

BILL ANALYSIS

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By: Flynn (Hughes)
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas teachers and other school employees currently have the ability to use pre-tax dollars to purchase financial products through the Teacher Retirement System (TRS) 403(b) marketplace. This allows them to supplement their state pensions upon retirement—a practice the TRS Board's Policy Committee has said is advisable. Like 401(k) investment options, all 403(b) financial products are regulated by the state through the Texas Department of Insurance (TDI) and the State Securities Board and/or by the federal government through the SEC, FINRA, the IRS and the Department of Labor. This oversight includes registration, regulation and approval of these products, ensuring that strong consumer protection safeguards are in place. Additionally, if a teacher or other school employee chooses an insurance product such as an annuity, the beneficiary has access to Texas Life and Health Insurance Guaranty Association protections should the company offering the product become insolvent. TRS is currently charged with regulating 403(b) products—a role that is duplicative of existing state and federal regulation. TRS has limited funds and expertise to comply with these regulatory requirements, often turning to other state agencies and private consultants for assistance. In addition, current law requires the TRS Board of Trustees to set maximum fees for 403(b) products rather than allowing the market to determine these rates. Limiting fees may not only reduce product offerings, but also limits a company's ability to offer services that provide valuable advice and educational tools that can assist teachers in making appropriate choices for their retirement income. Further, focusing only on fees ignores product performance and could deny teachers access to products that may have higher returns.

Amending Texas law to remove TRS from 403(b) product regulation will eliminate dual regulation already being conducted by other appropriate state and federal agencies. Disclosures for those products and laws regulating market conduct will be overseen by TDI. Updating Texas law governing 403(b) products will allow TRS to focus on its core function of managing one of the largest public pension funds in the country.

H.B. 2820 amends current law relating to the registration and certification of certain investment products made available to public school employees.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Teacher Retirement System of Texas is rescinded in SECTION 1.10 (Article 6228a-5, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.01 Amends Section 4, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

Sec. 4. Provides that in this section and in Sections 5, 6, 9, 9A, 9B, 10, 11, and 12, rather than Sections 5, 6, 7, 8, 8A, 9, 9A, 9B, 10, 11, 12, and 13 of this Act:

(1) Deletes existing definition of "board of trustees" and redesignates existing text of Subdivision (2) as Subdivision (1).

(2) Defines "eligible qualified investment" to mean a qualified investment product offered by a company that is eligible to offer the product under Section 6 of this Act, rather than to mean a qualified investment product offered by a company that is certified to the board of trustees under Section 5 of this Act, or is eligible to certify to the board of trustees under Section 8 of this Act.

(3) Redesignates existing text of Subdivision (4) as Subdivision (3).

(4) Redesignates existing text of Subdivision (5) as Subdivision (4).

(5) Redesignates existing text of Subdivision (7) as Subdivision (5). Deletes existing Subdivision (6) defining "retirement system."

SECTION 1.02. Amends Sections 5(a) and (f), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Deletes existing text authorizing an educational institution to enter into a salary reduction agreement with an employee of the institution only if the qualified investment product is registered with the Teacher Retirement System of Texas (TRS) under Section 8A of this Act.

(f) Requires educational institutions that enter into a salary reduction agreement with employees under this section, rather than requiring employers of employees who participate in the program offered under this section, to the greatest degree possible, to require that contributions to eligible qualified investments be made by automatic payroll deduction and deposited directly in the investment accounts.

SECTION 1.03. Amends Sections 6(a) and (b), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Provides that an insurance company is eligible to offer qualified investment products to the employees of educational institutions under this Act if the company satisfies the following criteria, rather than providing that a company is eligible to certify to TRS under Section 5 of this Act if the company satisfies the following financial strength criteria:

(1) the company is licensed by the Texas Department of Insurance (TDI) and is in compliance with minimum capital and surplus requirements, including applicable risk-based capital and surplus requirements prescribed by rules adopted by TDI, rather than the company's actuarial opinions required under Articles 1.11 and 3.28, Insurance Code, have not been adverse or qualified in the five years preceding the date the application is filed; and

(2) the company has experience in providing qualified investment products, rather than at least five years' experience in qualified investment products, and has a specialized department dedicated to the service of qualified investment products, as determined by the educational institution.

Deletes existing text of Subdivisions (2), (3), (4), and (5) and redesignates existing Subdivision (6) as Subdivision (2).

(b) Provides that a company that offers qualified investment products other than annuity contracts, including a company that offers custodial accounts under Section 403(b)(7), Internal Revenue Code of 1986, is eligible to offer qualified investment products to employees of educational institutions under this Act. Deletes existing text requiring the company, for purposes of Subsection (a)(4) of this section, to calculate the five-year average on the same date each year.

SECTION 1.04. Amends Section 9(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Prohibits an educational institutional from:

(1) except as provided by Subdivision (8) of this subsection and Subsection (b) of this section, refusing to enter into a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction is an eligible qualified investment, rather than is an eligible qualified investment and is registered with the system under Section 8A;

(2)–(7) makes no changes to these subdivisions; or

(8) entering into or continuing a salary reduction agreement with an employee if the qualified investment product that is the subject of the salary reduction agreement is not an eligible qualified investment, rather than is not an eligible qualified investment, including the investment product of a company whose certification has been denied, suspended, or revoked, without first providing the employee with notice in writing that:

(A) indicates the reason the subject of the salary reduction agreement is no longer an eligible qualified investment, rather than indicates the reason the subject of the salary reduction agreement is no longer an eligible qualified investment or why certification has been denied, suspended, or revoked; and

(B) makes no changes to this paragraph.

SECTION 1.05. Amends Section 9A, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

Sec. 9A. Prohibits a person, other than an employee of an educational institution, or an affiliate of the person from entering into or renewing a contract under which the person is to provide services for or administer a plan offered by the institution under Section 403(b), Internal Revenue Code of 1986, unless the person:

(1)–(2) makes no changes to these subdivisions; or

(3) is a financial institution that has sufficient presence in this state to serve the employees of educational institutions who participate in the plan, rather than has its main office, a branch office, or a trust office in this state.

SECTION 1.06. Amends Section 9B(b), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(b) Requires a person, if the person described by Subsection (a) holds a meeting at which qualified investment products will be marketed to employees of the educational institution, to provide representatives of other companies eligible to sell qualified investment products under Section 6, rather than provide representatives of other companies certified to TRS under Section 5 or 8, of this Act an opportunity to attend and market their qualified investment products at the meeting.

SECTION 1.07. Amends Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Provides that a person commits an offense if the person sells or offers for sale an investment product that is not an eligible qualified investment, rather than if the person sells or offers for sale an investment product that is not an eligible qualified investment or that is not registered under Section 8A of this Act, and that the person knows will be the subject of a salary reduction agreement.

SECTION 1.08. Amends Section 11(c), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(c) Requires the notice required under this section to be uniform and:

(1)–(2) makes no changes to these subdivisions; and

(3) to state, in plain language:

(A) that the company offering the annuity is required to comply with Section 6 of this Act and that the annuity is required to be a qualified investment product, rather than that the company offering the annuity is required to comply with Section 5 of this Act and that the annuity is required to be a qualified investment product registered under Section 8A of this Act;

(B) deletes existing text of Paragraph (B) providing that the notice is required to state, in plain language, that the potential purchaser is authorized to contact TRS or access its Internet website to determine which companies are in compliance with Section 5 of this Act and which qualified investment products are registered under Section 8A of this Act;

(C) Creates Paragraph (B) from existing Paragraph (C), redesignates existing text of Paragraph (D) as Paragraph (C), and renumbers the paragraphs accordingly.

SECTION 1.09. Amends Section 12, Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

Sec. 12. Requires a company that offers an eligible qualified investment that is subject to a salary reduction agreement to require, rather than to demonstrate annually to TRS, that each of its representatives are properly licensed and qualified, by training and continuing education, to sell and service the company's eligible qualified investments.

SECTION 1.10. Repealers: Sections 5(b) (relating to authorizing a company to certify to TRS that the company offers a qualified investment product), (c) (relating to requiring a company that certifies to notify TRS if the company is not in compliance), (d) (relating to requiring TRS to establish and maintain a list of companies that have certified), and (e) (relating to entitling an employee to designate any certain entity through which a qualified investment is authorized to be made), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.).

Repealer: Sections 6(c) (relating to authorizing TRS to adopt rules to administer certain sections of this Act), (d) (relating to requiring TRS to refer all complaints about qualified investment products to certain entities), (d-1) (relating to requiring certain entities to investigate a complaint received from TRS), (d-2) (relating to requiring the Texas Department of Banking to take certain actions if a certain complaint is received), (e) (relating to requiring certain entities to cooperate with TRS), (f) (relating to authorizing the retirement system to deny, suspend, or revoke the certification of a company), (f-1) (relating to authorizing a company to recertify under certain conditions), (g) (relating to requiring TRS to prescribe a required uniform notice), (h) (relating to the duration of a certification or recertification), and (i) (relating to requiring a company offering certain investments to provide toll-free telephone transferring privileges), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.).

Repealer: Section 7 (relating to authorizing TRS to collect certain fees), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.).

Repealer: Section 8 (relating to certification procedures for certain companies), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.).

Repealer: Section 8A (relating to registration application procedures for a company), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.).

Repealer: Section 11(b) (relating to requiring TRS to make a certain notice available on request and post the form of the notice on TRS's Internet website), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.).

Repealer: Section 13 (relating to authorizing the board of trustees of TRS to deny, suspend, or revoke the certification or recertification of a company), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.).

ARTICLE 2. CONFORMING CHANGE

SECTION 2.01. Reenacts Section 17.46(b), Business & Commerce Code, as amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B. 2065), Acts of the 85th Legislature, Regular Session, 2017, and amends it as follows:

(b) Redefines "false, misleading, or deceptive acts or practices," to include certain acts, including selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act, rather than selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act or is not registered with TRS as required by Section 8A of that Act. Makes nonsubstantive changes.

ARTICLE 3 TRANSITIONS; CONFLICT WITH OTHER LEGISLATION; EFFECTIVE DATE

SECTION 3.01. Makes application of Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), prospective.

SECTION 3.02. Makes application of Section 10(a), Chapter 22 (S.B. 17), Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), prospective. Provides that, for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 3.03. Makes application of Section 17.46(b), Business & Commerce Code, as amended by this Act, prospective.

SECTION 3.04. Provides that, to the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.05. Effective date: September 1, 2019.