

THE HOUSE OF REPRESENTATIVES  
Thursday, February 26, 2009

Committee Substitute for  
House Bill No. 2108

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2108 - By: ORTEGA of the House and JUSTICE of the Senate.

An Act relating to the Oklahoma State Employees Benefits Council; amending 74 O.S. 2001, Sections 1363 and 1365, as last amended by Section 2, Chapter 450, O.S.L. 2005 (74 O.S. Supp. 2008, Section 1365), which relate to the Oklahoma State Employees Benefits Act; modifying definitions; modifying duties of the Council; providing an effective date; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 74 O.S. 2001, Section 1363, is amended to read  
2 as follows:

3 Section 1363. The following words and phrases as used in ~~this act~~ the Oklahoma  
4 State Employees Benefits Act, unless a different meaning is clearly required by the  
5 context, shall have the following meanings:

6 1. "Authority" means the Oklahoma Health Care Authority;

7 2. "Basic plan" means the plan that provides the least amount of benefits each  
8 participant is required to purchase pursuant to the provisions of the plan. The basic plan  
9 shall include only health, dental, disability and life benefits;

10 3. "Benefit" means any of the benefits which may be purchased or is required to be  
11 purchased under the plan;

1 4. "Benefit plan" means the specific terms and conditions regarding a benefit which  
2 may be purchased under the plan, including the terms and conditions of any separate  
3 plan document, group insurance policy or administrative services contract entered into  
4 by the Council;

5 5. "Benefit price" means the number of flexible benefit dollars needed to purchase a  
6 benefit under the plan;

7 6. "Board" means the State and Education Employees Group Insurance Board, as  
8 created by the State and Education Employees Group Insurance Act;

9 7. "Code" means the Internal Revenue Code of 1986, as amended, from time to  
10 time;

11 8. "Compensation" means the remuneration directly paid to a participating  
12 employee by a participating employer exclusive of overtime pay, and longevity pay,  
13 calculated prior to and without regard to adjustments arising out of an employee's  
14 participation in the plan authorized pursuant to ~~this act~~ the Oklahoma State Employees  
15 Benefits Act, or amounts deferred under the tax sheltered income deferral plans as  
16 authorized by Section 1701 et seq. of this title;

17 9. "Council" means the Oklahoma State Employees Benefits Council, as created by  
18 ~~this act~~ the Oklahoma State Employees Benefits Act;

19 10. "Default benefit" means any benefit a participant who fails to make a proper  
20 election under the plan shall be deemed to have purchased;

21 11. "Dependent" means a participant's spouse or any of his or her dependents as  
22 defined in Code Section 152 and regulations promulgated thereunder;

1           12. “Flexible benefit allowance” means the annual amounts credited by the  
2 participating employer for each participant for the purchase of benefits under the plan;

3           13. “Flexible benefit dollars” means the sum of the flexible benefit allowance and  
4 pay conversion dollars allocated by a participant pursuant to provisions of the plan;

5           14. “Participant” means any officer or employee of a participating employer who is  
6 a member of the Oklahoma Law Enforcement Retirement System, the Oklahoma Public  
7 Employees Retirement System or the Uniform Retirement System for Justices and  
8 Judges, any officer or employee of a participating employer, whose employment is not  
9 seasonal or temporary and whose employment requires at least one thousand (1,000)  
10 hours of work per year and whose salary and wage is equal to or greater than the hourly  
11 wage for state employees ~~as provided in Section 284 of this title~~, and any employee of a  
12 participating employer who is a member of the Teachers' Retirement System of  
13 Oklahoma;

14           15. “Participating employer” means any state agency, board, commission,  
15 department, institution, authority, officer, bureau, council, office or other entity created  
16 by the Oklahoma Constitution or statute that is a participating employer of the  
17 Oklahoma Law Enforcement Retirement System, the Oklahoma Public Employees  
18 Retirement System or the Uniform Retirement System for Justices and Judges, but shall  
19 not include any county, county hospital, city or town, conservation district, any private or  
20 public trust in which a county, city or town participates and is the primary beneficiary,  
21 any school district or technology center school district, or political subdivision of the  
22 state, but shall include the State Department of Education, the Oklahoma Department of

1 Wildlife Conservation, the Oklahoma Employment Security Commission, the Teachers'  
2 Retirement System of Oklahoma and the Oklahoma Department of Career and  
3 Technology Education. Provided, the term “participating employer” shall also mean the  
4 State Regents for Higher Education or any institution under the authority of the State  
5 Regents for Higher Education upon agreement between the State Regents for Higher  
6 Education or the appropriate governing board of an institution under the authority of the  
7 State Regents for Higher Education and the Council;

8 16. “Pay conversion dollars” means amounts by which a participant elects to reduce  
9 his compensation to purchase benefits under the plan;

10 17. “Plan” means the flexible benefits plan authorized pursuant to the State  
11 Employees Flexible Benefits Act as modified by the provisions of this act;

12 18. “Plan year” means for the plan year beginning July 1, 2001, the six-month  
13 period commencing on July 1 and ending on the following December 31. The next plan  
14 year shall begin January 1, 2002. It shall mean the twelve-month period commencing on  
15 January 1 and ending on the following December 31;

16 19. “Preferred Provider Organization (PPO) Health Plan” means a managed care  
17 plan that provides comprehensive health coverage while utilizing a contracted group of  
18 providers to secure preferred pricing;

19 20. “Salary Adjustment Agreement” means a written agreement between a  
20 participant and participating employer whereby the employer agrees to adjust the salary  
21 of the participant by a stated amount or an amount equal to the cost of benefits selected

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 under the plan and the participating employer agrees to contribute such amount to cover  
2 certain costs of the benefits selected by the participant to the Council; and

3 ~~20.~~ 21. "Termination" means the termination of a participant's employment as an  
4 employee of a participating employer, whether by reasons of discharge, voluntary  
5 termination, retirement, death or reduction-in-force.

6 SECTION 2. AMENDATORY 74 O.S. 2001, Section 1365, as last amended by  
7 Section 2, Chapter 450, O.S.L. 2005 (74 O.S. Supp. 2008, Section 1365), is amended to  
8 read as follows:

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

12 1. To construe and interpret the plan, and decide all questions of eligibility in  
13 accordance with ~~this act~~ the Oklahoma State Employees Benefits Act and the Code;

14 2. To select those benefits which shall be made available to participants under the  
15 plan, according to ~~this act~~ the Oklahoma State Employees Benefits Act, and other  
16 applicable laws and rules;

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

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

21 5. To prepare and distribute information communicating and explaining the plan to  
22 participating employers and participants. The State and Education Employees Group

1 Insurance Board, Health Maintenance Organizations, or other third-party insurance  
2 vendors may be directly or indirectly involved in the distribution of communicated  
3 information to participating state agency employers and state employee participants  
4 subject to the following conditions:

- 5 a. the Council shall verify all marketing and communications information  
6 for factual accuracy prior to distribution,
- 7 b. the Board or vendors shall provide timely notice of any marketing,  
8 communications, or distribution plans to the Council and shall  
9 coordinate the scheduling of any group presentations with the Council,  
10 and
- 11 c. the Board or vendors shall file a brief summary with the Council  
12 outlining the results following any marketing and communications  
13 activities;

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

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

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

21 9. To appoint an executive director who shall serve at the pleasure of the Council.

22 The executive director shall employ or retain such persons in accordance with ~~this act~~ the

1 Oklahoma State Employees Benefits Act and the requirements of other applicable law,  
2 including but not limited to actuaries and certified public accountants, as ~~he or she~~ the  
3 executive director deems appropriate to perform such duties as may from time to time be  
4 required under ~~this act~~ the Oklahoma State Employees Benefits Act and to render advice  
5 upon request with regard to any matters arising under the plan subject to the approval of  
6 the Council. The executive director shall have not less than seven (7) years of group  
7 insurance administration experience on a senior managerial level or not less than three  
8 (3) years of flexible benefits experience on a senior managerial level. Any actuary or  
9 certified public accountant employed or retained under contract by the Council shall have  
10 not less than three (3) ~~years'~~ years of experience in group insurance or employee benefits  
11 administration. The compensation of all persons employed or retained by the Council  
12 and all other expenses of the Council shall be paid at such rates and in such amounts as  
13 the Council shall approve, subject to the provisions of applicable law;

14 10. To negotiate for best and final offer through competitive negotiation and  
15 contract with federally qualified health maintenance organizations under the provisions  
16 of 42 U.S.C., Section 300e et seq. or with Health Maintenance Organizations ~~licensed~~  
17 granted a certificate of authority by the State Department of Health Insurance  
18 Commissioner pursuant to Sections ~~2501 6901~~ through ~~2510 6951~~ of Title ~~63~~ 36 of the  
19 Oklahoma Statutes for consideration by participants as an alternative to the health  
20 plans offered by the Board, and to transfer to the health maintenance organizations such  
21 funds as may be approved for a participant electing health maintenance organization  
22 alternative services. The Council may also select and contract with a vendor to offer a

1 point-of-service plan. An HMO may offer coverage through a point-of-service plan,  
2 subject to the guidelines established by the Council. However, if the Council chooses to  
3 offer a point-of-service plan, then a vendor that offers both an HMO plan and a point-of-  
4 service plan may choose to offer only its point-of-service plan in lieu of offering its HMO  
5 plan.

6 The Oklahoma State Employees Benefits Council may, however, renegotiate rates  
7 with successful bidders after contracts have been awarded if there is an extraordinary  
8 circumstance. An extraordinary circumstance shall be limited to insolvency of a  
9 participating health maintenance organization or point-of-service plan, dissolution of a  
10 participating health maintenance organization or point-of-service plan or withdrawal of  
11 another participating health maintenance organization or point-of-service plan at any  
12 time during the calendar year. Nothing in this section of law shall be construed to  
13 permit either party to unilaterally alter the terms of the contract;

14 11. To retain as confidential information the initial Request For Proposal offers as  
15 well as any subsequent bid offers made by the health plans prior to final contract awards  
16 as a part of the best and final offer negotiations process for the benefit plan;

17 12. To promulgate administrative rules for the competitive negotiation process;

18 13. To require vendors offering coverage through the Council, including the Board,  
19 to provide such enrollment and claims data as is determined by the Council. The  
20 Oklahoma State Employees Benefits Council, with the cooperation of the Department of  
21 Central Services acting pursuant to Section 85.1 et seq. of this title, shall be authorized  
22 to retain as confidential, any proprietary information submitted in response to the



1 Council's Request For Proposal. Provided, however, that any ~~such~~ information requested  
2 by the Council from the vendors shall only be subject to the confidentiality provision of  
3 this paragraph if it is clearly designated in the Request For Proposal as being protected  
4 under this provision. All requested information lacking such a designation in the  
5 Request For Proposal shall be subject to Section 24A.1 et seq. of Title 51 of the Oklahoma  
6 Statutes. From health maintenance organizations, data provided shall include the  
7 current Health Plan Employer Data and Information Set (HEDIS);

8 14. To purchase any insurance and extend any benefits deemed necessary for  
9 providing benefits under the plan including, but not limited to, Preferred Provider  
10 Organization (PPO) Health Plans and indemnity dental plans, ~~provided that the only~~  
11 ~~indemnity health plan selected by the Council shall be the indemnity plan offered by the~~  
12 ~~Board,~~ and to transfer to the Board such funds as may be approved for a participant  
13 electing a benefit plan offered by the Board. All indemnity dental plans, including the  
14 one offered by the Oklahoma State and Education Group Insurance Board, must meet or  
15 exceed the following requirements:

- 16 a. they shall have a statewide provider network,  
17 b. they shall provide benefits which shall reimburse the expense for the  
18 following types of dental procedures:  
19 (1) diagnostic,  
20 (2) preventative,  
21 (3) restorative,  
22 (4) endodontic,

- 1 (5) periodontic,
- 2 (6) prosthodontics,
- 3 (7) oral surgery,
- 4 (8) dental implants,
- 5 (9) dental prosthetics, and
- 6 (10) orthodontics, and

7 c. they shall provide an annual benefit of not less than One Thousand  
8 Five Hundred Dollars (\$1,500.00) for all services other than  
9 orthodontic services, and a lifetime benefit of not less than One  
10 Thousand Five Hundred Dollars (\$1,500.00) for orthodontic services;

11 15. To communicate deferred compensation programs as provided in Section 1701  
12 of this title;

13 16. To assess and collect reasonable fees from the Board, and from ~~such~~ contracted  
14 health maintenance organizations and third party insurance vendors to offset the costs of  
15 administration as determined by the Council. The Council shall have the authority to  
16 transfer income received pursuant to this subsection to the Board for services provided  
17 by the Board;

18 17. To accept, modify or reject elections under the plan in accordance with ~~this act~~  
19 the Oklahoma State Employees Benefits Act and the Code;

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

21 19. Beginning with the plan year which begins on January 1, 2006, to select and  
22 contract with one or more providers to offer a group TRICARE Supplement product to

1 eligible employees who are eligible TRICARE beneficiaries. Any membership dues  
2 required to participate in a group TRICARE Supplement product offered pursuant to this  
3 paragraph shall be paid by the employee. As used in this paragraph, "TRICARE" means  
4 the Department of Defense health care program for active duty and retired uniform  
5 service members and their families;

6 20. To take all steps deemed necessary to properly administer the plan in  
7 accordance with ~~this act~~ the Oklahoma State Employees Benefits Act and the  
8 requirements of other applicable law; and

9 21. To manage, license or sell software developed for and acquired by the Council,  
10 whether or not such software is patented or copyrighted. The Council shall have the  
11 authority to license and sell such software or any rights to such software without  
12 declaring such property to be surplus. All proceeds from any ~~such~~ sale shall be deposited  
13 in the Benefits Council Administration Revolving Fund and used to defray the costs of  
14 administration.

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

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

20 a. exercises any discretionary authority or discretionary control  
21 respecting administration or management of the Council,



1 capacity and familiar with such matters would use in the conduct of an enterprise of like  
2 character and with like aims; and

3 6. The duties and responsibilities allocated to each fiduciary by ~~this act~~ the  
4 Oklahoma State Employees Benefits Act or by the Council shall be the several and not  
5 joint responsibility of each, and no fiduciary shall be liable for the act or omission of any  
6 other fiduciary unless:

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

16 SECTION 3. This act shall become effective July 1, 2009.

17 SECTION 4. It being immediately necessary for the preservation of the public  
18 peace, health and safety, an emergency is hereby declared to exist, by reason whereof  
19 this act shall take effect and be in full force from and after its passage and approval.

20 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND  
21 FINANCIAL SERVICES, dated 02-25-09 - DO PASS, As Amended and Coauthored.