

1-1 By: Delisi (Senate Sponsor - Duncan) H.B. No. 3257
1-2 (In the Senate - Received from the House May 12, 2003;
1-3 May 13, 2003, read first time and referred to Committee on
1-4 Education; May 26, 2003, reported favorably by the following vote:
1-5 Yeas 5, Nays 3; May 26, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to a health reimbursement arrangement program for active
1-9 school employees.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 ARTICLE 1. PROGRAM

1-12 SECTION 1.01. The heading to Article 3.50-8, Insurance
1-13 Code, is amended to read as follows:

1-14 Art. 3.50-8. ACTIVE EMPLOYEE HEALTH REIMBURSEMENT
1-15 ARRANGEMENT [COVERAGE OR COMPENSATION SUPPLEMENTATION]

1-16 SECTION 1.02. The heading to Section 1, Article 3.50-8,
1-17 Insurance Code, is amended to read as follows:

1-18 Sec. 1. GENERAL DEFINITIONS.

1-19 SECTION 1.03. Section 1, Article 3.50-8, Insurance Code, is
1-20 amended by amending Subdivisions (1) and (2) and adding
1-21 Subdivisions (1-a), (1-b), (1-c), (2-a), (2-b), (2-c), (2-d),
1-22 (3-a), and (3-b) to read as follows:

1-23 (1) "Account" means a health reimbursement
1-24 arrangement account established under this article for a
1-25 participating employee ["Cafeteria plan" means a plan as defined
1-26 and authorized by Section 125, Internal Revenue Code of 1986, and
1-27 its subsequent amendments].

1-28 (1-a) "Administering firm" means any entity
1-29 designated by the trustee to administer any coverages, services,
1-30 benefits, or requirements under this article and the trustee's
1-31 rules adopted under this article.

1-32 (1-b) "Approved health benefit plan provider" means an
1-33 entity approved by the trustee to offer health benefit plan
1-34 coverage under this article.

1-35 (1-c) "Dependent" means:

1-36 (A) the spouse of a person;

1-37 (B) an unmarried child of the person if that
1-38 child is under 25 years of age, including:

1-39 (i) an adopted child;

1-40 (ii) a stepchild, foster child, or other
1-41 child who has a regular parent-child relationship with the person;
1-42 or

1-43 (iii) a recognized natural child; or

1-44 (C) the person's recognized natural child,
1-45 adopted child, foster child, stepchild, or other child who is in a
1-46 regular parent-child relationship with the participating employee
1-47 and who lives with or has his or her care provided by the person on a
1-48 regular basis regardless of the child's age if the child is mentally
1-49 retarded or physically incapacitated to an extent that the child is
1-50 dependent on the person for care or support, as determined by the
1-51 trustee.

1-52 (2) "Employee" means a participating member of the
1-53 Teacher Retirement System of Texas who:

1-54 (A) is employed by a school district, other
1-55 educational district whose employees are members of the Teacher
1-56 Retirement System of Texas, participating charter school, or
1-57 regional education service center; ~~and~~

1-58 (B) is not a retiree covered under the Texas
1-59 Public School Retired Employees Group Insurance Program
1-60 established under Article 3.50-4 of this code;

1-61 (C) is not covered by a group insurance program
1-62 under Chapter 1551 or 1601 of this code; and

1-63 (D) is not an individual performing personal
1-64 services for a participating entity as an independent contractor.

2-1 (2-a) "Health benefit plan" means a plan designed to
 2-2 provide, pay for, or reimburse expenses for health care services.
 2-3 The term includes:

- 2-4 (A) an insurance policy, contract, or
 2-5 certificate;
- 2-6 (B) a medical or hospital service agreement; and
- 2-7 (C) a similar arrangement, including coverage
 2-8 through a health maintenance organization operating under Chapter
 2-9 843.

2-10 (2-b) "Health benefit plan issuer" means an entity
 2-11 that provides health benefit plan coverage in this state. The term
 2-12 includes:

- 2-13 (A) an insurance company authorized to do
 2-14 business in this state;
- 2-15 (B) a group hospital service corporation
 2-16 operating under Chapter 842 of this code;
- 2-17 (C) a health maintenance organization operating
 2-18 under Chapter 843 of this code;
- 2-19 (D) a stipulated premium insurance company
 2-20 operating under Chapter 884 of this code;
- 2-21 (E) a multiple employer welfare arrangement
 2-22 subject to Chapter 846 of this code;
- 2-23 (F) an approved nonprofit health corporation
 2-24 that holds a certificate of authority issued under Chapter 844 of
 2-25 this code; and
- 2-26 (G) any other entity providing a plan of health
 2-27 insurance or health benefits coverage subject to state regulation
 2-28 by the department.

2-29 (2-c) "Health reimbursement arrangement" is a health
 2-30 benefit plan that:

- 2-31 (A) is paid for solely by the employer;
- 2-32 (B) is not provided under a salary reduction
 2-33 election;
- 2-34 (C) reimburses a participant for a qualified
 2-35 health care expense incurred by the participant or the
 2-36 participant's dependent;
- 2-37 (D) provides reimbursements up to a maximum
 2-38 dollar amount at the end of a coverage period; and
- 2-39 (E) provides that any unused portion of the
 2-40 maximum dollar amount at the end of a coverage period is carried
 2-41 forward to increase the maximum reimbursement amount in subsequent
 2-42 coverage periods.

2-43 (2-d) "Participant" means a person enrolled in the
 2-44 program.

2-45 (3-a) "Program" means the health reimbursement
 2-46 arrangement program established under this article.

2-47 (3-b) "Qualified health care expense" means an expense
 2-48 paid by an employee for medical care, as defined by Section 213(d),
 2-49 Internal Revenue Code of 1986, and its subsequent amendments, for
 2-50 the employee or the employee's dependents, as defined by Section
 2-51 152, Internal Revenue Code of 1986, and its subsequent amendments.

2-52 SECTION 1.04. Article 3.50-8, Insurance Code, is amended by
 2-53 adding Section 1A to read as follows:

2-54 Sec. 1A. DEFINITION OF EMPLOYER. (a) For purposes of
 2-55 qualification under federal law of a health reimbursement
 2-56 arrangement established under this article, "employer" means this
 2-57 state and a school district, another educational district whose
 2-58 employees are members of the Teacher Retirement System of Texas, a
 2-59 participating charter school, or a regional education service
 2-60 center.

2-61 (b) This article does not make an employee an employee of
 2-62 this state for any purpose other than the limited purpose described
 2-63 by Subsection (a) of this section.

2-64 SECTION 1.05. Section 2, Article 3.50-8, Insurance Code, is
 2-65 amended to read as follows:

2-66 Sec. 2. ACTIVE EMPLOYEE HEALTH REIMBURSEMENT ARRANGEMENT
 2-67 PROGRAM; STATE CONTRIBUTION [COVERAGE OR COMPENSATION
 2-68 SUPPLEMENTATION]. (a) For each employee, the state shall annually
 2-69 contribute \$1,000 or the amount specified in the General

3-1 Appropriations Act to the health reimbursement arrangement account
 3-2 established for that employee for the payment of qualified health
 3-3 care expenses.

3-4 (b) Each year, the trustee shall contribute to the health
 3-5 reimbursement arrangement account of each employee of [deliver to]
 3-6 each school district, including a school district that is
 3-7 ineligible for state aid under Chapter 42, Education Code, each
 3-8 other educational district that is a member of the Teacher
 3-9 Retirement System of Texas, each participating charter school, and
 3-10 each regional education service center state the amount to which
 3-11 the employee is entitled under Subsection (a) of this section
 3-12 [funds in an amount, as determined by the trustee, equal to the
 3-13 product of the number of active employees employed by the district,
 3-14 school, or service center multiplied by \$1,000 or a greater amount
 3-15 as provided by the General Appropriations Act for purposes of this
 3-16 article]. The contributions shall be made in equal monthly
 3-17 installments.

3-18 (c) Each employee shall direct the expenditure of the amount
 3-19 of the state contribution made under this section and that is
 3-20 allocated to the employee in accordance with the General
 3-21 Appropriations Act and this article.

3-22 (d) Money described by Subsection (c) of this section may be
 3-23 used by an employee only in accordance with this article for the
 3-24 employee and the employee's dependents for health benefit plan
 3-25 coverage offered by approved health benefit plan providers and for
 3-26 other qualified health care expenses.

3-27 (e) Any funds in a cafeteria plan authorized by Section 125,
 3-28 Internal Revenue Code of 1986, and its subsequent amendments, and
 3-29 described by Section 3(a) of this article, for an employee who
 3-30 received the funds under this article, as this article existed
 3-31 immediately before September 1, 2003, that were designated by the
 3-32 employee for health care expenses and are unspent as of September 1,
 3-33 2003, must be spent by the employee for qualified health care
 3-34 expenses before the employee may spend any funds from the health
 3-35 reimbursement arrangement account established for that employee
 3-36 under this section. [(b) All funds received by a school district,
 3-37 other educational district, participating charter school, or
 3-38 regional education service center under this article are held in
 3-39 trust for the benefit of the active employees on whose behalf the
 3-40 district, school, or service center received the funds.

3-41 [(c) The trustee shall distribute funds under this article
 3-42 in equal monthly installments. The trustee is entitled to recover
 3-43 from a school district, other educational district, participating
 3-44 charter school, or regional education service center any amount
 3-45 distributed under this article to which the district, school, or
 3-46 service center was not entitled.

3-47 [(d) A determination by the trustee under this section is
 3-48 final and may not be appealed.]

3-49 SECTION 1.06. Article 3.50-8, Insurance Code, is amended by
 3-50 adding Section 2A to read as follows:

3-51 Sec. 2A. PROGRAM FUNDING STRUCTURE; RULES. (a) The
 3-52 trustee, in consultation with the comptroller, shall by rule
 3-53 develop a funding structure that:

3-54 (1) implements Section 2 of this article in accordance
 3-55 with this article;

3-56 (2) permits an employee to carry over money allocated
 3-57 to the employee throughout the period the employee is eligible to
 3-58 participate in the program; and

3-59 (3) ensures, to the extent feasible and consistent
 3-60 with this chapter, favorable federal tax treatment to the employee.

3-61 (b) The funding structure shall use a health reimbursement
 3-62 arrangement established in a manner compatible with federal tax
 3-63 law.

3-64 (c) To implement this section, the comptroller shall, as
 3-65 requested by the trustee:

3-66 (1) establish separate accounts attributable to
 3-67 individual participating employees within the Texas school
 3-68 employees uniform group coverage trust fund; or

3-69 (2) transfer funds from the Texas school employees

4-1 uniform group coverage trust fund to trust accounts outside the
 4-2 fund in the custody of the comptroller established for the benefit
 4-3 of employees.

4-4 (d) On an employee's separation from service with an entity
 4-5 described by Section 2(b) of this article, the employee may
 4-6 continue to use for qualified health care expenses any money
 4-7 carried over by the employee under Subsection (a)(2) of this
 4-8 section that was allocated to the employee under this article and
 4-9 was not spent before the effective date of the separation.

4-10 SECTION 1.07. Section 4, Article 3.50-8, Insurance Code, is
 4-11 amended to read as follows:

4-12 Sec. 4. GENERAL RULES AND ADMINISTRATION; CONTRACT
 4-13 AUTHORITY. (a) The trustee shall [may] adopt rules to implement
 4-14 this article.

4-15 (b) The trustee may contract with an independent and
 4-16 experienced group insurance consultant or actuary for advice and
 4-17 counsel in implementing and administering the program.

4-18 (c) The trustee may enter into interagency contracts with
 4-19 any agency of this state, including the Employees Retirement System
 4-20 of Texas and the department, for the purpose of assistance in
 4-21 implementing this article.

4-22 (d) The trustee may not directly administer health benefit
 4-23 plan coverages made available under the program and may not provide
 4-24 those coverages on a self-funded basis.

4-25 (e) The trustee may not establish, approve, or limit premium
 4-26 rates for health benefit plan coverages made available under the
 4-27 program.

4-28 (f) Notwithstanding Section 2 of this article, the trustee
 4-29 may pay all administrative costs incurred by the trustee in
 4-30 operating the program from the contributions made by the state
 4-31 under Section 2(a) of this article.

4-32 SECTION 1.08. Article 3.50-8, Insurance Code, is amended by
 4-33 adding Sections 4A-4F to read as follows:

4-34 Sec. 4A. COMPETITIVE BIDDING REQUIREMENTS. (a) The
 4-35 trustee may, on a competitive bid basis, contract with an entity to
 4-36 act for the trustee as an independent administrator or manager of
 4-37 the coverages, services, and benefits authorized under this
 4-38 article.

4-39 (b) The entity must be a qualified, experienced firm of
 4-40 group insurance specialists or an administering firm and shall
 4-41 assist the trustee in ensuring the proper administration of this
 4-42 article and the coverages, services, and benefits authorized under
 4-43 this chapter.

4-44 Sec. 4B. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a
 4-45 contract under this article, the trustee is not required to select
 4-46 the lowest bid and may consider also any relevant criteria,
 4-47 including the bidder's:

4-48 (1) ability to service contracts;
 4-49 (2) past experience, including experience with the
 4-50 operation of health reimbursement arrangements; and
 4-51 (3) financial stability.

4-52 (b) If the trustee awards a contract to a bidder whose bid
 4-53 deviates from that advertised, the trustee shall record the
 4-54 deviation and fully justify the reason for the deviation in the
 4-55 minutes of the next trustee meeting.

4-56 Sec. 4C. CERTIFICATE OF COVERAGE. An approved health
 4-57 benefit plan provider shall issue, to each employee purchasing
 4-58 health benefit plan coverage from the health benefit plan provider
 4-59 under the program, a certificate of coverage that states:

4-60 (1) the benefits to which the participant is entitled;
 4-61 (2) to whom the benefits are payable;
 4-62 (3) to whom a claim must be submitted; and
 4-63 (4) the provisions of the plan document, in summary
 4-64 form, that principally affect the participant.

4-65 Sec. 4D. ISSUER RECORDS. Any health benefit plan issuer
 4-66 providing coverages to participants in the program shall:

4-67 (1) furnish any reasonable report the trustee
 4-68 determines is necessary to enable the trustee to perform its
 4-69 functions under this article; and

5-1 (2) permit the trustee and a representative of the
 5-2 state auditor to examine records of the health benefit plan issuer
 5-3 as necessary to accomplish the purposes of this article.

5-4 Sec. 4E. CONFIDENTIALITY OF PARTICIPANT RECORDS. (a) The
 5-5 records of a participant in the program in the custody of the
 5-6 trustee, or of an administrator or health benefit plan issuer
 5-7 acting under the program, are confidential and not subject to
 5-8 disclosure and are exempt from the public access provisions of
 5-9 Chapter 552, Government Code, except as provided by this section.

5-10 (b) The trustee may release the records to:
 5-11 (1) an administrator, health benefit plan issuer,
 5-12 agent, or attorney acting under the program;
 5-13 (2) another governmental entity;
 5-14 (3) a medical provider of the participant to
 5-15 accomplish the purposes of this article; or
 5-16 (4) a party in response to a subpoena issued under
 5-17 applicable law.

5-18 Sec. 4F. EQUITABILITY IN NEGOTIATED RATES. (a) A health
 5-19 benefit plan used to provide coverage under the program must be
 5-20 designed to ensure that an employee who purchases coverage under
 5-21 the health benefit plan through the employee's health reimbursement
 5-22 arrangement account is entitled to pay a physician or other health
 5-23 care provider for services provided to the employee that are not
 5-24 reimbursed from the account at the same rate negotiated with the
 5-25 physician or other health care provider by the approved health
 5-26 benefit plan provider for provision of those services under the
 5-27 plan.

5-28 (b) Subsection (a) of this section applies to medical
 5-29 services, dental services, and vision care services.

5-30 ARTICLE 2. CONFORMING AMENDMENTS AND REPEALER

5-31 SECTION 2.01. Section 822.201(c), Government Code, is
 5-32 amended to read as follows:

5-33 (c) Excluded from salary and wages are:
 5-34 (1) expense payments;
 5-35 (2) allowances;
 5-36 (3) payments for unused vacation or sick leave;
 5-37 (4) maintenance or other nonmonetary compensation;
 5-38 (5) fringe benefits;
 5-39 (6) deferred compensation other than as provided by
 5-40 Subsection (b)(3);
 5-41 (7) compensation that is not made pursuant to a valid
 5-42 employment agreement;
 5-43 (8) payments received by an employee in a school year
 5-44 that exceed \$5,000 for teaching a driver education and traffic
 5-45 safety course that is conducted outside regular classroom hours;
 5-46 (9) the benefit replacement pay a person earns as a
 5-47 result of a payment made under Subchapter B or C, Chapter 661;
 5-48 (10) contributions to a health reimbursement
 5-49 arrangement account ~~[supplemental compensation]~~ received by an
 5-50 employee under Article 3.50-8, Insurance Code; and
 5-51 (11) any compensation not described by ~~[in]~~ Subsection

5-52 (b).
 5-53 SECTION 2.02. Sections 3 and 5, Article 3.50-8, Insurance
 5-54 Code, are repealed.

5-55 ARTICLE 3. IMPLEMENTATION; EFFECTIVE DATE

5-56 SECTION 3.01. (a) The Teacher Retirement System of Texas,
 5-57 in consultation with the comptroller, shall develop the funding
 5-58 structure required by Section 2A, Article 3.50-8, Insurance Code,
 5-59 as added by Article 1 of this Act, and shall take necessary action
 5-60 to implement the health reimbursement arrangement program in
 5-61 accordance with Article 3.50-8, Insurance Code, as amended by
 5-62 Article 1 of this Act, not later than September 1, 2004.

5-63 (b) Notwithstanding any other law, until September 1, 2004,
 5-64 the Teacher Retirement System of Texas may pay for administrative
 5-65 expenses incurred by the system in developing the health care
 5-66 reimbursement arrangement program from funds received by the system
 5-67 in fiscal year 2004 under Article 3.50-8, Insurance Code, for
 5-68 operation of the employee health coverage and compensation
 5-69 supplementation program.

6-1 SECTION 3.02. (a) The Teacher Retirement System of Texas
6-2 shall continue to operate the medical savings account program
6-3 established under Article 3.50-8, Insurance Code, as added by
6-4 Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001,
6-5 until September 1, 2004.

6-6 (b) Any unspent funds in a medical savings account
6-7 established for an employee under Article 3.50-8, Insurance Code,
6-8 as that section existed before amendment by this Act, are
6-9 transferred to the health reimbursement arrangement account
6-10 established for that employee under Article 3.50-8, Insurance Code,
6-11 as amended by this Act, effective September 1, 2004.

6-12 SECTION 3.03. Not later than July 31, 2004, the Teacher
6-13 Retirement System of Texas shall provide written information to
6-14 school districts eligible to participate in the health
6-15 reimbursement arrangement program under Article 3.50-8, Insurance
6-16 Code, as amended by Article 1 of this Act, that provides a general
6-17 description of the requirements for such a program as adopted under
6-18 Article 3.50-8, Insurance Code, as amended by Article 1 of this Act.

6-19 SECTION 3.04. During the initial implementation of Article
6-20 3.50-8, Insurance Code, as amended by Article 1 of this Act, and
6-21 notwithstanding any bidding requirements or other requirements set
6-22 forth in Article 3.50-8, Insurance Code, as added by Chapter 1187,
6-23 Acts of the 77th Legislature, Regular Session, 2001, the Teacher
6-24 Retirement System of Texas may amend any agreement in effect on
6-25 September 1, 2003, that it has entered into under Article 3.50-8,
6-26 Insurance Code, as added by Chapter 1187, Acts of the 77th
6-27 Legislature, Regular Session, 2001, as necessary to comply with
6-28 Article 3.50-8, Insurance Code, as amended by Article 1 of this Act.

6-29 SECTION 3.05. (a) Except as provided by Subsection (b) of
6-30 this section, this Act takes effect September 1, 2003.

6-31 (b) Article 2 of this Act takes effect September 1, 2004,
6-32 and applies beginning with the 2004-2005 school year.

6-33 * * * * *