

By: Eiland

H.B. No. 2617

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1402 to read as follows:

Sec. 411.1402. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: EMPLOYEES RETIREMENT SYSTEM OF TEXAS. (a) The Employees Retirement System of Texas is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is an applicant for employment with, or who is employed by, the retirement system.

(b) Criminal history record information obtained by the Employees Retirement System of Texas under Subsection (a) may be used only to evaluate an applicant for employment with the retirement system.

(c) The Employees Retirement System of Texas may not release or disclose information obtained under Subsection (a) except on court order.

(d) After the expiration of any probationary term of the person's employment or not later than the 180th day after the date of receipt of the information, whichever is later, the Employees Retirement System of Texas shall destroy all criminal history record information obtained under Subsection (a).

1 SECTION 2. Section. 609.001(2-a), Government Code, is
2 amended to read as follows:

3 (2-a) "Institution of higher education" means an
4 institution of higher education as defined by Section 61.003,
5 Education Code [~~other than a public junior college~~].

6 SECTION 3. Section 812.003, Government Code, is amended to
7 read as follows:

8 Sec. 812.003. MEMBERSHIP IN EMPLOYEE CLASS. (a) Except as
9 provided by Subsections [~~Subsection~~] (b), (d), and (e), membership
10 in the employee class of the retirement system includes all
11 employees and appointed officers of every department, commission,
12 board, agency, or institution of the state except:

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

15 (2) persons disqualified from membership under
16 Section 812.201.

17 (b) An office or employment that is included in the coverage
18 of the Teacher Retirement System of Texas, the Judicial Retirement
19 System of Texas Plan One, or the Judicial Retirement System of Texas
20 Plan Two is not a position with a department, commission, board,
21 agency, or institution of the state for purposes of this subtitle.

22 (c) Membership in the employee class is mandatory for
23 eligible persons.

24 (d) Membership [~~For persons whose employment or office~~
25 ~~holding begins on or after September 1, 2005, membership in the~~
26 ~~employee class begins on the first day the person is employed or~~
27 ~~holds office.~~

1 ~~[(e) For persons whose employment or office holding begins~~
2 ~~before September 1, 2005, membership]~~ in the employee class begins
3 on the 91st day after the first day a person is employed or holds
4 office.

5 (e) ~~[(f)]~~ A person who is reemployed or who again holds
6 office after withdrawing contributions under Subchapter B for
7 previous service credited in the employee class begins membership
8 in the employee class on the 91st day after the first day the person
9 is reemployed or again holds office.

10 (f) A ~~[(g) Notwithstanding any other provision of law, a]~~
11 member may establish service credit only as provided by Section
12 813.514 for service performed during the 90-day waiting period
13 provided by Subsection (d) ~~[(e)]~~ or (e) ~~[(f)]~~.

14 ~~[(h) Subsections (e), (f), and (g) and this subsection~~
15 ~~expire September 1, 2005.]~~

16 SECTION 4. Section 812.005(a), Government Code, is amended
17 to read as follows:

18 (a) A person's membership in the retirement system is
19 terminated by:

- 20 (1) death of the person;
- 21 (2) retirement based on service credited in all
22 classes of membership in which the person has service credit; or
- 23 (3) withdrawal of all of the person's accumulated
24 contributions~~[, or~~
- 25 ~~[(4) transfer of the person's accumulated~~
26 ~~contributions under Section 815.502(e)].~~

27 SECTION 5. Section 813.102(b), Government Code, is amended

1 to read as follows:

2 (b) A member may reestablish credit by depositing with the
3 retirement system in a lump sum the amount withdrawn from a
4 membership class, plus interest computed on the basis of the state
5 fiscal year at an annual rate of 10 [~~five~~] percent from the date of
6 withdrawal to the date of redeposit.

7 SECTION 6. Section 813.504, Government Code, is amended to
8 read as follows:

9 Sec. 813.504. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY
10 CANCELED. [~~(a)~~] A person may reestablish service credit
11 previously canceled in the retirement system if[+]

12 [~~(1)~~] the person is a member of the employee class and
13 at least six months have elapsed since the end of the month in which
14 the cancellation became effective[+ ~~or~~

15 [~~(2) the person is:~~

16 [~~(A) a former member of the employee class; and~~

17 [~~(B) a participant in the optional retirement~~
18 ~~program under Chapter 830].~~

19 SECTION 7. Section 813.513(a), Government Code, is amended
20 to read as follows:

21 (a) An eligible member may establish not more than 36 [~~60~~]
22 months of equivalent membership service credit, including law
23 enforcement or custodial officer service, in either the elected
24 class or the employee class.

25 SECTION 8. Subchapter A, Chapter 814, Government Code, is
26 amended by adding Section 814.011 to read as follows:

27 Sec. 814.011. LUMP-SUM PAYMENT IN LIEU OF ANNUITIES. The

1 retirement system may make a lump-sum payment to a retiree or
2 beneficiary in lieu of annuity payments if the actuarial present
3 value of the annuity at the time of retirement or death does not
4 exceed \$10,000.

5 SECTION 9. Section 814.202, Government Code, is amended by
6 amending Subsections (a), (b), and (e) and adding Subsection (f) to
7 read as follows:

8 (a) A member who was contributing to the retirement system
9 at the time the member became permanently incapacitated for the
10 further performance of duty is eligible to retire for a
11 nonoccupational disability if the member has at least:

12 (1) 8 years of membership service credit in the
13 elected class of membership;

14 (2) 6 years of membership service credit in the
15 elected class plus 2 years of military service credit established
16 before January 1, 1978; or

17 (3) 10 years of membership service credit in the
18 employee class of membership.

19 (b) A member who was contributing to the retirement system
20 at the time the member became permanently incapacitated for the
21 further performance of duty, who has an occupational disability as
22 defined by Section 811.001(12), and who has service credit in
23 either membership class is eligible to retire for an occupational
24 disability regardless of age or amount of service credit.

25 (e) A member otherwise eligible may not apply for or
26 receive a nonoccupational disability annuity if the member is
27 eligible for a service retirement annuity under Section 814.102 or

1 814.104(a)(2) or (b) [814.104].

2 (f) An application for a nonoccupational disability
3 retirement may not be made after the second anniversary of the date
4 the member ceased making contributions to the retirement system.

5 SECTION 10. Section 814.203, Government Code, is amended to
6 read as follows:

7 Sec. 814.203. CERTIFICATION OF DISABILITY. As soon as
8 practicable after an application for disability retirement is
9 filed, the medical board shall evaluate the medical and other
10 pertinent information regarding the member's application. If the
11 medical board finds that the member is mentally or physically
12 incapacitated for the further performance of duty, as supported by
13 substantial and objective medical evidence, and that the incapacity
14 is likely to be permanent, the medical board shall issue a
15 certification of disability and submit it to the executive
16 director. A certification under this section is admissible in a
17 contested case under Section 815.511 without qualifying the medical
18 board as experts.

19 SECTION 11. Section 814.206, Government Code, is amended by
20 adding Subsection (f) to read as follows:

21 (f) A standard disability retirement annuity under this
22 section is reducible, under actuarial tables adopted by the board
23 of trustees, for a member who retires before reaching an applicable
24 age provided by Section 814.102 or 814.104.

25 SECTION 12. Section 814.301(a), Government Code, is amended
26 to read as follows:

27 (a) A contributing member who has at least 10 years of

1 service credit in the elected or employee class of membership may
2 select a death benefit plan for the payment, if the member dies
3 while the member is eligible to select a plan, of a death benefit
4 annuity to a person designated by the member. Death benefit
5 annuities available for selection by a member described in this
6 subsection are the optional annuities provided by Sections
7 814.108(c)(1) and (c)(4), payable as if the member had retired at
8 the time of death.

9 SECTION 13. Section 814.302(a), Government Code, is amended
10 to read as follows:

11 (a) If a contributing member eligible to select a death
12 benefit plan under Section 814.301 dies without having made a
13 selection, or if a selection cannot be made effective, the member's
14 designated beneficiary may select a plan in the same manner as if
15 the member had made the selection. If there is no designated
16 beneficiary, the personal representative of the decedent's estate
17 may make the selection for the benefit of the decedent's heirs or
18 devisees. In lieu of selecting a death benefit plan, the designated
19 beneficiary or, if there is none, the personal representative of
20 the decedent's estate, may elect to receive a refund of
21 contributions and any applicable payment under Section 814.401.

22 SECTION 14. Section 815.109, Government Code, is amended to
23 read as follows:

24 Sec. 815.109. CORRECTION OF ERRORS. If an error in the
25 records of the retirement system results in a person receiving more
26 or less money than the person is entitled to receive under this
27 subtitle, the retirement system shall correct the error in

1 accordance with Section 802.1024 and so far as practicable shall
2 adjust future payments so that the actuarial equivalent of the
3 benefit to which the person is entitled is paid.

4 SECTION 15. Section 815.204, Government Code, is amended by
5 adding Subsection (d) to read as follows:

6 (d) The medical board is not subject to subpoena or
7 discovery regarding findings it makes in assisting the executive
8 director under this section, and its members may not be held liable
9 for any opinion, conclusion, or recommendation made under this
10 section.

11 SECTION 16. Sections 815.504(a), (c), and (d), Government
12 Code, are amended to read as follows:

13 (a) The retirement system may photograph, microphotograph,
14 or film any record in its possession or preserve the record through
15 electronic document imaging.

16 (c) A photograph, microphotograph, ~~[or] film~~, or electronic
17 document image of a record reproduced under Subsection (a) is
18 equivalent to the original record for all purposes, including
19 introduction as evidence in all courts and administrative agency
20 proceedings. A ~~[duly]~~ certified or authenticated copy of such a
21 record ~~[photograph, microphotograph, or film]~~ is admissible as
22 evidence equally with the original ~~[photograph, microphotograph,~~
23 ~~or film]~~.

24 (d) The executive director or an authorized representative
25 may certify the authenticity ~~[of a photograph, microphotograph, or~~
26 ~~film]~~ of a record reproduced under this section and shall charge a
27 fee for the certified copy ~~[photograph, microphotograph, or film]~~

1 as provided by law.

2 SECTION 17. Subchapter F, Chapter 815, Government Code, is
3 amended by adding Sections 815.5111, 815.513, and 815.514 to read
4 as follows:

5 Sec. 815.5111. DILIGENT PROSECUTION OF SUIT. The plaintiff
6 shall prosecute with reasonable diligence any suit brought under
7 Section 815.511(f). If the plaintiff does not secure proper
8 service of process or does not prosecute the suit within one year
9 after it is filed, the court shall presume that the suit has been
10 abandoned. The court shall dismiss the suit on a motion for
11 dismissal made by or on behalf of the retirement system unless the
12 plaintiff, after receiving appropriate notice, shows good cause for
13 the delay.

14 Sec. 815.513. EXCLUSIVE REMEDIES. The remedies provided by
15 this chapter are the exclusive remedies available to a member,
16 retiree, beneficiary, or alternate payee.

17 Sec. 815.514. MAILINGS ON BEHALF OF NONPROFIT ASSOCIATION.
18 The retirement system may make mailings not to exceed two in a
19 calendar year on behalf of a nonprofit association of active or
20 retired state employees described by Section 814.009, for purposes
21 of association membership and research only, to persons identified
22 in information contained in records that are in the custody of the
23 system. The nonprofit association requesting a mailing shall pay
24 the expenses of the mailing.

25 SECTION 18. Section 1551.063(c), Insurance Code, is amended
26 to read as follows:

27 (c) To accomplish the purposes of this chapter, the [The]

1 board of trustees may release the records to:

2 (1) an administrator, carrier, agent, or attorney
3 acting on behalf of the board;

4 (2) another governmental entity having a legitimate
5 need for the information to perform the functions of the entity;

6 (3) a medical provider of the participant [~~to~~
7 ~~accomplish the purposes of this chapter~~]; or

8 (4) a party in response to a subpoena issued under
9 applicable law.

10 SECTION 19. Section 1551.101(e), Insurance Code, is amended
11 to read as follows:

12 (e) An individual is eligible to participate in the group
13 benefits program as provided by Subsection (a) if the individual
14 receives compensation for service performed for an institution of
15 higher education pursuant to a payroll certified by an institution
16 of higher education or by an elected or appointed officer of this
17 state and either:

18 (1) is eligible to become [~~be~~] a member of the Teacher
19 Retirement System of Texas after any waiting period provided by law
20 before membership in that retirement system; or

21 (2) is employed at least 20 hours a week and is not
22 permitted to be a member of the Teacher Retirement System of Texas
23 because the individual is employed by an institution of higher
24 education only in a position that as a condition of employment
25 requires the individual to be enrolled as a student in the
26 institution in graduate-level courses.

27 SECTION 20. Subchapter G, Chapter 1551, Insurance Code, is

1 amended by adding Section 1551.3195 to read as follows:

2 Sec. 1551.3195. AMOUNT OF CONTRIBUTION FOR ANNUITANTS WHO
3 WERE PART-TIME EMPLOYEES. An annuitant who as an employee received
4 the benefits of a state contribution for coverage under Section
5 1551.319(b) during any portion of the annuitant's last employment
6 by a state agency is not eligible to receive more than the state
7 contribution provided under Section 1551.319(b) unless the
8 annuitant was designated by the annuitant's employer as a full-time
9 employee during the three-consecutive-month period immediately
10 before retirement.

11 SECTION 21. Section 1551.351(d), Insurance Code, is amended
12 to read as follows:

13 (d) A person may appeal a determination made under
14 Subsection (a) or (b) or Section 1551.352 only to the board of
15 trustees. A proceeding under this subsection is a contested case
16 under Chapter 2001, Government Code. This subchapter applies to an
17 appeal to the board of trustees under this subsection. The
18 appellant has the burden of proof on all issues, including issues in
19 the nature of an affirmative defense. Any[, and any] sanction
20 imposed is not stayed during an appeal under this subsection. [~~If a~~
21 person fails to make a timely appeal, any sanction relates back to
22 the date of the Employees Retirement System of Texas'
23 determination.] An appeal of a decision of the board of trustees
24 under this subsection is under the substantial evidence rule.

25 SECTION 22. Subchapter H, Chapter 1551, Insurance Code, is
26 amended by adding Section 1551.361 to read as follows:

27 Sec. 1551.361. DILIGENT PROSECUTION OF SUIT. The plaintiff

1 shall prosecute with reasonable diligence any suit brought under
2 Section 1551.359. If the plaintiff does not secure proper service
3 of process or does not prosecute the suit within one year after it
4 is filed, the court shall presume that the suit has been abandoned.
5 The court shall dismiss the suit on a motion for dismissal made by
6 or on behalf of the Employees Retirement System of Texas unless the
7 plaintiff, after receiving appropriate notice, shows good cause for
8 the delay.

9 SECTION 23. (a) The change in law made by this Act to
10 Section 814.202, Government Code, applies only to a person who
11 applies for a disability retirement annuity on or after the
12 effective date of this Act. A person who applied for a disability
13 retirement annuity before the effective date of this Act is
14 governed by the law as it existed immediately before the effective
15 date of this Act, and the former law is continued in effect for that
16 purpose.

17 (b) The changes in law made by this Act to Sections 814.301
18 and 814.302, Government Code, apply only to the selection of a death
19 benefit plan that is made on or after the effective date of this
20 Act. A person who selected a death benefit plan before the
21 effective date of this Act is governed by the law as it existed
22 immediately before the effective date of this Act, and the former
23 law is continued in effect for that purpose.

24 (c) The change in law made by this Act to Section
25 1551.351(d), Insurance Code, applies only to an appeal filed on or
26 after the effective date of this Act. An appeal filed under that
27 subsection before the effective date of this Act is governed by the

1 law as it existed immediately before the effective date of this Act,
2 and the former law is continued in effect for that purpose.

3 SECTION 24. The following provisions of the Government Code
4 are repealed:

- 5 (1) Section 813.103;
- 6 (2) Section 813.507;
- 7 (3) Section 813.508;
- 8 (4) Section 813.510;
- 9 (5) Section 814.1042; and
- 10 (6) Section 814.202(d).

11 SECTION 25. (a) Except as provided by Subsections (b) and
12 (c) of this section, this Act takes effect September 1, 2005.

13 (b) The change in law made by this Act to Section
14 813.513(a), Government Code, takes effect January 1, 2006.

15 (c) The change in law made by this Act to Section
16 813.102(b), Government Code, takes effect September 1, 2006.