

43: 21-19

✓

LEGISLATIVE HISTORY CHECKLIST

NJSA: 43:21-19 (Shorthand reporters--certain--exempt from contributions for unemployment compensation and temporary disability

LAWS OF: 1985 CHAPTER: 389

BILL NO: S2690

Sponsor(s): Lesniak and Gasliano

Date Introduced: February 4, 1985

Committee: Assembly: -----

Senate: Labor, Industry and Professions

Amended during passage: Yes Substituted for A3193 (not attached according to governor's recommendations since identical to S2690). Amendments denoted by asterisks.

Date of Passage: Assembly: June 24, 1985 Re-enacted 11-18-85

Senate: June 17, 1983 Re-enacted 12-12-85

Date of Approval: December 19, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

12-19-85

[OFFICIAL COPY REPRINT]

SENATE, No. 2690

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 4, 1985

By Senators LESNIAK and GAGLIANO

Referred to Committee on Labor, Industry and Professions

AN ACT to exclude certain shorthand reporting services from employment subject to unemployment compensation and temporary disability contributions and amending ***[and supplementing]*** 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. 43:21-9 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 or
10 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
14 the employer had an "annual payroll" in the operation of his busi-
15 ness, 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-

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:

*—Senate amendments adopted in accordance with Governor's recommendations November 18, 1985.

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

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

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

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

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

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

59 (f) "Contributions" means the money payments to the State
60 Unemployment Compensation Fund, required by R. S. 43:21-7.
61 "Payments in lieu of contributions" means the money payments
62 to the State Unemployment Compensation Fund by employers

63 electing or required to make payments in lieu of contributions, as
64 provided in section 3 or section 4 of P. L. 1971, c. 346 (C. 43:21-7.2
65 and 43:21-7.3).

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

88 (h) "Employer" means:

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

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

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

102 (4) Any employing unit which together with one or more other
103 employing units is owned or controlled (by legally enforceable
104 means or otherwise), directly or indirectly by the same interests,
105 or which owns or controls one or more other employing units (by

106 legally enforceable means or otherwise), and which, if treated as
 107 a single unit with such other employing unit or interest, would
 108 be an employer under paragraph (1) of this subsection;

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

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

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

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

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

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

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

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

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

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

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

148 (A) Any service performed prior to January 1, 1972, which
 149 was employment as defined in the Unemployment Compensation
 150 Law (R. S. 43:21-1 et seq.) prior to such date, and, subject
 151 to the other provisions of this subsection, service performed on
 152 or after January 1, 1972, including service in interstate com-
 153 merce, performed for remuneration or under any contract of
 154 hire, written or oral, express or implied.

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

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

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

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

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

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

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

190 (aa) as an elected official;

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

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

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

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

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

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

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

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

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

232 (ii) The American employer has no place of business in the
233 United States, but (I) the American employer is an individual

234 who is a resident of this State; or (II) the American employer
 235 is a corporation which is organized under the laws of this
 236 State; or (III) the American employer is a partnership or
 237 trust and the number of partners or trustees who are residents
 238 of this State is greater than the number who are residents of
 239 any other state; or

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

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

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

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

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

276 sation law submitted to the Secretary by the Virgin Islands
277 for such approval, the Virgin Islands.

278 (I) (i) Service performed after December 31, 1977 in agri-
279 cultural labor in a calendar year for an entity which is an
280 employer as defined in the Unemployment Compensation Law
281 (R. S. 43:21-1 et seq.) as of January 1 of such year; or for
282 an employing unit which

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

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

293-294 (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 substan-
302 tially 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 agricul-
323 tural 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 in 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 division
 372 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 of the
 377 business for which such service is performed, or that such
 378 service is performed outside of all the places of business of
 379 the enterprise for which such service is performed; and

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

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

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

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

397 (ii) for some portion of a day in each of 20 different calendar
 398 weeks, whether or not such weeks were consecutive, in either
 399 the current or the preceding calendar year, employed in agricul-
 400 tural labor 10 or more individuals, regardless of whether they
 401 were employed at the same moment of time.

402 (B) Domestic service in a private home performed prior to
 403 January 1, 1978; and after December 31, 1977, unless performed
 404 in the private home of an employing unit which paid cash

405 remuneration of \$1,000.00 or more to one or more individuals
406 for such domestic service in any calendar quarter in the current
407 or preceding calendar year;

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

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

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

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

445 (G) Services performed in the employ of fraternal bene-
446 ficiary societies, orders, or associations operating under the
447 lodge system or for the exclusive benefit of the members of a

448 fraternity itself operating under the lodge system and provid-
449 ing for the payment of life, sick, accident, or other benefits
450 to the members of such society, order, or association, or their
451 dependents;

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

458 (I) Service with respect to which unemployment insurance
459 is payable under an unemployment insurance program estab-
460 lished by an Act of Congress;

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

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

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

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

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

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

491 (P) Service performed in the employ of a foreign govern-
492 ment, including service as a consular, nondiplomatic repre-
493 sentative, or other officer or employee;

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

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

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

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

526 (U) Service performed by an individual who is enrolled at
527 a nonprofit or public educational institution which normally
528 maintains a regular faculty and curriculum and normally has
529 a regularly organized body of students in attendance at the
530 place where its educational activities are carried on, as a stu-
531 dent in a full-time program, taken for credit at such institu-
532 tion, which combines academic instruction with work experi-
533 ence, if such service is an integral part of such program, and

534 such institution has so certified to the employer, except that
 535 this subparagraph shall not apply to service performed in
 536 a program established for or on behalf of an employer or
 537 group of employers;

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

547 (W) Services performed after the effective date of this
 548 amendatory act by agents of mutual benefit associations if
 549 the compensation to such agents for such services is wholly
 550 on a commission basis[.];

551 (X) *Services performed by a certified shorthand reporter*
 552 *certified pursuant to P. L. 1940, c. 175 (C. 45:15B-1 et seq.),*
 553 *provided to a third party by the reporter who is referred to the*
 554 *third party pursuant to an agreement with another certified*
 555 *shorthand reporter or shorthand reporting service, on a free-*
 556 *lance basis, compensation for which is based upon a fee per*
 557 *transcript page, flat attendance fee, or other flat minimum fee,*
 558 *or combination thereof, set forth in the agreement*[, where the*
 559 *charge to the third party for the services is billed or collected*
 560 *by the referring reporter or shorthand reporting service, re-*
 561 *gardless of whether the performance of the services are under*
 562 *the control or direction of the referring reporter or shorthand*
 563 *reporting service, and regardless of whether the reporter is*
 564 *customarily engaged in an independent court reporting*
 565 *business apart from the referring reporter or shorthand re-*
 566 *porting service]*.*

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

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

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

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

584 (m) "Unemployment."

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

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

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

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

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

619 (p) "Remuneration" means all compensation for personal ser-

620 vices, including commissions and bonuses and the cash value of all
621 compensation in any medium other than cash.

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

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

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

633 (t) (1) "Base week" for a benefit year commencing prior to
634 October 1, 1984, means, except as otherwise provided in paragraph
635 (2) of this subsection, any calendar week of an individual's base
636 year during which he earned in employment from an employer
637 remuneration equal to not less than \$30.00. "Base week" for a
638 benefit year commencing on or after October 1, 1984 and prior to
639 October 1, 1985 means any calendar week of an individual's base
640 year during which the individual earned in employment from an
641 employer remuneration equal to not less than 15% of the Statewide
642 average weekly remuneration defined in subsection (c) of R. S.
643 43:21-3, which shall be adjusted to the next higher multiple of \$1.00
644 if not already a multiple thereof.

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

658 (2) "Base week," with respect to an individual claiming benefits
659 on the basis of service performed in the production and harvesting
660 of agricultural crops, means, for a benefit year commencing on or
661 after October 1, 1984 and before January 1, 1985, any calendar week
662 of an individual's base year during which the individual earned in

663 employment from an employer remuneration equal to not less than
664 \$30.00, except that if in any calendar week an individual subject to
665 this paragraph is in employment with more than one employer, the
666 individual may in that calendar week establish a base week with
667 respect to each of the employers from whom the individual earns
668 remuneration equal to not less than the amount defined in this
669 paragraph (2) during that week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *~~2.~~ (New section) Any uncollected payments for unemployment
2 compensation or temporary disability contributions payable from
3 a freelance shorthand reporter, a referring shorthand reporter, or a
4 referring shorthand reporting service, and any penalties and
5 interest due from a referring shorthand reporter or shorthand
6 reporting service, prior to the effective date of this act, shall not
9 be collected in any manner.]*

1 *~~3.~~* *2.* This act shall take effect *~~immediately~~* *on Octo-
2 ber 1, 1985*.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 2690

STATE OF NEW JERSEY

DATED: APRIL 24, 1985

This bill provides that certified shorthand reporters who freelance for other shorthand reporters or shorthand reporting services, and are compensated as independent contractors on the basis of the transcript they produce or a flat professional fee, are not employees of shorthand reporting services, and are exempt from unemployment compensation and temporary disability contributions. Both the referring reporter or service and the freelance reporter are excluded from contribution requirements.

The bill provides retroactive, ameliorative relief to those reporters or services, who have been assessed by the State for either contributions or penalties and interest, or both, prior to the enactment of the bill, and have not yet paid the amounts to the State, by prohibiting prospective collection of those amounts.

Shorthand reporters who are employed by the court system are not affected by this bill.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

August 28, 1985

SENATE BILL NO. 2690

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 2690 with my recommendations for reconsideration.

This legislation exempts services performed by certain certified shorthand reporters from coverage under the Unemployment Compensation Law and provides retroactive tax forgiveness to all freelance shorthand reporters, referring shorthand reporters and referring shorthand reporting services for any unemployment compensation or temporary disability contributions assessed prior to the effective date of this act.

Although I agree that freelance certified shorthand reporters are sufficiently independent to be excluded as employees for purposes of unemployment insurance, I am recommending the deletion of language which inadvertently restricts the applicability of this exemption along with other language which is unnecessary for the purpose of establishing the exemption.

The exemption proposed by this bill requires that, among other things, the charge to the third party for services performed by a certified shorthand reporter is billed or collected by the referring reporter or shorthand reporting service. While this system of billing and collecting fees represents the normal industry practice, there are occasions where a certified shorthand reporter may directly bill the third party for services rendered or collect the fees for these services. Because the method of billing for or collecting fees is not in and of itself indicative of the independent character of a certified shorthand reporter, I am proposing the elimination of this language. As a result, all certified shorthand reporters who meet the other criteria established in the bill will be exempt from the coverage of the Unemployment Compensation Law regardless of the method in which their services are billed for or collected.

I am also recommending the elimination of language providing that the exemption will apply regardless of whether the performance of the certified shorthand reporter services are under the control or direction of the referring

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

reporter or shorthand reporting service and regardless of whether the reporter is customarily engaged in an independent court reporting business apart from the referring reporter or reporting service. This language is parallel to the provisions of N.J.S. 43:21-19 (i)(6), which establishes the standards for independent contractors for purposes of exclusion from the Unemployment Compensation Law. Because this legislation excludes the services performed by certain certified shorthand reporters from the definition of "employment" provided by N.J.S. 43:21-19 (i)(7), this language is inapplicable and unnecessary.

I am further proposing the deletion of Section 2 of the bill, which provides that any unemployment or disability insurance tax payable by freelance shorthand reporters or shorthand reporting services assessed prior to the effective date of this act shall not be collected. The legitimacy of these taxes has been established by a series of administrative decisions going back as far as 1973 and has recently been affirmed by an Appellate Division decision. Until the enactment of any exception for certified shorthand reporters, these taxes will continue to be properly due and payable. Furthermore, it represents questionable public policy to retroactively forgive properly assessed taxes, as the better practice is to have all newly enacted tax exemptions apply prospectively. In addition, any retroactive tax forgiveness would give rise to problems of fairness in regard to those certified shorthand reporters and reporting services which have already paid all required taxes.

Finally, I am recommending that this bill become effective on October 1, 1985 in order to conform to tax reporting periods.

Therefore, I herewith return Senate Bill No. 2690 and recommend that it be amended as follows:

Page 1 Title, line 3: Delete "and supplementing"

Page 14, Section 1, line 558: After "agreement" delete remainder of line.

Page 14, Section 1, lines 559-565: Delete in entirety.

Page 14, Section 1, line 566: Delete "porting service".

Page 18, Section 2, lines 1-9: Delete in entirety.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

3

Page 18, Section 3, line 1: Delete "3." and insert "2."
Delete "immediately" and insert "on
October 1, 1985".

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ W. Cary Edwards
Chief Counsel

STATEMENT

This bill provides that certified shorthand reporters who freelance for other shorthand reporters or shorthand reporting services, and are compensated as independent contractors on the basis of the transcript they produce or a flat professional fee, are not employees of shorthand reporting services, and are exempt from unemployment compensation and temporary disability contributions. Both the referring reporter or service and the freelance reporter are excluded from contribution requirements.

All shorthand reporters are licensed by the State after passing a test. "Official" reporters are those employed by the court system and are not affected by this bill. Freelance reporters generally are utilized to record depositions and hearings and, on an as-needed basis, to serve in the courts.

Traditionally, freelance reporters have considered themselves to be independent contractors. The service companies that provide them with their work assignments act as their agents. As compensation, the service companies retain a percentage of the fees paid by attorneys and others who use the freelance reporter. In keeping with this tradition, freelance reporters heretofore have not filed claims for unemployment compensation or disability benefits.

A recent unreported decision of the Superior Court, Appellate Division, *State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance vs. Campise Reporting, Inc.* (A-1517-83T2), decided October 4, 1984, determined that at least some relationships between freelance reporters and their agencies are subject to the State "unemployment compensation law," R. S. 43:21-1 et seq., which requires withholding of unemployment and disability insurance taxes. This bill would overturn that decision if the reporters meet the bill's criteria. The bill also provides retroactive, ameliorative relief to those reporters, who have been assessed by the State for either contributions or penalties and interest, or both, prior to the enactment of the bill, and have not yet paid the amounts to the State, by prohibiting prospective collection of those amounts.

New Jersey reporters compete with reporters based in New York and Pennsylvania. New York, in 1978, specifically exempted freelance reporters from its unemployment-disability insurance requirement and Pennsylvania has reached the same result by administrative practice. Thus, under the recent Appellate Division decision, New Jersey reporters are at a competitive disadvantage. Furthermore, the federal government, under the federal Unem-

52690 (1985)

ployment Tax Act, 23 U. S. C. § 3301 et seq., does not consider an employment relationship to exist.

Also, because they have not been considered employees of the shorthand reporting services, many freelance reporters have established their own deferred compensation and retirement plans. At the same time, shorthand reporting service companies have developed such plans for their permanent staff members and have not included the freelance reporters. If the reporters are now to be considered employees, such long-established plans could be disqualified.
