

BILL ANALYSIS

Senate Research Center
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S.B. 439
By: Perry
Business & Commerce
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Although small employers are not mandated to provide health insurance for their employees under the Affordable Care Act, many small employers still wish to provide this important benefit. Health reimbursement accounts (HRAs) have become an option for small businesses to pay for health insurance premiums; however, this was not allowed until Congress passed the 21st Century Cures Act.

The 21st Century Cures Act created Qualified Small Employer Health Reimbursement Accounts (QSEHRA), and exempted certain small employers, generally those with fewer than 50 employees, from existing federal laws and regulations that had prohibited all employers from using HRAs to pay for health insurance premiums. This new exemption applies only to small employers and not employers considered “applicable large employers” as defined by the Affordable Care Act and federal regulations.

After the 21st Century Cures Act passed, it conflicted with state statute, causing some confusion on whether or not HRAs in Texas could be used to pay for health insurance premiums. In order to clarify this issue, an attorney general opinion was requested and issued. This opinion stated a court would likely determine that the Employment Retirement Income Security Act of 1974 preempts Section 1501.003 of the Insurance Code.

S.B. 439 will provide more clarity to small businesses that wish to use their HRA to provide healthcare benefits to their employees.

As proposed, S.B. 439 amends current law relating to the application of certain insurance regulations to certain small employer health reimbursement arrangements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1501.003, Insurance Code, as follows:

Sec. 1501.003. APPLICABILITY: SMALL EMPLOYER HEALTH BENEFIT PLANS; EXCEPTION. (a) Creates this subsection from existing text. Creates an exception under Subsection (b) to the criteria establishing an individual or group health benefit plan as a small employer health benefits plan subject to Subchapters C (Provision of Coverage), D (Guaranteed Issue of Small Employer Health Benefit Plans; Continuation of Coverage), E (Underwriting and Rating of Small Employer Health Benefits Plans), F (Coverage Under Small Employer Health Benefit Plans), G (Reinsurance for Small Employer Health Benefit Plans), and H (Marketing of Small Employer Health Benefit Plans).

(b) Provides that this chapter does not apply to a qualified small health reimbursement arrangement as defined by 26 U.S.C. Section 9831 (d) (2).

SECTION 2. Effective date: upon passage or September 1, 2019.

