

Amend HB 3125 by adding SECTIONS 2 and 3 and renumbering subsequent sections appropriately.

"SECTION 2. Section 830.107, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A participant in the optional retirement program may authorize the payment of investment advisory fees from the amount in the participant's custodial account or annuity if:

(1) the investment advisory fees for each fiscal year do not exceed two percent of the annual value of the participant's custodial account or annuity as of the last day of that fiscal year;

(2) the fees are paid directly to a registered investment advisor that provides investment advice to the participant;

(3) the investment advisor to whom the fees are paid is registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), ~~and~~ is engaged full-time in the business of providing investment advice, and is registered with one or more of the optional retirement program vendors currently authorized by the participant's employing institution of higher education;

(4) the participant and the investment advisor enter into a contract, for a term of no more than one year, for services that provides for the payment of fees as provided by this section; and

(5) the attorney general has received an official determination from the Internal Revenue Service that payment of investment advisory fees as prescribed by this section is not a distribution of funds that is prohibited or subject to taxation and penalty under the Internal Revenue Code.

(c) Each institution:

(1) may require each currently authorized vendor to certify on at least an annual basis that each investment advisor to whom optional retirement program funds are remitted as payment for investment advisor services meets all requirements of this section;

(2) may:

(A) require that any investment advisor to whom a

vendor remits optional retirement program funds be registered with the institution as a service provider; and

(B) subject the investment advisor to all policies and procedures adopted by the institution;

(3) may prohibit the payment of investment advisory fees to an investment advisor by deduction from a participant's optional retirement program account if the investment advisor fails to register or comply with the institution's policies and procedures; and

(4) shall prohibit a vendor from paying investment advisor fees to any investment advisor that does not or ceases to meet the requirements of this section.

(d) An investment advisor registered with an institution under this section must comply with all policies and procedures adopted by the institution and, at the discretion of the institution, may be prohibited from providing investment advisory services to the institution's participants for failure to comply.

SECTION 3. Section 830.107, Government Code, as amended by this Act applies only to a contract for investment advisory services entered into under the optional retirement program on or after September 1, 2005. A contract entered into before September 1, 2005, is governed by the law in effect on the date the contract was executed, and that law is continued in effect for that purpose."