

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1664
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State Affairs
4/27/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1664 makes several technical and clarifying changes to the ERS enabling statutes. These are primarily to death benefit conviction provisions, and new sections amending the current death benefit conviction provisions to confirm with the changes.

C.S.S.B. 1664 amends current law relating to the powers and duties of and contributions to and benefits from the systems and programs administered by 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 12 (Section 1551.068, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 609, Government Code, by adding Section 609.015, as follows:

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

(b) Provides that the plan 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. Authorizes the plan, however, to delay payment of any benefits, funds, or account balances payable on the death of a participating employee pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(c) Provides that, for the purposes of this section, a person has been convicted or adjudicated as having caused the death of a participating employee 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 participating employee, 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 participating employee and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 2. Amends Section 813.404, Government Code, as follows:

Sec. 813.404. CONTRIBUTIONS FOR SERVICE NOT PREVIOUSLY ESTABLISHED. Requires a member claiming credit in the elected class, for each month of membership, military, or equivalent membership service not previously credited in the Employees Retirement System of Texas (ERS), to pay a contribution in an amount equal to the greater of:

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

(2) the appropriate member contribution provided by Section 815.402 (Collection of Member Contributions) for a person who holds, rather than six percent of the monthly state salary paid to a person who holds, at the time the credit is established, the office for which credit is sought.

SECTION 3. Amends Section 813.505(a), Government Code, to require a member claiming credit in the employee class for membership service not previously established to, for each month of the service, pay a contribution in an amount equal to the greater of the appropriate member contribution provided by Section 815.402, rather than six percent of the member's monthly state compensation, for the service during the time for which credit is sought, or \$18.

SECTION 4. Amends Sections 814.007(a), (c), (d), and (e), Government Code, as follows:

(a) Provides that any benefits, funds, or account balances payable, rather than 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 that death, rather than causing that death, but instead are payable as if the convicted person had predeceased the decedent.

(c) Requires ERS to 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. Provides that the reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) Provides that ERS 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. Authorizes ERS, however, to 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. Makes a conforming and nonsubstantive change.

(e) Provides that, 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 5. Amends Section 814.104(d), Government Code, as follows:

(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 board of trustees authorization of retirement benefits) or 803.202(a)(2) (relating to retirement from ERS administered by the board), a member who was not a member on the date hired, was hired on or after September 1, 2009, and has service credit in ERS 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 years of service credit, rather than 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. Amends Section 814.1075(d), Government Code, as follows:

(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 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. Provides that the actuarial reduction described by this section is in addition to any other actuarial reduction required by law.

SECTION 7. Amends Section 815.303, Government Code, as follows:

Sec. 815.303. SECURITIES LENDING. (a) Authorizes ERS, in the exercise of its constitutional discretion to manage the assets of ERS, to select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of ERS's securities and to lend the securities under rules or policies adopted by the persons appointed or elected to administer ERS (board of trustees) and as required by this section.

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

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

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

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

(4) require any securities broker or dealer to whom it lends securities belonging to ERS to deliver to and maintain with the custodian or securities lending agent collateral in the form of cash or 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 ERS, of the loaned securities. Makes a nonsubstantive change.

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

(a-1) Provides that, notwithstanding Subsection (a)(1), if the state contribution to ERS 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. Provides that this subsection expires September 1, 2012.

(h-1) Provides that, 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. Provides that this subsection expires September 1, 2012.

SECTION 9. Amends Subchapter D, Chapter 834, Government Code, by adding Section 834.305, as follows:

Sec. 834.305. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT.

(a) Provides that any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted or adjudged as having caused that death but instead is payable as if the convicted person had predeceased the decedent.

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

(c) Requires the judicial retirement system of Texas plan one (judicial retirement system) to 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. Provides that the reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) Provides that the judicial retirement system is not required to change the recipient of benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. Authorizes the judicial retirement system, however, to delay payment of a 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 of legal proceedings relating to the cause of death.

(e) Provides that, for the purposes of this section, a person has been convicted 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. Amends Subchapter D, Chapter 839, Government Code, by adding Section 839.306, as follows:

Sec. 839.306. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT.

(a) Provides that any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted or adjudged as having caused that death but instead is payable as if the convicted person had predeceased the decedent.

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

(c) Requires the judicial retirement system of Texas plan two (judicial retirement system-plan two) to 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. Provides that the reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) Provides that the judicial retirement system-plan two 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. Authorizes the judicial retirement system-plan two, however, to 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 of legal proceedings relating to the cause of death.

(e) Provides that, for the purposes of this section, a person has been convicted 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. Amends Section 1551.004(a), Insurance Code, to redefine "dependent," with respect to an individual eligible to participate in the state employees group benefits program.

SECTION 12. Amends Subchapter B, Chapter 1551, Insurance Code, by adding Section 1551.068, as follows:

Sec. 1551.068. **QUALIFICATION OF GROUP BENEFITS PROGRAM.** Provides that, notwithstanding any provision of this chapter or any other law, it is intended that the provisions of this chapter be construed and administered in a manner that coverages under the group benefits program will be considered in compliance with applicable federal law. Authorizes the board of trustees of ERS to adopt rules that modify the coverage provided under the program by adding, deleting, or changing a provision of the program, including rules that modify eligibility and enrollment requirements and the benefits available under any group benefits program coverages.

SECTION 13. Amends Section 1551.220, Insurance Code, as follows:

Sec. 1551.220. **BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT.** (a) Provides that any benefits, funds, or account balances payable on the death of a participant or the beneficiary of the participant in the group benefits program 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) Provides that ERS 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. Authorizes ERS, however, to delay payment of any benefits, funds, or account balances payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(c) Provides that, for the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a participant or beneficiary of a participant 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 participant or beneficiary of a participant, 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 14. Amends Subchapter E, Chapter 1551, Insurance Code, by adding Section 1551.226, as follows:

Sec. 1551.226. TOBACCO CESSATION COVERAGE. (a) Requires the board of trustees of ERS to develop a plan for providing under any health benefit plan provided under the group benefits program tobacco cessation coverage for participants.

(b) Requires the plan developed under Subsection (a) to include coverage for prescription drugs that aid participants in ceasing the use of tobacco products.

SECTION 15. Amends Subchapter G, Chapter 1551, Insurance Code, by adding Section 1551.3075, as follows:

Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL. (a) Requires the board of trustees of ERS to assess each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products a tobacco user premium differential, to be paid in monthly installments. Requires the board of trustees of ERS, except as provided by Subsection (b), to determine the amount of the monthly installments of the premium differential.

(b) Requires the board of trustees of ERS, if the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the tobacco user premium differential for that biennium, to assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

SECTION 16. Amends Subchapter G, Chapter 1551, Insurance Code, by adding Section 1551.3076, as follows:

Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) Requires the board of trustees of ERS to assess each employer whose employees participate in 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) Requires the board of trustees of ERS to 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 (Employees Life, Accident, and Health Insurance and Benefits Fund).

SECTION 17. Amends Section 1551.314, Insurance Code, as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. Prohibits a state contribution from being:

(1) made for coverages under this chapter selected by an individual who receives a state contribution 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 (Definitions), Education Code, rather than prohibits a state contribution from being made for coverages under this chapter selected by an individual who receives a state contribution, other than as a spouse, dependent, or beneficiary; or

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

SECTION 18. Makes application of 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 added by this Act, prospective.

SECTION 19. Makes application of Section 814.104(d), Government Code, prospective.

SECTION 20. Requires the board of trustees of ERS to 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.