

43:21-19

LEGISLATIVE HISTORY CHECKLIST

NJSA: 43:21-19

(Limousine
franchise)

LAWS OF: 1989

CHAPTER: 265

Bill No: S3014

Sponsor(s): Di Francesco & Jackman

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Committee: Assembly: Labor

Senate: Labor, Industry & Professions

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denoted by asterisks.

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Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

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[FIRST REPRINT]
SENATE, No. 3014
STATE OF NEW JERSEY

INTRODUCED OCTOBER 20, 1988

By Senators DiFRANCESCO and JACKMAN

1 AN ACT excluding certain services from employment subject to
unemployment compensation and temporary disability
3 contributions and amending R.S.43:21-19.

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

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

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

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

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
1 Assembly ALA committee amendments adopted May 18, 1989.

1 succeeding day if such January 31 is a Saturday or Sunday)
2 immediately preceding the beginning of the 12-month period for
3 which the employer's contribution rate is computed.

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

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

14 (d) "Benefit year" with respect to any individual means the
15 364 consecutive calendar days beginning with the day on, or as of,
16 which he first files a valid claim for benefits, and thereafter
17 beginning with the day on, or as of, which the individual next files
18 a valid claim for benefits after the termination of his last
19 preceding benefit year. Any claim for benefits made in
20 accordance with subsection (a) of [section] R.S.43:21-6 [of this
21 Title] shall be deemed to be a "valid claim" for the purpose of
22 this subsection if (1) he is unemployed for the week in which, or
23 as of which, he files a claim for benefits; and (2) he has fulfilled
24 the conditions imposed by subsection (e) of [section] R.S.43:21-4
25 [of this Title].

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

31 (2) "Controller" means the Office of the Assistant
32 Commissioner for Finance and Controller of the Department of
33 Labor, established by the 1982 Reorganization Plan of the
34 Department of Labor.

35 (f) "Contributions" means the money payments to the State
36 Unemployment Compensation Fund, required by R.S.43:21-7.
37 "Payments in lieu of contributions" means the money payments
38 to the State Unemployment Compensation Fund by employers
39 electing or required to make payments in lieu of contributions, as

1 provided in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2
and 43:21-7.3).

3 (g) "Employing unit" means the State or any of its
instrumentalities or any political subdivision thereof or any of its
5 instrumentalities or any instrumentality of more than one of the
foregoing or any instrumentality of any of the foregoing and one
7 or more other states or political subdivisions or any individual or
type of organization, any partnership, association, trust, estate,
9 joint-stock company, insurance company or corporation, whether
domestic or foreign, or the receiver, trustee in bankruptcy,
11 trustee or successor thereof, or the legal representative of a
deceased person, which has or subsequent to January 1, 1936, had
13 in its employ one or more individuals performing services for it
within this State. All individuals performing services within this
15 State for any employing unit which maintains two or more
separate establishments within this State shall be deemed to be
17 employed by a single employing unit for all the purposes of this
chapter (R.S.43:21-1 et seq.). Each individual employed to
19 perform or to assist in performing the work of any agent or
employee of an employing unit shall be deemed to be employed by
21 such employing unit for all the purposes of this chapter
(R.S.43:21-1 et seq.), whether such individual was hired or paid
23 directly by such employing unit or by such agent or employee;
provided the employing unit had actual or constructive knowledge
25 of the work.

(h) "Employer" means:

27 (1) Any employing unit which in either the current or the
preceding calendar year paid remuneration for employment in the
29 amount of \$1,000.00 or more;

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

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

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

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

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

(7) Any employing unit not an employer by reason of any other
17 paragraph of this subsection (h) for which, within either the
current or preceding calendar year, service is or was performed
19 with respect to which such employing unit is liable for any
federal tax against which credit may be taken for contributions
21 required to be paid into a state unemployment fund; or which, as
a condition for approval of the [Unemployment Compensation
23 Law] "unemployment compensation law" for full tax credit
25 against the tax imposed by the federal Unemployment Tax Act, is
required pursuant to such act to be an employer under this
27 chapter (R.S.43:21-1 et seq.);

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

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

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

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

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

(13) Any employing unit for which domestic service in
39 employment as defined in R.S.43:21-19 (i) (1) (J) is performed

1 after December 31, 1977;

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

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

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

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

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

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

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

38 (i) In the employ of (I) a church or convention or association of
39 churches, or (II) an organization, or school which is operated

- 1 primarily for religious purposes and which is operated, supervised,
2 controlled or principally supported by a church or convention or
3 association of churches;
- 4 (ii) By a duly ordained, commissioned, or licensed minister of a
5 church in the exercise of his ministry or by a member of a
6 religious order in the exercise of duties required by such order;
- 7 (iii) Prior to January 1, 1978, in the employ of a school which
8 is not an institution of higher education, and after December 31,
9 1977, in the employ of a governmental entity referred to in
10 ¹[section 19 (i) (1) (B)] R.S.43:21-19 (i) (1) (B)¹ , if such service is
11 performed by an individual in the exercise of duties
- 12 (aa) as an elected official;
- 13 (bb) as a member of a legislative body, or a member of the
14 judiciary, of a state or political subdivision;
- 15 (cc) as a member of the State National Guard or Air National
16 Guard;
- 17 (dd) as an employee serving on a temporary basis in case of
18 fire, storm, snow, earthquake, flood or similar emergency;
- 19 (ee) in a position which, under or pursuant to the laws of this
20 State, is designated as a major nontenured policy making or
21 advisory position, or a policy making or advisory position, the
22 performance of the duties of which ordinarily does not require
23 more than eight hours per week; or
- 24 (iv) By an individual receiving rehabilitation or remunerative
25 work in a facility conducted for the purpose of carrying out a
26 program of rehabilitation of individuals whose earning capacity is
27 impaired by age or physical or mental deficiency or injury or
28 providing remunerative work for individuals who because of their
29 impaired physical or mental capacity cannot be readily absorbed
30 in the competitive labor market;
- 31 (v) By an individual receiving work-relief or work-training as
32 part of an unemployment work-relief or work-training program
33 assisted in whole or in part by any federal agency or an agency of
34 a state or political subdivision thereof; or
- 35 (vi) Prior to January 1, 1978, for a hospital in a State prison or
36 other State correctional institution by an inmate of the prison or
37 correctional institution and after December 31, 1977, by an
38 inmate of a custodial or penal institution.
- 39 (E) The term "employment" shall include the services of an

1 individual who is a citizen of the United States, performed
outside the United States after December 31, 1971 (except in
3 Canada and in the case of the Virgin Islands, after December 31,
1971 and prior to January 1 of the year following the year in
5 which the U.S. Secretary of Labor approves the unemployment
compensation law of the Virgin Islands, under section 3304 (a) of
7 the Internal Revenue Code of 1954) in the employ of an
American employer (other than the service which is deemed
9 employment under the provisions of ¹[paragraph] R.S. 143:21-19
(i) (2) or (5) of the parallel provisions of another state's
11 unemployment compensation law), if

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

(ii) The American employer has no place of business in the
15 United States, but (I) the American employer is an individual who
is a resident of this State; or (II) the American employer is a
17 corporation which is organized under the laws of this State; or
(III) the American employer is a partnership or trust and the
19 number of partners or trustees who are residents of this State is
greater than the number who are residents of another state; or

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

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

(F) Notwithstanding R.S.43:21-19 (i) (2), all service performed
37 after January 1, 1972 by an officer or member of the crew of an
American vessel or American aircraft on or in connection with
39 such vessel or aircraft, if the operating office from which the

1 operations of such vessel or aircraft operating within, or within
and without, the United States are ordinarily and regularly
3 supervised, managed, directed, and controlled, is within this State.

(G) Notwithstanding any other provision of this subsection,
5 service in this State with respect to which the taxes required to
be paid under any federal law imposing a tax against which credit
7 may be taken for contributions required to be paid into a state
unemployment fund or which as a condition for full tax credit
9 against the tax imposed by the federal Unemployment Tax Act is
required to be covered under the [Unemployment Compensation
11 Law] "unemployment compensation law" (R.S.43:21-1 et seq.).

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

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

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

(bb) for some portion of a day in each of 20 different calendar
29 weeks, whether or not such weeks were consecutive, in either the
current or the preceding calendar year, employed in agricultural
31 labor 10 or more individuals, regardless of whether they were
employed at the same moment in time.

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

37 (aa) if such crew leader holds a certification of registration
under the Migrant and Seasonal Agricultural Work Protection
39 Act, Pub. L. 97-470 (29 U.S.C. § 1801 et seq.), or P.L.1971, c.192

1 (C.34:8A-7 et seq.); or substantially all the members of such crew
operate or maintain tractors, mechanized harvesting or
3 cropdusting equipment, or any other mechanized equipment,
which is provided by such crew leader; and

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

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

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

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

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

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

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

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

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

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

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

(B) The service is not localized in any state but some of the
37 service is performed in this State, and (i) the base of operations,
or, if there is no base of operations, then the place from which
39 such service is directed or controlled, is in this State; or (ii) the

1 base of operations or place from which such service is directed or
2 controlled is not in any state in which some part of the service is
3 performed, but the individual's residence is in this State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Service performed in the employ of any other state or its
37 political subdivisions or of an instrumentality of any other state
or states or their political subdivisions to the extent that such
39 instrumentality is with respect to such service exempt under the

1 Constitution of the United States from the tax imposed under the
federal Unemployment Tax Act, as amended, except as provided
3 in R.S.43:21-19 (i) (1) (B) above;

(F) Service performed in the employ of the United States
5 Government or of any instrumentality of the United States
except under the Constitution of the United States from the
7 contributions imposed by the ¹[federal Unemployment
Compensation Law,] "unemployment compensation law,"¹ except
9 that to the extent that the Congress of the United States shall
permit states to require any instrumentalities of the United
11 States to make payments into an unemployment fund under a
state unemployment compensation law, all of the provisions of
13 this act shall be applicable to such instrumentalities, and to
service performed for such instrumentalities, in the same
15 manner, to the same extent and on the same terms as to all other
employers, employing units, individuals and services; provided
17 that if this State shall not be certified for any year by the
Secretary of Labor of the United States under section 3304 of the
19 federal Internal Revenue Code (26 U.S.C. § 3304), the payments
required of such instrumentalities with respect to such year shall
21 be refunded by the division from the fund in the same manner and
within the same period as is provided in R.S.43:21-14 (f) with
23 respect to contributions erroneously paid to or collected by the
division;

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

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

(I) Service with respect to which unemployment insurance is
39 payable under an unemployment insurance program established by

1 an Act of Congress;

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

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

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

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

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

(O) Services performed in the sale or distribution of
27 merchandise by home-to-home salespersons or in-the-home
demonstrators whose remuneration consists wholly of
29 commissions or commissions and bonuses;

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

33 (Q) Service performed in the employ of an instrumentality
wholly owned by a foreign government if (i) the service is of a
35 character similar to that performed in foreign countries by
employees of the United States Government or of an
37 instrumentality thereof, and (ii) the division finds that the
United States Secretary of State has certified to the United
39 States Secretary of the Treasury that the foreign government,

1 with respect to whose instrumentality exemption is claimed,
grants an equivalent exemption with respect to similar services
3 performed in the foreign country by employees of the United
States Government and of instrumentalities thereof;

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

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

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

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

37 (V) Service performed in the employ of a hospital, if such
service is performed by a patient of the hospital; service
39 performed as a student nurse in the employ of a hospital or a

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

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

11 (X) Services performed by operators of motor vehicles
weighing 18,000 pounds or more, licensed for commercial use and
13 used for the highway movement of motor freight, who own their
equipment or who lease or finance the purchase of their
15 equipment through an entity which is not owned or controlled
directly or indirectly by the entity for which the services were
17 performed and who were compensated by receiving a percentage
of the gross revenue generated by the transportation move or by
19 a schedule of payment based on the distance and weight of the
transportation move;

21 (Y) Services performed by a certified shorthand reporter
certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),
23 provided to a third party by the reporter who is referred to the
third party pursuant to an agreement with another certified
25 shorthand reporter or shorthand reporting service, on a freelance
basis, compensation for which is based upon a fee per transcript
27 page, flat attendance fee, or other flat minimum fee, or
combination thereof, set forth in the agreement¹;

29 (Z) Services performed by the owner of a limousine franchise
subject to regulation by the Interstate Commerce Commission
31 pursuant to the written franchise arrangement between the
franchisee and the franchisor as defined by section 3 of P.L.1971,
33 c.356 (C.56:10-3)]¹.

(8) If one-half or more of the services in any pay period
35 performed by an individual for an employing unit constitutes
employment, all the services of such individual shall be deemed
37 to be employment; but if more than one-half of the service in any
pay period performed by an individual for an employing unit does
39 not constitute employment, then none of the service of such

1 individual shall be deemed to be employment. As used in this
2 paragraph, the term "pay period" means a period of not more
3 than 31 consecutive days for which a payment for service is
4 ordinarily made by an employing unit to individuals in its employ.

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

9 (A) The limousine franchisee is incorporated;

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

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

15 (D) The franchisee registers with the Department of Labor and
16 receives an employer registration number.¹

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

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

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

(m) "Unemployment."

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

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

1 of a dollar omitted) or \$5.00, whichever is the larger.

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

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

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

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

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

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

29 (s) "Investment company" means any company as defined in
[paragraph 1-a of c. 322 of the laws of 1938 entitled "An act
31 concerning investment companies, and supplementing Title 17 of
the Revised Statutes by adding thereto a new chapter entitled
33 'investment companies.'"] subsection a. of section 1 of P.L.1938,
c.322 (C.17:16A-1).

35 (t) (1) "Base week" for a benefit year commencing prior to
October 1, 1984, means, except as otherwise provided in
37 paragraph (2) of this subsection, any calendar week of an
individual's base year during which he earned in employment
39 from an employer remuneration equal to not less than \$30.00.

1 "Base week" for a benefit year commencing on or after October
2 1, 1984 and prior to October 1, 1985 means any calendar week of
3 an individual's base year during which the individual earned in
4 employment from an employer remuneration equal to not less
5 than 15% of the Statewide average weekly remuneration defined
6 in subsection (c) of R.S.43:21-3, which shall be adjusted to the
7 next higher multiple of \$1.00 if not already a multiple thereof.

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

21 (2) "Base week," with respect to an individual claiming
22 benefits on the basis of service performed in the production and
23 harvesting of agricultural crops, means, for a benefit year
24 commencing on or after October 1, 1984 and before January 1,
25 1985, any calendar week of an individual's base year during which
26 the individual earned in employment from an employer
27 remuneration equal to not less than \$30.00, except that if in any
28 calendar week an individual subject to this paragraph is in
29 employment with more than one employer, the individual may in
30 that calendar week establish a base week with respect to each of
31 the employers from whom the individual earns remuneration
32 equal to not less than the amount defined in this paragraph (2)
33 during that week.

(u) "Average weekly wage" means the amount derived by
35 dividing an individual's total wages received during his base year
36 base weeks (as defined in subsection (t) of this section) from that
37 most recent base year employer with whom he has established at
38 least 20 base weeks, by the number of base weeks in which such
39 wages were earned. In the event that such claimant had no

1 employer in his base year with whom he had established at least
20 base weeks, then such individual's average weekly wage shall
3 be computed as if all of his base week wages were received from
one employer and as if all his base weeks of employment had been
5 performed in the employ of one employer.

For the purpose of computing the average weekly wage, the
7 monetary alternative in subsection (e) of R.S.43:21-4 shall only
apply in those instances where the individual did not have at least
9 20 base weeks in the base year. For benefit years commencing on
or after July 1, 1986, "average weekly wage" means the amount
11 derived by dividing an individual's total base year wages by the
number of base weeks worked by the individual during the base
13 year; provided that for the purpose of computing the average
weekly wage, the maximum number of base weeks used in the
15 divisor shall be 52.

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

(w) "Last date of employment" means the last calendar day in
27 the base year of an individual on which he performed services in
employment for a given employer.
29

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

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

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

(B) Which is approved, licensed or issued a permit to operate
39

1 as a school by the State Department of Education or other
government agency that is authorized within the State to
3 approve, license or issue a permit for the operation of a school;
and

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

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

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

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

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

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

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

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

27 (cf: P.L.1985, c.389 s.1)

2. This act shall take effect immediately.

29

31 LABOR AND EMPLOYMENT
Unemployment Compensation

33

Excludes certain services performed by the owner of a limousine
35 franchise from unemployment compensation and temporary
disability contributions.

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2 academic, technical, trade, or preparation for gainful
3 employment in a recognized occupation.

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10 education beyond high school;

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12 bachelor's or higher degree, or provides a program which is
13 acceptable for full credit toward such a degree, a program of
14 post-graduate or post-doctoral studies, or a program of training
15 to prepare students for gainful employment in a recognized
16 occupation; and

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19 subsection, all colleges and universities in this State are
20 institutions of higher education for purposes of this section.

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22 certified or approved under the law of this State as a hospital.

23 (cf: P.L.1985, c.389 s.1)

24 2. This act shall take effect immediately.

25

27

STATEMENT

29 This act excludes services performed by owners of limousine
30 franchises pursuant to the franchise agreement entered into with
31 the franchisor from being subject to unemployment compensation
32 and temporary disability contributions. The purpose of the bill is
33 to remove the relationship between the owner of a limousine
34 franchise (the franchisee) and the franchisor from the definition
35 of employment under the unemployment compensation and
36 temporary disability benefit laws. This will leave limousine
37 franchisees responsible for the payment of unemployment
38 compensation and temporary disability benefits in those instances
39 where they qualify as employers pursuant to law.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

PROPERTY OF
NEW JERSEY STATE LIBRARY

SENATE, No. 3014

JAN 12 1989

STATE OF NEW JERSEY

185 State Street
Trenton, N. J.

DATED: DECEMBER 8, 1988

The Senate Labor, Industry and Professions Committee reports favorably Senate, No. 3014.

This bill amends the law governing unemployment compensation and temporary disability insurance benefits to exclude services performed by owners of limousine franchises pursuant to a franchise agreement entered into with the franchisor from being subject to unemployment compensation and temporary disability insurance contributions. The bill removes the relationship between the owner of a limousine franchise (the franchisee) and the franchisor from the definition of employment under the unemployment compensation and temporary disability benefits laws. Therefore, franchisees will be treated as independent contractors rather than employees of the franchisor and will be responsible for the payment of contributions only in those instances where they are deemed to be employers pursuant to law.

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ASSEMBLY LABOR COMMITTEE

STATEMENT TO

SENATE, No. 3014

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 18, 1989

The Assembly Labor Committee reports favorably, with committee amendments, Senate Bill No. 3014.

As amended, the bill removes the relationship between the owner of a limousine franchise (the franchisee) and the franchisor from the definition of employment under the unemployment compensation and temporary disability benefits laws, provided that the franchisee is incorporated, is subject to Interstate Commerce Commission regulation, and is registered with the Department of Labor and receives an employer registration number. Therefore, franchisees will be treated as independent contractors rather than employees of the franchisor and will be responsible for the payment of contributions pursuant to law.

The committee amendments added the requirements that a franchisee subject to the provisions of the bill be incorporated and be registered with the Department of Labor and receive an employer registration number.