

## **BILL ANALYSIS**

Senate Research Center

H.B. 3257  
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Education  
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Engrossed

### **DIGEST AND PURPOSE**

The 77th Texas Legislature established a uniform group coverage program for school district employees with funds from state, district, and employee contributions and created a \$1,000 "pass through" of state funds to assist these employees with their health care needs.

In June of 2002, the Internal Revenue Service (IRS) issued a ruling that facilitated an innovative new method for use by employers to assist their employees in paying for health care. Referred to as a health reimbursement arrangement (HRA), this new model of health care financing enabled an employer to make a tax-free contribution into an account held on behalf of an employee. The employee was then free to spend these pre-tax dollars on their qualified health care expenditures. Unexpended funds would "roll over" into the next year, which provides an opportunity for employees to build up a reserve for unplanned expenditures.

Current statutes do not allow school district employees to take advantage of this new tax-free approach to assisting with their health care. The result is that employees face having to use after-tax dollars to pay for medical expenses that would be eligible for health reimbursement arrangement (HRA) reimbursement. H.B. 3257 establishes an HRA system for school employees and has the impact, via the clear tax advantages, of actually increasing a school employee's total pay and benefits package.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Board of Trustees in SECTION 1.06 (Article 3.50-8, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Article 3.50-8, Insurance Code, to read as follows:

Art. 3.50-8. ACTIVE EMPLOYEE HEALTH REIMBURSEMENT ARRANGEMENT

SECTION 1.02. Amends the heading to Section 1, Article 3.50-8, Insurance Code, to read as follows:

Sec. 1. GENERAL DEFINITIONS.

SECTION 1.03. Amends 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 redefine "employee," delete the definition of "cafeteria plan," and define "account," "administering firm," "approved health benefit plan provider," "dependent," "health benefit plan," "health benefit plan issuer," "health reimbursement arrangement," "participant," "program," and "qualified health care expense."

SECTION 1.04. Amends Article 3.50-8, Insurance Code, by adding Section 1A, as follows:

Sec. 1A. DEFINITION OF EMPLOYER. (a) Defines “employer.”

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

SECTION 1.05. Amends Section 2, Article 3.50-8, Insurance Code, as follows:

Sec. 2. New heading: ACTIVE EMPLOYEE HEALTH REIMBURSEMENT

ARRANGEMENT PROGRAM; STATE CONTRIBUTION (a) Requires the state, for each employee, to annually contribute \$1,000 or the amount specified in the General Appropriations Act to the health reimbursement arrangement account established for that employee for the payment of qualified health care expenses.

(b) Requires the trustee, each year, to contribute to the health reimbursement arrangement account of each employee of each school district, including a school district that is ineligible for state aid under Chapter 42 (Foundation School Program), Education Code, each other educational district that is a member of the Teacher Retirement System of Texas (TRS), each participating charter school, and each regional education service center state the amount to which the employee is entitled under Subsection (a) of this section. Requires the contributions to be made in equal monthly installments. Deletes text requiring the trustee to contribute into the fund in an amount to equal the product of number of active employees employed by the district, school, or service center multiplied by \$1000 or a greater amount as provided by the General Appropriation Act.

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

(d) Authorizes the money described by Subsection (c) of this section to be used by an employee only in accordance with this article for the employee and the employee's dependents for health benefit plan coverage offered by approved health benefit plan providers and for other qualified health care expenses.

(e) Requires any funds in a cafeteria plan authorized by Section 125, Internal Revenue Code of 1986, and its subsequent amendments, and described by Section 3(a) of this article, for an employee who received the funds under this article, as this article existed immediately before September 1, 2003, that were designated by the employee for health care expenses and are unspent as of September 1, 2003, to be spent by the employee for qualified health care expenses before the employee may spend any funds from the health reimbursement arrangement account established for that employee under this section. Deletes text providing that all funds received by a school district, other educational district, participating charter school, or regional educational center are held in the trust for the benefit of employee.

(c) Deletes Subsection (c) requiring the trustee to distribute the funds under this article in equal monthly installments.

(d) Deletes text providing that a determination by the trustee is final and may not be appealed.

SECTION 1.06. Amends Article 3.50-8, Insurance Code, by adding Section 2A, as follows:

Sec. 2A. PROGRAM FUNDING STRUCTURE; RULES. (a) Requires the trustee, in consultation with the comptroller, to by rule develop a funding structure that meets certain

requirements.

- (b) Requires the funding structure to use a health reimbursement arrangement established in a manner compatible with federal tax law.
- (c) Requires the comptroller, to implement this section, as requested by the trustee, to establish separate accounts attributable to individual participating employees within the Texas school employees uniform group coverage trust fund or transfer funds from the Texas school employees uniform group coverage trust fund to trust accounts outside the fund in the custody of the comptroller established for the benefit of employees.
- (d) Authorizes the employee, on an employee's separation from service with an entity described by Section 2(b) of this article, to continue to use for qualified health care expenses any money carried over by the employee under Subsection (a)(2) of this section that was allocated to the employee under this article and was not spent before the effective date of the separation.

SECTION 1.07. Amends Section 4, Article 3.50-8, Insurance Code, as follows:

Sec. 4. New heading: GENERAL RULES AND ADMINISTRATION; CONTRACT AUTHORITY. (a) Requires, rather than authorizes, the trustee to adopt rules to implement this article.

- (b) Authorizes the trustee to contract with an independent and experienced group insurance consultant or actuary for advice and counsel in implementing and administering the program.
- (c) Authorizes the trustee may enter into interagency contracts with any agency of this state, including the Employees Retirement System of Texas and the Department of Insurance (department), for the purpose of assistance in implementing this article.
- (d) Prohibits the trustee from directly administering health benefit plan coverages made available under the program and from providing those coverages on a self-funded basis.
- (e) Prohibits the trustee from establishing, approving, or limiting premium rates for health benefit plan coverages made available under the program.
- (f) Authorizes the trustee, notwithstanding Section 2 of this article, to pay all administrative costs incurred by the trustee in operating the program from the contributions made by the state under Section 2(a) of this article.

SECTION 1.08. Amends Article 3.50-8, Insurance Code, by adding Sections 4A-4F,as follows:

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

- (b) Requires the entity to be a qualified, experienced firm of group insurance specialists or an administering firm and requires the entity to assist the trustee in ensuring the proper administration of this article and the coverages, services, and benefits authorized under this chapter.

Sec. 4B. CONTRACT AWARD; CONSIDERATIONS (a) Provides that the trustee is not required to select the lowest bid and may consider certain criteria, in awarding a contract under

this article.

(b) Requires the trustee, if the trustee awards a contract to a bidder whose bid deviates from that advertised, to record the deviation and fully justify the reason for the deviation in the minutes of the next trustee meeting.

Sec. 4C. CERTIFICATE OF COVERAGE. Requires an approved health benefit plan provider to issue, to each employee purchasing health benefit plan coverage from the health benefit plan provider under the program, a certificate of coverage that provides certain information.

Sec. 4D. ISSUER RECORDS. Requires any benefit plan issuer providing coverage to participants in the program to take certain actions.

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

(b) Authorizes the trustee to release the records to certain entities.

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

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

## ARTICLE 2. CONFORMING AMENDMENTS AND REPEALER

SECTION 2.01. Amends Section 822.201(c), Government Code, to provide that certain salaries and wages are excluded.

SECTION 2.02. Repealer: Sections 3 and 5, Article 3.50-8, Insurance Code.

## ARTICLE 3. IMPLEMENTATION; EFFECTIVE DATE

SECTION 3.01. (a) Requires TRS, in consultation with the comptroller, to develop the funding structure required by Section 2A, Article 3.50-8, Insurance Code, as added by Article 1 of this Act, and to take necessary action to implement the health reimbursement arrangement program in accordance with Article 3.50-8, Insurance Code, as amended by Article 1 of this Act, not later than September 1, 2004.

(b) Authorizes TRS, notwithstanding any other law, until September 1, 2004, to pay for administrative expenses incurred by the system in developing the health care reimbursement arrangement program from funds received by the system in fiscal year 2004 under Article 3.50-8, Insurance Code, for operation of the employee health coverage and compensation supplementation program.

SECTION 3.02 (a) Requires TRS to continue to operate the medical savings account program

established under Article 3.50-8, Insurance Code, as added by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, until September 1, 2004.

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

SECTION 3.03. Requires TRS, by July 31, 2004, to provide written information to school districts eligible to participate in the health reimbursement arrangement program under Article 3.50-8, Insurance Code, as amended by Article 1 of this Act, that provides a general description of the requirements for such a program as adopted under Article 3.50-8, Insurance Code, as amended by Article 1 of this Act.

SECTION 3.04. Authorizes TRS, during the initial implementation of Article 3.50-8, Insurance Code, as amended by Article 1 of this Act, and notwithstanding any bidding requirements or other requirements set forth in Article 3.50-8, Insurance Code, as added by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, to amend any agreement in effect on September 1, 2003, that it has entered into under Article 3.50-8, Insurance Code, as added by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, as necessary to comply with Article 3.50-8, Insurance Code, as amended by Article 1 of this Act.

SECTION 3.05. (a) Effective date: September 1, 2003, except as provided by Subsection (b) of this section,

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