

SENATE, No. 328

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Establishes system for portable benefits for workers who provide services to consumers through contracting agents.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning portable benefits for certain workers and
2 supplementing Title 34 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 “Contracting agent” means a business, organization, corporation,
9 limited liability company, partnership, sole proprietor, or any other
10 entity that facilitates the provision of services by workers to
11 consumers seeking the services and makes payments to workers,
12 where the provision of services is taxed as an independent contractor,
13 using Form 1099.

14 “Department” means the Department of Labor and Workforce
15 Development.

16 “Principal” means a person or company engaged in the business
17 of manufacturing, who:

18 a. manufactures, produces, imports, or distributes a product for
19 wholesale;

20 b. contracts with a sales representative to solicit orders for the
21 product; and

22 c. compensates the sales representative in whole or in part by
23 commission.

24 “Qualified benefit provider” means a nonprofit benefit provider
25 that is eligible to provide benefits to workers of contracting agents
26 pursuant to this act.

27 “Worker” means a person who provides services to consumers
28 through a contracting agent. “Worker” shall not mean:

29 a. any person who contracts to solicit orders in New Jersey as
30 the sales representative of a principal;

31 b. any person subject to a collective bargaining agreement that
32 specifies wages, terms and conditions of employment;

33 c. any person engaged in the sale of financial products or
34 services; or

35 d. any person who is licensed by the New Jersey Real Estate
36 Commission pursuant to R.S.45:15-1 et seq.

37
38 2. a. Contracting agents that have facilitated the provision of
39 services by at least 50 individual workers in a consecutive 12-month
40 period shall contribute funds to qualified benefit providers designated
41 by the workers to provide benefits to the workers of the contracting
42 agents. The requirement to contribute funds under this act only applies
43 when the services are provided to consumers located in this State.

44 b. (1) The contribution amount shall be the lesser of 25 percent
45 of the total fee collected from the consumer for each transaction of
46 services provided or six dollars for every hour that the worker provided
47 services to the consumer. If determined per hour, then the determination
48 shall be prorated per minute.

1 (2) The contribution amount required under this section may be
2 added to the invoice or billing submitted to the consumer for the
3 services.

4 c. Contributions shall be made to the qualified benefit provider on
5 no less than a monthly basis and no later than 15 days after the end of
6 the month in which the services were provided.

7 d. Contributions shall indicate the assigned amount per worker per
8 transaction, according to the following:

9 (1) if a single worker provided services for a transaction, the entire
10 contribution is assigned to that worker; or

11 (2) if multiple workers provided services for a transaction, the
12 contribution is assigned proportionately to those workers.

13

14 3. a. Based on the contributions received under section 2 of this
15 act, qualified benefit providers shall ensure that benefits are provided to
16 workers as set forth in this section.

17 b. Qualified benefit providers shall provide to any worker entitled
18 to benefits based on contributions made under section 2 of this act
19 workers' compensation insurance as required pursuant to chapter 15 of
20 Title 34 of the Revised Statutes, or, if the workers' compensation
21 insurance is not required for the worker, occupational accident
22 insurance which satisfies the minimum standards for that insurance
23 established by regulations promulgated by the Commissioner of
24 Banking and Insurance.

25 c. In addition to workers' compensation insurance or occupational
26 accident insurance, qualified benefit providers shall provide some or all
27 of the benefits set forth in this subsection. Qualified benefit providers
28 shall solicit input from workers on their benefits, and shall allow
29 workers to choose from available benefits or allocate the contributions
30 among the following benefits:

31 (1) health insurance, including but not limited to subsidies to
32 purchase health insurance;

33 (2) paid time off;

34 (3) retirement benefits; and

35 (4) other benefits determined by the qualified benefit providers, on
36 behalf of the workers.

37 The worker may elect to not receive any of the benefits indicated in
38 paragraphs (1) through (4) of this subsection, in which case an amount
39 equal to one half of the contribution required pursuant to subsection b.
40 of section 2 of this act shall be provided as compensation to the worker.

41 d. Qualified benefit providers may use up to five percent of the
42 contribution funds received for administration of benefits.

43

44 4. A worker entitled to benefits under this act shall select a
45 qualified benefit provider and shall be given the option to change that
46 selected qualified benefit provider once per year. Workers shall be
47 provided information regarding available qualified benefit providers

1 in a format that allows them to easily select their chosen qualified
2 benefit provider.

3

4 5. The department shall adopt rules for organizations to become
5 qualified benefit providers. At a minimum, the rules governing
6 qualified benefit providers shall require that the following criteria are
7 met:

8 a. the organization shall be a nonprofit organization, operating
9 under 26 U.S.C. s.501(c)(3) federal tax status;

10 b. at least one-half of the organization's board of directors shall be
11 comprised of workers performing work for customers of contracting
12 agents or representatives of bona fide independent organizations of
13 those workers;

14 c. the organization shall be independent from all business entities,
15 organizations, corporations, or individuals that would pursue any
16 financial interest in conflict with that of the workers;

17 d. all action of the organization regarding providing benefits shall
18 be for the sole purpose of maximizing benefits to the covered workers;

19 e. the board of directors of the organization shall hold a fiduciary
20 duty to the workers with respect to provision of the benefits; and

21 f. the organization shall demonstrate adequate viability and
22 financial sufficiency as determined by the department. At a minimum,
23 the organization shall have:

24 (1) cash reserves in a sufficient amount, as determined by the
25 department;

26 (2) liability coverage for an amount determined by the department;

27 (3) access to bonding; and

28 (4) other demonstrated competencies as determined by the
29 department.

30 The department shall prepare, post on its website, and make available
31 upon request, a list of qualified benefit providers, and shall update the
32 list not less than one time each calendar year after the year in which it
33 is first prepared.

34

35 6. The department shall establish rules to implement and
36 administer this act, including rules for:

37 a. monitoring compliance of contracting agents;

38 b. monitoring qualified benefit providers, including the ability to
39 remove providers that are out of compliance with the criteria established
40 under this act;

41 c. establishing a fee on contracting agents to fund the department's
42 compliance efforts;

43 d. administering workers' compensation coverage for workers
44 under this act; and

45 e. providing procedures for workers to select qualified benefit
46 providers, to change their selections annually, and to receive notices of
47 the right to select different qualified benefit providers.

1 In addition to workers' compensation insurance or occupational
2 accident insurance, qualified benefit providers must provide some or all
3 of the following benefits, as selected by the workers: health insurance,
4 paid time off, retirement benefits, or other benefits determined by the
5 providers, except that if a worker elects not to receive any of those
6 benefits, an amount equal to one half of the contribution is to be
7 provided as compensation to the worker. Up to five percent of the
8 contributions may be used for administration.

9 A worker entitled to benefits under the bill must select a qualified
10 benefit provider and be allowed to change the qualified benefit provider
11 once per year.

12 The bill requires the Department of Labor and Workforce
13 Development to adopt rules for organizations to become qualified
14 benefit providers. At a minimum, the rules governing qualified benefit
15 providers must require that the following criteria to be met:

16 1. the organization must be a nonprofit organization, operating
17 under 26 U.S.C. s.501(c)(3) federal tax status;

18 2. at least one-half of the organization's board of directors must be
19 comprised of workers performing work for customers of contracting
20 agents or representatives of bona fide independent organizations of
21 those workers;

22 3. the organization must be independent from all business entities,
23 organizations, corporations, or individuals that would pursue any
24 financial interest in conflict with that of the workers;

25 4. all actions of the organization regarding worker benefits must be
26 for the sole purpose of maximizing those benefits;

27 5. the board of directors of the organization must hold a fiduciary
28 duty to the workers with respect to provision of the benefits; and

29 6. the organization must demonstrate viability and financial
30 sufficiency as determined by the department. At a minimum, the
31 organization must have cash reserves, liability coverage, access to
32 bonding, and any other competencies as determined by the department.

33 The bill requires the department to establish rules to implement and
34 administer the bill, including rules for monitoring contracting agents
35 and qualified benefit providers, establishing fees on contracting agents
36 to fund compliance efforts, administering workers' compensation
37 coverage, and providing procedures for workers to select and change
38 providers.

39 In addition to remedies provided by the department to a worker for
40 a contracting agent's noncompliance, a worker may bring a private
41 cause of action against a contracting agent for the contracting agent's
42 failure to comply with the bill's contribution requirements.

43 The bill also provides that the bill's requirements on contracting
44 agents and the benefits provided to workers may not be considered in
45 determinations of a worker's employment status under the State
46 unemployment law.