

AN ACT

relating to a health reimbursement arrangement program for active school employees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. PROGRAM

SECTION 1.01. The heading to Article 3.50-8, Insurance Code, is amended to read as follows:

Art. 3.50-8. ACTIVE EMPLOYEE HEALTH REIMBURSEMENT ARRANGEMENT [~~COVERAGE OR COMPENSATION SUPPLEMENTATION~~]

SECTION 1.02. The heading to Section 1, Article 3.50-8, Insurance Code, is amended to read as follows:

Sec. 1. GENERAL DEFINITIONS.

SECTION 1.03. Section 1, Article 3.50-8, Insurance Code, is amended by amending Subdivisions (1) and (2) and adding Subdivisions (1-a), (1-b), (1-c), (2-a), (2-b), (2-c), (2-d), (3-a), and (3-b) to read as follows:

(1) "Account" means a health reimbursement arrangement account established under this article for a participating employee [~~"Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986, and its subsequent amendments~~].

(1-a) "Administering firm" means any entity designated by the trustee to administer any coverages, services, benefits, or requirements under this article and the trustee's

1 rules adopted under this article.

2 (1-b) "Approved health benefit plan provider" means an
3 entity approved by the trustee to offer health benefit plan
4 coverage under this article.

5 (1-c) "Dependent" means:

6 (A) the spouse of a person;

7 (B) an unmarried child of the person if that
8 child is under 25 years of age, including:

9 (i) an adopted child;

10 (ii) a stepchild, foster child, or other
11 child who has a regular parent-child relationship with the person;

12 or

13 (iii) a recognized natural child; or

14 (C) the person's recognized natural child,
15 adopted child, foster child, stepchild, or other child who is in a
16 regular parent-child relationship with the participating employee
17 and who lives with or has his or her care provided by the person on a
18 regular basis regardless of the child's age if the child is mentally
19 retarded or physically incapacitated to an extent that the child is
20 dependent on the person for care or support, as determined by the
21 trustee.

22 (2) "Employee" means a participating member of the
23 Teacher Retirement System of Texas who:

24 (A) is employed by a school district, other
25 educational district whose employees are members of the Teacher
26 Retirement System of Texas, participating charter school, or
27 regional education service center; [~~and~~]

1 (B) is not a retiree covered under the Texas
2 Public School Retired Employees Group Insurance Program
3 established under Article 3.50-4 of this code;

4 (C) is not covered by a group insurance program
5 under Chapter 1551 or 1601 of this code; and

6 (D) is not an individual performing personal
7 services for a participating entity as an independent contractor.

8 (2-a) "Health benefit plan" means a plan designed to
9 provide, pay for, or reimburse expenses for health care services.

10 The term includes:

11 (A) an insurance policy, contract, or
12 certificate;

13 (B) a medical or hospital service agreement; and

14 (C) a similar arrangement, including coverage
15 through a health maintenance organization operating under Chapter
16 843.

17 (2-b) "Health benefit plan issuer" means an entity
18 that provides health benefit plan coverage in this state. The term
19 includes:

20 (A) an insurance company authorized to do
21 business in this state;

22 (B) a group hospital service corporation
23 operating under Chapter 842 of this code;

24 (C) a health maintenance organization operating
25 under Chapter 843 of this code;

26 (D) a stipulated premium insurance company
27 operating under Chapter 884 of this code;

1 (E) a multiple employer welfare arrangement
2 subject to Chapter 846 of this code;

3 (F) an approved nonprofit health corporation
4 that holds a certificate of authority issued under Chapter 844 of
5 this code; and

6 (G) any other entity providing a plan of health
7 insurance or health benefits coverage subject to state regulation
8 by the department.

9 (2-c) "Health reimbursement arrangement" is a health
10 benefit plan that:

11 (A) is paid for solely by the employer;

12 (B) is not provided under a salary reduction
13 election;

14 (C) reimburses a participant for a qualified
15 health care expense incurred by the participant or the
16 participant's dependent;

17 (D) provides reimbursements up to a maximum
18 dollar amount at the end of a coverage period; and

19 (E) provides that any unused portion of the
20 maximum dollar amount at the end of a coverage period is carried
21 forward to increase the maximum reimbursement amount in subsequent
22 coverage periods.

23 (2-d) "Participant" means a person enrolled in the
24 program.

25 (3-a) "Program" means the health reimbursement
26 arrangement program established under this article.

27 (3-b) "Qualified health care expense" means an expense

1 paid by an employee for medical care, as defined by Section 213(d),
 2 Internal Revenue Code of 1986, and its subsequent amendments, for
 3 the employee or the employee's dependents, as defined by Section
 4 152, Internal Revenue Code of 1986, and its subsequent amendments.

5 SECTION 1.04. Article 3.50-8, Insurance Code, is amended by
 6 adding Section 1A to read as follows:

7 Sec. 1A. DEFINITION OF EMPLOYER. (a) For purposes of
 8 qualification under federal law of a health reimbursement
 9 arrangement established under this article, "employer" means this
 10 state and a school district, another educational district whose
 11 employees are members of the Teacher Retirement System of Texas, a
 12 participating charter school, or a regional education service
 13 center.

14 (b) This article does not make an employee an employee of
 15 this state for any purpose other than the limited purpose described
 16 by Subsection (a) of this section.

17 SECTION 1.05. Section 2, Article 3.50-8, Insurance Code, is
 18 amended to read as follows:

19 Sec. 2. ACTIVE EMPLOYEE HEALTH REIMBURSEMENT ARRANGEMENT
 20 PROGRAM; STATE CONTRIBUTION [COVERAGE OR COMPENSATION
 21 SUPPLEMENTATION]. (a) For each employee, the state shall annually
 22 contribute \$1,000 or the amount specified in the General
 23 Appropriations Act to the health reimbursement arrangement account
 24 established for that employee for the payment of qualified health
 25 care expenses.

26 (b) Each year, the trustee shall contribute to the health
 27 reimbursement arrangement account of each employee of [deliver to]

1 each school district, including a school district that is
2 ineligible for state aid under Chapter 42, Education Code, each
3 other educational district that is a member of the Teacher
4 Retirement System of Texas, each participating charter school, and
5 each regional education service center state the amount to which
6 the employee is entitled under Subsection (a) of this section
7 ~~[funds in an amount, as determined by the trustee, equal to the~~
8 ~~product of the number of active employees employed by the district,~~
9 ~~school, or service center multiplied by \$1,000 or a greater amount~~
10 ~~as provided by the General Appropriations Act for purposes of this~~
11 ~~article].~~ The contributions shall be made in equal monthly
12 installments.

13 (c) Each employee shall direct the expenditure of the amount
14 of the state contribution made under this section and that is
15 allocated to the employee in accordance with the General
16 Appropriations Act and this article.

17 (d) Money described by Subsection (c) of this section may be
18 used by an employee only in accordance with this article for the
19 employee and the employee's dependents for health benefit plan
20 coverage offered by approved health benefit plan providers and for
21 other qualified health care expenses.

22 (e) Any funds in a cafeteria plan authorized by Section 125,
23 Internal Revenue Code of 1986, and its subsequent amendments, and
24 described by Section 3(a) of this article, for an employee who
25 received the funds under this article, as this article existed
26 immediately before September 1, 2003, that were designated by the
27 employee for health care expenses and are unspent as of September 1,

1 2003, must be spent by the employee for qualified health care
2 expenses before the employee may spend any funds from the health
3 reimbursement arrangement account established for that employee
4 under this section. [~~(b) All funds received by a school district,~~
5 ~~other educational district, participating charter school, or~~
6 ~~regional education service center under this article are held in~~
7 ~~trust for the benefit of the active employees on whose behalf the~~
8 ~~district, school, or service center received the funds.~~

9 [~~(c) The trustee shall distribute funds under this article~~
10 ~~in equal monthly installments. The trustee is entitled to recover~~
11 ~~from a school district, other educational district, participating~~
12 ~~charter school, or regional education service center any amount~~
13 ~~distributed under this article to which the district, school, or~~
14 ~~service center was not entitled.~~

15 [~~(d) A determination by the trustee under this section is~~
16 ~~final and may not be appealed.]~~

17 SECTION 1.06. Article 3.50-8, Insurance Code, is amended by
18 adding Section 2A to read as follows:

19 Sec. 2A. PROGRAM FUNDING STRUCTURE; RULES. (a) The
20 trustee, in consultation with the comptroller, shall by rule
21 develop a funding structure that:

22 (1) implements Section 2 of this article in accordance
23 with this article;

24 (2) permits an employee to carry over money allocated
25 to the employee throughout the period the employee is eligible to
26 participate in the program; and

27 (3) ensures, to the extent feasible and consistent

1 with this chapter, favorable federal tax treatment to the employee.

2 (b) The funding structure shall use a health reimbursement
3 arrangement established in a manner compatible with federal tax
4 law.

5 (c) To implement this section, the comptroller shall, as
6 requested by the trustee:

7 (1) establish separate accounts attributable to
8 individual participating employees within the Texas school
9 employees uniform group coverage trust fund; or

10 (2) transfer funds from the Texas school employees
11 uniform group coverage trust fund to trust accounts outside the
12 fund in the custody of the comptroller established for the benefit
13 of employees.

14 (d) On an employee's separation from service with an entity
15 described by Section 2(b) of this article, the employee may
16 continue to use for qualified health care expenses any money
17 carried over by the employee under Subsection (a)(2) of this
18 section that was allocated to the employee under this article and
19 was not spent before the effective date of the separation.

20 SECTION 1.07. Section 4, Article 3.50-8, Insurance Code, is
21 amended to read as follows:

22 Sec. 4. GENERAL RULES AND ADMINISTRATION; CONTRACT
23 AUTHORITY. (a) The trustee shall [~~may~~] adopt rules to implement
24 this article.

25 (b) The trustee may contract with an independent and
26 experienced group insurance consultant or actuary for advice and
27 counsel in implementing and administering the program.

1 (c) The trustee may enter into interagency contracts with
2 any agency of this state, including the Employees Retirement System
3 of Texas and the department, for the purpose of assistance in
4 implementing this article.

5 (d) The trustee may not directly administer health benefit
6 plan coverages made available under the program and may not provide
7 those coverages on a self-funded basis.

8 (e) The trustee may not establish, approve, or limit premium
9 rates for health benefit plan coverages made available under the
10 program.

11 (f) Notwithstanding Section 2 of this article, the trustee
12 may pay all administrative costs incurred by the trustee in
13 operating the program from the contributions made by the state
14 under Section 2(a) of this article.

15 SECTION 1.08. Article 3.50-8, Insurance Code, is amended by
16 adding Sections 4A-4F to read as follows:

17 Sec. 4A. COMPETITIVE BIDDING REQUIREMENTS. (a) The
18 trustee may, on a competitive bid basis, contract with an entity to
19 act for the trustee as an independent administrator or manager of
20 the coverages, services, and benefits authorized under this
21 article.

22 (b) The entity must be a qualified, experienced firm of
23 group insurance specialists or an administering firm and shall
24 assist the trustee in ensuring the proper administration of this
25 article and the coverages, services, and benefits authorized under
26 this chapter.

27 Sec. 4B. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a

1 contract under this article, the trustee is not required to select
2 the lowest bid and may consider also any relevant criteria,
3 including the bidder's:

- 4 (1) ability to service contracts;
5 (2) past experience, including experience with the
6 operation of health reimbursement arrangements; and
7 (3) financial stability.

8 (b) If the trustee awards a contract to a bidder whose bid
9 deviates from that advertised, the trustee shall record the
10 deviation and fully justify the reason for the deviation in the
11 minutes of the next trustee meeting.

12 Sec. 4C. CERTIFICATE OF COVERAGE. An approved health
13 benefit plan provider shall issue, to each employee purchasing
14 health benefit plan coverage from the health benefit plan provider
15 under the program, a certificate of coverage that states:

- 16 (1) the benefits to which the participant is entitled;
17 (2) to whom the benefits are payable;
18 (3) to whom a claim must be submitted; and
19 (4) the provisions of the plan document, in summary
20 form, that principally affect the participant.

21 Sec. 4D. ISSUER RECORDS. Any health benefit plan issuer
22 providing coverages to participants in the program shall:

- 23 (1) furnish any reasonable report the trustee
24 determines is necessary to enable the trustee to perform its
25 functions under this article; and
26 (2) permit the trustee and a representative of the
27 state auditor to examine records of the health benefit plan issuer

1 as necessary to accomplish the purposes of this article.

2 Sec. 4E. CONFIDENTIALITY OF PARTICIPANT RECORDS. (a) The
3 records of a participant in the program in the custody of the
4 trustee, or of an administrator or health benefit plan issuer
5 acting under the program, are confidential and not subject to
6 disclosure and are exempt from the public access provisions of
7 Chapter 552, Government Code, except as provided by this section.

8 (b) The trustee may release the records to:

9 (1) an administrator, health benefit plan issuer,
10 agent, or attorney acting under the program;

11 (2) another governmental entity;

12 (3) a medical provider of the participant to
13 accomplish the purposes of this article; or

14 (4) a party in response to a subpoena issued under
15 applicable law.

16 Sec. 4F. EQUITABILITY IN NEGOTIATED RATES. (a) A health
17 benefit plan used to provide coverage under the program must be
18 designed to ensure that an employee who purchases coverage under
19 the health benefit plan through the employee's health reimbursement
20 arrangement account is entitled to pay a physician or other health
21 care provider for services provided to the employee that are not
22 reimbursed from the account at the same rate negotiated with the
23 physician or other health care provider by the approved health
24 benefit plan provider for provision of those services under the
25 plan.

26 (b) Subsection (a) of this section applies to medical
27 services, dental services, and vision care services.

ARTICLE 2. CONFORMING AMENDMENTS AND REPEALER

SECTION 2.01. Section 822.201(c), Government Code, is amended to read as follows:

(c) Excluded from salary and wages are:

- (1) expense payments;
- (2) allowances;
- (3) payments for unused vacation or sick leave;
- (4) maintenance or other nonmonetary compensation;
- (5) fringe benefits;
- (6) deferred compensation other than as provided by Subsection (b)(3);
- (7) compensation that is not made pursuant to a valid employment agreement;
- (8) payments received by an employee in a school year that exceed \$5,000 for teaching a driver education and traffic safety course that is conducted outside regular classroom hours;
- (9) the benefit replacement pay a person earns as a result of a payment made under Subchapter B or C, Chapter 661;
- (10) contributions to a health reimbursement arrangement account [~~supplemental compensation~~] received by an employee under Article 3.50-8, Insurance Code; and
- (11) any compensation not described by [~~in~~] Subsection (b).

SECTION 2.02. Sections 3 and 5, Article 3.50-8, Insurance Code, are repealed.

ARTICLE 3. IMPLEMENTATION; EFFECTIVE DATE

SECTION 3.01. (a) The Teacher Retirement System of Texas,

1 in consultation with the comptroller, shall develop the funding
2 structure required by Section 2A, Article 3.50-8, Insurance Code,
3 as added by Article 1 of this Act, and shall take necessary action
4 to implement the health reimbursement arrangement program in
5 accordance with Article 3.50-8, Insurance Code, as amended by
6 Article 1 of this Act, not later than September 1, 2004.

7 (b) Notwithstanding any other law, until September 1, 2004,
8 the Teacher Retirement System of Texas may pay for administrative
9 expenses incurred by the system in developing the health care
10 reimbursement arrangement program from funds received by the system
11 in fiscal year 2004 under Article 3.50-8, Insurance Code, for
12 operation of the employee health coverage and compensation
13 supplementation program.

14 SECTION 3.02. (a) The Teacher Retirement System of Texas
15 shall continue to operate the medical savings account program
16 established under Article 3.50-8, Insurance Code, as added by
17 Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001,
18 until September 1, 2004.

19 (b) Any unspent funds in a medical savings account
20 established for an employee under Article 3.50-8, Insurance Code,
21 as that section existed before amendment by this Act, are
22 transferred to the health reimbursement arrangement account
23 established for that employee under Article 3.50-8, Insurance Code,
24 as amended by this Act, effective September 1, 2004.

25 SECTION 3.03. Not later than July 31, 2004, the Teacher
26 Retirement System of Texas shall provide written information to
27 school districts eligible to participate in the health

1 reimbursement arrangement program under Article 3.50-8, Insurance
2 Code, as amended by Article 1 of this Act, that provides a general
3 description of the requirements for such a program as adopted under
4 Article 3.50-8, Insurance Code, as amended by Article 1 of this Act.

5 SECTION 3.04. During the initial implementation of Article
6 3.50-8, Insurance Code, as amended by Article 1 of this Act, and
7 notwithstanding any bidding requirements or other requirements set
8 forth in Article 3.50-8, Insurance Code, as added by Chapter 1187,
9 Acts of the 77th Legislature, Regular Session, 2001, the Teacher
10 Retirement System of Texas may amend any agreement in effect on
11 September 1, 2003, that it has entered into under Article 3.50-8,
12 Insurance Code, as added by Chapter 1187, Acts of the 77th
13 Legislature, Regular Session, 2001, as necessary to comply with
14 Article 3.50-8, Insurance Code, as amended by Article 1 of this Act.

15 SECTION 3.05. (a) Except as provided by Subsection (b) of
16 this section, this Act takes effect September 1, 2003.

17 (b) Article 2 of this Act takes effect September 1, 2004,
18 and applies beginning with the 2004-2005 school year.

David Swinhart

President of the Senate

Jim Caddell

Speaker of the House

I certify that H.B. No. 3257 was passed by the House on May 10, 2003, by a non-record vote.

Robert Harey

Chief Clerk of the House

I certify that H.B. No. 3257 was passed by the Senate on May 28, 2003, by a viva-voce vote.

Patricia Shaw

Secretary of the Senate

APPROVED:

18 JUNE '03

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:50 PM O'CLOCK

JUN 18 2003
Heather Shea
Secretary of State