

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2559
By: Truitt (Duncan)
State Affairs
5/22/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 2559 relates to the powers and duties of and benefits available under the Employees Retirement System of Texas.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 14 (Section 814.1075, Government Code) and SECTION 25 (Section 815.515, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

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

(a) Provides that records of individuals listed by Section 615.003 (Applicability) and of survivors eligible for benefits under this chapter that are in the custody of the employee retirement system of Texas (retirement system), an administering firm as defined by Section 1551.003, Insurance Code, a carrier as defined by Section 1551.007 (Definition of Carrier), 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 provisions, rather than public information provisions, of Chapter 552 (Public Information), except as otherwise provided by this section.

(b-1) Authorizes a record released or received by the retirement system under this section to be transmitted electronically, including through the use of an electronic signature or certification in a form acceptable to the retirement system. Provides that an unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

(d) Provides that the retirement system has sole discretion in determining whether a record is subject to this section. Provides that for purposes of this section, a record includes any identifying information about any person, living or deceased, who is or was an individual listed in Section 615.003, or a survivor, heir, or beneficiary of an individual listed in Section 615.003.

SECTION 2. Amends Subchapter A, Chapter 811, Government Code, by adding Sections 811.010 and 811.011, as follows:

Sec. 811.010. VENUE. Provides that subject to and without waiving the retirement system's sovereign immunity or the official immunity from liability of the trustees, officers, and employees of the retirement system, the venue for any action by or against the retirement system, the trustees, officers, or employees of the retirement system, or an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system venue is in Travis County.

Sec. 811.011. STATUTE OF LIMITATIONS. Provides that subject to and without waiving the retirement system's sovereign immunity or the official immunity of the trustees, officers, and employees of the retirement system, unless specifically provided otherwise by another statute, the statute of limitations for a claim against the retirement system or a trustee, officer, or employee of the retirement system is two years.

SECTION 3. Amends Section 812.101, Government Code, by adding Subsection (c), as follows:

(c) Provides that for a law enforcement or custodial officer, the withdrawal of accumulated contributions under Subsection (a) (relating to a member withdrawing all the member's accumulated contributions) includes all of the officer's contributions made under Section 815.402(h).

SECTION 4. Amends Section 812.201(c), Government Code, to authorize a person who is retired from the elected class of membership and who again holds a position included in that class to elect to become a member again by filing notice with the retirement system. Requires the retirement system, except as provided by Section 812.203(c) (relating to the authorization for a person at the time of subsequent requirement to select an annuity based on service in the elected class as if the person were retiring for the first time), rather than Section 812.203(e), when benefit payments are resumed, to recompute the annuity selected at the time of the person's original retirement to include the additional service established during membership under this subsection.

SECTION 5. Amends Subchapter C, Chapter 812, Government Code, by adding Section 812.205, as follows:

Sec. 812.205. WAITING PERIOD. Prohibits a member who retires from the employee class on or after May 31, 2009, from returning to work in a position included in the employee class of membership before the 90th day after the date of the retiree's original retirement.

SECTION 6. Amends Subchapter C, Chapter 812, Government Code, by adding Section 812.206, as follows:

Sec. 812.206. RETURN TO WORK SURCHARGE. (a) Provides that this section applies only to a person who, on or after September 1, 2009, retires from the employee class and is rehired as a retiree into a position that would otherwise include membership in the employee class.

(b) Requires the department or agency, for each month that a department or agency of this state employs a person described by Subsection (a), to remit to the retirement system an amount equal to the amount of the state contribution that the department or agency would remit for an active member employed in the person's position. Requires that the amount remitted be deposited in the trust fund established under Section 815.310.

SECTION 7. Amends Section 813.509, Government Code, by amending Subsections (d) and (e) and adding Subsection (k), as follows:

(d) Authorizes an individual who was a member or employee on August 31, 2009, and who holds a position included in the employee class to use sick leave creditable under this section to satisfy service requirements for retirement under Sections 814.104 or 814.107 if the sick leave attributed to the eligibility requirements remains otherwise unused on the last day of employment.

(e) Authorizes a death benefit beneficiary, rather than designee, under Section 814.302 (Selection of Death Benefit Plan by Survivor of Member) to use the deceased member's sick leave credit under this section to qualify for making a death benefit plan selection under Section 814.302 if the decedent was a member or employee on August 31, 2009.

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

SECTION 8. Amends Section 813.511, Government Code, by amending Subsections (d) and (e) and adding Subsection (j), as follows:

(d) Authorizes an individual who was a member or employee on August 31, 2009, and who holds a position included in the employee class to use annual leave creditable under this section to satisfy service requirements for retirement under Sections 814.104 or 814.107 if the annual leave attributed to the eligibility requirements remains otherwise unused on the last day of employment.

(e) Authorizes a death benefit beneficiary, rather than designee, under Section 814.302 to use the deceased member's sick leave credit under this section to qualify for making a death benefit plan selection under Section 814.302 if the decedent was a member or employee on August 31, 2009.

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

SECTION 9. Amends Section 814.008(a), Government Code, to authorize a retiree receiving an optional service or disability retirement annuity approved by the board of trustees of the retirement system (board of trustees) or described by Section 814.108(c)(1) (relating to a certain optional retirement annuity approved by the board of trustees), (c)(2) (relating to a certain optional retirement annuity approved by the board of trustees), or (c)(5), to change the designated beneficiary as provided by this section for the benefits payable after the retiree's death.

SECTION 10. Amends Subchapter A, Chapter 814, Government Code, by adding Section 814.012, as follows:

Sec. 814.012. DISPOSITION OF UNCLAIMED BENEFICIARY BENEFITS. Provides that if, as of the fourth anniversary of the death of a member or annuitant, the retirement system has not paid benefits and a claim for benefits is not pending with the retirement system based on the death of the member or annuitant, the accumulated contributions of the deceased member or the balance of the reserve for the deceased annuitant reverts to the benefit of the retirement system. Requires that the retirement system transfer funds reverted under this section to the state accumulation account.

SECTION 11. Amends Section 814.104, Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Creates an exception under Subsection (d) of this section.

(d) Provides that except as provided by Section 814.102 (Eligibility of Elected Members for Service Retirement) or by rule adopted under Section 813.304(d) (relating to the board of trustees by rule permitting a person who retires to receive service retirement benefits as an elected officer) 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 is at least 65 years old and has at least 10 years of service credit in the employee class or has at least five 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 12. Amends Section 814.105, Government Code, by adding Subsections (c) and (d), as follows:

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

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

SECTION 13. Amends Sections 814.107(c) and (d), Government Code, as follows:

(c) Entitles a law enforcement or custodial officer who retires before attaining the normal retirement age only to an annuity that is actuarially reduced from the annuity available at the normal retirement age to the law enforcement or custodial officer whose service credit annuity amount is based on, rather than available at, the sum of the member's age and amount of law enforcement or custodial officer service credit and employee class service credit, and is not entitled to have the annuity recalculated at normal retirement age. Provides that the standard or reduced annuity is payable from the trust fund established by Section 815.310 (Trust Fund) and the law enforcement and custodial officer supplemental retirement fund in a ratio determined by the retirement system.

(d) Deletes existing text providing that benefits for service in the employee class of membership become payable from the trust fund established by Section 815.310 at the normal retirement age under the computation provided by Section 814.105 (Service Retirement Benefits for Employee Class Service). Requires that optional retirement annuities provided by Section 814.108 (Optional Service Retirement Benefits) are available to a member eligible to receive a service retirement annuity under this section, but the same optional plan and beneficiary, rather than designee, be selected for the portion of the annuity payable from the law enforcement and custodial officer supplemental retirement fund and the portion payable from the trust fund established by Section 815.310.

SECTION 14. Amends Subchapter B, Chapter 814, Government Code, by adding Section 814.1075, as follows:

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

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

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

(d) Provides that 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 the amount of service credit in the employee class equals or exceeds the number 80. Provides that 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.

(e) Provides that an annuity payable under this section:

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

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

(f) Provides that a member who retires under this section retires simultaneously from the employee class of membership. Provides that optional retirement annuities provided by Section 814.108 are available to a member eligible to receive a service retirement annuity payable under this section, but the same optional plan and beneficiary are required to be selected for the portion of the annuity payable from the law enforcement and custodial officer supplemental retirement fund established by Section 815.310.

(g) Provides that the amount payable from the law enforcement and custodial officer supplemental retirement fund is reducible by the amount paid from the trust fund established by Section 815.310 for service as a law enforcement or custodial officer. Prohibits the total combined amount of an annuity under this section from being less than the amount necessary because of the selection of an optional annuity, because of retirement before the age of 55, or as provided by Subsection (h).

(h) Prohibits the standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer from exceeding 100 percent of the average compensation computed under Subsection (c).

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

SECTION 15. Amends Sections 814.108(c), (g), and (h), Government Code, as follows:

(c) Authorizes an eligible person to select one of certain options, including if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more beneficiaries, rather than designees, or, if one does not exist, to the retiree's estate; if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more beneficiaries, rather than designees or, if one does not exist, to the retiree's estate; or after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement. Deletes existing text authorizing an eligible person to select any optional retirement annuity approved by the board of trustees or one of certain options. Makes nonsubstantive changes.

(g) Prohibits a person who selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Subsection (c)(1), (c)(2), or (c)(5), except as provided by Section 814.008 (Change of Beneficiary After Retirement) or 814.1081(Partial Lump-Sum Option), from changing or revoking a beneficiary designation after the person's effective date of retirement.

(h) Provides that a beneficiary designation that names a former spouse as beneficiary for a guaranteed optional annuity described by Subsection (c)(3) (relating to remainder of annuity payments if the retiree dies before 60 monthly payments have been made) or (c)(4) (relating to remainder of annuity payments if the retiree dies before 120 monthly

payments have been made) is invalid unless the designation is made after the date of the divorce.

SECTION 16. Amends Section 814.1081(a), Government Code, to authorize a person who retired and selected an optional service retirement annuity described by Section 814.108(c)(1), (c)(2), or (c)(5), rather than a person who retired and selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Section 814.108(c)(1), (c)(2), or (c)(5), to change the optional annuity selection to the selection of a standard service retirement annuity by filing with the retirement system a request to change the annuity selection, if the retiree designated a person as beneficiary who meets certain criteria.

SECTION 17. Amends Section 814.202, Government Code, by adding Subsection (g) to prohibit a member otherwise eligible to receive a disability retirement annuity from receiving the annuity if the member is still earning a salary or wage from the employment for which the member is claiming disability or on leave without pay from the employment for which the member is claiming disability.

SECTION 18. Amends Section 814.203, Government Code, as follows:

Sec. 814.203. CERTIFICATION OF DISABILITY. (a) Creates this subsection from existing text.

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

(c) Defines "comparable pay" for the purposes of this section. Authorizes comparable pay to be adjusted by the retirement system to account for adjustments in state pay rates.

SECTION 19. Amends Subchapter C, Chapter 815, Government Code, by adding Section 815.214, as follows:

Sec. 815.214. SUBPOENA. Authorizes the retirement system, notwithstanding any other law, to issue a subpoena that conforms to Rule 176 (Subpoenas), Texas Rules of Civil Procedure, including a preappeal investigative subpoena or any subpoena otherwise authorized by the Texas Rules of Civil Procedure, that the retirement system determines necessary to protect the interests of a program or system administered by the retirement system.

SECTION 20. Amends Section 815.301, Government Code, by adding Subsections (g), (h), and (i), as follows:

(g) Requires the board of trustees, in awarding contracts to private professional investment managers under Subsection (c) or otherwise acquiring private financial services, to make a good faith effort to award contracts to or acquire services from qualified emerging fund managers.

(h) Defines "emerging fund manager" and "private financial services" for purposes of Subsection (g).

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

SECTION 21. Reenacts Section 815.307, Government Code, as amended by Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 815.307. DUTY OF CARE. Requires the assets of the retirement system to be invested and reinvested without distinction as to their source in accordance with Section 67 (State and Local Retirement Systems), Article XVI (General Provisions), Texas Constitution. Requires that a determination of whether the board of trustees has exercised prudence with respect to an investment decision be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable.

SECTION 22. Amends Section 815.402, Government Code, by amending Subsection (a) and adding Subsection (h), as follows:

(a) Requires each department or agency of the state, except as provided by Section 813.201 (Current Service), each payroll period, to cause to be deducted from each member's compensation a contribution of:

(1) 6.5 percent, rather than six percent, of the compensation if the member is not a member of the legislature, provided that if the state contribution to the retirement system is computed using a percentage less than 6.5 percent, the member's contribution is computed using a percentage equal to the percentage used to compute the state contribution, which may not be less than six percent; or

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

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

SECTION 23. Amends Section 815.503, Government Code, by amending Subsections (a) and (b), and adding Subsections (b-1) and (e), as follows:

(a) Provides that records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of the system or of an administering firm, rather than administrator, carrier, or other governmental agency acting in cooperation 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 provisions, rather than public access provisions, of Chapter 552, except as otherwise provided by this section.

(b) Makes a conforming change.

(b-1) Authorizes a record released or received by the retirement system under this section to be transmitted electronically, including through the use of an electronic signature or certification in a form acceptable to the retirement system. Provides that an unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

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

SECTION 24. Amends Section 815.512, Government Code, as follows:

Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY. (a) Creates this subsection from existing text. Authorizes the executive director to cause an action for interpleader, rather than to cause a suit, concerning a claim to be filed on behalf of the retirement system in a district court in Travis County to protect the system from double or multiple liability if the executive director determines that a claim may expose the retirement system to such liability.

(b) Prohibits a person from pursuing a counterclaim or other cause of action against the retirement system, a trustee, officer, or employee of the retirement system, or a carrier or administering firm for the retirement system in connection with a transaction or occurrence related to the interpleader action.

(c) Provides that a person who violates Subsection (b) is liable for the costs and attorney's fees incurred by the retirement system, a trustee, officer, or employee of the retirement system, or a carrier or administering firm for the retirement system as a result of the violation.

SECTION 25. Amends Subchapter F, Chapter 815, Government Code, by adding Section 815.515, as follows:

Sec. 815.515. DISPOSITION OF UNCLAIMED CONTRIBUTIONS OF FORMER MEMBERS. (a) Authorizes the retirement system, subject to Chapters 803 (Proportionate Retirement Program) and 805 (Credit Transfer between Employees Retirement System of Texas and Teacher Retirement System of Texas), if the retirement system has not received a request for a refund of the accumulated contributions of a member in accordance with Subchapter B (Withdrawal of Contributions), Chapter 812 (Membership), before the seventh anniversary of the member's last day of service, to refund the accumulated contributions to the member or the member's heirs. Provides that if the member or the member's heirs cannot be found, the member's accumulated contributions revert to the retirement system.

(b) Requires that the retirement system credit any amounts that revert to the retirement system under Subsection (a) to the state accumulation amount.

(c) Authorizes the board of trustees to adopt rules to implement and administer this section.

SECTION 26. Amends Section 837.003, Government Code, by adding Subsection (e), to require the retirement system, at the time a service retirement, disability retirement, or death benefit annuity becomes payable, to refund any contributions, interest, or membership fees used to establish service credit that is not used in computing the amount of the annuity.

SECTION 27. Amends Section 838.106, Government Code, by adding Subsection (c), to provide that for the purpose of Subsection (a)(1) (relating to authorizing a member to establish service credit for a calendar year during which a member held an office included in the membership of the retirement system), the term of a member leaving judicial office ends not later than December 31 regardless of the date on which the member's successor takes the oath of office.

SECTION 28. Amends Section 839.103(a), Government Code, to authorize a retiring member, instead of a service retirement annuity payable under Section 839.102 (Service Retirement Annuity), to elect to receive one of certain optional service retirement annuities, actuarially

reduced to an actuarially equivalent value consisting of an annuity payable during the retiring member's life and continuing after death in an amount equal to three-fourths of the amount payable during the retiring member's life, throughout the life of one person designated by the retiring member before retirement. Makes a conforming and nonsubstantive change.

SECTION 29. Reenacts Section 840.303, Government Code, as amended by Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 840.303. DUTY OF CARE. Requires that the assets of the retirement system be invested and reinvested without distinction as to their source in accordance with Section 67 (State and Local Retirement Systems), Article XVI (General Provisions), Texas Constitution. Requires that a determination of whether the board of trustees has exercised prudence with respect to an investment decision be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable.

SECTION 30. Amends Section 840.402, Government Code, as follows:

Sec. 840.402. RETIREMENT SYSTEM RECORDS. Provides that records of members, annuitants, retirees, beneficiaries, and alternate payees of the retirement system are confidential and are not subject to public disclosure and are exempt from the provisions of Chapter 552. Authorizes records maintained as confidential under this section to be released or received in the manner provided by Section 815.503.

SECTION 31. Amends Section 1551.003, Insurance Code, by adding Subdivision (10-a), to define "participant."

SECTION 32. Amends Section 1551.004, Insurance Code, as follows:

Sec. 1551.004. DEFINITION OF DEPENDENT. (a) Redefines "dependent."

(b) Redefines "child."

(c) Requires that the requirement in Subsection (b)(2) that a child be claimed as a dependent on a federal income tax return in the calendar year preceding the child's enrolment does not apply if the child is born in the year in which the child is first enrolled, or the participant can demonstrate good cause for not claiming the child as a dependent in the preceding calendar year.

SECTION 33. Amends Section 1551.063, Insurance Code, by amending Subsections (a) and (c), and adding Subsections (d-1) and (f), as follows:

(a) Provides that the records of a participant in the group benefits program in the custody of the Employees Retirement System of Texas (ERS), rather than board of trustees, or of an administering firm, rather than administrator, carrier, or another governmental entity acting on behalf of the retirement system, rather than board, are confidential and not subject to disclosure, and the retirement system, administering firm, carrier, or governmental entity, rather than board, 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 provisions, rather than public access provisions, of Chapter 552, Government Code, except as provided by this section.

(c) Makes a conforming change.

(d-1) Authorizes a record released or received by ERS under this section to be transmitted electronically, including through the use of an electronic signature or certification in a form acceptable to the retirement system. Provides that an unintentional disclosure to, or unauthorized access by, a third party related to the transmission or

receipt of information under this section is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

(f) Provides that ERS has sole discretion in determining if a record is subject to this section. Provides that for purposes of this section, a record includes any identifying information about a person, living or deceased, who is or was an employee, annuitant, dependant, or participant in the group benefits program.

SECTION 34. Amends Section 1551.102(d), Insurance Code, to provide that an individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual retires under the optional retirement program established by Chapter 830 (Optional Retirement Program), Government Code; the individual has at least 10 years of eligible service credit; and the individual 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 (TRS) or ERS 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 TRS or ERS, if the individual had not elected to participate in the optional retirement program, and is eligible to receive an annuity or periodic distribution of funds from an account under the optional retirement program, or is disabled as determined by ERS based on at least 10 years of eligible service credit, and is receiving an annuity or periodic distribution of funds from an account under the optional retirement program, rather than receives or is eligible to receive an annuity under that program. Makes nonsubstantive changes.

SECTION 35. Amends Section 1551.155, Insurance Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes a person who is the surviving spouse of an individual described by Subsection (a) to secure group health coverage without evidence of the person's insurability if the individual was eligible to participate in the group benefits program under Section 1551.101 (Participation Eligibility: State Officers and Employees) or 1551.102 (Participation Eligibility: Annuitants) but was not participating at the time of the individual's death.

(d) Provides that a surviving spouse seeking group coverage under Subsection (c) is required to apply for the coverage not later than the 30th day after the date on which the individual who was eligible to participate in the group benefits program dies and pay for the coverage at the group rate as provided by Subsection (b) (relating to coverage at the group rate for other participants).

SECTION 36. Amends the heading to Section 1551.156, Insurance Code, to read as follows:

Sec. 1551.156. COVERAGE OPTIONS FOR SURVIVING DEPENDENT.

SECTION 37. Amends Section 1551.156, Insurance Code, by adding Subsections (d) and (e), as follows:

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

(e) Provides that a surviving dependent seeking group coverage under Subsection (d) is required to apply for the coverage not later than the 30th day after the date on which the individual who was eligible to participate in the group benefits program dies and pay for the coverage at the group rate as provided by Subsection (b).

SECTION 38. Amends Section 1551.354, Insurance Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Makes a conforming change.

(c) Prohibits a person from pursuing a counterclaim or other cause of action against ERS, a trustee, officer, or employee of the retirement system, or a carrier or administering firm for the retirement system in connection with a transaction or occurrence related to the interpleader action.

(d) Provides that a person who violates Subsection (c) is liable for the costs and attorney's fees incurred by ERS, a trustee, officer, or employee of the retirement system, or a carrier or administering firm for the retirement system as a result of the violation.

SECTION 39. Amends Subchapter H, Chapter 1551, Insurance Code, by adding Section 1551.362, as follows:

Sec. 1551.362. SUBPOENA. Authorizes ERS, notwithstanding any other law, to issue a subpoena that conforms to Rule 176, Texas Rules of Civil Procedure, including a preappeal investigative subpoena otherwise authorized by the Texas Rules of Civil Procedure, that the retirement system determines necessary to protect the interests of a program or system administered by the retirement system.

SECTION 40. Amends Section 1551.401, Insurance Code, by adding Subsection (g), to authorize the retirement system, except as provided by Section 1551.259(d) (relating to a participant payment that has not been made and a claim for payment by a person entitled under this section), to 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 41. Repealer: Section 833.1035(c) (relating to a prohibition against a member establishing more than 120 months of service credit), Government Code.

Repealer: Section 833.104 (Service on Domestic Relations or Special Juvenile Court), Government Code.

Repealer: Section 835.1015(c) (relating to the length of time a member is authorized to make contributions under this section), Government Code.

Repealer: Section 838.1035(c) (relating to the prohibition against a member establishing more than 120 months of service credit), Government Code.

Repealer: Section 838.104 (Service on Domestic Relations or Special Juvenile Court), Government Code.

Repealer: Section 840.1025(c) (relating to the length of time a member is authorized to make contributions under this section), Government Code.

Repealer: Section 840.1027(c) (relating to the length of time a member is authorized to make contributions under this section), Government Code.

Repealer: Section 1551.218(c) (relating to the requirement that the board of trustees submit to the comptroller of public accounts and the Legislative Budget Board a report regarding any cost savings achieved in the group benefits program every six months), Insurance Code.

Repealer: Section 1551.221 (Voluntary Supplemental Health Coverage for Individuals Eligible Under Tricare Military Health System), Insurance Code.

SECTION 42. Authorizes ERS, under Section 67, Article XVI, Texas Constitution, to distribute a supplemental annuity payment on behalf of the State of Texas using money appropriated from the general revenue fund to the retirement system by an Act of the 81st Legislature, Regular Session, 2009, that is enacted and becomes law.

SECTION 43. Makes application of Sections 811.010 and 811.011, Government Code, as added by this Act, and Sections 815.512, Government Code, and 1551.354, Insurance Code, as amended by this Act, prospective.

SECTION 44. Makes application of Section 837.003(e), Government Code, as added by this Act, prospective.

SECTION 45. Makes application of Section 1551.004, Insurance Code, as amended by this Act, prospective to September 1, 2010.

SECTION 46. Effective date: September 1, 2009.