

SHORT TITLE: State government; transferring certain duties and responsibilities from the State and Education Employees Group Insurance Board to the State Employees Benefits Council; repealer; recodification; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 535

By: Roberts

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 1991, Sections 1302, 1305.1, 1306, as amended by Section 16, Chapter 400, O.S.L. 1992, 1307.1, 1342, as amended by Section 1, Chapter 163, O.S.L. 1992, 1343, 1344, 1345, 1346 (Section 29, Chapter 26, O.S.L. 1991), 1348, as last amended by Section 18, Chapter 400, O.S.L. 1992, and Sections 2 and 5, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1992, Sections 1306, 1342, 1348, 1362 and 1365), which relate to employee benefits; deleting reference to federal act and state act; adding statutory reference; deleting reference to certain plans; deleting reference to certain fund; removing authority for Oklahoma State and Education Employees Group Insurance Board to make certain contracts; removing requirement for risk adjustment factor; deleting obsolete language; changing references to certain state laws; moving responsibilities from the State Employees Group Insurance Board to the Oklahoma Employees Benefits Council; changing definition; making certain benefits uniform; allowing for the transfer of certain funds; repealing 74 O.S. 1991, Section 1346 (Section 28, Chapter 26, O.S.L. 1991), which is a duplicate section relating to Flexible Benefit Revolving Fund; providing for recodification;

providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1991, Section 1302, is amended to read as follows:

Section 1302. It is hereby declared that the purpose of this act is:

(a) To provide uniformity in Accident and Health Insurance and/or Benefits Coverage and Life Insurance on all employees of the State of Oklahoma;

(b) To enable the state to attract and retain qualified employees by providing health, dental and life insurance benefits similar to those commonly provided in private industry;

(c) To recognize and protect the state's investment in each permanent employee by promoting and preserving good health and longevity among state employees;

(d) To recognize the service to the state by elected and appointed officials by extending to them the same health, dental and life insurance benefits as are provided herein for state employees; and

(e) To recognize long and faithful service, and to encourage employees to remain in state service until eligible for retirement by providing health, dental and life insurance benefits for employees; ~~and~~

~~(f) To ensure state compliance with the Health Maintenance Organization Act of 1973 pursuant to 42 U.S.C., Section 300e et seq.~~

SECTION 2. AMENDATORY 74 O.S. 1991, Section 1305.1, is amended to read as follows:

Section 1305.1 (1) The State and Education Employees Group Insurance Board shall discharge their duties with respect to the

State and Education Employees Group Insurance Act ~~the State~~
~~Employees Flexible Benefits Act~~, Section 1301 et seq. of this title,
and the State Employees Disability Program Act, Section 1331 et seq.
of this title, solely in the interest of said Acts and:

(a) For the exclusive purpose of:

- (i) Providing benefits to the participants and their dependents, and
- (ii) defraying reasonable expenses of administering the State and Education Employees Group Insurance Act, ~~the State Employees Flexible Benefits Act~~ and the State Employees Disability Program Act;

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) By diversifying investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the laws, documents and instruments governing the State and Education Employees Group Insurance Act, ~~the State Employees Flexible Benefits Act~~ and the State Employees Disability Program Act.

(2) The monies received by the State and Education Employees Group Insurance Board shall be invested only in assets eligible for the investment of funds of legal reserve life insurance companies in this state as provided for in Sections 1602 through 1611, 1613 through 1620, and 1622 through 1624 of Title 36 of the Oklahoma Statutes. The term admitted assets shall mean the amount of the monies received by the Board and the provisions relating to limitation of investments as a percentage of surplus and loans to policyholders shall be inapplicable with respect to investment of the monies received by the Board.

(3) The Board may procure insurance indemnifying the members of the Board from personal loss or accountability from liability resulting from a member's action or inaction as a member of the Board.

(4) The Board may establish an investment committee. The investment committee shall be composed of not more than five (5) members of the Board appointed by the chairman of the Board. The committee shall make recommendations to the full Board on all matters related to the choice of custodians and managers of the assets of the Board, on the establishment of investment and fund management guidelines, and in planning future investment policy. The committee shall have no authority to act on behalf of the Board in any circumstances whatsoever. No recommendation of the committee shall have effect as an action of the Board nor take effect without the approval of the Board as provided by law.

(5) The Board shall retain qualified investment managers to provide for the investment of the monies received by the Board. The investment managers shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board. Subject to the overall investment guidelines set by the Board, the investment managers shall have full discretion in the management of those monies of the Board allocated to the investment managers. The Board shall manage those monies not specifically allocated to the investment managers. The monies of the Board allocated to the investment managers shall be actively managed by the investment managers, which may include selling investments and realizing losses if such action is considered advantageous to longer term return maximization. Because of the total return objective, no distinction shall be made for management and performance evaluation purposes between realized and unrealized capital gains and losses.

(6) Funds and revenues for investment by the investment managers or the Board shall be placed with a custodian selected by

the Board. The custodian shall be a bank or trust company offering pension fund master trustee and master custodial services. The custodian shall be chosen by a solicitation of proposals on a competitive bid basis pursuant to standards set by the Board. In compliance with the investment policy guidelines of the Board, the custodian bank or trust company shall be contractually responsible for ensuring that all monies of the Board are invested in income-producing investment vehicles at all times. If a custodian bank or trust company has not received direction from the investment managers of the Board as to the investment of the monies of the Board in specific investment vehicles, the custodian bank or trust company shall be contractually responsible to the Board for investing the monies in appropriately collateralized short-term interest-bearing investment vehicles.

(7) By November 1, 1989, and prior to August 1 of each year thereafter, the Board shall develop a written investment plan for the monies received by the Board.

(8) The Administrator shall compile a quarterly financial report of all the funds of the Board on a fiscal year basis. The report shall be compiled pursuant to uniform reporting standards prescribed by the State Insurance Commissioner for all domestic insurance companies. The report shall include several relevant measures of investment value, including acquisition cost and current fair market value with appropriate summaries of total holdings and returns. The report shall contain combined and individual rate of returns of the investment managers by category of investment, over periods of time. The report shall be distributed to the Governor, the Legislative Service Bureau and the Joint Committee on Fiscal Operations.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 1306, as amended by Section 16, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1992, Section 1306), is amended to read as follows:

Section 1306. ~~(1)~~ The State and Education Employees Group Insurance Board shall administer and manage the group insurance plans ~~and the flexible benefits plan~~ and, subject to the provisions of the State and Education Employees Group Insurance Act, Section 1301 et seq. ~~and the State Employees Flexible Benefits Act, Section 1341 et seq.~~ of this title, shall have the following powers and duties:

(a) The preparation of specifications for such insurance plans as the Board may be directed to offer;

(b) The authority and duty to request bids through the Purchasing Division of the ~~Office of Public Affairs~~ Department of Central Services, for a contract to be the claims administrator for all or any part of such insurance ~~and benefit~~ plans as the Board may be directed to offer;

(c) The determination of the methods of claims administration under such insurance ~~and benefit~~ plans as the Board may be directed to offer;

(d) The determination of the eligibility of employees and their dependents to participate in each of the Group Insurance Plans and in such other insurance ~~and benefit~~ plans as the Board may be directed to offer and the eligibility of employees other than education employees to participate in the Life Insurance Plan provided that evidence of insurability shall not be a requirement in determining an employee's initial eligibility;

(e) The determination of the amount of employee payroll deductions and the responsibility of establishing the procedure by which such deduction shall be made;

(f) The establishment of a grievance procedure by which a three-member grievance panel shall act as an appeals body for complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters. Except for grievances settled to the satisfaction of both parties prior to a hearing, any

person who requests in writing a hearing before the grievance panel shall receive a hearing before the panel. The grievance procedure provided by this paragraph shall be the exclusive remedy available to insured employees having complaints against the insurer. Such grievance procedure shall be subject to the Oklahoma Administrative Procedures Act, Sections 301 through 325 of Title 75 of the Oklahoma Statutes including provisions thereof for review of agency decisions by the district court. The grievance panel shall schedule a hearing regarding the allowance and payment of claims, eligibility and other matters within sixty (60) days from the date the grievance panel receives a written request for a hearing unless the panel orders a continuance for good cause shown. Upon written request by the insured employee to the grievance panel and received not less than ten (10) days before the hearing date, the grievance panel shall cause a full stenographic record of the proceedings to be made by a competent court reporter at the insured employee's expense;

(g) The continuing study of the operation of such insurance ~~and benefit~~ plans as the Board may be directed to offer including such matters as gross and net costs, administrative costs, benefits, utilization of benefits, and claims administration;

(h) The administration of the Health, Dental and Life Insurance Reserve Fund or Funds, ~~the Flexible Benefits Revolving Fund~~ and the Education Employees Group Insurance Reserve Fund;

(i) The auditing of the claims paid pursuant to the provisions of the State and Education Employees Group Insurance Act, ~~the State Employees Flexible Benefits Act~~ Section 1301 et seq. of this title, and the State Employees Disability Program Act, Section 1331 et seq. of this title;

(j) ~~(1) To select and contract with federally qualified Health Maintenance Organizations under the provisions of 42 U.S.C., Section 300e et seq. for consideration by employees as an alternative to the state self-insured health plan, and to transfer to the HMOs such~~

~~funds as may be approved for an employee electing HMO alternative services.~~

~~(2) HMO contracts shall provide for a risk adjustment factor for adverse selection, that may occur as determined by the Board, based on generally accepted actuarial principles;~~

~~(k) For the fiscal year beginning July 1, 1992, to assess and collect a four percent (4%) fee from such contracted HMOs to offset the costs of administration, and to appropriate and pay to the Benefits Council Administration Fund an amount equal to fifty percent (50%) of said fee within ten (10) days of collection;~~

~~(l) To contract for re-insurance, catastrophic insurance, or any other type of insurance deemed necessary by the Board;~~

~~(m) (k) The Board, pursuant to the provisions of Sections 301 through 325 of Title 75 of the Oklahoma Statutes, shall adopt such rules and regulations consistent with the provisions of the State and Education Employees Group Insurance Act as it deems necessary to carry out its statutory duties and responsibilities;~~

~~(n) (l) The Board shall contract for claims administration services with a private insurance carrier or a company experienced in claims administration of any insurance that the Board may be directed to offer. No contract for claims administration services shall be made unless such contract has been offered for bids through the Purchasing Division of the ~~Office of Public Affairs~~ Department of Central Services. The Board shall contract with a private insurance carrier or other experienced claims administrator to process claims with software that is normally used for its customers;~~

~~(o) (m) The Board shall contract for utilization review services with a company experienced in utilization review, data base evaluation, market research, and planning and performance of the health insurance plan;~~

~~(p)~~ (n) The Board shall approve the amount of employee premiums and dependent premiums for such insurance plans as the Board shall be directed to offer for each fiscal year no later than March 1 of the previous fiscal year. The Board shall submit notice of the amount of employee premiums and dependent premiums along with an actuarial projection of the upcoming fiscal year's enrollment, employee contributions, employer contributions, investment earnings, paid claims, internal expenses, external expenses and changes in liabilities to the Director of the Office of State Finance and the Director of the Legislative Service Bureau no later than March 1 of the previous fiscal year.

~~(q)~~ (o) Before December 1 of each year the Board shall submit to the Director of the Office of State Finance a report outlining the financial condition for the previous fiscal year of all insurance plans offered by the Board. The report shall include a complete explanation of all reserve funds and the actuarial projections on the need for such reserves. The report shall include and disclose an estimate of the future trend of medical costs, the impact from HMO enrollment, antiselection, changes in law, and other contingencies that could impact the financial status of the plan. The Director of the Office of State Finance shall make written comment on the report and shall provide such comment, along with the report submitted by the Board, to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Chairman of the Oklahoma State Employees Benefits Council by January 15;

~~(r)~~ (p) The Board shall establish a prescription drug card network for the fiscal year beginning July 1, 1990;

~~(s)~~ (q) The Board shall have the authority to intercept monies owing to plan participants from other state agencies, when those participants in turn, owe money to the Board. The Board shall be

required to adopt rules and regulations ensuring the participants due process of law;

~~(t)~~ (r) The Board is authorized to make available to eligible employees supplemental health care benefit plans to include but not be limited to long-term care, deductible reduction plans and employee co-payment reinsurance. Premiums for said plans shall be actuarially based and the cost for such supplemental plans shall be paid by the employee; and

~~(u)~~ (s) There is hereby created as a joint committee of the State Legislature, the Joint Liaison Committee on State and Education Employees Group Insurance Benefits, which Joint Committee shall consist of three members of the Senate to be appointed by the President Pro Tempore thereof and three members of the House of Representatives to be appointed by the Speaker thereof. The Chairman and Vice Chairman of the Joint Committee shall be appointed from the membership thereof by the President Pro Tempore of the Senate and the Speaker of the House of Representatives, respectively, one of whom shall be a member of the Senate and the other shall be a member of the House of Representatives. At the beginning of the first regular session of each Legislature, starting in 1991, the Chairman shall be from the Senate; thereafter the chairmanship shall alternate every two (2) years between the Senate and the House of Representatives.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefits shall function as a committee of the State Legislature when the Legislature is in session and when the Legislature is not in session. Each appointed member of said committee shall serve until his or her successor is appointed.

The Joint Liaison Committee on State and Education Employees Group Insurance Benefits shall serve as a liaison with the State and Education Employees Group Insurance Board regarding advice, guidance, policy, management, operations, plans, programs and fiscal

needs of said Board. Said Board shall not be bound by any action of the Joint Committee.

~~(v)~~ (t) For the fiscal year beginning July 1, 1993, certain duties and responsibilities of the Board shall be transferred to the Oklahoma State Employees Benefits Council pursuant to the provisions of the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title. During the fiscal year beginning July 1, 1992, the Board shall cease activities related to the implementation of said transferred duties and responsibilities for the next fiscal year and implement all reasonable actions to ensure the effective and efficient transfer of said duties and responsibilities to the Oklahoma State Employees Benefits Council.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 1307.1, is amended to read as follows:

Section 1307.1 No state employee or dependent who participates in a HMO through the ~~State Employees Group Insurance Act~~ Oklahoma State Employees Benefits Act shall be denied the right of changing his primary care physician to any other primary care physician within the HMO. The state employee or dependent shall notify the HMO in writing of any change in his choice of primary care physician forty-five (45) days in advance of such change by certified mail with return receipt requested. Any such change in a primary care physician shall not be subject to the approval of the HMO, the ~~State Employees Group Insurance Board~~ Oklahoma State Employees Benefits Council or state agency.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 1342, as amended by Section 1, Chapter 163, O.S.L. 1992 (74 O.S. Supp. 1992, Section 1342), is amended to read as follows:

Section 1342. As used in the State Employees Flexible Benefits Act, Section 1341 et seq. of this title:

1. ~~"Board" means the State and Education Employees Group Insurance Board~~ "Council" means the Oklahoma State Employees Benefits Council;

2. "Flexible benefits plan" means a written plan providing benefits to eligible employees which meets the requirements of Title 26, Section 125 et seq. of the Internal Revenue Code of the United States and regulations promulgated thereunder;

3. "Employee" means any person eligible to participate in the State and Education Employees Group Insurance Act, Section 1301 et seq. of this title, or an employee of the Oklahoma Employment Security Commission. "Employee" shall not include a person who is an employee of the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education or any person who is an employee of any school district or political subdivision of this state, except as provided for in Section ~~2~~ 1348 of this ~~act~~ title;

4. "Employer" means any state agency, board, commission, department, institution, authority, officer, bureau, council, office or other entity created by the Oklahoma Constitution or statutes, but shall not include the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any school district, or political subdivision of the state, except as provided for in Section ~~2~~ 1348 of this ~~act~~ title;
and

5. "Salary adjustment agreement" means a written agreement between an eligible employee and an employer whereby the employer agrees to adjust the salary of the employee by a stated amount or an amount equal to the cost of benefits selected under a flexible benefits plan and the employer agrees to contribute such amount to cover certain costs of the benefits selected by the eligible employee.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 1343, is amended to read as follows:

Section 1343. The ~~Board~~ Council shall retain qualified agencies, persons or entities to design, develop, communicate, implement or administer the state employees flexible benefits plan. The ~~Board~~ Council shall solicit proposals on a competitive bid basis for such agencies, persons or entities according to the standards set out in the Oklahoma Central Purchasing Act, Section 85.1 et seq. of Title 74 of the Oklahoma Statutes. When requested by the ~~Board~~ Council, the ~~Office of Public Affairs~~ Department of Central Services shall assist the ~~Board~~ Council in the process of selecting contracts for the design, development, communication or implementation of the state employees flexible benefits plan.

When awarding a contract for services pursuant to this subsection, the ~~Board~~ Council shall satisfy itself that the contractor has no interests which would impair its ability to perform the tasks and services required and that the contractor will exercise independent judgment when performing its responsibilities under the act and under the agreement.

SECTION 7. AMENDATORY 74 O.S. 1991, Section 1344, is amended to read as follows:

Section 1344. A. The ~~Board~~ Council shall establish a flexible benefits plan. All state employers as defined in Section 1342 of this title shall offer the flexible benefits plan to employees.

B. Expenses included in an employee's salary adjustment agreement pursuant to the flexible benefits plan shall be limited to expenses for:

1. Dependent health insurance pursuant to the provisions of Section 1309 of ~~Title 74 of the Oklahoma Statutes~~ this title;

2. Insurance premiums or retirement plan premiums or payments which are supplemental to insurance or retirement programs offered by the State of Oklahoma or which are paid for under salary

adjustment agreements pursuant to the provisions of paragraph 1 or 2 of subsection D of Section 7.10 of Title 62 of the Oklahoma Statutes;

3. Dependent care;

4. Medical care as defined by the ~~Board~~ Council; or

5. All other eligible programs offered under Title 26, Section 125 et seq. of the Internal Revenue Code of the United States.

C. The amount by which an employee's salary is adjusted pursuant to a salary adjustment agreement shall be excluded from income in computation of income tax withholding, unemployment payments and workers' compensation coverage. Such amount shall be included as income in computation of state retirement contributions and benefits. Provided, if the inclusions and exclusions provided in this subsection conflict with the provisions of federal law or regulations pertaining to flexible benefits plans, the ~~Board~~ Council is authorized to modify or abolish such inclusions and exclusions.

D. The Administrator of the ~~State and Education Employees Group Insurance Board~~ Oklahoma State Employees Benefits Council with approval of the ~~Board~~ Council shall promulgate rules, regulations and procedures as necessary for implementation and administration of the flexible benefits plan.

E. The Administrator of the ~~State and Education Employees Group Insurance Board~~ Oklahoma State Employees Benefits Council under the direction of the ~~Board~~ Council shall contract with one or more private firms or organizations to administer the flexible benefits plan. The contract shall be made at no cost to any employee of the State of Oklahoma.

F. All employers shall begin offering the flexible benefits plan to employees not later than January 1, 1990.

SECTION 8. AMENDATORY 74 O.S. 1991, Section 1345, is amended to read as follows:

Section 1345. In the event that federal law, through legislation or through ruling of the United States Internal Revenue Service, provides that Social Security (FICA) and unemployment (FUTA) taxes shall be due and payable on any amount by which an employee's salary is reduced pursuant to a salary adjustment agreement, the State Employees Flexible Benefits Act, Section 1341 et seq. of this title, shall cease to be effective. In such event, payroll deductions may be made for expenses included in an employee's salary adjustment agreement pursuant to procedures established by the ~~Board~~ Council.

SECTION 9. AMENDATORY 74 O.S. 1991, Section 1346 (Section 29, Chapter 26, O.S.L. 1991), is amended to read as follows:

Section 1346. There is hereby created in the State Treasury a revolving fund for the ~~State and Education Employees Group Insurance Board~~ Oklahoma State Employees Benefits Council to be designated the "Flexible Benefit Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of employee payroll deductions and contributions for flexible spending accounts. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the ~~State and Education Employees Group Insurance Board~~ Oklahoma State Employees Benefits Council for expenses of the state employees flexible benefits plan and for expenses authorized by law. The ~~State and Education Employees Group Insurance Board~~ Oklahoma State Employees Benefits Council is authorized to pay employee claim costs associated with the state employees flexible benefits plan from monies accrued for said purpose. Expenditures from said funds shall be pursuant to the laws of the state and statutes relating to the state employees flexible benefits plan.

SECTION 10. AMENDATORY 74 O.S. 1991, Section 1348, as last amended by Section 18, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1992, Section 1348), is amended to read as follows:

Section 1348. The ~~Board~~ Council shall develop a flexible benefits plan, in accordance with the provisions of Section 1344 of ~~Title 74 of the Oklahoma Statutes~~ this title, to be made available to the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, counties, municipalities, political subdivisions or school districts. If the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any individual county, municipality, political subdivision or school district chooses to participate in the plan, it must, by a resolution adopted by the governing body, adopt a written flexible benefits plan and notify the ~~Board~~ Council in order to participate in the program. All full-time employees of a participating entity shall be given the option of participating in the program. The ~~Board~~ Council is authorized to contract with the State Regents for Higher Education or any institution under the authority of the State Regents for Higher Education, any county, municipality, political subdivision or school district within this state for providing a flexible benefits plan and is authorized to assess charges to participating entities to cover the costs associated with administering this program.

SECTION 11. AMENDATORY Section 2, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1992, Section 1362), is amended to read as follows:

Section 1362. It is hereby declared that the purpose of this act is:

1. To recognize that the employee benefit needs of individual state employees differ, depending on the age, salary and family status of the employee, and that it is needful to permit participating employees to select and tailor the benefits they

receive in a manner calculated to best meet the particular needs of themselves and their families;

2. To furnish state employees with choices among various employee benefits or cash compensation;

3. To provide state employees and their dependents with basic group health insurance, basic group term life insurance, and basic long-term disability insurance;

4. To provide state employees and their dependents with optional employee benefits, to include, but not be limited to, enhanced health insurance coverage, health maintenance organization services, life insurance, dental insurance and enhanced long-term disability insurance;

5. To provide state employees with reimbursement for qualifying dependent care expenses for which a dependent care tax credit is not taken, reimbursement for qualifying health care expenses not reimbursed by any other insurance plan or taken as a tax deduction, additional benefits which are currently taxable, additional benefits which are not currently taxable, and cash compensation;

6. To provide state employees with tax sheltered income deferment plans;

7. To provide uniform benefit options for all state employees regardless of their place of residence within the State of Oklahoma;

8. To manage the provision of health care benefits in a manner that allows for the long term control of costs;

9. To provide for the coordination and design, in accordance with applicable law, of all employee benefits offered to state employees so as to increase the efficient delivery and effectiveness of those benefits;

10. To enable the state to attract and retain qualified employees by providing employee benefits which are competitive with those provided private industry;

11. To offer uniformity in those benefits that are offered to both state employees and those eligible for participation in the State and Education Employees Group Insurance Act, Section 1301 et seq. of this title;

12. To ensure compliance with the Health Maintenance Organization Act of 1973, ~~pursuant to~~ 42 U.S.C., Section 300e et seq.;

~~12.~~ 13. To recognize and protect the state's investment in each employee by promoting and preserving good health and longevity among state employees;

~~13.~~ 14. To recognize the service to the state by elected and appointed officials by extending to them the same benefits as are provided under the flexible benefits program to state employees; and

~~14.~~ 15. To recognize long and faithful service, and to encourage employees to remain in state service until eligible for retirement by providing employee benefits.

SECTION 12. AMENDATORY Section 5, Chapter 400, O.S.L. 1992 (74 O.S. Supp. 1992, Section 1365), is amended to read as follows:

Section 1365. A. The Oklahoma State Employees Benefits Council shall have the following duties, responsibilities and authority with respect to the administration of the plan:

1. To construe and interpret the plan, and decide all questions of eligibility in accordance with this act and the Code;

2. To select those benefits which shall be made available to participants under the plan, according to this act, and other applicable laws and regulations;

3. To retain or employ qualified agencies, persons or entities to design, develop, communicate, implement or administer the plan;

4. To prescribe procedures to be followed by participants in making elections and filing claims under the plan;

5. To prepare and distribute information communicating and explaining the plan to participating employers and participants; provided that neither the Board, health maintenance organizations, nor other third-party insurance vendors shall be directly or indirectly involved in the distribution of said communicated information to participating employers and participants;

6. To receive from participating employers and participants such information as shall be necessary for the proper administration of the plan, and any of the benefits offered thereunder;

7. To furnish the participating employers and participants such annual reports with respect to the administration of the plan as are reasonable and appropriate;

8. To keep reports of benefit elections, claims and disbursements for claims under the plan;

9. To appoint an executive director who shall serve at the pleasure of the Council. The executive director shall employ or retain such persons in accordance with this act and the requirements of other applicable law, including but not limited to actuaries and certified public accountants, as he or she deems appropriate to perform such duties as may from time to time be required under this act and to render advice upon request with regard to any matters arising under the plan subject to the approval of the Council. The executive director shall have not less than seven (7) years of group insurance administration experience on a senior managerial level or not less than three (3) years of flexible benefits experience on a senior managerial level. Any actuary or certified public accountant employed or retained under contract by the Council shall have not less than three (3) years' experience in group insurance or employee benefits administration. The compensation of all persons employed or retained by the Council and all other expenses of the Council shall be paid at such rates and in such amounts as the Council shall approve, subject to the provisions of applicable law;

10. For plan year beginning July 1, 1993, and all future plan years, to select and contract with federally qualified health maintenance organizations under the provisions of 42 U.S.C., Section 300e et seq. or with health maintenance organizations licensed by the Department of Health pursuant to Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes for consideration by participants or others eligible for participation in the State and Education Employees Group Insurance Act, Section 1301 et seq. of this title, as an alternative to the health plans offered by the Board, and to transfer to the health maintenance organizations such funds as may be approved for a participant electing health maintenance organization alternative services;

11. To purchase any insurance deemed necessary for providing benefits under the plan, provided that the only indemnity plan selected by the Council shall be the indemnity plan offered by the Board, and to transfer to the Board such funds as may be approved for a participant electing a benefit plan offered by the Board;

12. For the plan year beginning July 1, 1993, and all future plan years, to assess and collect reasonable fees from the Board, and from such contracted health maintenance organizations and third party insurance vendors to offset the costs of administration as determined by the Council. The Council shall have the authority to transfer income received pursuant to this subsection to the Board for services provided by the Board;

13. To accept, modify or reject elections under the plan in accordance with this act and the Code;

14. To promulgate election and claim forms to be used by participants; and

15. To take all steps deemed necessary to properly administer the plan in accordance with this act and the requirements of other applicable law.

B. The Council members shall discharge their duties as fiduciaries with respect to the participants and their dependents of the plan, and all fiduciaries shall be subject to the following definitions and provisions:

1. A person or organization is a fiduciary with respect to the Council to the extent that the person or organization:

- a. exercises any discretionary authority or discretionary control respecting administration or management of the Council,
- b. exercises any authority or control respecting disposition of the assets of the Council,
- c. renders advice for a fee or other compensation, direct or indirect, with respect to any participant or dependent benefits, monies or other property of the Council, or has any authority or responsibility to do so, or
- d. has any discretionary authority or discretionary responsibility in the administration of the Council;

2. The Council may purchase insurance for its fiduciaries or for itself to cover potential liability or losses occurring by reason of the act or omission of a fiduciary, but any such insurance purchased by the Council must permit recourse by the insurer against a fiduciary in the case of a breach of fiduciary obligation by such fiduciary. Nothing in this subsection shall be construed as requiring the purchase of any insurance;

3. Except for a breach of fiduciary obligation, a Council member shall not be individually or personally responsible for any action of the Council;

4. Any person who is a fiduciary with respect to the Council shall be entitled to rely on representations made by participants, participating employers, third party administrators and beneficiaries with respect to age and other personal facts

concerning a participant or beneficiaries, unless said fiduciary knows said representations to be false;

5. Each fiduciary shall discharge his or her duties and responsibilities with respect to the Council and the plan solely in the interest of the participants and beneficiaries of the plan according to the terms hereof, for the exclusive purpose of providing benefits to participants and their beneficiaries, with the care, skill, prudence and diligence under the circumstances prevailing from time to time that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and

6. The duties and responsibilities allocated to each fiduciary by this act or by the Council shall be the several and not joint responsibility of each, and no fiduciary shall be liable for the act or omission of any other fiduciary unless:

- a. by his or her failure to properly administer his or her specific responsibility he or she enabled such other person or organization to commit a breach of fiduciary responsibility, or
- b. he or she knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person or organization, knowing such act or omission to be a breach, or
- c. having knowledge of the breach of another person or organization, he or she fails to make reasonable efforts under the circumstances to remedy said breach.

SECTION 13. REPEALER 74 O.S. 1991, Section 1346 (Section 28, Chapter 26, O.S.L. 1991), which is a duplicate section, is hereby repealed.

SECTION 14. RECODIFICATION 74 O.S. 1991, Section 1307.1, as amended by Section 4 of this act, shall be recodified as Section 1373 of Title 74 of the Oklahoma Statutes.

SECTION 15. This act shall become effective July 1, 1993.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-1-0647

JJ