A BILL FOR AN ACT

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

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

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

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

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

(1) For the exclusive purpose of:

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

(B) Defraying reasonable expenses of administering the plan;
(2) With the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of an enterprise of a similar character and with like aims;

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

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

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

(1) If the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act of omission of the other fiduciary, knowing that act or omission is a breach;
(2) If, by the fiduciary's failure to comply with subsection (a) or (b), the fiduciary has enabled the other fiduciary to commit a breach; or

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

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

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

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

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

(3) Furnishing of goods, services, or facilities between the plan and a party in interest; or
(4) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

(e) A fiduciary shall not:

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

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

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

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

§87A-B Liability for breach of fiduciary duty. (a) Any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties
imposed on fiduciaries by this chapter shall be personally liable for reimbursing the plan for any losses to the plan resulting from each breach, and restoring to the plan any profits of the fiduciary that have been made through the use of assets of the plan by the fiduciary, and shall be subject to any other equitable and remedial relief as a court may deem appropriate, including removal of the fiduciary.

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

(1) A plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary in the case of a breach of a fiduciary obligation by the fiduciary, provided that the insurance permits recourse by the insurer against the fiduciary in the case of a breach of fiduciary obligation by the fiduciary;
A fiduciary from purchasing insurance to cover liability under this chapter from and for the fiduciary's own personal account; or

An employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee welfare benefit plan."

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

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2050.
Report Title:
EUTF; Fiduciary Duties; Prohibited Transactions; Liabilities

Description:
Creates a fiduciary duty on EUTF trustees. Prohibits transactions where the trustee has a conflict of interest. Establishes liabilities for breach of fiduciary duty. (HB393 HD1)

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