

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1386

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 25, 2024

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 1386.

As amended by the committee, this bill establishes a system to provide portable benefits to workers who work 40 or more hours per month to provide services to consumers facilitated by contracting agents through digital marketplace networks. The bill defines a “contracting agent” as a business entity that facilitates the provision of services by workers to consumers and makes payments to workers, with the workers providing the services being taxed as independent contractors, and defines “digital marketplace network” as an online-enabled technology application, service, website, or system offered or utilized by a contracting agent to enable the transaction of services between workers and consumers. Workers covered by the bill do not include certain sales representatives, licensed healthcare professionals and persons subject to collective bargaining agreements.

The bill requires contracting agents that facilitate the provision of services through a digital marketplace network to contribute funds through individual portable benefits accounts to qualified benefit providers to provide benefits to the workers. The requirement to contribute funds only applies if the services are provided to consumers located in this State.

A contracting agent is required to contribute to the individual portable benefits account of a worker an amount not less than 15 percent of the amount the worker earned providing services through the contracting agent during the immediately preceding month. The bill requires contributions to be made on no less than a monthly basis and not later than 15 days after the end of the month in which the services were provided.

Qualified benefit providers are required to use the contributions to provide benefits to workers as set forth in the bill. The providers are required to provide workers’ compensation insurance to workers entitled to workers’ compensation benefits, and other approved occupational accident insurance to workers who are not entitled to workers’ compensation benefits.

In addition to workers’ compensation insurance or occupational accident insurance, qualified benefit providers must provide some or

all of the following benefits, as selected by the workers: health insurance, paid time off, retirement benefits, or other benefits determined by the providers, except that if a worker elects not to receive any of those benefits, an amount equal to one half of the contribution is to be provided as compensation to the worker. Up to five percent of the contributions may be used for administration.

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

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

1. the organization must be a nonprofit organization, operating under 26 U.S.C. s.501(c)(3) federal tax status;
2. at least one-half of the organization's board of directors must be comprised of workers performing work for customers of contracting agents or representatives of bona fide independent organizations of those workers;
3. the organization must be independent from all business entities, organizations, corporations, or individuals that would pursue any financial interest in conflict with that of the workers;
4. all actions of the organization regarding worker benefits must be for the sole purpose of maximizing those benefits;
5. the board of directors of the organization must hold a fiduciary duty to the workers with respect to provision of the benefits; and
6. the organization must demonstrate viability and financial sufficiency as determined by the department. At a minimum, the organization must have cash reserves, liability coverage, access to bonding, and any other competencies as determined by the department.

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

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

The bill specifies that it is not to be construed as requiring a contracting agent to reduce, or justifying the contracting agent in reducing, rights or benefits provided by the contracting agent pursuant to law or a policy or previous practice of the contracting agent, including any law, policy or practice which is or was more favorable to workers than those required by this act or which provide rights or benefits to workers not covered by the bill.

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

This bill was prefiled for introduction in the 2024-2025 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The amendments proposed by the sponsor:

1. Define "digital marketplace network" and "individual portable benefits account."
2. Provide that the bill applies only to workers who work 40 or more hours per month providing services through a contracting agent.
3. Exclude licensed healthcare professionals from coverage under the bill.
4. Change the required contributions from an amount equal to the lesser of 25 percent of fees collected from consumers or six dollars per hour worked to an amount not less than 15 percent of the amount that the worker earned during the immediately preceding month.
5. Specify that the bill is not to be construed as requiring a contracting agent to reduce, or justifying the contracting agent in reducing, rights or benefits provided by the contracting agent pursuant to law or a policy or previous practice of the contracting agent.