

ASSEMBLY, No. 64

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1946

By Mr. PREISER

Referred to Committee on Judiciary

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 follows:

2 43:21-19. As used in this chapter, unless the context clearly requires  
3 otherwise:

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

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

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

15 (c) The term "base year" means the first four of the last five com-  
16 pleted calendar quarters immediately preceding the first day of an indi-

17 vidual's benefit year; *provided*, that no calendar quarter shall comprise a  
18 part of more than one base year.

19 (d) "Benefit year" with respect to any individual means the three hun-  
20 dred sixty-four consecutive calendar days beginning with the day on, or as  
21 of, which he first files a valid claim for benefits, and thereafter beginning  
22 with the day on, or as of, which the individual next files a valid claim for ben-  
23 efits after the termination of his last preceding benefit year. Any claim for  
24 benefits made in accordance with subsection (a) of section 43:21-6 of this Title  
25 shall be deemed to be a "valid claim" for the purpose of this subsection if  
26 the individual has fulfilled the condition imposed by subsection (e) of section  
27 43:21-4 of this Title.

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

32 (f) "Contributions" means the money payments to the State Unemploy-  
33 ment Compensation Fund required by this chapter.

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

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

66 (h) "Employer" means:

67 (1) Any employing unit which for some portion of a day, but not neces-  
68 sarily simultaneously, in each of twenty different weeks, whether or not such  
69 weeks are or were consecutive, within either the current or the preceding  
70 calendar year, has or had in employment four or more individuals (irrespec-  
71 tive of whether the same individuals are or were employed in each such day);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 (A) Agricultural labor;

140 (B) Domestic service in a private home;

141	(C) Service performed by an individual in the employ of his son,	172
142	daughter or spouse, and service performed by a child under the age of	173
143	twenty-one in the employ of his father or mother;	174
144	(D) Service performed in the employ of this State or of any po-	175
145	litical subdivision thereof or of any instrumentality of this State or its	176
146	political subdivisions;	177
147	(E) Service performed in the employ of any other State or its politi-	178
148	cal subdivisions, or of the United States Government, or if an instru-	179
149	mentality of any other State or States or their political subdivisions or	180 b
150	of the United States;	181 c
151	(F) Services performed in the employ of a corporation, community	182
152	chest, fund, or foundation, organized and operated exclusively for relig-	183 t
153	ious, charitable, scientific, literary, hospital, benevolent, philanthropic, or	184 f
154	educational purposes, or for the prevention of cruelty to children or ani-	185
155	mals, no part of the net earnings of which inures to the benefit of any	186 d
156	private shareholder or individual;	187
157	(G) Services performed in the employ of fraternal beneficiary socie-	188
158	ties, orders, or associations operating under the lodge system or for the	189 v
159	exclusive benefit of the members of a fraternity itself operating under	190 i
160	the lodge system and providing for the payment of life, sick, accident or	191
161	other benefits to the members of such society, order, or association, or	192
162	their dependents;	193
163	(H) Services performed as an officer or other employee of any	194
164	building and loan association of this State, except where such services	195
165	constitute the principal employment of the individual; services performed	196
166	as an officer or other employee of any building and loan association where	197
167	such association is a member of the Federal Home Loan Bank System;	198
168	services performed as an officer or other employee of any bank which	199
169	is a member of the Federal Reserve System;	200
170	(I) Service, performed after June thirtieth, one thousand nine hun-	201
171	dred and thirty-nine, with respect to which unemployment compensation	

172 is payable under the Railroad Unemployment Insurance Act (52 Stat.  
173 1094).

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

177 (K) Services performed by real estate salesmen or brokers who are  
178 compensated wholly on a commission basis.

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

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

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

187 (m) Unemployment.

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

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

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

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

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

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

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

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

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

1 2. This act shall take effect immediately.

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#### STATEMENT

The purpose of this act is to remove real estate brokers and salesmen who are employed entirely on a commission basis from the payment of unemployment compensation, putting them on the same par with insurance agents.

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

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2 43:21-19. As used in this chapter, unless the context clearly requires  
3 otherwise:

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

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

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

15 (c) The term "base year" means the first four of the last five com-  
16 pleted calendar quarters immediately preceding the first day of an indi-

17 vidual's benefit year; *provided*, that no calendar quarter shall comprise a  
18 part of more than one base year.

19 (d) "Benefit year" with respect to any individual means the three hun-  
20 dred sixty-four consecutive calendar days beginning with the day on, or as  
21 of, which he first files a valid claim for benefits, and thereafter beginning  
22 with the day on, or as of, which the individual next files a valid claim for ben-  
23 efits after the termination of his last preceding benefit year. Any claim for  
24 benefits made in accordance with subsection (a) of section 43:21-6 of this Title  
25 shall be deemed to be a "valid claim" for the purpose of this subsection if  
26 the individual has fulfilled the condition imposed by subsection (c) of section  
27 43:21-4 of this Title.

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

32 (f) "Contributions" means the money payments to the State Unemploy-  
33 ment Compensation Fund required by this chapter.

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

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

66 (h) "Employer" means:

67 (1) Any employing unit which for some portion of a day, but not neces-  
68 sarily simultaneously, in each of twenty different weeks, whether or not such  
69 weeks are or were consecutive, within either the current or the preceding  
70 calendar year, has or had in employment four or more individuals (irrespec-  
71 tive of whether the same individuals are or were employed in each such day);

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

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

79 (4) Any employing unit which together with one or more other employ- 109  
80 ing units, is owned or controlled (by legally enforceable means or otherwise), 110  
81 directly or indirectly by the same interests, or which owns or controls one or 111  
82 more other employing units (by legally enforceable means or otherwise), and 112  
83 which, if treated as a single unit with such other employing unit or interests, 113  
84 would be an employer under paragraph (1) of this subsection; 114

85 (5) Any employing unit which, having become an employer under para- 115  
86 graphs (1), (2), (3) or (4), has not, under section 43:21-8 of this Title, 116  
87 ceased to be an employer subject to this chapter; or 117

88 (6) For the effective period of its election pursuant to subsection (c) of 118  
89 section 43:21-8 of this Title any other employing unit which has elected to 119  
90 become fully subject to this chapter. 120

91 (i) (1) "Employment" means service, including service in interstate 121  
92 commerce performed for remuneration or under any contract of hire, written 122  
93 or oral, expressed or implied. 123

94 (2) The term "employment" shall include an individual's entire service, 124  
95 performed within or both within and without this State if: 125

96 (A) The service is localized in this State; or 126

97 (B) The service is not localized in any State but some of the service 127  
98 is performed in this State, and (i) the base of operation, or, if there is 128  
99 no base of operations, then the place from which such service is directed 129  
100 or controlled, is in this State; or (ii) the base of operations or place 130  
101 from which such service is directed or controlled is not in any State in 131  
102 which some part of the service is performed, but the individual's resi- 132  
103 dence is in this State. 133

104 (3) Services performed within this State but not covered under para- 134  
105 graph (2) of this subsection shall be deemed to be employment subject to 135  
106 this chapter if contributions are not required and paid with respect to such 136  
107 services under an unemployment compensation law of any other State or of 137  
108 the Federal Government. 138

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

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

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

122 (B) the service is performed both within and without such State,  
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124 vidual's service within the State, for example, is temporary or transitory  
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127 deemed to be employment subject to this chapter unless and until it is shown  
128 to the satisfaction of the commission that

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

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

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

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142 daughter or spouse, and service performed by a child under the age of  
143 twenty-one in the employ of his father or mother;

144 (D) Service performed in the employ of this State or of any po-  
145 litical subdivision thereof or of any instrumentality of this State or its  
146 political subdivisions;

147 (E) Service performed in the employ of any other State or its politi-  
148 cal subdivisions, or of the United States Government, or if an instru-  
149 mentality of any other State or States or their political subdivisions or  
150 of the United States;

151 (F) Services performed in the employ of a corporation, community  
152 chest, fund, or foundation, organized and operated exclusively for relig-  
153 ious, charitable, scientific, literary, hospital, benevolent, philanthropic, or  
154 educational purposes, or for the prevention of cruelty to children or ani-  
155 mals, no part of the net earnings of which inures to the benefit of any  
156 private shareholder or individual;

157 (G) Services performed in the employ of fraternal beneficiary socie-  
158 ties, orders, or associations operating under the lodge system or for the  
159 exclusive benefit of the members of a fraternity itself operating under  
160 the lodge system and providing for the payment of life, sick, accident or  
161 other benefits to the members of such society, order, or association, or  
162 their dependents;

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

170 (I) Service, performed after June thirtieth, one thousand nine hun-  
171 dred and thirty-nine, with respect to which unemployment compensation

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180 branch thereof operated by this State or maintained as a part of a State  
181 controlled system of public employment offices.

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183 this chapter, to which all contributions required and from which all benefits  
184 provided under this chapter shall be paid.

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186 America, Alaska, Hawaii, and the District of Columbia.

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

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

194 (3) An individual's week of unemployment shall be deemed to com-  
195 mence only after his registration at an employment office, except as the com-  
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198 employment compensation administration fund established by this chapter,  
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202 (p) "Remuneration" means all compensation payable for personal serv-  
203 ices, including commissions and bonuses and the cash value of all compensa-  
204 tion payable in any medium other than cash.

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

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

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

1 2. This act shall take effect immediately.