

GOVERNMENT CODE  
CHAPTER 609. DEFERRED COMPENSATION PLANS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 609.001. DEFINITIONS. In this chapter:

(1) "Board of trustees" means the board of trustees of the Employees Retirement System of Texas.

(2) "Employee" means an individual who is an officer or employee of a state agency or political subdivision, as appropriate.

(2-a) "Institution of higher education" means an institution of higher education as defined by Section 61.003, Education Code.

(3) "Investment income" means the amount earned from investment in a qualified investment product of compensation deferred under a deferred compensation plan.

(4) "Participating employee" means an employee who contracts to participate in a deferred compensation plan.

(5) "Plan administrator" means the person responsible for administering a deferred compensation plan.

(6) "Political subdivision" means a governmental entity in the state that is not a state agency and includes a county, municipality, school district, river authority, other special purpose district or authority, and junior college district.

(7) "Qualified vendor" means a vendor approved by a plan administrator or with whom a plan administrator has contracted for participation in the deferred compensation plan.

(8) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government, including an institution of higher education.

(9) "Vendor" means a private entity that sells investment products.

(10) "401(k) plan" means an employees' deferred compensation plan, the federal income tax treatment of which is governed by Section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(k)).

(11) "457 plan" means an employees' deferred compensation plan, the federal income tax treatment of which is governed by Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 2.01, eff. Jan. 1, 2004; Acts 2005, 79th Leg., ch. 347, Sec. 2, eff. Sept. 1, 2005.

Sec. 609.002. QUALIFICATIONS FOR QUALIFIED VENDOR. A vendor may be a qualified vendor for a 457 plan or a 401(k) plan created by a political subdivision, group of political subdivisions, an institution of higher education, or a group of institutions of higher education only if the vendor satisfies the requirements for participation in the deferred compensation plan provided by:

(1) this chapter; and

(2) the plan administrator.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 2.02, eff. Jan. 1, 2004.

Sec. 609.003. QUALIFIED INVESTMENT PRODUCT. (a) To be classified as a qualified investment product for a deferred compensation plan, an investment product must be approved by the plan administrator to receive investments under the plan. The approval of an investment product for a 457 plan must be in writing.

(b) The approval of an investment product for a 401(k) plan of a political subdivision, group of political subdivisions, an institution of higher education, or a group of institutions of higher education, or for a 457 plan of an institution of higher education or group of institutions of higher education, must be in accordance with a contract between the plan administrator and a qualified vendor.

(c) A qualified investment product may be offered only by a qualified vendor of the deferred compensation plan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 2.03, eff. Jan. 1, 2004.

Sec. 609.004. PERMISSIBLE USE OF PUBLIC FUNDS. A deferred compensation plan governed by this chapter is a permissible use of the funds of a state agency or political subdivision.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.005. PLAN AS COMPENSATION. (a) A deferred compensation plan is a part of an employee's compensation and is in addition to a retirement, pension, or benefit system established by law.

(b) The deferral of compensation does not reduce retirement, pension, or other benefits provided by law unless the reduction is required by federal law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.006. CONFORMANCE TO OR CONFLICT WITH FEDERAL LAW. (a) A deferred compensation plan must conform to federal law to provide that deferred amounts and investment income are not includable, for federal income tax purposes, in the gross income of a participating employee until distributed to the employee.

(b) Federal law controls to the extent that this chapter materially conflicts with:

(1) Section 401(k), Internal Revenue Code of 1986 (26 U.S.C. Section 401(k));

(2) Section 457, Internal Revenue Code of 1986 (26 U.S.C. Section 457); or

(3) other federal law, including a federal rule governing deferred compensation plans.

(c) For the purposes of Subsection (b), a conflict is material only if, for federal income tax purposes, it is reasonably certain to result in the inclusion of an employee's deferred amounts or investment income in the employee's gross income before the amounts or income are distributed to the employee.

(d) The board of trustees of the Employees Retirement System of Texas may adopt rules necessary to make a deferred compensation plan established under Subchapter C a qualified plan under federal law, including federal rules and regulations.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.007. CONTRACT FOR DEFERMENT OF COMPENSATION. (a) A political subdivision may contract with an employee of the political subdivision for the deferment of any part of the employee's compensation.

(b) The board of trustees of the Employees Retirement System of Texas may contract with an employee of a state agency participating in a deferred compensation plan for the deferment of any part of the employee's compensation.

(c) To participate in a deferred compensation plan, an employee must consent in the contract to automatic payroll deductions in an amount equal to the deferred amount.

(d) A contract created under this section need not be in writing and may be communicated to the plan administrator electronically or by any other means approved by the plan's trustees.

(e) An institution of higher education may contract with an employee of the institution of higher education for the deferment of any part of the employee's compensation.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 1541, Sec. 51, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1266, Sec. 2.04, eff. Jan. 1, 2004.

Sec. 609.008. CREDITING TRUST FUND INTEREST.. Interest earned on an employee's deferred amounts and investment income deposited in any of the deferred compensation trust funds, as defined by Section 609.101, or to which Section 609.512 applies is credited to the employee.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 1, eff. Sept. 1, 2003.

Sec. 609.009. TRUST FOR 457 PLAN. An employee's deferred amounts and investment income under a 457 plan and the qualified investment products in which the amounts are invested are held in trust for the exclusive benefit of participants and their beneficiaries in accordance with Section 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 457). For purposes of this section, custodial accounts and contracts described by Section 457 are treated as trusts. A trust does not have to be established before January 1, 1999, for a 457 plan in existence on August 20, 1996.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1048, Sec. 38, eff. Sept. 1, 1997.

Sec. 609.010. LIABILITY; RESPONSIBILITY FOR MONITORING. (a) The board of trustees, a state agency, a political

subdivision, a plan administrator, or an employee of any of those persons is not liable to a participating employee for the diminution in value or loss of all or part of the participating employee's deferred amounts or investment income because of market conditions or the failure, insolvency, or bankruptcy of a qualified vendor.

(b) A participating employee is responsible for monitoring:

(1) the financial status of the qualified vendor in whose products the employee's deferred amounts and investment income are invested;

(2) market conditions; and

(3) the amount of the employee's deferred amounts and investment income that is invested in the qualified vendor's product.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.011. NOTIFICATION BY PLAN ADMINISTRATOR. (a) The plan administrator of a plan established under this chapter may notify an employee participating in the plan that the administrator believes that:

(1) a qualified vendor is having significant financial difficulties; or

(2) the amount of the employee's deferred amounts and investment income invested with a qualified vendor exceeds an insured or guaranteed level.

(b) A plan administrator is not liable to a participating employee for a loss resulting from the failure to notify the employee under this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 2, eff. Sept. 1, 2003.

Sec. 609.012. TRANSFER FROM A PLAN VENDOR. The plan administrator of a plan established under this chapter may immediately transfer to the plan's deferred compensation trust fund all deferred amounts and investment income from a vendor who at any time fails to satisfy the requirements of this chapter or the plan administrator. A vendor may not charge a fee or penalty as the result of a plan administrator's transfer under this section. Immediately after making the transfer, the plan administrator shall give to each employee whose deferred amounts and investment income were transferred a notice that states that:

(1) the vendor's investment products are ineligible to receive additional deferred amounts;

(2) the amounts have been transferred from the vendor to the deferred compensation trust fund; and

(3) the employee is required to promptly designate another qualified investment product to receive the transferred amount.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 2, eff. Sept. 1, 2003.

Sec. 609.013. INABILITY TO DISTRIBUTE. If a plan administrator cannot distribute promptly an employee's deferred amounts and investment income when a distribution is due and permissible under federal law, the plan administrator shall deposit the amount to be distributed in the deferred compensation trust fund defined by Section 609.101 or described by Section 609.512, as appropriate.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.014. COORDINATION OF PLANS. Notwithstanding any other provision of this chapter, an institution of higher education, as defined by Section 61.003, Education Code, participating in a group benefits program under Chapter 1551, Insurance Code, may participate under this chapter only in a deferred compensation plan described by Subchapter C.

Added by Acts 2003, 78th Leg., ch. 1310, Sec. 30, eff. June 20, 2003.

#### SUBCHAPTER B. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

Sec. 609.101. DEFINITIONS. In this subchapter:

(1) "Deferred compensation plan" means a plan established under this subchapter.

(2) "Deferred compensation trust fund" means the fund in which deferred amounts and investment income of participating employees are temporarily held.

(3) "Investment product" includes a life insurance

policy, fixed or variable rate annuity, mutual fund, certificate of deposit, money market account, passbook savings account, stock, bond, obligation, and any other investment product not prohibited under Section 457 or 401(k), Internal Revenue Code of 1986, as amended.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 890, Sec. 1, eff. Sept. 1, 2001.

Sec. 609.102. CREATION OF PLAN. (a) A political subdivision may create and administer for its employees a 401(k) plan under this subchapter.

(b) A political subdivision may create and administer for its employees a 457 plan under this subchapter.

(c) A political subdivision may contract with other political subdivisions to create a single deferred compensation plan for their employees under Subsection (a) or (b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.103. DESIGNATION OF PLAN ADMINISTRATOR. (a) A political subdivision that creates a deferred compensation plan shall designate a plan administrator for the plan.

(b) Political subdivisions that create a single plan shall designate jointly a plan administrator for the plan.

(c) A plan administrator may be an employee, a nonprofit corporation, an individual, a trustee, a private entity, another political subdivision, or an association of political subdivisions.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.104. REMOVAL OF PLAN ADMINISTRATOR. A political subdivision or group of political subdivisions that designates a plan administrator may remove the plan administrator at any time unless specifically provided otherwise by contract.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.105. DELEGATION OF 401(K) PLAN ADMINISTRATOR'S AUTHORITY AND RESPONSIBILITIES. A plan administrator of a 401(k) plan may delegate the administrator's authority and responsibilities under this subchapter to another person.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.106. OVERSIGHT COMMITTEE. (a) A political subdivision or group of political subdivisions that creates a deferred compensation plan may direct and supervise the activities of the plan administrator through an oversight committee.

(b) The political subdivision or group shall determine the authority, activities, and composition of an oversight committee created under this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.107. AUTHORITY OF PLAN ADMINISTRATOR. (a) A plan administrator shall execute necessary contracts for the administration of the deferred compensation plan, subject to any prior approval required by the political subdivision or group of political subdivisions that created the plan.

(b) A plan administrator shall develop and implement criteria and procedures for any matter not covered by this subchapter that the plan administrator considers appropriate for the operation of the deferred compensation plan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.108. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. The plan administrator shall:

(1) invest the deferred amounts and investment income of a participating employee in the qualified investment products designated by the employee; and

(2) transfer the deferred amounts and investment income of a participating employee from one qualified investment product to another on the employee's request.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.109. PARTICIPATION OF INDEPENDENT CONTRACTORS. (a) The plan administrator shall determine whether a person who provides services as an independent contractor to a political subdivision that created the plan may participate in the deferred compensation plan.

(b) For the purposes of Subchapter A and this subchapter, an independent contractor that is authorized to participate in a deferred compensation plan is treated as an employee of the political subdivision creating the plan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.110. CHANGING AMOUNT DEFERRED. An employee may

change the amount to be deferred by notifying the plan administrator of the change in accordance with the requirements of the administrator.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.111. DISTRIBUTION. A plan administrator shall develop and implement procedures for:

(1) the designation by a participating employee of a beneficiary to receive the employee's deferred amounts and investment income after the employee's death; and

(2) the distribution of a participating employee's deferred amounts and investment income to the employee or the employee's beneficiary, as appropriate, because of the employee's death or termination of employment, a financial hardship, or another reason permissible under federal law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.112. FEE. (a) A political subdivision or group of political subdivisions that creates a deferred compensation plan may assess a fee for the administration of the plan against each participating employee.

(b) The political subdivision or group of political subdivisions shall determine the method for computing and assessing the fee.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.113. EVALUATION AND APPROVAL OF QUALIFIED VENDOR. (a) A plan administrator shall develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor.

(b) A plan administrator may not approve a vendor's application if the vendor is:

(1) a state or national bank or savings and loan association, the deposits of which are not insured by the Federal Deposit Insurance Corporation;

(2) a credit union, the deposits of which are not insured by the National Credit Union Administration Board or the Texas Share Guaranty Credit Union; or

(3) an insurance company that:  
(A) is not a member of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association; or  
(B) is an impaired or insolvent insurer under Article 21.28-D, Insurance Code.

(c) On written request, the Texas Department of Insurance shall certify in writing to a plan administrator whether an insurance company is prohibited from being approved as a qualified vendor under Subsection (b)(3). The plan administrator may rely on the certification.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.114. NUMBER OF VENDORS UNDER 457 PLAN. The plan administrator of a 457 plan shall determine the minimum and maximum number of vendors that may be qualified vendors for the plan at any given time.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.115. CONTRACT WITH QUALIFIED VENDOR. (a) After a plan administrator approves an application of a vendor to become a qualified vendor or, under a 401(k) plan, after the plan administrator approves an application of a vendor to become a qualified vendor and approves the vendor's investment products, the plan administrator shall execute a written contract with the vendor to participate in the deferred compensation plan.

(b) A plan administrator shall develop and implement criteria and procedures for evaluating a qualified vendor's investment products to determine whether those products are acceptable as qualified investment products.

(c) A qualified vendor may offer to employees participating in a 457 plan only qualified investment products.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.116. REGULATION OF QUALIFIED VENDORS. A plan administrator shall develop and implement requirements for qualified vendors and their employees concerning disclosure, reporting, standards of conduct, solicitation, advertising, relationships with participating employees, the nature and quality of services provided to those employees, and other matters.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.117. LOANS UNDER 401(K) PLAN. The plan administrator of a 401(k) plan shall develop and implement procedures to efficiently administer a program that allows a

qualified vendor to lend money to a participating employee.  
Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.118. TRUST FOR 401(K) PLAN. A political subdivision or group of political subdivisions that creates a 401(k) plan may:

- (1) establish a trust to hold deferred amounts and investment income for the benefit of participating employees; and
- (2) act as trustee of the trust.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.119. TRANSFER ON VENDOR'S FAILURE. A political subdivision or group of subdivisions that creates a deferred compensation plan may authorize or require as a part of the plan that the plan administrator immediately transfer to the deferred compensation trust fund all deferred amounts and investment income from a vendor who fails to satisfy the requirements of this subchapter or the plan administrator.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF STATE AGENCIES

Sec. 609.501. DEFINITION. In this subchapter, "deferred compensation plan" means a plan established under this subchapter.  
Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.502. CREATION OF PLAN; PARTICIPATION.. (a) The board of trustees of the Employees Retirement System of Texas is the trustee and the plan administrator of a 401(k) plan and a 457 plan, collectively known as the TexaSaver program, established under this subchapter.

(b) The board of trustees shall administer all aspects of each plan.

(c) The board of trustees may designate a person to assist in the execution of the board's authority and responsibilities as plan administrator.

(d) A state agency may participate in either or both plans.  
Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 1048, Sec. 39, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1111, Sec. 3, eff. Sept. 1, 2003.

Sec. 609.503. CHANGING AMOUNT DEFERRED. An employee may change the amount to be deferred by notifying the board of trustees in accordance with the requirements of the board of trustees.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.10(a), eff. Sept. 1, 1995.

Sec. 609.504. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. After execution of a contract under Section 609.007, the board of trustees shall:

(1) invest the deferred amounts and investment income of the employee in the qualified investment products designated by the employee; and

(2) promptly transfer the deferred amounts and investment income of the employee from one qualified investment product to another in accordance with the requirements of the board of trustees.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.10(a), eff. Sept. 1, 1995.

Sec. 609.505. QUALIFIED VENDOR. (a) The board of trustees or a third party administrator approved by the board, in accordance with rules adopted under this subchapter, may contract with a vendor qualified to participate in a deferred compensation plan.

(b) In a contract under Subsection (a), the board of trustees may require the vendor to be audited annually by an independent auditor paid by the vendor.

(c) A vendor or investment product having an ownership or other financial interest in the contractor selected by the board of trustees to administer a deferred compensation plan is not qualified to participate in that plan.

(d) The board of trustees shall select vendors or investment products based on the quality of investment performance, proven ability to manage institutional assets, minimum net worth requirements, fee structure, compliance with applicable federal and state laws, and other criteria established by the board. The board of trustees shall determine the minimum and maximum number of vendors and investment products that may be offered by a plan at any particular time.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 1541, Sec. 52, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1111, Sec. 4, eff. Sept. 1, 2003.

Sec. 609.506. INSURANCE COMPANY AS QUALIFIED VENDOR. On written request, the Texas Department of Insurance shall certify in writing to the board of trustees whether an insurance company is eligible to be a qualified vendor under rules adopted by the board. The board is entitled to rely on the certification.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.507. FINANCIAL INSTITUTION AS QUALIFIED VENDOR. Each bank or savings and loan association that is a qualified vendor is not required to comply with Chapter 404 with regard to deferrals and investment income, but shall comply with plan rules that deal with vendors and investment products.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 586, Sec. 44, eff. Aug. 28, 1995.

Sec. 609.508. RULES. (a) The board of trustees may adopt rules, including plans and procedures, and orders necessary to carry out the purposes of this subchapter, including rules or orders relating to:

(1) the selection and regulation of vendors for a deferred compensation plan;

(2) the regulation of the practices of agents employed by vendors and a participating employee's use and reimbursement of investment advisors participating in the program;

(3) the disclosure of information concerning investment products;

(4) the regulation of advertising materials to be used by vendors;

(5) the submission of financial information by a vendor; and

(6) the development of a system to facilitate electronic authorization, distribution, transfer, and investment of deferrals.

(b) The plan administrator of the TexaSaver 401(k) or the TexaSaver 457 plan may adopt rules and procedures to allow a participating employee, subject to applicable requirements of the Internal Revenue Code of 1986, to obtain a loan from the employee's account.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.10(a), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1111, Sec. 5, eff. Sept. 1, 2003.

Sec. 609.509. CONTRACTS FOR GOODS AND SERVICES. (a) The board of trustees may contract for necessary goods and consolidated billing, accounting, and other services to be provided in connection with a deferred compensation plan.

(b) In a contract under Subsection (a), the board of trustees may provide for the board to audit periodically the person with whom the contract is made. The audit may cover:

(1) the proper handling and accounting of state or trust funds; and

(2) other matters related to the proper performance of the contract.

(c) The board of trustees may contract with a private entity to conduct the audit under Subsection (b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1048, Sec. 40, eff. Sept. 1, 1997.

Sec. 609.510. EXEMPTION FOR CERTAIN CONTRACTS. A contract authorized by Section 609.505 or by Section 609.509 for either deferred compensation plan is exempt from:

(1) Subtitle D, Title 10;

(2) Chapter 463; and

(3) Chapter 2254.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(5), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1541, Sec. 53, eff. Sept. 1, 1999.

Sec. 609.511. FEE. (a) The board of trustees may assess a fee against participating employees or qualified vendors, or both the employees and the qualified vendors, in the manner and to the extent it determines necessary to cover the costs of administering the plan.

(b) The board of trustees shall determine the method for computing and assessing a fee under this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.512. DEFERRED COMPENSATION PLAN TRUST FUNDS. (a) The TexaSaver 401(k) trust fund is in the state treasury. The fund is for the benefit of the program described by Section 609.001(10).

(b) The TexaSaver 457 trust fund is in the state treasury. The fund is for the benefit of the program described by Section 609.001(11).

(c) The board of trustees shall administer each trust fund.

(d) Deferred amounts, fees collected under Section 609.511, and state appropriations for the administration of a deferred compensation plan shall be credited to the appropriate trust fund.

(e) The interest on and earnings of amounts in a trust fund and the proceeds from the sale of investments shall be credited to the fund.

(f) The amounts credited to a trust fund are available without fiscal year limitation:

(1) to pay expenses for administering the deferred compensation plan for which the trust fund was established; and

(2) to purchase qualified investment products for participants of the appropriate plan.

(g) The board of trustees may establish accounts in a trust fund that it considers necessary, including an account for the administration of the deferred compensation plan for which the trust fund was established.

(h) The board of trustees may transfer assets from one account of a trust fund to another account of the fund for financial management purposes if adequate arrangements are made to:

(1) reimburse the account from which the transfer is made; and

(2) pay administrative expenses.

(i) The board of trustees may invest and reinvest money in a trust fund subject only to the duty of care provided by Section 815.307 that would apply if the investments were being made for the Employees Retirement System of Texas.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1048, Sec. 41, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1111, Sec. 6, eff. Sept. 1, 2003.

Sec. 609.513. DISCRETIONARY TRANSFER. (a) The board of trustees may transfer an employee's deferred amounts and investment income from a qualified investment product to the trust fund of the deferred compensation plan in which the employee participates if the board of trustees determines that the transfer is in the best interest of the plan and the employee.

(b) The board of trustees is not required to give notice of a transfer under Subsection (a) to the employee before the transfer occurs.

(c) Promptly after a transfer under Subsection (a) occurs, the board of trustees shall give to the employee a notice that:

(1) states the reason for the transfer; and

(2) requests that the employee promptly designate another qualified investment product to receive the transferred amount.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 609.514. ALTERNATIVE TO FUND DEPOSIT. Instead of depositing deferred amounts and investment income in the trust fund of the deferred compensation plan, the board of trustees may invest them in a qualified investment product specifically designated by the board for that purpose.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

#### SUBCHAPTER D. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION

Sec. 609.701. DEFINITIONS. In this subchapter:

(1) "Deferred compensation plan" means a plan established under this subchapter.

(2) "Deferred compensation trust fund" means the fund in which deferred amounts and investment income of participating employees are temporarily held.

(3) "Investment product" includes a fixed or variable rate annuity, mutual fund, certificate of deposit, money market account, passbook savings account, stock, bond, obligation, and any other investment product not prohibited under Section 457, Internal Revenue Code of 1986, as amended.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.702. CREATION OF PLAN. (a) An institution of



higher education may create and administer for its employees a 457 plan under this subchapter.

(b) An institution of higher education may contract with other institutions of higher education to create a single deferred compensation plan for their employees under Subsection (a).  
Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.703. DESIGNATION OF PLAN ADMINISTRATOR. (a) An institution of higher education that creates a deferred compensation plan shall designate a plan administrator for the plan.

(b) Institutions of higher education that create a single plan shall designate jointly a plan administrator for the plan.

(c) A plan administrator may be an employee, a nonprofit corporation, an individual, a trustee, a private entity, another institution of higher education, or an association of institutions of higher education.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.704. REMOVAL OF PLAN ADMINISTRATOR. An institution of higher education or group of institutions of higher education that designates a plan administrator may remove the plan administrator at any time unless specifically provided otherwise by contract.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.705. OVERSIGHT COMMITTEE. (a) An institution of higher education or group of institutions of higher education that creates a deferred compensation plan may direct and supervise the activities of the plan administrator through an oversight committee.

(b) The institution of higher education or group shall determine the authority, activities, and composition of an oversight committee created under this section.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.706. AUTHORITY OF PLAN ADMINISTRATOR. (a) A plan administrator shall execute necessary contracts for the administration of the deferred compensation plan, subject to any prior approval required by the institution of higher education or group of institutions of higher education that created the plan.

(b) A plan administrator shall develop and implement criteria and procedures for any matter not covered by this subchapter that the plan administrator considers appropriate for the operation of the deferred compensation plan.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.707. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. The plan administrator shall:

(1) invest the deferred amounts and investment income of a participating employee in the qualified investment products designated by the employee; and

(2) transfer the deferred amounts and investment income of a participating employee from one qualified investment product to another on the employee's request.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.708. PARTICIPATION OF INDEPENDENT CONTRACTORS. (a) The plan administrator shall determine whether a person who provides services as an independent contractor to an institution of higher education that created the plan may participate in the deferred compensation plan.

(b) For the purposes of Subchapter A and this subchapter, an independent contractor that is authorized to participate in a deferred compensation plan is treated as an employee of the institution of higher education creating the plan.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.709. CHANGING AMOUNT DEFERRED. An employee may change the amount to be deferred by notifying the plan administrator of the change in accordance with the requirements of the administrator.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.710. DISTRIBUTION. A plan administrator shall

develop and implement procedures for:

(1) the designation by a participating employee of a beneficiary to receive the employee's deferred amounts and investment income after the employee's death; and

(2) the distribution of a participating employee's deferred amounts and investment income to the employee or the employee's beneficiary, as appropriate, because of the employee's death or termination of employment, a financial hardship, or another reason permissible under federal law.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.711. FEE. (a) An institution of higher education or group of institutions of higher education that creates a deferred compensation plan may assess a fee for the administration of the plan against each participating employee.

(b) The institution of higher education or group of institutions of higher education shall determine the method for computing and assessing the fee.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.712. EVALUATION AND APPROVAL OF QUALIFIED VENDOR. (a) A plan administrator shall develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor.

(b) A plan administrator may not approve a vendor's application if the vendor is:

(1) a state or national bank or savings and loan association, the deposits of which are not insured by the Federal Deposit Insurance Corporation;

(2) a credit union, the deposits of which are not insured by the National Credit Union Administration Board; or

(3) an insurance company that:  
(A) is not a member of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association; or  
(B) is an impaired or insolvent insurer under Article 21.28-D, Insurance Code.

(c) On written request, the Texas Department of Insurance shall certify in writing to a plan administrator whether an insurance company is prohibited from being approved as a qualified vendor under Subsection (b)(3). The plan administrator may rely on the certification.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.713. NUMBER OF VENDORS UNDER 457 PLAN. The plan administrator of a 457 plan shall determine the minimum and maximum number of vendors that may be qualified vendors for the plan at any given time.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.714. CONTRACT WITH QUALIFIED VENDOR. (a) After a plan administrator approves an application of a vendor to become a qualified vendor, the plan administrator shall execute a written contract with the vendor to participate in the deferred compensation plan.

(b) A plan administrator shall develop and implement criteria and procedures for evaluating a qualified vendor's investment products to determine whether those products are acceptable as qualified investment products.

(c) A qualified vendor may offer to employees participating in a 457 plan only qualified investment products.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.715. REGULATION OF QUALIFIED VENDORS. A plan administrator shall develop and implement requirements for qualified vendors and their employees concerning disclosure, reporting, standards of conduct, solicitation, advertising, relationships with participating employees, the nature and quality of services provided to those employees, and other matters.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.

Sec. 609.716. TRANSFER ON VENDOR'S FAILURE. An institution of higher education or group of institutions of higher education that creates a deferred compensation plan may authorize or require as a part of the plan that the plan administrator immediately transfer to the deferred compensation trust fund all deferred

amounts and investment income from a vendor who fails to satisfy the requirements of this subchapter or the plan administrator.  
Added by Acts 2003, 78th Leg., ch. 1266, Sec. 2.05, eff. Jan. 1, 2004.