

By: Duncan

S.B. No. 1404

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Employees Retirement System of Texas.

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

SECTION 1. Section 659.102(c), Government Code, is amended to read as follows:

(c) The supplemental optional benefits program may include:
(1) a group coverage plan for permanent life insurance, catastrophic illness insurance, or disability insurance;

(2) [] prepaid legal services; [] or

(3) a qualified transportation benefit.

SECTION 2. Subchapter A, Chapter 811, Government Code, is amended by adding Section 811.010 to read as follows:

Sec. 811.010. TRAVIS COUNTY VENUE; TWO-YEAR LIMITATION.
Subject to and without waiving the retirement system's sovereign immunity from suit or liability or the official immunity from liability of the trustees, officers, and employees of the retirement system under Section 811.007, for any action by or against the retirement system, the trustees, officers, or employees of the retirement system, or an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system:

(1) venue is in Travis County; and

1 (2) the statute of limitations is two years unless
2 otherwise specifically provided by law.

3 SECTION 3. Section 814.008(a), Government Code, is amended
4 to read as follows:

5 (a) A retiree receiving an optional service or disability
6 retirement annuity approved by the board of trustees or described
7 by Section 814.108(c)(1), ~~[or]~~ (c)(2), or (c)(5) may change the
8 designated beneficiary as provided by this section for the benefits
9 payable after the retiree's death.

10 SECTION 4. Subchapter A, Chapter 814, Government Code, is
11 amended by adding Section 814.012 to read as follows:

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

21 SECTION 5. Sections 814.108(c), (g), and (h), Government
22 Code, are amended to read as follows:

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

26 (1) after the retiree's death, the reduced annuity is
27 payable in the same amount throughout the life of the person

1 designated by the retiree before retirement;

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

5 (3) if the retiree dies before 60 monthly annuity
6 payments have been made, the remainder of the 60 payments are
7 payable to one or more designees or, if one does not exist, to the
8 retiree's estate; ~~or~~

9 (4) if the retiree dies before 120 monthly annuity
10 payments have been made, the remainder of the 120 payments are
11 payable to one or more designees or, if one does not exist, to the
12 retiree's estate; or

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

16 (g) Except as provided by Section 814.008 or 814.1081, a
17 person who selected an optional service retirement annuity approved
18 by the board of trustees or an optional service retirement annuity
19 described by Subsection (c)(1), ~~or~~ (c)(2), or (c)(5) may not
20 change or revoke a beneficiary designation after the person's
21 effective date of retirement.

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

26 SECTION 6. Section 814.1081(a), Government Code, is amended
27 to read as follows:

1 (a) A person who retired and selected an optional service
2 retirement annuity [~~approved by the board of trustees or an~~
3 ~~optional service retirement annuity~~] described by Section
4 814.108(c)(1), ~~[or]~~ (c)(2), or (c)(5) may change the optional
5 annuity selection to the selection of a standard service retirement
6 annuity by filing with the retirement system a request to change the
7 annuity selection, if the retiree designated a person as
8 beneficiary who:

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

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

15 SECTION 7. Section 814.202, Government Code, is amended by
16 adding Subsection (g) to read as follows:

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

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

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

23 SECTION 8. Section 814.203, Government Code, is amended to
24 read as follows:

25 Sec. 814.203. CERTIFICATION OF DISABILITY. (a) As soon as
26 practicable after an application for disability retirement is
27 filed, the medical board shall evaluate the medical and other

1 pertinent information regarding the member's application. If the
 2 medical board finds that the member is mentally or physically
 3 incapacitated for the further performance of duty, as supported by
 4 substantial, objective, medical evidence, and that the incapacity
 5 is likely to be permanent, the medical board shall issue a
 6 certification of disability and submit it to the executive
 7 director. A certification under this section is admissible in a
 8 contested case under Section 815.511 without proving the medical
 9 board as experts.

10 (b) For purposes of this subchapter, a member is
 11 incapacitated for the further performance of duty if the member has
 12 demonstrably sought and been denied workplace accommodation of the
 13 disability in accordance with applicable law, and the member is
 14 physically or mentally unable to continue to hold the position
 15 occupied or to hold any other position offering comparable pay. The
 16 employee's education, training, and experience must be considered
 17 when making a determination of incapacity under this subchapter.

18 (c) For the purposes of this section, "comparable pay" means
 19 80 percent or more of the member's final state employment base pay
 20 before deductions for taxes or deferred compensation under state
 21 and federal law, including any longevity or hazardous duty pay, but
 22 excluding the monetary value of any insurance or retirement
 23 benefits. Comparable pay may be adjusted by the retirement system
 24 to account for adjustments in state pay rates.

25 SECTION 9. Subchapter C, Chapter 815, Government Code, is
 26 amended by adding Section 815.214 to read as follows:

27 Sec. 815.214. SUBPOENA. Notwithstanding any other law, the

1 executive director or the executive director's designee may issue a
2 subpoena that conforms to Rule 176, Texas Rules of Civil Procedure,
3 including a preappeal investigative subpoena or any subpoena
4 otherwise authorized by the Texas Rules of Civil Procedure, that
5 the executive director or designee determines necessary to protect
6 the interests of a program or system administered by the retirement
7 system.

8 SECTION 10. Section 815.307, Government Code, as amended by
9 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
10 Legislature, Regular Session, 2003, is reenacted to read as
11 follows:

12 Sec. 815.307. DUTY OF CARE. The assets of the retirement
13 system shall be invested and reinvested without distinction as to
14 their source in accordance with Section 67, Article XVI, Texas
15 Constitution. A determination of whether the board of trustees has
16 exercised prudence with respect to an investment decision must be
17 made taking into consideration the investment of all assets of the
18 trust or all assets of the collective investment vehicle, as
19 applicable, over which the board has management and control, rather
20 than considering the prudence of a single investment of the trust or
21 the collective investment vehicle, as applicable.

22 SECTION 11. Section 815.512, Government Code, is amended to
23 read as follows:

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

25 (a) The executive director may cause an action for interpleader [~~a~~
26 ~~suit~~] concerning a claim to be filed on behalf of the retirement
27 system in a district court in Travis County to protect the system

1 from double or multiple liability if the executive director
2 determines that a claim may expose the retirement system to such
3 liability.

4 (b) A person may not pursue a counterclaim or other cause of
5 action against the retirement system or its trustees, officers,
6 employees, carriers, or administering firms in connection with the
7 transactions and occurrences related to the interpleader action.

8 (c) A person who files suit against the retirement system or
9 its trustees, officers, employees, carriers, or administering
10 firms is liable for the costs and attorney's fees incurred in
11 violation of Subsection (b).

12 SECTION 12. Subchapter F, Chapter 815, Government Code, is
13 amended by adding Section 815.515 to read as follows:

14 Sec. 815.515. DISPOSITION OF UNCLAIMED CONTRIBUTIONS OF
15 FORMER MEMBERS. (a) Subject to Chapters 803 and 805, if the
16 retirement system has not received a demand for a refund of the
17 accumulated contributions of a member in accordance with Subchapter
18 B, Chapter 812, before the seventh anniversary of the member's last
19 day of service, the retirement system may refund the accumulated
20 contributions to the member or the member's heirs. If the member or
21 the member's heirs cannot be found, the member's accumulated
22 contributions revert to the retirement system.

23 (b) The retirement system shall credit any amounts that
24 revert to the retirement system under Subsection (a) to the state
25 contribution account.

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

SECTION 13. Section 837.003, Government Code, is amended by adding Subsection (e) to read as follows:

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

SECTION 14. Section 838.106, Government Code, is amended by adding Subsection (c) to read as follows:

(c) For the purpose of Subsection (a)(1), the term of a member leaving judicial office ends December 31 regardless of the date on which the member's successor takes the oath of office.

SECTION 15. Section 839.103(a), Government Code, is amended to read as follows:

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

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

(2) an annuity payable during the retiring member's life and continuing after death in an amount equal to one-half of the amount payable during the retiring member's life, throughout

1 the life of one person designated by the retiring member before
2 retirement;

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

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

7 (5) an annuity payable during the retiring member's
8 life and continuing after death in an amount equal to three-fourths
9 of the amount payable during the retiring member's life, throughout
10 the life of one person designated by the retiring member before
11 retirement.

12 SECTION 16. Section 840.303, Government Code, as amended by
13 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
14 Legislature, Regular Session, 2003, is reenacted to read as
15 follows:

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

26 SECTION 17. Section 1551.102(d), Insurance Code, is amended
27 to read as follows:

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

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

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

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

(4) the individual:

(A) is at least 65 years of age, or would have been eligible to retire and receive a service or disability retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas in an amount such that the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80 or would have been eligible to retire and receive a disability retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas, if the individual had not elected to participate in the optional retirement program; or

(B) is disabled as determined by the Employees Retirement System of Texas based on at least 10 years of eligible service credit.

SECTION 18. Section 1551.155, Insurance Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A person who is the surviving spouse of an individual may secure group health coverage without evidence of the person's insurability if the individual was eligible to participate in the

1 group benefits program under Section 1551.101 or 1551.102 but was
2 not participating at the time of the individual's death.

3 (d) A surviving spouse seeking group coverage under
4 Subsection (c):

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

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

10 SECTION 19. The heading to Section 1551.156, Insurance
11 Code, is amended to read as follows:

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

14 SECTION 20. Section 1551.156, Insurance Code, is amended by
15 adding Subsections (d) and (e) to read as follows:

16 (d) A person who is a surviving dependent of an annuitant
17 may secure group health coverage after the death of the annuitant
18 without evidence of the person's insurability if the annuitant was
19 eligible to participate in the group benefits program of a
20 retirement system named in this chapter but was not participating
21 at the time of the individual's death.

22 (e) A surviving dependent seeking group coverage under
23 Subsection (d):

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

27 (2) shall pay for the coverage at the group rate as

1 provided by Subsection (b).

2 SECTION 21. Section 1551.354, Insurance Code, is amended by
3 amending Subsection (b) and adding Subsections (c) and (d) to read
4 as follows:

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

10 (c) A person may not pursue a counterclaim or other cause of
11 action against the retirement system or its trustees, officers,
12 employees, carriers, or administering firms in connection with the
13 transactions and occurrences related to the interpleader action.

14 (d) A person who files suit against the retirement system or
15 its trustees, officers, employees, carriers, or administering
16 firms is liable for the costs and attorney's fees incurred in
17 violation of Subsection (c).

18 SECTION 22. Subchapter H, Chapter 1551, Insurance Code, is
19 amended by adding Section 1551.362 to read as follows:

20 Sec. 1551.362. SUBPOENA. Notwithstanding any other law,
21 the executive director or the executive director's designee may
22 issue a subpoena that conforms to Rule 176, Texas Rules of Civil
23 Procedure, including a preappeal investigative subpoena or any
24 subpoena otherwise authorized by the Texas Rules of Civil
25 Procedure, that the executive director or designee determines
26 necessary to protect the interests of a program or system
27 administered by the retirement system.

SECTION 23. Section 1551.401, Insurance Code, is amended by adding Subsection (g) to read as follows:

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

SECTION 24. The following laws are repealed:

- (1) Section 812.006, Government Code;
- (2) Section 833.1035(c), Government Code;
- (3) Section 833.104, Government Code;
- (4) Section 835.1015(c), Government Code;
- (5) Section 838.1035(c), Government Code;
- (6) Section 838.104, Government Code;
- (7) Section 840.1025(c), Government Code;
- (8) Section 840.1027(c), Government Code; and
- (9) Section 1551.221, Insurance Code.

SECTION 25. Sections 811.010 and 815.214, Government Code, and Section 1551.362, Insurance Code, as added by this Act, and Sections 815.512, Government Code, and 1551.354, Insurance Code, as amended by this Act, apply only to an action filed by or against the Employees Retirement System of Texas, the trustees, officers, or employees of the retirement system, or an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect when the action was filed, and that law is continued in effect for that purpose.

1 SECTION 26. Section 814.203(b), Government Code, as added
2 by this Act, applies only to an application for disability
3 retirement filed with the Employees Retirement System of Texas on
4 or after the effective date of this Act. An application filed
5 before the effective date of this Act is subject to the law in
6 effect on the date the application was filed, and that law is
7 continued in effect for that purpose.

8 SECTION 27. Section 837.003(e), Government Code, as added
9 by this Act, applies only to a service retirement, disability
10 retirement, or death benefit annuity that becomes payable by the
11 Judicial Retirement System of Texas Plan Two on or after the
12 effective date of this Act. A service retirement, disability
13 retirement, or death benefit annuity that becomes payable by the
14 Judicial Retirement System of Texas Plan Two before the effective
15 date of this Act is governed by the law in effect on the date the
16 annuity becomes payable, and that law is continued in effect for
17 that purpose.

18 SECTION 28. Section 838.106(c), Government Code, as added
19 by this Act, applies only to the establishment of service credit by
20 a member of the Judicial Retirement System of Texas Plan Two who
21 leaves office on or after the effective date of this Act. The
22 establishment of service credit of a member of the Judicial
23 Retirement System of Texas Plan Two who leaves office before the
24 effective date of this Act is governed by the law in effect when the
25 member leaves office, and that law is continued in effect for that
26 purpose.

27 SECTION 29. This Act takes effect September 1, 2009.