

CHAPTER 298

AN ACT establishing a retirement savings marketplace and supplementing Title 43 of the Revised Statutes.

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

C.43:23-1 Short title.

1. This act shall be known and may be cited as the “New Jersey Small Business Retirement Marketplace Act.”

C.43:23-2 Findings, declarations relative to a New Jersey Small Business Retirement Marketplace.

2. The Legislature finds and declares that:

a. it is appropriate to create a New Jersey Small Business Retirement Marketplace because there is a retirement savings gap in this State, one in six Americans retire in poverty, and employees who are unable to effectively build their retirement savings risk living on low incomes in their elderly years and are more likely to become dependent on State services;

b. small businesses, which employ half of New Jersey’s private workforce, often choose not to offer retirement plans to employees due to concerns about the cost, administrative burden, and potential liability that they believe would be placed on their businesses;

c. the federal government has attempted to address the savings gap by establishing the myRA program, a safe, affordable, and accessible retirement vehicle designed to remove barriers to retirement savings;

d. the New Jersey Small Business Retirement Marketplace will remove the barriers to entry into the retirement market for small businesses by educating small employers on plan availability and promoting, without mandating participation, qualified, low cost, low burden retirement savings vehicles and myRA; the marketplace furthers greater retirement plan access for the residents of New Jersey while ensuring that individuals participating in these retirement plans will have all the protections offered by federal law;

e. the New Jersey Small Business Retirement Marketplace should not place any financial burden upon taxpayers in the State and it should not be implemented if it is determined that there is any financial exposure to the State;

f. the New Jersey Small Business Retirement Marketplace will be the best way for New Jersey to close the retirement savings access gap, protect the fiscal stability of the State and its citizens well into the future, become a national leader in retirement and investor promotion and protection, and educate and promote retirement saving among employees and small employers;

g. according to a recent AARP poll, 86 percent of New Jersey residents age 35 and older say they hope to retire one day, but 65 percent are anxious about saving enough money so they could afford it, and AARP estimates that roughly 1.7 million private sector workers in New Jersey do not have access to a retirement savings plan through their employer, and the National Institute of Retirement Security describes this as a growing consumer crisis, because the typical family has saved only \$2,500 for their retirement;

h. AARP has been instrumental in leading a national initiative called Work and Save to deal with retirement insecurity by promoting state run retirement programs, including the Washington Small Business Retirement Marketplace, signed into law in May 2015, designed to provide thousands of small business employees access to retirement plans by creating a voluntary public-private partnership marketplace that will educate small business employers on existing private sector retirement plan vendors;

i. the Washington marketplace was the result of public and private organizations coming together to find the most effective and efficient way to close the retirement savings access gap, and the following organizations have endorsed the Washington marketplace: AARP, Securities Industry and Financial Markets Association, the American Council of Life Insurers, Washington Bankers Association, and various employer groups; and

j. by following this model, the New Jersey Small Business Retirement Marketplace will provide a market-based approach so that small businesses can offer a simple and inexpensive way to offer private savings to their employees, which will result in workers saving more for retirement throughout their lives.

C.43:23-3 Definitions relative to a New Jersey Small Business Retirement Marketplace.

3. As used in this act:

“Approved plans” means retirement plans offered by private sector financial services firms that meet the requirements of this act to participate in the marketplace.

“Balanced fund” means a mutual fund that has an investment mandate to balance its portfolio holdings and generally includes a mix of stocks and bonds in varying proportions according to the fund’s investment outlook.

“Eligible employer” means a person, firm, corporation, partnership, or sole proprietor, or any other employer that is actively engaged in business with fewer than 100 qualified employees at the time of enrollment, and a majority of which employees are employed in New Jersey.

“Enrollee” means any employee who is voluntarily enrolled in an approved plan offered by an eligible employer through the marketplace.

“myRA” means the myRA retirement program administered by the United States Department of the Treasury that is available to all employers and employees with no fees or no minimum contribution requirements. “myRA” is a Roth IRA option, and investments in these accounts are backed by the United States Department of the Treasury.

“New Jersey Small Business Retirement Marketplace” or “marketplace” means the retirement savings program created to connect eligible employers and their employees with approved plans to increase retirement savings.

“Participating employer” means any eligible employer with employees enrolled in an approved plan offered through the New Jersey Small Business Retirement Marketplace who chooses to participate in the marketplace and offers approved plans to employees for voluntary enrollment.

“Private sector financial services firms” or “financial services firms” means persons or entities licensed or holding a certificate of authority or authorized to do business in the State, in good standing by the Department of Banking and Insurance and the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety, and meeting all federal laws and regulations to offer retirement plans.

“Qualified employee” means those workers who are defined by the federal Internal Revenue Service to be eligible to participate in a specific qualified plan.

“Target date or other similar fund” means a mutual fund that automatically resets the asset mix of stocks, bonds, cash equivalents, and other investments in its portfolio according to a selected time frame that is appropriate for a particular investor and is structured to address a projected retirement date.

C.43:23-4 New Jersey Small Business Retirement Marketplace.

4. There is established the New Jersey Small Business Retirement Marketplace in the Department of the Treasury.

C.43:23-5 Plan for the operation of the marketplace.

5. a. The State Treasurer, or the Treasurer's designee, shall design and implement a plan for the operation of the marketplace pursuant to the provisions of this act. Thereafter, the State Treasurer, or the Treasurer's designee, shall facilitate the connections between eligible employers and approved plans included in the marketplace.

b. The State Treasurer, or the Treasurer's designee, shall consult with the Director of Investment of the Department of the Treasury, or the director's designee; the Commissioner of Banking and Insurance, or the commissioner's designee; the Commissioner of Labor and Workforce Development, or the commissioner's designee; the Chairperson of the State Investment Council, or the chairperson's designee; the Director of the Division of Pensions and Benefits, or the director's designee; and the Chief Executive Officer of the New Jersey Economic Development Authority, or the chief executive office's designee, in designing and managing the marketplace.

c. The State Treasurer, or the Treasurer's designee, shall approve private sector financial services firms as defined in section 3 of this act for participation in the marketplace. The State Treasurer, or the Treasurer's designee, shall ensure that the range of investment options offered by the financial services firms is sufficient to meet the needs of investors with various levels of risk tolerance and various ages.

d. The State Treasurer, or the Treasurer's designee, shall approve a diverse array of private retirement plan options that are available to employers on a voluntary basis, including life insurance plans that are designed for retirement purposes, and at least two types of plans for eligible employer participation, including:

(1) a SIMPLE IRA type plan that provides for employer contributions to participating enrollee accounts; and

(2) a payroll deduction individual retirement account type plan or workplace-based individual retirement accounts open to all workers in which the employer does not contribute to the employees' account.

e. Prior to approving a plan to be offered on the marketplace, the State Treasurer, or the Treasurer's designee, shall obtain certification from the Department of Banking and Insurance and the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety that the financial services firm providing the plan is in good standing with the department and the bureau and shall ensure that the plan meets the requirements of this act. The State Treasurer, or the Treasurer's designee, may at any time remove any approved plan from the marketplace that no longer meets the requirements of this act.

f. The financial services firms participating in the marketplace shall offer a minimum of two product options, including:

(1) a target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of retirement; and

(2) a balanced fund.

The marketplace shall offer myRA in addition to any other approved plan.

g. The marketplace shall not operate unless there are at least two financial services firms offering approved plans on the marketplace; however, nothing in this section shall be construed as to limit the number of financial services firms with approved plans participating in the marketplace.

h. The State Treasurer, or the Treasurer's designee, shall ensure that approved plans are compliant with any federal law or regulation regarding Internal Revenue Service approved retirement plans.

i. Approved plans shall include the option for enrollees to roll pretax contributions into a different individual retirement account or another eligible retirement plan after ceasing participation in a plan approved by the marketplace.

j. Financial services firms selected by the State Treasurer, or the Treasurer's designee, to offer approved plans on the marketplace shall not charge the participating employer an administrative fee or surcharge and shall not charge enrollees more than 100 basis points in total annual fees and shall provide information about their product's historical investment performance.

k. Participation in the marketplace is voluntary for both eligible employers and qualified employees, and enrollment in any approved plan offered in the marketplace is not an entitlement.

l. The State Treasurer, or the Treasurer's designee, shall establish protocol to address rollovers for eligible employers that have workers in other states, and to address whether out-of-State employees with existing IRAs may roll them into the plans offered through the marketplace.

m. The State Treasurer, or the Treasurer's designee, may establish a fee system that charges financial services firms that participate in the marketplace in order to cover the startup and annual administrative expenses of the State Treasurer, or the Treasurer's designee, in the performance of its duties under this act.

C.43:23-6 Contracts with private sector entities.

6. a. The State Treasurer, or the Treasurer's designee, shall contract with one or more private sector entities to:

(1) establish a protocol for reviewing and approving the qualifications of all financial services firms that meet the requirements to participate in the marketplace;

(2) design and operate an Internet website that includes information on how eligible employers can voluntarily participate in the marketplace;

(3) develop marketing materials about the marketplace that can be distributed electronically or posted on both public and private sector maintained websites;

(4) identify and promote existing federal and State tax credits and benefits for employers and employees that are related to encouraging retirement savings or participating in retirement plans; and

(5) promote the benefits of retirement savings and other information that promotes financial literacy.

b. The State Treasurer, or the Treasurer's designee, shall direct any private sector entity contracted pursuant to subsection a. of this section to assure that licensed professionals who assist their clients that are eligible employers or their employees to enroll in a plan offered through the marketplace will receive routine, market-based commissions or other compensation for their services.

c. The State Treasurer, or the Treasurer's designee, shall establish rules to ensure that there are objective criteria in the protocol established pursuant to subsection a.(1) of this section and that the protocol does not provide an unfair advantage to the private sector entity that establishes the protocol.

C.43:23-7 Use of private funding sources.

7. In addition to any funds appropriated for the purposes of this act, the State Treasurer, or the Treasurer's designee, shall approve the use of private funding sources, including private foundation grants, to pay for marketplace expenses. On behalf of the marketplace, the Department of the Treasury shall seek federal and private grants and is authorized to accept any funds awarded to the State Treasurer, or the Treasurer's designee, for use in designing, implementing, and operating the marketplace.

C.43:23-8 Avoidance of liability.

8. The Department of the Treasury shall not expose the State as an employer or through administration of the marketplace to any liability under the federal "Employee Retirement Income Security Act of 1974" (29 U.S.C. s.1001 et seq.). The Department of the Treasury is specifically prohibited from offering and operating a State-sponsored retirement plan for businesses for individuals who are not employed by the State, or any political subdivision thereof.

C.43:23-9 Incentive payment to participating employers.

9. The State Treasurer, or the Treasurer's designee, shall approve incentive payments to participating employers that enroll in the marketplace if there are sufficient funds provided by private foundations or other private sector entities, or with State funds specifically appropriated for this purpose.

C.43:23-10 Report to Legislature.

10. The State Treasurer, or the Treasurer's designee, shall report biennially to the Legislature on the effectiveness and efficiency of the marketplace, including levels of enrollment and the retirement savings levels of participating enrolled that are obtained in aggregate on a voluntary basis from private sector financial services firms that participate in the marketplace.

C.43:23-11 Compliance.

11. The State Treasurer, or the Treasurer's designee, shall ensure that any individual retirement account products proposed for inclusion in the marketplace comply with the requirements of section 5 of this act.

C.43:23-12 Regulations.

12. The Department of the Treasury shall promulgate regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of this act. In promulgating regulations, the State Treasurer, or the Treasurer's designee, shall consult with organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, private sector financial services firms, and any other individuals or entities that the State Treasurer, or the Treasurer's designee, determine relevant to the effective and efficient method for effectuating the purposes of this act.

13. This act shall take effect immediately.

Approved January 19, 2016.