
A BILL FOR AN ACT

RELATING TO HAWAII RETIREMENT SAVINGS ACT.

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

1 SECTION 1. The purpose of this Act is to:

2 (1) Clarify the definition of "covered employer" in the
3 Hawaii Retirement Savings Act; and

4 (2) Amend and align provisions of the Hawaii retirement
5 savings program, the state-facilitated payroll-
6 deduction retirement savings plan for private sector
7 employees in Hawaii who do not have access to
8 employer-sponsored retirement plans, to require
9 automatic enrollment unless the employee opts out.

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

13 ""Covered employer" means any person who is in business in
14 the State and has one or more individuals in employment.

15 "Covered employer" does not include:

16 (1) The United States;

17 (2) The State or any of its political subdivisions; or



1 (3) A person that has [~~been maintaining~~] offered or
2 maintained for some or all employees at any time
3 during the preceding two years a retirement plan that
4 is tax-qualified under or is described in and
5 satisfies the requirements of section 401(a), 401(k),
6 403(a), 403(b), 408(k), or 408(p) of the Internal
7 Revenue Code."

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

10 "(a) The board shall have powers and duties in accordance
11 with law to:

- 12 (1) Establish, implement, and maintain the program;
- 13 (2) Cause the program and arrangements and accounts
14 established under the program to be designed,
15 established, and operated:
 - 16 (A) In accordance with best practices for retirement
17 savings vehicles;
 - 18 (B) To encourage participation, saving, sound
19 investment practices, and appropriate selection
20 of default investments;



- 1 (C) To maximize simplicity and ease of administration
- 2 for employers;
- 3 (D) To minimize costs, including by collective
- 4 investment and other measures to achieve
- 5 economies of scale and other efficiencies in
- 6 program design and administration;
- 7 (E) To promote portability of benefits; and
- 8 (F) To avoid preemption of the program by federal
- 9 law;
- 10 (3) Arrange for collective, common, and pooled investment
- 11 of assets of the program;
- 12 (4) Determine the eligibility of an employer, employee, or
- 13 other individual to participate in the program;
- 14 (5) Ensure the program's compliance with all applicable
- 15 laws and regulations;
- 16 (6) Establish procedures for the timely and fair
- 17 resolution of participant and other disputes related
- 18 to accounts or program operation;
- 19 (7) Develop and implement:



- 1 (A) An investment policy that defines the program's
2 investment objectives and that is consistent with
3 the objectives of the program; and
4 (B) Other policies and procedures consistent with
5 those investment objectives;
- 6 (8) Cause expenses incurred to initiate, implement,
7 maintain, and administer the program to be paid from
8 the program and other available sources;
- 9 (9) Establish and collect application, account, and
10 administrative fees;
- 11 (10) Accept grants, gifts, donations, legislative
12 appropriations, loans, and other moneys from the
13 State, any unit of federal, state, or local
14 government, or any other person to defray the costs of
15 administering and operating the program;
- 16 (11) Enter into contracts pursuant to chapter 103D for
17 services that the board deems necessary to carry out
18 the purposes of this chapter, including:
- 19 (A) Services of private and public financial
20 institutions, depositories, consultants,
21 actuaries, counsel, auditors, investment



1 advisors, investment administrators, investment
2 management firms, other investment firms, third-
3 party administrators, other professionals and
4 service providers;

5 (B) Research, technical, financial, administrative,
6 and other services; and

7 (C) Services of other state agencies to assist the
8 board in the exercise of its powers and duties;

9 (12) Develop and implement an outreach plan to gain input
10 and disseminate information regarding the program and
11 retirement savings in general;

12 (13) Cause moneys to be held and invested and reinvested
13 under the program;

14 (14) Ensure that all contributions to individual retirement
15 accounts under the program may be used only to:

16 (A) Pay benefits to participants under the program;
17 (B) Pay the cost of administering the program; and
18 (C) Make investments for the benefit of the program;

19 provided that no assets of the program shall be
20 transferred to the general fund of the State or to any
21 other fund of the State or otherwise encumbered or



1 used for any purpose other than those specified in
2 this paragraph;

3 (15) Provide for the payment of costs of administration and
4 operation of the program;

5 (16) Evaluate the need for and, if the board deems
6 necessary, procure:

7 (A) Insurance against any and all loss in connection
8 with the property, assets, or activities of the
9 program; and

10 (B) Pooled private insurance;

11 (17) Indemnify, including procurement of insurance if and
12 as needed for this purpose, each board member from
13 personal loss or liability resulting from the member's
14 action or inaction as a board member;

15 (18) Collaborate with and evaluate the role of financial
16 advisors or other financial professionals, including
17 in assisting and providing guidance for covered
18 employees; [~~and~~]

19 (19) Reimburse, when appropriate, the general fund of the
20 State of Hawaii for the initial expenses incurred for



1 initiating, implementing, maintaining, and
2 administering the program; and

3 (20) Take any other action the board deems reasonably
4 necessary to carry out the purpose of this chapter.

5 (b) The board may develop and disseminate information
6 designed to educate covered employees about the impacts of
7 ~~[opting in to]~~ the program on take-home pay, savings strategies,
8 and the benefits of planning and saving for retirement to help
9 covered employees in deciding whether to participate and at what
10 level participation may be appropriate."

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

13 1. By amending its title to read:

14 "~~[+]§389-5[+]~~ **Hawaii retirement savings program; due**
15 **diligence; establishment; payroll deduction** ~~[upon election to~~
16 ~~contribute]."~~

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

18 "(d) ~~[Any covered employee may elect to contribute a~~
19 ~~portion of the employee's salary or wages to an individual~~
20 ~~retirement account provided by the program through payroll~~
21 ~~deduction.]~~ Each covered employer shall enroll its covered



1 employees in the program and withhold payroll deduction
2 contributions from each covered employee's paycheck unless the
3 covered employee has elected not to contribute.

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

6 (1) [~~Allow a~~] Automatically enroll covered [~~employee to~~
7 ~~enroll~~] employees into the program after [~~providing~~]
8 the program administrator provides the [~~covered~~
9 ~~employee~~] employees with a written notice of the
10 [~~employee's~~] right of the employees to opt [~~in~~] out;
11 and

12 (2) For any covered employee who [~~has opted in to~~] is
13 enrolled into the program[+], a covered employer
14 shall:

15 (A) Withhold the covered employee's contribution
16 amount from the employee's salary or wages; and

17 (B) Transmit the covered employee's payroll deduction
18 contribution to the program on the earliest date
19 the amount withheld can reasonably be segregated
20 from the covered employer's assets, but no later
21 than the fifteenth day of the calendar month



1 following the month in which the covered
2 employee's contribution amounts are withheld.

3 (f) The program shall establish for each enrolled employee
4 a Roth IRA, into which the contributions deducted from ~~an~~ the
5 employee's payroll shall be deposited. The board may add an
6 option for all participants to affirmatively elect to contribute
7 to a traditional IRA in addition to or in lieu of a Roth IRA."

8 SECTION 5. Section 389-14, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Any covered employer who fails to enroll a covered
11 employee into the program in accordance with section 389-5(e)(1)
12 without equitable justification shall be liable:

13 (1) To the covered employee, in an amount equal to the
14 contribution amount that would have been made by the
15 employee into the program and interest at a rate of
16 six per cent per year on the contribution amount,
17 beginning from the date the contribution would have
18 been made into the account; provided that the sum of
19 the contribution amount and interest thereto shall be
20 transmitted by the covered employer to the program to
21 be paid into the covered employee's IRA; and



1 (2) A penalty of:

2 (A) \$25 for each month the covered employee was not
3 enrolled in the program; and

4 (B) \$50 for each month the covered employee continues
5 to be unenrolled in the program after the date on
6 which a penalty has been assessed with respect to
7 the covered employee who [~~had elected to~~
8 ~~participate~~] should have been enrolled in the
9 program."

10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect on July 1, 3000.



Report Title:

Hawaii Retirement Savings Act; Hawaii Retirement Savings Program; Covered Employer; Definition; Automatic Enrollment; Opt-out Option

Description:

Clarifies the definition of "covered employer" under the Hawaii Retirement Savings Act. Requires covered employers to automatically enroll covered employees into the Hawaii Retirement Savings Program unless the employee chooses to opt out. Effective 7/1/3000. (HD1)

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