

SENATE, No. 1

STATE OF NEW JERSEY

INTRODUCED JANUARY 13, 1942

By Mr. HENDRICKSON

(Without Reference)

AN ACT concerning unemployment compensation, and amending section 43:21-19
of the Revised Statutes.

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

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

3 43:21-19. As used in this chapter, unless the context clearly requires
4 otherwise:

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

8 (2) "Average annual payroll" means the average of the annual pay-
9 rolls of any employer for the last three or five preceding calendar years,
10 whichever average is higher [.] ; provided, however, that only those wages
11 be included on which employer contributions have been paid on or before
12 January thirty-first of the calendar year for which the employer's contribu-
12½ tion rate is computed.

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

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

15 fit year [.] ; provided, that no calendar quarter shall comprise a part of
15½ more than one base year.

16 (d) "Benefit year" with respect to any individual means the [fifty-two
17 consecutive week periods] three hundred sixty-four consecutive calendar
18 days beginning with the day on, or as of, which he first files a valid claim for
19 benefits, and thereafter beginning with the day on, or as of, which the indi-
20 vidual next files a valid claim for benefits after the termination of his last
21 preceding benefit year [; *provided, that no succeeding benefit year shall*
22 *commence before the expiration of one full year from and after the first*
23 *day of the preceding benefit year*]. Any claim for benefits made in accord-
24 ance with subsection (a) of section 43:21-6 of this Title shall be deemed to
25 be a "valid claim" for the purpose of this subsection if the individual has ful-
26 filled the condition imposed by subsection (e) of section 43:21-4 of this Title.

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

31 (f) "Contributions" means the money payments to the State unemploy-
32 ment compensation fund required by this chapter.

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

47 this Title or subsection (h) of this section, the employing unit shall for all
48 the purposes of this chapter be deemed to employ each individual in the em-
49 ploy of each such contractor or subcontractor for each day during which
50 such individual is engaged in performing such employment; except that each
51 such contractor or subcontractor who is an employer by reason of subsection
52 (c) of section 43:21-8 of this Title or subsection (h) of this section, shall
53 alone be liable for the contributions measured by wages payable to individ-
54 uals in his employ, and except that any employing unit who shall become lia-
55 ble for and pay contributions with respect to individuals in the employ of any
56 such contractor or subcontractor who is not an employer by reason of subsec-
57 tion (c) of section 43:21-8 of this Title or subsection (h) of this section, may
58 recover the same from such contractor or subcontractor. Each individual
59 employed to perform or to assist in performing the work of any agent or em-
60 ployee of an employing unit shall be deemed to be employed by such employ-
61 ing unit for all the purposes of this chapter, whether such individual was
62 hired or paid directly by such employing unit or by such agent or employee;
63 *provided*, the employing unit had actual or constructive knowledge of the
64 work.

65 (h) "Employer" means:

66 (1) Any employing unit which for some portion of a day, but not
67 necessarily simultaneously, in each of twenty different weeks, whether or
68 not such weeks are or were consecutive, within either the current or the
69 preceding calendar year, has or had in employment, eight or more indi-
70 viduals (irrespective of whether the same individuals are or were em-
71 ployed in each such day);

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

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

79 (4) Any employing unit which together with one or more other em-
80 ploying units, is owned or controlled (by legally enforceable means or
81 otherwise), directly or indirectly by the same interests, or which owns or
82 controls one or more other employing units (by legally enforceable means
83 or otherwise), and which, if treated as a single unit with such other em-
84 ploying unit or interests, would be an employer under paragraph (1) of
85 this subsection;

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

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

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

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

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

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

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

110 (4) Services not covered under paragraph (2) of this subsection, and
111 performed entirely without this State, with respect to no part of which con-
112 tributions are required and paid under an unemployment compensation law
113 of any other State or of the Federal Government, shall be deemed to be em-
114 ployment subject to this chapter if the individual performing such services is
115 a resident of this State and the commission approves the election of the em-
116 ploying unit for whom such services are performed that the entire service of
117 such individual shall be deemed to be employment subject to this chapter;
118 *provided*, written objections on the part of a substantial proportion of such
119 individuals affected are not presented to the commission within ten days fol-
120 lowing the filing of such election.

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

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

123 (B) the service is performed both within and without such State, but
124 the service performed without such State is incidental to the individual's
125 service within the State, for example, is temporary or transitory in na-
126 ture or consists of isolated transactions.

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

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

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

137 (C) such individual is customarily engaged in an independently es-
138 tablished trade, occupation, profession or business.

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

140 (A) Agricultural labor;

141 (B) Domestic service in a private home;

142 (C) Service performed as an officer or member of the crew of a ves-
143 sel on the navigable waters of the United States;

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

147 (E) Service performed in the employ of this State or of any polit-
148 ical subdivision thereof or of any instrumentality of this State or its
149 political subdivisions;

150 (F) Service performed in the employ of any other State or its po-
151 litical subdivisions, or of the United States Government, or of an instru-
152 mentality of any other State or States or their political subdivisions or
153 of the United States;

154 (G) Services performed in the employ of a corporation, commun-
155 ity chest, fund, or foundation, organized and operated exclusively for
156 religious, charitable, scientific, literary, hospital, benevolent, philan-
157 thropic, or educational purposes, or for the prevention of cruelty to
158 children or animals, no part of the net earnings of which inures to the
159 benefit of any private shareholder or individual;

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

166 (I) Services performed as an officer or other employee of any build-
167 ing and loan association of this State, except where such services con-
168 stitute the principal employment of the individual; services performed
169 as an officer or other employee of any building and loan association where

170 such association is a member of the Federal Home Loan Bank System;
171 services performed as an officer or other employee of any bank which is
172 a member of the Federal Reserve System;

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

177 (K) Service performed by agents of insurance companies, exclu-
178 sive of industrial life insurance agents, or by agents of investment com-
179 panies, who are compensated wholly on a commission basis.

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

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

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

188 (m) Unemployment.

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

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

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

198 (n) "Unemployment compensation administration fund" means the un-
199 employment compensation administration fund established by this chapter,
200 from which administrative expenses under this chapter shall be paid.

201 (o) "Wages" means remuneration payable by employers for employ-
202 ment.

203 (p) "Remuneration" means all compensation payable for personal serv-
204 ices, including commissions and bonuses and the cash value of all compensa-
205 tion payable in any medium other than cash.

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

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

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

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to reinstate Chapter 374, P. L. 1941, inadvertently repealed on December 22, 1941, when Assembly Bill No. 34 was enacted into law.

(Chapter 385)

SENATE, No. 1

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of the Revised Statutes.

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2 Jersey:

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4 otherwise:

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6 an employer (regardless of the time of payment) for employment during a
7 calendar year.

8 (2) "Average annual payroll" means the average of the annual pay-
9 rolls of any employer for the last three or five preceding calendar years,
10 whichever average is higher; *provided, however*, that only those wages
11 be included on which employer contributions have been paid on or before
12 January thirty-first of the calendar year for which the employer's contribu-
12½ tion rate is computed.

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

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

15 fit year; *provided*, that no calendar quarter shall comprise a part of more
15½ than one base year.

16. (d) "Benefit year" with respect to any individual means the three hun-
17 dred sixty-four consecutive calendar days beginning with the day on, or
18 as of, which he first files a valid claim for benefits, and thereafter beginning
19 with the day on, or as of, which the individual next files a valid claim for
20 benefits after the termination of his last preceding benefit year. Any claim
21 for benefits made in accordance with subsection (a) of section 43:21-6 of
22 this Title shall be deemed to be a "valid claim" for the purpose of this sub-
23 section if the individual has fulfilled the condition imposed by subsection (e)
24-26 of section 43:21-4 of this Title.

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

31 (f) "Contributions" means the money payments to the State unemploy-
32 ment compensation fund required by this chapter.

33 (g) "Employing unit" means any individual or type of organization,
34 including any partnership, association, trust, estate, joint-stock company, in-
35 surance company or corporation, whether domestic or foreign, or the re-
36 ceiver, trustee in bankruptcy, trustee or successor thereof, or the legal repre-
37 sentative of a deceased person, which has or subsequent to January first, one
38 thousand nine hundred and thirty-six, had in its employ one or more individ-
39 uals performing services for it within this State. All individuals performing
40 services within this State for any employing unit which maintains two or more
41 separate establishments within this State shall be deemed to be employed by a
42 single employing unit for all the purposes of this chapter. Whenever any em-
43 ploying unit contracts with or has under it any contractor or subcontractor
44 for any employment which is part of its usual trade, occupation, profession,
45 or business, unless the employing unit as well as each such contractor or sub-
46 contractor is an employer by reason of subsection (e) of section 43:21-8 of

47 this Title or subsection (h) of this section, the employing unit shall for all
48 the purposes of this chapter be deemed to employ each individual in the em-
49 ploy of each such contractor or subcontractor for each day during which
50 such individual is engaged in performing such employment; except that each
51 such contractor or subcontractor who is an employer by reason of subsection
52 (c) of section 43:21-8 of this Title or subsection (h) of this section, shall
53 alone be liable for the contributions measured by wages payable to individ-
54 uals in his employ, and except that any employing unit who shall become lia-
55 ble for and pay contributions with respect to individuals in the employ of any
56 such contractor or subcontractor who is not an employer by reason of subsec-
57 tion (c) of section 43:21-8 of this Title or subsection (h) of this section, may
58 recover the same from such contractor or subcontractor. Each individual
59 employed to perform or to assist in performing the work of any agent or em-
60 ployee of an employing unit shall be deemed to be employed by such employ-
61 ing unit for all the purposes of this chapter, whether such individual was
62 hired or paid directly by such employing unit or by such agent or employee;
63 *provided*, the employing unit had actual or constructive knowledge of the
64 work.

65 (h) "Employer" means:

66 (1) Any employing unit which for some portion of a day, but not
67 necessarily simultaneously, in each of twenty different weeks, whether or
68 not such weeks are or were consecutive, within either the current or the
69 preceding calendar year, has or had in employment, eight or more indi-
70 viduals (irrespective of whether the same individuals are or were em-
71 ployed in each such day);

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

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

79 (4) Any employing unit which together with one or more other em-
80 ploying units, is owned or controlled (by legally enforceable means or
81 otherwise), directly or indirectly by the same interests, or which owns or
82 controls one or more other employing units (by legally enforceable means
83 or otherwise), and which, if treated as a single unit with such other em-
84 ploying unit or interests, would be an employer under paragraph (1) of
85 this subsection;

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

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

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

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

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

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

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

110 (4) Services not covered under paragraph (2) of this subsection, and
111 performed entirely without this State, with respect to no part of which con-
112 tributions are required and paid under an unemployment compensation law
113 of any other State or of the Federal Government, shall be deemed to be em-
114 ployment subject to this chapter if the individual performing such services is
115 a resident of this State and the commission approves the election of the em-
116 ploying unit for whom such services are performed that the entire service of
117 such individual shall be deemed to be employment subject to this chapter;
118 *provided*, written objections on the part of a substantial proportion of such
119 individuals affected are not presented to the commission within ten days fol-
120 lowing the filing of such election.

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

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

123 (B) the service is performed both within and without such State, but
124 the service performed without such State is incidental to the individual's
125 service within the State, for example, is temporary or transitory in na-
126 ture or consists of isolated transactions.

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

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

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

137 (C) such individual is customarily engaged in an independently es-
138 tablished trade, occupation, profession or business.

- 139 (7) The term "employment" shall not include:
- 140 (A) Agricultural labor;
- 141 (B) Domestic service in a private home;
- 142 (C) Service performed as an officer or member of the crew of a ves-
- 143 sel on the navigable waters of the United States;
- 144 (D) Service performed by an individual in the employ of his son,
- 145 daughter or spouse, and service performed by a child under the age of
- 146 twenty-one in the employ of his father or mother;
- 147 (E) Service performed in the employ of this State or of any polit-
- 148 ical subdivision thereof or of any instrumentality of this State or its
- 149 political subdivisions;
- 150 (F) Service performed in the employ of any other State or its po-
- 151 litical subdivisions, or of the United States Government, or of an instru-
- 152 mentality of any other State or States or their political subdivisions or
- 153 of the United States;
- 154 (G) Services performed in the employ of a corporation, commun-
- 155 ity chest, fund, or foundation, organized and operated exclusively for
- 156 religious, charitable, scientific, literary, hospital, benevolent, philan-
- 157 thropic, or educational purposes, or for the prevention of cruelty to
- 158 children or animals, no part of the net earnings of which inures to the
- 159 benefit of any private shareholder or individual;
- 160 (H) Services performed in the employ of fraternal beneficiary so-
- 161 cieties, orders, or associations operating under the lodge system or for the
- 162 exclusive benefit of the members of a fraternity itself operating under the
- 163 lodge system and providing for the payment of life, sick, accident or
- 164 other benefits to the members of such society, order, or association, or
- 165 their dependents;
- 166 (I) Services performed as an officer or other employee of any build-
- 167 ing and loan association of this State, except where such services con-
- 168 stitute the principal employment of the individual; services performed
- 169 as an officer or other employee of any building and loan association where

170 such association is a member of the Federal Home Loan Bank System;
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172 a member of the Federal Reserve System;

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174 hundred and thirty-nine, with respect to which unemployment compensa-
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181 branch thereof operated by this State or maintained as a part of a State
182 controlled system of public employment offices.

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181 to which his remuneration is less than his weekly benefit rate.

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193 only that part of the same which exceeds three dollars (\$3.00) for any
194 one (1) week.

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196 mence only after his registration at an employment office, except as the
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199 employment compensation administration fund established by this chapter,
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202 ment.

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205 tion payable in any medium other than cash.

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

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209 months ending on March thirty-first, June thirtieth, September thirtieth, or
210 December thirty-first, excluding, however, any calendar quarter or portion
211 thereof which occurs prior to January first, one thousand nine hundred and
212 thirty-seven, or the equivalent thereof as the commission may by regulation
213 prescribe.

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

1 2. This act shall take effect immediately.