

AN ACT

relating to the powers and duties of and benefits available under the Employees Retirement System of Texas and to a chronic disease prevention and wellness pilot program administered by the system and the Department of State Health Services for department employees.

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

SECTION 1. Section 615.045, Government Code, is amended by amending Subsection (a) and adding Subsections (b-1) and (d) to read as follows:

(a) Records of individuals listed by Section 615.003 and of survivors eligible for benefits under this chapter that are in the custody of the Employees Retirement System of Texas, ~~or~~ an administering firm as defined by Section 1551.003, Insurance Code, a carrier as defined by Section 1551.007, Insurance Code, or another governmental agency acting with or on behalf of the retirement system are confidential and not subject to public disclosure, and the retirement system, administering firm, carrier, or governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the ~~[public information]~~ provisions of Chapter 552, except as otherwise provided by this section.

(b-1) A record released or received by the retirement system

1 under this section may be transmitted electronically, including
2 through the use of an electronic signature or certification in a
3 form acceptable to the retirement system. An unintentional
4 disclosure to, or unauthorized access by, a third party related to
5 the transmission or receipt of information under this section is
6 not a violation by the retirement system of any law, including a law
7 or rule relating to the protection of confidential information.

8 (d) The retirement system has sole discretion in
9 determining whether a record is subject to this section. For
10 purposes of this section, a record includes any identifying
11 information about any person, living or deceased, who is or was:

- 12 (1) an individual listed in Section 615.003; or
13 (2) a survivor, heir, or beneficiary of an individual
14 listed in Section 615.003.

15 SECTION 2. Subchapter A, Chapter 811, Government Code, is
16 amended by adding Sections 811.010 and 811.011 to read as follows:

17 Sec. 811.010. VENUE. Subject to and without waiving the
18 retirement system's sovereign immunity or the official immunity of
19 the trustees, officers, and employees of the retirement system, the
20 venue for any action by or against the retirement system, the
21 trustees, officers, or employees of the retirement system, or an
22 administering firm, carrier, or other governmental agency acting in
23 cooperation with or on behalf of the retirement system is in Travis
24 County.

25 Sec. 811.011. STATUTE OF LIMITATIONS. Subject to and
26 without waiving the retirement system's sovereign immunity or the
27 official immunity of the trustees, officers, and employees of the

1 retirement system, unless specifically provided otherwise by
2 another statute, the statute of limitations for a claim against the
3 retirement system or a trustee, officer, or employee of the
4 retirement system is two years.

5 SECTION 3. Section 812.101, Government Code, is amended by
6 adding Subsection (c) to read as follows:

7 (c) For a law enforcement or custodial officer, the
8 withdrawal of accumulated contributions under Subsection (a)
9 includes all of the officer's contributions made under Section
10 815.402(h).

11 SECTION 4. Section 812.201(c), Government Code, is amended
12 to read as follows:

13 (c) A person who is retired from the elected class of
14 membership and who again holds a position included in that class may
15 elect to become a member again by filing notice with the retirement
16 system. Except as provided by Section 812.203(c) [~~812.203(e)~~],
17 when benefit payments are resumed, the retirement system shall
18 recompute the annuity selected at the time of the person's original
19 retirement to include the additional service established during
20 membership under this subsection.

21 SECTION 5. Subchapter C, Chapter 812, Government Code, is
22 amended by adding Section 812.205 to read as follows:

23 Sec. 812.205. WAITING PERIOD. A member who retires from the
24 employee class on or after May 31, 2009, may not return to work in a
25 position included in the employee class of membership before the
26 90th day after the date of the retiree's original retirement.

27 SECTION 6. Subchapter C, Chapter 812, Government Code, is

1 amended by adding Section 812.206 to read as follows:

2 Sec. 812.206. RETURN TO WORK SURCHARGE. (a) This section
3 applies only to a person who, on or after September 1, 2009:

4 (1) retires from the employee class; and

5 (2) is rehired as a retiree into a position that would
6 otherwise include membership in the employee class.

7 (b) For each month that a department or agency of this state
8 employs a person described by Subsection (a), the department or
9 agency shall remit to the retirement system an amount equal to the
10 amount of the state contribution that the department or agency
11 would remit for an active member employed in the person's position.
12 The amount remitted shall be deposited as provided by Section
13 815.309.

14 SECTION 7. Section 813.509, Government Code, is amended by
15 amending Subsections (d) and (e) and adding Subsection (k) to read
16 as follows:

17 (d) An individual who was a [A] member or employee on August
18 31, 2009, and who holds a position included in the employee class
19 may use sick leave creditable under this section to satisfy service
20 requirements for retirement under Section 814.104 or 814.107 if the
21 sick leave attributed to the eligibility requirements remains
22 otherwise unused on the last day of employment.

23 (e) A death benefit beneficiary [~~designee~~] under Section
24 814.302 may use the deceased member's sick leave credit under this
25 section to qualify for making a death benefit plan selection under
26 Section 814.302 if the decedent was a member or employee on August
27 31, 2009.

1 (k) A member who was not a member on the date hired and was
2 hired on or after September 1, 2009, or a death benefit beneficiary
3 of that member may use sick leave creditable under this section only
4 for purposes of calculating the member's or beneficiary's annuity.

5 SECTION 8. Section 813.511, Government Code, is amended by
6 amending Subsections (d) and (e) and adding Subsection (j) to read
7 as follows:

8 (d) An individual who was a [A] member or employee on August
9 31, 2009, and who holds a position included in the employee class
10 may use annual leave creditable under this section to satisfy
11 service requirements for retirement under Section 814.104 or
12 814.107 if the annual leave attributed to the eligibility
13 requirements remains otherwise unused on the last day of
14 employment.

15 (e) A death benefit beneficiary [~~designee~~] under Section
16 814.302 may use the deceased member's annual leave credit under
17 this section to qualify for making a death benefit plan selection
18 under Section 814.302 if the decedent was a member or employee on
19 August 31, 2009.

20 (j) A member who was not a member on the date hired and was
21 hired on or after September 1, 2009, or a death benefit beneficiary
22 of that member may use annual leave creditable under this section
23 only for purposes of calculating the member's or beneficiary's
24 annuity.

25 SECTION 9. Section 814.008(a), Government Code, is amended
26 to read as follows:

27 (a) A retiree receiving an optional service or disability

1 retirement annuity approved by the board of trustees or described
2 by Section 814.108(c)(1), ~~or~~ (c)(2), or (c)(5) may change the
3 designated beneficiary as provided by this section for the benefits
4 payable after the retiree's death.

5 SECTION 10. Subchapter A, Chapter 814, Government Code, is
6 amended by adding Section 814.012 to read as follows:

7 Sec. 814.012. DISPOSITION OF UNCLAIMED BENEFICIARY
8 BENEFITS. If, as of the fourth anniversary of the death of a member
9 or annuitant, the retirement system has not paid benefits and a
10 claim for benefits is not pending with the retirement system based
11 on the death of the member or annuitant, the accumulated
12 contributions of the deceased member or the balance of the reserve
13 for the deceased annuitant reverts to the benefit of the retirement
14 system. The retirement system shall transfer funds reverted under
15 this section to the state accumulation account.

16 SECTION 11. Section 814.104, Government Code, is amended by
17 amending Subsection (a) and adding Subsection (d) to read as
18 follows:

19 (a) Except as provided by Subsection (d) of this section,
20 Section 814.102, or by rule adopted under Section 813.304(d) or
21 803.202(a)(2), a member who has service credit in the retirement
22 system is eligible to retire and receive a service retirement
23 annuity if the member:

24 (1) is at least 60 years old and has at least 5 years of
25 service credit in the employee class; or

26 (2) has at least 5 years of service credit in the
27 employee class and the sum of the member's age and amount of service

1 credit in the employee class, including months of age and credit,
2 equals or exceeds the number 80.

3 (d) Except as provided by Section 814.102 or by rule adopted
4 under Section 813.304(d) or 803.202(a)(2), a member who was not a
5 member on the date hired, was hired on or after September 1, 2009,
6 and has service credit in the retirement system is eligible to
7 retire and receive a service retirement annuity if the member:

8 (1) is at least 65 years old and has at least 10 years
9 of service credit in the employee class; or

10 (2) has at least 5 years of service credit in the
11 employee class and the sum of the member's age and amount of service
12 credit in the employee class, including months of age and credit,
13 equals or exceeds the number 80.

14 SECTION 12. Section 814.105, Government Code, is amended by
15 adding Subsections (c) and (d) to read as follows:

16 (c) The standard service retirement annuity for service
17 credited in the employee class of membership for a member who was
18 not a member on the date hired, was hired on or after September 1,
19 2009, and is eligible to retire is an amount computed as the
20 member's average monthly compensation for service in that class for
21 the 48 highest months of compensation multiplied by 2.3 percent for
22 each year of service credit in that class.

23 (d) The standard service retirement annuity computed under
24 Subsection (c) is reduced by five percent for each year the member
25 retires before the member reaches age 60, with a maximum possible
26 reduction of 25 percent.

27 SECTION 13. Sections 814.107(c) and (d), Government Code,

1 are amended to read as follows:

2 (c) The standard combined service retirement annuity that
3 is payable under this section is based on retirement on or after the
4 attainment of the normal retirement age, which for purposes of this
5 section is the earlier of either the age of 50 or the age at which
6 the sum of the member's age and amount of service credit in the
7 employee class equals the number 80. A law enforcement or custodial
8 officer who retires before attaining the normal retirement age is
9 entitled only to an annuity that is actuarially reduced from the
10 annuity available at the normal retirement age to the law
11 enforcement or custodial officer whose service credit annuity
12 amount is based on [~~available at~~] the sum of the member's age and
13 amount of law enforcement or custodial officer service credit and
14 employee class service credit, and is not entitled to have the
15 annuity recalculated at normal retirement age. The standard or
16 reduced annuity is payable from the trust fund established by
17 Section 815.310 and the law enforcement and custodial officer
18 supplemental retirement fund in a ratio determined by the
19 retirement system.

20 (d) A member who retires under this section retires
21 simultaneously from the employee class of membership. [~~Benefits for~~
22 ~~service in the employee class of membership become payable from the~~
23 ~~trust fund established by Section 815.310 at the normal retirement~~
24 ~~age under the computation provided by Section 814.105.] Optional
25 retirement annuities provided by Section 814.108 are available to a
26 member eligible to receive a service retirement annuity under this
27 section, but the same optional plan and beneficiary [~~designee~~] must~~

1 be selected for the portion of the annuity payable from the law
2 enforcement and custodial officer supplemental retirement fund and
3 the portion payable from the trust fund established by Section
4 815.310.

5 SECTION 14. Subchapter B, Chapter 814, Government Code, is
6 amended by adding Section 814.1075 to read as follows:

7 Sec. 814.1075. ADJUSTED BENEFITS FOR CERTAIN PEACE
8 OFFICERS. (a) This section applies only to a person hired on or
9 after September 1, 2009, who was not a member on the date hired.

10 (b) A member who has at least 20 years of service credit as a
11 law enforcement or custodial officer is eligible to retire
12 regardless of age and receive a standard service retirement annuity
13 as provided by this section.

14 (c) The standard service retirement annuity payable for at
15 least 20 years of service credit as a law enforcement or custodial
16 officer is an amount computed on the basis of the member's average
17 monthly compensation for the 48 highest months of compensation in
18 the employee class multiplied by the sum of the percentage factor
19 used in the computation of a standard service retirement annuity
20 under Section 814.105(c) plus 0.5 percent.

21 (d) The standard combined service retirement annuity that
22 is payable under this section is based on retirement at either the
23 age of 55 or the age at which the sum of the member's age and amount
24 of service credit in the employee class equals or exceeds the number
25 80. The annuity of a law enforcement or custodial officer who
26 retires before reaching the age of 55 under any eligibility
27 criteria is actuarially reduced by five percent for each year the

1 member retires before the member reaches age 55, with a maximum
2 possible reduction of 25 percent.

3 (e) An annuity payable under this section:

4 (1) is payable from the trust fund established by
5 Section 815.310 and from the law enforcement and custodial officer
6 supplemental retirement fund in a ratio determined by the
7 retirement system; and

8 (2) is based on the service credit available to the law
9 enforcement or custodial officer at the time of retirement and the
10 sum of the member's age and amount of law enforcement or custodial
11 officer service credit and employee class service credit.

12 (f) A member who retires under this section retires
13 simultaneously from the employee class of membership. Optional
14 retirement annuities provided by Section 814.108 are available to a
15 member eligible to receive a service retirement annuity under this
16 section, but the same optional plan and beneficiary must be
17 selected for the portion of the annuity payable from the law
18 enforcement and custodial officer supplemental retirement fund and
19 the portion payable from the trust fund established by Section
20 815.310.

21 (g) The amount payable from the law enforcement and
22 custodial officer supplemental retirement fund is reducible by the
23 amount paid from the trust fund established by Section 815.310 for
24 service as a law enforcement or custodial officer. The total
25 combined amount of an annuity under this section may not be less
26 than the authorized benefit under Subsection (c) subtracted by any
27 amount necessary because of the selection of an optional annuity,

1 because of retirement before the age of 55, or as provided by
2 Subsection (h).

3 (h) The standard combined service retirement annuity
4 payable for at least 20 years of service credit as a law enforcement
5 or custodial officer may not exceed 100 percent of the average
6 compensation computed under Subsection (c).

7 (i) For purposes of this section, service as a law
8 enforcement or custodial officer is creditable as provided by rule
9 of the board of trustees or on a month-to-month basis, whichever is
10 greater.

11 SECTION 15. Sections 814.108(c), (g), and (h), Government
12 Code, are amended to read as follows:

13 (c) An eligible person may select [~~any optional retirement~~
14 ~~annuity approved by the board of trustees, or may select~~] one of the
15 following options, which provides [~~provide~~] that:

16 (1) after the retiree's death, the reduced annuity is
17 payable in the same amount throughout the life of the person
18 designated by the retiree before retirement;

19 (2) after the retiree's death, one-half of the reduced
20 annuity is payable throughout the life of the person designated by
21 the retiree before retirement;

22 (3) if the retiree dies before 60 monthly annuity
23 payments have been made, the remainder of the 60 payments are
24 payable to one or more beneficiaries [~~designees~~] or, if one does not
25 exist, to the retiree's estate; [~~or~~]

26 (4) if the retiree dies before 120 monthly annuity
27 payments have been made, the remainder of the 120 payments are

1 payable to one or more beneficiaries [~~designees~~] or, if one does not
2 exist, to the retiree's estate; or

3 (5) after the retiree's death, three-fourths of the
4 reduced annuity is payable throughout the life of the person
5 designated by the retiree before retirement.

6 (g) Except as provided by Section 814.008 or 814.1081, a
7 person who selected an optional service retirement annuity approved
8 by the board of trustees or an optional service retirement annuity
9 described by Subsection (c)(1), ~~[or]~~ (c)(2), or (c)(5) may not
10 change or revoke a beneficiary designation after the person's
11 effective date of retirement.

12 (h) A beneficiary designation that names a former spouse as
13 beneficiary for a guaranteed optional annuity described by
14 Subsection (c)(3) or (c)(4) is invalid unless the designation is
15 made after the date of the divorce.

16 SECTION 16. Section 814.1081(a), Government Code, is
17 amended to read as follows:

18 (a) A person who retired and selected an optional service
19 retirement annuity [~~approved by the board of trustees or an~~
20 ~~optional service retirement annuity~~] described by Section
21 814.108(c)(1), ~~[or]~~ (c)(2), or (c)(5) may change the optional
22 annuity selection to the selection of a standard service retirement
23 annuity by filing with the retirement system a request to change the
24 annuity selection, if the retiree designated a person as
25 beneficiary who:

26 (1) was not at the time of designation and is not
27 currently the retiree's spouse or dependent child; or

1 (2) has executed since the designation a transfer and
2 release, approved by a court of competent jurisdiction pursuant to
3 a divorce decree, of the beneficiary's interest in the annuity and
4 is not currently the retiree's spouse or dependent child.

5 SECTION 17. Section 814.202, Government Code, is amended by
6 adding Subsection (g) to read as follows:

7 (g) A member otherwise eligible to receive a disability
8 retirement annuity may not receive the annuity if the member is:

9 (1) still earning a salary or wage from the employment
10 for which the member is claiming disability; or

11 (2) on leave without pay from the employment for which
12 the member is claiming disability.

13 SECTION 18. Section 814.203, Government Code, is amended to
14 read as follows:

15 Sec. 814.203. CERTIFICATION OF DISABILITY. (a) As soon as
16 practicable after an application for disability retirement is
17 filed, the medical board shall evaluate the medical and other
18 pertinent information regarding the member's application. If the
19 medical board finds that the member is mentally or physically
20 incapacitated for the further performance of duty, as supported by
21 substantial, objective, medical evidence, and that the incapacity
22 is likely to be permanent, the medical board shall issue a
23 certification of disability and submit it to the executive
24 director. A certification under this section is admissible in a
25 contested case under Section 815.511 without proving the medical
26 board as experts.

27 (b) For purposes of this subchapter, a member is

1 incapacitated for the further performance of duty if the member has
2 demonstrably sought and been denied workplace accommodation of the
3 disability in accordance with applicable law, and the member is
4 physically or mentally unable to continue to hold the position
5 occupied or to hold any other position offering comparable pay. The
6 employee's education, training, and experience must be considered
7 when making a determination of incapacity under this subchapter.

8 (c) For the purposes of this section, "comparable pay" means
9 80 percent or more of the member's final state employment base pay
10 before deductions for taxes or deferred compensation under state
11 and federal law, including any longevity or hazardous duty pay, but
12 excluding the monetary value of any insurance or retirement
13 benefits. Comparable pay may be adjusted by the retirement system
14 to account for adjustments in state pay rates.

15 SECTION 19. Subchapter C, Chapter 815, Government Code, is
16 amended by adding Section 815.214 to read as follows:

17 Sec. 815.214. SUBPOENA. Notwithstanding any other law, the
18 retirement system may issue a subpoena that conforms to Rule 176,
19 Texas Rules of Civil Procedure, including a preappeal investigative
20 subpoena or any subpoena otherwise authorized by the Texas Rules of
21 Civil Procedure, that the retirement system determines necessary to
22 protect the interests of a program or system administered by the
23 retirement system.

24 SECTION 20. Section 815.301, Government Code, is amended by
25 adding Subsections (g), (h), and (i) to read as follows:

26 (g) In awarding contracts to private professional
27 investment managers under Subsection (c) or otherwise acquiring

1 private financial services, the board of trustees shall make a good
2 faith effort to award contracts to or acquire services from
3 qualified emerging fund managers.

4 (h) For purposes of Subsection (g):

5 (1) "Emerging fund manager" means a private
6 professional investment manager that manages assets of not more
7 than \$2 billion.

8 (2) "Private financial services" includes pension
9 fund management, consulting, investment advising, brokerage
10 services, hedge fund management, private equity fund management,
11 and real estate investment.

12 (i) The retirement system shall report to the board of
13 trustees on the methods and results of the system's efforts to hire
14 emerging fund managers, including data disaggregated by race,
15 ethnicity, gender, and fund size.

16 SECTION 21. Section 815.307, Government Code, as amended by
17 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
18 Legislature, Regular Session, 2003, is reenacted to read as
19 follows:

20 Sec. 815.307. DUTY OF CARE. The assets of the retirement
21 system shall be invested and reinvested without distinction as to
22 their source in accordance with Section 67, Article XVI, Texas
23 Constitution. A determination of whether the board of trustees has
24 exercised prudence with respect to an investment decision must be
25 made taking into consideration the investment of all assets of the
26 trust or all assets of the collective investment vehicle, as
27 applicable, over which the board has management and control, rather

1 than considering the prudence of a single investment of the trust or
2 the collective investment vehicle, as applicable.

3 SECTION 22. Section 815.402, Government Code, is amended by
4 amending Subsection (a) and adding Subsection (h) to read as
5 follows:

6 (a) Except as provided by Section 813.201, each payroll
7 period, each department or agency of the state shall cause to be
8 deducted from each member's compensation a contribution of:

9 (1) 6.5 [~~six~~] percent of the compensation if the
10 member is not a member of the legislature, provided that if the
11 state contribution to the retirement system is computed using a
12 percentage less than 6.5 percent, the member's contribution is
13 computed using a percentage equal to the percentage used to compute
14 the state contribution, which may not be less than six percent; or

15 (2) eight percent of the compensation if the member is
16 a member of the legislature.

17 (h) In addition to the contribution under Subsection
18 (a)(1), each department or agency of the state that employs a law
19 enforcement or custodial officer shall deduct an additional 0.5
20 percent contribution from that member's compensation, to be
21 deposited in the law enforcement and custodial officer supplemental
22 retirement fund, provided that, if the state contribution to the
23 law enforcement and custodial officer supplemental retirement fund
24 is computed using a percentage less than 0.5 percent, the member's
25 contribution is computed using a percentage equal to the percentage
26 used to compute the state contribution.

27 SECTION 23. Section 815.503, Government Code, is amended by

1 amending Subsections (a) and (b) and adding Subsections (b-1) and
2 (e) to read as follows:

3 (a) Records of members, annuitants, retirees,
4 beneficiaries, and alternate payees under retirement plans
5 administered by the retirement system that are in the custody of the
6 system or of an administering firm [~~administrator~~], carrier, or
7 other governmental agency acting in cooperation with or on behalf
8 of the retirement system are confidential and not subject to public
9 disclosure, and the retirement system, administering firm,
10 carrier, or governmental agency is not required to accept or comply
11 with a request for a record or information about a record or to seek
12 an opinion from the attorney general, because the records are
13 exempt from the [~~public access~~] provisions of Chapter 552, except
14 as otherwise provided by this section.

15 (b) Records may be released to a member, annuitant, retiree,
16 beneficiary, or alternate payee or to an authorized attorney,
17 family member, or representative acting on behalf of the member,
18 annuitant, retiree, beneficiary, or alternate payee. The
19 retirement system may release the records to an administering firm
20 [~~administrator~~], carrier, or agent or attorney acting on behalf of
21 the retirement system, to another governmental entity having a
22 legitimate need for the information to perform the purposes of the
23 retirement system, or to a party in response to a subpoena issued
24 under applicable law.

25 (b-1) A record released or received by the retirement system
26 under this section may be transmitted electronically, including
27 through the use of an electronic signature or certification in a

1 form acceptable to the retirement system. An unintentional
2 disclosure to, or unauthorized access by, a third party related to
3 the transmission or receipt of information under this section is
4 not a violation by the retirement system of any law, including a law
5 or rule relating to the protection of confidential information.

6 (e) The retirement system has sole discretion in
7 determining if a record is subject to this section. For purposes of
8 this section, a record includes any identifying information about a
9 person, living or deceased, who is or was a member, annuitant,
10 retiree, beneficiary, or alternate payee, under any retirement plan
11 or program administered by the retirement system.

12 SECTION 24. Section 815.512, Government Code, is amended to
13 read as follows:

14 Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY.

15 (a) The executive director may cause an action for interpleader [a
16 suit] concerning a claim to be filed on behalf of the retirement
17 system in a district court in Travis County to protect the system
18 from double or multiple liability if the executive director
19 determines that a claim may expose the retirement system to such
20 liability.

21 (b) A person may not pursue a counterclaim or other cause of
22 action against the retirement system, a trustee, officer, or
23 employee of the retirement system, or a carrier or administering
24 firm for the retirement system in connection with a transaction or
25 occurrence related to the interpleader action.

26 (c) A person who violates Subsection (b) is liable for the
27 costs and attorney's fees incurred by the retirement system, a

1 trustee, officer, or employee of the retirement system, or a
2 carrier or administering firm for the retirement system as a result
3 of the violation.

4 SECTION 25. Subchapter F, Chapter 815, Government Code, is
5 amended by adding Section 815.515 to read as follows:

6 Sec. 815.515. DISPOSITION OF UNCLAIMED CONTRIBUTIONS OF
7 FORMER MEMBERS. (a) Subject to Chapters 803 and 805, if the
8 retirement system has not received a request for a refund of the
9 accumulated contributions of a member in accordance with Subchapter
10 B, Chapter 812, before the seventh anniversary of the member's last
11 day of service, the retirement system may refund the accumulated
12 contributions to the member or the member's heirs. If the member or
13 the member's heirs cannot be found, the member's accumulated
14 contributions revert to the retirement system.

15 (b) The retirement system shall credit any amounts that
16 revert to the retirement system under Subsection (a) to the state
17 accumulation account.

18 (c) The board of trustees may adopt rules to implement and
19 administer this section.

20 SECTION 26. Section 837.003, Government Code, is amended by
21 adding Subsection (e) to read as follows:

22 (e) At the time a service retirement, disability
23 retirement, or death benefit annuity becomes payable, the
24 retirement system shall refund any contributions, interest, or
25 membership fees used to establish service credit that is not used in
26 computing the amount of the annuity.

27 SECTION 27. Section 838.106, Government Code, is amended by

1 adding Subsection (c) to read as follows:

2 (c) For the purpose of Subsection (a)(1), the term of a
3 member leaving judicial office ends not later than December 31
4 regardless of the date on which the member's successor takes the
5 oath of office.

6 SECTION 28. Section 839.103(a), Government Code, is amended
7 to read as follows:

8 (a) Instead of a service retirement annuity payable under
9 Section 839.102, a retiring member may elect to receive [~~an~~
10 ~~optional service retirement annuity provided by the board of~~
11 ~~trustees or~~] one of the following optional service retirement
12 annuities, actuarially reduced to an actuarially equivalent value
13 and consisting of:

14 (1) an annuity payable during the retiring member's
15 life and continuing after death in the same amount, throughout the
16 life of one person designated by the retiring member before
17 retirement;

18 (2) an annuity payable during the retiring member's
19 life and continuing after death in an amount equal to one-half of
20 the amount payable during the retiring member's life, throughout
21 the life of one person designated by the retiring member before
22 retirement;

23 (3) an annuity payable for the greater of the rest of
24 the retiring member's life or 60 months; [~~or~~]

25 (4) an annuity payable for the greater of the rest of
26 the retiring member's life or 120 months; or

27 (5) an annuity payable during the retiring member's

1 life and continuing after death in an amount equal to three-fourths
2 of the amount payable during the retiring member's life, throughout
3 the life of one person designated by the retiring member before
4 retirement.

5 SECTION 29. Section 840.303, Government Code, as amended by
6 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
7 Legislature, Regular Session, 2003, is reenacted to read as
8 follows:

9 Sec. 840.303. DUTY OF CARE. The assets of the retirement
10 system shall be invested and reinvested without distinction as to
11 their source in accordance with Section 67, Article XVI, Texas
12 Constitution. A determination of whether the board of trustees has
13 exercised prudence with respect to an investment decision must be
14 made taking into consideration the investment of all assets of the
15 trust or all assets of the collective investment vehicle, as
16 applicable, over which the board has management and control, rather
17 than considering the prudence of a single investment of the trust or
18 the collective investment vehicle, as applicable.

19 SECTION 30. Section 840.402, Government Code, is amended to
20 read as follows:

21 Sec. 840.402. RETIREMENT SYSTEM RECORDS. Records of
22 members, annuitants, retirees, beneficiaries, and alternate payees
23 of the retirement system are confidential and are not subject to
24 public disclosure and are exempt from the provisions of Chapter
25 552. Records maintained as confidential under this section may be
26 released or received in the manner provided by Section 815.503.

27 SECTION 31. Section 1551.003, Insurance Code, is amended by

1 adding Subdivision (10-a) to read as follows:

2 (10-a) "Participant" means an eligible individual who
3 participates in the group benefits program.

4 SECTION 32. Section 1551.004, Insurance Code, is amended to
5 read as follows:

6 Sec. 1551.004. DEFINITION OF DEPENDENT. (a) In this
7 chapter, "dependent" with respect to an individual eligible to
8 participate in the group benefits program under Section 1551.101 or
9 1551.102 means the individual's:

- 10 (1) spouse;
- 11 (2) unmarried child younger than 25 years of age;
- 12 (3) child of any age who the board of trustees
13 determines lives with or has the child's care provided by the
14 individual on a regular basis if:

15 (A) the child is mentally retarded or physically
16 incapacitated to the extent that the child is dependent on the
17 individual for care or support, as determined by the board of
18 trustees;

19 (B) the child's coverage under this chapter has
20 not lapsed; and

21 (C) the child is at least 25 years old and was
22 enrolled as a participant in the health benefits coverage under the
23 group benefits program on the date of the child's 25th birthday;
24 [~~and~~]

25 (4) child of any age who is unmarried, for purposes of
26 health benefit coverage under this chapter, on expiration of the
27 child's continuation coverage under the Consolidated Omnibus

1 Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its
2 subsequent amendments; and

3 (5) ward, as that term is defined by Section 601, Texas
4 Probate Code.

5 (b) In this section, "child" includes:

6 (1) a natural child, [an] adopted child, [and a]
7 stepchild, or foster child; [r] or

8 (2) a [other] child who is related by blood or marriage
9 and was claimed as a dependent on the federal income tax return of
10 [is in a parent-child relationship with] an individual who is
11 eligible to participate in the group benefits program under Section
12 1551.101 or 1551.102 for the calendar year preceding the plan year
13 in which the child is first enrolled as a dependent under Subchapter
14 D, and for each subsequent year in which the child is enrolled as a
15 dependent.

16 (c) The requirement in Subsection (b)(2) that a child must
17 be claimed as a dependent on a federal income tax return in the
18 calendar year preceding the child's enrollment does not apply if:

19 (1) the child is born in the year in which the child is
20 first enrolled; or

21 (2) the participant can demonstrate good cause for not
22 claiming the child as a dependent in the preceding calendar year.

23 SECTION 33. Section 1551.063, Insurance Code, is amended by
24 amending Subsections (a) and (c) and adding Subsections (d-1) and
25 (f) to read as follows:

26 (a) The records of a participant in the group benefits
27 program in the custody of the Employees Retirement System of Texas

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

10 (c) To accomplish the purposes of this chapter, the board of
11 trustees may release the records to:

12 (1) an administering firm ~~[administrator]~~, carrier,
13 agent, or attorney acting on behalf of the board;

14 (2) another governmental entity having a legitimate
15 need for the information to perform a function of the board of
16 trustees;

17 (3) an authorized medical provider of the participant;
18 or

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

21 (d-1) A record released or received by the Employees
22 Retirement System of Texas under this section may be transmitted
23 electronically, including through the use of an electronic
24 signature or certification in a form acceptable to the retirement
25 system. An unintentional disclosure to, or unauthorized access by,
26 a third party related to the transmission or receipt of information
27 under this section is not a violation by the retirement system of

1 any law, including a law or rule relating to the protection of
2 confidential information.

3 (f) The Employees Retirement System of Texas has sole
4 discretion in determining if a record is subject to this section.
5 For purposes of this section, a record includes any identifying
6 information about a person, living or deceased, who is or was an
7 employee, annuitant, dependent, or participant in the group
8 benefits program.

9 SECTION 34. Section 1551.102(d), Insurance Code, is amended
10 to read as follows:

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

13 (1) the individual retires under the optional
14 retirement program established by Chapter 830, Government Code;

15 (2) the individual has ~~[, with]~~ at least 10 years of
16 eligible service credit; and

17 (3) ~~[(2) receives or is eligible to receive an~~
18 ~~annuity under that program and]~~ the individual:

19 (A) is at least 65 years of age, or would have
20 been eligible to retire and receive a service or disability
21 retirement annuity from the Teacher Retirement System of Texas or
22 the Employees Retirement System of Texas in an amount such that the
23 sum of the person's age and amount of service credit, including
24 months of age and credit, equals or exceeds the number 80 or would
25 have been eligible to retire and receive a disability retirement
26 annuity from the Teacher Retirement System of Texas or the
27 Employees Retirement System of Texas, if the individual had not

1 elected to participate in the optional retirement program, and is
2 eligible to receive an annuity or periodic distribution of funds
3 from an account under the optional retirement program; or

4 (B) is disabled as determined by the Employees
5 Retirement System of Texas based on at least 10 years of eligible
6 service credit, and is receiving an annuity or periodic
7 distribution of funds from an account under the optional retirement
8 program.

9 SECTION 35. Section 1551.155, Insurance Code, is amended by
10 adding Subsections (c) and (d) to read as follows:

11 (c) A person who is the surviving spouse of an individual
12 described by Subsection (a) may secure group health coverage
13 without evidence of the person's insurability if the individual was
14 eligible to participate in the group benefits program under Section
15 1551.101 or 1551.102 but was not participating at the time of the
16 individual's death.

17 (d) A surviving spouse seeking group coverage under
18 Subsection (c):

19 (1) must apply for the coverage not later than the 30th
20 day after the date on which the individual who was eligible to
21 participate in the group benefits program dies; and

22 (2) shall pay for the coverage at the group rate as
23 provided by Subsection (b).

24 SECTION 36. The heading to Section 1551.156, Insurance
25 Code, is amended to read as follows:

26 Sec. 1551.156. COVERAGE OPTIONS FOR SURVIVING DEPENDENT
27 [~~WHEN THERE IS NO SURVIVING SPOUSE~~].

1 SECTION 37. Section 1551.156, Insurance Code, is amended by
2 adding Subsections (d) and (e) to read as follows:

3 (d) A person who is a surviving dependent of an annuitant
4 may secure group health coverage after the death of the annuitant
5 without evidence of the person's insurability if the annuitant was
6 eligible to participate in the group benefits program of a
7 retirement system named in this chapter but was not participating
8 at the time of the individual's death.

9 (e) A surviving dependent seeking group coverage under
10 Subsection (d):

11 (1) must apply for the coverage not later than the 30th
12 day after the date on which the individual who was eligible to
13 participate in the group benefits program dies; and

14 (2) shall pay for the coverage at the group rate as
15 provided by Subsection (b).

16 SECTION 38. Section 1551.354, Insurance Code, is amended by
17 amending Subsection (b) and adding Subsections (c) and (d) to read
18 as follows:

19 (b) The executive director may cause the filing of an action
20 for interpleader [~~a suit~~] concerning the claim in a district court
21 in Travis County on behalf of the Employees Retirement System of
22 Texas to protect the group coverage plan from double or multiple
23 liability.

24 (c) A person may not pursue a counterclaim or other cause of
25 action against the Employees Retirement System of Texas, a trustee,
26 officer, or employee of the retirement system, or a carrier or
27 administering firm for the retirement system in connection with a

1 transaction or occurrence related to the interpleader action.

2 (d) A person who violates Subsection (c) is liable for the
3 costs and attorney's fees incurred by the Employees Retirement
4 System of Texas, a trustee, officer, or employee of the retirement
5 system, or a carrier or administering firm for the retirement
6 system as a result of the violation.

7 SECTION 39. Subchapter H, Chapter 1551, Insurance Code, is
8 amended by adding Section 1551.362 to read as follows:

9 Sec. 1551.362. SUBPOENA. Notwithstanding any other law,
10 the Employees Retirement System of Texas may issue a subpoena that
11 conforms to Rule 176, Texas Rules of Civil Procedure, including a
12 preappeal investigative subpoena or any subpoena otherwise
13 authorized by the Texas Rules of Civil Procedure, that the
14 retirement system determines necessary to protect the interests of
15 a program or system administered by the retirement system.

16 SECTION 40. Section 1551.401, Insurance Code, is amended by
17 adding Subsection (g) to read as follows:

18 (g) Except as provided by Section 1551.259(d), the
19 retirement system may deposit to the credit of the fund any
20 unclaimed money on a finding that a good faith effort has been made
21 to locate the person entitled to the money.

22 SECTION 41. The following laws are repealed:

23 (1) Section 833.1035(c), Government Code;

24 (2) Section 833.104, Government Code;

25 (3) Section 835.1015(c), Government Code;

26 (4) Section 838.1035(c), Government Code;

27 (5) Section 838.104, Government Code;

- 1 (6) Section 840.1025(c), Government Code;
- 2 (7) Section 840.1027(c), Government Code;
- 3 (8) Section 1551.218(c), Insurance Code; and
- 4 (9) Section 1551.221, Insurance Code.

5 SECTION 42. Under Section 67, Article XVI, Texas
6 Constitution, the Employees Retirement System of Texas may
7 distribute a supplemental annuity payment on behalf of the State of
8 Texas using money appropriated from the general revenue fund to the
9 retirement system by an Act of the 81st Legislature, Regular
10 Session, 2009, that is enacted and becomes law.

11 SECTION 43. Sections 811.010 and 811.011, Government Code,
12 as added by this Act, and Sections 815.512, Government Code, and
13 1551.354, Insurance Code, as amended by this Act, apply only to an
14 action filed by or against the Employees Retirement System of
15 Texas, the trustees, officers, or employees of the retirement
16 system, or an administering firm, carrier, or other governmental
17 agency acting in cooperation with or on behalf of the retirement
18 system on or after the effective date of this Act. An action filed
19 before the effective date of this Act is governed by the law in
20 effect when the action was filed, and that law is continued in
21 effect for that purpose.

22 SECTION 44. Section 837.003(e), Government Code, as added
23 by this Act, applies only to a service retirement, disability
24 retirement, or death benefit annuity that becomes payable by the
25 Judicial Retirement System of Texas Plan Two on or after the
26 effective date of this Act. A service retirement, disability
27 retirement, or death benefit annuity that becomes payable by the

1 Judicial Retirement System of Texas Plan Two before the effective
2 date of this Act is governed by the law in effect on the date the
3 annuity becomes payable, and that law is continued in effect for
4 that purpose.

5 SECTION 45. Section 1551.004, Insurance Code, as amended by
6 this Act, applies only to an individual claimed as a dependent for a
7 plan year beginning on or after September 1, 2010. An individual
8 claimed as a dependent for a plan year that began before September
9 1, 2010, is governed by the law in effect when the individual was
10 claimed as a dependent, and that law is continued in effect for that
11 purpose.

12 SECTION 46. DEPARTMENT OF STATE HEALTH SERVICES: STATE
13 EMPLOYEE PILOT PROGRAM. The Department of State Health Services
14 and the Employees Retirement System of Texas may enter into an
15 interagency contract to establish a state employee pilot program
16 consistent with federal guidelines for chronic disease prevention
17 and wellness initiatives. To support the pilot program the
18 Department of State Health Services may use funds received from the
19 American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5)
20 or other such federal funds available to the Department of State
21 Health Services.

22 SECTION 47. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 2559 was passed by the House on May 11, 2009, by the following vote: Yeas 141, Nays 0, 2 present, not voting; that the House concurred in Senate amendments to H.B. No. 2559 on May 29, 2009, by the following vote: Yeas 100, Nays 43, 2 present, not voting; and that the House adopted H.C.R. No. 292 authorizing certain corrections in H.B. No. 2559 on June 1, 2009, by the following vote: Yeas 141, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2559 was passed by the Senate, with amendments, on May 26, 2009, by the following vote: Yeas 26, Nays 5; and that the Senate adopted H.C.R. No. 292 authorizing certain corrections in H.B. No. 2559 on June 1, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor