

By: Deuell

S.B. No. 1269

A BILL TO BE ENTITLED

AN ACT

relating to establishment of a defined contribution health care benefits program for certain active state employees that is operated through the establishment of health reimbursement arrangements.

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

SECTION 1. Subtitle H, Title 8, Insurance Code, is amended by adding Chapter 1555 to read as follows:

CHAPTER 1555. HEALTH REIMBURSEMENT ARRANGEMENTS FOR CERTAIN STATE EMPLOYEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1555.001. GENERAL DEFINITIONS. In this chapter:

(1) "Approved carrier" means a carrier approved by the board of trustees to offer group health benefit plan coverage under this chapter.

(2) "Board of trustees" means the board of trustees established under Chapter 815, Government Code, to administer the Employees Retirement System of Texas.

(3) "Employee" means an individual who participates in the program under Section 1555.101.

(4) "Employer" means this state or a state agency subject to this chapter.

(5) "Full-time employee" has the meaning assigned by Section 1551.003.

1 (6) "Health reimbursement arrangement" means a health
2 benefit plan that:

3 (A) is paid for solely by the employer;

4 (B) is not provided under a salary reduction
5 election;

6 (C) reimburses a participant for a qualified
7 health care expense incurred by the participant or the
8 participant's spouse or dependent;

9 (D) provides reimbursements up to a maximum
10 dollar amount at the end of a coverage period; and

11 (E) provides that any unused portion of the
12 maximum dollar amount at the end of a coverage period is carried
13 forward to increase the maximum reimbursement amount in subsequent
14 coverage periods.

15 (7) "Institution of higher education" has the meaning
16 assigned by Section 1551.006.

17 (8) "Part-time employee" has the meaning assigned by
18 Section 1551.003.

19 (9) "Program" means the state employees health
20 reimbursement arrangement program established under this chapter.

21 (10) "Service" means personal service to the state
22 creditable in accordance with rules adopted by the board of
23 trustees.

24 (11) "State agency" has the meaning assigned by
25 Section 1551.003.

26 Sec. 1555.002. DEFINITION OF DEPENDENT. (a) In this
27 chapter, "dependent" with respect to an individual means the

individual's:

(1) spouse;

(2) unmarried child younger than 25 years of age;

(3) child of any age who lives with or has the child's care provided by the individual on a regular basis if the child is mentally retarded or physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the board of trustees; or

(4) child of any age who is unmarried on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272).

(b) In this section, "child" includes an adopted child and a stepchild, foster child, or other child who is in a parent-child relationship with an individual.

Sec. 1555.003. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means a plan that provides, pays for, or reimburses expenses for health care services, including comparable health care services for participants who rely solely on spiritual means through prayer for healing in accordance with the teaching of a well-recognized church or denomination.

(b) Health benefit plans made available through the program shall be provided on a group basis through:

(1) a policy or contract;

(2) a medical or hospital service agreement;

(3) a membership or subscription contract;

(4) a health maintenance organization agreement;

(5) a preferred provider arrangement; or

1 (6) any other similar group arrangement or a
2 combination of policies, plans, contracts, agreements, or
3 arrangements described by this subsection.

4 Sec. 1555.004. DEFINITION OF CARRIER; APPROVAL OF CARRIER.

5 (a) In this chapter, "carrier" means:

6 (1) an insurance company that is authorized by the
7 department under this code to provide any of the types of insurance
8 coverages, benefits, or services provided for in this chapter;

9 (2) a corporation operating under Chapter 842 or 843
10 that provides any of the types of coverage, benefits, or services
11 provided for in this chapter; or

12 (3) any combination of entities described by
13 Subdivisions (1) and (2) on terms the board of trustees prescribes.

14 (b) The board of trustees shall approve carriers to offer
15 group health benefit plan coverage under this chapter. The board
16 may impose requirements for approval of a carrier.

17 (c) For the initial operation of the program, the board of
18 trustees may approve only carriers that demonstrate to the
19 satisfaction of the board of trustees that they:

20 (1) have professional experience in the provision of
21 group health benefits under health reimbursement arrangements; and

22 (2) on or before January 1, 2006, were commercially
23 providing group health benefits under those arrangements.

24 Sec. 1555.005. OTHER DEFINITIONS. The board of trustees by
25 rule may define a word in terms necessary to the administration of
26 this chapter.

27 Sec. 1555.006. EXEMPTION FROM EXECUTION. All benefit

1 payments, state contributions, contributions of employees, any
2 rights, benefits, or payments accruing to a person under this
3 chapter, and all money in a fund created by this chapter:

4 (1) are exempt from execution, attachment,
5 garnishment, or any other process; and

6 (2) may not be assigned, except:

7 (A) for direct payment that a participant may
8 assign to a provider of health care services; and

9 (B) as specifically provided by this chapter.

10 Sec. 1555.007. EXEMPTION FROM STATE TAXES AND FEES. Any
11 coverage established under this chapter, including a policy, an
12 insurance contract, a certificate of coverage, an evidence of
13 coverage, and an agreement with a health maintenance organization
14 or a plan administrator, is not subject to any state tax, regulatory
15 fee, or surcharge, including a premium or maintenance tax or fee.

16 [Sections 1555.008-1555.050 reserved for expansion]

17 SUBCHAPTER B. ESTABLISHMENT AND ADMINISTRATION OF PROGRAM

18 Sec. 1555.051. ESTABLISHMENT OF PROGRAM. The state
19 employees health reimbursement arrangement program is established
20 to provide group health benefit coverages to employees through the
21 operation of health reimbursement arrangements.

22 Sec. 1555.052. ADMINISTRATION AND IMPLEMENTATION; GENERAL
23 POWERS. (a) Subject to Sections 1555.053(b) and (c), the
24 administration and implementation of this chapter are vested solely
25 in the board of trustees.

26 (b) Except as otherwise provided by this chapter, the board
27 of trustees may exercise under this chapter any power granted to the

1 board of trustees under Subchapter B, Chapter 1551.

2 Sec. 1555.053. GENERAL POWERS OF BOARD OF TRUSTEES
3 REGARDING PROGRAM. (a) As necessary for the operation of the
4 program, the board of trustees may:

5 (1) prescribe the time and conditions under which an
6 employee or employee's dependent is eligible for a coverage
7 provided under this chapter;

8 (2) determine the methods and procedures of claims
9 administration;

10 (3) determine the amount of payroll deductions and
11 reductions applicable to participating employees and establish
12 procedures to implement those deductions and reductions;

13 (4) establish procedures for the board of trustees to
14 decide contested cases arising from a coverage provided under this
15 chapter;

16 (5) study, on an ongoing basis, the operation of all
17 coverages provided under this chapter, including gross and net
18 costs, administration costs, benefits, utilization of benefits,
19 and claims administration;

20 (6) administer the employees life, accident, and
21 health insurance and benefits fund;

22 (7) provide the beginning and ending dates of
23 coverages of participants;

24 (8) make health benefit plan coverage available to all
25 employees who are required to or elect to participate in the program
26 and their dependents through plans offered by approved carriers;
27 and

1 (9) develop a funding structure, as provided by
2 Section 1555.252, that efficiently uses state and other employer
3 contributions to achieve the purposes of this chapter and that is
4 reasonable and ensures participants a fair choice among health
5 benefit plans.

6 (b) The board of trustees may not directly administer group
7 health benefit plan coverages made available under the program and
8 may not provide those coverages on a self-funded basis.

9 (c) The board of trustees may not establish, approve, or
10 limit premium rates for group health benefit plan coverages made
11 available under the program.

12 Sec. 1555.054. CERTIFICATE OF COVERAGE. An approved
13 carrier shall issue to each employee purchasing group health
14 benefit plan coverage from the carrier under the program a
15 certificate of coverage that states:

16 (1) the benefits to which the participant is entitled;
17 (2) to whom the benefits are payable;
18 (3) to whom a claim must be submitted; and
19 (4) the provisions of the plan document, in summary
20 form, that principally affect the participant.

21 Sec. 1555.055. CARRIER REQUIREMENTS. Any carrier providing
22 coverages to participants in the program shall:

23 (1) furnish any reasonable report the board of
24 trustees determines is necessary to enable the board to perform its
25 functions under this chapter; and

26 (2) permit the board and a representative of the state
27 auditor to examine records of the carrier as necessary to

1 accomplish the purposes of this chapter.

2 Sec. 1555.056. CONFIDENTIALITY OF CERTAIN RECORDS. (a)
3 The records of a participant in the program in the custody of the
4 board of trustees, or of an administrator or carrier acting under
5 the program, are confidential and not subject to disclosure and are
6 exempt from the public access provisions of Chapter 552, Government
7 Code, except as provided by this section.

8 (b) A participant's records may be released to a participant
9 or to an authorized attorney, family member, or representative
10 acting on behalf of the participant.

11 (c) The board of trustees may release a participant's
12 records to:

13 (1) an administrator, carrier, agent, or attorney
14 acting under the program;

15 (2) another governmental entity;

16 (3) a medical provider of the participant to
17 accomplish the purposes of this chapter; or

18 (4) a party in response to a subpoena issued under
19 applicable law.

20 Sec. 1555.057. ANNUAL REPORT. (a) The board of trustees
21 shall submit a written report not later than January 1 of each year
22 to the governor, lieutenant governor, speaker of the house of
23 representatives, and Legislative Budget Board concerning:

24 (1) the operation of the program; and

25 (2) the coverages provided to and the benefits and
26 services being received by participants under this chapter.

27 (b) The report must include information about and analysis

1 of the effectiveness of the use of health reimbursement
2 arrangements in providing comprehensive and efficient health
3 benefits coverage to state employees.

4 [Sections 1555.058-1555.100 reserved for expansion]

5 SUBCHAPTER C. COVERAGE AND PARTICIPATION

6 Sec. 1555.101. PARTICIPATION IN PROGRAM BY CERTAIN
7 EMPLOYEES. (a) Notwithstanding any provision of Chapter 1551,
8 participation in the health reimbursement arrangement program
9 established under this chapter is:

10 (1) mandatory for each employee who begins employment
11 on or after September 1, 2006; and

12 (2) elective for each employee:

13 (A) employed before September 1, 2006; and

14 (B) eligible to receive a state contribution
15 under Subchapter G, Chapter 1551.

16 (b) An individual who elects to participate in the program
17 shall notify the board of trustees and the individual's employing
18 state agency in the manner prescribed by the board of trustees by
19 rule.

20 (c) An individual who participates in the program is not
21 entitled to receive group health benefit coverages under the group
22 benefits program operated under Chapter 1551. The individual is
23 eligible to receive other coverages through the group benefits
24 program in the manner provided by Chapter 1551.

25 Sec. 1555.102. RIGHT TO COVERAGE. Subject to Section
26 1555.301, an individual who participates in the program may not be
27 denied any group coverage under this chapter.

1 Sec. 1555.103. DATE COVERAGE BEGINS. Group health benefit
2 plan coverage under this chapter begins on the first day of the
3 calendar month that begins after the 90th day after the date on
4 which the employee performs services for the state agency, in
5 accordance with procedures established by the board of trustees.
6 Coverage under other group coverages provided under the group
7 benefits program established under Chapter 1551 begins as provided
8 by the board of trustees under that chapter.

9 [Sections 1555.104-1555.150 reserved for expansion]

10 SUBCHAPTER D. COVERAGE FOR DEPENDENTS

11 Sec. 1555.151. ENTITLEMENT TO COVERAGE. An individual who
12 participates in the program is entitled to secure for a dependent of
13 the individual any group coverages provided under this chapter, as
14 determined by the board of trustees and subject to the exceptions
15 provided by this subchapter.

16 Sec. 1555.152. PARTICIPANT RESIDING OUTSIDE OF SERVICE
17 AREA. An individual who participates in the program and who resides
18 outside of a health maintenance organization service area is
19 entitled to group coverages for a dependent of the individual
20 without evidence of insurability if the individual applies for the
21 coverage for the dependent during the annual enrollment period.

22 Sec. 1555.153. EMPLOYEE PAYMENTS. In the manner and form
23 the board of trustees determines, payments required of an employee
24 in excess of employer contributions shall be made by:

25 (1) a deduction from the employee's monthly pay; or

26 (2) a reduction of the employee's salary.

27 Sec. 1555.154. REINSTATEMENT OF HEALTH BENEFIT PLAN

1 COVERAGE BY CERTAIN DEPENDENTS. (a) A dependent child who is
2 unmarried and whose coverage under this chapter ends when the child
3 becomes 25 years of age may, on expiration of continuation coverage
4 under the Consolidated Omnibus Budget Reconciliation Act of 1985
5 (Pub. L. No. 99-272), reinstate health benefit plan coverage under
6 this chapter if the child, or the child's participating parent,
7 pays the full cost of the health benefit plan coverage.

8 (b) A state contribution is not payable for coverage under
9 this section.

10 (c) Coverage under this section terminates at the end of the
11 month in which the child marries.

12 [Sections 1555.155-1555.200 reserved for expansion]

13 SUBCHAPTER E. GROUP COVERAGE

14 Sec. 1555.201. HEALTH BENEFIT PLAN COVERAGE; APPROVED
15 HEALTH BENEFIT PLANS. (a) Group health benefit plan coverage shall
16 be made available under the program in accordance with this
17 section.

18 (b) The board of trustees shall approve carriers providing a
19 range of health benefit plans and must include carriers offering
20 health benefit plans in which a participant may be enrolled on
21 selection of the plan without proof of insurability.

22 (c) The board of trustees by rule shall prescribe the
23 specifications for each health benefit plan offered under this
24 chapter, including:

25 (1) the types of health benefit plans offered;

26 (2) the benefits offered under each plan;

27 (3) the levels of copayments, coinsurance, or

1 deductibles required for each plan; and

2 (4) any other requirements for a health benefit plan
3 that are determined to be necessary by the board of trustees.

4 (d) The Employees Retirement System of Texas is the group
5 policy or contract holder for a health benefit plan offered by an
6 approved carrier under this chapter.

7 Sec. 1555.202. PROGRAM NOT SELF-FUNDED. The board of
8 trustees may not self-fund health benefit plan coverage under this
9 chapter.

10 Sec. 1555.203. ACCOUNTING BY CARRIER. (a) An approved
11 carrier providing group health benefit plan coverage under this
12 chapter shall provide an accounting to the board of trustees not
13 later than the 90th day after the end of each plan year.

14 (b) The accounting must be in a form approved by the board of
15 trustees.

16 (c) The accounting must state for the period from the
17 coverage's date of issue to the end of the plan year:

18 (1) the amounts of contributions accrued under the
19 coverage;

20 (2) the total claims, charges, losses, and expenses
21 incurred; and

22 (3) the amounts of the carrier's allowance for a
23 reasonable profit and contingencies.

24 Sec. 1555.204. SPECIAL CONTINGENCY RESERVE. (a) An
25 approved carrier providing group health benefit plan coverage under
26 this chapter shall hold as a special contingency reserve an amount
27 that equals the amount by which the amount described by Section

1 1555.203(c)(1) exceeds the sum of the amounts described by Sections
2 1555.203(c)(2) and (3).

3 (b) The carrier may use the special contingency reserve only
4 for charges, claims, and expenses under the plan.

5 (c) The special contingency reserve earns interest at a rate
6 determined before each plan year by the carrier and approved by the
7 board of trustees as consistent with the rates generally used by the
8 carrier for similar funds held under other group coverage plans.

9 (d) On a determination by the board of trustees that the
10 special contingency reserve has attained an amount estimated by the
11 board to make satisfactory provision for adverse fluctuations in
12 future charges, claims, or expenses under the plan, any further
13 excess shall be deposited to the credit of the employees life,
14 accident, and health insurance and benefits fund in the state
15 treasury.

16 (e) On discontinuation of a plan, any balance remaining in
17 the special contingency reserve after all charges have been made
18 shall be deposited to the credit of the employees life, accident,
19 and health insurance and benefits fund in the state treasury. The
20 carrier may make the deposit in equal monthly installments over a
21 period of not more than two years.

22 [Sections 1555.205-1555.250 reserved for expansion]

23 SUBCHAPTER F. CONTRIBUTIONS AND COSTS

24 Sec. 1555.251. STATE CONTRIBUTION; FUNDING OF COVERAGE.

25 (a) For each participating employee, the state annually shall
26 contribute the amount specified by the legislature to the health
27 reimbursement arrangement account established for that employee

1 for the payment of qualified health care expenses.

2 (b) Each individual who participates in the program under
3 Section 1555.101 shall direct the expenditure of:

4 (1) the amount of the state contribution made under
5 this subchapter that is allocated to the participant in accordance
6 with the General Appropriations Act and this subchapter;

7 (2) the amount of other employer contributions made
8 under this subchapter that is allocated to the participant in
9 accordance with the General Appropriations Act and this subchapter;
10 and

11 (3) the amount of the participant's contributions to
12 the program under this subchapter.

13 (c) Money described by Subsection (b) may be used by an
14 individual who participates in the program under Section 1555.101
15 to purchase coverage under a health benefit plan offered by an
16 approved carrier for the individual and the individual's
17 dependents. At least \$500 of the money in the health reimbursement
18 arrangement account must be spendable at the individual's
19 discretion for qualified health care expenses.

20 Sec. 1555.252. FUNDING STRUCTURE; RULES. (a) The board of
21 trustees, in consultation with the comptroller, shall by rule
22 develop a funding structure that:

23 (1) implements Section 1555.251 in accordance with
24 this subchapter;

25 (2) permits an individual who participates in the
26 program under Section 1555.101 to carry over money allocated to the
27 individual throughout the period the individual is eligible to

1 participate; and

2 (3) ensures, to the extent feasible and consistent
3 with this subchapter, favorable federal tax treatment to the
4 individual.

5 (b) The funding structure shall use a system of health
6 reimbursement arrangements established in a manner compatible with
7 federal tax law.

8 (c) To implement this section, the comptroller shall, if
9 requested by the board of trustees:

10 (1) establish separate accounts attributable to
11 individual participants within the employees life, accident, and
12 health insurance and benefits fund; or

13 (2) transfer funds from the employees life, accident,
14 and health insurance and benefits fund to trust accounts that are
15 outside the fund, in the custody of the comptroller, and
16 established for the benefit of individual participants.

17 Sec. 1555.253. EFFECT OF SEPARATION FROM SERVICE WITH
18 PARTICIPATING STATE AGENCY. Notwithstanding any other provision of
19 this chapter, on an individual's separation from service with the
20 state, the individual may continue to use for qualified health care
21 expenses any money carried over by the individual under Section
22 1555.252(a)(2) that was allocated to the individual under this
23 chapter and was not spent before the effective date of the
24 separation.

25 Sec. 1555.254. COST OF COVERAGE EXCEEDING STATE AND OTHER
26 EMPLOYER CONTRIBUTIONS. If the cost of the coverage selected by an
27 individual who participates in the program under Section 1555.101

exceeds the amount available to pay the cost from state and other employer contributions allocable to the individual, the state shall deduct from the monthly compensation of the individual an amount sufficient to pay the cost of the coverage selected or reduce the monthly compensation of the individual in an amount sufficient to pay the cost of the coverage selected.

Sec. 1555.255. PAYMENT OF EXCESS COST. (a) If an individual who participates in the program under Section 1555.101 applies for group health coverages for which the cost exceeds the state and other employer contributions for those coverages under this chapter, the individual shall authorize in a form and manner satisfactory to the board of trustees a deduction from the individual's monthly compensation equal to the difference between:

(1) the cost of the coverages for which the individual applies; and

(2) the individual's contribution.

(b) Money contributed by an individual under this section shall be allocated to the individual in accordance with rules adopted under Section 1555.252. Money contributed by the individual is subject to Section 1555.253.

Sec. 1555.256. NO CONTRIBUTION ON REFUSAL OF COVERAGE. The state or a state agency may not make any contribution to the cost of any coverages or benefits provided under this chapter for an individual who refuses the coverages or benefits in a form and manner satisfactory to the board of trustees.

Sec. 1555.257. REQUIRED CONTRIBUTIONS BY STATE AGENCIES.

(a) The governing board of each state agency participating in the

1 program shall pay to the board of trustees an amount equal to the
2 amount appropriated by the legislature for each employee's
3 individual group health coverages or dependents' group health
4 coverages for the agency's employees who are compensated from funds
5 not appropriated in the General Appropriations Act.

6 (b) The state agency shall:

7 (1) include the required contributions from funds not
8 appropriated in the General Appropriations Act in its annual
9 operating budget;

10 (2) ensure current participant coverages based on the
11 records of the board of trustees;

12 (3) make timely payments of amounts due the board of
13 trustees from all fund sources under the state agency's control;
14 and

15 (4) each month reconcile board of trustees and state
16 agency records of coverages and payments.

17 Sec. 1555.258. ALLOCATION TO BOARD OF TRUSTEES OF EMPLOYER
18 CONTRIBUTIONS. From the several funds from which employees receive
19 their respective salaries, all employer contributions computed in
20 accordance with this chapter and rules adopted under this chapter
21 are allocated to the board of trustees to allocate to a participant
22 as provided by this subchapter.

23 Sec. 1555.259. PAYMENT OF EMPLOYER CONTRIBUTIONS ALLOCATED
24 BY THE STATE. (a) All money allocated by this state to the board of
25 trustees for participants under this chapter shall be paid to the
26 board in monthly installments based on the annual estimate by the
27 board of the contributions to be received for all employees during

1 the year.

2 (b) At the end of each fiscal year, the board of trustees
3 shall make any adjustments required to cover the difference
4 between:

5 (1) the annual estimate; and

6 (2) the actual amount of the employer contributions
7 during the year.

8 (c) Each monthly installment shall be paid to the
9 appropriate fund in the amount certified by the board of trustees.

10 Sec. 1555.260. AMOUNT OF CONTRIBUTION FOR FULL-TIME AND
11 PART-TIME EMPLOYEES. (a) A full-time employee receives the
12 benefits of a full state contribution for coverage under this
13 chapter.

14 (b) A part-time employee receives the benefits of one-half
15 of the amount of the state contribution received by a full-time
16 employee.

17 [Sections 1555.261-1555.300 reserved for expansion]

18 SUBCHAPTER G. EXPULSION AND ADJUDICATION OF CLAIM

19 Sec. 1555.301. GENERAL REQUIREMENTS. (a) The board of
20 trustees shall apply Subchapter H, Chapter 1551, to determine
21 grounds for expulsion from the program and adjudication of any
22 claim arising under this chapter.

23 (b) The board of trustees, by rule, may modify a procedure
24 established under Subchapter H, Chapter 1551, as necessary to
25 implement this chapter.

26 [Sections 1555.302-1555.350 reserved for expansion]

27 SUBCHAPTER H. FUND REQUIREMENTS

1 Sec. 1555.351. USE OF EMPLOYEES LIFE, ACCIDENT, AND HEALTH
2 INSURANCE AND BENEFITS FUND. (a) Contributions of participants
3 and the state provided for under this chapter shall be credited to
4 the employees life, accident, and health insurance and benefits
5 fund in the state treasury and allocated from the fund in accordance
6 with the funding structure adopted by the board under Section
7 1555.252.

8 (b) The fund is available:

9 (1) without fiscal year limitation for all allocations
10 to participants for payments for any coverages provided for under
11 this chapter; and

12 (2) for payment of expenses of administering this
13 chapter within the limitations that may be specified annually by
14 the legislature.

15 SECTION 2. (a) The board of trustees of the Employees
16 Retirement System of Texas, in consultation with the comptroller,
17 shall develop the funding structure required by Section 1555.252,
18 Insurance Code, as added by this Act, and shall take necessary
19 action to implement the program in accordance with Chapter 1555,
20 Insurance Code, as added by this Act, not later than September 1,
21 2006.

22 (b) In accordance with the program established by this Act,
23 the board of trustees shall transfer to the employees life,
24 accident, and health insurance and benefits fund from the
25 contingency reserve fund for self-funded coverage established
26 under Section 1551.211, Insurance Code, any amounts contained in
27 the contingency reserve fund for self-funded coverage allocable to

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1 coverages that are no longer self-funded under the program. A
2 transfer under this subsection is effective September 1, 2006.

3 SECTION 3. This Act takes effect September 1, 2005.