ASSEMBLY, No. 34

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1941

By Mr. HUNTINGTON

Referred to Committee on Judiciary

AN ACT defining the term "employment" as used in the unemployment compensation law, being chapter twenty-one of Title 43 of the Revised Statutes, and amending section 43:21-19 of the Revised Statutes, as amended by chapter ninety-four, pamphlet laws of one thousand nine hundred and thirty-nine, and chapter two hundred and forty-seven, pamphlet laws of one thousand nine hundred and forty.

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

1. Section 43:21-19 of the Revised Statutes is amended to read as follows:

43:21-19. As used in this chapter, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(c) The term "base year" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year" with respect to any individual means the fifty-two consecutive week periods beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year; *provided,* that no succeeding benefit year shall commence before the expiration of one full year from and after the first day of the preceding benefit year. Any claim for benefits made in accordance with section six (a) of this act shall be deemed to be a "valid claim" for the purpose of this subsection if the individual has fulfilled the condition imposed by section four (e).

(e) "Commission" means the Unemployment Compensation Commission established by section 43:21–10 of this Title, and for purposes of this chapter any transaction or exercise of authority by the executive director shall be deemed to be performed by the commission.

(f) "Contributions" means the money payments to the State unemployment compensation fund required by this chapter.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection (c) of section 43:21–8 of this Title or subsection (h) of this section, the employing unit shall for all

the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of subsection (c) of section 43:21–8 of this Title or subsection (h) of this section, shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection (c) of section 43:21–8 of this Title or subsection (h) of this section, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee; *provided*, the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, eight or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforcible means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforcible means or otherwise), and which, if treated as a single unit with such other employing unit or interests, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3) or (4), has not, under section 43:21-8 of this Title, ceased to be an employer subject to this chapter; or

(6) For the effective period of its election pursuant to subsection (c) of section 43:21-8 of this Title any other employing unit which has elected to become fully subject to this chapter.

(i) (1) "Employment" means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

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

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

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

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an employment compensation law of any other State or of the Federal Government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal Government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this State and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter; *provided,* written objections on the part of a substantial proportion of such individuals affected are not presented to the commission within ten days following the filing of such election.

(5) Service shall be deemed to be localized within a State if

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that

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

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

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

(7) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(E) Service performed in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions;

(F) Service performed in the employ of any other State or its political subdivisions, or of the United States Government, or of an instrumentality of any other State or States or their political subdivisions or of the United States;

(G) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operating exclusively for religious, charitable, scientific, literary, hospital, benevolent, philanthropic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

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

(I) Services performed as an officer or other employee of any building and loan association of this State, except where such services constitute the principal employment of the individual; services performed as an officer or other employee of any building and loan association where such association is a member of the Federal Home Loan Bank System; services performed as an officer or other employee of any bank which is a member of the Federal Reserve System;

(J) Service, performed after June thirtieth, one thousand nine hundred and thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094).

(K) Service heretofore or hereafter performed by agents of insurance companies, exclusive of industrial life insurance agents, or by agents of investment companies who are compensated wholly on a commission basis, and there shall be no liability or right of action for any contribution or penalty accrued or due under the provisions of this act, by reason of any such service.

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

(k) "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(l) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(m) Unemployment.

(1) An individual shall be deemed "unemployed" for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate.

(2) The term remuneration, as used in this subsection, shall include only that part of the same which exceeds three dollars ($3.00) for any one (1) week.

(3) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(o) "Wages" means remuneration payable by employers for employment.

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

(q) "Week" means such period or periods of seven consecutive calendar days ending at midnight, as the commission may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the commission may by regulation prescribe.

(s) "Investment company" means any company as defined in paragraph 1.a of chapter three hundred twenty-two of the laws of one thousand nine hundred and thirty-eight, ~~Revised Statutes, section 17-16A-1a~~ entitled "An act concerning investment companies, and supplementing Title 17 of the Revised Statutes by adding thereto a new chapter entitled 'investment companies'."

2. ~~This act shall take effect April first, one thousand nine hundred and forty-one.~~

STATEMENT

The purpose of this bill is to clarify the tax provisions of the Unemployment Insurance Law by the exclusion therefrom of the classification of insurance and investment agents compensated wholly on a commission basis, because such agents are independent contractors and the commissions earned by them can form no practical basis for the ultimate payment of benefits to them, and are not subject to the provisions of the Federal Social Security Act.

[SECOND OFFICIAL COPY REPRINT]

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STATE OF NEW JERSEY

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1. Section 43:21-19 of the Revised Statutes is amended to read as follows:

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(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(c) The term "base year" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year" with respect to any individual means the fifty-two consecutive week periods beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year; *provided,* that no succeeding benefit year shall commence before the expiration of one full year from and after the first day of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of section 43:21-6 of this Title shall be deemed to be a "valid claim" for the purpose of this subsection if the individual has fulfilled the condition imposed by subsection (c) of section 43:21-4 of this Title.

(e) "Commission" means the Unemployment Compensation Commission established by section 43:21-10 of this Title, and for purposes of this chapter any transaction or exercise of authority by the executive director shall be deemed to be performed by the commission.

(f) "Contributions" means the money payments to the State unemployment compensation fund required by this chapter.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection (c) of section 43:21-8 of

this Title or subsection (h) of this section, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee; *provided,* the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, eight or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforcible means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforcible means or otherwise), and which, if treated as a single unit with such other employing unit or interests, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3) or (4), has not, under section 43:21-8 of this Title, ceased to be an employer subject to this chapter; or

(6) For the effective period of its election pursuant to subsection (c) of section 43:21-8 of this Title any other employing unit which has elected to become fully subject to this chapter.

(i) (1) "Employment" means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

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

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

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

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other State or of the Federal Government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal Government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this State and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter; *provided,* written objections on the part of a substantial proportion of such individuals affected are not presented to the commission within ten days following the filing of such election.

(5) Service shall be deemed to be localized within a State if

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that

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

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

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

(7) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

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(E) Service performed in te United States;

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political subdivisions; performed by a child under the age of

(F) Service performed in tfather or mother;

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(D) Service performed by a

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

(I) Services performed as an officer or other employee of any building and loan association of this State, except where such services constitute the principal employment of the individual; services performed as an officer or other employee of any building and loan association where such association is a member of the Federal Home Loan Bank System; services performed as an officer or other employee of any bank which is a member of the Federal Reserve System;

(J) Service, performed after June thirtieth, one thousand nine hundred and thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094).

(K) Service heretofore or hereafter performed by agents of insurance companies, exclusive of industrial life insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis, and there shall be no liability or right of action for any contribution or penalty accrued or due under the provisions of this act, by reason of any such service.

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

(k) "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(l) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(m) Unemployment.

(1) An individual shall be deemed "unemployed" for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate.

(2) The term remuneration, as used in this subsection, shall include only that part of the same which exceeds three dollars ($3.00) for any one (1) week.

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(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(o) "Wages" means remuneration payable by employers for employment.

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

(q) "Week" means such period or periods of seven consecutive calendar days ending at midnight, as the commission may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the commission may by regulation prescribe.

(s) "Investment company" means any company as defined in paragraph 1.a of chapter three hundred twenty-two of the laws of one thousand nine hundred and thirty-eight, entitled "An act concerning investment companies, and supplementing Title 17 of the Revised Statutes by adding thereto a new chapter entitled 'investment companies'."

2. This act shall take effect July first, one thousand nine hundred and forty-one, and shall apply to all benefits payable with respect to benefit years beginning on or after said date, and any benefits accruing to any individual on or after said date with respect to benefit years beginning before said date, shall be paid in accordance with subsection (b) of section 43:21-3 of this chapter, and shall supersede section three of chapter two hundred and forty-seven of the laws of one thousand nine hundred and forty.

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STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1941

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Referred to Committee on Judiciary

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(b) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(c) The term "base year" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year" with respect to any individual means the fifty-two consecutive week periods beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year; *provided,* that no succeeding benefit year shall commence before the expiration of one full year from and after the first day of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of section 43:21-6 of this Title shall be deemed to be a "valid claim" for the purpose of this subsection if the individual has fulfilled the condition imposed by subsection (c) of section 43:21-4 of this Title.

(e) "Commission" means the Unemployment Compensation Commission established by section 43:21-10 of this Title, and for purposes of this chapter any transaction or exercise of authority by the executive director shall be deemed to be performed by the commission.

(f) "Contributions" means the money payments to the State unemployment compensation fund required by this chapter.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection (c) of section 43:21-8 of

this Title or subsection (h) of this section, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee; *provided,* the employing unit had actual or constructive knowledge of the work.

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(f) "Contributions" means the money payments to the State unemployment compensation fund required by this chapter.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection (c) of section 43:21–8 of

this Title or subsection (h) of this section, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee; *provided*, the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, eight or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforcible means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforcible means or otherwise), and which, if treated as a single unit with such other employing unit or interests, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3) or (4), has not, under section 43:21-8 of this Title, ceased to be an employer subject to this chapter; or

(6) For the effective period of its election pursuant to subsection (c) of section 43:21-8 of this Title any other employing unit which has elected to become fully subject to this chapter.

(i) (1) "Employment" means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

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

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

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

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other State or of the Federal Government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal Government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this State and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter; *provided,* written objections on the part of a substantial proportion of such individuals affected are not presented to the commission within ten days following the filing of such election.

(5) Service shall be deemed to be localized within a State if

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that

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

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

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

(7) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(E) Service performed in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions;

(F) Service performed in the employ of any other State or its political subdivisions, or of the United States Government, or of an instrumentality of any other State or States or their political subdivisions or of the United States;

(G) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, hospital, benevolent, philanthropic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

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

(I) Services performed as an officer or other employee of any building and loan association of this State, except where such services constitute the principal employment of the individual; services performed as an officer or other employee of any building and loan association where such association is a member of the Federal Home Loan Bank System; services performed as an officer or other employee of any bank which is a member of the Federal Reserve System;

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(J) Service, performed after June thirtieth, one thousand nine hundred and thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094).

(K) Service heretofore or hereafter performed by agents of insurance companies, exclusive of industrial life insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis, and there shall be no liability or right of action for any contribution or penalty accrued or due under the provisions of this act, by reason of any such service.

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

(k) "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(l) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(m) Unemployment.

(1) An individual shall be deemed "unemployed" for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate.

(2) The term remuneration, as used in this subsection, shall include only that part of the same which exceeds three dollars ($3.00) for any one (1) week.

(3) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(o) "Wages" means remuneration payable by employers for employment.

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

(q) "Week" means such period or periods of seven consecutive calendar days ending at midnight, as the commission may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the commission may by regulation prescribe.

(s) "Investment company" means any company as defined in paragraph 1.a of chapter three hundred twenty-two of the laws of one thousand nine hundred and thirty-eight, Revised Statutes, section 17-16A–1.a entitled "An act concerning investment companies, and supplementing Title 17 of the Revised Statutes by adding thereto a new chapter entitled 'investment companies'."

2. This act shall take effect April first, one thousand nine hundred and forty-one, and shall apply to all benefits payable with respect to benefit years beginning on or after said date, and any benefits accruing to any individual on or after said date with respect to benefit years beginning before said date, shall be paid in accordance with subsection (b) of section 43:21–3 of this chapter, and shall supersede section three of chapter two hundred and forty-seven of the laws of one thousand nine hundred and forty.

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ASSEMBLY, No. 34

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1941

By Mr. HUNTINGTON

Referred to Committee on Judiciary

AN ACT defining the term "employment" as used in the unemployment compensation law, being chapter twenty-one of Title 43 of the Revised Statutes, and amending section 43:21–19 of the Revised Statutes, as amended by chapter ninety-four, pamphlet laws of one thousand nine hundred and thirty-nine, and chapter two hundred and forty-seven, pamphlet laws of one thousand nine hundred and forty.

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

1. Section 43:21-19 of the Revised Statutes is amended to read as follows:

43:21–19. As used in this chapter, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(c) The term "base year" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

(d) "Benefit year" with respect to any individual means the fifty-two consecutive week periods beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year; *provided*, that no succeeding benefit year shall commence before the expiration of one full year from and after the first day of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of section 43:21–6 of this Title shall be deemed to be a "valid claim" for the purpose of this subsection if the individual has fulfilled the condition imposed by subsection (c) of section 43:21–4 of this Title.

(e) "Commission" means the Unemployment Compensation Commission established by section 43:21–10 of this Title, and for purposes of this chapter any transaction or exercise of authority by the executive director shall be deemed to be performed by the commission.

(f) "Contributions" means the money payments to the State unemployment compensation fund required by this chapter.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January first, one thousand nine hundred and thirty-six, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of subsection (c) of section 43:21–8 of

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this Title or subsection (h) of this section, the employing unit shall for all the purposes of this chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such employment; except that each such contractor or subcontractor who is an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, shall alone be liable for the contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of subsection (c) of section 43:21-8 of this Title or subsection (h) of this section, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee; *provided*, the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of twenty different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, eight or more individuals (irrespective of whether the same individuals are or were employed in each such day);

(2) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforcible means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforcible means or otherwise), and which, if treated as a single unit with such other employing unit or interests, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3) or (4), has not, under section 43:21-8 of this Title, ceased to be an employer subject to this chapter; or

(6) For the effective period of its election pursuant to subsection (c) of section 43:21-8 of this Title any other employing unit which has elected to become fully subject to this chapter.

(i) (1) "Employment" means service, including service in interstate commerce performed for remuneration or under any contract of hire, written or oral, expressed or implied.

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

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

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

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter if contributions are not required and paid with respect to such services under an unemployment compensation law of any other State or of the Federal Government.

(4) Services not covered under paragraph (2) of this subsection, and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal Government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this State and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter; *provided,* written objections on the part of a substantial proportion of such individuals affected are not presented to the commission within ten days following the filing of such election.

(5) Service shall be deemed to be localized within a State if

(A) the service is performed entirely within such State; or

(B) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commission that

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

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

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

(7) The term "employment" shall not include:

(A) Agricultural labor;

(B) Domestic service in a private home;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(E) Service performed in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions;

(F) Service performed in the employ of any other State or its political subdivisions, or of the United States Government, or of an instrumentality of any other State or States or their political subdivisions or of the United States;

(G) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, hospital, benevolent, philanthropic, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

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

(I) Services performed as an officer or other employee of any building and loan association of this State, except where such services constitute the principal employment of the individual; services performed as an officer or other employee of any building and loan association where such association is a member of the Federal Home Loan Bank System; services performed as an officer or other employee of any bank which is a member of the Federal Reserve System;

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(J) Service, performed after June thirtieth, one thousand nine hundred and thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act (52 Stat. 1094).

(K) Service performed by agents of insurance companies, exclusive of industrial life insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis.

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

(k) "Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(l) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia.

(m) Unemployment.

(1) An individual shall be deemed "unemployed" for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate.

(2) The term remuneration, as used in this subsection, shall include only that part of the same which exceeds three dollars ($3.00) for any one (1) week.

(3) An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the commission may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter, from which administrative expenses under this chapter shall be paid.

(o) "Wages" means remuneration payable by employers for employment.

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

(q) "Week" means such period or periods of seven consecutive calendar days ending at midnight, as the commission may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending on March thirty-first, June thirtieth, September thirtieth, or December thirty-first, excluding, however, any calendar quarter or portion thereof which occurs prior to January first, one thousand nine hundred and thirty-seven, or the equivalent thereof as the commission may by regulation prescribe.

(s) "Investment company" means any company as defined in paragraph 1.a of chapter three hundred twenty-two of the laws of one thousand nine hundred and thirty-eight, entitled "An act concerning investment companies, and supplementing Title 17 of the Revised Statutes by adding thereto a new chapter entitled 'investment companies'."

2. This act shall take effect July first, one thousand nine hundred and forty-one.