

1-1 By: Duncan S.B. No. 1664
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 29, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 1; April 29, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1664 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the powers and duties of and contributions to and
1-11 benefits from the systems and programs administered by the
1-12 Employees Retirement System of Texas.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter A, Chapter 609, Government Code, is
1-15 amended by adding Section 609.015 to read as follows:

1-16 Sec. 609.015. BENEFICIARY CAUSING DEATH OF PARTICIPATING
1-17 EMPLOYEE. (a) Any benefits, funds, or account balances payable on
1-18 the death of a participating employee may not be paid to a person
1-19 convicted of or adjudicated as having caused that death but instead
1-20 are payable as if the convicted person had predeceased the
1-21 decedent.

1-22 (b) The plan is not required to change the recipient of any
1-23 benefits, funds, or account balances under this section unless it
1-24 receives actual notice of the conviction or adjudication of a
1-25 beneficiary. However, the plan may delay payment of any benefits,
1-26 funds, or account balances payable on the death of a participating
1-27 employee pending the results of a criminal investigation or civil
1-28 proceeding and other legal proceedings relating to the cause of
1-29 death.

1-30 (c) For the purposes of this section, a person has been
1-31 convicted of or adjudicated as having caused the death of a
1-32 participating employee if the person:

1-33 (1) pleads guilty or nolo contendere to, or is found
1-34 guilty by a court or jury in a criminal proceeding of, causing the
1-35 death of the participating employee, regardless of whether sentence
1-36 is imposed or probated, and no appeal of the conviction is pending
1-37 and the time provided for appeal has expired; or

1-38 (2) is found liable by a court or jury in a civil
1-39 proceeding for causing the death of the participating employee and
1-40 no appeal of the judgement is pending and the time provided for
1-41 appeal has expired.

1-42 SECTION 2. Section 813.404, Government Code, is amended to
1-43 read as follows:

1-44 Sec. 813.404. CONTRIBUTIONS FOR SERVICE NOT PREVIOUSLY
1-45 ESTABLISHED. For each month of membership, military, or equivalent
1-46 membership service not previously credited in the retirement
1-47 system, a member claiming credit in the elected class shall pay a
1-48 contribution in an amount equal to the greater of:

1-49 (1) eight percent of the monthly salary paid to
1-50 members of the legislature at the time the credit is established; or

1-51 (2) the appropriate member contribution provided by
1-52 Section 815.402 for ~~[six percent of the monthly state salary paid~~
1-53 ~~to]~~ a person who holds, at the time the credit is established, the
1-54 office for which credit is sought.

1-55 SECTION 3. Subsection (a), Section 813.505, Government
1-56 Code, is amended to read as follows:

1-57 (a) A member claiming credit in the employee class for
1-58 membership service not previously established shall, for each month
1-59 of the service, pay a contribution in an amount equal to the greater
1-60 of:

1-61 (1) the appropriate member contribution provided by
1-62 Section 815.402 ~~[six percent of the member's monthly state~~
1-63 ~~compensation]~~ for the service during the time for which credit is

sought; or

(2) \$18.

SECTION 4. Subsections (a), (c), (d), and (e), Section 814.007, Government Code, are amended to read as follows:

(a) Any benefits, funds, or account balances ~~[A benefit]~~ payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused ~~[causing]~~ that death but instead are ~~[is]~~ payable as if the convicted person had predeceased the decedent.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances ~~[a benefit]~~ payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other ~~[of]~~ legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused ~~[causing]~~ the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, ~~[+]~~ and

~~[(2) has]~~ no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 5. Subsection (d), Section 814.104, Government Code, is amended to read as follows:

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

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

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

SECTION 6. Subsection (d), Section 814.1075, Government Code, is amended to read as follows:

(d) The standard combined service retirement annuity that is payable under this section is based on retirement at either the age of 55 or the age at which the sum of the member's age and amount of service credit in the employee class equals or exceeds the number 80. The annuity of a law enforcement or custodial officer who retires before reaching the age of 55 under any eligibility criteria is actuarially reduced by five percent for each year the member retires before the member reaches age 55, with a maximum possible reduction of 25 percent. The actuarial reduction described by this section is in addition to any other actuarial reduction required by law.

SECTION 7. Section 815.303, Government Code, is amended to read as follows:

Sec. 815.303. SECURITIES LENDING. (a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules or policies adopted by the board of

trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian or securities lending agent collateral in the form of cash or [United States government] securities that are obligations of the United States or agencies or instrumentalities of the United States in an amount equal to but not less than 100 percent of the market value, from time to time, as determined by the retirement system, of the loaned securities.

SECTION 8. Section 815.402, Government Code, is amended by adding Subsections (a-1) and (h-1) to read as follows:

(a-1) Notwithstanding Subsection (a)(1), if the state contribution to the retirement system is computed using a percentage less than 6.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

(h-1) Notwithstanding Subsection (h), if the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

SECTION 9. Subchapter D, Chapter 834, Government Code, is amended by adding Section 834.305 to read as follows:

Sec. 834.305. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 10. Subchapter D, Chapter 839, Government Code, is amended by adding section 839.306 to read as follows:

Sec. 839.306. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 11. Subsection (a), Section 1551.004, Insurance Code, is amended to read as follows:

(a) In this chapter, "dependent" with respect to an individual eligible to participate in the group benefits program ~~[under Section 1551.101 or 1551.102]~~ means the individual's:

(1) spouse;
 (2) unmarried child younger than 26 ~~[25]~~ years of age;
 (3) child of any age who the board of trustees determines lives with or has the child's care provided by the individual on a regular basis if:

(A) 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;

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

(C) the child is at least 26 ~~[25]~~ years old and was enrolled as a participant in the health benefits coverage under the group benefits program on the date of the child's 26th ~~[25th]~~ birthday;

(4) child of any age who is unmarried, for purposes of health benefit coverage under this chapter, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its subsequent amendments; and

(5) ward, as that term is defined by Section 601, Texas Probate Code, who is 26 years of age or younger.

SECTION 12. Subchapter B, Chapter 1551, Insurance Code, is amended by adding Section 1551.068 to read as follows:

5-1 Sec. 1551.068. QUALIFICATION OF GROUP BENEFITS PROGRAM.
 5-2 Notwithstanding any provision of this chapter or any other law, it
 5-3 is intended that the provisions of this chapter be construed and
 5-4 administered in a manner that coverages under the group benefits
 5-5 program will be considered in compliance with applicable federal
 5-6 law. The board of trustees may adopt rules that modify the coverage
 5-7 provided under the program by adding, deleting, or changing a
 5-8 provision of the program, including rules that modify eligibility
 5-9 and enrollment requirements and the benefits available under the
 5-10 program.

5-11 SECTION 13. Section 1551.220, Insurance Code, is amended to
 5-12 read as follows:

5-13 Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR
 5-14 BENEFICIARY OF PARTICIPANT. (a) Any benefits, funds, or account
 5-15 balances [A benefit] payable on the death of a participant or the
 5-16 beneficiary of a participant in the group benefits program may not
 5-17 be paid to a person convicted of or adjudicated as having caused
 5-18 [causing] that death but instead are [is] payable as if the
 5-19 convicted person had predeceased the decedent.

5-20 (b) The Employees Retirement System of Texas is not required
 5-21 to change the recipient of any benefits, funds, or account balances
 5-22 under this section unless it receives actual notice of the
 5-23 conviction or adjudication of a beneficiary. However, the
 5-24 retirement system may delay payment of any benefits, funds, or
 5-25 account balances [a benefit] payable on the death of a participant
 5-26 or beneficiary of a participant pending the results of a criminal
 5-27 investigation or civil proceeding and other [of] legal proceedings
 5-28 relating to the cause of death.

5-29 (c) For the purposes of this section, a person has been
 5-30 convicted of or adjudicated as having caused [causing] the death of
 5-31 a participant or beneficiary of a participant if the person:

5-32 (1) pleads guilty or nolo contendere to, or is found
 5-33 guilty by a court or jury in a criminal proceeding of, causing the
 5-34 death of the participant or beneficiary of a participant,
 5-35 regardless of whether sentence is imposed or probated, [+] and

5-36 [(-2) has] no appeal of the conviction is pending and
 5-37 the time provided for appeal has expired; or

5-38 (2) is found liable by a court or jury in a civil proceeding
 5-39 for causing the death of the member or annuitant and no appeal of
 5-40 the judgment is pending and the time provided for appeal has
 5-41 expired.

5-42 SECTION 14. Subchapter E, Chapter 1551, Insurance Code, is
 5-43 amended by adding Section 1551.226 to read as follows:

5-44 Sec. 1551.226. TOBACCO CESSATION COVERAGE. (a) The board
 5-45 of trustees shall develop a plan for providing under any health
 5-46 benefit plan provided under the group benefits program tobacco
 5-47 cessation coverage for participants.

5-48 (b) The plan developed under Subsection (a) must include
 5-49 coverage for prescription drugs that aid participants in ceasing
 5-50 the use of tobacco products.

5-51 SECTION 15. Subchapter G, Chapter 1551, Insurance Code, is
 5-52 amended by adding Section 1551.3075 to read as follows:

5-53 Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL.
 5-54 (a) The board of trustees shall assess each participant in a
 5-55 health benefit plan provided under the group benefits program who
 5-56 uses one or more tobacco products a tobacco user premium
 5-57 differential, to be paid in monthly installments. Except as
 5-58 provided by Subsection (b), the board of trustees shall determine
 5-59 the amount of the monthly installments of the premium differential.

5-60 (b) If the General Appropriations Act for a state fiscal
 5-61 biennium sets the amount of the monthly installments of the tobacco
 5-62 user premium differential for that biennium, the board of trustees
 5-63 shall assess the premium differential during that biennium in the
 5-64 amount prescribed by the General Appropriations Act.

5-65 SECTION 16. Subchapter G, Chapter 1551, Insurance Code, is
 5-66 amended by adding Section 1551.3076 to read as follows:

5-67 Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) The board of
 5-68 trustees shall assess each employer whose employees participate in
 5-69 the group benefits program an employer enrollment fee in an amount

not to exceed a percentage of the employer's total payroll, as determined by the General Appropriations Act.

(b) The board of trustees shall deposit the enrollment fees to the credit of the employees life, accident, and health insurance and benefits fund to be used for the purposes specified by Section 1551.401.

SECTION 17. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution~~[, other than as a spouse, dependent, or beneficiary,]~~ for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay a tobacco user premium differential assessed under Section 1551.3075.

SECTION 18. The change in law made by Sections 609.015, 834.305, and 839.306, Government Code, as added by this Act, and Sections 814.007, Government Code, and 1551.220, Insurance Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 19. (a) Subsection (d), Section 814.104, Government Code, as amended by this Act, applies only to a member of the Employees Retirement System of Texas who retires on or after the effective date of this Act.

(b) A member of the Employees Retirement System of Texas who retires before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20. The board of trustees of the Employees Retirement System of Texas shall develop and fully implement the plan for providing tobacco cessation coverage as required by Section 1551.226, Insurance Code, as added by this Act, and implement the tobacco user premium differential required under Section 1551.3075, Insurance Code, as added by this Act, not later than January 1, 2012.

SECTION 21. This Act takes effect September 1, 2011.

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