

# SENATE, No. 943

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

**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**

As introduced.



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  
13 contractor, 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-  
40 month period shall contribute funds to qualified benefit providers to  
41 provide benefits to the workers of the contracting agents. The  
42 requirement to contribute funds under this act only applies when the  
43 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  
47 provided services to the consumer. If determined per hour, then the  
48 determination 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  
5 on no less than a monthly basis and no later than 15 days after the  
6 end of the month in which the services were provided.

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

9 (1) if a single worker provided services for a transaction, the  
10 entire 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  
15 this act, qualified benefit providers shall ensure that benefits are  
16 provided to workers as set forth in this section.

17 b. Qualified benefit providers shall provide workers'  
18 compensation insurance pursuant to chapter 15 of Title 34 of the  
19 Revised Statutes to those workers entitled to benefits based on  
20 contributions made under section 2 of this act.

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

27 (1) health insurance, including but not limited to subsidies to  
28 purchase health insurance;

29 (2) paid time off;

30 (3) retirement benefits; and

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

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

35

36 4. A worker entitled to benefits under this act shall select a  
37 qualified benefit provider and shall be given the option to change  
38 that selected qualified benefit provider once per year. Workers  
39 shall be provided information regarding available qualified benefit  
40 providers in a format that allows them to easily select their chosen  
41 qualified benefit provider.

42

43 5. The department shall adopt rules for organizations to  
44 become qualified benefit providers. At a minimum, the rules  
45 governing qualified benefit providers shall require that the  
46 following criteria are met:

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

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

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

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

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

14       f. the organization shall demonstrate adequate viability and  
15 financial sufficiency as determined by the department. At a  
16 minimum, the organization shall have:

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

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

21       (3) access to bonding; and

22       (4) other demonstrated competencies as determined by the  
23 department.

24

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

27       a. monitoring compliance of contracting agents;

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

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

33       d. administering workers' compensation coverage for workers  
34 under this act; and

35       e. providing procedures for workers to select qualified benefit  
36 providers, to change their selections annually, and to receive notices  
37 of the right to select different qualified benefit providers.

38

39       7. In addition to remedies provided by the department to a  
40 worker for a contracting agent's noncompliance, a worker may  
41 bring a private cause of action against a contracting agent for the  
42 contracting agent's failure to comply with the contribution  
43 requirements under section 2 of this act.

44

45       8. The requirements on contracting agents and the benefits  
46 provided to workers under this act shall not be considered in  
47 determinations of a worker's employment status or a contracting  
48 agent's employment relationship to the worker under R.S.43:21-19.

1       9. This act shall take effect on the sixth month next following  
2 enactment, except the Commissioner of Labor and Workforce  
3 Development may take any anticipatory administrative action in  
4 advance as shall be necessary for the implementation of this act.

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6  
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STATEMENT

9       This bill establishes a system for the provision of portable benefits  
10 to workers who provide services to consumers through contracting  
11 agents. Pursuant to the bill, a contracting agent is a business entity  
12 that facilitates the provision of services by workers to consumers  
13 seeking the services and makes payments to workers, and the  
14 provision of services is taxed as an independent contractor.

15       The bill requires contracting agents that have facilitated the  
16 provision of services by at least 50 individual workers in a consecutive  
17 12-month period to contribute funds to qualified benefit providers to  
18 provide benefits to the workers of the contracting agents. The  
19 requirement to contribute funds only applies when the services are  
20 provided to consumers located in this State.

21       The contribution amount must be the lesser of 25 percent of the  
22 total fee collected from the consumer for each transaction of services  
23 provided or six dollars for every hour that the worker provided  
24 services to the consumer. If determined per hour, then the  
25 determination must be prorated per minute. The contribution amount  
26 required under this bill may be added to the invoice or billing  
27 submitted to the consumer for the services.

28       The bill requires contributions to be made to the qualified benefit  
29 provider on no less than a monthly basis and no later than 15 days after  
30 the end of the month in which the services were provided.  
31 Contributions must indicate the assigned amount per worker per  
32 transaction.

33       Based on the contributions received, qualified benefit providers are  
34 required to ensure that benefits are provided to workers as set forth in  
35 the bill. Qualified benefit providers must provide workers'  
36 compensation insurance to those workers entitled to benefits based on  
37 contributions.

38       In addition to workers' compensation insurance, qualified benefit  
39 providers must provide some or all of other, optional benefits.  
40 Qualified benefit providers must solicit input from workers on their  
41 benefits, and allow workers to choose from available benefits or  
42 allocate the contributions among the following benefits:

- 43       (1) health insurance, including but not limited to subsidies to  
44 purchase health insurance;  
45       (2) paid time off;  
46       (3) retirement benefits; and  
47       (4) other benefits determined by the qualified benefit providers, on  
48 behalf of the workers.

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1 The bill provides that qualified benefit providers may use up to  
2 five percent of the contribution funds received for administration of  
3 benefits.

4 A worker entitled to benefits under the bill must select a qualified  
5 benefit provider and must be given the option to change that selected  
6 qualified benefit provider once per year. Workers are to be provided  
7 information regarding available qualified benefit providers in a format  
8 that allows them to easily select their chosen qualified benefit  
9 provider.

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

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

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

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

23 4. all action of the organization regarding providing benefits must  
24 be for the sole purpose of maximizing benefits to the covered workers;

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

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

32 The bill requires the Department of Labor and Workforce  
33 Development to establish rules to implement and administer the bill,  
34 including rules for monitoring contracting agents and qualified benefit  
35 providers, establishing fees on contracting agents to fund compliance  
36 efforts, administering workers' compensation coverage for workers,  
37 and providing procedures for workers to select and change qualified  
38 benefit 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 requirements on contracting agents  
44 and the benefits provided to workers are not to be considered in  
45 determinations of a worker's employment status or a contracting  
46 agent's employment relationship to the worker under the State  
47 unemployment law.

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1       The bill provides that any person who contracts to solicit orders in  
2 New Jersey as the sales representative of a principal or any person who  
3 is subject to a collective bargaining agreement that specifies wages,  
4 terms and conditions of employment is not subject to the requirements  
5 of the bill.