

JAN 23 2025

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# 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 purposes of this Act are 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

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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;

21       (C) To maximize simplicity and ease of administration  
22       for employers;

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(D) To minimize costs, including by collective investment and other measures to achieve economies of scale and other efficiencies in program design and administration;

(E) To promote portability of benefits; and

(F) To avoid preemption of the program by federal law;

(3) Arrange for collective, common, and pooled investment of assets of the program;

(4) Determine the eligibility of an employer, employee, or other individual to participate in the program;

(5) Ensure the program's compliance with all applicable laws and regulations;

(6) Establish procedures for the timely and fair resolution of participant and other disputes related to accounts or program operation;

(7) Develop and Implement:

(A) An investment policy that defines the program's investment objectives and that is consistent with the objectives of the program; and

(B) Other policies and procedures consistent with those investment objectives;

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

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

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

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

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

(A) Pay benefits to participants under the program;

(B) Pay the cost of administering the program; and

(C) Make investments for the benefit of the program;

provided that no assets of the program shall be

transferred to the general fund of the State or

to any other fund of the State or otherwise

encumbered or used for any purpose other than

those specified in this paragraph;

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

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

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

(B) Pooled private insurance;

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

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

(19) Reimburse, when appropriate, the general fund of the State of Hawaii for the initial expenses incurred for initiating, implementing, maintaining, and administering the program; and

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

(b) The board may develop and disseminate information designed to educate covered employees about the impacts of [opting in to] the program on take-home pay, savings strategies, and the benefits of planning and saving for retirement to help

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1 covered employees in deciding whether to participate and at what  
2 level participation may be appropriate."

3 SECTION 4. Section 389-5, Hawaii Revised Statutes, is  
4 amended by amending its title to read as follows:

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

8 SECTION 5. Section 389-5, Hawaii Revised Statutes, is  
9 amended by amending subsections (d), (e), and (f) to read as  
10 follows:

11 "(d) [~~Any covered employee may elect to contribute a~~  
12 ~~portion of the employee's salary or wages to an individual~~  
13 ~~retirement account provided by the program through payroll~~  
14 ~~deduction.]~~ Each covered employer shall enroll its covered  
15 employees in the program and withhold payroll deduction  
16 contributions from each covered employee's paycheck unless the  
17 covered employee has elected not to contribute.

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

20 (1) [~~Allow a~~] Automatically enroll covered [~~employee to~~  
21 ~~enroll~~] employees into the program after [~~providing~~]  
22 the program administrator provides the covered

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1           ~~[employee]~~ employees with a written notice of the  
2           ~~[employees']~~ right to opt ~~[in,]~~ out; and

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

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

8           (B) Transmit the covered employee's payroll deduction  
9           contribution to the program on the earliest date  
10          the amount withheld can reasonably be segregated  
11          from the covered employer's assets, but no later  
12          than the fifteenth day of the calendar month  
13          following the month in which the covered  
14          employee's contribution amounts are withheld.

15          (f) The program shall establish for each enrolled employee  
16          a Roth ~~[IRA,]~~ individual retirement account, into which the  
17          contributions deducted from ~~[an]~~ the employee's payroll shall be  
18          deposited. The board may add an option for all participants to  
19          affirmatively elect to contribute to a traditional ~~[IRA]~~  
20          individual retirement account in addition to or in lieu of a  
21          Roth ~~[IRA,]~~ individual retirement account."



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SECTION 6. Section 389-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

(2) A penalty of:

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

(B) \$50 for each month the covered employee continues to be unenrolled in the program after the date on which a penalty has been assessed with respect to the covered employee who ~~[had elected to~~

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1                    ~~participate]~~ should have been enrolled in the  
2                    program."

3            SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5            SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: 

9

BY REQUEST

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**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 covered employee chooses to opt out. Effective upon approval.

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

JUSTIFICATION SHEET

**SB. NO. 1455**

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO HAWAII RETIREMENT SAVINGS ACT.

PURPOSE: To require employers to automatically enroll covered employees in the Hawaii Retirement Savings Program; allow covered employees to opt-out instead of opt-in; and clarify the definition of "covered employer".

MEANS: Amend sections 389-2, 389-4(a) and (b), and 389-5(d), (e), and (f), the title of section 389-5, and section 389-14(a), Hawaii Revised Statutes.

JUSTIFICATION: The Hawaii Retirement Savings Board (HRSB) believes that the current program design that requires employees to opt-in adversely impacts the viability of the Hawaii Retirement Savings Program. Automatically requiring employee enrollment with an option to opt-out is a best practice for retirement savings programs and would align Hawaii's program with most of the other states' programs.

Aligning Hawaii's program design with most of the other states' automatic enrollment provisions facilitates the potential for Hawaii to engage in an interstate compact agreement, which the HRSB believes is critical to the feasibility of the program.

This bill also (1) clarifies the definition of "covered employer" to exclude an employer that has offered or maintained for some or all employees at any time during the preceding two years a tax-qualified retirement plan; and (2) amends the penalty provision to include employer liability for a penalty for covered employees who should be enrolled in the program but are not enrolled. This bill also includes a

housekeeping provision that spells out "IRA" and "Roth IRA" as "individual retirement account" and "Roth individual retirement account."

Impact on the public: This proposal will facilitate the feasibility of the program and help enable business owners to offer a voluntary, portable retirement savings program to help them attract and retain employees and stay competitive.

Impact on the department and other agencies: This bill will positively affect agencies providing support to Hawaii's aging population as it will facilitate the establishment of private sector savings plans.

GENERAL FUND:	None.
OTHER FUNDS:	Hawaii retirement savings special fund.
PPBS PROGRAM DESIGNATION:	LBR 902.
OTHER AFFECTED AGENCIES:	Department of Budget and Finance.
EFFECTIVE DATE:	Upon approval.