

ASSEMBLY, No. 1333

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DeCROCE

1 AN ACT exempting certain operators of certain trucks from the
2 "unemployment compensation law" and amending R.S.43:21-19.

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

6
7 1. R.S.43:21-19 is amended to read as follows:
8 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
9 seq.), unless the context clearly requires otherwise:

10 (a) (1) "Annual payroll" means the total amount of wages paid
11 during a calendar year (regardless of when earned) by an employer for
12 employment.

13 (2) "Average annual payroll" means the average of the annual
14 payrolls of any employer for the last three or five preceding calendar
15 years, whichever average is higher, except that any year or years
16 throughout which an employer has had no "annual payroll" because of
17 military service shall be deleted from the reckoning; the "average
18 annual payroll" in such case is to be determined on the basis of the
19 prior three or five calendar years in each of which the employer had an
20 "annual payroll" in the operation of his business, if the employer
21 resumes his business within 12 months after separation, discharge or
22 release from such service, under conditions other than dishonorable,
23 and makes application to have his "average annual payroll" determined
24 on the basis of such deletion within 12 months after he resumes his
25 business; provided, however, that "average annual payroll" solely for
26 the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means
27 the average of the annual payrolls of any employer on which he paid
28 contributions to the State disability benefits fund for the last three or
29 five preceding calendar years, whichever average is higher; provided
30 further that only those wages be included on which employer
31 contributions have been paid on or before January 31 (or the next
32 succeeding day if such January 31 is a Saturday or Sunday)

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 immediately preceding the beginning of the 12-month period for which
2 the employer's contribution rate is computed.

3 (b) "Benefits" means the money payments payable to an individual,
4 as provided in this chapter (R.S.43:21-1 et seq.), with respect to his
5 unemployment.

6 (c) (1) "Base year" with respect to benefit years commencing on
7 or after January 1, 1953, shall mean the 52 calendar weeks ending with
8 the second week immediately preceding an individual's benefit year.
9 "Base year" with respect to benefit years commencing on or after July
10 1, 1986, shall mean the first four of the last five completed calendar
11 quarters immediately preceding an individual's benefit year.

12 (2) With respect to a benefit year commencing on or after June 1,
13 1990 for an individual who immediately preceding the benefit year was
14 subject to a disability compensable under the provisions of the
15 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
16 seq.), "base year" shall mean the first four of the last five completed
17 calendar quarters immediately preceding the individual's period of
18 disability, if the employment held by the individual immediately
19 preceding the period of disability is no longer available at the
20 conclusion of that period and the individual files a valid claim for
21 unemployment benefits after the conclusion of that period. For the
22 purposes of this paragraph, "period of disability" means the period
23 defined as a period of disability by section 3 of the "Temporary
24 Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual
25 who files a claim under the provisions of this paragraph (2) shall not
26 be regarded as having left work voluntarily for the purposes of
27 subsection (a) of R.S.43:21-5.

28 (3) With respect to a benefit year commencing on or after June 1,
29 1990 for an individual who immediately preceding the benefit year was
30 subject to a disability compensable under the provisions of the
31 workers' compensation law (chapter 15 of Title 34 of the Revised
32 Statutes), "base year" shall mean the first four of the last five
33 completed calendar quarters immediately preceding the individual's
34 period of disability, if the period of disability was not longer than two
35 years, if the employment held by the individual immediately preceding
36 the period of disability is no longer available at the conclusion of that
37 period and if the individual files a valid claim for unemployment
38 benefits after the conclusion of that period. For the purposes of this
39 paragraph, "period of disability" means the period from the time at
40 which the individual becomes unable to work because of the
41 compensable disability until the time that the individual becomes able
42 to resume work and continue work on a permanent basis. An
43 individual who files a claim under the provisions of this paragraph (3)
44 shall not be regarded as having left work voluntarily for the purposes
45 of subsection (a) of R.S.43:21-5.

46 (d) "Benefit year" with respect to any individual means the 364

1 consecutive calendar days beginning with the day on, or as of, which
2 he first files a valid claim for benefits, and thereafter beginning with
3 the day on, or as of, which the individual next files a valid claim for
4 benefits after the termination of his last preceding benefit year. Any
5 claim for benefits made in accordance with subsection (a) of
6 R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of
7 this subsection if (1) he is unemployed for the week in which, or as of
8 which, he files a claim for benefits; and (2) he has fulfilled the
9 conditions imposed by subsection (e) of R.S.43:21-4.

10 (e) (1) "Division" means the Division of Unemployment and
11 Temporary Disability Insurance of the Department of Labor, and any
12 transaction or exercise of authority by the director of the division
13 thereunder, or under this chapter (R.S.43:21-1 et seq.), shall be
14 deemed to be performed by the division.

15 (2) "Controller" means the Office of the Assistant Commissioner
16 for Finance and Controller of the Department of Labor, established by
17 the 1982 Reorganization Plan of the Department of Labor.

18 (f) "Contributions" means the money payments to the State
19 Unemployment Compensation Fund, required by R.S.43:21-7.
20 "Payments in lieu of contributions" means the money payments to the
21 State Unemployment Compensation Fund by employers electing or
22 required to make payments in lieu of contributions, as provided in
23 section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

24 (g) "Employing unit" means the State or any of its instrumentalities
25 or any political subdivision thereof or any of its instrumentalities or
26 any instrumentality of more than one of the foregoing or any
27 instrumentality of any of the foregoing and one or more other states
28 or political subdivisions or any individual or type of organization, any
29 partnership, association, trust, estate, joint-stock company, insurance
30 company or corporation, whether domestic or foreign, or the receiver,
31 trustee in bankruptcy, trustee or successor thereof, or the legal
32 representative of a deceased person, which has or subsequent to
33 January 1, 1936, had in its employ one or more individuals performing
34 services for it within this State. All individuals performing services
35 within this State for any employing unit which maintains two or more
36 separate establishments within this State shall be deemed to be
37 employed by a single employing unit for all the purposes of this
38 chapter (R.S.43:21-1 et seq.). Each individual employed to perform
39 or to assist in performing the work of any agent or employee of an
40 employing unit shall be deemed to be employed by such employing unit
41 for all the purposes of this chapter (R.S.43:21-1 et seq.), whether such
42 individual was hired or paid directly by such employing unit or by such
43 agent or employee; provided the employing unit had actual or
44 constructive knowledge of the work.

45 (h) "Employer" means:

46 (1) Any employing unit which in either the current or the preceding

- 1 calendar year paid remuneration for employment in the amount of
2 \$1,000.00 or more;
- 3 (2) Any employing unit (whether or not an employing unit at the
4 time of acquisition) which acquired the organization, trade or business,
5 or substantially all the assets thereof, of another which, at the time of
6 such acquisition, was an employer subject to this chapter (R.S.43:21-1
7 et seq.);
- 8 (3) Any employing unit which acquired the organization, trade or
9 business, or substantially all the assets thereof, of another employing
10 unit and which, if treated as a single unit with such other employing
11 unit, would be an employer under paragraph (1) of this subsection;
- 12 (4) Any employing unit which together with one or more other
13 employing units is owned or controlled (by legally enforceable means
14 or otherwise), directly or indirectly by the same interests, or which
15 owns or controls one or more other employing units (by legally
16 enforceable means or otherwise), and which, if treated as a single unit
17 with such other employing unit or interest, would be an employer
18 under paragraph (1) of this subsection;
- 19 (5) Any employing unit for which service in employment as
20 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December 31,
21 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed after
22 December 31, 1977;
- 23 (6) Any employing unit for which service in employment as defined
24 in R.S.43:21-19 (i) (1) (C) is performed after December 31, 1971 and
25 which in either the current or the preceding calendar year paid
26 remuneration for employment in the amount of \$1,000.00 or more;
- 27 (7) Any employing unit not an employer by reason of any other
28 paragraph of this subsection (h) for which, within either the current or
29 preceding calendar year, service is or was performed with respect to
30 which such employing unit is liable for any federal tax against which
31 credit may be taken for contributions required to be paid into a state
32 unemployment fund; or which, as a condition for approval of the
33 "unemployment compensation law" for full tax credit against the tax
34 imposed by the Federal Unemployment Tax Act, is required pursuant
35 to such act to be an employer under this chapter (R.S.43:21-1 et seq.);
- 36 (8) (Deleted by amendment; P.L.1977, c.307.)
- 37 (9) (Deleted by amendment; P.L.1977, c.307.)
- 38 (10) (Deleted by amendment; P.L.1977, c.307.)
- 39 (11) Any employing unit subject to the provisions of the Federal
40 Unemployment Tax Act within either the current or the preceding
41 calendar year, except for employment hereinafter excluded under
42 paragraph (7) of subsection (i) of this section;
- 43 (12) Any employing unit for which agricultural labor in
44 employment as defined in R.S.43:21-19 (i) (1) (I) is performed after
45 December 31, 1977;
- 46 (13) Any employing unit for which domestic service in employment

1 as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31,
2 1977;

3 (14) Any employing unit which having become an employer under
4 the "unemployment compensation law" (R.S.43:21-1 et seq.), has not
5 under R.S.43:21-8 ceased to be an employer; or for the effective
6 period of its election pursuant to R.S.43:21-8, any other employing
7 unit which has elected to become fully subject to this chapter
8 (R.S.43:21-1 et seq.).

9 (i) (1) "Employment" means:

10 (A) Any service performed prior to January 1, 1972, which was
11 employment as defined in the "unemployment compensation law"
12 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
13 provisions of this subsection, service performed on or after January 1,
14 1972, including service in interstate commerce, performed for
15 remuneration or under any contract of hire, written or oral, express or
16 implied.

17 (B) (i) Service performed after December 31, 1971 by an individual
18 in the employ of this State or any of its instrumentalities or in the
19 employ of this State and one or more other states or their
20 instrumentalities for a hospital or institution of higher education
21 located in this State, if such service is not excluded from
22 "employment" under paragraph (D) below.

23 (ii) Service performed after December 31, 1977, in the employ of
24 this State or any of its instrumentalities or any political subdivision
25 thereof or any of its instrumentalities or any instrumentality of more
26 than one of the foregoing or any instrumentality of the foregoing and
27 one or more other states or political subdivisions, if such service is not
28 excluded from "employment" under paragraph (D) below.

29 (C) Service performed after December 31, 1971 by an individual
30 in the employ of a religious, charitable, educational, or other
31 organization, which is excluded from "employment" as defined in the
32 Federal Unemployment Tax Act, solely by reason of section 3306 (c)
33 (8) of that act, if such service is not excluded from "employment"
34 under paragraph (D) below.

35 (D) For the purposes of paragraphs (B) and (C), the term
36 "employment" does not apply to services performed

37 (i) In the employ of (I) a church or convention or association of
38 churches, or (II) an organization, or school which is operated primarily
39 for religious purposes and which is operated, supervised, controlled or
40 principally supported by a church or convention or association of
41 churches;

42 (ii) By a duly ordained, commissioned, or licensed minister of a
43 church in the exercise of his ministry or by a member of a religious
44 order in the exercise of duties required by such order;

45 (iii) Prior to January 1, 1978, in the employ of a school which is
46 not an institution of higher education, and after December 31, 1977,

- 1 in the employ of a governmental entity referred to in R.S.43:21-19 (i)
2 (1) (B), if such service is performed by an individual in the exercise of
3 duties
- 4 (aa) as an elected official;
- 5 (bb) as a member of a legislative body, or a member of the
6 judiciary, of a state or political subdivision;
- 7 (cc) as a member of the State National Guard or Air National
8 Guard;
- 9 (dd) as an employee serving on a temporary basis in case of fire,
10 storm, snow, earthquake, flood or similar emergency;
- 11 (ee) in a position which, under or pursuant to the laws of this
12 State, is designated as a major nontenured policy making or advisory
13 position, or a policy making or advisory position, the performance of
14 the duties of which ordinarily does not require more than eight hours
15 per week; or
- 16 (iv) By an individual receiving rehabilitation or remunerative work
17 in a facility conducted for the purpose of carrying out a program of
18 rehabilitation of individuals whose earning capacity is impaired by age
19 or physical or mental deficiency or injury or providing remunerative
20 work for individuals who because of their impaired physical or mental
21 capacity cannot be readily absorbed in the competitive labor market;
- 22 (v) By an individual receiving work-relief or work-training as part
23 of an unemployment work-relief or work-training program assisted in
24 whole or in part by any federal agency or an agency of a state or
25 political subdivision thereof; or
- 26 (vi) Prior to January 1, 1978, for a hospital in a State prison or
27 other State correctional institution by an inmate of the prison or
28 correctional institution and after December 31, 1977, by an inmate of
29 a custodial or penal institution.
- 30 (E) The term "employment" shall include the services of an
31 individual who is a citizen of the United States, performed outside the
32 United States after December 31, 1971 (except in Canada and in the
33 case of the Virgin Islands, after December 31, 1971 and prior to
34 January 1 of the year following the year in which the U.S. Secretary
35 of Labor approves the unemployment compensation law of the Virgin
36 Islands, under section 3304 (a) of the Internal Revenue Code of 1986
37 (26 U.S.C. §3304 (a)) in the employ of an American employer (other
38 than the service which is deemed employment under the provisions of
39 R.S.43:21-19 (i) (2) or (5) of the parallel provisions of another state's
40 unemployment compensation law), if
- 41 (i) The American employer's principal place of business in the
42 United States is located in this State; or
- 43 (ii) The American employer has no place of business in the United
44 States, but (I) the American employer is an individual who is a resident
45 of this State; or (II) the American employer is a corporation which is
46 organized under the laws of this State; or (III) the American employer

1 is a partnership or trust and the number of partners or trustees who are
2 residents of this State is greater than the number who are residents of
3 another state; or

4 (iii) None of the criteria of divisions (i) and (ii) of this
5 subparagraph (E) is met but the American employer has elected to
6 become an employer subject to the "unemployment compensation law"
7 (R.S.43:21-1 et seq.) in this State, or the American employer having
8 failed to elect to become an employer in any state, the individual has
9 filed a claim for benefits, based on such service, under the law of this
10 State;

11 (iv) An "American employer," for the purposes of this
12 subparagraph (E), means (I) an individual who is a resident of the
13 United States; or (II) a partnership, if two-thirds or more of the
14 partners are residents of the United States; or (III) a trust, if all the
15 trustees are residents of the United States; or (IV) a corporation
16 organized under the laws of the United States or of any state.

17 (F) Notwithstanding R.S.43:21-19 (i) (2), all service performed
18 after January 1, 1972 by an officer or member of the crew of an
19 American vessel or American aircraft on or in connection with such
20 vessel or aircraft, if the operating office from which the operations of
21 such vessel or aircraft operating within, or within and without, the
22 United States are ordinarily and regularly supervised, managed,
23 directed, and controlled, is within this State.

24 (G) Notwithstanding any other provision of this subsection, service
25 in this State with respect to which the taxes required to be paid under
26 any federal law imposing a tax against which credit may be taken for
27 contributions required to be paid into a state unemployment fund or
28 which as a condition for full tax credit against the tax imposed by the
29 Federal Unemployment Tax Act is required to be covered under the
30 "unemployment compensation law" (R.S.43:21-1 et seq.).

31 (H) The term "United States" when used in a geographical sense
32 in subsection R.S.43:21-19 (i) includes the states, the District of
33 Columbia, the Commonwealth of Puerto Rico and, effective on the day
34 after the day on which the U.S. Secretary of Labor approves for the
35 first time under section 3304 (a) of the Internal Revenue Code of 1986
36 (26 U.S.C §3304 (a)) an unemployment compensation law submitted
37 to the Secretary by the Virgin Islands for such approval, the Virgin
38 Islands.

39 (I) (i) Service performed after December 31, 1977 in agricultural
40 labor in a calendar year for an entity which is an employer as defined
41 in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of
42 January 1 of such year; or for an employing unit which

43 (aa) during any calendar quarter in either the current or the
44 preceding calendar year paid remuneration in cash of \$20,000.00 or
45 more for individuals employed in agricultural labor, or

46 (bb) for some portion of a day in each of 20 different calendar

1 weeks, whether or not such weeks were consecutive, in either the
2 current or the preceding calendar year, employed in agricultural labor
3 10 or more individuals, regardless of whether they were employed at
4 the same moment in time.

5 (ii) For the purposes of this subsection any individual who is a
6 member of a crew furnished by a crew leader to perform service in
7 agricultural labor for any other entity shall be treated as an employee
8 of such crew leader

9 (aa) if such crew leader holds a certification of registration under
10 the Migrant and Seasonal Agricultural Worker Protection Act,
11 Pub.L.97-470 (29 U.S.C.§1801 et seq.), or P.L.1971, c.192
12 (C.34:8A-7 et seq.); or substantially all the members of such crew
13 operate or maintain tractors, mechanized harvesting or cropdusting
14 equipment, or any other mechanized equipment, which is provided by
15 such crew leader; and

16 (bb) if such individual is not an employee of such other person for
17 whom services were performed.

18 (iii) For the purposes of subparagraph (I) (i) in the case of any
19 individual who is furnished by a crew leader to perform service in
20 agricultural labor or any other entity and who is not treated as an
21 employee of such crew leader under (I) (ii)

22 (aa) such other entity and not the crew leader shall be treated as
23 the employer of such individual; and

24 (bb) such other entity shall be treated as having paid cash
25 remuneration to such individual in an amount equal to the amount of
26 cash remuneration paid to such individual by the crew leader (either on
27 his own behalf or on behalf of such other entity) for the service in
28 agricultural labor performed for such other entity.

29 (iv) For the purpose of subparagraph (I) (i), the term "crew leader"
30 means an individual who

31 (aa) furnishes individuals to perform service in agricultural labor
32 for any other entity;

33 (bb) pays (either on his own behalf or on behalf of such other
34 entity) the individuals so furnished by him for the service in
35 agricultural labor performed by them; and

36 (cc) has not entered into a written agreement with such other entity
37 under which such individual is designated as an employee of such other
38 entity.

39 (J) Domestic service after December 31, 1977 performed in the
40 private home of an employing unit which paid cash remuneration of
41 \$1,000.00 or more to one or more individuals for such domestic
42 service in any calendar quarter in the current or preceding calendar
43 year.

44 (2) The term "employment" shall include an individual's entire
45 service performed within or both within and without this State if:

46 (A) The service is localized in this State; or

1 (B) The service is not localized in any state but some of the service
2 is performed in this State, and (i) the base of operations, or, if there is
3 no base of operations, then the place from which such service is
4 directed or controlled, is in this State; or (ii) the base of operations or
5 place from which such service is directed or controlled is not in any
6 state in which some part of the service is performed, but the
7 individual's residence is in this State.

8 (3) Services performed within this State but not covered under
9 paragraph (2) of this subsection shall be deemed to be employment
10 subject to this chapter (R.S.43:21-1 et seq.) if contributions are not
11 required and paid with respect to such services under an
12 unemployment compensation law of any other state or of the federal
13 government.

14 (4) Services not covered under paragraph (2) of this subsection and
15 performed entirely without this State, with respect to no part of which
16 contributions are required and paid under an unemployment
17 compensation law of any other state or of the federal government,
18 shall be deemed to be employment subject to this chapter (R.S.43:21-1
19 et seq.) if the individual performing such services is a resident of this
20 State and the employing unit for whom such services are performed
21 files with the division an election that the entire service of such
22 individual shall be deemed to be employment subject to this chapter
23 (R.S.43:21-1 et seq.).

24 (5) Service shall be deemed to be localized within a state if:

25 (A) The service is performed entirely within such state; or

26 (B) The service is performed both within and without such state,
27 but the service performed without such state is incidental to the
28 individual's service within the state; for example, is temporary or
29 transitory in nature or consists of isolated transactions.

30 (6) Services performed by an individual for remuneration shall be
31 deemed to be employment subject to this chapter (R.S.43:21-1 et seq.)
32 unless and until it is shown to the satisfaction of the division that:

33 (A) Such individual has been and will continue to be free from
34 control or direction over the performance of such service, both under
35 his contract of service and in fact; and

36 (B) Such service is either outside the usual course of the business
37 for which such service is performed, or that such service is performed
38 outside of all the places of business of the enterprise for which such
39 service is performed; and

40 (C) Such individual is customarily engaged in an independently
41 established trade, occupation, profession or business.

42 (7) Provided that such services are also exempt under the Federal
43 Unemployment Tax Act, as amended, or that contributions with
44 respect to such services are not required to be paid into a state
45 unemployment fund as a condition for a tax offset credit against the
46 tax imposed by the Federal Unemployment Tax Act, as amended, the

1 term "employment" shall not include:

2 (A) Agricultural labor performed prior to January 1, 1978; and
3 after December 31, 1977, only if performed in a calendar year for an
4 entity which is not an employer as defined in the "unemployment
5 compensation law," (R.S.43:21-1 et seq.) as of January 1 of such
6 calendar year; or unless performed for an employing unit which

7 (i) during a calendar quarter in either the current or the preceding
8 calendar year paid remuneration in cash of \$20,000.00 or more to
9 individuals employed in agricultural labor, or

10 (ii) for some portion of a day in each of 20 different calendar
11 weeks, whether or not such weeks were consecutive, in either the
12 current or the preceding calendar year, employed in agricultural labor
13 10 or more individuals, regardless of whether they were employed at
14 the same moment in time;

15 (B) Domestic service in a private home performed prior to January
16 1, 1978; and after December 31, 1977, unless performed in the private
17 home of an employing unit which paid cash remuneration of \$1,000.00
18 or more to one or more individuals for such domestic service in any
19 calendar quarter in the current or preceding calendar year;

20 (C) Service performed by an individual in the employ of his son,
21 daughter or spouse, and service performed by a child under the age of
22 18 in the employ of his father or mother;

23 (D) Service performed prior to January 1, 1978, in the employ of
24 this State or of any political subdivision thereof or of any
25 instrumentality of this State or its political subdivisions, except as
26 provided in R.S.43:21-19 (i) (1) (B) above, and service in the employ
27 of the South Jersey Port Corporation or its successors;

28 (E) Service performed in the employ of any other state or its
29 political subdivisions or of an instrumentality of any other state or
30 states or their political subdivisions to the extent that such
31 instrumentality is with respect to such service exempt under the
32 Constitution of the United States from the tax imposed under the
33 Federal Unemployment Tax Act, as amended, except as provided in
34 R.S.43:21-19 (i) (1) (B) above;

35 (F) Service performed in the employ of the United States
36 Government or of any instrumentality of the United States except
37 under the Constitution of the United States from the contributions
38 imposed by the "unemployment compensation law," except that to the
39 extent that the Congress of the United States shall permit states to
40 require any instrumentalities of the United States to make payments
41 into an unemployment fund under a state unemployment compensation
42 law, all of the provisions of this act shall be applicable to such
43 instrumentalities, and to service performed for such instrumentalities,
44 in the same manner, to the same extent and on the same terms as to all
45 other employers, employing units, individuals and services; provided
46 that if this State shall not be certified for any year by the Secretary of

1 Labor of the United States under section 3304 of the federal Internal
2 Revenue Code of 1986 (26 U.S.C. §3304), the payments required of
3 such instrumentalities with respect to such year shall be refunded by
4 the division from the fund in the same manner and within the same
5 period as is provided in R.S.43:21-14 (f) with respect to contributions
6 erroneously paid to or collected by the division;

7 (G) Services performed in the employ of fraternal beneficiary
8 societies, orders, or associations operating under the lodge system or
9 for the exclusive benefit of the members of a fraternity itself operating
10 under the lodge system and providing for the payment of life, sick,
11 accident, or other benefits to the members of such society, order, or
12 association, or their dependents;

13 (H) Services performed as a member of the board of directors, a
14 board of trustees, a board of managers, or a committee of any bank,
15 building and loan, or savings and loan association, incorporated or
16 organized under the laws of this State or of the United States, where
17 such services do not constitute the principal employment of the
18 individual;

19 (I) Service with respect to which unemployment insurance is
20 payable under an unemployment insurance program established by an
21 Act of Congress;

22 (J) Service performed by agents of mutual fund brokers or dealers
23 in the sale of mutual funds or other securities, by agents of insurance
24 companies, exclusive of industrial insurance agents or by agents of
25 investment companies, if the compensation to such agents for such
26 services is wholly on a commission basis;

27 (K) Services performed by real estate salesmen or brokers who are
28 compensated wholly on a commission basis;

29 (L) Services performed in the employ of any veterans' organization
30 chartered by Act of Congress or of any auxiliary thereof, no part of the
31 net earnings of which organization, or auxiliary thereof, inures to the
32 benefit of any private shareholder or individual;

33 (M) Service performed for or in behalf of the owner or operator of
34 any theatre, ballroom, amusement hall or other place of entertainment,
35 not in excess of 10 weeks in any calendar year for the same owner or
36 operator, by any leader or musician of a band or orchestra, commonly
37 called a "name band," entertainer, vaudeville artist, actor, actress,
38 singer or other entertainer;

39 (N) Services performed after January 1, 1973 by an individual for
40 a labor union organization, known and recognized as a union local, as
41 a member of a committee or committees reimbursed by the union local
42 for time lost from regular employment, or as a part-time officer of a
43 union local and the remuneration for such services is less than
44 \$1,000.00 in a calendar year;

45 (O) Services performed in the sale or distribution of merchandise
46 by home-to-home salespersons or in-the-home demonstrators whose

1 remuneration consists wholly of commissions or commissions and
2 bonuses;

3 (P) Service performed in the employ of a foreign government,
4 including service as a consular, nondiplomatic representative, or other
5 officer or employee;

6 (Q) Service performed in the employ of an instrumentality wholly
7 owned by a foreign government if (i) the service is of a character
8 similar to that performed in foreign countries by employees of the
9 United States Government or of an instrumentality thereof, and (ii) the
10 division finds that the United States Secretary of State has certified to
11 the United States Secretary of the Treasury that the foreign
12 government, with respect to whose instrumentality exemption is
13 claimed, grants an equivalent exemption with respect to similar
14 services performed in the foreign country by employees of the United
15 States Government and of instrumentalities thereof;

16 (R) Service in the employ of an international organization entitled
17 to enjoy the privileges, exemptions and immunities under the
18 International Organizations Immunities Act (22 U.S.C. §288 et seq.);

19 (S) Service covered by an election duly approved by an agency
20 charged with the administration of any other state or federal
21 unemployment compensation or employment security law, in
22 accordance with an arrangement pursuant to R.S.43:21-21 during the
23 effective period of such election;

24 (T) Service performed in the employ of a school, college, or
25 university if such service is performed (i) by a student enrolled at such
26 school, college, or university on a full-time basis in an educational
27 program or completing such educational program leading to a degree
28 at any of the severally recognized levels, or (ii) by the spouse of such
29 a student, if such spouse is advised at the time such spouse commences
30 to perform such service that (I) the employment of such spouse to
31 perform such service is provided under a program to provide financial
32 assistance to such student by such school, college, or university, and
33 (II) such employment will not be covered by any program of
34 unemployment insurance;

35 (U) Service performed by an individual who is enrolled at a
36 nonprofit or public educational institution which normally maintains a
37 regular faculty and curriculum and normally has a regularly organized
38 body of students in attendance at the place where its educational
39 activities are carried on, as a student in a full-time program, taken for
40 credit at such institution, which combines academic instruction with
41 work experience, if such service is an integral part of such program,
42 and such institution has so certified to the employer, except that this
43 subparagraph shall not apply to service performed in a program
44 established for or on behalf of an employer or group of employers;

45 (V) Service performed in the employ of a hospital, if such service
46 is performed by a patient of the hospital; service performed as a

1 student nurse in the employ of a hospital or a nurses' training school
2 by an individual who is enrolled and regularly attending classes in a
3 nurses' training school approved under the laws of this State; and
4 service performed as an intern in the employ of a hospital by an
5 individual who has completed a four-year course in a medical school
6 approved pursuant to the laws of this State;

7 (W) Services performed after the effective date of this amendatory
8 act by agents of mutual benefit associations if the compensation to
9 such agents for such services is wholly on a commission basis;

10 (X) Services performed for freight transportation firms by
11 operators of motor vehicles [weighing 18,000 pounds or more,
12 licensed for commercial use and] used for the highway movement of
13 motor freight, who own their equipment or who lease or finance the
14 purchase of their equipment through an entity which is not owned or
15 controlled directly or indirectly by the entity for which the services
16 were performed and who were compensated by receiving a percentage
17 of the gross revenue generated by the transportation move or by a
18 schedule of payment based on the distance and weight of the
19 transportation move. For the purposes of this subparagraph, "motor
20 vehicles" means motor vehicles licensed for commercial use and
21 registered in New Jersey and operated pursuant to a certificate or
22 permit issued by the federal Interstate Commerce Commission, and
23 "freight transportation firm" means a firm which is properly classified
24 at the three digit Standard Industrial Classification (SIC) level as 421,
25 and has as its primary business the transportation of freight, including
26 small packages and parcels, and does not engage in transporting
27 passengers;

28 (Y) Services performed by a certified shorthand reporter certified
29 pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.), provided to a third
30 party by the reporter who is referred to the third party pursuant to an
31 agreement with another certified shorthand reporter or shorthand
32 reporting service, on a freelance basis, compensation for which is
33 based upon a fee per transcript page, flat attendance fee, or other flat
34 minimum fee, or combination thereof, set forth in the agreement;

35 (Z) Services performed, using facilities provided by a travel agent,
36 by a person, commonly known as an outside travel agent, who acts as
37 an independent contractor, is paid on a commission basis, sets his own
38 work schedule and receives no benefits, sick leave, vacation or other
39 leave from the travel agent owning the facilities.

40 (8) If one-half or more of the services in any pay period performed
41 by an individual for an employing unit constitutes employment, all the
42 services of such individual shall be deemed to be employment; but if
43 more than one-half of the service in any pay period performed by an
44 individual for an employing unit does not constitute employment, then
45 none of the service of such individual shall be deemed to be
46 employment. As used in this paragraph, the term "pay period" means

1 a period of not more than 31 consecutive days for which a payment for
2 service is ordinarily made by an employing unit to individuals in its
3 employ.

4 (9) Services performed by the owner of a limousine franchise
5 (franchisee) shall not be deemed to be employment subject to the
6 "unemployment compensation law," R.S.43:21-1 et seq., with regard
7 to the franchisor if:

8 (A) The limousine franchisee is incorporated;

9 (B) The franchisee is subject to regulation by the Interstate
10 Commerce Commission;

11 (C) The limousine franchise exists pursuant to a written franchise
12 arrangement between the franchisee and the franchisor as defined by
13 section 3 of P.L.1971, c.356 (C.56:10-3); and

14 (D) The franchisee registers with the Department of Labor and
15 receives an employer registration number.

16 (j) "Employment office" means a free public employment office, or
17 branch thereof operated by this State or maintained as a part of a
18 State-controlled system of public employment offices.

19 (k) (Deleted by amendment, P.L.1984, c.24.)

20 (l) "State" includes, in addition to the states of the United States
21 of America, the District of Columbia, the Virgin Islands and Puerto
22 Rico.

23 (m) "Unemployment."

24 (1) An individual shall be deemed "unemployed" for any week
25 during which he is not engaged in full-time work and with respect to
26 which his remuneration is less than his weekly benefit rate, including
27 any week during which he is on vacation without pay; provided such
28 vacation is not the result of the individual's voluntary action, except
29 that for benefit years commencing on or after July 1, 1984, an officer
30 of a corporation, or a person who has more than a 5% equitable or
31 debt interest in the corporation, whose claim for benefits is based on
32 wages with that corporation shall not be deemed to be unemployed in
33 any week during the individual's term of office or ownership in the
34 corporation.

35 (2) The term "remuneration" with respect to any individual for
36 benefit years commencing on or after July 1, 1961, and as used in this
37 subsection, shall include only that part of the same which in any week
38 exceeds 20% of his weekly benefit rate (fractional parts of a dollar
39 omitted) or \$5.00, whichever is the larger.

40 (3) An individual's week of unemployment shall be deemed to
41 commence only after the individual has filed a claim at an
42 unemployment insurance claims office, except as the division may by
43 regulation otherwise prescribe.

44 (n) "Unemployment compensation administration fund" means the
45 unemployment compensation administration fund established by this
46 chapter (R.S.43:21-1 et seq.), from which administrative expenses

1 under this chapter (R.S.43:21-1 et seq.) shall be paid.

2 (o) "Wages" means remuneration paid by employers for
3 employment. If a worker receives gratuities regularly in the course of
4 his employment from other than his employer, his "wages" shall also
5 include the gratuities so received, if reported in writing to his
6 employer in accordance with regulations of the division, and if not so
7 reported, his "wages" shall be determined in accordance with the
8 minimum wage rates prescribed under any labor law or regulation of
9 this State or of the United States, or the amount of remuneration
10 actually received by the employee from his employer, whichever is the
11 higher.

12 (p) "Remuneration" means all compensation for personal services,
13 including commission and bonuses and the cash value of all
14 compensation in any medium other than cash.

15 (q) "Week" means for benefit years commencing on or after
16 October 1, 1984, the calendar week ending at midnight Saturday, or
17 as the division may by regulation prescribe.

18 (r) "Calendar quarter" means the period of three consecutive
19 calendar months ending March 31, June 30, September 30, or
20 December 31.

21 (s) "Investment company" means any company as defined in
22 subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

23 (t) (1) "Base week" for a benefit year commencing prior to
24 October 1, 1984, means, except as otherwise provided in paragraph
25 (2) of this subsection, any calendar week of an individual's base year
26 during which he earned in employment from an employer remuneration
27 equal to not less than \$30.00. "Base week" for a benefit year
28 commencing on or after October 1, 1984 and prior to October 1, 1985
29 means any calendar week of an individual's base year during which the
30 individual earned in employment from an employer remuneration equal
31 to not less than 15% of the Statewide average weekly remuneration
32 defined in subsection (c) of R.S.43:21-3, which shall be adjusted to the
33 next higher multiple of \$1.00 if not already a multiple thereof.

34 "Base week" for a benefit year commencing on or after October 1,
35 1985 means, except as otherwise provided in paragraph (2) of this
36 subsection, any calendar week of an individual's base year during
37 which the individual earned in employment from an employer
38 remuneration equal to not less than 20% of the Statewide average
39 weekly remuneration defined in subsection (c) of R.S.43:21-3 which
40 shall be adjusted to the next higher multiple of \$1.00 if not already a
41 multiple thereof; provided if in any calendar week an individual is in
42 employment with more than one employer, he may in such calendar
43 week establish a base week with respect to each such employer from
44 whom the individual earns remuneration equal to not less than the
45 amount defined in this paragraph (1) during such week.

46 (2) "Base week," with respect to an individual claiming benefits on

1 the basis of service performed in the production and harvesting of
2 agricultural crops, means, for a benefit year commencing on or after
3 October 1, 1984 and before January 1, 1985, any calendar week of an
4 individual's base year during which the individual earned in
5 employment from an employer remuneration equal to not less than
6 \$30.00, except that if in any calendar week an individual subject to this
7 paragraph is in employment with more than one employer, the
8 individual may in that calendar week establish a base week with
9 respect to each of the employers from whom the individual earns
10 remuneration equal to not less than the amount defined in this
11 paragraph (2) during that week.

12 (u) "Average weekly wage" means the amount derived by dividing
13 an individual's total wages received during his base year base weeks
14 (as defined in subsection (t) of this section) from that most recent base
15 year employer with whom he has established at least 20 base weeks,
16 by the number of base weeks in which such wages were earned. In the
17 event that such claimant had no employer in his base year with whom
18 he had established at least 20 base weeks, then such individual's
19 average weekly wage shall be computed as if all of his base week
20 wages were received from one employer and as if all his base weeks of
21 employment had been performed in the employ of one employer.

22 For the purpose of computing the average weekly wage, the
23 monetary alternative in subsection (e) of R.S.43:21-4 shall only apply
24 in those instances where the individual did not have at least 20 base
25 weeks in the base year. For benefit years commencing on or after July
26 1, 1986, "average weekly wage" means the amount derived by dividing
27 an individual's total base year wages by the number of base weeks
28 worked by the individual during the base year; provided that for the
29 purpose of computing the average weekly wage, the maximum number
30 of base weeks used in the divisor shall be 52.

31 (v) "Initial determination" means, subject to the provisions of
32 R.S.43:21-6 (b) (2) and (3), a determination of benefit rights as
33 measured by an eligible individual's base year employment with a
34 single employer covering all periods of employment with that employer
35 during the base year. For benefit years commencing prior to July 1,
36 1986, subject to the provisions of R.S.43:21-3 (d) (3), if an individual
37 has been in employment in his base year with more than one employer,
38 no benefits shall be paid to that individual under any successive initial
39 determination until his benefit rights have been exhausted under the
40 next preceding initial determination.

41 (w) "Last date of employment" means the last calendar day in the
42 base year of an individual on which he performed services in
43 employment for a given employer.

44 (x) "Most recent base year employer" means that employer with
45 whom the individual most recently, in point of time, performed service
46 in employment in the base year.

1 (y) (1) "Educational institution" means any public or other
2 nonprofit institution (including an institution of higher education):

3 (A) In which participants, trainees, or students are offered an
4 organized course of study or training designed to transfer to them
5 knowledge, skills, information, doctrines, attitudes or abilities from,
6 by or under the guidance of an instructor (s) or teacher (s);

7 (B) Which is approved, licensed or issued a permit to operate as a
8 school by the State Department of Education or other government
9 agency that is authorized within the State to approve, license or issue
10 a permit for the operation of a school; and

11 (C) Which offers courses of study or training which may be
12 academic, technical, trade, or preparation for gainful employment in
13 a recognized occupation.

14 (2) "Institution of higher education" means an educational
15 institution which:

16 (A) Admits as regular students only individuals having a certificate
17 of graduation from a high school, or the recognized equivalent of such
18 a certificate;

19 (B) Is legally authorized in this State to provide a program of
20 education beyond high school;

21 (C) Provides an educational program for which it awards a
22 bachelor's or higher degree, or provides a program which is acceptable
23 for full credit toward such a degree, a program of post-graduate or
24 post-doctoral studies, or a program of training to prepare students for
25 gainful employment in a recognized occupation; and

26 (D) Is a public or other nonprofit institution.

27 Notwithstanding any of the foregoing provisions of this subsection,
28 all colleges and universities in this State are institutions of higher
29 education for purposes of this section.

30 (z) "Hospital" means an institution which has been licensed,
31 certified or approved under the law of this State as a hospital.

32 (cf: P.L.1993, c.312, s.1)

33

34 2. This act shall take effect immediately.

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STATEMENT

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39 Current law exempts services performed by certain operators of
40 trucks over 18,000 pounds from being subject to unemployment
41 compensation and temporary disability contributions. This bill
42 expands that exemption to include certain operators of light trucks.

43 Specifically, services exempt under the bill are those performed for
44 freight transportation firms by operators of motor vehicles used for
45 motor freight, who own their own equipment or lease or finance the
46 purchase of their own equipment and are compensated by receiving a

1 percentage of the gross revenue generated by the haul or by a schedule
2 of payment based upon the distance and weight of the motor freight
3 moved. To be subject to the exemption, the motor vehicle of the
4 operator must be licensed for commercial use and registered in New
5 Jersey and operated pursuant to a certificate or permit issued by the
6 Interstate Commerce Commission.

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11 Exempts certain operators of certain trucks from the "unemployment
12 compensation law."