

ASSEMBLY, No. 1341

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

“New Jersey Small Business Retirement Marketplace Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/8/2017)

1 AN ACT establishing a retirement savings marketplace and
2 supplementing Title 43 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. This act shall be known and may be cited as the “New Jersey
8 Small Business Retirement Marketplace Act.”

9

10 2. The Legislature finds and declares that:

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

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

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

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

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

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

43 g. according to a recent AARP poll, 86 percent of New Jersey
44 residents age 35 and older say they hope to retire one day, but 65
45 percent are anxious about saving enough money so they could
46 afford it and AARP estimates that roughly 1.7 million private sector
47 workers in New Jersey do not have access to a retirement savings
48 plan through their employer, and the National Institute of

1 Retirement Security describes this as a growing consumer crisis,
2 because the typical family has saved only \$2,500 for their
3 retirement;

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

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

19 j. by following this model, the New Jersey Small Business
20 Retirement Marketplace will provide a market-based approach so
21 that small businesses can offer a simple and inexpensive way to
22 offer private savings to their employees, which will result in
23 workers saving more for retirement throughout their lives.
24

25 3. As used in this act:

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

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

33 “Board” means the board of directors of the marketplace.

34 “Division” means the Division of Investment in the Department
35 of the Treasury.

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

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

44 “Executive director” means the executive director of the
45 marketplace.

46 “myRA” means the myRA retirement program administered by
47 the United States Department of the Treasury that is available to all
48 employers and employees with no fees or no minimum contribution

1 requirements. “myRA” is a Roth IRA option and investments in
2 these accounts are backed by the United States Department of the
3 Treasury.

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

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

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

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

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

28

29 4. There is established the New Jersey Small Business
30 Retirement Marketplace, allocated within the Division of
31 Investment in the Department of the Treasury; but, notwithstanding
32 that allocation, the marketplace shall be independent of any
33 supervision or control of the division or by any board or officer
34 thereof.

35

36 5. a. The marketplace shall be governed by a board of
37 directors consisting of 10 members as follows:

38 (1) the Director of the Division of Investment of the Department
39 of the Treasury, or the director’s designee, as a nonvoting, ex
40 officio member;

41 (2) the Commissioner of Banking and Insurance, or the
42 commissioner’s designee, as a nonvoting, ex officio member;

43 (3) the Chairperson of the State Investment Council, as a
44 nonvoting, ex officio member; and

45 (4) seven public members who are residents of this State, to be
46 appointed by the Governor with the advice and consent of the
47 Senate, including: one person who shall be a member in good
48 standing of the American Academy of Actuaries; and four other

1 persons, two of whom shall be appointed upon the recommendation
2 of the President of the Senate, and two of whom shall be appointed
3 upon the recommendation of the Speaker of the General Assembly.

4 b. Each public member of the board shall have demonstrated
5 their qualification for appointment by training, experience, or long-
6 term interest in the direct management, analysis, supervision, or
7 investment of assets, and this training, experience, or long-term
8 interest shall have been supplemented by academic training in the
9 fields of economics, business, law, finance, or actuarial science or
10 by actual employment in those fields.

11 c. The public members shall serve without compensation, but
12 shall be reimbursed for any expenses incurred by them in the
13 performance of their duties, subject to the limits of funds
14 appropriated or otherwise made available for this purpose.

15 d. The public members of the board shall serve for a term of
16 four years; except that with respect to the first term of the members
17 first appointed, one of the public members appointed upon the
18 recommendation of the President of the Senate, one of the public
19 members appointed upon the recommendation of the Speaker of the
20 General Assembly, and one additional public member shall each
21 serve for a period of three years, one of the public members
22 appointed upon the recommendation of the President of the Senate,
23 one of the public members appointed upon the recommendation of
24 the Speaker of the General Assembly, and one additional public
25 member shall each serve for a period of four years, and the other
26 public member appointed shall serve for a period of five years.

27 e. Each public member of the board shall hold office for the
28 term of the appointment and until a successor has been appointed.
29 Vacancies shall be filled in the same manner as the original
30 appointments were made. A member is eligible for reappointment.

31 f. The board shall organize as soon as practicable after the
32 appointment of its members and shall select a chairperson annually
33 from among its members.

34 g. (1) The board shall appoint an executive director of the
35 marketplace to supervise the administrative affairs and general
36 management and operations of the marketplace.

37 (2) The executive director shall:

38 (a) be a person qualified by training and experience to perform
39 the duties of that position;

40 (b) serve as a member of the senior executive or unclassified
41 service and be appointed without regard to the provisions of Title
42 11A of the New Jersey Statutes;

43 (c) attend all meetings of the board; and

44 (d) serve at the pleasure of the board, and receive such
45 compensation as the board shall determine, which shall not exceed
46 the compensation of a cabinet-level official of the State.

47 (3) With the approval of the board, the executive director shall:

1 (a) plan, direct, coordinate, and execute the administrative
2 functions of the marketplace in conformity with the policies and
3 directives of the board;

4 (b) employ staff as necessary to implement the provisions of this
5 act;

6 (c) report to the board on all operations under the control and
7 supervision of the executive director; and

8 (d) undertake any other activities necessary to accomplish the
9 purposes of the marketplace.

10
11 6. a. The board shall design and implement a plan for the
12 operation of the marketplace pursuant to the provisions of this act.
13 The board shall facilitate the connections between eligible
14 employers and approved plans included in the marketplace.

15 b. The board shall approve for participation in the marketplace
16 all private sector financial services firms as defined in section 3 of
17 this act. The board shall ensure that a range of investment options
18 are provided by the financial services firms to meet the needs of
19 investors with various levels of risk tolerance and various ages.

20 c. The board shall approve a diverse array of private retirement
21 plan options that are available to employers on a voluntary basis,
22 including life insurance plans that are designed for retirement
23 purposes, and at least two types of plans for eligible employer
24 participation, including:

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

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

31 d. Prior to approving a plan to be offered on the marketplace,
32 the board shall obtain certification from the Department of Banking
33 and Insurance and the Bureau of Securities in the Division of
34 Consumer Affairs in the Department of Law and Public Safety that
35 the financial services firm providing the plan is in good standing
36 with the department and the bureau and that the plan meets the
37 requirements of this act. The board may remove any approved plan
38 from the marketplace that no longer meets the requirements of this
39 act.

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

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

45 (2) a balanced fund.

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

- 1 f. The marketplace shall not operate unless there are at least
- 2 two financial services firms offering approved plans on the
- 3 marketplace; however, nothing in this section shall be construed as
- 4 to limit the number of financial services firms with approved plans
- 5 from participating in the marketplace.
- 6 g. The board shall ensure that approved plans are compliant
- 7 with any federal law or regulation regarding Internal Revenue
- 8 Service approved retirement plans.
- 9 h. Approved plans shall include the option for enrollees to roll
- 10 pretax contributions into a different individual retirement account or
- 11 another eligible retirement plan after ceasing participation in a plan
- 12 approved by the marketplace.
- 13 i. Financial services firms selected by the board to offer
- 14 approved plans on the marketplace shall not charge the participating
- 15 employer an administrative fee or surcharge and shall not charge
- 16 enrollees more than 100 basis points in total annual fees and shall
- 17 provide information about their product's historical investment
- 18 performance.
- 19 j. Participation in the marketplace is voluntary for both eligible
- 20 employers and qualified employees, and enrollment in any approved
- 21 plan offered in the marketplace is not an entitlement.
- 22 k. The board shall establish protocol to address rollovers for
- 23 eligible employers that have workers in other states, and to address
- 24 whether out-of-state employees with existing IRAs may roll them
- 25 into the plans offered through the marketplace.
- 26 l. The board shall establish a fee system that charges financial
- 27 services firms that participate in the marketplace in order to cover
- 28 the startup and annual administrative expenses of the board in the
- 29 performance of its duties under this act.
- 30
- 31 7. a. The board shall contract with a private sector entity to:
- 32 (1) establish a protocol for reviewing and approving the
- 33 qualifications of all financial services firms that meet the
- 34 requirements to participate in the marketplace;
- 35 (2) design and operate an Internet website that includes
- 36 information about how eligible employers can voluntarily
- 37 participate in the marketplace;
- 38 (3) develop marketing materials about the marketplace that can
- 39 be distributed electronically or posted on both public and private
- 40 sector maintained websites;
- 41 (4) identify and promote existing federal and State tax credits
- 42 and benefits for employers and employees that are related to
- 43 encouraging retirement savings or participating in retirement plans;
- 44 and
- 45 (5) promote the benefits of retirement savings and other
- 46 information that promotes financial literacy.
- 47 b. The board shall direct the private sector entity contracted
- 48 pursuant to subsection a. of this section to assure that licensed

1 professionals who assist their eligible business clients or employees
2 to enroll in a plan offered through the marketplace will receive
3 routine, market-based commissions or other compensation for their
4 services.

5 c. The board shall establish objective criteria for the protocol
6 established pursuant to subsection a. of this section to ensure that
7 the protocol does not provide unfair advantage to the private sector
8 entity which establishes the protocol.

9
10 8. In addition to any funds appropriated for the purposes of this
11 act, the board shall approve the use of private funding sources,
12 including private foundation grants, to pay for marketplace
13 expenses. On behalf of the board, the executive director shall seek
14 federal and private grants and is authorized to accept any funds
15 awarded to the board for use in designing, implementing, and
16 operating the marketplace.

17
18 9. The board shall not expose the State as an employer or
19 through administration of the marketplace to any liability under the
20 federal "Employee Retirement Income Security Act of 1974" (29
21 U.S.C. s. 1001 et seq.). The board is specifically prohibited from
22 offering and operating a State sponsored retirement plan for
23 businesses or individuals who are not employed by the State, or any
24 political subdivision thereof.

25
26 10. The board shall approve incentive payments to participating
27 employers that enroll in the marketplace if there are sufficient funds
28 provided by private foundations or other private sector entities, or
29 with State funds specifically appropriated for this purpose.

30
31 11. The board shall submit a report biennially to the Legislature
32 on the effectiveness and efficiency of the marketplace, including
33 levels of enrollment and the retirement savings levels of
34 participating enrollees that are obtained in aggregate on a voluntary
35 basis from private sector financial services firms that participate in
36 the marketplace.

37
38 12. The division shall annually, or upon request of the board,
39 review individual retirement account products proposed for
40 inclusion in the marketplace to confirm that the products comply
41 with the requirements of section 5 of this act.

42
43 13. The board shall promulgate regulations, pursuant to the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.), necessary to effectuate the purposes of this act. In
46 promulgating regulations, the board shall consult with organizations
47 representing eligible employers, qualified employees, private and
48 nonprofit sector retirement plan administrators and providers,

1 private sector financial services firms, and any other individuals or
2 entities that the board determines relevant to the effective and
3 efficient method for effectuating the purposes of this act.

4
5 14. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill establishes the New Jersey Small Business Retirement
11 Marketplace (“the marketplace”) to remove the barriers to entry into
12 the retirement market for small businesses by educating small
13 employers on plan availability and promoting, without mandated
14 participation, qualified, low cost, low burden retirement savings
15 vehicles. The marketplace is allocated within the Division of
16 Investment in the Department of the Treasury, but it is to be
17 independent of any supervision or control by the department or any
18 board or officer thereof.

19 The marketplace is to be governed by a board of directors
20 charged with developing and implementing the marketplace,
21 consisting of ten members as follows:

22 -- the Director of the Division of Investment of the Department
23 of the Treasury, or the director’s designee, as a nonvoting, ex
24 officio member;

25 -- the Commissioner of Banking and Insurance, or the
26 commissioner’s designee, as a nonvoting, ex officio member;

27 -- the Chairperson of the State Investment Council, as a
28 nonvoting, ex officio member; and

29 -- seven public members who are residents of this State, to be
30 appointed by the Governor with the advice and consent of the
31 Senate, including: one person who is a member in good standing of
32 the American Academy of Actuaries; and four other persons, two of
33 whom will be appointed upon the recommendation of the President
34 of the Senate, and two of whom will be appointed upon the
35 recommendation of the Speaker of the General Assembly.

36 The bill ensures that the public members of the board will be
37 individuals who have demonstrated their qualification for
38 appointment by training, experience, or long-term interest in the
39 direct management, analysis, supervision, or investment of assets,
40 and this training, experience, or long-term interest has been
41 supplemented by academic training in the fields of economics,
42 business, law, finance, or actuarial science or by actual employment
43 in those fields.

44 The board is directed to appoint an executive director of the
45 marketplace to supervise the administrative affairs and general
46 management and operations of the marketplace. The executive
47 director will serve at the pleasure of the board and receive such

1 compensation as the board determines, which will not exceed the
2 compensation of a cabinet-level official of the State.

3 The board must design and implement a plan for the operation of
4 the marketplace pursuant to the provisions of the bill, including
5 approval of financial services firms to participate in the
6 marketplace. The board must ensure that a range of investment
7 options are provided by the financial services firms to meet the
8 needs of investors with various levels of risk tolerance and various
9 ages. The board must approve a diverse array of private retirement
10 plan options, including life insurance plans that are designed for
11 retirement purposes, and at least two types of plans for eligible
12 employer participation, including:

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

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

19 The financial services firms participating in the marketplace
20 must offer a minimum of two product options, including:

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

24 (2) a balanced fund.

25 The marketplace must offer the federal myRA in addition to any
26 other approved plan.

27 The board will ensure that approved plans are compliant with
28 any federal law or regulation regarding Internal Revenue Service
29 approved retirement plans. The bill stipulates that financial
30 services firms selected by the board to offer approved plans on the
31 marketplace will not charge the participating employer an
32 administrative fee or surcharge and will not charge enrollees more
33 than 100 basis points in total annual fees and must provide
34 information about their product's historical investment
35 performance. Participation in the marketplace is voluntary for both
36 eligible employers and qualified employees, and enrollment in any
37 approved plan offered in the marketplace is not an entitlement.

38 The board is directed to contract with a private sector entity to
39 establish a protocol for reviewing and approving the qualifications
40 of all financial services firms that meet the requirements to
41 participate in the marketplace, design and operate an Internet
42 website that includes information on employer participation in the
43 marketplace, develop marketing materials about the marketplace,
44 identify and promote existing federal and State tax credits and
45 benefits that are related to encouraging retirement savings, and
46 promote the benefits of retirement savings and other information
47 that promotes financial literacy.

1 In addition to any funds that may be appropriated for the
2 purposes of the bill, the board must approve the use of private
3 funding sources, including private foundation grants, to pay for
4 marketplace expenses. The board is prohibited from exposing the
5 State as an employer, or through administration of the marketplace,
6 to any liability under the federal “Employee Retirement Income
7 Security Act of 1974” (29 U.S.C. s. 1001 et seq.). The board is also
8 specifically prohibited from offering and operating a State
9 sponsored retirement plan for businesses or individuals who are not
10 employed by the State, or any political subdivision thereof.

11 The bill permits the board to approve incentive payments to
12 participating employers that enroll in the marketplace if there are
13 sufficient funds provided by private foundations or other private
14 sector entities, or with State funds specifically appropriated for this
15 purpose.

16 Finally, the bill provides that the board must submit a report
17 biennially to the Legislature on the effectiveness and efficiency of
18 the marketplace, including levels of enrollment and the retirement
19 savings levels of participating enrollees that are obtained in
20 aggregate on a voluntary basis from private sector financial services
21 firms that participate in the marketplace.