

GOVERNMENT CODE
SUBTITLE B. EMPLOYEES RETIREMENT SYSTEM OF TEXAS
CHAPTER 811. GENERAL PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 811.001. DEFINITIONS. In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the employees saving account, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarially reduced annuity" means an annuity payable on retirement or death occurring before a normal retirement age, the amount of which is determined by computing, using the amount of the member's service credit, the standard service retirement annuity payable at a normal retirement age and reducing it, under tables adopted by the board, by the factor applicable because of the attained age of the member.

(3) "Annuity" means an amount of money payable in monthly installments for a guaranteed period or for life, as determined by this subtitle.

(4) "Appointed officer or employee" means a person who holds a position that requires adherence to laws and rules of the state applicable to its employees, and who is paid a salary from state funds.

(5) "Board of trustees" means the persons appointed or elected under Subchapter A of Chapter 815 to administer the retirement system.

(6) "Combined retirement annuity" means the amount payable on retirement for service credited as a member of the employee class of membership plus any supplemental amount payable from the law enforcement and custodial officer supplemental retirement fund.

(7) "Compensation" means the base salary of a person; amounts that would otherwise qualify as compensation but are not received directly by a person pursuant to a good faith, voluntary, written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986 (26 U.S.C. Section 125); longevity and hazardous duty pay; nonmonetary compensation, the value of which is determined by the retirement system; amounts by which a person's salary is reduced under a salary reduction agreement authorized by Chapter 610; and the benefit replacement pay a person earns under Subchapter H, Chapter 659, as added by Chapter 417, Acts of the 74th Legislature, 1995, except for the benefit replacement pay a person earns as a result of a payment made under Subchapter B, C, or D, Chapter 661. The term excludes overtime pay and a cleaning or clothing allowance.

(8) "Custodial officer" means a member of the retirement system who is employed by the Board of Pardons and Paroles or the Texas Department of Criminal Justice as a parole officer or caseworker or who is employed by the institutional division or the state jail division of the Texas Department of Criminal Justice and certified by the department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates of the institutional division or inmates or defendants confined in the state jail division without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the institutional division or the state jail division. The term includes a member who transfers from the Texas Department of Criminal Justice to the managed health care unit of The University of Texas Medical Branch or the Texas Tech University Health Sciences Center pursuant to Section 9.01, Chapter 238, Acts of the 73rd Legislature, 1993, elects at the time of transfer to retain membership in the retirement system, and is certified by the

managed health care unit or the health sciences center as having a normal job assignment described by this subdivision.

(8-a) "Good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

(9) "Law enforcement officer" means a member of the retirement system who:

(A) has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, or the Parks and Wildlife Department; and

(B) is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

(10) "Membership service" means service in a position included in a class of membership, including service performed in the position before holders of the position were eligible or required to be members of the retirement system.

(11) "Normal retirement age" means an age at which a member is entitled to receive a service retirement annuity without reduction because of age.

(12) "Occupational disability" means disability from a sudden and unexpected injury or disease that results solely from a specific act or occurrence determinable by a definite time and place and solely from an extremely dangerous risk of severe physical or mental trauma or disease that is not common to the public at large and that is peculiar to and inherent in a dangerous duty that arises from the nature and in the course of a person's state employment.

(12-a) "Occupational death" means death from an injury resulting from an external force, an activity, or a disease caused by or resulting from a line-of-duty accident or from an illness caused by line-of-duty work under hazardous conditions. The term includes death from accidents or illnesses that directly result from an action a person is required or authorized by rule, condition of employment, or law to perform, including an action performed by the person at a social, ceremonial, athletic, or other function to which the person is assigned by the person's employer.

(13) "Position" means an office held by an elected or appointed officer or a job or other regular employment held by an employee, which office, job, or employment is included in a class of membership.

(14) "Retiree" means a person who, except as provided by Section 812.203, receives an annuity based on service that was credited to the person in a class of membership.

(15) "Retirement system" means the Employees Retirement System of Texas.

(16) "Service credit" means the amount of membership and military service ascribed to a person's account in the retirement system for which all required contributions have been made to, and are being held by, the retirement system.

(17) "Temporary employee" means a person who has a position only until another person can be hired, only for the duration of a project scheduled to end less than six months after the date of hiring, only until a specific date less than six months after the date of hiring, or only until a volume of work is completed that is estimated to be completed in less than six months after the date of hiring.

(18) "Parole officer" has the meaning assigned by Section 508.001.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 91, Sec. 3, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 828, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 204, Sec. 8, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 944, Sec. 2, eff. June 20, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.001 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 988, Sec. 1.11, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(34), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 688, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1035, Sec. 53, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1048, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1499, Sec. 1.10, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch.

1541, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1231, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 842, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1111, Sec. 10, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 74, Sec. 1, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 347, Sec. 3, eff. Sept. 1, 2005.

Sec. 811.002. PURPOSE OF SUBTITLE. The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.002 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 811.003. RETIREMENT SYSTEM. The retirement system is a public entity. Except as provided by Section 815.304, the Employees Retirement System of Texas is the name by which all its business shall be transacted, all its funds invested, and all its cash, securities, and other property held.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 77, Sec. 1, eff. Oct. 20, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 811.004. POWERS AND PRIVILEGES. The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.004 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 811.005. EXEMPTION FROM EXECUTION. All retirement annuity payments, optional benefit payments, member contributions, money in the various retirement system funds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levies, sales, and any other process, and are unassignable except as provided by Section 813.103.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.005 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 811.006. ACTION INCREASING AMORTIZATION PERIOD. (a) A rate of member or state contributions to or a rate of interest required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation.

Added by Acts 1985, 69th Leg., ch. 228, Sec. 6, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.006 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 811.007. IMMUNITY FROM LIABILITY. The board of trustees, executive director, and employees of the retirement system are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty in connection with any program or system administered by the retirement system.

Added by Acts 2003, 78th Leg., ch. 1111, Sec. 11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 48, eff. June 20, 2003.

Sec. 811.008. INSURANCE. Notwithstanding any other law, the board of trustees may self-insure or purchase any insurance in amounts the board considers reasonable and prudent.

Added by Acts 2003, 78th Leg., ch. 1111, Sec. 11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 48, eff. June 20, 2003.

Sec. 811.009. CERTAIN CONTRACTS FOR HEALTH CARE PURPOSES; REVIEW BY ATTORNEY GENERAL. (a) This section applies to any contract with a contract amount of \$250 million or more:

(1) under which a person provides goods or services in connection with the provision of medical or health care services, coverage, or benefits; and

(2) entered into by the person and the retirement system.

(b) Notwithstanding any other law, before a contract described by Subsection (a) may be entered into by the retirement system, a representative of the office of the attorney general shall review the form and terms of the contract and may make recommendations to the retirement system for changes to the contract if the attorney general determines that the office of the attorney general has sufficient subject matter expertise and resources available to provide this service.

(c) The retirement system must notify the office of the attorney general at the time the system initiates the planning phase of the contracting process. A representative of the office of the attorney general or another attorney advising the agency under Subsection (d) may participate in negotiations or discussions with proposed contractors and may be physically present during those negotiations or discussions.

(d) If the attorney general determines that the office of the attorney general does not have sufficient subject matter expertise or resources available to provide the services described by this section, the office of the attorney general may require the retirement system to enter into an interagency agreement or to obtain outside legal services under Section 402.0212 for the provision of services described by this section.

(e) The retirement system shall provide to the office of the attorney general any information the office of the attorney general determines is necessary to administer this section.

Added by Acts 2005, 79th Leg., ch. 1011, Sec. 2, eff. Sept. 1, 2005.

SUBCHAPTER B. PENAL PROVISIONS

Sec. 811.101. CONVERSION OF FUNDS; FRAUD. (a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds representing deductions from a member's salary either before or after the funds are received by the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes a false statement or falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member knowingly receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates an applicable requirement of this subtitle other than one described by Subsection (a), (b), or (c).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.101 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 811.102. PENALTIES. (a) An offense under Section 811.101(a) or 811.101(b) is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 811.101(c) is a misdemeanor punishable by a fine of not less than \$100 nor more than \$5,000.

(c) An offense under Section 811.101(d) is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 21.102 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.