

## **BILL ANALYSIS**

Senate Research Center

H.B. 1795  
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Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

H.B. 1795 provides for the establishment of health savings accounts (HSAs) for Employees Retirement System of Texas members and their dependents.

HSAs are an initiative to encourage consumer-driven health care, under which the cost of care is transparent and individuals can choose care based on need and price shop using available resources. HSAs combine high-deductible health plans (HDHPs), which are less expensive than low-deductible health plans, with a savings account specifically dedicated to health care expenses.

The initial cost of care is paid with money accumulated in an individual's HSA. Once the annual deductible is met, the HDHP covers a portion of any remaining health care costs. Employees are motivated to spend less than the annual contribution to the HSA, because any money not spent by the end of the year rolls forward, continuing to earn interest. HSAs also remain with the individual from job to job as well as into retirement. All contributions to the HSA made by the individual as well as the employer are non-taxable, thus creating another incentive to save money.

H.B. 1795 requires the State of Texas to give state employees the option of choosing an HSA/HDHP instead of a low-deductible health plan. With the cost of health insurance increasing every year, any increase in premiums results in a *de facto* compensation increase, unseen by the employee. HSAs offer a more affordable option in health care. Employees should be given this option to tailor their health insurance to their specific health care needs and the resulting opportunity to use their health care funds more wisely.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 16 (Sections 1551.452, 1551.458, 1551.462 and 1551.464, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1551.002, Insurance Code, to include providing uniformity and individual choice and control in life, accident, and health benefit coverages for all state officers and employees and their dependents amongst the purposes of this chapter.

SECTION 2. Amends Section 1551.011, Insurance Code, to provide that all state contributions are exempt from execution, attachment, garnishment, or any other process and are prohibited from being assigned, except in certain circumstances.

SECTION 3. Amends Section 1551.055, Insurance Code, to make a conforming change.

SECTION 4. Amends Section 1551.201, Insurance Code, by adding Subsection (d), to require the board of trustees of the Employees Retirement System of Texas (board of trustees) to give individuals participating in the group benefits program the option of choosing a high deductible health plan to be used in conjunction with a health savings account established under Subchapter J. Defines "high deductible health plan."

SECTION 5. Amends Section 1551.301, Insurance Code, to make conforming changes.

SECTION 6. Amends Section 1551.303, Insurance Code, to make a conforming change.

SECTION 7. Amends Section 1551.305, Insurance Code, as follows:

Sec. 1551.305. New heading: COST OF BASIC COVERAGE AND CERTAIN OTHER BENEFITS EXCEEDING EMPLOYER CONTRIBUTIONS. Makes conforming changes.

SECTION 8. Amends Section 1551.306, Insurance Code, as follows:

Sec. 1551.306. New heading: PAYMENT OF CERTAIN EXCESS COST. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 1551.310, Insurance Code, to make conforming changes.

SECTION 10. Amends Section 1551.311(a), Insurance Code, to make a conforming change.

SECTION 11. Amends Section 1551.314, Insurance Code, to make a conforming change.

SECTION 12. Amends Section 1551.315(a), Insurance Code, to make conforming changes.

SECTION 13. Amends Section 1551.318(a), Insurance Code, to make conforming changes.

SECTION 14. Amends Section 1551.319(a), Insurance Code, to make conforming changes.

SECTION 15. Amends Section 1551.401(d), Insurance Code, to make conforming changes.

SECTION 16. Amends Chapter 1551, Insurance Code, by adding Subchapter J, as follows:

#### SUBCHAPTER J. STATE HEALTH SAVINGS ACCOUNT PROGRAM

Sec. 1551.451. DEFINITIONS. Defines "high deductible health plan," "participant," "program," and "qualified medical expense."

Sec. 1551.452. ESTABLISHMENT OF STATE HEALTH SAVINGS ACCOUNT PROGRAM. (a) Provides that the state health savings account program is established for the benefit of individuals eligible to participate in the group benefits program and those individuals' eligible dependents.

(b) Requires the board of trustees to take certain actions relating to the administration of the health savings account program after final rules, plans, and procedures are adopted by the board of trustees and qualified by the Internal Revenue Service under Section 1551.453.

(c) Requires the board of trustees to adopt rules, plans, and procedures as necessary to administer this subchapter.

Sec. 1551.453. QUALIFICATION OF HEALTH SAVINGS ACCOUNTS. Requires the board of trustees to request in writing a ruling or opinion from the Internal Revenue Service as to whether the program established under this subchapter and the rules adopted under this subchapter qualify the health savings accounts established under this subchapter for federal tax treatment as health savings accounts under Section 223(e), Internal Revenue Code of 1986, and its subsequent amendments, and any other appropriate federal tax exemptions. Requires the board of trustees to take certain actions based on the response of the Internal Revenue Service.

Sec. 1551.454. ACCOUNT ADMINISTRATOR. (a) Requires the account administrator of a health savings account established under this subchapter to be a person that meets certain requirements.

(b) Provides that the account administrator is the fiduciary of a participant who has a health savings account established under this subchapter.

(c) Provides that Section 1551.056(b) (relating to the requirements for an independent administrator) does not apply to the account administrator.

Sec. 1551.455. **REQUIRED PARTICIPATION.** Requires each state agency, including an institution of higher education, to make participation in the program as provided by this subchapter available to employees and inform employees of an employee's option to participate in the program.

Sec. 1551.456. **PROVISION OF COVERAGE.** Requires the program to provide, through a high deductible health plan, health benefit plan coverage to a participant and, as provided by this chapter, to that participant's dependents.

Sec. 1551.457. **HIGH DEDUCTIBLE HEALTH PLANS.** Requires the program to include a high deductible health plan.

Sec. 1551.458. **PARTICIPATION IN PROGRAM.** (a) Authorizes each individual eligible to participate in the group benefits program to participate in the program if the participant is an eligible individual under Section 223(c)(1), Internal Revenue Code of 1986, and its subsequent amendments. Provides that a participant in the program waives basic plan coverage and is required to be enrolled in a high deductible health plan.

(b) Provides that participation in the program qualifies a participant to receive a contribution to a health savings account under Section 1551.461. Provides that an individual who elects not to participate in the program is not eligible to receive a contribution under Section 1551.461.

(c) Provides that an individual who elects to participate in the program is subject to Subchapter H (Sanctions and Adjudication of Claims) in the same manner as an individual who participates in a group coverage plan offered under the group benefits program.

(d) Provides that, under this section, the board of trustees has exclusive authority to determine an individual's eligibility to participate in the program and is required to adopt rules, plans, and procedures regarding eligibility to participate in the program.

Sec. 1551.459. **COVERAGE FOR DEPENDENTS; REQUIRED CONTRIBUTIONS.**

(a) Entitles a participant, subject to Subsection (d), to obtain for the participant's dependents coverage in the high deductible health plan selected by the participant in the manner determined by the board of trustees.

(b) Requires the participant to make any required additional contribution payments for the dependent coverage in the manner prescribed by the board of trustees.

(c) Authorizes amounts contributed by a participant under this section to be used or contributed for certain purposes.

(d) Sets forth provisions regarding a participant's dependent who is covered by a high deductible health plan selected by the participant.

Sec. 1551.460. **IDENTIFICATION CARDS FOR PARTICIPANTS.** (a) Requires the board of trustees or the account administrator, as applicable, to issue to each participant an identification card.

(b) Requires the board of trustees or the account administrator, as applicable, to issue a duplicate identification card to each participant's dependent for whom

qualified medical expenses may be paid out of a health savings account established under the program.

Sec. 1551.461. STATE CONTRIBUTION. (a) Requires the state to make certain annual contributions for each participant.

(b) Requires the state to make certain annual contributions for each participant's dependent covered by a high deductible health plan under Section 1551.459.

(c) Prohibits the amount of state contributions under Subsections (a)(2) and (b)(2), in the aggregate, from exceeding the sum of the monthly limitations imposed by federal law for health savings accounts for a calendar year.

Sec. 1551.462. DETERMINATION OF STATE CONTRIBUTION TO HEALTH SAVINGS ACCOUNT. (a) Requires the board of trustees, by rule, to determine the amount of the state contribution to a participant's health savings account under Section 1551.461(a)(2) and a participant's health savings account under Section 1551.461(b)(2).

(b) Requires the amount of the state contribution under Section 1551.461(a)(2), subject to Section 1551.461(c), to be an amount equal to or greater than 50 percent of the difference between the cost of coverage for a full-time or part-time employee covered by the basic coverage plan and a participant covered under the high deductible health plan.

(c) Requires the amount of the state contribution under Section 1551.461(b)(2), subject to Section 1551.461(c), to be an amount equal to or greater than 50 percent of the difference between the cost of dependent coverage under the basic coverage plan and dependent coverage under the high deductible health plan.

(d) Requires the board of trustees to establish state contributions under Subsection (a) in amounts that encourage participation in the program while, at the same time, maximize the use of state resources.

Sec. 1551.463. PARTICIPANT CONTRIBUTIONS. (a) Requires each participant, in accordance with Section 1551.305 (Cost of Basic Coverage Exceeding Employer Contributions), to contribute any amount required to cover the selected participation in the high deductible health plan that exceeds the state contribution amount under Section 1551.461.

(b) Authorizes a participant to contribute any amount allowed under federal law to the participant's health savings account. Authorizes a participant to make a contribution under this section in addition to receiving the state contribution under Section 1551.461.

(c) Requires a participant to make contributions under this section in the manner prescribed by the board of trustees.

Sec. 1551.464. COORDINATION WITH CAFETERIA PLAN. (a) Provides that the board of trustees has exclusive authority to determine the eligibility of a participant in the program established under this subchapter to participate in any medical flexible savings account that is part of a cafeteria plan offered under this chapter.

(b) Requires the board of trustees to adopt rules, plans, and procedures regarding certain administrative details.

(c) Requires the rules adopted by the board of trustees under Subsection (b) to prohibit a participant in the program established under this chapter from participating in any medical flexible savings account that would disqualify the participant's health savings account from favorable tax treatment under federal law.

Sec. 1551.465. CONFIDENTIALITY OF RECORDS. Authorizes the board of trustees or the program administrator, as applicable, to the extent allowed under federal law and subject to Section 1551.063 (Confidentiality of Certain Records), to disclose to a carrier information in an individual's records that the board of trustees determines is necessary to administer the program.

Sec. 1551.466. ASSISTANCE. Authorizes the board of trustees, in implementing and administering this subchapter, to obtain the assistance of any state agency the board of trustees considers appropriate.

SECTION 17. (a) Requires an advisory council, during the initial implementation of Chapter 1551, Insurance Code, as amended by this Act, and notwithstanding other requirements set forth in Chapter 1551, Insurance Code, to be created for the purpose of overseeing the design of the state health savings account program consisting of seven members, including a nonvoting ex officio member, being the executive director of the Employees Retirement System of Texas.

(b) Requires the governor of Texas to designate a chair to the advisory council in conjunction with appointing three members: a representative from the public sector, a representative from the private sector, and an actuary, preferably having experience in the area of health savings accounts; requires the lieutenant governor of Texas to appoint two members from the Texas Senate; and requires the speaker of the Texas House of Representatives to appoint two members from the Texas House of Representatives.

SECTION 18. Requires the Employees Retirement System of Texas to develop the health savings account program to be implemented under Chapter 1551, Insurance Code, as amended by this Act, beginning September 1, 2005, and to develop enrollment requirements for the program during 2005-2006, with coverage beginning, subject to the Internal Revenue Service qualifying the health savings account program under Section 1551.453, Insurance Code, as added by this Act, September 1, 2006.

SECTION 19. Requires the Employees Retirement System of Texas, not later than July 31, 2006, and subject to the Internal Revenue Service qualifying the health savings account program under Section 1551.453, Insurance Code, as added by this Act, to provide written information to individuals eligible to participate in the state health savings account program under Chapter 1551, Insurance Code, as amended by this Act, that provides a general description of the requirements for such a program as adopted under Chapter 1551, Insurance Code, as amended by this Act.

SECTION 20. Authorizes the Employees Retirement System of Texas to amend any agreement in effect on September 1, 2006, that it has entered into as necessary to comply with Chapter 1551, Insurance Code, as amended by this Act, during the initial implementation of Chapter 1551, Insurance Code, as amended by this Act, and notwithstanding any bidding requirements or other requirements set forth in Chapter 1551, Insurance Code, as that chapter existed before amendment by this Act.

SECTION 21. Requires the Employees Retirement System of Texas to develop and implement the health savings account program under Chapter 1551, Insurance Code, as amended by this Act, in a manner that is as revenue neutral as is possible.

SECTION 22. Effective date: September 1, 2005, except as otherwise provided by this Act.