statistics, 2014; American Community Survey, 2014; Stone, 2015).



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON  
LABOR & PUBLIC EMPLOYMENT  
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 309  
THURSDAY, MARCH 12, 2020 AT 9:00 A.M.**

To The Honorable Aaron Ling Johanson, Chair;  
The Honorable Stacelynn K.M. Eli, Vice Chair; and  
Members of the Committee on Labor & Public Employment,

**TESTIMONY IN SUPPORT OF SB2490 RELATING TO  
THE HAWAII RETIREMENT SAVINGS PROGRAM**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. I am writing share our support of SB2490.

Over the decades, it has been widely recognized that fewer people are saving than they used to and the lack of savings impacts us over our lives. Without savings, people are less able to afford a home if they have no down payment saved, opportunities can be missed when they arise, and struggle when running into major medical or retirement issues.

We think creating avenues to help employees have their own retirement savings is valuable. However, we have questions on how the state can implement and run this program, given the broken ERS system. Therefore, we support this bill to establish a task force to study the feasibility and implications of creating a state retirement savings program.

We appreciate the opportunity to testify on this matter and ask that this bill be passed.

Sincerely,

*Pamela Tumpap*

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

Representative Aaron Ling Johanson and Members  
of the House Committee on Labor and Public Employment  
Hearing 9:00 am  
March 12, 2020  
Room 309  
via email [LABtestimony@capitol.hawaii.gov](mailto:LABtestimony@capitol.hawaii.gov)

Testimony on Senate Bill 2490 SD2 from Mike Hernandez-Soria

Dear Chair Dela Cruz and Members of the Committee:

My name is Mike Hernandez and I am the general manager of Hawaiian Cool Water. I am in **strong support of Senate Bill 2490 SD2.**

Like about half of the private-sector businesses in Hawai'i, we do not offer a retirement savings plan to our workers even though I want to help them save and it would make us more competitive to hire and keep workers.

I've looked into offering retirement savings plans for my workers and the options are just too expensive and would require too much time and effort to implement for a small, growing company like ours.

Our workers are large part of the reason for our success and we want them to be successful later in their later years. That's why a program like Hawaii Saves makes sense. Studies show that workers are 15 times more likely to save if they can save through payroll deduction. They are 20 times more likely to save if they are auto-enrolled and have the option to opt out.

A state-facilitated program – run by a private, reputable financial services company offered at no cost and little effort to businesses would allow us to help our workers save. The state's help is needed to create the economy of scale to make a plan like this a success.

I know I am not the only small business that feels this way. An AARP survey of small businesses owners and decision makers showed 63 percent do not offer a retirement savings plan and 69 percent would likely offer a Hawaii Saves option if it was available.

The same survey showed 76 percent of small business owners say more should be done to encourage Hawaii residents to save for retirement and 80 percent agree that lawmakers should support a Hawaii Saves plan.

I urge you to pass a Hawai'i Saves program this year. About half of the private-sector workforce – 216,000 workers in Hawaii -- are not able to save for retirement at work. The longer we wait to set up a program, the less money workers will save. Nearly half of Baby Boomers and Gen X workers already lack the income to meet basic retirement expenses and health care costs.

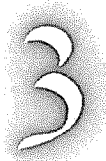
If these worker were able to save enough money to generate \$1,000 in extra income during retirement, one study shows the state will save \$32.7 million over 15 years in reduced public assistance program costs and combined state and federal savings would be more than \$160

million in lower rental subsidies, food assistance and medical costs. The savings to the taxpayer would grow as more workers saved.

Please help workers, small business and taxpayers. Start a Hawai'i Saves program.

Mike Hernandez-Soria  
Hawaiian Cool Water  
1718 Hau Street  
Honolulu, HI 96819  
(808)954-9638  
[mike@hawaiiancoolwater.com](mailto:mike@hawaiiancoolwater.com)





**FINANCIAL GROUP**  
*Strength Flexibility Preservation*

Date: March 12, 2020

To: Chair Aaron Ling Johanson  
House Committee on Labor and Public Employment

From: Joanna Amberger, 3 Financial Group LLC

Subject: Support for SB 2490 SD2 Relating to the Hawaii Retirement Savings Program

Good morning Chair and Committee Members. My name is Joanna Amberger. I'm a CERTIFIED FINANCIAL PLANNER™ and owner of **3 Financial Group LLC**, a local small business. I'm writing to request your support of SB 2490 SD2, relating to the Hawaii Retirement Savings Program. This legislation would establish a task force to look how small business and workers in the private sector can save for retirement through payroll deduction and facilitate the establishment of an "Auto-IRA" retirement savings program.

With the high cost of living in Hawaii, it is often hard for people in the low- and middle-income brackets to save for the future. Hawaii is a state of small businesses and government workers. While the government workers have many opportunities to save and invest, the private sector small business employees do not. Because of this, there is a deep disparity among Hawaii's workers, which threatens the future of individuals and our communities.

Hawaii's private sector workers need more opportunities and incentive to save. "Hawaii Saves" could help. In looking at the "Oregon Saves," model, I note that the average income of those who have participated is less than \$30,000 a year. This income group is underserved by the financial industry because they are not viewed as profitable customers.

Therefore, I want to reassure the committee that a financial planner, I'm not concerned about the proposed "Hawaii Saves," legislation taking business away from me. The group that would be most helped by this legislation is not a group that would typically look to me for services. I wholeheartedly support this avenue of helping Hawaii's private sector workers achieve financial security in retirement. Further, I note that if this group starts to invest, they will become eligible for the IRS's "Savers Credit," a special tax credit designed specifically for low and moderate-income taxpayers to help encourage saving more for retirement.

I respectfully urge you to support Hawaii Saves.



CERTIFIED FINANCIAL PLANNER™

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Investment Advisory Services offered through Continuum Advisory, LLC., 868 E. Riverside Drive, Suite 200, Eagle, ID, an Independent Registered Investment Advisor. Continuum Advisory, LLC and 3 Financial Group, LLC are not affiliated.

March 12, 2020

**Testimony in Support of SB 2490 SD 2– Related to Retirement Savings**

9:00 am, Room 309

To: Chair Aaron Ling Johanson, and Members of the House Committee on Labor and Public Employment

My name is Dean Ueda.

I strongly support Senate Bill 2490 SD2 regarding a Hawai'i Saves Retirement Savings Program.

From what I've learned, the bill is a win-win-win for small business, workers and taxpayers.

About half of all private sector workers do not have access to payroll savings, the easiest and most effective way to get people to save. Experience in the OregonSaves program shows that if workers are given access, they will participate and start saving. About 70 percent of workers offered a chance to save took advantage of the opportunity. They are saving their own money for their own futures, it's not a state handout.

Seventy percent of Hawai'i small business owners surveyed support a privately managed, retirement savings program because in many cases it's too expensive, complicated and time consuming for them to offer a plan to their workers. About the same percentage of businesses say they would offer the savings program to their employees if it existed.

In addition, it is estimated that Hawaii Saves could save taxpayers \$32.7 million in public assistance programs in less than 15 years if retirees save enough to generate \$1,000 in extra income each year.

Let's make saving, and retirement in Hawai'i, easier for our workers and small business and save money for taxpayers.

Thank you for your support.

Dean Ueda  
1347 Kapiolani Boulevard  
Honolulu, HI 96814  
808-228-8209

**House Committee on Labor and Public Employment**  
**March 12, 2020**  
**9:00 am, Room 309**  
**Testimony in Support of Senate Bill 2490 SD 2**

**Dear Representative Johanson, Chair, and Committee Members:**

My name is Jon Iha and I am the chef/owner of the Gochi Grill on Bishop Street. I love cooking and I love to have been able to open my own restaurant. It's a lot of work to open your own business and unfortunately there's not enough time or energy left over to figure out how to offer your workers a savings plan.

I am in strong support of **SB 2490 SD2**.

I want to help my workers and I want to be competitive and be able to offer them retirement savings. But it's not easy. It's complicated, expensive and time consuming, especially when you are starting up a new small business.

If the state were to offer an easy, no cost way for small businesses like mine to offer a retirement savings program, I would take it. I understand the OregonSaves program is working and helping small businesses and workers there. Why can't we have a similar program here?

The lack of retirement savings means many Hawai'i workers will retire into poverty. What will happen to them? Will they become homeless? It will be difficult, if not impossible for them to survive on Social Security alone without some kind of help from the government for housing, food and medical assistance.

Saving through payroll deduction is the most effective way to get people to save.

Let's take a step in the right direction now to help people help themselves and start saving. Waiting means less time for people to save and more workers will be in danger of retiring poor.

Thank you for the opportunity to testify.

Jon Iha  
Gochi Grill  
1111 Bishop Street Suite #112  
Honolulu, HI 96813  
(808) 585-8558

## Testimony in Support of Senate Bill 2490 SD2

March 12, 2020

Aloha Chair Johanson and members of the House Committee on Labor and Public Employment,

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 SB 2490 SD2, which establishes a task force and lays the groundwork to implement a Hawai'i retirement savings program similar to the OregonSaves program.

Oregon was the first to start a state-facilitated retirement savings program to help private-sector workers and small businesses with an easy way to save at work. From July 2017 to Dec. 2018, 22,000 Oregon workers have saved nearly \$11 million. The program is working and other states are following. California's CalSavers and Illinois' Secure Choice are in the pilot phase and at least seven other states should roll out their programs soon.

Hawai'i needs to catch this wave and join other states in helping workers and small business and we need to move quickly. The time to act is sooner rather than later. The alternative – doing nothing – means more people will age into poverty.

Studies consistently show that people are 15 times more likely to save if it comes out of their paychecks and 20 times more likely to save if they are auto-enrolled and given the option to opt out. But about half of Hawai'i's private-sector workers can't save at work because their employers don't offer 401Ks or other payroll deduction savings plans.

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.

Young people will benefit most from having access to savings because of compounding. A 20-year-old who starts with \$100 and saves \$100 a month (the average amount OregonSaves workers contribute) for the rest of his or her working life will have over \$1 million at age 67, assuming a 10 percent annual return. And that doesn't count additional contributions you might make as you make more money.

But all generations will benefit from starting to save and getting into the savings habit. And fewer people retiring into poverty means we will all pay less taxes for social services programs that kupuna living on just Social Security will need.

Hawai'i must take action now and join in the movement to find ways to help our future retirees to be retirement-ready.

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

## Priam's Automotive

Service & Repair, Inc.  
2002 Pauoa Rd  
Honolulu, Hawaii 96813

### Testimony in Support of Senate Bill 2490 SD2

March 12, 2020

Chair Aaron Ling Johanson and Members of the Committee  
House Committee on Labor and Public Employment  
9:00 am, Room 309

My name is Sharon Stewart and I am the owner, along with my husband, of Priam's Automotive Service & Repair, Inc., a small business in Pauoa.

Like many small businesses, we value our employees and want to take care of them. We would love to offer a retirement savings program to help our workers save for their retirement so they don't have to work forever.

But we have enough paperwork to deal with already just keeping our business going. We don't have a human resources department and we don't have the time nor money needed to create a retirement savings program. I think we're too small for banks or insurance agents to bother with and besides, we don't have the money to spend on an expensive 401K plan.

That's why creating a Hawai'i Saves program, similar to the OregonSaves program that's helping small businesses and workers in Oregon, makes sense. If it's easy and inexpensive for businesses to participate, then we will participate. If it's easy for workers, they'll participate too.

As taxpayers, we are also concerned about the large number of people who have no retirement savings. Who is going to pay for what Social Security doesn't cover? Social Security alone is not enough for people to live on in Hawai'i. That burden, I fear, is going to fall on taxpayers. So anything we do now to help people save their own money for their own futures, will pay off in the long run.

Thank you for your consideration.

Sharon Stewart  
Vice President  
Priam's Automotive Service & Repair  
2002 Pauoa Road  
Honolulu, HI 96813-1516  
808-537-1919  
Priams\_Auto@yahoo.com



**Written Testimony before the Hawaii House  
Committee on Labor and Public Employment**

by Hank Kim, Esq.  
Executive Director and Counsel  
National Conference on Public Employee Retirement Systems (NCPERS)

March 12, 2020

Introduction

Good morning. My name is Hank Kim and I am the Executive Director and Counsel of the National Conference on Public Employee Retirement Systems (NCPERS). I want to thank Chair Dela Cruz, Vice-Chair Keith-Agaran and Members of this Committee for the opportunity to submit written testimony in support of **SB# 2490 SD2** Hawai'i Saves.

NCPERS is the largest trade association for public sector pension funds, representing 500 plans, plan sponsors, and employee groups, including the Fire & Police Pension Association of Colorado, throughout the United States and Canada. It is a unique non-profit network of public trustees, administrators, public officials, and investment, actuarial and legal professionals who collectively manage more than \$4 trillion in pension assets. Founded in 1941, NCPERS is the principal trade association working to promote and protect pensions by focusing on advocacy, research and education for the benefit of public sector pension stakeholders. Further, NCPERS promotes retirement security for *all* workers by advocating for state-facilitated retirement savings programs and plans to those who do not have access to an employer plan.

In addition to serving as Executive Director and Counsel for NCPERS, I currently serve as Vice-Chair of the Fairfax County Uniform Retirement System, a \$1.8 billion public employee retirement system providing pension coverage for the Fire & Rescue Department, Sheriff's Department, and certain other sworn employees of Fairfax, Virginia. Additionally, I serve as Treasurer of the National Institute on Retirement Security, a Washington, D.C. based think tank focusing on retirement security.

I am also an Editorial Advisory Panel member of the *Benefits Law Journal*, a quarterly law journal that for over 20 years has featured the most respected and accomplished employee benefits professionals who have shared their expertise. Each quarterly issue

offers in-depth analysis of new legislation, regulations, case law, and current trends governing employee benefits: pension plans, welfare benefits, executive compensation, and tax and ERISA issues.

### Hawai'i Saves

This is the fifth year in a row that the Hawaii State Legislature has considered bills to help private-sector workers save for retirement. Hawaii's interest in the topic reflects a trend that is playing out across the nation. Cities and states can see that millions of workers are inadequately prepared for retirement. They are concerned that if they fail to intervene, unprepared retirees will place added stress on social welfare programs and reduce the tax base.

Other speakers today have or will address the scope of the very real retirement crisis in America. I won't dwell on this, except to say that Americans have good reason to be worried about their ability to achieve financial security and make it last through retirement.

I will note, however, that Hawaii's numbers underscore the need to prompt action: Half of the state's private sector workers lack access to a workplace retirement savings plan, and the situation is worse for employees of companies with fewer than 100 employees. As I noted, Hawaii is far from the only state concerned with its citizens' retirement security. Policymakers and stakeholders from across the political spectrum have been considering for years how to give Americans greater confidence in their financial future. Payroll deduction is widely considered to be the most effective savings method. And the starting point is small businesses, which drive local economies and power innovation but often lack the scale to provide robust benefits.

In September 2011, NCPERS laid out the rationale for a state- and city-facilitated approach in a white paper, "The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector." Like the plans currently under consideration in Hawaii, the Secure Choice idea gives workers a way to build a retirement nest egg through automatic enrollment in an individual retirement account or similar offering. States and cities would leverage their existing expertise and savings mechanisms in the form of pooled investment vehicles.

Since 2011, we have seen tremendous progress in the Secure Choice movement. Nearly two years ago, Oregon became the first state in the nation to implement such a program, launching OregonSaves in July 2017. California followed suit in July 2019. Numerous other programs have launched or are in the pipeline.

Most states began the process with the same step Hawaii is now considering—by conducting a feasibility study to examine precisely how an automatic IRA program

would fit the needs and requirements of Hawaii's workforce. SB 2490 SD2 would create a Hawaii Retirement Security Task Force, which is a prudent starting point.

### Conclusion

NCPERS wishes to thank the Committee for this opportunity to testify in support of **SB# 2490 SD 2** Hawai'i Saves. We congratulate members of this committee and other legislative sponsors for their leadership in this area. We believe that through this hearing Hawaii is providing leadership in addressing the retirement crisis our nation faces. NCPERS stands ready to assist you with facts, research, and expertise as you delve into policy discussions on retirement security. We invite this body to contact us should you need additional information. Thank you.



Testimony in Support on Senate Bill 2490 SD2

March 12, 2020

House Committee on Labor and Public Employment

TO: Chair Aaron Ling Johanson, and Members of the Committee

My name is Larry Stenek and I am the owner of Art Nelson Sailmaker/Ullman Sails Hawaii and I am writing in strong support of Senate Bill 2490 SD2.

We need to make it easy for workers to save for retirement. Payroll savings is the easiest way to save. But it's not easy for small business owners like myself. In fact, it's expensive and time-consuming for a business owner to set up a payroll savings plan. Our company is small. We don't have a human resources department and I don't have the time nor money to research all of the plans that are out there, nor do I have the time and money to do everything needed to keep the program going. All my time and energy and my worker's time and energy is focused on making the best sails and rigging possible and delivering quality products to our customers.

Having a state-facilitated savings plan, that we could implement into our payroll system easily, at little or no cost, would give my workers a common-sense way to save at work and make us more competitive as an employer.

Too many people in Hawaii are unprepared for retirement and have little or no savings. One of the reasons for that is the lack of access to payroll savings plans. About half of private sector workers, according to AARP, are not able to save easily at work.

What will happen to them if they get sick or can't work anymore? It's likely that we as taxpayers will have to help them with rent, food and medical care.

To me, it's a no brainer. We have to do something to make it easier for people to save or workers won't save and we will all pay for that down the line. The longer we wait to create a program like Hawai'i Saves, the less time there is for people to save and that will mean a bigger bill for taxpayers in the future.

Sincerely,

Larry Stenek  
Art Nelson Sailmaker/Ullman Sails  
419 Waiakamilo Road #2d  
Honolulu, HI 96817  
(808)593-9958

House Committee on Ways and Means  
March 12, 2020, Room 309  
9:00 a.m.  
Chair Aaron Johanson and Committee Members

Testimony of Carl Takamura in support of SB 2490, SD2

My name is Carl Takamura and I am in strong support of SB 2490, SD 2.

The establishment of a retirement saving plan that will provide access to an employer-based payroll deduction plan for the 50% of Hawaii's private sector workers who currently do not is critical to the economic security of not just the affected workers, but also to the future economic health of Hawaii.

About half of all working Americans have nothing saved for their retirement, and thus, when they retire, they will need public assistance for housing, food and medical care. This is an important issue that does not just affect me as a taxpayer (who is fortunate enough to have retirement income), but my children and all future retirees who will struggle to keep up with Hawaii's high cost of living. Enabling more people to save for their retirement through automatic payroll deduction is a no-brainer and has been proven in other states, such as Oregon, to work.

The task force that would be established in this bill to study and recommend an approach best suited to Hawaii is an important first step to addressing this very significant issue.

Please pass this important bill.

To: Chair Aaron Ling Johanson and  
Members of the House Committee on Labor and Public Employment  
**Re: SB 2490 SD2 -Relating to Retirement Savings**  
9:00 a.m., Thursday March 12, 2020  
Room 309

### **Testimony in Support of Senate Bill 2490 SD2**

We need to create a Hawaii Saves program and I am in strong support of Senate Bill 2490 SD 2. My name is Elizabeth Hata-Watanabe and I own Burgers on Bishop. We pride ourselves on making the best burgers and desserts in town and our success is due to the hard work my employees and I put into our craft. So I want to help my employees succeed. I want them to save for retirement and I want them to be able to retire.

But I can tell you as a small business owner that it's not easy to help workers save. I cannot afford to offer them a payroll savings plan, even though I know they are 15 times more likely to save if the money comes out of their paychecks. Not only is it expensive and complicated to hire a financial advisor, possibly a lawyer and then pay fees to set up payroll savings, but it's also time-consuming. And I don't have time to set up a program and manage it. I'm too busy running a restaurant.

So a state-facilitated retirement program like Hawaii Saves is the easiest way for me to offer savings to my employees and the best chance they have of actually saving. If I can add it to my payroll system at little or no cost and have my employees' funds managed by a private, reputable financial service company selected by the state, similar to the way the state runs college 529 savings plans, I would enthusiastically participate. It would help me keep my employees happy and compete against larger businesses that can offer savings plans.

One of the reasons I'm passionate about supporting this program is because as a woman business owner I know women are much more likely to retire into poverty and this program will help women save. On average women live longer so their retirement savings needs to go further. They also make less money, which means lower savings and lower Social Security benefits. So it's critical that women have access to payroll savings and a retirement account that is their own that can travel with them no matter where their life takes them.

Many of my workers are young and they will benefit most from starting retirement savings early because of compounding – the fact that, if invested properly and not withdrawn, their money will likely double every seven to ten years. So \$2,000 invested at age 20 could become more than \$176,000 by age 67 if you averaged a 10 percent annual return. And that doesn't even count the additional money workers would save over the course of their lifetime. But even older workers would benefit from a Hawaii Saves program. The key is to get into the savings habit and without an easy way to save, too many workers do not save.

This is not a government handout. This program is about helping workers save for their own futures.

As a taxpayer, I worry about the ticking time bomb cost of all the workers who are not saving now. The average retirement savings for workers is \$2,500 and the average worker close to retirement has saved only \$12,000. We as taxpayers will have to pay for them when they get old and cannot work anymore. What will our homeless situation be like if we have kupuna who cannot pay for their housing because

their Social Security payments can't cover medicine, food and rent? How many of these older homeless will be women?

The time to act is now. We cannot do nothing. Please pass Senate Bill 2490 SD2.

Elizabeth Hata-Watanabe  
Burgers on Bishop  
745 Fort Street, #130  
Honolulu, HI 96813  
(808)586-2000

**House Committee on Labor and Public Employment**  
**March 12, 2020**  
**Room 309, 9:00 am**

**Testimony in Support of SB 2490, SD 2**

Dear Chair Johanson, Vice-Chair Eli, and Members of the Committee:

My name is Jodi Bistodeau and I live in Waianae, HI. I support Bill SB 2490, SD2 regarding the savings program for all employees. Too many people are unable to retire at a reasonable age, due to insufficient savings. When forced to live on a fixed income, many are unable to afford the cost of living and therefore, must continue to work to make ends meet.

This Bill (S.B. 2490, SD2) would provide a means for all people to begin saving for retirement early in their careers. This money would continue to grow and build over time, allowing for a larger savings at retirement. It is my hope that the legislative committees will support this Bill also and allow it to become a reality.

Sincerely,

Jodi Bistodeau  
84-550 Farrington Hwy  
Waianae, HI 96792

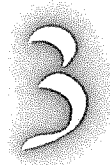
**House Committee on Labor and Public Employment  
March 12, 2020  
Room 309, 9:00 am**

**Testimony in Support of SB 2490, SD 2**

Attention: Chair Aaron L. Johanson and Members of the Committee

Aloha, I strongly support Hawaii Saves bill (SB 2490, SD2) on Thursday, March 12,2020.

Kay Smith  
Waianae, Hawaii



**FINANCIAL GROUP**  
*Strength Flexibility Preservation*

Date: March 12, 2020

To: Chair Aaron Ling Johanson  
House Committee on Labor and Public Employment

From: Joanna Amberger, 3 Financial Group LLC

Subject: Support for SB 2490 SD2 Relating to the Hawaii Retirement Savings Program

Good morning Chair and Committee Members. My name is Joanna Amberger. I'm a CERTIFIED FINANCIAL PLANNER™ and owner of **3 Financial Group LLC**, a local small business. I'm writing to request your support of SB 2490 SD2, relating to the Hawaii Retirement Savings Program. This legislation would establish a task force to look how small business and workers in the private sector can save for retirement through payroll deduction and facilitate the establishment of an "Auto-IRA" retirement savings program.

With the high cost of living in Hawaii, it is often hard for people in the low- and middle-income brackets to save for the future. Hawaii is a state of small businesses and government workers. While the government workers have many opportunities to save and invest, the private sector small business employees do not. Because of this, there is a deep disparity among Hawaii's workers, which threatens the future of individuals and our communities.

Hawaii's private sector workers need more opportunities and incentive to save. "Hawaii Saves" could help. In looking at the "Oregon Saves," model, I note that the average income of those who have participated is less than \$30,000 a year. This income group is underserved by the financial industry because they are not viewed as profitable customers.

Therefore, I want to reassure the committee that a financial planner, I'm not concerned about the proposed "Hawaii Saves," legislation taking business away from me. The group that would be most helped by this legislation is not a group that would typically look to me for services. I wholeheartedly support this avenue of helping Hawaii's private sector workers achieve financial security in retirement. Further, I note that if this group starts to invest, they will become eligible for the IRS's "Savers Credit," a special tax credit designed specifically for low and moderate-income taxpayers to help encourage saving more for retirement.

I respectfully urge you to support Hawaii Saves.



CERTIFIED FINANCIAL PLANNER™

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*1888 Kalakaua Ave., Suite C312 | Honolulu, HI 96815 | 808.791.2925 | www.3FinancialGroup.com*  
*Investment Advisory Services offered through Continuum Advisory, LLC., 868 E. Riverside Drive, Suite 200, Eagle, ID, an Independent Registered Investment Advisor. Continuum Advisory, LLC and 3 Financial Group, LLC are not affiliated.*

**House Committee on Labor and Public Employment**  
**March 12, 2020**  
**9:00 am, Room 309**  
**Testimony in Support of Senate Bill 2490 SD 2**

**Dear Representative Johanson, Chair, and Committee Members:**

My name is Jon Iha and I am the chef/owner of the Gochi Grill on Bishop Street. I love cooking and I love to have been able to open my own restaurant. It's a lot of work to open your own business and unfortunately there's not enough time or energy left over to figure out how to offer your workers a savings plan.

I am in strong support of **SB 2490 SD2**.

I want to help my workers and I want to be competitive and be able to offer them retirement savings. But it's not easy. It's complicated, expensive and time consuming, especially when you are starting up a new small business.

If the state were to offer an easy, no cost way for small businesses like mine to offer a retirement savings program, I would take it. I understand the OregonSaves program is working and helping small businesses and workers there. Why can't we have a similar program here?

The lack of retirement savings means many Hawai'i workers will retire into poverty. What will happen to them? Will they become homeless? It will be difficult, if not impossible for them to survive on Social Security alone without some kind of help from the government for housing, food and medical assistance.

Saving through payroll deduction is the most effective way to get people to save.

Let's take a step in the right direction now to help people help themselves and start saving. Waiting means less time for people to save and more workers will be in danger of retiring poor.

Thank you for the opportunity to testify.

Jon Iha  
Gochi Grill  
1111 Bishop Street Suite #112  
Honolulu, HI 96813  
(808) 585-8558



## Testimony in Support of Senate Bill 2490 SD2

March 12, 2020

Aloha Chair Johanson and members of the House Committee on Labor and Public Employment,

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 SB 2490 SD2, which establishes a task force and lays the groundwork to implement a Hawai'i retirement savings program similar to the OregonSaves program.

Oregon was the first to start a state-facilitated retirement savings program to help private-sector workers and small businesses with an easy way to save at work. From July 2017 to Dec. 2018, 22,000 Oregon workers have saved nearly \$11 million. The program is working and other states are following. California's CalSavers and Illinois' Secure Choice are in the pilot phase and at least seven other states should roll out their programs soon.

Hawai'i needs to catch this wave and join other states in helping workers and small business and we need to move quickly. The time to act is sooner rather than later. The alternative – doing nothing – means more people will age into poverty.

Studies consistently show that people are 15 times more likely to save if it comes out of their paychecks and 20 times more likely to save if they are auto-enrolled and given the option to opt out. But about half of Hawai'i's private-sector workers can't save at work because their employers don't offer 401Ks or other payroll deduction savings plans.

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.

Young people will benefit most from having access to savings because of compounding. A 20-year-old who starts with \$100 and saves \$100 a month (the average amount OregonSaves workers contribute) for the rest of his or her working life will have over \$1 million at age 67, assuming a 10 percent annual return. And that doesn't count additional contributions you might make as you make more money.

But all generations will benefit from starting to save and getting into the savings habit. And fewer people retiring into poverty means we will all pay less taxes for social services programs that kupuna living on just Social Security will need.

Hawai'i must take action now and join in the movement to find ways to help our future retirees to be retirement-ready.

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

## Priam's Automotive

Service & Repair, Inc.  
2002 Pauoa Rd  
Honolulu, Hawaii 96813

### Testimony in Support of Senate Bill 2490 SD2

March 12, 2020

Chair Aaron Ling Johanson and Members of the Committee  
House Committee on Labor and Public Employment  
9:00 am, Room 309

My name is Sharon Stewart and I am the owner, along with my husband, of Priam's Automotive Service & Repair, Inc., a small business in Pauoa.

Like many small businesses, we value our employees and want to take care of them. We would love to offer a retirement savings program to help our workers save for their retirement so they don't have to work forever.

But we have enough paperwork to deal with already just keeping our business going. We don't have a human resources department and we don't have the time nor money needed to create a retirement savings program. I think we're too small for banks or insurance agents to bother with and besides, we don't have the money to spend on an expensive 401K plan.

That's why creating a Hawai'i Saves program, similar to the OregonSaves program that's helping small businesses and workers in Oregon, makes sense. If it's easy and inexpensive for businesses to participate, then we will participate. If it's easy for workers, they'll participate too.

As taxpayers, we are also concerned about the large number of people who have no retirement savings. Who is going to pay for what Social Security doesn't cover? Social Security alone is not enough for people to live on in Hawai'i. That burden, I fear, is going to fall on taxpayers. So anything we do now to help people save their own money for their own futures, will pay off in the long run.

Thank you for your consideration.

Sharon Stewart  
Vice President  
Priam's Automotive Service & Repair  
2002 Pauoa Road  
Honolulu, HI 96813-1516  
808-537-1919  
Priams\_Auto@yahoo.com



**Written Testimony before the Hawaii House  
Committee on Labor and Public Employment**

by Hank Kim, Esq.  
Executive Director and Counsel  
National Conference on Public Employee Retirement Systems (NCPERS)

March 12, 2020

Introduction

Good morning. My name is Hank Kim and I am the Executive Director and Counsel of the National Conference on Public Employee Retirement Systems (NCPERS). I want to thank Chair Dela Cruz, Vice-Chair Keith-Agaran and Members of this Committee for the opportunity to submit written testimony in support of **SB# 2490 SD2** Hawai'i Saves.

NCPERS is the largest trade association for public sector pension funds, representing 500 plans, plan sponsors, and employee groups, including the Fire & Police Pension Association of Colorado, throughout the United States and Canada. It is a unique non-profit network of public trustees, administrators, public officials, and investment, actuarial and legal professionals who collectively manage more than \$4 trillion in pension assets. Founded in 1941, NCPERS is the principal trade association working to promote and protect pensions by focusing on advocacy, research and education for the benefit of public sector pension stakeholders. Further, NCPERS promotes retirement security for *all* workers by advocating for state-facilitated retirement savings programs and plans to those who do not have access to an employer plan.

In addition to serving as Executive Director and Counsel for NCPERS, I currently serve as Vice-Chair of the Fairfax County Uniform Retirement System, a \$1.8 billion public employee retirement system providing pension coverage for the Fire & Rescue Department, Sheriff's Department, and certain other sworn employees of Fairfax, Virginia. Additionally, I serve as Treasurer of the National Institute on Retirement Security, a Washington, D.C. based think tank focusing on retirement security.

I am also an Editorial Advisory Panel member of the *Benefits Law Journal*, a quarterly law journal that for over 20 years has featured the most respected and accomplished employee benefits professionals who have shared their expertise. Each quarterly issue

offers in-depth analysis of new legislation, regulations, case law, and current trends governing employee benefits: pension plans, welfare benefits, executive compensation, and tax and ERISA issues.

### Hawai'i Saves

This is the fifth year in a row that the Hawaii State Legislature has considered bills to help private-sector workers save for retirement. Hawaii's interest in the topic reflects a trend that is playing out across the nation. Cities and states can see that millions of workers are inadequately prepared for retirement. They are concerned that if they fail to intervene, unprepared retirees will place added stress on social welfare programs and reduce the tax base.

Other speakers today have or will address the scope of the very real retirement crisis in America. I won't dwell on this, except to say that Americans have good reason to be worried about their ability to achieve financial security and make it last through retirement.

I will note, however, that Hawaii's numbers underscore the need to prompt action: Half of the state's private sector workers lack access to a workplace retirement savings plan, and the situation is worse for employees of companies with fewer than 100 employees. As I noted, Hawaii is far from the only state concerned with its citizens' retirement security. Policymakers and stakeholders from across the political spectrum have been considering for years how to give Americans greater confidence in their financial future. Payroll deduction is widely considered to be the most effective savings method. And the starting point is small businesses, which drive local economies and power innovation but often lack the scale to provide robust benefits.

In September 2011, NCPERS laid out the rationale for a state- and city-facilitated approach in a white paper, "The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector." Like the plans currently under consideration in Hawaii, the Secure Choice idea gives workers a way to build a retirement nest egg through automatic enrollment in an individual retirement account or similar offering. States and cities would leverage their existing expertise and savings mechanisms in the form of pooled investment vehicles.

Since 2011, we have seen tremendous progress in the Secure Choice movement. Nearly two years ago, Oregon became the first state in the nation to implement such a program, launching OregonSaves in July 2017. California followed suit in July 2019. Numerous other programs have launched or are in the pipeline.

Most states began the process with the same step Hawaii is now considering—by conducting a feasibility study to examine precisely how an automatic IRA program

would fit the needs and requirements of Hawaii's workforce. SB 2490 SD2 would create a Hawaii Retirement Security Task Force, which is a prudent starting point.

### Conclusion

NCPERS wishes to thank the Committee for this opportunity to testify in support of **SB# 2490 SD 2** Hawai'i Saves. We congratulate members of this committee and other legislative sponsors for their leadership in this area. We believe that through this hearing Hawaii is providing leadership in addressing the retirement crisis our nation faces. NCPERS stands ready to assist you with facts, research, and expertise as you delve into policy discussions on retirement security. We invite this body to contact us should you need additional information. Thank you.

To: Chair Aaron Ling Johanson and  
Members of the House Committee on Labor and Public Employment  
**Re: SB 2490 SD2 -Relating to Retirement Savings**  
9:00 a.m., Thursday March 12, 2020  
Room 309

### **Testimony in Support of Senate Bill 2490 SD2**

We need to create a Hawaii Saves program and I am in strong support of Senate Bill 2490 SD 2. My name is Elizabeth Hata-Watanabe and I own Burgers on Bishop. We pride ourselves on making the best burgers and desserts in town and our success is due to the hard work my employees and I put into our craft. So I want to help my employees succeed. I want them to save for retirement and I want them to be able to retire.

But I can tell you as a small business owner that it's not easy to help workers save. I cannot afford to offer them a payroll savings plan, even though I know they are 15 times more likely to save if the money comes out of their paychecks. Not only is it expensive and complicated to hire a financial advisor, possibly a lawyer and then pay fees to set up payroll savings, but it's also time-consuming. And I don't have time to set up a program and manage it. I'm too busy running a restaurant.

So a state-facilitated retirement program like Hawaii Saves is the easiest way for me to offer savings to my employees and the best chance they have of actually saving. If I can add it to my payroll system at little or no cost and have my employees' funds managed by a private, reputable financial service company selected by the state, similar to the way the state runs college 529 savings plans, I would enthusiastically participate. It would help me keep my employees happy and compete against larger businesses that can offer savings plans.

One of the reasons I'm passionate about supporting this program is because as a woman business owner I know women are much more likely to retire into poverty and this program will help women save. On average women live longer so their retirement savings needs to go further. They also make less money, which means lower savings and lower Social Security benefits. So it's critical that women have access to payroll savings and a retirement account that is their own that can travel with them no matter where their life takes them.

Many of my workers are young and they will benefit most from starting retirement savings early because of compounding – the fact that, if invested properly and not withdrawn, their money will likely double every seven to ten years. So \$2,000 invested at age 20 could become more than \$176,000 by age 67 if you averaged a 10 percent annual return. And that doesn't even count the additional money workers would save over the course of their lifetime. But even older workers would benefit from a Hawaii Saves program. The key is to get into the savings habit and without an easy way to save, too many workers do not save.

This is not a government handout. This program is about helping workers save for their own futures.

As a taxpayer, I worry about the ticking time bomb cost of all the workers who are not saving now. The average retirement savings for workers is \$2,500 and the average worker close to retirement has saved only \$12,000. We as taxpayers will have to pay for them when they get old and cannot work anymore. What will our homeless situation be like if we have kupuna who cannot pay for their housing because

their Social Security payments can't cover medicine, food and rent? How many of these older homeless will be women?

The time to act is now. We cannot do nothing. Please pass Senate Bill 2490 SD2.

Elizabeth Hata-Watanabe  
Burgers on Bishop  
745 Fort Street, #130  
Honolulu, HI 96813  
(808)586-2000

Testimony in Support on Senate Bill 2490 SD2

March 12, 2020

House Committee on Labor and Public Employment

TO: Chair Aaron Ling Johanson, and Members of the Committee

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Too many people in Hawaii are unprepared for retirement and have little or no savings. One of the reasons for that is the lack of access to payroll savings plans. About half of private sector workers, according to AARP, are not able to save easily at work.

What will happen to them if they get sick or can't work anymore? It's likely that we as taxpayers will have to help them with rent, food and medical care.

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Sincerely,

Larry Stenek  
Art Nelson Sailmaker/Ullman Sails  
419 Waiakamilo Road #2d  
Honolulu, HI 96817  
(808)593-9958



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Members of the House Committee on Labor and Public Employment  
**Re: SB 2490 SD2 -Relating to Retirement Savings**  
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Elizabeth Hata-Watanabe  
Burgers on Bishop  
745 Fort Street, #130  
Honolulu, HI 96813  
(808)586-2000

**SB-2490-SD-2**

Submitted on: 3/10/2020 12:27:42 PM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Francis Nakamoto	Individual	Support	No

Comments:

Chair Aaron Ling Johanson, Vice-Chair Stacylyn Eli and Members of the Committee on Labor and Public Employment

My name is Francis Nakamoto and I support SB2490 SD2.

Why are half of Hawaii's private sector employees not saving for their retirement?

Why hasn't the participation rate improved over the last 40 years?

The answer is simple. The private retirement planning sector (insurance companies, banks, financial planners, investment companies, retirement planning companies) are just not interested in this relatively unprofitable business. Yet, they exert their financial and political power to obstruct and resist good faith efforts to help the 216,000 private sector workers, mainly employed by small business, plan for and save for their retirement.

One would think that instead of opposing the State to facilitate retirement savings, the private sector would be joining in this effort to help these workers put money away relatively painlessly to avoid poverty, homelessness and dependency when they are able to retire.

We do not see helpful proposals to make creating retirement plans easily and less costly for the small business employers who now find providing retirement or pension plans for their employees daunting, complicated and expensive.

A simple, inexpensive, voluntary payroll deduction program controlled by the individual worker, not by his or her employer can be achieved with the passage of this legislation.

Hawaii simply can't allow our people to careen toward retirement or old age unprepared to support themselves, much less enjoy their golden years in financial security.

Please support SB2490 SD2.

March 12, 2020

**Testimony in Support of SB 2490 SD 2– Related to Retirement Savings**

9:00 am, Room 309

To: Chair Aaron Ling Johanson, and Members of the House Committee on Labor and Public Employment

My name is Dean Ueda.

I strongly support Senate Bill 2490 SD2 regarding a Hawai'i Saves Retirement Savings Program.

From what I've learned, the bill is a win-win-win for small business, workers and taxpayers.

About half of all private sector workers do not have access to payroll savings, the easiest and most effective way to get people to save. Experience in the OregonSaves program shows that if workers are given access, they will participate and start saving. About 70 percent of workers offered a chance to save took advantage of the opportunity. They are saving their own money for their own futures, it's not a state handout.

Seventy percent of Hawai'i small business owners surveyed support a privately managed, retirement savings program because in many cases it's too expensive, complicated and time consuming for them to offer a plan to their workers. About the same percentage of businesses say they would offer the savings program to their employees if it existed.

In addition, it is estimated that Hawaii Saves could save taxpayers \$32.7 million in public assistance programs in less than 15 years if retirees save enough to generate \$1,000 in extra income each year.

Let's make saving, and retirement in Hawai'i, easier for our workers and small business and save money for taxpayers.

Thank you for your support.

Dean Ueda  
1347 Kapiolani Boulevard  
Honolulu, HI 96814  
808-228-8209

**SB-2490-SD-2**

Submitted on: 3/10/2020 9:06:49 PM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eric Wong	small business owner	Support	No

Comments:

Aloha, My name is Eric Wong, co owner of two plate lunch business, Loco Moco Drive Inn - Ewa Beach and Wiki Wiki Drive Inn - Waterfront Plaza. I've been a small business owner for nearly 25 years and it scares me, too many ounger (under 40 years of age) workers in Hawaii are unprepared for retirement and have little or no savings. Born and raised in Honolulu with frugal Chinese parents, we understood how money seriously does not grow on trees; my parents worked a lot so did my grandfather who worked to provide for his family (my father had 12 other siblings) as first arriving here in Honolulu in the 1920s. Both generations saved for the better future.

Our plate lunch is small, 'mom-and-pop', no fancy 'HR' department nor have the time and money to research the saving and retirement plans out there. We don't have the time and money to do everything needed to start and maintain such a savings program. Frankly, my time and energy as well as my worker's time and energy is focused on preparing 'broke da mout kine' plate lunches at affordable prices while delivering great customer service for repeat business.

About half of the private sector, esp. small businesses like ours staffed with lower level (below \$15/hr) workers, according to AARP, are not able to save easily at work. To me a state-sponsored savings plan that we could easily implement via our payroll system, at minimal or no cost would give my workers a common-sense way to save at work and make us more competitive as an employer.

SB 2490 SD2 is a no brainer. We must do something to make it easier for people to save or workers won't save and we will all pay for that down the line. The longer we wait to create a program like Hawai'i Saves advocated by AARP Hawai'i, the less time there is for people to save and that will mean a bigger bill for taxpayers in the future.

The sad reality is most people in Hawaii are unprepared for retirement and have little or no savings - we can change this reality today for a brighter tomorrow.

Thank you for your support of SB2490 SD2, it's time!

Eric S S Wong | 808-689-8321

**SB-2490-SD-2**

Submitted on: 3/10/2020 4:12:15 PM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carl Takamura	Individual	Support	No

Comments:

Chair Johanson and Members of the Committee on Labor and Public Employment

My name is Carl Takamura and I strongly support SB 2490.

We need to encourage Hawaii residents, especially young people, to actively save for their retirement, not only for their own individual and family's benefit, but also for the economic health of our state.

Roughly half of our private sector workforce do not have access to a retirement savings program at work and if people retire or are forced into retirement without adequate resources, then the taxpayers will have to support them through Medicaid and other social safety net programs. The Hawaii Saves payroll savings program proposed to be studied in this bill will provide a simple and effective way for Hawaii's workers to save for a more secure retirement. The implementation study called for in this bill will enable the state to utilize information from other state experiences (such as Oregon) and explore the use of interstate partnerships and agreements.

I urge your support for SB 2490.

House Committee on Ways and Means  
March 12, 2020, Room 309  
9:00 a.m.  
Chair Aaron Johanson and Committee Members

Testimony of Carl Takamura in support of SB 2490, SD2

My name is Carl Takamura and I am in strong support of SB 2490, SD 2.

The establishment of a retirement saving plan that will provide access to an employer-based payroll deduction plan for the 50% of Hawaii's private sector workers who currently do not is critical to the economic security of not just the affected workers, but also to the future economic health of Hawaii.

About half of all working Americans have nothing saved for their retirement, and thus, when they retire, they will need public assistance for housing, food and medical care. This is an important issue that does not just affect me as a taxpayer (who is fortunate enough to have retirement income), but my children and all future retirees who will struggle to keep up with Hawaii's high cost of living. Enabling more people to save for their retirement through automatic payroll deduction is a no-brainer and has been proven in other states, such as Oregon, to work.

The task force that would be established in this bill to study and recommend an approach best suited to Hawaii is an important first step to addressing this very significant issue.

Please pass this important bill.

**House Committee on Labor and Public Employment**  
**March 12, 2020**  
**Room 309, 9:00 am**

**Testimony in Support of SB 2490, SD 2**

Dear Chair Johanson, Vice-Chair Eli, and Members of the Committee:

My name is Jodi Bistodeau and I live in Waianae, HI. I support Bill SB 2490, SD2 regarding the savings program for all employees. Too many people are unable to retire at a reasonable age, due to insufficient savings. When forced to live on a fixed income, many are unable to afford the cost of living and therefore, must continue to work to make ends meet.

This Bill (S.B. 2490, SD2) would provide a means for all people to begin saving for retirement early in their careers. This money would continue to grow and build over time, allowing for a larger savings at retirement. It is my hope that the legislative committees will support this Bill also and allow it to become a reality.

Sincerely,

Jodi Bistodeau  
84-550 Farrington Hwy  
Waianae, HI 96792



**House Committee on Labor and Public Employment  
March 12, 2020  
Room 309, 9:00 am**

**Testimony in Support of SB 2490, SD 2**

Attention: Chair Aaron L. Johanson and Members of the Committee

Aloha, I strongly support Hawaii Saves bill (SB 2490, SD2) on Thursday, March 12,2020.

Kay Smith  
Waianae, Hawaii

**SB-2490-SD-2**

Submitted on: 3/10/2020 10:14:52 PM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dan Gardner	Individual	Support	No

Comments:

Chairman Johanson,

Rational for Establishment of the Hawaii Saves program is clearly strengthened by the current pandemic which threatens us all. Sadly with this crisis upon us, clearly there will be many people in Hawaii who will be challenged economically with little or no savings to fall back upon. With this program up and running, these same folks will have an opportunity for greater financial resiliency in the future. I urge you to continue your leadership support for SB2490 SD1 and ask you to appropriate the necessary funds to enable bringing the Hawaii Saves program back to the legislature in 2021 for successful passage. Thank you.

March 10.2020

TO:

Committee on Labor and Public Employment

Hearing Date: March 12, 9:00AM, Room 309

Re: Bill SB2490 SD2 – Relating to the Hawaii Retirement Savings Program

Honorable Chair Rep. Aaron Ling Johanson and Vice Chair Rep. Stacelynn Eli and  
Committee Members: Reps: Linda Ichiyama, Lisa Kitigawa, Angus McKelvey, Sean Quinlan,  
Kyle Yamashita and Lauren Matsumoto ,

**I am in support of Bill SB2490 SD2. Here's why:**

A constituent's can vote by age 18. With a built-in Retirement Savings Plan their lifetime of savings for retirement can start at that time too--and with compounding interest the savings in their own self-directed Roth IRA will nicely fund the needs of their retirement. The problem today is, there is no will power or easy path to savings.

This bill for an Hawaii Retirement Savings Program would set up an individual retirement plan that works for a wage earner, *regardless of age*—and follows the wage earner seamlessly from job to job too. What a great benefit for the worker and the employer! A paycheck savings withdrawal plan suited to the employee. (Needless to say, a fully-funded retiree is also a blessing for the tax payers who do not have to fund social service budgets for under-funded retirees too.)

A program operated by a regulated 3<sup>rd</sup> party, managed and owned by the wage earner, that costs no money for the employer to operate is a win-win initiative that other states have already adopted.

Yes, there is proof that it works. Just take a look at one of the many plans:  
[www.oregonsaves.com](http://www.oregonsaves.com)

Hawaii legislators have understood and supported this idea in prior legislative sessions and **SB2490 SD2 provides the funds for a task force** to determine what framework would best fit the needs of the workers in Hawaii.

All constituents, including those at age 18 would like to get start saving. Please vote affirmative for SB2490 SD2.

Aloha,  
Christine Olah  
Honolulu resident



**SB-2490-SD-2**

Submitted on: 3/11/2020 7:46:23 AM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Esther Ueda	Individual	Support	No

Comments:

Please support SB 2490 SD2. People are not saving enough for retirement.

The potential savings program that would be developed under this proposal will help many working people save more for retirement. I have been retired for over 20 years and I know how expensive retirement can be --there are always unexpected expenses and inflation concerns. I am fortunate to have a pension from my employer, however, I know that most of the workers today will need to save for retirement through their own savings efforts. This bill will potentially provide a vehicle for them to do this.



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# Fax Cover Sheet

Date: 3-11-2020

Time Sent: 10:39 am

## Please Deliver Immediately

To: House Committee on Labor & Public Employment

Firm: State Legislature

Fax Number: \_\_\_\_\_

Phone Number: 722-8885

From: Tony Wong, Craigside Travel

Message: Please forward for Labor Hearing on

March 12th 9:00 am Room 309

Rep. Johanson, Chair

There are 2 pages, including this cover page.

March 11, 2020

The House of Representatives  
Committee on Labor and Public Employment  
Representative Aaron Ling Johanson, Chair  
Conference Room # 309  
Date: March 12, 2020

Testimony on S.B. 2490 SD 2 –Relating to Retirement Savings.

My name is Thomas Wong and I am the owner of a travel agency and I am writing in strong support of SB 2490 SD2.

We need to make it easy for workers to save money for their retirement. But it's not easy for the average person to save. Small companies need help in providing a savings program to help their employees save. Taking a small portion out their paycheck will make it easier for employees to save.

When an individual or a member of his family gets sick, he or she needs money for medical care, food and other supplies.

Let's make it easier for people to save because most young workers do not think about saving so we need to provide them with a program that works.

Thank you for your attention.

Sincerely,

Thomas Wong, President  
CRAIGSIDE TRAVEL  
1042 ILIMA DRIVE  
HONOLULU, HI 96817  
(808) 595-8132

House of Representatives  
Committee on Labor & Public Employment  
Thursday, March 12, 2020  
9:00 a.m.  
Conference Room 309

Testimony in Support of SB 2490, SD2  
Relating to the Hawaii Retirement Savings Program

Dear Chair Rep. Aaron Ling Johnson, Vice-Chair Rep. Staceylynn K. M. Eli, and Members of the Committee on Labor & Public Employment

My name is Anna Filler, and I am writing to express my support for SB 2490, SD2, relating to the Hawaii Retirement Savings Program.

Thank you for considering my testimony for SB 2490, SD2. It is time for solutions, not delay which convenes a retirement savings task force to identify ways we can help Hawaii's private sector workers save for their future retirement. This is an important issue that affects the future generation of retirees who need to save enough for their retirement so that they can keep up with the high cost of living and housing especially in Hawaii. This will be more than four years the Legislature has considered Retirement Savings, a program to help private sector workers save for retirement. It needs to pass this year. The good news is people save when it's easy, and Retirement Savings will make it easy having an automatic deduction from their paycheck. When people save for retirement, they not only help themselves, they reduce their reliance on government assistance which saves taxpayers money. Our private-sector employees work hard. They need a way to save easy.

Thank you for providing the opportunity to testify in support of SB 2490, SD2 relating to the Hawaii Retirement Savings Program.

Anna Filler  
District 26, Downtown-Kakaako-McCully  
Email: [afiller@twc.com](mailto:afiller@twc.com)



# Late Testimonies

**Kathleen M. Jaycox  
559 Pauku St.  
Kailua, HI 96734**

Hawaii House of Representatives  
Committee on Labor and Public Employment  
Thursday, March 12, 2020  
9:00 am  
Conference Room 309

**LATE**

To: Representative Aaron Ling Johanson, Chair  
Subject: S.B. 2490, SD2, Relating to Retirement Savings

Dear Chair Johanson, Vice-Chair Eli and Members of the Committee:

Thank you for providing me with this opportunity to speak in support of SB 2490 SD2.

I am a retiree who was lucky enough to work for the state; so it was easy for me, while working, to have a portion of my salary set aside for retirement. But many of my kupuna friends were not so lucky -- especially if they worked for small businesses.

Today, data from AARP indicate that nearly 50% of private-sector employees in Hawaii work for companies that do not offer a savings plan. Yet studies show that workers are 15 times more likely to save for their future if they can do so through payroll deduction. The beauty of this proposed legislation is that it allows employees at all salary levels -- no matter how low -- to set aside some portion of their salaries for their later years. And it does this without putting heavy paperwork demands on employers. As the language of the bill notes, "Employee[s] who are offered the opportunity to save through [their] place of employment [are] significantly more likely to participate and make steady contributions to build retirement savings."

Currently, older individuals who lack retirement savings often turn to government-funded programs to help them meet basic needs (food, health care, housing assistance). Or even if they try to survive without depending on government assistance, they may need to mortgage their homes (their only asset) in order to have a source of income. Both such options penalize the future financial stability of their children and grandchildren, thus beginning a cycle of financial woes continuing for several generations.

By passing SB 2490 SD2, to create a study committee, you are taking a first step to interrupt this cycle. It is my sincere hope that you do so.

Again, thank you for this opportunity to testify.

Sincerely,

Kathleen Jaycox

**LATE**

SB2490 Relating to Hawaii Retirement Savings Program

February 4, 2020 2:45 p.m. Room 224

Aloha Chair Taniguchi, Vice Chair Ihara and committee members

Although it would be preferable to establish the program (as was nearly accomplished last year), this bill calls for the establishment of a task force to study the feasibility of a program to help small business employees to save for retirement through payroll deductions. Such a task force would look at models (public-private partnerships, possibly partnering with another state which has already established a program, deciding which governmental agencies may be involved and to what extent, etc.)

We are only “kicking the can down the road,” when we fail to enact legislation to help the two-thirds of small business employees to save for their futures through payroll deduction.

Please support SB2490 to get the ball rolling on sorely needed assistance to our small business families.

Governor Ige made it clear in the State of the State address that he wants to prioritize the needs of working families. This cannot be accomplished without giving them an incentive to save for their futures.

Please support SB2490.

Mahalo!

Barbara J. Service MSW (retired)

AARP

Policy Advisory Board for Elder Affairs

Kokua Council

Hawaii Alliance of Retired Americans.

**LATE**

**SB-2490-SD-2**

Submitted on: 3/12/2020 12:15:03 AM

Testimony for LAB on 3/12/2020 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sarah Yuan	Individual	Support	No

Comments:

The Policy Advisory Board for Elder Affairs has a statutory obligation to advocate on behalf of the senior citizens of Hawaii. While we advise the Executive Office on Aging, we do not speak on its behalf.

The PABEA strongly supports bill **SB2490** which establishes a retirement savings task force to secure a consultant to assess the feasibility of a Hawaii retirement savings program; research the implications of the federal SECURE Act; draft an implementation plan for a retirement savings program for private-sector employees; and submit a report of findings and recommendations including any proposed legislation to implement a program. The bill requests an appropriation of the \$500,000 to retain a consultant to conduct the activities as identified in this bill and pay for associated expenses.

According to AARP, retirement saving tools are not readily available for about 216,000 Hawaii workers--many of them work for small businesses. Only 1 in 20 people will take the initiative to set up IRAs for themselves. Studies show that an effective way to help these workers to save for their future is to establish retirement plans through payroll deduction at work. The state of Oregon has offered a retirement savings program to its lower-income workers since 2017, and 70% of eligible workers have signed up. Data show that the average income of the new savers is \$29,000, and the average amount saved is \$128 per month. This bill will establish a task force and fund the consultation work needed to develop a plan for the HawaiiSaves program.

Thank you for your consideration of this testimony.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS IN OPPOSITION TO  
SB 2490, SD 2, RELATING TO THE HAWAII RETIREMENT SAVINGS PROGRAM

March 12, 2020

Honorable Representative Aaron Ling Johanson, Chair  
Honorable Representative Stacelynn K. M. Eli, Vice Chair  
Committee on Labor and Public Employment  
State House of Representatives  
Hawaii State Capitol, Room 309  
415 South Beretania Street  
Honolulu, Hawaii 96813



Chair Johanson, Vice Chair Eli and Committee Members:

Thank you for the opportunity to testify in opposition to SB 2490, SD 2, Relating to the Hawaii Retirement Savings Program.

Our firm represents the American Council of Life Insurers (“ACLI”). The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 of the industry assets in the United States. ACLI members represent 95 percent of industry assets in the United States. Two hundred eighteen (218) ACLI member companies currently do business in the State of Hawaii; and they represent 95% of the life insurance premiums and 99% of the annuity considerations in this State.

Section 2 of the bill establishes a retirement savings task force to:

1. Create a Hawaii Retirement savings program for private sector employees, not covered by an existing employer-sponsored retirement plan. Sections 2(a), lines 4 through 7, on page 3
2. Select a research entity to draft an implementation plan for the State’s own retirement savings program. Section 2(b), lines 8 through 10, at page 3.
3. Submit to the legislature prior to the next legislative session a report, including any proposed legislation, to create the State’s own retirement savings program. Section 2(d), lines 8 through 11, at page 4.

The stated premise for the bill is that many small businesses do not have access to retirement plans for their employees. As a result many private sector employees do not have access to an employer sponsored retirement plan.

ACLI strongly believes that access to workplace retirement plan coverage is critical to helping workers meet their retirement savings challenges.

However, ACLI disagrees that these plans are not available.

## EMPLOYERS HAVE ACCESS TO AFFORDABLE RETIREMENT PLANS

- Affordable Retirement Vehicles Already Exist.
  - Many inexpensive and accessible retirement vehicles are already available to small employers:
    - IRAs
    - SEPs
    - SIMPLE IRA plans
    - 401(k) and 403(b) plans are available as part of an association or pooled employer plans
- The passage of the SECURE Act and other law changes have created more access to affordable retirement savings plans for employers.
  - On 12/20/19 Congress passed into law the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act). This Act is expected to dramatically increase the number of small employers adopting retirement plans and the participation of their employees.
  - New Laws Allow for More Multiple Employer Plans (MEPs)
    - On 7/29/19 the US Department of Labor (DOL) promulgated its Association Retirement Plan (ARP) Regulation. Employers in the same trade, industry, line of business or profession or in the same geographic area can now establish an ARP.
    - The SECURE Act now supplements the DOL's ARP Regulation by authorizing unrelated employers to band together to create a multiple employer plan (a "MEP") which will reduce an employer's cost to establish and administer a retirement plan for its employees.
  - New Employer Tax Incentives
    - To reduce the costs of starting a retirement plan the SECURE Act gives new tax incentives to small businesses to establish retirement plans for their employees.
    - Small business employers are given a tax credit of up to \$5,000 each year for 3 years.
      - The amount of an employer's tax credit is the greater of (a) \$500, or (b) the lesser of (1) \$250 credit for each non-highly compensated employee eligible to participate, or (2) \$5,000.

- Thus, a small employer having only one employee is entitled to a \$500 tax credit; and an employer having 20 or more employees gets a \$5,000 tax credit.

- The credit applies to small employers having no more than 100 employees over a 3 year period.

- The credit applies to SEP, SIMPLE, 401(k) and Profit Sharing plans.

- If the plan has auto enrollment, the employer gets an additional \$500 tax credit per year – up to 3 years. Thus, small employers having an auto enrollment plan and 20 employees get a tax credit of \$5,500.

**THE SECURE ACT ENABLES MANY MORE EMPLOYEES TO PARTICIPATE IN THEIR EMPLOYER’S RETIREMENT PLAN**

- Part-time employees can now join their employers’ 401(k) plans.

- The Act now REQUIRES employers to offer any employee working more than 1,000 hours a year or 500 hours each year for 3 consecutive years to participate in their 401(k) plan.

- Thus, a part-time employee working at least a 20 hour week each year, for example, or at least a 10 hour week each year over 3 consecutive years can now participate in their employer’s 401(k) plan

**B. THE MANDATE TO DRAFT AN IMPLEMENTATION PLAN AND PROPOSED LEGISLATION TO ESTABLISH THE STATE’S OWN HAWAII RETIREMENT SAVINGS PROGRAM IS PREMATURE AND ILL ADVISED**

The SECURE ACT was only passed into law a little more than a month ago. It will take some time for the DOL to implement the Act’s provisions and for the marketplace to respond.

Accordingly, ACLI submits that the drafting of an implementation plan and proposed legislation by a Retirement Savings Task Force to establish the State’s own retirement saving program and proposed legislation is premature. Indeed, whether Hawaii would want or even need to establish its own retirement savings program before knowing the full impact of the SECURE ACT’s provisions may be questioned.

By way of background, SB 2490 is one of several bills introduced by the bill’s proponents over the years seeking to create a state sponsored retirement savings plan for private sector employees. The proposed retirement plan is an AARP branded state-run retirement plan called “Work and Save” or “Secure Choice” which is an auto-enrollment IRA plan.

Since 2012 seven states have adopted this plan, namely, California, Connecticut, Illinois, Maryland, New Jersey, Oregon and most recently, New York. Massachusetts and Vermont have

adopted a different plan, a voluntary 401 (k). Only four states have begun enrollment – California, Massachusetts, Oregon and Illinois. Implementation in all these states has been a costly struggle.

These plans are expensive – the estimated startup costs for Illinois are \$18M and California \$170M. Oregon has already spent \$5.2M; and its total estimate is \$23M. Just in December of last year, the Hartford Courant reported on the Connecticut plan: “New state retirement authority is almost broke, suspends further expenditures”.

These plans are likely preempted by ERISA.

The U.S. Chamber of Commerce has received a definitive legal opinion that the State sponsored retirement plans currently in existence in California, Connecticut, Illinois, Maryland, New Jersey and Oregon, 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.

Indeed, the California plan, now called CalSavers, is under serious legal threat from a lawsuit filed in a Federal District Court in California<sup>1</sup> on May 31, 2018. The US Justice Department and Department of Labor have issued a Statement of Interest in that case supporting the plaintiffs’ assertion that the plan is preempted by ERISA and subjects employers to ERISA liability, in violation of the authorizing statute. A copy of the Government’s filed Statement of Interest is attached for your information. If the lawsuit is successful, it would undermine the premise of the other State sponsored retirement plans that have already adopted them.

Accordingly, considering the establishment of Hawaii’s own state sponsored retirement saving program at this time would be ill advised. Prudence and common sense would dictate that Hawaii should await the outcome of the current litigation; and determine the full impact of the SECURE ACT’s provisions in addressing employees’ access to an employer sponsored retirement plan.

For the foregoing reasons ACLI must respectfully oppose SB 2490, SD 2, and urges this Committee to defer passage of this bill.

LAW OFFICES OF  
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A Limited Liability Law Company

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<sup>1</sup> Howard Jarvis Taxpayers Association, et al. vs. The California Secure Choice Retirement Savings Program, et al.  
No. 2:18-cv-01584 MCE-KJN, Dist. Ct, Eastern Dist., CA.



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10 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

11 Howard Jarvis Taxpayers Association *et al.*,

12 Plaintiffs,

13 v.

14 California Secure Choice Retirement  
15 Savings Program *et al.*  
16 Defendants.

Case No. 2:18-cv-01584-MCE-KJN

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**STATEMENT OF INTEREST OF THE  
UNITED STATES**

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1  
2 The United States submits this Statement of Interest<sup>1</sup> for the purpose of advancing a  
3 correct and uniform interpretation of the extent of ERISA preemption and in order to further  
4 Congress's intent of promoting the voluntary establishment of employer-sponsored retirement  
5 plans with nationally uniform standards of administration. *See* 29 U.S.C. § 1144(a). The United  
6 States has a heightened interest in finding the Secure Choice Act preempted because the Act is  
7 among the first of a number of similar state auto-individual retirement account (IRA) laws to be  
8 challenged. *See* National Conference of State Legislatures, State-Facilitated Retirement Savings  
9 Programs for Private Sector Workers (Sept. 26, 2018), *available at*  
10 <http://www.ncsl.org/research/fiscal-policy/state-facilitated-retirement-savings-programs-for-private-sector-workers.aspx>.

#### 11 INTRODUCTION

12 The Employee Retirement Income Security Act of 1974 (ERISA) is a “comprehensive  
13 and reticulated statute” reflecting Congress’s careful policy choices. *See Mertens v. Hewitt*  
14 *Assocs.*, 508 U.S. 248, 251 (1993) (quoting *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446  
15 U.S. 259, 261 (1980)). Among those choices is Congress’s intentional decision to give  
16 employers the freedom to choose whether to establish a retirement plan. “Nothing in ERISA,”  
17 the Supreme Court has observed, “requires employers to establish employee benefits plans. Nor  
18 does ERISA mandate what kind of benefits employers must provide if they choose to have such  
19 a plan.” *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). “Congress enacted ERISA to  
20 ensure that employees would receive the benefits they had earned, but Congress did not require  
21 employers to establish benefit plans in the first place.” *Conkright v. Frommert*, 559 U.S. 506,

22  
23 <sup>1</sup> 28 U.S.C. Section 517 provides that the “Solicitor General, or any officer of the Department of  
24 Justice, may be sent by the Attorney General to any State or district in the United States to attend  
25 to the interests of the United States in a suit pending in a court of the United States, or in a court  
26 of a State, or to attend to any other interest of the United States.” 28 U.S.C. § 517. A  
submission by the United States pursuant to this provision does not constitute intervention under  
Rule 24 of the Federal Rules of Civil Procedure.

1 516-17 (2010). The Court “[has] therefore recognized that ERISA represents a ‘careful  
2 balancing’ between ensuring fair and prompt enforcement of rights under a plan and the  
3 *encouragement of the creation of such plans.*” *Id.* (emphasis added).

4 The California Secure Choice Retirement Savings Trust Act (“Secure Choice Act” or  
5 “Act”) takes away the freedom of choice that lies at the core of ERISA by forcing employers  
6 either to establish their own ERISA plan or to maintain an equivalent plan under the Act.  
7 Employers face only these two stark options. In taking away this choice, the Secure Choice Act  
8 disregards Congress’s careful determination that employers should not be required to maintain  
9 employee pension benefit plans. Because the Secure Choice Act disregards and runs afoul of  
10 ERISA’s statutory scheme by effectively requiring employers to maintain such plans, it is  
11 preempted by ERISA’s broad, express preemption provision that disallows any state laws that  
12 “relate to any employee benefit plan.” 29 U.S.C. § 1144(a).

### 13 BACKGROUND

14 The Secure Choice Act, Cal Gov’t Code § 100000 *et seq.*, requires California employers  
15 with five or more employees to have retirement savings programs for their employees through  
16 automatic enrollment in IRAs managed by the state’s CalSavers Board. *See* § 100032. It  
17 implements this regime in stages—California employers with more than 100 employees must  
18 have such IRA plans in place by June 2020; employers with more than 50 employees must have  
19 such IRA plans in place by 2021; and all eligible employers must have such IRA plans in place  
20 by 2022. *See* Cal. Code Regs. tit 10 § 10002(a). Employers are exempt if they offer an  
21 “employer-sponsored retirement plan” or an “automatic enrollment payroll deduction IRA” that  
22 qualifies for “favorable income tax treatment under the federal Internal Revenue Code.” *See* Cal.  
23 Gov’t Code § 100032(g)(1). Thus, private, non-church employers who sponsor these types of  
24 ERISA-covered retirement plans are exempt from CalSavers. *See generally* ERISA tit. II, Pub.  
25 L. 93-406 (amending the Internal Revenue Code with respect to retirement plans covered under  
26 ERISA). However, employers who provide ERISA-covered retirement plans that do not fit



1 within the exemption (such as employers who offer payroll deduction IRA programs without  
2 automatic enrollment) are still required to register for CalSavers. *See* Cal. Code Regs. tit 10 §  
3 10000(l),(o),(x).

4 Under the CalSavers Act and its implementing regulations, as recently amended,  
5 nonexempt employers must provide contact information for their eligible employees to  
6 CalSavers, which then distributes enrollment materials directly to employees. Cal. Gov't Code §  
7 100014(f); Cal. Code Regs. tit. 10 § 10003(c). Because the plain text of the Act provides that  
8 certain classes of employees are ineligible for CalSavers (such as employees for whom  
9 contributions are made to a multiemployer plan, *see* Cal. Gov't Code § 100000(c)(2)(B), or  
10 employees engaged in interstate commerce, § 100000(c)(2)(A)), employers must continually  
11 determine which of their employees are "eligible employees" for whom reporting to CalSavers is  
12 required. Cal Gov't Code § 10000(c). Employers must also determine on an ongoing basis  
13 whether they are an "eligible employer" by determining whether any retirement plans they offer  
14 qualify as a "tax-qualified retirement plan," *see* Cal. Code Regs. tit. 10 § 10000(l), (x); § 10001,  
15 or whether their average number of employees has fallen below the statutory amount, *see* §  
16 10002(a), as calculated by the average number of employees reported to the State for the quarter  
17 ending December 31 and the previous three quarters of available data. Eligible employers must  
18 then withhold contributions from the eligible employees' wages at a specified contribution rate,  
19 and remit them to an IRA set up for each employee by CalSavers, unless CalSavers instructs the  
20 employer otherwise because the employee opted out of the program. Cal. Code Regs. tit. 10 §§  
21 10003-10004; *see* Cal. Gov't Code § 10032. Employers are required to update the contributions  
22 withheld for each employee as the applicable contribution rate changes. *See* Cal. Code Regs. tit.  
23 10 § 10003(d). CalSavers maintains a single pooled fund of IRA assets, which are invested  
according to enumerated guidelines. Cal Gov't Code at §§ 100002, 100004.

24 Although the statute provides for optional employer contributions if doing so "would not  
25 cause the program to be treated" as an ERISA-covered plan, § 100012(j), such contributions are  
26 prohibited by regulation. *See* Cal. Code Regs. tit. 10 § 10005(c)(1). The Secure Choice Act

1 specifically provides that the CalSavers Board shall not implement the program “if it is  
2 determined that the program is an employee benefit plan under the federal Employee Retirement  
3 Income Security Act.” *Id.* § 100043(a).

4 **ARGUMENT**

5 **THE SECURE CHOICE ACT IS PREEMPTED BY ERISA SECTION 514(a).**

6 ERISA section 514(a) provides that ERISA supersedes any state laws that “relate to any  
7 employee benefit plan.” 29 U.S.C. § 1144(a). The Supreme Court has identified two separate  
8 threads of ERISA preemption—“reference to” preemption and “connection with” preemption.  
9 *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 96-97 (1983); *accord, e.g., Gobeille v. Liberty Mut.*  
10 *Ins. Co.*, 136 S. Ct. 936, 943 (2016). A state law inappropriately makes “reference to” an  
11 ERISA-covered plan if (1) the law “specifically refers” to ERISA covered plans, *District of*  
12 *Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125, 130 (1992); (2) if it acts  
13 “immediately and exclusively” upon ERISA plans; or (3) if the existence of ERISA plans is  
14 “essential to the law’s operation.” *Cal Div. of Labor Stds. Enforcement v. Dillingham Const.*,  
15 *N.A.*, 519 U.S. 316, 325 (1996). A state law has an impermissible “connection with” ERISA  
16 plans if it “governs a central matter of plan administration” or “interferes with nationally uniform  
17 plan administration.” *Gobeille v. Liberty Mut. Ins Co.*, 136 S. Ct. 936, 943 (2016) (citing  
18 *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001)). Under either thread, the pre-emption provision  
19 “displace[s] all state laws that fall within its sphere, even including state laws that are consistent  
20 with ERISA’s substantive requirements.” *Mackey v. Lanier*, 486 U.S. 825, 829 (1988) (citing  
*Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985)).

21 **I. The Act Makes Improper “Reference to” ERISA Plans Because the Law Presents**  
22 **Employers with the False Choice of Establishing an ERISA Plan or Maintaining**  
23 **California’s Equivalent.**

24 Under the “reference to” inquiry, the Supreme Court has held preempted a law that  
25 “impos[ed] requirements by reference to [ERISA] covered programs,” *Dist. of Columbia v.*  
*Greater Washington Bd. of Trade*, 506 U.S. 125, 131 (1992); a law that specifically exempted  
26

1 ERISA plans from an otherwise generally applicable garnishment provision, *Mackey v. Lanier*  
2 *Collection Agency & Service, Inc.*, 486 U.S. 825, 828, n. 2, 829–830 (1988); and a common-law  
3 cause of action where the existence of an ERISA plan was a “critical factor” in establishing  
4 liability, *Ingersoll–Rand Co. v. McClendon*, 498 U.S. 133, 140 (1990); *see also Cal. Div. of*  
5 *Labor Stds. Enf’t v. Dillingham Const., N.A., Inc.*, 519 U.S. 316, 324–25 (1997). Indeed, the  
6 Court has taken it “virtually . . . for granted that state laws which are designed to affect employee  
7 benefit plans are pre-empted under § 514(a).” *Mackey*, 486 U.S. at 829 (1988) (internal  
8 quotations omitted). “Even if the law is not specifically designed to affect such plans, or the  
9 effect is only indirect,” a state law will nonetheless be preempted if it has such an effect. *See*  
10 *Ingersoll-Rand*, 498 U.S. at 139.

11 This preemption regime, of course, is not boundless. Where a state law is indifferent as  
12 to the ERISA coverage of plans within its scope, such as where the law affects a broad class of  
13 arrangements that may incidentally contain ERISA plans, such a law does not make “reference  
14 to” ERISA plans. *See e.g. Dillingham*, 519 U.S. at 325-28; *N.Y. State Conf. of Blue Cross &*  
15 *Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995). Furthermore, where a law  
16 does not act upon ERISA-covered *plans* at all, but rather acts upon plan participants, *see e.g.* ,  
17 *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987), such laws similarly do not make an  
18 improper “reference to” ERISA.

19 Because CalSavers falls squarely in the category of cases holding state laws preempted  
20 because of their improper reference to ERISA plans. Indeed, ERISA plans are essential to the  
21 operation of the Secure Choice Act’s regulatory framework—the Act forces California  
22 employers who do not offer the State’s preferred types of ERISA plans (certain tax-favored  
23 employer-sponsored retirement programs and automatic enrollment IRAs) to adopt equivalent  
24 automatic-enrollment IRAs through CalSavers. *See Cal. Gov’t Code § 100032(g)*. Such heads-  
25 I-win-tails-you-lose state regulations cannot survive under the Court’s “reference to”  
26 jurisprudence.

1 The case law is instructive here. In *Mackey*, the Court struck down a Georgia law that  
2 specifically exempted ERISA plans from a generally applicable garnishment procedure. 486 U.S.  
3 at 828 n. 2, 829–830. The Georgia law specifically referred to ERISA by requiring that “[f]unds  
4 or benefits of a pension, retirement, or employee benefit plan or program subject to [ERISA]” be  
5 exempt from garnishment. *See id.* at 828 n.2. Because the law “single[d] out” ERISA-covered  
6 plans for different treatment under state garnishment through this express reference to ERISA  
7 plans, the law was preempted. *See id.*

8 Similarly, in *Greater Washington*, the Supreme Court held that ERISA preempted a  
9 District of Columbia law requiring employers to provide the same health benefits to workers’  
10 compensation recipients that they provided to their active employees through ERISA plans. *See*  
11 506 U.S. at 125. Because the active employees’ health insurance plans were ERISA-covered  
12 plans, the Court found that the statute’s mandate that health insurance be provided at the “same  
13 benefit level” as the existing insurance “specifically refer[red]” to ERISA plans. *See id.* at 130-  
14 31. That statute, too, was preempted.

15 In contrast, the Court in *Dillingham* found that a state law that referenced an entire class  
16 of plans that incidentally *included* ERISA plans was not preempted. There, California had  
17 enacted a law providing that public works contractors could pay an apprenticeship wage to  
18 apprentices in apprenticeship programs that met national standards. *See Dillingham*, 519 U.S. at  
19 319. Noting that the regulated “apprenticeship programs need not necessarily be ERISA plans,”  
20 *id.* at 325, the Court rejected the argument that the law improperly made reference to ERISA—  
21 the law remained valid because it referred to a class of plans that included some ERISA plans; it  
22 did not make specific reference to ERISA plans. *Id.*

23 Likewise, in *Fort Halifax*, a Maine law that required employers to pay one-time  
24 severance payments to employees laid off by plant closures was not preempted. 482 U.S. at 1.  
25 The payments did not suffice to constitute a “plan” for ERISA purposes because they simply  
26 involved the writing of a single check to all affected employees—they did not require “an

1 ongoing administrative program to meet the employer’s obligation” under the statute, which was  
2 necessary for the regime to constitute a “plan.” *See Fort Halifax*, 482 U.S. at 11.

3 Crucially, the *Fort Halifax* Court expressly rejected the reasoning of the Maine Supreme  
4 Court in its decision below, which had found that the Maine statute was not preempted because  
5 the severance mandate was a state-created benefit plan, not one created by employers. *See Dir.*  
6 *of Bureau of Labor Standards v. Fort Halifax Packing Co.*, 510 A.2d 1054, 1059 (Me. 1986).  
7 The United States Supreme Court recognized that the Maine court’s approach “would permit  
8 States to circumvent ERISA’s pre-emption provision, by allowing them to require directly what  
9 they are forbidden to regulate.” *Fort Halifax*, 482 U.S. at 16. “[T]he purpose of ERISA pre-  
10 emption makes clear why the mere fact that a plan is required by a State is insufficient to fend  
11 off pre-emption.” *Id.* at 16-17. Indeed, the Supreme Court recognized that “[t]he requirements  
12 imposed by a State’s establishment of a benefit plan would pose a formidable barrier to the  
13 development of a uniform set of administrative practices.” *Id.*

14 Under the Secure Choice Act, California singles-out employers who decline to sponsor  
15 the state’s preferred ERISA plans, forcing them to enroll their workers in plans that function just  
16 like the plans they have chosen not to offer. This is invalid under the case law discussed above.  
17 Just as the statutes in *Mackey* and *Greater Washington* invalidly made specific reference to  
18 ERISA plans, so, too, does the Secure Choice Act: It requires employers who do not offer a  
19 qualifying “employer-sponsored retirement plan” or “automatic enrollment payroll deduction  
20 IRA” to register for CalSavers. *See* Cal. Gov’t Code § 100032(g)(1). As in *Mackey*, CalSavers  
21 includes a provision that specifically exempts ERISA plans from coverage. *See Mackey*, 486  
22 U.S. at 828 n. 2, 829–830. The statute’s mandate to create alternative equivalent plans are  
23 “measured by reference to the existing . . . coverage provided by the employer.” *Greater*  
*Washington*, 506 U.S. at 130.

24 Moreover, the employer-sponsored plans that exempt employers from the Secure Choice  
25 Act’s requirements are *all* ERISA-covered plans. *See* 29 U.S.C. § 1002(2)(A). Unlike in  
26 *Dillingham*, the Secure Choice Act is not a statute that references some larger class of plans that

1 happens to include ERISA plans. *See Dillingham* 519 U.S. at 325. Nor is *Fort Halifax* a barrier  
2 to preemption. As in that case, the fact that state law, rather than employers, has created  
3 CalSavers is irrelevant to its preemptive scope, *see Fort Halifax* 482 U.S. at 16-17, and unlike  
4 the Maine statute in *Fort Halifax*, the Secure Choice Act's reference to ERISA operates with  
5 respect to *plans*, not participants or one-time benefits. *See Fort Halifax*, 482 U.S. at 11; *see also*  
6 *Mackey*, 486 U.S. at 830-38.

7 Further, the Secure Choice Act, unlike the *Fort Halifax* statute, requires "an ongoing  
8 administrative program to meet the employer's obligation" under the statute. *Fort Halifax*, 482  
9 U.S. at 11. The Secure Choice Act establishes an ongoing program and requires that employers  
10 continually update their payroll deductions to reflect changes to their workforce of eligible  
11 employees, their employer eligibility, and the fluctuating contribution rate for each employee.  
12 *See Background, supra* at 3; *cf. Simas v. Quaker Fabric Corp.*, 6 F.3d 849, 852-53 (1st Cir.  
13 1993) (a Massachusetts statute that required employers to make one-time severance payments at  
14 varying times and amounts for different terminated employees based on complex eligibility  
15 criteria required an "ongoing administrative program," and was preempted). The required  
16 CalSavers plans are, in every relevant sense, equivalent to the ERISA plans that non-exempt  
17 employers have decided not to offer. Just as a typical ERISA retirement savings account would  
18 operate, CalSavers sets-up IRAs for retirement savings for employees, and the contributions to  
19 those IRAs are collectively invested by a fiduciary. Cal. Gov't Code §§ 100002, 100004.  
20 Whether the employees invest the money with a state-managed vehicle or private entities does  
21 not change the simple fact that CalSavers is an employment-based pension plan, which, aside  
22 from the state's involvement, would be indistinguishable from other ERISA-covered plans.

23 This fact distinguishes this case from *Golden Gate*, in which the Ninth Circuit held that a  
24 San Francisco ordinance that set minimum health care spending requirements on employers in  
25 the City was not preempted. *See Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 546  
26 F.3d 639 (9th Cir. 2008). The Ordinance at issue in *Golden Gate* imposed fixed per-employee  
health care spending requirements on San Francisco employers, which could be satisfied by

1 either funding ERISA plans maintained by the employers in the required amount, or by paying  
2 the same amount instead to the City's Health Access Program (HAP), which provided health  
3 care benefits for uninsured city residents. The Ninth Circuit found that this did not constitute an  
4 improper reference to ERISA, because covered employers could discharge their obligation under  
5 the ordinance by making payments to the HAP without ongoing administrative maintenance or  
6 management. *See Golden Gate*, 546 F.3d at 652. The HAP was distinguishable from the  
7 employers' ERISA health care plans—it was a “government entitlement program available . . .  
8 regardless of employment status,” funded primarily by taxpayer dollars. 546 F.3d at 653. In  
9 contrast, CalSavers creates a nearly identical replacement for the ERISA plans employers have  
10 elected not to provide.

11 A state law may not reference ERISA plans in order to trigger ERISA-equivalent  
12 coverage. Because the Secure Choice Act does exactly that, this Court should determine that the  
13 law is preempted on that basis.

14 **II. Because the Secure Choice Act Requires Employers to Maintain CalSavers Plans,  
15 Those Plans are Themselves ERISA Plans to Which the Secure Choice Act  
16 Improperly Refers.**

17 The Secure Choice Act is alternatively preempted because an employer's ongoing  
18 maintenance of CalSavers Plans makes them ERISA-covered plans. *See Golden Gate*, 546 F.3d  
19 at 648 (if a city ordinance “creates an ERISA plan,” then “the ordinance almost certainly makes  
20 an impermissible ‘reference to’ an ERISA plan.”). ERISA defines a “pension benefit plan” as  
21 “any plan, fund, or program . . . established *or maintained* by an employer . . . to the extent that  
22 by its express terms or as a result of surrounding circumstances such plan, fund, or program— (i)  
23 provides retirement income to employees, or (ii) results in a deferral of income by employees for  
24 periods extending to the termination of covered employment or beyond.” 29 U.S.C. §  
25 1002(2)(A) (emphasis added). Thus, in order to find that employers subject to the Act create  
26 ERISA-covered plans, this Court must first determine whether the CalSavers arrangement is a  
“plan, fund, or program” of the type described in 29 U.S.C. § 1002(2)(A), and second, whether

1 the level of employer involvement in “establish[ing] or maintain[ing]” the arrangement is  
2 sufficient to create ERISA-covered plans. These are separate and distinct inquiries. *See*  
3 *Donovan v. Dillingham*, 688 F.2d 1367, 1367 n.11 (11th Cir. 1982) (en banc) (“Department of  
4 Labor regulations recognize that an employer may be involved in a plan, fund, or program  
5 without establishing it or maintaining it.”). In this case, both criteria are satisfied.

6 A. CalSavers is a “Plan, Fund or Program” under 29 U.S.C. § 1002(2)(A).

7 The requirements to establish a plan are minimal. *See Credit Managers Ass’n of S. Cal.*  
8 *v. Kennesaw Life & Acc. Ins. Co.*, 809 F.2d 617, 625 (9th Cir. 1987) (“An employer, however,  
9 can establish an ERISA plan rather easily.”). Indeed, an ERISA-covered plan can exist even if  
10 funded solely with employee contributions. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432,  
11 439 (1999). “In determining whether a plan, fund, or program (pursuant to a writing or not) is a  
12 reality, a court must determine whether from the surrounding circumstances a reasonable person  
13 could ascertain the intended benefits, beneficiaries, source of financing, and procedures for  
14 receiving benefits.” *Id.* The Ninth Circuit has repeatedly relied on *Donovan*.<sup>2</sup> *See, e.g.,*  
*Modzelewski v. Resolution Tr. Corp.*, 14 F.3d 1374, 1376 (9th Cir. 1994).

15 It is plain that the payroll-deduction arrangements mandated by the Secure Choice Act  
16 meet the test set forth in *Donovan*. The “intended benefits” are the retirement income from tax-

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18 <sup>2</sup> This Court did not apply the *Donovan* test in its March 29, 2019 Order on the Motion to  
19 Dismiss, noting that the Ninth Circuit in *Golden Gate* had declined to apply the test when  
20 considering government mandates on employers. Dkt. No. 24 at 15. The Ninth Circuit appears  
21 to have mistakenly concluded that the *Donovan* analysis applies both to whether a “plan, fund or  
22 program” has been established *and* whether that plan, fund, or program is “established or  
23 maintained” by employers. *See Golden Gate*, 546 F.3d at 651-52. The test actually applies only  
24 to the former inquiry. *See Donovan*, 688 F.2d at 1367 n.11. It is unsurprising, then, that the  
25 *Golden Gate* court expressed doubt with regard to the application of the *Donovan* test where the  
26 court had found that employers had neither established nor maintained the plan—under the  
ordinance (and unlike CalSavers) the court found that employers had no ongoing obligation to  
the city once they made required payments, much like a payroll tax. *See* 546 F.3d at 652. In any  
event, that court did not actually reach the question of whether *Donovan* applied, because it  
found that the *Donovan* criteria were not satisfied. *See Golden Gate*, 546 F.3d at 652.



1 deferred contributions provided by the IRAs required by the Act, the “beneficiaries” are the  
2 employees whose wages are withheld, the “source of financing” is the automatic payroll  
3 deductions, and the “procedures for receiving benefits” are those provided through the IRA  
4 product. See *Donovan*, 688 F.2d at 1373. If the identical functions of the CalSavers Board were  
5 instead performed by a third party administrator and investment manager voluntarily hired by an  
6 employer plan sponsor, this arrangement clearly would fall within the scope of ERISA.  
7 *Compare Silvera v. Mut. Life Ins. Co. of New York*, 884 F.2d 423, 427 (9th Cir. 1989) (rejecting  
8 the notion that a government employer delegating tasks to a private insurer, who “stepped into  
9 the employer’s shoes,” changes the fact that the plan was established as a governmental plan  
10 under ERISA). A CalSavers payroll-deduction arrangement is therefore a “plan, fund or  
11 program.”

12 B. Employers Participating in CalSavers, at the Very Least, “Maintain” ERISA-covered  
13 Plans under 29 U.S.C. § 1002(2)(A).

14 Determining that the CalSavers program constitutes a “plan, fund, or program” to provide  
15 retirement benefits does not end the analysis. *Donovan* emphasizes that a plan “only falls within  
16 the ambit of ERISA if [it] covers ERISA participants because of their employee status in an  
17 employment relationship, and an employer or employee organization is the person that  
18 establishes or maintains [it].” 688 F.2d at 1371. The arrangements created by the Secure  
19 Choice Act require employers to “maintain” CalSavers plans.

20 The Secure Choice Act specifically requires employers to maintain CalSavers plans by  
21 setting up the payroll-deduction arrangements, ensuring the enrollment of their employees,  
22 deducting money from employees’ pay, and sending the payroll deductions to the CalSavers  
23 program administering the IRAs. See Cal. Gov’t Code, § 100032; Cal. Code Regs. tit. 10 §  
24 10003(c). By requiring employers to deduct contributions from eligible employees’ wages on an  
25 ongoing basis, and to forward the contributions for deposit into IRAs established for each  
26 enrolled employee, the Secure Choice Act requires the employers to maintain an employer-based  
program providing “retirement income to employees” or resulting “in a deferral of income by

1 employees for periods extending to the termination of covered employment or beyond.” 29  
2 U.S.C. § 1002(2)(A). Therefore, the Act requires the covered employers to maintain “ongoing  
3 administrative programs” to pay employee benefits. *Fort Halifax* 482 U.S. at 11.

4 Employers subject to the Act must make ongoing determinations regarding their  
5 eligibility, the eligibility of employees, and the associated contribution rate. Specifically,  
6 employers must monitor and make determinations on an ongoing basis regarding: whether any  
7 benefit provided is or becomes a “tax-qualified retirement plan” under California regulations  
8 such that the employer becomes exempt from coverage, Cal. Code Regs. tit. 10 § 10000(l), (x);  
9 whether any employee has elected to change his or her contribution rate, or whether the  
10 CalSavers Board has changed the default contribution rate, *see id.* § 10005; whether any  
11 particular employee is or becomes exempt by virtue of the fact that he or she is “engaged in  
12 interstate commerce,” Cal. Gov’t Code § 100000(c)(2)(A); whether the employee is or becomes  
13 exempt because contributions are required on that employee’s behalf to a multiemployer plan  
14 pursuant to a collective bargaining agreement, § 100000(c)(2)(B); whether an employee is or  
15 becomes exempt due to coverage under the Railway Labor Act, § 100000(c)(2)(A); and whether  
16 the employer’s average total employees for the quarter ending December 31 and the previous  
17 three quarters of available data has fallen below the Act’s current coverage minimum, Cal. Gov’t  
18 Code § 100000(d)(1). Such determinations must also be made for all new hires, and then on an  
19 ongoing basis for all existing employees, including even short-term employees. These  
20 determinations may not be straightforward, particularly given that they are subject to government  
21 “investigation and audit” and any subsequent penalties. Cal. Unemp. Ins. Code § 1088.9(d).

22 The First Circuit recognized in *Simas* that, when a state law requires such ongoing  
23 eligibility determinations in combination with an ongoing administrative scheme, then the  
24 employer’s required activities will be sufficient to establish or maintain an ERISA-covered plan.  
25 *Simas*, 6 F.3d at 852-54. The Eighth Circuit has similarly recognized that an employer’s need to  
26 make eligibility determinations can be sufficient to establish or maintain an ERISA-covered  
plan. *Petersen v. E.F. Johnson Co.*, 366 F.3d 676, 679-80 (8th Cir. 2004) (finding plan existed

1 when it was necessary for the “company to engage in a case-by-case review of employees to  
2 determine eligibility for benefits.”)

3 Defendants have argued in their Motion to Dismiss that recent modifications to the Act  
4 effective June 27, 2019, made by S.B. 83, 2019 Cal. Legis. Serv. Ch. 24, and associated  
5 emergency regulations effective July 25, 2019, mean that the role of employers is “purely  
6 ministerial.” Dkt. No. 38 at 6. Under the amended Act, employers do not provide materials to  
7 their employees directly; rather, employers must provide contact information for their employees  
8 to CalSavers, which then sends materials to employees. Cal. Gov’t Code § 100014(f); Cal. Code  
9 Regs. tit. 10 § 10003(c). Yet even under these modifications, employers must still make ongoing  
10 determinations as to which employees are “eligible employees” under the Act as a threshold  
11 matter. For example, an employee of a multistate employer may cease to become an “eligible  
12 employee” after being transferred from a California office to an Oregon office under the Act’s  
13 interstate commerce exemption at Cal. Gov’t Code § 100000(c)(2)(A). Or, an employee may  
14 cease to be an “eligible employee” after entering a bargaining unit for whom contributions are  
15 made to a multiemployer plan under Cal. Gov’t Code § 100000(c)(2)(B). Under the Act’s  
16 reporting structure, these initial eligibility determinations would necessarily be made by the  
17 employer, not CalSavers.

18 The fact that employers do not voluntarily create these ERISA plans does not alter the  
19 conclusion that they are still “employers” as defined by ERISA who “maintain” the plan,  
20 notwithstanding any attempt by state law to redefine the role of employers. The Supreme Court  
21 has held that when an employer acts in an ERISA capacity, state laws regulating that activity  
22 may not diminish the entity’s status as an ERISA actor. *See Unum v. Ward*, 526 U.S. 358, 379  
23 (1999) (California law that would have rendered invalid a contractual provision governing an  
24 employer’s status as an agent of its insurer was preempted by ERISA because it regulated plan  
25 administration). ERISA still operates and has consequences even if the employer’s conduct is  
26 dictated by a third party. *See Fort Halifax*, 482 U.S. at 12, 16-17. The Ninth Circuit has  
followed this reasoning in finding that state laws mandating that employers provide certain

1 benefits to their employees are preempted when the employer would need to establish an ERISA-  
2 covered plan to comply with the law. *Aloha Airlines, Inc. v. Ahue*, 12 F.3d 1498 (1993).

3 In sum, each private employer that participates in the CalSavers program maintains an  
4 employee pension benefit plan covered by ERISA, regardless of the role of the state mandate in  
5 creating the withholding arrangements.<sup>3</sup>

6 **III. The Act's Arrangements Do Not Satisfy the Department of Labor's 1975 IRA Safe  
7 Harbor.**

8 Defendants have argued that even if the CalSavers IRAs are ERISA plans, they fall  
9 within the 1975 IRA Safe Harbor Regulations at 29 C.F.R. § 2510.3-2(d). This safe harbor is  
10 part of a regulation that "clarifies the limits of the defined terms 'employee pension benefit plan'  
11 and 'pension plan' for purposes of title I of the Act . . . by identifying specific plans, funds and  
12 programs which do not constitute employee pension benefit plans for those purposes." 29 C.F.R.  
13 § 2510.3-2(a). The safe harbor regulation provides that ERISA does not cover a payroll-  
14 deduction IRA arrangement otherwise covered by ERISA so long as four conditions are met: (1)  
15 the employer makes no contributions; (2) employee participation is "completely voluntary"; (3)  
16 the employer does not endorse the program and acts as a mere facilitator of a relationship  
17 between the IRA vendor and employees; and (4) the employer receives no consideration except  
18 for its own expenses. "[A]ny failure under [the conditions in the regulation] establishes that the  
19 Plan is an employee pension benefit plan for purposes of ERISA," assuming the plan was  
20 otherwise covered. *Cline v. Indus. Maint. Eng'g & Contracting Co.*, 200 F.3d 1223, 1230 (9th

20 <sup>3</sup> Although the Court need not decide the question, certain employers may be deemed to have  
21 "established" ERISA plans in addition to "maintaining" them. In particular, although the Act  
22 mandates participation by employers that do not offer another retirement plan, it also  
23 contemplates voluntary participation by any California employer, such as, for example, if the  
24 employer registers before the law becomes mandatory for employers of their size. See Cal.  
25 Gov't Code §100032. For these employers who voluntarily set up CalSavers, this may suffice to  
26 "establish" an ERISA plan. See, e.g., *Donovan*, 688 F.2d at 1373 (a plan has been "established"  
by an employer when a "decision [to provide benefits] has become a reality"). Indeed, if  
anything, this provides further reason to find that all employers "maintain" ERISA plans under  
the Act, since it would be counterintuitive to find the Act preempted for those employers who  
*voluntarily* sign up for CalSavers, but not for those who are forced to do so.

1 Cir. 2000). Because CalSavers' automatic-enrollment IRAs are not "completely voluntary," they  
2 are not exempt from ERISA within the 1975 IRA Safe Harbor.

3 The Court correctly decided in its decision on the First Motion to Dismiss that the  
4 CalSavers arrangement is not "completely voluntary." Dkt. No. 24 at 12-13. As mentioned by  
5 the Court, it was for this reason that the 2016 Safe Harbor that had excepted savings  
6 arrangements such as CalSavers (and which was later disapproved by Congress and rescinded  
7 pursuant to the Congressional Review Act, 5 U.S.C. § 801 *et seq.*), had been necessary. *See* Dkt.  
8 No. 24 at 13.

9 Cases discussing the "completely voluntary" requirement in other ERISA safe harbors,  
10 while not involving opt-out provisions, have focused on whether the employees' participation  
11 was voluntary or automatic, which at least implies that an affirmative choice by the employee is  
12 needed to make participation "completely voluntary."<sup>4</sup> *See, e.g., Kanne v. Conn. Gen. Life Ins.*  
13 *Co.*, 867 F.2d 489, 492 (9th Cir. 1998) (analyzing group welfare plan safe harbor, court focused  
14 on "whether Kanne's participation was voluntary or automatic"); *Carter v. Guardian Life Ins.*  
15 *Co.*, Civil No. 11-3-ART, 2011 WL 1884625 (E.D. Ky. 2011) ("Courts have held that  
16 employees' participation is not 'completely voluntary' if their enrollment in the plan is  
17 'automatic'"). In addition, cases in other contexts have also held that opt-out arrangements, like  
18 the one in CalSavers, are not "completely voluntary." *See e.g., Doe v. Wood Co. Bd. of Educ.*,  
19 888 F. Supp. 2d 771, 775-77 (S.D. W. Va. 2012); *Schear v. Food Scope Am., Inc.*, 297 F.R.D.  
20 114, 125 (S.D.N.Y. 2014). To protect participant choice and further ERISA's protections of

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21 <sup>4</sup> Defendants contend that there is no distinction between "voluntary" and "completely  
22 voluntary," and that the terms "appear redundant." *See* Defs.' Supplemental Statement, Dkt. No.  
23 22, at 5 n.8. This reasoning conflicts with general principles of statutory interpretation. *See*  
24 *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (holding that it is "a cardinal principle of statutory  
25 construction" that "a statute ought, upon the whole, to be so construed that, if it can be  
26 prevented, no clause, sentence, or word shall be superfluous, void, or insignificant") (internal  
quotation marks omitted). By adopting an opt-out regime, the IRA arrangements required under  
the Act fail to meet the 1975 Safe Harbor.

1 participants, the safe harbor requires a “completely voluntary” rather than a merely “voluntary”  
2 choice, and this heightened protection bars opt-out regimes from the 1975 Safe Harbor.<sup>5</sup>

3 **IV. The Secure Choice Act is Preempted Because it Has an Impermissible “Connection**  
4 **With” ERISA-Covered Plans.**

5 The Secure Choice is also independently preempted under “connection with” preemption.  
6 Under “connection with” preemption, a state law is preempted if it “mandate[s] employee benefit  
7 structures.” *Travelers*, 514 U.S. at 658. Additionally, a state law has an impermissible  
8 “connection with” ERISA plans if the state law either “governs . . . a central matter of plan  
9 administration” or “interferes with nationally uniform plan administration.” *Gobeille v. Liberty*  
10 *Mut. Ins. Co.*, 136 S. Ct. at 943 (citing *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001)). The *Gobeille*  
11 Court emphasized that “ERISA preempts a state law that regulates a key facet of plan  
12 administration even if the state law exercises a traditional state power.” 136 S. Ct. at 946. Thus,  
13 in *Gobeille*, a Vermont law requiring that information about benefit payments and plan  
14 demographic data be reported to a centralized healthcare database was preempted by ERISA  
15 because reporting and disclosure are core functions of ERISA plan administration.

16 This Court previously ruled that “CalSavers does not govern a central matter of an  
17 ERISA plan’s administration, nor does it interfere with nationally uniform plan administration.”  
18 Dkt. No. 24 at 8. The Court reasoned that the program only applies to employers without  
19 existing retirement plans, does not require employers to make any promises to employees, and  
20 imposes only ministerial duties on employees. *Id.* at 7. The United States respectfully urges the  
21 Court to reconsider its analysis of “connection with” preemption in light of *Gobeille*.

22 <sup>5</sup> The inverse proposition does not hold, of course—*i.e.* opt-out arrangements are not inherently  
23 nonconsensual or involuntary. *See, e.g.*, Fed. R. Civ. P. 23(c)(2)(B)(v) (members of Rule  
24 23(b)(3) class are included in settlement unless they “request exclusion”); *Circuit City Stores v.*  
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26 considered consent). Instead, the IRA safe harbor regulation requires a “completely voluntary”  
choice, a heightened standard that requires more than mere consent or mere voluntariness.  
Automatic enrollment is inconsistent with that heightened standard.

1 The Secure Choice Act governs a central matter of plan administration and mandates  
2 employee benefit structures by requiring the maintenance of ERISA plans in the manner  
3 specified in the Act. As discussed earlier, California's Secure Choice Act requires employers  
4 who do not have ERISA plans to maintain ERISA-covered plans. The Secure Choice Act also  
5 controls the benefits, design, and administration of the mandated plan. *See* Cal. Gov't Code §  
6 100000-100050. The Act interferes with nationally uniform plan administration by potentially  
7 subjecting multi-state employers to numerous disparate retirement plan laws. In that regard, a  
8 decision by this Court to allow the Secure Choice Act to survive would allow for the creation of  
9 a patchwork of different state laws regulating the provision of retirement benefits to employees.  
10 This danger is exacerbated because the Act applies to employers to the extent they do business in  
11 California regardless of where the company is headquartered or specific employees are located.  
12 Cal. Gov't Code § 100000(d). A multi-state employer would not only have to keep track of  
13 payroll deductions, rates, and eligibility for CalSavers, but also for myriad other states'  
14 automatic-enrollment IRA programs. This is exactly the kind of disuniformity that ERISA §  
15 514(a) was designed to avoid. *See Gobeille*, 136 U.S. at 949 (Breyer, J., concurring) ("failure to  
16 find pre-emption here would subject [ERISA] plans to 50 or more potentially conflicting  
17 information reporting requirements. Doing so is likely to create serious administrative  
18 problems.").

18 **V. The Secure Choice Act is Preempted Under Traditional Conflict Preemption**  
19 **Principles.**

20 Finally, CalSavers is still preempted under traditional preemption principles, as  
21 articulated by the Supreme Court. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)  
22 (holding that ERISA's civil enforcement remedies preempted conflicting state law in part  
23 because of "the deliberate care" and "balancing of policies" undertaken by Congress in drafting  
24 the statute); *Boggs v. Boggs*, 520 U.S. 833, 841 (1997) (holding that ERISA preempted state law  
25 under conflict preemption principles without needing to analyze whether the state law related to  
26 a plan under ERISA section 514(a)). Where a state law "stands as an obstacle to the

1 accomplishment and execution of the full purposes and objectives of Congress,” the law may be  
2 preempted under those principles. *Gade v. Nat’l Solid Waste Mgmt. Assoc.*, 505 U.S. 88, 98  
3 (1992). Conflict preemption analysis is “informed by examining the federal statute as a whole  
4 and identifying its purpose and intended effects.” *Crosby v. Nat’l For. Trade Council*, 530 U.S.  
5 363, 373 (2000).

6 As the case law interpreting the express preemption doctrine makes clear, “[t]he purpose  
7 of ERISA is to provide a uniform regulatory regime over employee benefit plans.” *Aetna Health,*  
8 *Inc., v. Davila*, 542 U.S. 200, 208 (2008). Congress, through ERISA, carefully refrained from  
9 mandating “what kind of benefits employers must provide if they choose to have such a plan.”  
10 *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). ERISA’s “comprehensive and reticulated”  
11 regime does not “require employers to establish benefit plans in the first place.” *Mertens*, 508  
12 U.S. at 251; *Conkright*, 559 U.S. at 516-17. ERISA’s provisions do not mandate plans, but  
13 include specific provisions to encourage the creation of plans, and then to apply its requirements  
14 to those plans. *See, e.g., Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014) (discussing  
15 application of ERISA to employee stock ownership plans). The Court “[has] therefore  
16 recognized that ERISA represents a ‘careful balancing’ between ensuring fair and prompt  
17 enforcement of rights under a plan and the *encouragement* of the creation of such plans.”  
*Conkright*, 559 U.S. at 515-16. (emphasis added).

18 Because CalSavers, unlike ERISA, *forces* (rather than encourages) employers to have an  
19 ERISA-covered pension plan, or else provide an equivalent through CalSavers, *see supra* Section  
20 I, it conflicts with ERISA even if CalSavers does not create ERISA-covered plans itself.  
21 However, because CalSavers *does* create ERISA-covered plans by requiring employers to  
22 maintain a “plan, program, or fund,” *see supra* Section II, it conflicts with numerous substantive  
23 requirements of ERISA as well—CalSavers has its own administrative regime, fiduciary  
24 obligations, reporting procedures, and enforcement mechanisms, entirely apart from those set  
25 forth in or required by ERISA. *See Cal. Gov’t Code §§100000 et seq.* These provisions clearly  
26 conflict with ERISA and are therefore preempted.



**CONCLUSION**

1  
2 Because the CalSavers Act is preempted by ERISA, this Court should deny Defendant's  
3 motion to dismiss Plaintiff's First Amended Complaint.

4 Date: September 13, 2019

Respectfully submitted:

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26 a plan under ERISA section 514(a)). Where a state law "stands as an obstacle to the

1 accomplishment and execution of the full purposes and objectives of Congress,” the law may be  
2 preempted under those principles. *Gade v. Nat’l Solid Waste Mgmt. Assoc.*, 505 U.S. 88, 98  
3 (1992). Conflict preemption analysis is “informed by examining the federal statute as a whole  
4 and identifying its purpose and intended effects.” *Crosby v. Nat’l For. Trade Council*, 530 U.S.  
5 363, 373 (2000).

6 As the case law interpreting the express preemption doctrine makes clear, “[t]he purpose  
7 of ERISA is to provide a uniform regulatory regime over employee benefit plans.” *Aetna Health,*  
8 *Inc., v. Davila*, 542 U.S. 200, 208 (2008). Congress, through ERISA, carefully refrained from  
9 mandating “what kind of benefits employers must provide if they choose to have such a plan.”  
10 *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). ERISA’s “comprehensive and reticulated”  
11 regime does not “require employers to establish benefit plans in the first place.” *Mertens*, 508  
12 U.S. at 251; *Conkright*, 559 U.S. at 516-17. ERISA’s provisions do not mandate plans, but  
13 include specific provisions to encourage the creation of plans, and then to apply its requirements  
14 to those plans. *See, e.g., Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014) (discussing  
15 application of ERISA to employee stock ownership plans). The Court “[has] therefore  
16 recognized that ERISA represents a ‘careful balancing’ between ensuring fair and prompt  
17 enforcement of rights under a plan and the *encouragement* of the creation of such plans.”  
*Conkright*, 559 U.S. at 515-16. (emphasis added).

18 Because CalSavers, unlike ERISA, *forces* (rather than encourages) employers to have an  
19 ERISA-covered pension plan, or else provide an equivalent through CalSavers, *see supra* Section  
20 I, it conflicts with ERISA even if CalSavers does not create ERISA-covered plans itself.  
21 However, because CalSavers *does* create ERISA-covered plans by requiring employers to  
22 maintain a “plan, program, or fund,” *see supra* Section II, it conflicts with numerous substantive  
23 requirements of ERISA as well—CalSavers has its own administrative regime, fiduciary  
24 obligations, reporting procedures, and enforcement mechanisms, entirely apart from those set  
25 forth in or required by ERISA. *See* Cal. Gov’t Code §§100000 *et seq.* These provisions clearly  
26 conflict with ERISA and are therefore preempted.

**CONCLUSION**

1  
2 Because the CalSavers Act is preempted by ERISA, this Court should deny Defendant's  
3 motion to dismiss Plaintiff's First Amended Complaint.

4 Date: September 13, 2019

Respectfully submitted:

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