

1 AN ACT

2 relating to the programs and systems administered by the Employees  
3 Retirement System of Texas.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 609.008, Government Code, is amended to  
6 read as follows:

7 Sec. 609.008. CREDITING TRUST FUND INTEREST. Interest  
8 earned on an employee's deferred amounts and investment income  
9 deposited in any of the deferred compensation trust funds [~~fund~~],  
10 as defined by Section 609.101, or [~~in the TexasSaver trust fund or~~  
11 ~~the other deferred compensation trust fund~~] to which Section  
12 609.512 applies is credited to the employee.

13 SECTION 2. Sections 609.011 and 609.012, Government Code,  
14 are amended to read as follows:

15 Sec. 609.011. NOTIFICATION BY [457] PLAN ADMINISTRATOR.

16 (a) The plan administrator of a [457] plan established under this  
17 chapter may notify an employee participating in the plan that the  
18 administrator believes that:

19 (1) a qualified vendor is having significant financial  
20 difficulties; or

21 (2) the amount of the employee's deferred amounts and  
22 investment income invested with a qualified vendor exceeds an  
23 insured or guaranteed level.

24 (b) A plan administrator is not liable to a participating

1 ~~[an]~~ employee for a loss resulting from the failure to notify the  
2 employee under this section.

3           Sec. 609.012. TRANSFER FROM A ~~[457]~~ PLAN VENDOR. The plan  
4 administrator of a ~~[457]~~ plan established under this chapter may  
5 immediately transfer to the plan's deferred compensation trust fund  
6 all deferred amounts and investment income from a vendor who at any  
7 time fails to satisfy the requirements of this chapter or the plan  
8 administrator. A vendor may not charge a fee or penalty as the  
9 result of a plan administrator's transfer under this section.

10 Immediately after making the transfer, the plan administrator shall  
11 give to each employee whose deferred amounts and investment income  
12 were transferred a notice that states that:

13           (1) the vendor's investment products are ineligible to  
14 receive additional deferred amounts;

15           (2) the amounts have been transferred from the vendor  
16 to the deferred compensation trust fund; and

17           (3) the employee is required to promptly designate  
18 another qualified investment product to receive the transferred  
19 amount.

20           SECTION 3. Section 609.502, Government Code, is amended to  
21 read as follows:

22           Sec. 609.502. CREATION OF PLAN; PARTICIPATION. (a) The  
23 board of trustees of the Employees Retirement System of Texas is the  
24 trustee and the plan administrator of a 401(k) plan and a 457 plan,  
25 collectively known as the TexaSaver program, established under this  
26 subchapter.

27           (b) ~~[The board of trustees is the trustee and the plan~~

1 ~~administrator of a 457 plan established under this subchapter.~~

2       ~~[(c)]~~ The board of trustees shall administer all aspects of  
3 each plan.

4       (c) ~~[(d)]~~ The board of trustees may designate a person to  
5 assist in the execution of the board's authority and  
6 responsibilities as plan administrator.

7       (d) ~~[(e)]~~ A state agency may participate in either or both  
8 plans.

9       SECTION 4. Section 609.505(a), Government Code, is amended  
10 to read as follows:

11       (a) The board of trustees or a third party administrator  
12 approved by the board, in accordance with rules adopted under this  
13 subchapter, may contract with a vendor qualified to participate in  
14 a deferred compensation plan.

15       SECTION 5. Section 609.508, Government Code, is amended to  
16 read as follows:

17       Sec. 609.508. RULES. (a) The board of trustees may adopt  
18 rules, including plans and procedures, and orders necessary to  
19 carry out the purposes of this subchapter, including rules or  
20 orders relating to:

21               (1) the selection and regulation of vendors for a  
22 deferred compensation plan;

23               (2) the regulation of the practices of agents employed  
24 by vendors and a participating employee's use and reimbursement of  
25 investment advisors participating in the program;

26               (3) the disclosure of information concerning  
27 investment products;

1 (4) the regulation of advertising materials to be used  
2 by vendors;

3 (5) the submission of financial information by a  
4 vendor; and

5 (6) the development of a system to facilitate  
6 electronic authorization, distribution, transfer, and investment  
7 of deferrals.

8 (b) The plan administrator of the TexaSaver 401(k) or the  
9 TexaSaver 457 plan may adopt rules and procedures to allow a  
10 participating employee, subject to applicable requirements of the  
11 Internal Revenue Code of 1986, to obtain a loan from the employee's  
12 account.

13 SECTION 6. Sections 609.512(a) and (b), Government Code,  
14 are amended to read as follows:

15 (a) The TexaSaver 401(k) trust fund is in the state  
16 treasury. The fund is for the benefit of the program described by  
17 Section 609.001(10) [TexaSaver].

18 (b) The TexaSaver 457 [~~deferred compensation~~] trust fund is  
19 in the state treasury. The fund is for the benefit of the program  
20 described by Section 609.001(11) [~~deferred compensation plan~~  
21 ~~described by Section 609.502(b)~~].

22 SECTION 7. Section 615.023, Government Code, as amended by  
23 Chapter 1231 and repealed by Chapter 1438, Acts of the 77th  
24 Legislature, Regular Session, 2001, is reenacted to read as  
25 follows:

26 Sec. 615.023. PAYMENT TO SURVIVING MINOR CHILD. (a) The  
27 state shall pay to the duly appointed or qualified guardian or other

1 legal representative of an eligible surviving minor child:

2 (1) \$200 each month, if there is one surviving child;

3 (2) \$300 each month, if there are two surviving  
4 children; or

5 (3) \$400 each month, if there are three or more  
6 surviving children.

7 (b) A child's entitlement to assistance payable under this  
8 section ends on the child's 18th birthday. At that time, payments  
9 to any other surviving minor children shall be adjusted, as  
10 necessary, to conform to the amounts payable under Subsection (a).

11 (c) A payment under this section is in addition to any  
12 payment made under Section 615.022.

13 SECTION 8. Section 615.045(a), Government Code, is amended  
14 to read as follows:

15 (a) Records of individuals listed by Section 615.003 and of  
16 survivors eligible for benefits under this chapter that are in the  
17 custody of the Employees Retirement System of Texas or an [~~a~~  
18 ~~carrier,~~] administering firm as defined by Section 1551.003,  
19 Insurance Code [~~the Texas Employees Uniform Group Insurance~~  
20 ~~Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)], or  
21 another [~~other~~] governmental agency acting with or on behalf of the  
22 retirement system are confidential and [~~7~~] not subject to public  
23 disclosure, and the retirement system is not required to accept or  
24 comply with a request for a record or information about a record or  
25 to seek an opinion from the attorney general, because the records  
26 are exempt from the public information provisions of Chapter 552,  
27 except as otherwise provided by this section.~~

1 SECTION 9. Section 659.102, Government Code, is amended by  
2 amending Subsection (c) and adding Subsection (d) to read as  
3 follows:

4 (c) The supplemental optional benefits program may include  
5 permanent life insurance, catastrophic illness insurance,  
6 disability insurance, ~~or~~ prepaid legal services, or a qualified  
7 transportation benefit.

8 (d) A qualified transportation benefit is a transportation  
9 benefit meeting the requirements of Section 132(f), Internal  
10 Revenue Code of 1986. The Employees Retirement System of Texas  
11 shall determine a fee or charge that may be paid as a qualified  
12 transportation benefit.

13 SECTION 10. Section 811.001(12), Government Code, is  
14 amended to read as follows:

15 (12) "Occupational death or disability" means death or  
16 disability from a sudden and unexpected ~~an~~ injury or disease that  
17 ~~directly~~ results solely from a specific act or occurrence  
18 determinable by a definite time and place~~7~~ and solely ~~directly~~  
19 ~~results~~ from an extremely dangerous risk of severe physical or  
20 mental trauma or disease that is not common to the public at large  
21 and that is ~~a risk or a hazard~~ peculiar to and inherent in a  
22 dangerous ~~a~~ duty that arises from the nature and in the course of  
23 a person's state employment.

24 SECTION 11. Subchapter A, Chapter 811, Government Code, is  
25 amended by adding Sections 811.007 and 811.008 to read as follows:

26 Sec. 811.007. IMMUNITY FROM LIABILITY. The board of  
27 trustees, executive director, and employees of the retirement

1 system are not liable for any action taken or omission made or  
2 suffered by them in good faith in the performance of any duty in  
3 connection with any program or system administered by the  
4 retirement system.

5 Sec. 811.008. INSURANCE. Notwithstanding any other law,  
6 the board of trustees may self-insure or purchase any insurance in  
7 amounts the board considers reasonable and prudent.

8 SECTION 12. Section 812.003(a), Government Code, is amended  
9 to read as follows:

10 (a) Except as provided by Subsection (b), membership in the  
11 employee class of the retirement system includes all employees and  
12 appointed officers of every department, commission, board, agency,  
13 or institution of the state except:

14 (1) independent contractors and their employees  
15 performing work for the state; and

16 (2) persons disqualified from membership under  
17 Section 812.201[~~, and~~

18 [~~(3) persons disqualified from membership under~~  
19 ~~Section 812.004].~~

20 SECTION 13. Section 812.203, Government Code, is amended to  
21 read as follows:

22 Sec. 812.203. BENEFITS AFFECTED. (a) [~~(c) Time during~~  
23 ~~which retirement benefit payments are suspended as provided by this~~  
24 ~~section does not reduce the number of months payments are to be made~~  
25 ~~under an optional benefit plan providing for a specific amount of~~  
26 ~~benefits for a guaranteed number of months after retirement.~~

27 [~~(d)~~] If a retiree takes the oath for a position included in

1 the elected class of membership, the retirement system shall  
2 suspend annuity payments to the person for service that was  
3 credited in that class, until the person no longer holds that  
4 position.

5 (b) Time during which annuity payments are suspended as  
6 provided by this section does not reduce the number of months  
7 payments are to be made under an optional benefit selection  
8 providing for a specific amount of benefits for a guaranteed number  
9 of months after retirement.

10 (c) [~~(e)~~] If a member who originally retired with service  
11 credited at the time of that retirement only in the elected class of  
12 membership again retires, the person at the time of subsequent  
13 retirement may select an annuity based on service in the elected  
14 class as if the person were retiring for the first time. If the  
15 person selects an annuity under Section 814.108(c)(3) or (c)(4),  
16 the retirement system shall reduce the number of months of  
17 guaranteed payment by the number of months for which an annuity was  
18 paid under the person's original retirement.

19 SECTION 14. The heading of Section 813.104, Government  
20 Code, is amended to read as follows:

21 Sec. 813.104. ALTERNATIVE PAYMENTS AND METHODS TO ESTABLISH  
22 OR REESTABLISH SERVICE CREDIT.

23 SECTION 15. Section 813.104, Government Code, is amended by  
24 adding Subsection (e) to read as follows:

25 (e) The retirement system may provide for the electronic  
26 filing of agreements to establish or reestablish service credit.  
27 In this subsection "electronic filing" has the meaning assigned by



1 Section 814.010(a).

2 SECTION 16. Subchapter A, Chapter 814, Government Code, is  
3 amended by adding Section 814.010 to read as follows:

4 Sec. 814.010. ELECTRONIC FILING OF BENEFICIARY  
5 DESIGNATION. (a) In this section, "electronic filing" means the  
6 filing of data in the form of digital electronic signals  
7 transformed by computer and stored on magnetic tape, optical disks,  
8 or any other medium.

9 (b) A person entitled to designate a beneficiary under any  
10 system or program administered by the retirement system may make  
11 the designation by electronic filing under procedures adopted by  
12 the retirement system.

13 SECTION 17. Section 814.104(b), Government Code, is amended  
14 to read as follows:

15 (b) A member who is at least 55 years old and who has at  
16 least 10 years of service credit as a commissioned peace officer  
17 engaged in criminal law enforcement activities of the Department of  
18 Public Safety, the Texas Alcoholic Beverage Commission, the State  
19 Board of Pharmacy, or the Parks and Wildlife Department, [~~as an~~  
20 ~~employee of the Railroad Commission of Texas who is licensed by the~~  
21 ~~Commission on Law Enforcement Officer Standards and Education and~~  
22 ~~has served at least five years as an investigator for the oil field~~  
23 ~~theft detection division,~~] or as a custodial officer, is eligible  
24 to retire and receive a service retirement annuity.

25 SECTION 18. Section 814.108(f), Government Code, is amended  
26 to read as follows:

27 (f) The computation of an optional annuity must be made

1 without regard to the gender [~~sex~~] of the annuitant or designee  
2 involved.

3 SECTION 19. Section 814.203, Government Code, is amended to  
4 read as follows:

5 Sec. 814.203. CERTIFICATION OF DISABILITY. As soon as  
6 practicable after an application for disability retirement is  
7 filed, the medical board shall evaluate the medical and other  
8 pertinent information regarding the member's application. If the  
9 medical board finds that the member is mentally or physically  
10 incapacitated for the further performance of duty and[~~7~~] that the  
11 incapacity is likely to be permanent, [~~and that the member should be~~  
12 ~~retired,~~] the medical board shall issue a certification of  
13 disability and submit it to the executive director.

14 SECTION 20. Sections 814.207(a) and (e), Government Code,  
15 are amended to read as follows:

16 (a) An annuity payable for [~~because of~~] an occupational  
17 disability resulting [~~that directly results~~] from a risk [~~or~~  
18 ~~hazard~~] to which law enforcement or custodial officers are exposed  
19 because of the nature of law enforcement or custodial duties is  
20 payable under the same terms and conditions that apply to other  
21 occupational disability retirement annuities under this subtitle,  
22 except that the source and amount of the annuity are as provided by  
23 this section.

24 (e) If a retiring member or retiree under this section  
25 presents evidence satisfactory to the retirement system that the  
26 person's occupational disability [~~condition~~] makes the person  
27 incapable of substantial gainful activity solely because of the

1 disability [~~occupation~~] and is considered a total disability under  
2 federal social security law, the retirement system shall increase  
3 the person's occupational disability retirement annuity to 100  
4 percent of the officer's average monthly compensation.

5 SECTION 21. Section 814.603, Government Code, is amended to  
6 read as follows:

7 Sec. 814.603. SUPPLEMENTAL PAYMENTS [~~ONE-TIME PAYMENT~~].

8 (a) The retirement system may [~~shall~~] make a supplemental payment  
9 as provided by this section [~~Subsection (d)~~] to persons whose  
10 annuities are described by Section 814.107, 814.207, 814.305, or  
11 814.601(a) and that are based on service retirements, disability  
12 retirements, or deaths. A [~~This~~] supplemental payment made under  
13 this section is in addition to the regular monthly annuity payment.  
14 [~~Each person who receives an annuity described by this subsection~~  
15 ~~is entitled to receive one payment equal to 10 percent of one~~  
16 ~~month's annuity payment for each fiscal year that preceded or~~  
17 ~~includes the effective date of the requirement or authorization~~  
18 ~~under Subsection (d) and in which the annuity has been paid. A~~  
19 ~~supplemental payment may not exceed 350 percent of a monthly~~  
20 ~~annuity.~~] Supplemental payments under this section [~~subsection~~]  
21 must comply with Section 811.006.

22 (b) The board of trustees shall determine the amount and  
23 timing of a supplemental payment and the manner in which the payment  
24 is made.

25 (c) The retirement system shall pay any [~~the~~] supplemental  
26 payment made under this section [~~provided by Subsection (a)~~] from  
27 the retirement annuity reserve account and may transfer to that

1 account from the state accumulation account any portion of the  
2 amount that exceeds the amount in the retirement annuity reserve  
3 account available to finance this supplemental payment and that is  
4 actuarially determined to be necessary to finance the supplemental  
5 payment.

6 ~~[(c) The board of trustees may adopt rules to implement the  
7 payment, including rules that govern the timing of the supplemental  
8 payment described by Subsection (a).]~~

9 ~~[(d) The retirement system shall make a supplemental  
10 payment under this section in the fiscal year ending August 31,  
11 1997. The board of trustees may by rule authorize similar  
12 supplemental payments in succeeding fiscal years, if the payments  
13 are in compliance with Section 811.006.]~~

14 SECTION 22. Section 815.008(c), Government Code, is amended  
15 to read as follows:

16 (c) If the executive director has knowledge that a potential  
17 ground for removal exists, the executive director shall notify the  
18 presiding officer ~~[chairman]~~ of the board of the ground. The  
19 presiding officer ~~[chairman]~~ shall then notify the appropriate  
20 appointing officer, if any, that a potential ground for removal  
21 exists.

22 SECTION 23. Section 815.103, Government Code, is amended by  
23 adding Subsection (f) to read as follows:

24 (f) Chapter 412, Labor Code, does not apply to the  
25 retirement system. The board of trustees may acquire services  
26 described by that chapter in any manner or amount the board  
27 considers reasonable.

1 SECTION 24. Section 815.201, Government Code, is amended to  
2 read as follows:

3 Sec. 815.201. PRESIDING OFFICER [~~CHAIRMAN~~]. The board of  
4 trustees shall elect a presiding officer from the membership  
5 [~~chairman. The chairman must be a member~~] of the board.

6 SECTION 25. Section 815.202(c), Government Code, is amended  
7 to read as follows:

8 (c) To be eligible to serve as the executive director, a  
9 person must:

10 (1) be a citizen of the United States and have been a  
11 resident [~~citizen~~] of the state for the three years immediately  
12 preceding the person's appointment; and

13 (2) have executive ability and experience to carry out  
14 the duties of the office.

15 SECTION 26. Section 815.207(b), Government Code, is amended  
16 to read as follows:

17 (b) The comptroller shall pay money from the funds of the  
18 retirement system on warrants drawn by the comptroller supported  
19 only on vouchers signed by the executive director and the presiding  
20 officer [~~chairman~~] of the board of trustees or their authorized  
21 representatives.

22 SECTION 27. Section 815.307, Government Code, is amended to  
23 read as follows:

24 Sec. 815.307. DUTY OF CARE. The assets of the retirement  
25 system shall be invested and reinvested without distinction as to  
26 their source in accordance with Section 67, Article XVI, Texas  
27 Constitution. A determination of whether the board of trustees has

1 exercised prudence with respect to an investment decision must be  
2 made taking into consideration the investment of all assets of the  
3 trust or all assets of the collective investment vehicle, as  
4 applicable, over which the board has management and control, rather  
5 than considering the prudence of a single investment of the trust or  
6 the collective investment vehicle, as applicable. [~~Investment~~  
7 ~~decisions are subject to the standard provided in the Texas Trust~~  
8 ~~Code by Section 113.056(a), Property Code.~~]

9 SECTION 28. Section 815.503(a), Government Code, is amended  
10 to read as follows:

11 (a) Records of members, annuitants, retirees,  
12 beneficiaries, and alternate payees under retirement plans  
13 administered by the retirement system that are in the custody of the  
14 system or of an administrator, carrier, or other governmental  
15 agency acting in cooperation with or on behalf of the retirement  
16 system are confidential and not subject to public disclosure, and  
17 the retirement system is not required to accept or comply with a  
18 request for a record or information about a record or to seek an  
19 opinion from the attorney general, because the records are exempt  
20 from the public access provisions of Chapter 552, except as  
21 otherwise provided by this section.

22 SECTION 29. Section 815.511, Government Code, is amended to  
23 read as follows:

24 Sec. 815.511. ADMINISTRATIVE DECISION; APPEAL AND  
25 NEGOTIATION. (a) A person aggrieved by a decision of the  
26 retirement system relating to any program or system administered by  
27 the system under this code denying or limiting membership, service

1 credit, or eligibility for or the amount of benefits payable under  
2 the program or system may appeal the decision to the board of  
3 trustees.

4 (b) The executive director or the executive director's  
5 designee may refer an appeal made under Subsection (a) to the State  
6 Office of Administrative Hearings for a hearing or employ, select,  
7 or contract for the services of an administrative law judge or  
8 hearing examiner not affiliated with the State Office of  
9 Administrative Hearings to conduct a hearing. This subsection  
10 prevails over any other law to the extent of any conflict.

11 (c) An appeal under this section is considered to be a  
12 contested case under Chapter 2001. The appellant in a contested  
13 case under this section has the burden of proof on all issues,  
14 including issues in the nature of an affirmative defense.

15 (d) The board of trustees may in its sole discretion make a  
16 final decision on a contested case under this section.  
17 Notwithstanding any other law, the [The] board of trustees may in  
18 its sole discretion modify, refuse to accept, or delete any [a]  
19 proposed finding of fact or conclusion of law contained in a  
20 proposal for decision submitted by an administrative law judge or  
21 other hearing examiner, or make alternative findings of fact and  
22 conclusions of law, in a proceeding considered to be a contested  
23 case under Chapter 2001. The board of trustees shall state in  
24 writing the specific reason for its determination and may adopt  
25 rules for the implementation of this subsection. The board of  
26 trustees may delegate its authority under this subsection to the  
27 executive director, and the executive director may delegate the

1 authority to another employee of the retirement system.

2 (e) Notwithstanding Subsections (c) and (d), the retirement  
3 system and a person aggrieved by a decision of the system may at any  
4 time informally negotiate an award of benefits. Negotiated  
5 benefits may not exceed the maximum benefits otherwise available or  
6 required by law.

7 (f) A person aggrieved by a final decision of the retirement  
8 system in a contested case under this section is entitled to  
9 judicial review under Chapter 2001. Venue of the appeal is only in  
10 a district court in Travis County. [~~(b) A person aggrieved by a~~  
11 decision of any retirement system administered by the board of  
12 trustees denying or limiting membership, service credit, or  
13 eligibility for or the amount of benefits payable by a system may  
14 appeal the decision to the board. The appeal is considered to be an  
15 appeal of a contested case under the administrative procedure law,  
16 Chapter 2001.] On judicial appeal the standard of review is by  
17 substantial evidence.

18 [~~(c) Notwithstanding Subsection (b), the retirement system~~  
19 and a person aggrieved by a decision of the system may at any time  
20 informally negotiate an award of benefits. Negotiated benefits may  
21 not exceed the maximum benefits otherwise available or required by  
22 law.

23 [~~(d) On behalf of the retirement system, the executive~~  
24 director may refer an appeal made under Subsection (b) to the State  
25 Office of Administrative Hearings for a hearing or, notwithstanding  
26 Section 2003.021 or other law, employ or contract for the services  
27 of an administrative law judge or hearing examiner not affiliated



1 ~~with the State Office of Administrative Hearings to conduct the~~  
2 ~~hearing.]~~

3 SECTION 30. Section 838.103(b), Government Code, is amended  
4 to read as follows:

5 (b) A member eligible to establish military service credit  
6 is one who:

7 (1) [~~currently contributes to the retirement system,~~  
8 [~~(2)~~] has at least eight years of service credit in the  
9 retirement system;

10 (2) [~~(3)~~] does not receive and is not eligible to  
11 receive federal retirement payments based on 20 years or more of  
12 active federal military duty or its equivalent; and

13 (3) [~~(4)~~] has been released from military duty under  
14 conditions not dishonorable.

15 SECTION 31. Section 838.106(a), Government Code, is amended  
16 to read as follows:

17 (a) A [~~contributing~~] member may establish service credit in  
18 the retirement system for any calendar year during which the  
19 member:

20 (1) held an office included in the membership of the  
21 retirement system; or

22 (2) was eligible to take the oath for an office  
23 included in the membership of the retirement system.

24 SECTION 32. Section 840.303, Government Code, is amended to  
25 read as follows:

26 Sec. 840.303. DUTY OF CARE. The assets of the retirement  
27 system shall be invested and reinvested without distinction as to

1 their source in accordance with Section 67, Article XVI, Texas  
2 Constitution. A determination of whether the board of trustees has  
3 exercised prudence with respect to an investment decision must be  
4 made taking into consideration the investment of all assets of the  
5 trust or all assets of the collective investment vehicle, as  
6 applicable, over which the board has management and control, rather  
7 than considering the prudence of a single investment of the trust or  
8 the collective investment vehicle, as applicable. [~~Investment~~  
9 ~~decisions are subject to the standard provided in the Texas Trust~~  
10 ~~Code by Section 113.056(a), Property Code.~~]

11 SECTION 33. Section 1551.063(a), Insurance Code, as  
12 effective June 1, 2003, is amended to read as follows:

13 (a) The records of a participant in the group benefits  
14 program in the custody of the board of trustees, or of an  
15 administrator or carrier acting on behalf of the board, are  
16 confidential and not subject to disclosure, and the board is not  
17 required to accept or comply with a request for a record or  
18 information about a record or to seek an opinion from the attorney  
19 general, because the records [~~and~~] are exempt from the public  
20 access provisions of Chapter 552, Government Code, except as  
21 provided by this section.

22 SECTION 34. Section 1551.102(d), Insurance Code, as  
23 effective June 1, 2003, is amended to read as follows:

24 (d) An individual is eligible to participate in the group  
25 benefits program as provided by Subsection (a) if the individual:

26 (1) retires under the optional retirement program  
27 established by Chapter 830, Government Code, with at least 10 years

1 of eligible service; and

2 (2) receives or is eligible to receive an annuity  
3 under that program and the individual:

4 (A) would have been eligible to retire and  
5 receive a service or disability retirement annuity from the Teacher  
6 Retirement System of Texas or the Employees Retirement System of  
7 Texas based on at least 10 years of service credit if the individual  
8 had not elected to participate in the optional retirement program;  
9 or

10 (B) is disabled as determined by the Employees  
11 Retirement System of Texas.

12 SECTION 35. Section 1551.209, Insurance Code, as effective  
13 June 1, 2003, is amended to read as follows:

14 Sec. 1551.209. [~~SELF-FUNDED~~] COVERAGE EXEMPT FROM  
15 INSURANCE LAW. A coverage plan provided [~~for which the board of~~  
16 ~~trustees does not purchase coverage but provides~~] under this  
17 chapter [~~on a self-funded basis~~] is exempt from any other insurance  
18 law, including common law, that does not expressly apply to the plan  
19 or this chapter.

20 SECTION 36. Section 1551.351(d), Insurance Code, as  
21 effective June 1, 2003, is amended to conform to Section 33, Chapter  
22 1231, Acts of the 77th Legislature, Regular Session, 2001, and  
23 further amended to read as follows:

24 (d) A person may appeal a determination made under  
25 Subsection (a) or (b) or Section 1551.352 only to the board of  
26 trustees. A proceeding under this subsection is a contested case  
27 under Chapter 2001, Government Code. This subchapter applies to an

1 appeal to the board of trustees under this subsection. The  
2 appellant has the burden of proof on all issues, including issues in  
3 the nature of an affirmative defense, and any sanction imposed is  
4 stayed during an appeal under this subsection. If a person fails to  
5 make a timely appeal, any sanction relates back to the date of the  
6 Employees Retirement System of Texas' determination. An appeal of  
7 a decision of the board of trustees under this subsection is under  
8 the substantial evidence rule.

9 SECTION 37. Section 1551.355(b), Insurance Code, as  
10 effective June 1, 2003, is amended to read as follows:

11 (b) On behalf of the board of trustees and notwithstanding  
12 any other law, including Section 2003.021, Government Code, the  
13 executive director may:

14 (1) refer an appeal to the State Office of  
15 Administrative Hearings for a hearing; or

16 (2) [~~notwithstanding any other law, including Section~~  
17 ~~2003.021, Government Code,~~] employ, select, or contract for the  
18 services of an administrative law judge or other hearing examiner  
19 not affiliated with the State Office of Administrative Hearings to  
20 conduct the hearing of an appeal.

21 SECTION 38. Section 1551.356, Insurance Code, as effective  
22 June 1, 2003, is amended to conform to Section 29, Chapter 1231,  
23 Acts of the 77th Legislature, Regular Session, 2001, and further  
24 amended to read as follows:

25 Sec. 1551.356. STANDING. (a) A person has standing to  
26 appeal a determination of the executive director under this  
27 subchapter only if the person is:

1 (1) an employee, participant, annuitant, or covered  
2 dependent participating in the group benefits program; or

3 (2) after the death of an employee, participant,  
4 annuitant, or covered dependent, the person's estate, personal  
5 representative, heir at law, or designated beneficiary.

6 (b) A person has no standing to appeal a determination of  
7 the executive director under this subchapter or to pursue a private  
8 cause of action against the state, the board of trustees, the  
9 retirement system, the executive director, an administering firm,  
10 or an employee of any of those persons based on a determination or  
11 the implementation by the board or executive director of the type or  
12 scope of plan design features under the group benefits program.

13 SECTION 39. Section 1551.357, Insurance Code, as effective  
14 June 1, 2003, is amended by amending Subsection (a) and adding  
15 Subsection (d) to read as follows:

16 (a) Notwithstanding any other law, in [~~Ia~~] a proceeding  
17 considered to be a contested case under Chapter 2001, Government  
18 Code, the board of trustees in its sole discretion may modify,  
19 refuse to accept, or delete any [~~a~~] proposed finding of fact or  
20 conclusion of law contained in a proposal for decision submitted by  
21 an administrative law judge or other hearing examiner, or make  
22 alternative findings of fact and conclusions of law.

23 (d) The appellant in a contested case under this subchapter  
24 has the burden of proof on all issues, including issues in the  
25 nature of an affirmative defense.

26 SECTION 40. Section 1551.359, Insurance Code, as effective  
27 June 1, 2003, is amended to read as follows:

1           Sec. 1551.359. JUDICIAL REVIEW [~~STANDARD OF REVIEW OF~~  
2 ~~DETERMINATION OF BOARD OF TRUSTEES~~]. A person aggrieved by a final  
3 decision of the Employees Retirement System of Texas in a contested  
4 case under this subchapter is entitled to judicial review of the  
5 decision. Venue of an appeal under this subchapter is only in a  
6 district court in Travis County. The standard of review for the  
7 appeal of a determination made by the board of trustees under this  
8 subchapter is by substantial evidence.

9           SECTION 41. Section 812.003, Government Code, is amended by  
10 amending Subsection (d) and adding Subsections (e) through (h) to  
11 read as follows:

12           (d) For persons whose employment or office holding begins on  
13 or after September 1, 2005, membership [~~Membership~~] in the employee  
14 class begins on the first day the [~~a~~] person is employed or holds  
15 office.

16           (e) For persons whose employment or office holding begins  
17 before September 1, 2005, membership in the employee class begins  
18 on the 91st day after the first day a person is employed or holds  
19 office.

20           (f) A person who is reemployed or who again holds office  
21 after withdrawing contributions under Subchapter B for previous  
22 service credited in the employee class begins membership in the  
23 employee class on the 91st day after the first day the person is  
24 reemployed or again holds office.

25           (g) Notwithstanding any other provision of law, a member may  
26 establish service credit only as provided by Section 813.514 for  
27 service performed during the 90-day waiting period provided by

1 Subsection (e) or (f).

2 (h) Subsections (e), (f), and (g) and this subsection expire  
3 September 1, 2005.

4 SECTION 42. Subchapter F, Chapter 813, Government Code, is  
5 amended by adding Section 813.514 to read as follows:

6 Sec. 813.514. CREDIT PURCHASE OPTION FOR CERTAIN SERVICE.

7 (a) A member may establish service credit under this section in  
8 the employee class only for service performed during a 90-day  
9 waiting period to become a member after beginning employment or  
10 holding office.

11 (b) A member may establish service credit under this section  
12 by depositing with the retirement system, for each month of service  
13 credit, the actuarial present value, at the time of deposit, of the  
14 additional standard retirement annuity benefits that would be  
15 attributable to the purchase of the service credit under this  
16 section based on rates and tables recommended by the retirement  
17 system's actuary and adopted by the board of trustees.

18 (c) After a member makes the deposits required by this  
19 section, the retirement system shall grant the member one month of  
20 equivalent membership service credit for each month of credit  
21 approved. A member may establish not more than three months of  
22 equivalent membership service credit under this section.

23 (d) The retirement system shall deposit the amount of the  
24 actuarial present value of the service credit purchased in the  
25 member's individual account in the employees saving account.

26 (e) The board of trustees may adopt rules to administer this  
27 section, including rules that impose restrictions on the

1 application of this section as necessary to cost-effectively  
2 administer this section.

3 SECTION 43. Section 615.003, Government Code, is amended to  
4 read as follows:

5 Sec. 615.003. APPLICABILITY. This chapter applies only to  
6 eligible survivors of the following individuals:

7 (1) an individual elected, appointed, or employed as a  
8 peace officer by the state or a political subdivision of the state  
9 under Article 2.12, Code of Criminal Procedure, or other law;

10 (2) a paid probation officer appointed by the director  
11 of a community supervision and corrections department who has the  
12 duties set out in Section 76.002 and the qualifications set out in  
13 Section 76.005, or who was appointed in accordance with prior law;

14 (3) a parole officer employed by the pardons and  
15 paroles division of the Texas Department of Criminal Justice who  
16 has the duties set out in Section 508.001 and the qualifications set  
17 out in Section 508.113 or in prior law;

18 (4) a paid jailer;

19 (5) a member of an organized police reserve or  
20 auxiliary unit who regularly assists peace officers in enforcing  
21 criminal laws;

22 (6) a member of the class of employees of the  
23 institutional division or the state jail division of the Texas  
24 Department of Criminal Justice formally designated as custodial  
25 personnel under Section 615.006 by the Texas Board of Criminal  
26 Justice or its predecessor in function;

27 (7) a jailer or guard of a county jail who is appointed



1 by the sheriff and who:

2 (A) performs a security, custodial, or  
3 supervisory function over the admittance, confinement, or  
4 discharge of prisoners; and

5 (B) is certified by the Commission on Law  
6 Enforcement Officer Standards and Education;

7 (8) a juvenile correctional employee of the Texas  
8 Youth Commission;

9 (9) an employee of the Texas Department of Mental  
10 Health and Mental Retardation who:

11 (A) works at the department's maximum security  
12 unit; or

13 (B) performs on-site services for the Texas  
14 Department of Criminal Justice;

15 (10) an individual who is employed by the state or a  
16 political or legal subdivision and is subject to certification by  
17 the Texas Commission on Fire Protection;

18 (11) an individual employed by the state or a  
19 political or legal subdivision whose principal duties are aircraft  
20 crash and rescue fire fighting;

21 (12) a member of an organized volunteer fire-fighting  
22 unit that:

23 (A) renders fire-fighting services without  
24 remuneration; and

25 (B) [~~consists of not fewer than 20 active~~  
26 ~~members, a majority of whom are present at each meeting, and~~

27 [~~(C)~~] conducts a minimum of two drills each

1 month, each two hours long; or

2 (13) an individual who:

3 (A) performs emergency medical services or  
4 operates an ambulance;

5 (B) is employed by a political subdivision of the  
6 state or is an emergency medical services volunteer as defined by  
7 Section 773.003, Health and Safety Code; and

8 (C) is qualified as an emergency care attendant  
9 or at a higher level of training under Section 773.046, 773.047,  
10 773.048, 773.049, or 773.0495, Health and Safety Code.

11 SECTION 44. (a) The change in law made by this Act to  
12 Section 1551.102(d), Insurance Code, applies only to a person who  
13 was not participating in the program provided by Chapter 1551,  
14 Insurance Code, as an annuitant on the effective date of this Act.

15 (b) The changes in law made by this Act to Section 815.511,  
16 Government Code, and Sections 1551.355 and 1551.357, Insurance  
17 Code, as effective June 1, 2003, prevail over any other Act of the  
18 78th Legislature, Regular Session, 2003, regardless of the relative  
19 dates of enactment, that purports to deprive the Employees  
20 Retirement System of Texas of the powers described by Section  
21 815.511, Government Code, or Section 1551.355 or 1551.357,  
22 Insurance Code, and to that extent that other Act has no effect.

23 (c) The changes in law made by this Act to Section 815.511,  
24 Government Code, and Section 1551.359, Insurance Code, prevail over  
25 any other Act of the 78th Legislature, Regular Session, 2003,  
26 regardless of the relative dates of enactment, that purports to  
27 establish venue for judicial review of a final decision in a

1 contested case by the Board of Trustees of the Employees Retirement  
2 System of Texas, and to that extent that other Act has no effect.

3 (d) The change in law made by this Act to Section  
4 811.001(12), Government Code, applies only to an application for  
5 occupational disability retirement filed with the Employees  
6 Retirement System of Texas on or after the effective date of this  
7 Act. A person who filed an application for occupational disability  
8 retirement before the effective date of this Act is subject to the  
9 law as it existed immediately before the effective date of this Act,  
10 and the former law is continued in effect for this purpose.

11 (e) The change in law made by this Act to Section 615.003,  
12 Government Code, relating to the death of a member of an organized  
13 volunteer fire-fighting unit applies only in relation to a death  
14 that occurs on or after the effective date of this Act. Matters  
15 regarding eligibility, payment, and benefits under Chapter 615,  
16 Government Code, in relation to a death that occurs before the  
17 effective date of this Act are governed by the law in effect when  
18 the death occurs, and the former law is continued in effect for that  
19 purpose.

20 SECTION 45. Section 812.003, Government Code, as amended by  
21 this Act, and Section 813.514, Government Code, as added by this  
22 Act, apply only to a person who is first employed by or begins to  
23 hold an office of the state on or after the effective date of this  
24 Act and to a former employee or office holder who has withdrawn  
25 retirement contributions under Subchapter B, Chapter 812,  
26 Government Code, and is reemployed by or begins to again hold an  
27 office of the state on or after the effective date of this Act.

1 SECTION 46. The following laws are repealed:

2 (1) Section 609.515, Government Code;

3 (2) Section 805.002(e), Government Code;

4 (3) Section 812.004, Government Code;

5 (4) Section 813.504(b), Government Code;

6 (5) Section 814.1041, Government Code;

7 (6) Section 815.211, Government Code;

8 (7) Section 815.502, Government Code;

9 (8) Section 840.210, Government Code;

10 (9) Section 1551.054, Insurance Code, as effective  
11 June 1, 2003; and

12 (10) Section 3(b), Chapter 22, Acts of the 57th  
13 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's  
14 Texas Civil Statutes).

15 SECTION 47. To the extent of any conflict, this Act prevails  
16 over another Act of the 78th Legislature, Regular Session, 2003,  
17 relating to nonsubstantive additions to and corrections in enacted  
18 codes.

19 SECTION 48. This Act takes effect September 1, 2003.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2359 was passed by the House on April 25, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2359 on May 29, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2359 on June 1, 2003, by a non-record vote.

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Chief Clerk of the House

H.B. No. 2359

I certify that H.B. No. 2359 was passed by the Senate, with amendments, on May 27, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2359 on June 1, 2003, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor