

43:21-19

6/16/88

LEGISLATIVE HISTORY CHECKLIST

NJSA: 43:21-19 (Unemployment compensation-- various amendments)

LAWS OF: 1985

CHAPTER: 378

Bill No: S2840

Sponsor(s): Russo

Date Introduced: March 7, 1985

Committee: Assembly: \_\_\_\_\_

Senate: \_\_\_\_\_

Amended during passage: Yes Amendments denoted by asterisks.

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Senate: May 2, 1985 Re-enacted 9-12-85

Date of Approval: November 27, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate No

Fiscal Note: No

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Message on Signing: No

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[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 2840

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1985

By Senator RUSSO

(Without Reference)

AN ACT concerning unemployment compensation and amending  
R. S. 43:21-19.

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

1 1. R. S. 43:21-19 is amended to read as follows:

2 43:21-19. Definitions. As used in this chapter (R. S. 43:21-1  
3 et seq.), unless the context clearly requires otherwise:

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

7 (2) "Average annual payroll" means the average of the annual  
8 payrolls of any employer for the last three or five preceding  
9 calendar years, whichever average is higher, except that any year  
10 or years throughout which an employer has had no "annual payroll"  
11 because of military service shall be deleted from the reckoning;  
12 the "average annual payroll" in such case is to be determined on  
13 the basis of the prior three to five calendar years in each of which the  
14 employer had an "annual payroll" in the operation of his business,  
15 if the employer resumes his business within 12 months after  
16 separation, discharge or release from such service, under conditions  
17 other than dishonorable, and makes application to have his "aver-  
18 age annual payroll" determined on the basis of such deletion  
19 within 12 months after he resumes his business; provided, how-  
20 ever, that "average annual payroll" solely for the purposes of  
21 paragraph (3) of subsection (e) of section 43:21-7 of this Title  
22 means the average of the annual payrolls of any employer on

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

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly committee amendment adopted June 24, 1985.

\*\*—Senate amendments adopted in accordance with Governor's recommenda-  
tions September 9, 1985.

23 which he paid contributions to the State Disability Benefits Fund  
24 for the last three or five preceding calendar years, whichever  
25 average is higher; provided further that only those wages be  
26 included on which employer contributions have been paid on or be-  
27 fore January 31 (or the next succeeding day if such January 31 is  
28 a Saturday or Sunday) immediately preceding the beginning of the  
29 12-month period for which the employer's contribution rate is  
30 computed.

31 (b) "Benefits" means the money payments payable to an indi-  
32 vidual, as provided in this chapter (R. S. 43:21-1 et seq.), with  
33 respect to his unemployment.

34 (c) "Base year" with respect to benefit years commencing on or  
35 after January 1, 1953, shall mean the 52 calendar weeks ending  
36 with the second week immediately preceding an individual's benefit  
37 year. "Base year" with respect to benefit years commencing on or  
38 after July 1, 1986, shall mean the first four of the last five com-  
39 pleted calendar quarters immediately preceding an individual's  
40 benefit year.

41 (d) "Benefit year" with respect to any individual means the  
42 364 consecutive calendar days beginning with the day on, or as  
43 of, which he first files a valid claim for benefits, and thereafter  
44 beginning with the day on, or as of, which the individual next files  
45 a valid claim for benefits after the termination of his last preceding  
46 benefit year. Any claim for benefits made in accordance with sub-  
47 section (a) of section 43:21-6 of this Title shall be deemed to be a  
48 "valid claim" for the purpose of this subsection if (1) he is  
49 unemployed for the week in which, or as of which, he files a claim  
50 for benefits; and (2) he has fulfilled the conditions imposed by  
51 subsection (e) of section 43:21-4 of this Title.

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

57 (2) "Controller" means the Office of the Assistant Commissioner  
58 for Finance and Controller of the Department of Labor, estab-  
59 lished by the 1982 Reorganization Plan of the Department of Labor.

60 (f) "Contributions" means the money payments to the State  
61 Unemployment Compensation Fund, required by R. S. 43:21-7.  
62 "Payments in lieu of contributions" means the money payments  
63 to the State Unemployment Compensation Fund by employers  
64 electing or required to make payments in lieu of contributions, as  
65 provided in section 3 or section 4 of P. L. 1971, c. 346 (C. 43:21-7.2  
66 and 43:21-7.3).

67 (g) "Employing unit" means the State or any of its instrumen-  
 68 talities or any political subdivision thereof or any of its instru-  
 69 mentalities or any instrumentality of more than one of the fore-  
 70 going or any instrumentality of any of the foregoing and one or  
 71 more other states or political subdivisions or any individual or type  
 72 of organization, any partnership, association, trust, estate, joint-  
 73 stock company, insurance company or corporation, whether  
 74 domestic or foreign, or the receiver, trustee in bankruptcy, trustee  
 75 or successor thereof, or the legal representative of a deceased  
 76 person, which has or subsequent to January 1, 1936, had in its  
 77 employ one or more individuals performing services for it within  
 78 this State. All individuals performing services within this State  
 79 for any employing unit which maintains two or more separate  
 80 establishments within this State shall be deemed to be employed  
 81 by a single employing unit for all the purposes of this chapter  
 82 (R. S. 43:21-1 et seq.). Each individual employed to perform or  
 83 to assist in performing the work of any agent or employee of an  
 84 employing unit shall be deemed to be employed by such employing  
 85 unit for all the purposes of this chapter (R. S. 43:21-1 et seq.),  
 86 whether such individual was hired or paid directly by such employ-  
 87 ing unit or by such agent or employee; provided the employing  
 88 unit had actual or constructive knowledge of the work.

89 (h) "Employer" means:

90 (1) Any employing unit which in either the current or the preced-  
 91 ing calendar year paid remuneration for employment in the amount  
 92 of \$1,000.00 or more;

93 (2) Any employing unit (whether or not an employing unit at  
 94 the time of acquisition) which acquired the organization, trade or  
 95 business, or substantially all the assets thereof, of another which,  
 96 at the time of such acquisition, was an employer subject to this  
 97 chapter (R. S. 43:21-1 et seq.);

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

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

110 (5) Any employing unit for which service in employment as  
 111 defined in R. S. 43:21-19 (i) (1) (B) (i) is performed after  
 112 December 31, 1971; and as defined in R. S. 43:21-19 (i) (1) (B) (ii)  
 113 is performed after December 31, 1977;

114 (6) Any employing unit for which service in employment as  
 115 defined in R. S. 43:21-19 (i) (1) (C) is performed after December  
 116 31, 1971 and which in either the current or the preceding calendar  
 117 year paid remuneration for employment in the amount of \$1,000.00  
 118 or more;

119 (7) Any employing unit not an employer by reason of any other  
 120 paragraph of this subsection (h) for which, within either the  
 121 current or preceding calendar year, service is or was performed  
 122 with respect to which such employing unit is liable for any federal  
 123 tax against which credit may be taken for contributions required  
 124 to be paid into a State unemployment fund; or which, as a condition  
 125 for approval of the Unemployment Compensation Law for full  
 126 tax credit against the tax imposed by the federal Unemployment  
 127 Tax Act, is required pursuant to such act to be an employer under  
 128 this chapter (R. S. 43:21-1 et seq.);

129 (8) (Deleted by amendment; P. L. 1977, c. 307.)

130 (9) (Deleted by amendment; P. L. 1977, c. 307.)

131 (10) (Deleted by amendment; P. L. 1977, c. 307.)

132 (11) Any employing unit subject to the provisions of the federal  
 133 Unemployment Tax Act within either the current or the preceding  
 134 calendar year, except for employment hereinafter excluded under  
 135 paragraph (7) of subsection (i) of this section;

136 (12) Any employing unit for which agricultural labor in employ-  
 137 ment as defined in R. S. 43:21-19 (i) (1) (I) is performed after  
 138 December 31, 1977;

139 (13) Any employing unit for which domestic service in employ-  
 140 ment as defined in R. S. 43:21-19 (i) (1) (J) is performed after  
 141 December 31, 1977;

142 (14) Any employing unit which, having become an employer  
 143 under the Unemployment Compensation Law (R. S. 43:21-1 et  
 144 seq.), has not under R. S. 43:21-8 ceased to be an employer; or for  
 145 the effective period of its election pursuant to R. S. 43:21-8, any  
 146 other employing unit which has elected to become fully subject to  
 147 this chapter (R. S. 43:21-1 et seq.).

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

149 (A) Any service performed prior to January 1, 1972, which  
 150 was employment as defined in the Unemployment Compensa-  
 151 tion Law (R. S. 43:21-1 et seq.) prior to such date, and, subject  
 152 to the other provisions of this subsection, service performed on

153 or after January 1, 1972, including service in interstate com-  
154 merce, performed for remuneration or under any contract of  
155 hire, written or oral, express or implied.

156 (B) (i) Service performed after December 31, 1971 by an  
157 individual in the employ of this State or any of its instrumen-  
158 talities or in the employ of this State and one or more other  
159 states or their instrumentalities for a hospital or institution  
160 of higher education located in this State, if such service is not  
161 excluded from "employment" under paragraph (D) below.

162 (ii) Service performed after December 31, 1977, in the em-  
163 ploy of this State or any of its instrumentalities or any political  
164 subdivision thereof or any of its instrumentalities or any  
165 instrumentality of more than one of the foregoing or any in-  
166 strumentality of the foregoing and one or more other states  
167 or political subdivisions, if such service is not excluded from  
168 "employment" under paragraph (D) below.

169 (C) Service performed after December 31, 1971 by an indi-  
170 vidual in the employ of a religious, charitable, educational, or  
171 other organization, which is excluded from "employment" as  
172 defined in the federal Unemployment Tax Act, solely by reason  
173 of section 3306 (c) (8) of that act, if such service is not ex-  
174 cluded from "employment" under paragraph (D) below.

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

177 (i) In the employ of (I) a church or convention or associa-  
178 tion of churches, or (II) an organization or school which is  
179 operated primarily for religious purposes and which is oper-  
180 ated, supervised, controlled or principally supported by a  
181 church or convention or association of churches;

182 (ii) By a duly ordained, commissioned, or licensed minister  
183 of a church in the exercise of his ministry or by a member  
184 of a religious order in the exercise of duties required by such  
185 order:

186 (iii) Prior to January 1, 1978, in the employ of a school  
187 which is not an institution of higher education, and after  
188 December 31, 1977, in the employ of a governmental entity  
189 referred to in section 19 (i) (1) (B), if such service is per-  
190 formed by an individual in the exercise of duties

191 (aa) as an elected official;

192 (bb) as a member of a legislative body, or a member of  
193 the judiciary, of a State or political subdivision;

194 (cc) as a member of the State National Guard or Air  
195 National Guard;

196 (dd) as an employee serving on a temporary basis in  
197 case of fire, storm, snow, earthquake, flood or similar emer-  
198 gency;

199 (ee) in a position which, under or pursuant to the laws  
200 of this State, is designated as a major nontenured policy-  
201 making or advisory position, or a policymaking or advisory  
202 position, the performance of the duties of which ordinarily  
203 does not require more than eight hours per week; or

204 (iv) By an individual receiving rehabilitation or remunera-  
205 tive work in a facility conducted for the purpose of carrying  
206 out a program of rehabilitation of individuals whose earning  
207 capacity is impaired by age or physical or mental deficiency  
208 or injury or providing remunerative work for individuals who  
209 because of their impaired physical or mental capacity cannot  
210 be readily absorbed in the competitive labor market;

211 (v) By an individual receiving work-relief or work-training  
212 as part of an unemployment work-relief or work-training pro-  
213 gram assisted in whole or in part by any federal agency or an  
214 agency of a state or political subdivision thereof; or

215 (vi) Prior to January 1, 1978, for a hospital in a State  
216 prison or other State correctional institution by an inmate of  
217 the prison or correctional institution and after December 31,  
218 1977, by an inmate of a custodial or penal institution.

219 (E) The term "employment" shall include the services of  
220 an individual who is a citizen of the United States, performed  
221 outside the United States after December 31, 1971 (except in  
222 Canada and in the case of the Virgin Islands, after December  
223 31, 1971 and prior to January 1 of the year following the year  
224 in which the U. S. Secretary of Labor approves the unemploy-  
225 ment compensation law of the Virgin Islands, under section  
226 3304 (a) of the Internal Revenue Code of 1954) in the employ  
227 of an American employer (other than the service which is  
228 deemed employment under the provisions of paragraph  
229 43:21-19 (i) (2) or (5) or the parallel provisions of another  
230 state's Unemployment Compensation Law), if

231 (i) The American employer's principal place of business in  
232 the United States is located in this State; or

233 (ii) The American employer has no place of business in the  
234 United States, but (I) the American employer is an individual  
235 who is a resident of this State; or (II) the American employer  
236 is a corporation which is organized under the laws of this  
237 State; or (III) the American employer is a partnership or  
238 trust and the number of partners or trustees who are residents

239 of this State is greater than the number who are residents of  
240 any other state; or

241 (iii) None of the criteria of divisions (i) and (ii) of this  
242 subparagraph (E) is met but the American employer has  
243 elected to become an employer subject to the Unemployment  
244 Compensation Law (R. S. 43:21-1 et seq.) in this State, or  
245 the American employer having failed to elect to become an  
246 employer in any state, the individual has filed a claim for  
247 benefits, based on such service, under the law of this State;

248 (iv) An "American employer," for the purposes of this sub-  
249 paragraph (E), means (I) an individual who is a resident of  
250 the United States; or (II) a partnership, if two-thirds or  
251 more of the partners are residents of the United States; or  
252 (III) a trust, if all the trustees are residents of the United  
253 States; or (IV) a corporation organized under the laws of the  
254 United States or of any state.

255 (F) Notwithstanding R. S. 43:21-19 (i) (2), all service per-  
256 formed after January 1, 1972 by an officer or member of the  
257 crew of an American vessel or American aircraft on or in  
258 connection with such vessel or aircraft, if the operating office  
259 from which the operations of such vessel or aircraft operating  
260 within, or within and without, the United States are ordinarily  
261 and regularly supervised, managed, directed, and controlled,  
262 is within this State.

263 (G) Notwithstanding any other provision of this subsection,  
264 service in this State with respect to which the taxes required  
265 to be paid under any federal law imposing a tax against which  
266 credit may be taken for contributions required to be paid into  
267 a State unemployment fund or which as a condition for full  
268 tax credit against the tax imposed by the federal Unemploy-  
269 ment Tax Act is required to be covered under the Unemploy-  
270 ment Compensation Law (R. S. 43:21-1 et seq.).

271 (H) The term "United States" when used in a geographical  
272 sense in subsection R. S. 43:21-19 (i) includes the states, the  
273 District of Columbia, the Commonwealth of Puerto Rico and,  
274 effective on the day after the day on which the U. S. Secretary  
275 of Labor approves for the first time under section 3304 (a)  
276 of the Internal Revenue Code of 1954 an unemployment com-  
277 pensation law submitted to the Secretary by the Virgin Islands  
278 for such approval, the Virgin Islands.

279 (I) (i) Service performed after December 31, 1977 in agri-  
280 cultural labor in a calendar year for an entity which is an  
281 employer as defined in the Unemployment Compensation Law



282 (R. S. 43:21-1 et seq.) as of January 1 of such year; or for  
283 an employing unit which

284 (aa) during any calendar quarter in either the current or  
285 the preceding calendar year paid remuneration in cash of  
286 \$20,000.00 or more to individuals employed in agricultural  
287 labor, or

288 (bb) for some portion of a day in each of 20 different  
289 calendar weeks, whether or not such weeks were consecutive,  
290 in either the current or the preceding calendar year, em-  
291 ployed in agricultural labor 10 or more individuals, regard-  
292 less of whether they were employer at the same moment of  
293 time.

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

298 (aa) if such crew leader holds a valid certification of reg-  
299 istration under the Migrant and Seasonal Agricultural  
300 Worker Protection Act, Pub. L. 97-470 (29 U. S. C. § 1801  
301 et seq.); or P. L. 1971, c. 192 (C. 34:8A-7 et seq.); or sub-  
302 stantially all the members of such crew operate or maintain  
303 tractors, mechanized harvesting or cropdusting equipment,  
304 or any other mechanized equipment, which is provided by  
305 such crew leader; and

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

308 (iii) For the purposes of subparagraph (I) (i) in the case  
309 of any individual who is furnished by a crew leader to perform  
310 service in agricultural labor for any other entity and who is  
311 not treated as an employee of such crew leader under (I) (ii)

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

314 (bb) such other entity shall be treated as having paid  
315 cash remuneration to such individual in an amount equal to  
316 the amount of cash remuneration paid to such individual  
317 by the crew leader (either on his own behalf or on behalf  
318 of such other entity) for the service in agricultural labor  
319 performed for such other entity.

320 (iv) For the purposes of subparagraph (I) (i), the term  
321 "crew leader" means an individual who

322 (aa) furnishes individuals to perform service in agri-  
323 cultural labor for any other entity;

324 (bb) pays (either on his own behalf or on behalf of such

325 other entity) the individuals so furnished by him for the  
326 service in agricultural labor performed by them; and

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

330 (J) Domestic service after December 31, 1977 performed  
331 in the private home of an employing unit which paid cash re-  
332 munerations of \$1,000.00 or more to one or more individuals  
333 for such domestic service in any calendar quarter in the current  
334 or preceding calendar year.

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

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

338 (B) The service is not localized in any state but some of the  
339 service is performed in this State, and (i) the base of opera-  
340 tions, or, if there is no base of operations, then the place from  
341 which such service is directed or controlled, is in this State;  
342 or (ii) the base of operations or place from which such service  
343 is directed or controlled is not an any state in which some part  
344 of the service is performed, but the individual's residence is  
345 in this State.

346 (3) Services performed within this State but not covered under  
347 paragraph (2) of this subsection shall be deemed to be employment  
348 subject to this chapter (R. S. 43:21-1 et seq.) if contributions are  
349 not required and paid with respect to such services under an un-  
350 employment compensation law of any other state or of the federal  
351 government.

352 (4) Services not covered under paragraph (2) of this subsection  
353 and performed entirely without this State, with respect to no part  
354 of which contributions are required and paid under an Unemploy-  
355 ment Compensation Law of any other state or of the federal  
356 government, shall be deemed to be employment subject to this  
357 chapter (R. S. 43:21-1 et seq.) if the individual performing such  
358 services is a resident of this State and the employing unit for  
359 whom such services are performed files with the division an election  
360 that the entire service of such individual shall be deemed to be  
361 employment subject to this chapter (R. S. 43:21-1 et seq.).

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

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

364 (B) The service is performed both within and without such  
365 state, but the service performed without such state is incidental  
366 to the individual's service within the state, for example, is  
367 temporary or transitory in nature or consists of isolated trans-  
368 actions.

369 (6) Services performed by an individual for remuneration shall  
370 be deemed to be employment subject to this chapter (R. S. 43:21-1  
371 et seq.) unless and until it is shown to the satisfaction of the di-  
372 vision that:

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

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

381 (C) Such individual is customarily engaged in an inde-  
382 pendently established trade, occupation, profession or business.

383 (7) Provided that such services are also exempt under the federal  
384 Unemployment Tax Act, as amended, or that contributions with  
385 respect to such services are not required to be paid into a state  
386 unemployment fund as a condition for a tax offset credit against  
387 the tax imposed by the federal Unemployment Tax Act, as amended,  
388 the term "employment" shall not include:

389 (A) Agricultural labor performed prior to January 1, 1978;  
390 and after December 31, 1977, only if performed in a calendar  
391 year for an entity which is not an employer as defined in the  
392 Unemployment Compensation Law (R. S. 43:21-1 et seq.) as  
393 of January 1 of such calendar year; or unless performed for  
394 an employing unit which

395 (i) during a calendar quarter in either the current or the  
396 preceding calendar year paid remuneration in cash of  
397 \$20,000.00 or more to individuals employed in agricultural  
398 labor, or

399 (ii) for some portion of a day in each of 20 different  
400 calendar weeks, whether or not such weeks were consecutive,  
401 in either the current or the preceding calendar year, em-  
402 ployed in agricultural labor 10 or more individuals, regard-  
403 less of whether they were employed at the same moment  
404 of time.

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

411 (C) Service performed by an individual in the employ of

412 his son, daughter or spouse, and service performed by a child  
413 under the age of 18 in the employ of his father or mother;

414 (D) Service performed prior to January 1, 1978, in the  
415 employ of this State or of any political subdivision thereof or  
416 of any instrumentality of this State or its political subdivi-  
417 sions, except as provided in R. S. 43:21-19 (i) (1) (B) above,  
418 and service in the employ of the South Jersey Port Corporation  
419 or its successors;

420 (E) Service performed in the employ of any other state or  
421 its political subdivisions or of an instrumentality of any other  
422 state or states or their political subdivisions to the extent  
423 that such instrumentality is with respect to such service  
424 exempt under the Constitution of the United States from the  
425 tax imposed under the federal Unemployment Tax Act, as  
426 amended, except as provided in R. S. 43:21-19 (i) (1) (B)  
427 above;

428 (F) Service performed in the employ of the United States  
429 Government or of an instrumentality of the United States  
430 exempt under the Constitution of the United States from the  
431 contributions imposed by the Unemployment Compensation  
432 Law, except that to the extent that the Congress of the United  
433 States shall permit states to require any instrumentalities of  
434 the United States to make payments into an unemployment  
435 fund under a state unemployment compensation law, all of the  
436 provisions of this act shall be applicable to such instrumentali-  
437 ties, and to service performed for such instrumentalities, in the  
438 same manner, to the same extent and on the same terms as to  
439 all other employers, employing units, individuals and services;  
440 provided that if this State shall not be certified for any  
441 year by the Secretary of Labor of the United States under  
442 section 3304 of the federal Internal Revenue Code (26 U. S. C.,  
443 sec. 3304), the payments required of such instrumentalities  
444 with respect to such year shall be refunded by the division  
445 from the fund the same manner and within the same period  
446 as is provided in R. S. 43:21-14 (f) with respect to contribu-  
447 tions erroneously paid to or collected by the division;

448 (G) Services performed in the employ of fraternal bene-  
449 ficiary societies, orders, or associations operating under the  
450 lodge system or for the exclusive benefit of the members of a  
451 fraternity itself operating under the lodge system and provid-  
452 ing for the payment of life, sick, accident, or other benefits  
453 to the members of such society, order, or association, or their  
454 dependents;

455 (H) Services performed as a member of the board of  
456 directors, a board of trustees, a board of managers, or a com-  
457 mittee of any bank, building and loan or savings and loan  
458 association, incorporated or organized under the laws of this  
459 State or of the United States, where such services do not  
460 constitute the principal employment of the individual;

461 (I) Service with respect to which unemployment insurance  
462 is payable under an unemployment insurance program estab-  
463 lished by an Act of Congress;

464 (J) Service performed by agents of mutual fund brokers or  
465 dealers in the sale of mutual funds or other securities, by  
466 agents of insurance companies, exclusive of industrial insur-  
467 ance agents, or by agents of investment companies, if the  
468 compensation to such agents for such services is wholly on a  
469 commission basis;

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

472 (L) Services performed in the employ of any veterans'  
473 organization chartered by Act of Congress or of any auxiliary  
474 thereof, no part of the net earnings of which organization, or  
475 auxiliary thereof, inures to the benefit of any private share-  
476 holder or individual;

477 (M) Service performed for or in behalf of the owner or  
478 operator of any theatre, ballroom, amusement hall or other  
479 place of entertainment, not in excess of 10 weeks in any  
480 calendar year for the same owner or operator, by any leader  
481 or musician of a band or orchestra, commonly called a "name  
482 band," entertainer, vaudeville artist, actor, actress, singer or  
483 other entertainer;

484 (N) Services performed after January 1, 1973 by an indi-  
485 vidual for a labor union organization, known and recognized as  
486 a union local, as a member of a committee or committees reim-  
487 bursed by the union local for time lost from regular employ-  
488 ment, or as a part-time officer of a union local and the remunera-  
489 tion for such services is less than \$1,000.00 in a calendar year;

490 (O) Services performed in the sale or distribution of mer-  
491 chandise by home-to-home salespersons or in-the-home demon-  
492 strators whose remuneration consists wholly of commissions  
493 or commissions and bonuses;

494 (P) Service performed in the employ of a foreign govern-  
495 ment, including service as a consular, nondiplomatic represen-  
496 tative, or other officer or employee;

497 (Q) Service performed in the employ of an instrumentality

498 wholly owned by a foreign government if (i) the service is of  
499 a character similar to that performed in foreign countries by  
500 employees of the United States Government or of an instru-  
501 mentality thereof, and (ii) the division finds that the United  
502 States Secretary of State has certified to the United States  
503 Secretary of the Treasury that the foreign government, with  
504 respect to whose instrumentality exemption is claimed, grants  
505 an equivalent exemption with respect to similar services per-  
506 formed in the foreign country by employees of the United  
507 States Government and of instrumentalities thereof;

508 (R) Service in the employ of an international organization  
509 entitled to enjoy the privileges, exemptions and immunities  
510 under the International Organization Immunities Act (22  
511 U. S. C. 288 et seq.);

512 (S) Service covered by an election duly approved by an  
513 agency charged with the administration of any other state or  
514 federal Unemployment Compensation or Employment Secu-  
515 rity Law, in accordance with an arrangement pursuant to  
516 R. S. 43:21-21 during the effective period of such election;

517 (T) Service performed in the employ of a school, college, or  
518 university if such service is performed (i) by a student enrolled  
519 at such school, college, or university on a full-time basis in an  
520 educational program or completing such educational program  
521 leading to a degree at any of the severally recognized levels, or  
522 (ii) by the spouse of such a student, if such spouse is advised at  
523 the time such spouse commences to perform such service that  
524 (I) the employment of such spouse to perform such service is  
525 provided under a program to provide financial assistance to  
526 such student by such school, college, or university, and (II)  
527 such employment will not be covered by any program of  
528 unemployment insurance;

529 (U) Service performed by an individual who is enrolled at  
530 a nonprofit or public educational institution which normally  
531 maintains a regular faculty and curriculum and normally has  
532 a regularly organized body of students in attendance at the  
533 place where its educational activities are carried on, as a stu-  
534 dent in a full-time program, taken for credit at such institu-  
535 tion, which combines academic instruction with work experi-  
536 ence, if such service is an integral part of such program, and  
537 such institution has so certified to the employer, except that  
538 this subparagraph shall not apply to service performed in a  
539 program established for or on behalf of an employer or group  
540 of employers;

541 (V) Service performed in the employ of a hospital, if such  
 542 service is performed by a patient of the hospital; service  
 543 performed as a student nurse in the employ of a hospital or a  
 544 nurses' training school by an individual who is enrolled and  
 545 regularly attending classes in a nurses' training school ap-  
 546 proved under the laws of this State; and service performed  
 547 as an intern in the employ of a hospital by an individual who  
 548 has completed a four-year course in a medical school approved  
 549 pursuant to the law of this State;

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

554 (X) *Services performed by operators of motor vehicles*  
 555 *\*\*weighing 18,000 lbs. or more\*\*, licensed for commercial use*  
 556 *\*\*and used for the highway movement of motor freight\*\*, who*  
 557 *own their equipment or who lease or finance the purchase of*  
 558 *their equipment through an entity which is not owned or con-*  
 559 *trolled directly or indirectly by the entity for which the services*  
 560 *were performed and who were compensated by receiving a per-*  
 561 *centage of the gross revenue generated by the transportation*  
 562 *move or by a schedule of payment based on the distance and*  
 562A *weight of the transportation move. \*\****[***No operator shall sub-*  
 562B *contract for any purpose other than the movement of motor*  
 562C *freight.***]***\*\**

563 (8) If one-half or more of the services in any pay period per-  
 564 formed by an individual for an employing unit constitutes employ-  
 565 ment, all the services of such individual shall be deemed to be  
 566 employment; but if more than one-half of the service in any pay  
 567 period performed by an individual for an employing unit does  
 568 not constitute employment, then none of the service of such in-  
 569 dividual shall be deemed to be employment. As used in this para-  
 570 graph, the term "pay period" means a period of not more than 31  
 571 consecutive days for which a payment for service is ordinarily  
 572 made by an employing unit to individuals in its employ.

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

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

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

579A (m) "Unemployment."

580 (1) An individual shall be deemed "unemployed" for any  
581 week during which he is not engaged in full-time work and  
582 with respect to which his remuneration is less than his weekly  
583 benefit rate, including any week during which he is on vacation  
584 without pay; provided such vacation is not the result of  
585 the individual's voluntary action, except that for benefit years  
586 commencing on or after July 1, 1984, an officer of a corporation,  
587 or a person who has more than a 5% equitable or debt interest  
588 in the corporation, whose claim for benefits is based on wages  
589 with that corporation shall not be deemed to be unemployed  
590 in any week during the individual's term of office or ownership  
591 in the corporation.

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

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

602 (n) "Unemployment compensation administration fund" means  
603 the unemployment compensation administration fund established  
604 by this chapter (R. S. 43:21-1 et seq.), from which administrative  
605 expenses under this chapter (R. S. 43:21-1 et seq.) shall be paid.

606 (o) "Wages" means remuneration paid by employers for em-  
607 ployment. If a worker receives gratuities regularly in the course  
608 of his employment from others than his employer, his "wages"  
609 shall also include the gratuities so received, if reported in writing  
610 to his employer in accordance with regulations of the division, and  
611 if not so reported, his "wages" shall be determined in accordance  
612 with the minimum wage rates prescribed under any labor law or  
613 regulation of this State or of the United States, or the amount  
614 of remuneration actually received by the employee from his em-  
615 ployer, whichever is the higher.

616 (p) "Remuneration" means all compensation for personal ser-  
617 vices, including commissions and bonuses and the cash value of all  
618 compensation in any medium other than cash.

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

622 (r) "Calendar quarter" means the period of three consecutive



623 calendar months ending on March 31, June 30, September 30, or  
624 December 31.

625 (s) "Investment company" means any company as defined in  
626 paragraph 1-a of c. 322 of the laws of 1938, entitled "An act con-  
627 cerning investment companies, and supplementing Title 17 of the  
628 Revised Statutes by adding thereto a new chapter entitled 'invest-  
629 ment companies.'"

630 (t) (1) "Base week" a benefit year commencing prior to October  
631 1, 1984, means, except as otherwise provided in paragraph (2)  
632 of this subsection, any calendar week of an individual's base  
633 year during which he earned in employment from an employer re-  
634 munerated equal to not less than \$30.00. "Base week" for a benefit  
635 year commencing on or after October 1, 1984 and prior to October  
636 1, 1985 means any calendar week of an individual's base year during  
637 which the individual earned in employment from an employer  
638 remuneration equal to not less than 15% of the Statewide average  
639 weekly remuneration defined in subsection (c) of R. S. 43:21-3,  
640 which shall be adjusted to the next higher multiple of \$1.00 if not  
641 already a multiple thereof.

642 "Base week" for a benefit year commencing on or after October  
643 1, 1985 means, except as otherwise provided in paragraph (2) of this  
644 subsection, any calendar week of an individual's base year during  
645 which the individual earned in employment from an employer  
646 remuneration equal to not less than 20% of the Statewide average  
647 weekly remuneration defined in subsection (c) of R. S. 43:21-3,  
648 which shall be adjusted to the next higher multiple of \$1.00 if not  
649 already a multiple thereof; provided if in any calendar week an  
650 individual is in employment with more than one employer, he may  
651 in such calendar week establish a base week with respect to each  
652 such employer from whom the individual earns remuneration equal  
653 to not less than the amount defined in this paragraph (1) during  
654 such week.

655 (2) "Base week," with respect to an individual claiming benefits  
656 on the basis of service performed in the production and harvesting  
657 of agricultural crops, means, for a benefit year commencing on or  
658 after October 1, 1984 and before January 1, 1985, any calendar  
659 week of an individual's base year during which the individual  
660 earned in employment from an employer remuneration equal to  
661 not less than \$30.00, except that if in any calendar week an indi-  
662 vidual subject to this paragraph is in employment with more than  
663 one employer, the individual may in that calendar week establish  
664 a base week with respect to each of the employers from whom the  
665 individual earns remuneration equal to not less than the amount  
666 defined in this paragraph (2) during that week.

667 (u) "Average weekly wage" means the amount derived by divid-  
 668 ing an individual's total wages received during his base year base  
 669 weeks (as defined in subsection (t) of this section) from that most  
 670 recent base year employer with whom he has established at least 20  
 671 base weeks, by the number of base weeks in which such wages were  
 672 earned. In the event that such claimant had no employer in his base  
 673 year with whom he had established at least 20 base weeks, then such  
 674 individual's average weekly wage shall be computed as if all of his  
 675 base week wages were received from one employer and as if all his  
 676 base weeks of employment had been performed in the employ of  
 677 one employer.

678 For the purpose of computing the average weekly wage, the  
 679 monetary alternative in subsection (e) of R. S. 43:21-4 shall only  
 680 apply in those instances where the individual did not have at least  
 681 20 base weeks in the base year. For benefit years commencing on or  
 682 after July 1, 1986, "average weekly wage" means the amount  
 683 derived by dividing an individual's total base year wages by the  
 684 number of base weeks worked by the individual during the base  
 685 year; provided that for the purpose of computing the average  
 686 weekly wage, the maximum number of base weeks used in the  
 687 divisor shall be 52.

688 (v) "Initial determination" means, subject to the provisions of  
 689 R. S. 43:21-6 (b) (2) and (3), a determination of benefit rights as  
 690 measured by an eligible individual's base year employment with a  
 691 single employer covering all periods of employment with that em-  
 692 ployer during the base year. For benefits years commencing prior  
 693 to July 1, 1986, subject to the provisions of R. S. 43:21-3 (d) (3),  
 694 if an individual has been in employment in his base year with more  
 695 than one employer, no benefits shall be paid to that individual  
 696 under any successive initial determination until his benefit rights  
 697 have been exhausted under the next preceding initial determination.

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

701 (x) "Most recent base year employer" means that employer with  
 702 whom the individual most recently, in point of time, performed  
 703 services in employment in the base year.

704 (y) (1) "Educational institution" means any public or other non-  
 705 profit institution (including an institution of higher education):

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

711 (B) Which is approved, licensed or issued a permit to oper-  
712 ate as a school by the State Department of Education or other  
713 government agency that is authorized within the State to  
714 approve, license or issue a permit for the operation of a school;  
715 and

716 (C) Which offers courses of study or training which may  
717 be academic, technical, trade, or preparation for gainful em-  
718 ployment in a recognized occupation.

719 (2) "Institution of higher education" means an educational in-  
720 stitution which:

721 (A) Admits as regular students only individuals having  
722 a certificate of graduation from a high school, or the recog-  
723 nized equivalent of such a certificate;

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

726 (C) Provides an educational program for which it awards a  
727 bachelor's or higher degree, or provides a program which is  
728 acceptable for full credit toward such a degree, a program of  
729 post-graduate or post-doctoral studies, or a program of train-  
730 ing to prepare students for gainful employment in a recognized  
731 occupation; and

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

733 Notwithstanding any of the foregoing provisions of this subsec-  
734 tion, all colleges and universities in this State are institutions of  
735 higher education for purposes of this section.

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

1 2. This act shall take effect **\*\*[immediately]\*\*** **\*\*October 1,**  
2 **1985\*\***.

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712 ate as a school by the State Department of Education or other  
 713 government agency that is authorized within the State to  
 714 approve, license or issue a permit for the operation of a school;  
 715 and

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 717 be academic, technical, trade, or preparation for gainful em-  
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 727 bachelor's or higher degree, or provides a program which is  
 728 acceptable for full credit toward such a degree, a program of  
 729 post-graduate or post-doctoral studies, or a program of train-  
 730 ing to prepare students for gainful employment in a recognized  
 731 occupation; and

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 734 tion, all colleges and universities in this State are institutions of  
 735 higher education for purposes of this section.

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

1 2. This act shall take effect immediately.

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#### STATEMENT

This bill exempts independent truckers from the unemployment compensation law if they own their own equipment or lease or finance it through an entity not owned or controlled by the entity they are hauling for and they are compensated by receiving a percentage of the gross revenue generated by the haul or by a payment schedule based on distance and weight.

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## SENATE BILL NO. 2840 (AR)

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 2840 (AR) of 1985 with my recommendations for reconsideration.

This legislation exempts certain operators of commercial vehicles from the "unemployment compensation law," R.S. 43:21-1 et seq. The bill is intended to apply to truck drivers who own or lease their own vehicles.

While I agree that certain truck drivers who own or lease their own vehicles are independent contractors and should be exempt from the "unemployment compensation law," I believe that this legislation is overly broad and could apply to other operators of commercial vehicles. Because this bill would apply to operators of all commercial motor vehicles, regardless of size, I am concerned that certain operators of small motor vehicles who are currently considered to be employees may be terminated or disenfranchised from the protection of unemployment and disability insurance through no choice of their own. In an attempt to restrict the applicability of this bill to larger motor vehicles, I am recommending that the exemption pertain only to motor vehicles which weigh 18,000 lbs. or more. This will serve to protect the interest of small motor vehicle operators while effectuating the legislative intent to provide an exception to independent truck drivers.

I am also proposing a clarification to the Assembly Committee amendment to this bill, which provides that "No operator shall subcontract for any purpose other than the movement of motor freight." Although this amendment was intended to restrict the applicability of the bill to the highway movement of motor freight, it can be construed to prohibit a commercial vehicle operator from subcontracting for purposes unrelated to the movement of motor freight, such as the repair or servicing of his motor vehicle. In order to avoid a situation under which motor vehicle operators may be treated differently for unemployment purposes based solely upon subcontracting for purposes unrelated to the movement of motor freight, I have recommended language which effectuates the intent of the amendment in a more lucid manner.

Finally, I have recommended that the effective date of this bill be amended in order to coincide with the beginning of the next tax period.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

2

Therefore, I herewith return Senate Bill No. 2840 (AR) and recommend that it be amended as follows:

- Page 14, Section 1, line 554: After "vehicles" insert "weighing 18,000 lbs. or more".
- Page 14, Section 1, line 555: After "use" insert "and used for the highway movement of motor freight".
- Page 14, Section 1, lines 562-562A: Delete "No operator shall subcontract for any purpose other than the movement of motor freight."
- Page 18, Section 2, line 1: Delete "immediately" and insert "October 1, 1985".

Respectfully,  
/s/ Thomas H. Kean  
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards  
Chief Counsel