

1-1 By: Ritter (Senate Sponsor - Armbrister) H.B. No. 2359  
1-2 (In the Senate - Received from the House April 28, 2003;  
1-3 May 1, 2003, read first time and referred to Committee on State  
1-4 Affairs; May 22, 2003, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 May 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2359 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the programs and systems administered by the Employees  
1-11 Retirement System of Texas.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 609.008, Government Code, is amended to  
1-14 read as follows:

1-15 Sec. 609.008. CREDITING TRUST FUND INTEREST. Interest  
1-16 earned on an employee's deferred amounts and investment income  
1-17 deposited in any of the deferred compensation trust funds [fund],  
1-18 as defined by Section 609.101, or [~~in the TexaSaver trust fund or~~  
1-19 ~~the other deferred compensation trust fund~~] to which Section  
1-20 609.512 applies is credited to the employee.

1-21 SECTION 2. Sections 609.011 and 609.012, Government Code,  
1-22 are amended to read as follows:

1-23 Sec. 609.011. NOTIFICATION BY [~~457~~] PLAN ADMINISTRATOR.

1-24 (a) The plan administrator of a [~~457~~] plan established under this  
1-25 chapter may notify an employee participating in the plan that the  
1-26 administrator believes that:

1-27 (1) a qualified vendor is having significant financial  
1-28 difficulties; or

1-29 (2) the amount of the employee's deferred amounts and  
1-30 investment income invested with a qualified vendor exceeds an  
1-31 insured or guaranteed level.

1-32 (b) A plan administrator is not liable to a participating  
1-33 [~~an~~] employee for a loss resulting from the failure to notify the  
1-34 employee under this section.

1-35 Sec. 609.012. TRANSFER FROM A [~~457~~] PLAN VENDOR. The plan  
1-36 administrator of a [~~457~~] plan established under this chapter may  
1-37 immediately transfer to the plan's deferred compensation trust fund  
1-38 all deferred amounts and investment income from a vendor who at any  
1-39 time fails to satisfy the requirements of this chapter or the plan  
1-40 administrator. A vendor may not charge a fee or penalty as the  
1-41 result of a plan administrator's transfer under this section.

1-42 Immediately after making the transfer, the plan administrator shall  
1-43 give to each employee whose deferred amounts and investment income  
1-44 were transferred a notice that states that:

1-45 (1) the vendor's investment products are ineligible to  
1-46 receive additional deferred amounts;

1-47 (2) the amounts have been transferred from the vendor  
1-48 to the deferred compensation trust fund; and

1-49 (3) the employee is required to promptly designate  
1-50 another qualified investment product to receive the transferred  
1-51 amount.

1-52 SECTION 3. Section 609.502, Government Code, is amended to  
1-53 read as follows:

1-54 Sec. 609.502. CREATION OF PLAN; PARTICIPATION. (a) The  
1-55 board of trustees of the Employees Retirement System of Texas is the  
1-56 trustee and the plan administrator of a 401(k) plan and a 457 plan,  
1-57 collectively known as the TexaSaver program, established under this  
1-58 subchapter.

1-59 (b) [~~The board of trustees is the trustee and the plan~~  
1-60 ~~administrator of a 457 plan established under this subchapter.~~

1-61 [~~(c)~~] The board of trustees shall administer all aspects of  
1-62 each plan.

1-63 (c) [~~(d)~~] The board of trustees may designate a person to

2-1 assist in the execution of the board's authority and  
2-2 responsibilities as plan administrator.

2-3 (d) [~~(e)~~] A state agency may participate in either or both  
2-4 plans.

2-5 SECTION 4. Section 609.505(a), Government Code, is amended  
2-6 to read as follows:

2-7 (a) The board of trustees or a third party administrator  
2-8 approved by the board, in accordance with rules adopted under this  
2-9 subchapter, may contract with a vendor qualified to participate in  
2-10 a deferred compensation plan.

2-11 SECTION 5. Section 609.508, Government Code, is amended to  
2-12 read as follows:

2-13 Sec. 609.508. RULES. (a) The board of trustees may adopt  
2-14 rules, including plans and procedures, and orders necessary to  
2-15 carry out the purposes of this subchapter, including rules or  
2-16 orders relating to:

2-17 (1) the selection and regulation of vendors for a  
2-18 deferred compensation plan;

2-19 (2) the regulation of the practices of agents employed  
2-20 by vendors and a participating employee's use and reimbursement of  
2-21 investment advisors participating in the program;

2-22 (3) the disclosure of information concerning  
2-23 investment products;

2-24 (4) the regulation of advertising materials to be used  
2-25 by vendors;

2-26 (5) the submission of financial information by a  
2-27 vendor; and

2-28 (6) the development of a system to facilitate  
2-29 electronic authorization, distribution, transfer, and investment  
2-30 of deferrals.

2-31 (b) The plan administrator of the TexasSaver 401(k) or the  
2-32 TexasSaver 457 plan may adopt rules and procedures to allow a  
2-33 participating employee, subject to applicable requirements of the  
2-34 Internal Revenue Code of 1986, to obtain a loan from the employee's  
2-35 account.

2-36 SECTION 6. Sections 609.512(a) and (b), Government Code,  
2-37 are amended to read as follows:

2-38 (a) The TexasSaver 401(k) trust fund is in the state  
2-39 treasury. The fund is for the benefit of the program described by  
2-40 Section 609.001(10) [TexasSaver].

2-41 (b) The TexasSaver 457 [~~deferred compensation~~] trust fund is  
2-42 in the state treasury. The fund is for the benefit of the program  
2-43 described by Section 609.001(11) [~~deferred compensation plan~~  
2-44 described by Section 609.502(b)].

2-45 SECTION 7. Section 615.023, Government Code, as amended by  
2-46 Chapter 1231 and repealed by Chapter 1438, Acts of the 77th  
2-47 Legislature, Regular Session, 2001, is reenacted to read as  
2-48 follows:

2-49 Sec. 615.023. PAYMENT TO SURVIVING MINOR CHILD. (a) The  
2-50 state shall pay to the duly appointed or qualified guardian or other  
2-51 legal representative of an eligible surviving minor child:

2-52 (1) \$200 each month, if there is one surviving child;

2-53 (2) \$300 each month, if there are two surviving  
2-54 children; or

2-55 (3) \$400 each month, if there are three or more  
2-56 surviving children.

2-57 (b) A child's entitlement to assistance payable under this  
2-58 section ends on the child's 18th birthday. At that time, payments  
2-59 to any other surviving minor children shall be adjusted, as  
2-60 necessary, to conform to the amounts payable under Subsection (a).

2-61 (c) A payment under this section is in addition to any  
2-62 payment made under Section 615.022.

2-63 SECTION 8. Section 615.045(a), Government Code, is amended  
2-64 to read as follows:

2-65 (a) Records of individuals listed by Section 615.003 and of  
2-66 survivors eligible for benefits under this chapter that are in the  
2-67 custody of the Employees Retirement System of Texas or an [a  
2-68 carrier,] administering firm as defined by Section 1551.003,  
2-69 Insurance Code [the Texas Employees Uniform Group Insurance

3-1 ~~Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)], or~~  
 3-2 ~~another [other] governmental agency acting with or on behalf of the~~  
 3-3 ~~retirement system are confidential and [7] not subject to public~~  
 3-4 ~~disclosure, and the retirement system is not required to accept or~~  
 3-5 ~~comply with a request for a record or information about a record or~~  
 3-6 ~~to seek an opinion from the attorney general, because the records~~  
 3-7 ~~are exempt from the public information provisions of Chapter 552,~~  
 3-8 ~~except as otherwise provided by this section.~~

3-9 SECTION 9. Section 659.102, Government Code, is amended by  
 3-10 amending Subsection (c) and adding Subsection (d) to read as  
 3-11 follows:

3-12 (c) The supplemental optional benefits program may include  
 3-13 permanent life insurance, catastrophic illness insurance,  
 3-14 disability insurance, ~~[or]~~ prepaid legal services, or a qualified  
 3-15 transportation benefit.

3-16 (d) A qualified transportation benefit is a transportation  
 3-17 benefit meeting the requirements of Section 132(f), Internal  
 3-18 Revenue Code of 1986. The Employees Retirement System of Texas  
 3-19 shall determine a fee or charge that may be paid as a qualified  
 3-20 transportation benefit.

3-21 SECTION 10. Section 811.001(12), Government Code, is  
 3-22 amended to read as follows:

3-23 (12) "Occupational death or disability" means death or  
 3-24 disability from a sudden and unexpected ~~[an]~~ injury or disease that  
 3-25 ~~[directly]~~ results solely from a specific act or occurrence  
 3-26 determinable by a definite time and place~~[7]~~ and solely ~~[directly~~  
 3-27 ~~results]~~ from an extremely dangerous risk of severe physical or  
 3-28 mental trauma or disease that is not common to the public at large  
 3-29 and that is ~~[a risk or a hazard]~~ peculiar to and inherent in a  
 3-30 dangerous ~~[a]~~ duty that arises from the nature and in the course of  
 3-31 a person's state employment.

3-32 SECTION 11. Subchapter A, Chapter 811, Government Code, is  
 3-33 amended by adding Sections 811.007 and 811.008 to read as follows:

3-34 Sec. 811.007. IMMUNITY FROM LIABILITY. The board of  
 3-35 trustees, executive director, and employees of the retirement  
 3-36 system are not liable for any action taken or omission made or  
 3-37 suffered by them in good faith in the performance of any duty in  
 3-38 connection with any program or system administered by the  
 3-39 retirement system.

3-40 Sec. 811.008. INSURANCE. Notwithstanding any other law,  
 3-41 the board of trustees may self-insure or purchase any insurance in  
 3-42 amounts the board considers reasonable and prudent.

3-43 SECTION 12. Section 812.003(a), Government Code, is amended  
 3-44 to read as follows:

3-45 (a) Except as provided by Subsection (b), membership in the  
 3-46 employee class of the retirement system includes all employees and  
 3-47 appointed officers of every department, commission, board, agency,  
 3-48 or institution of the state except:

3-49 (1) independent contractors and their employees  
 3-50 performing work for the state; and

3-51 (2) persons disqualified from membership under  
 3-52 Section 812.201~~[7, and~~

3-53 ~~[(3) persons disqualified from membership under~~  
 3-54 ~~Section 812.004].~~

3-55 SECTION 13. Section 812.203, Government Code, is amended to  
 3-56 read as follows:

3-57 Sec. 812.203. BENEFITS AFFECTED. (a) ~~[(c) Time during~~  
 3-58 ~~which retirement benefit payments are suspended as provided by this~~  
 3-59 ~~section does not reduce the number of months payments are to be made~~  
 3-60 ~~under an optional benefit plan providing for a specific amount of~~  
 3-61 ~~benefits for a guaranteed number of months after retirement.~~

3-62 ~~[(d)]~~ If a retiree takes the oath for a position included in  
 3-63 the elected class of membership, the retirement system shall  
 3-64 suspend annuity payments to the person for service that was  
 3-65 credited in that class, until the person no longer holds that  
 3-66 position.

3-67 (b) Time during which annuity payments are suspended as  
 3-68 provided by this section does not reduce the number of months  
 3-69 payments are to be made under an optional benefit selection

4-1 providing for a specific amount of benefits for a guaranteed number  
 4-2 of months after retirement.

4-3 (c) [(e)] If a member who originally retired with service  
 4-4 credited at the time of that retirement only in the elected class of  
 4-5 membership again retires, the person at the time of subsequent  
 4-6 retirement may select an annuity based on service in the elected  
 4-7 class as if the person were retiring for the first time. If the  
 4-8 person selects an annuity under Section 814.108(c)(3) or (c)(4),  
 4-9 the retirement system shall reduce the number of months of  
 4-10 guaranteed payment by the number of months for which an annuity was  
 4-11 paid under the person's original retirement.

4-12 SECTION 14. The heading of Section 813.104, Government  
 4-13 Code, is amended to read as follows:

4-14 Sec. 813.104. ALTERNATIVE PAYMENTS AND METHODS TO ESTABLISH  
 4-15 OR REESTABLISH SERVICE CREDIT.

4-16 SECTION 15. Section 813.104, Government Code, is amended by  
 4-17 adding Subsection (e) to read as follows:

4-18 (e) The retirement system may provide for the electronic  
 4-19 filing of agreements to establish or reestablish service credit.  
 4-20 In this subsection "electronic filing" has the meaning assigned by  
 4-21 Section 814.010(a).

4-22 SECTION 16. Subchapter A, Chapter 814, Government Code, is  
 4-23 amended by adding Section 814.010 to read as follows:

4-24 Sec. 814.010. ELECTRONIC FILING OF BENEFICIARY  
 4-25 DESIGNATION. (a) In this section, "electronic filing" means the  
 4-26 filing of data in the form of digital electronic signals  
 4-27 transformed by computer and stored on magnetic tape, optical disks,  
 4-28 or any other medium.

4-29 (b) A person entitled to designate a beneficiary under any  
 4-30 system or program administered by the retirement system may make  
 4-31 the designation by electronic filing under procedures adopted by  
 4-32 the retirement system.

4-33 SECTION 17. Section 814.104(b), Government Code, is amended  
 4-34 to read as follows:

4-35 (b) A member who is at least 55 years old and who has at  
 4-36 least 10 years of service credit as a commissioned peace officer  
 4-37 engaged in criminal law enforcement activities of the Department of  
 4-38 Public Safety, the Texas Alcoholic Beverage Commission, the State  
 4-39 Board of Pharmacy, or the Parks and Wildlife Department, [~~as an~~  
 4-40 ~~employee of the Railroad Commission of Texas who is licensed by the~~  
 4-41 ~~Commission on Law Enforcement Officer Standards and Education and~~  
 4-42 ~~has served at least five years as an investigator for the oil field~~  
 4-43 ~~theft detection division,~~] or as a custodial officer, is eligible  
 4-44 to retire and receive a service retirement annuity.

4-45 SECTION 18. Section 814.108(f), Government Code, is amended  
 4-46 to read as follows:

4-47 (f) The computation of an optional annuity must be made  
 4-48 without regard to the gender [~~sex~~] of the annuitant or designee  
 4-49 involved.

4-50 SECTION 19. Section 814.203, Government Code, is amended to  
 4-51 read as follows:

4-52 Sec. 814.203. CERTIFICATION OF DISABILITY. As soon as  
 4-53 practicable after an application for disability retirement is  
 4-54 filed, the medical board shall evaluate the medical and other  
 4-55 pertinent information regarding the member's application. If the  
 4-56 medical board finds that the member is mentally or physically  
 4-57 incapacitated for the further performance of duty and[~~7~~] that the  
 4-58 incapacity is likely to be permanent, [~~and that the member should be~~  
 4-59 ~~retired,~~] the medical board shall issue a certification of  
 4-60 disability and submit it to the executive director.

4-61 SECTION 20. Sections 814.207(a) and (e), Government Code,  
 4-62 are amended to read as follows:

4-63 (a) An annuity payable for [~~because of~~] an occupational  
 4-64 disability resulting [~~that directly results~~] from a risk [~~or~~  
 4-65 ~~hazard~~] to which law enforcement or custodial officers are exposed  
 4-66 because of the nature of law enforcement or custodial duties is  
 4-67 payable under the same terms and conditions that apply to other  
 4-68 occupational disability retirement annuities under this subtitle,  
 4-69 except that the source and amount of the annuity are as provided by

5-1 this section.

5-2 (e) If a retiring member or retiree under this section  
5-3 presents evidence satisfactory to the retirement system that the  
5-4 person's occupational disability [~~condition~~] makes the person  
5-5 incapable of substantial gainful activity solely because of the  
5-6 disability [~~occupation~~] and is considered a total disability under  
5-7 federal social security law, the retirement system shall increase  
5-8 the person's occupational disability retirement annuity to 100  
5-9 percent of the officer's average monthly compensation.

5-10 SECTION 21. Section 814.603, Government Code, is amended to  
5-11 read as follows:

5-12 Sec. 814.603. SUPPLEMENTAL PAYMENTS [~~ONE-TIME PAYMENT~~].

5-13 (a) The retirement system may [~~shall~~] make a supplemental payment  
5-14 as provided by this section [~~Subsection (d)~~] to persons whose  
5-15 annuities are described by Section 814.107, 814.207, 814.305, or  
5-16 814.601(a) and that are based on service retirements, disability  
5-17 retirements, or deaths. A [~~This~~] supplemental payment made under  
5-18 this section is in addition to the regular monthly annuity payment.  
5-19 [~~Each person who receives an annuity described by this subsection~~  
5-20 ~~is entitled to receive one payment equal to 10 percent of one~~  
5-21 ~~month's annuity payment for each fiscal year that preceded or~~  
5-22 ~~includes the effective date of the requirement or authorization~~  
5-23 ~~under Subsection (d) and in which the annuity has been paid. A~~  
5-24 ~~supplemental payment may not exceed 350 percent of a monthly~~  
5-25 ~~annuity.] Supplemental payments under this section [~~subsection~~]  
5-26 must comply with Section 811.006.~~

5-27 (b) The board of trustees shall determine the amount and  
5-28 timing of a supplemental payment and the manner in which the payment  
5-29 is made.

5-30 (c) The retirement system shall pay any [~~the~~] supplemental  
5-31 payment made under this section [~~provided by Subsection (a)~~] from  
5-32 the retirement annuity reserve account and may transfer to that  
5-33 account from the state accumulation account any portion of the  
5-34 amount that exceeds the amount in the retirement annuity reserve  
5-35 account available to finance this supplemental payment and that is  
5-36 actuarially determined to be necessary to finance the supplemental  
5-37 payment.

5-38 [~~(c) The board of trustees may adopt rules to implement the~~  
5-39 ~~payment, including rules that govern the timing of the supplemental~~  
5-40 ~~payment described by Subsection (a).~~

5-41 [~~(d) The retirement system shall make a supplemental~~  
5-42 ~~payment under this section in the fiscal year ending August 31,~~  
5-43 ~~1997. The board of trustees may by rule authorize similar~~  
5-44 ~~supplemental payments in succeeding fiscal years, if the payments~~  
5-45 ~~are in compliance with Section 811.006.]~~

5-46 SECTION 22. Section 815.008(c), Government Code, is amended  
5-47 to read as follows:

5-48 (c) If the executive director has knowledge that a potential  
5-49 ground for removal exists, the executive director shall notify the  
5-50 presiding officer [~~chairman~~] of the board of the ground. The  
5-51 presiding officer [~~chairman~~] shall then notify the appropriate  
5-52 appointing officer, if any, that a potential ground for removal  
5-53 exists.

5-54 SECTION 23. Section 815.103, Government Code, is amended by  
5-55 adding Subsection (f) to read as follows:

5-56 (f) Chapter 412, Labor Code, does not apply to the  
5-57 retirement system. The board of trustees may acquire services  
5-58 described by that chapter in any manner or amount the board  
5-59 considers reasonable.

5-60 SECTION 24. Section 815.201, Government Code, is amended to  
5-61 read as follows:

5-62 Sec. 815.201. PRESIDING OFFICER [~~CHAIRMAN~~]. The board of  
5-63 trustees shall elect a presiding officer from the membership  
5-64 [~~chairman. The chairman must be a member~~] of the board.

5-65 SECTION 25. Section 815.202(c), Government Code, is amended  
5-66 to read as follows:

5-67 (c) To be eligible to serve as the executive director, a  
5-68 person must:

5-69 (1) be a citizen of the United States and have been a

6-1 resident [~~citizen~~] of the state for the three years immediately  
6-2 preceding the person's appointment; and

6-3 (2) have executive ability and experience to carry out  
6-4 the duties of the office.

6-5 SECTION 26. Section 815.207(b), Government Code, is amended  
6-6 to read as follows:

6-7 (b) The comptroller shall pay money from the funds of the  
6-8 retirement system on warrants drawn by the comptroller supported  
6-9 only on vouchers signed by the executive director and the presiding  
6-10 officer [~~chairman~~] of the board of trustees or their authorized  
6-11 representatives.

6-12 SECTION 27. Section 815.307, Government Code, is amended to  
6-13 read as follows:

6-14 Sec. 815.307. DUTY OF CARE. The assets of the retirement  
6-15 system shall be invested and reinvested without distinction as to  
6-16 their source in accordance with Section 67, Article XVI, Texas  
6-17 Constitution. A determination of whether the board of trustees has  
6-18 exercised prudence with respect to an investment decision must be  
6-19 made taking into consideration the investment of all assets of the  
6-20 trust or all assets of the collective investment vehicle, as  
6-21 applicable, over which the board has management and control, rather  
6-22 than considering the prudence of a single investment of the trust or  
6-23 the collective investment vehicle, as applicable. [~~Investment~~  
6-24 ~~decisions are subject to the standard provided in the Texas Trust~~  
6-25 ~~Code by Section 113.056(a), Property Code.~~]

6-26 SECTION 28. Section 815.503(a), Government Code, is amended  
6-27 to read as follows:

6-28 (a) Records of members, annuitants, retirees,  
6-29 beneficiaries, and alternate payees under retirement plans  
6-30 administered by the retirement system that are in the custody of the  
6-31 system or of an administrator, carrier, or other governmental  
6-32 agency acting in cooperation with or on behalf of the retirement  
6-33 system are confidential and not subject to public disclosure, and  
6-34 the retirement system is not required to accept or comply with a  
6-35 request for a record or information about a record or to seek an  
6-36 opinion from the attorney general, because the records are exempt  
6-37 from the public access provisions of Chapter 552, except as  
6-38 otherwise provided by this section.

6-39 SECTION 29. Section 815.511, Government Code, is amended to  
6-40 read as follows:

6-41 Sec. 815.511. ADMINISTRATIVE DECISION; APPEAL AND  
6-42 NEGOTIATION. (a) A person aggrieved by a decision of the  
6-43 retirement system relating to any program or system administered by  
6-44 the system under this code denying or limiting membership, service  
6-45 credit, or eligibility for or the amount of benefits payable under  
6-46 the program or system may appeal the decision to the board of  
6-47 trustees.

6-48 (b) The executive director or the executive director's  
6-49 designee may refer an appeal made under Subsection (a) to the State  
6-50 Office of Administrative Hearings for a hearing or employ, select,  
6-51 or contract for the services of an administrative law judge or  
6-52 hearing examiner not affiliated with the State Office of  
6-53 Administrative Hearings to conduct a hearing. This subsection  
6-54 prevails over any other law to the extent of any conflict.

6-55 (c) An appeal under this section is considered to be a  
6-56 contested case under Chapter 2001. The appellant in a contested  
6-57 case under this section has the burden of proof on all issues,  
6-58 including issues in the nature of an affirmative defense.

6-59 (d) The board of trustees may in its sole discretion make a  
6-60 final decision on a contested case under this section.  
6-61 Notwithstanding any other law, the [The] board of trustees may in  
6-62 its sole discretion modify, refuse to accept, or delete any [a]  
6-63 proposed finding of fact or conclusion of law contained in a  
6-64 proposal for decision submitted by an administrative law judge or  
6-65 other hearing examiner, or make alternative findings of fact and  
6-66 conclusions of law, in a proceeding considered to be a contested  
6-67 case under Chapter 2001. The board of trustees shall state in  
6-68 writing the specific reason for its determination and may adopt  
6-69 rules for the implementation of this subsection. The board of

7-1 trustees may delegate its authority under this subsection to the  
 7-2 executive director, and the executive director may delegate the  
 7-3 authority to another employee of the retirement system.

7-4 (e) Notwithstanding Subsections (c) and (d), the retirement  
 7-5 system and a person aggrieved by a decision of the system may at any  
 7-6 time informally negotiate an award of benefits. Negotiated  
 7-7 benefits may not exceed the maximum benefits otherwise available or  
 7-8 required by law.

7-9 (f) A person aggrieved by a final decision of the retirement  
 7-10 system in a contested case under this section is entitled to  
 7-11 judicial review under Chapter 2001. Venue of the appeal is only in  
 7-12 a district court in Travis County. [~~(b) A person aggrieved by a~~  
 7-13 ~~decision of any retirement system administered by the board of~~  
 7-14 ~~trustees denying or limiting membership, service credit, or~~  
 7-15 ~~eligibility for or the amount of benefits payable by a system may~~  
 7-16 ~~appeal the decision to the board. The appeal is considered to be an~~  
 7-17 ~~appeal of a contested case under the administrative procedure law,~~  
 7-18 ~~Chapter 2001.] On judicial appeal the standard of review is by  
 7-19 substantial evidence.~~

7-20 [~~(c) Notwithstanding Subsection (b), the retirement system~~  
 7-21 ~~and a person aggrieved by a decision of the system may at any time~~  
 7-22 ~~informally negotiate an award of benefits. Negotiated benefits may~~  
 7-23 ~~not exceed the maximum benefits otherwise available or required by~~  
 7-24 ~~law.~~

7-25 [~~(d) On behalf of the retirement system, the executive~~  
 7-26 ~~director may refer an appeal made under Subsection (b) to the State~~  
 7-27 ~~Office of Administrative Hearings for a hearing or, notwithstanding~~  
 7-28 ~~Section 2003.021 or other law, employ or contract for the services~~  
 7-29 ~~of an administrative law judge or hearing examiner not affiliated~~  
 7-30 ~~with the State Office of Administrative Hearings to conduct the~~  
 7-31 ~~hearing.]~~

7-32 SECTION 30. Section 838.103(b), Government Code, is amended  
 7-33 to read as follows:

7-34 (b) A member eligible to establish military service credit  
 7-35 is one who:

7-36 (1) [~~currently contributes to the retirement system,~~  
 7-37 [~~(2)~~] has at least eight years of service credit in the  
 7-38 retirement system;

7-39 (2) [~~(3)~~] does not receive and is not eligible to  
 7-40 receive federal retirement payments based on 20 years or more of  
 7-41 active federal military duty or its equivalent; and

7-42 (3) [~~(4)~~] has been released from military duty under  
 7-43 conditions not dishonorable.

7-44 SECTION 31. Section 838.106(a), Government Code, is amended  
 7-45 to read as follows:

7-46 (a) A [~~contributing~~] member may establish service credit in  
 7-47 the retirement system for any calendar year during which the  
 7-48 member:

7-49 (1) held an office included in the membership of the  
 7-50 retirement system; or

7-51 (2) was eligible to take the oath for an office  
 7-52 included in the membership of the retirement system.

7-53 SECTION 32. Section 840.303, Government Code, is amended to  
 7-54 read as follows:

7-55 Sec. 840.303. DUTY OF CARE. The assets of the retirement  
 7-56 system shall be invested and reinvested without distinction as to  
 7-57 their source in accordance with Section 67, Article XVI, Texas  
 7-58 Constitution. A determination of whether the board of trustees has  
 7-59 exercised prudence with respect to an investment decision must be  
 7-60 made taking into consideration the investment of all assets of the  
 7-61 trust or all assets of the collective investment vehicle, as  
 7-62 applicable, over which the board has management and control, rather  
 7-63 than considering the prudence of a single investment of the trust or  
 7-64 the collective investment vehicle, as applicable. [~~Investment~~  
 7-65 ~~decisions are subject to the standard provided in the Texas Trust~~  
 7-66 ~~Code by Section 113.056(a), Property Code.]~~

7-67 SECTION 33. Section 1551.063(a), Insurance Code, as  
 7-68 effective June 1, 2003, is amended to read as follows:

7-69 (a) The records of a participant in the group benefits

8-1 program in the custody of the board of trustees, or of an  
 8-2 administrator or carrier acting on behalf of the board, are  
 8-3 confidential and not subject to disclosure, and the board is not  
 8-4 required to accept or comply with a request for a record or  
 8-5 information about a record or to seek an opinion from the attorney  
 8-6 general, because the records ~~[and]~~ are exempt from the public  
 8-7 access provisions of Chapter 552, Government Code, except as  
 8-8 provided by this section.

8-9 SECTION 34. Section 1551.102(d), Insurance Code, as  
 8-10 effective June 1, 2003, is amended to read as follows:

8-11 (d) An individual is eligible to participate in the group  
 8-12 benefits program as provided by Subsection (a) if the individual:

8-13 (1) retires under the optional retirement program  
 8-14 established by Chapter 830, Government Code, with at least 10 years  
 8-15 of eligible service; and

8-16 (2) receives or is eligible to receive an annuity  
 8-17 under that program and the individual:

8-18 (A) would have been eligible to retire and  
 8-19 receive a service or disability retirement annuity from the Teacher  
 8-20 Retirement System of Texas or the Employees Retirement System of  
 8-21 Texas based on at least 10 years of service credit if the individual  
 8-22 had not elected to participate in the optional retirement program;  
 8-23 or

8-24 (B) is disabled as determined by the Employees  
 8-25 Retirement System of Texas.

8-26 SECTION 35. (a) Section 1551.205, Insurance Code, as  
 8-27 effective June 1, 2003, is amended to conform to Section 30, Chapter  
 8-28 1231, Acts of the 77th Legislature, Regular Session, 2001, and  
 8-29 further amended to read as follows:

8-30 Sec. 1551.205. LIMITATIONS. (a) The board of trustees may  
 8-31 not contract for or provide a coverage plan that:

8-32 (1) excludes or limits coverage or services for  
 8-33 acquired immune deficiency syndrome, as defined by the Centers for  
 8-34 Disease Control and Prevention of the United States Public Health  
 8-35 Service, or human immunodeficiency virus infection; or

8-36 (2) provides coverage for serious mental illness that  
 8-37 is less extensive than the minimum coverage ~~[provided]~~ for serious  
 8-38 mental ~~[any physical]~~ illness required by Section 3, Article  
 8-39 3.51-14.

8-40 (b) The board of trustees may not contract for or provide a  
 8-41 coverage plan that excludes from participation in the network a  
 8-42 general hospital that:

8-43 (1) is located in a county, all or part of which is  
 8-44 located within the geographical service area of the health coverage  
 8-45 plan, in which at least two, but not more than four, general  
 8-46 hospitals are located; and

8-47 (2) agrees to provide medical and health care services  
 8-48 under the plan subject to the same terms and conditions as other  
 8-49 hospital providers under the plan.

8-50 (b) Section 30, Chapter 1231, Acts of the 77th Legislature,  
 8-51 Regular Session, 2001, is repealed.

8-52 SECTION 36. Section 1551.209, Insurance Code, as effective  
 8-53 June 1, 2003, is amended to read as follows:

8-54 Sec. 1551.209. ~~[SELF-FUNDED]~~ COVERAGE EXEMPT FROM  
 8-55 INSURANCE LAW. A coverage plan provided ~~[for which the board of~~  
 8-56 ~~trustees does not purchase coverage but provides]~~ under this  
 8-57 chapter ~~[on a self-funded basis]~~ is exempt from any other insurance  
 8-58 law, including common law, that does not expressly apply to the plan  
 8-59 or this chapter.

8-60 SECTION 37. Section 1551.351(d), Insurance Code, as  
 8-61 effective June 1, 2003, is amended to conform to Section 33, Chapter  
 8-62 1231, Acts of the 77th Legislature, Regular Session, 2001, and  
 8-63 further amended to read as follows:

8-64 (d) A person may appeal a determination made under  
 8-65 Subsection (a) or (b) or Section 1551.352 only to the board of  
 8-66 trustees. A proceeding under this subsection is a contested case  
 8-67 under Chapter 2001, Government Code. This subchapter applies to an  
 8-68 appeal to the board of trustees under this subsection. The  
 8-69 appellant has the burden of proof on all issues, including issues in



9-1 the nature of an affirmative defense, and any sanction imposed is  
 9-2 stayed during an appeal under this subsection. If a person fails to  
 9-3 make a timely appeal, any sanction relates back to the date of the  
 9-4 Employees Retirement System of Texas' determination. An appeal of  
 9-5 a decision of the board of trustees under this subsection is under  
 9-6 the substantial evidence rule.

9-7 SECTION 38. Section 1551.355(b), Insurance Code, as  
 9-8 effective June 1, 2003, is amended to read as follows:

9-9 (b) On behalf of the board of trustees and notwithstanding  
 9-10 any other law, including Section 2003.021, Government Code, the  
 9-11 executive director may:

9-12 (1) refer an appeal to the State Office of  
 9-13 Administrative Hearings for a hearing; or

9-14 (2) [~~notwithstanding any other law, including Section~~  
 9-15 ~~2003.021, Government Code,~~] employ, select, or contract for the  
 9-16 services of an administrative law judge or other hearing examiner  
 9-17 not affiliated with the State Office of Administrative Hearings to  
 9-18 conduct the hearing of an appeal.

9-19 SECTION 39. Section 1551.356, Insurance Code, as effective  
 9-20 June 1, 2003, is amended to conform to Section 29, Chapter 1231,  
 9-21 Acts of the 77th Legislature, Regular Session, 2001, and further  
 9-22 amended to read as follows:

9-23 Sec. 1551.356. STANDING. (a) A person has standing to  
 9-24 appeal a determination of the executive director under this  
 9-25 subchapter only if the person is:

9-26 (1) an employee, participant, annuitant, or covered  
 9-27 dependent participating in the group benefits program; or

9-28 (2) after the death of an employee, participant,  
 9-29 annuitant, or covered dependent, the person's estate, personal  
 9-30 representative, heir at law, or designated beneficiary.

9-31 (b) A person has no standing to appeal a determination of  
 9-32 the executive director under this subchapter or to pursue a private  
 9-33 cause of action against the state, the board of trustees, the  
 9-34 retirement system, the executive director, an administering firm,  
 9-35 or an employee of any of those persons based on a determination or  
 9-36 the implementation by the board or executive director of the type or  
 9-37 scope of plan design features under the group benefits program.

9-38 SECTION 40. Section 1551.357, Insurance Code, as effective  
 9-39 June 1, 2003, is amended by amending Subsection (a) and adding  
 9-40 Subsection (d) to read as follows:

9-41 (a) Notwithstanding any other law, in [In] a proceeding  
 9-42 considered to be a contested case under Chapter 2001, Government  
 9-43 Code, the board of trustees in its sole discretion may modify,  
 9-44 refuse to accept, or delete any [a] proposed finding of fact or  
 9-45 conclusion of law contained in a proposal for decision submitted by  
 9-46 an administrative law judge or other hearing examiner, or make  
 9-47 alternative findings of fact and conclusions of law.

9-48 (d) The appellant in a contested case under this subchapter  
 9-49 has the burden of proof on all issues, including issues in the  
 9-50 nature of an affirmative defense.

9-51 SECTION 41. Section 1551.359, Insurance Code, as effective  
 9-52 June 1, 2003, is amended to read as follows:

9-53 Sec. 1551.359. JUDICIAL REVIEW [STANDARD OF REVIEW OF  
 9-54 DETERMINATION OF BOARD OF TRUSTEES]. A person aggrieved by a final  
 9-55 decision of the Employees Retirement System of Texas in a contested  
 9-56 case under this subchapter is entitled to judicial review of the  
 9-57 decision. Venue of an appeal under this subchapter is only in a  
 9-58 district court in Travis County. The standard of review for the  
 9-59 appeal of a determination made by the board of trustees under this  
 9-60 subchapter is by substantial evidence.

9-61 SECTION 42. (a) The change in law made by this Act to  
 9-62 Section 1551.102(d), Insurance Code, applies only to a person who  
 9-63 was not participating in the program provided by Chapter 1551,  
 9-64 Insurance Code, as an annuitant on the effective date of this Act.

9-65 (b) The changes in law made by this Act to Section 815.511,  
 9-66 Government Code, and Sections 1551.355 and 1551.357, Insurance  
 9-67 Code, as effective June 1, 2003, prevail over any other Act of the  
 9-68 78th Legislature, Regular Session, 2003, regardless of the relative  
 9-69 dates of enactment, that purports to deprive the Employees

10-1 Retirement System of Texas of the powers described by Section  
10-2 815.511, Government Code, or Section 1551.355 or 1551.357,  
10-3 Insurance Code, and to that extent that other Act has no effect.

10-4 (c) The changes in law made by this Act to Section 815.511,  
10-5 Government Code, and Section 1551.359, Insurance Code, prevail over  
10-6 any other Act of the 78th Legislature, Regular Session, 2003,  
10-7 regardless of the relative dates of enactment, that purports to  
10-8 establish venue for judicial review of a final decision in a  
10-9 contested case by the Board of Trustees of the Employees Retirement  
10-10 System of Texas, and to that extent that other Act has no effect.

10-11 (d) The change in law made by this Act to Section  
10-12 811.001(12), Government Code, applies only to an application for  
10-13 occupational disability retirement filed with the Employees  
10-14 Retirement System of Texas on or after the effective date of this  
10-15 Act. A person who filed an application for occupational disability  
10-16 retirement before the effective date of this Act is subject to the  
10-17 law as it existed immediately before the effective date of this Act,  
10-18 and the former law is continued in effect for this purpose.

10-19 SECTION 43. The following laws are repealed:

- 10-20 (1) Section 609.515, Government Code;
- 10-21 (2) Section 805.002(e), Government Code;
- 10-22 (3) Section 812.004, Government Code;
- 10-23 (4) Section 813.504(b), Government Code;
- 10-24 (5) Section 814.1041, Government Code;
- 10-25 (6) Section 815.211, Government Code;
- 10-26 (7) Section 815.502, Government Code;
- 10-27 (8) Section 840.210, Government Code;
- 10-28 (9) Section 1551.054, Insurance Code, as effective  
10-29 June 1, 2003; and
- 10-30 (10) Section 3(b), Chapter 22, Acts of the 57th  
10-31 Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's  
10-32 Texas Civil Statutes).

10-33 SECTION 44. To the extent of any conflict, this Act prevails  
10-34 over another Act of the 78th Legislature, Regular Session, 2003,  
10-35 relating to nonsubstantive additions to and corrections in enacted  
10-36 codes.

10-37 SECTION 45. This Act takes effect September 1, 2003.

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