

43: 21-16

LEGISLATIVE HISTORY CHECKLIST

NJSA: 43:21-16 (Unemployment Compensation reports--criminal prosecution--clarify jurisdiction of courts)

LAWS OF: 1985 **CHAPTER:** 476

BILL NO: S1929

Sponsor(s): Russo

Date Introduced: June 25, 1984

Committee: Assembly: Judiciary
Senate: Judiciary

Amended during passage: Yes Amendments denoted by asterisks
according to Governor's recommendations

Date of Passage: **Assembly:** September 9, 1985 Re-enacted 1-13-86
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Date of Approval: January 17, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** No
Senate Yes

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Veto Message: Yes

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Reports: No

Hearings: No

1-17-86

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1929

STATE OF NEW JERSEY

INTRODUCED JUNE 25, 1984

By Senator RUSSO

Referred to Committee on Judiciary

AN ACT concerning unemployment compensation and amending
R. S. 43:21-16 ****[*and 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. 43:21-16 is amended to read as follows:

2 43:21-16. (a) Whoever makes a false statement or representation
3 knowing it to be false or knowingly fails to disclose a material fact,
4 to obtain or increase or attempts to obtain or increase any benefit
5 or other payment under this chapter (R. S. 43:21-1 et seq.), or
6 under an employment security law of any other state or of the
7 federal government, either for himself or for any other person,
8 shall be liable to a fine of \$20.00 for each offense, or 25% of the
9 amount fraudulently obtained, whichever is greater, to be recovered
10 in an action at law in the name of the Division of Unemployment
11 and Temporary Disability Insurance of the Department of Labor
12 of the State of New Jersey or as provided in subsection (e) of sec-
13 tion 43:21-14, said fine when recovered to be paid to the unemploy-
14 ment compensation auxiliary fund for the use of said fund; and each
15 such false statement or representation or failure to disclose a ma-
16 terial fact shall constitute a separate offense. Any penalties im-
17 posed by this subsection shall be in addition to those otherwise pre-
18 scribed in this chapter (R. S. 43:21-1 et seq.).

19 (b) (1) An employing unit or any officer or agent of an employing
20 unit or any other person who makes a false statement or repre-
21 sentation knowing it to be false, or who knowingly fails to disclose
22 a material fact, to prevent or reduce the payment of benefits to any

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

Matter printed in italics thus is new matter.

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

***—Assembly committee amendments adopted August 28, 1985.**

****—Senate amendments adopted in accordance with Governor's recommenda-
tions January 13, 1986.**

23 individual entitled thereto or to avoid becoming or remaining
24 subject hereto or to avoid or reduce any contribution or other pay-
25 ment required from an employing unit under this chapter (R. S.
26 43:21-1 et seq.), or under an employment security law of any other
27 state or of the federal government, or who willfully fails or
28 refuses to furnish any reports required hereunder (except for such
29 reports as may be required under paragraph 43:21-6(b) of this
30 Title) or to produce or permit the inspection or copying of records
31 as required hereunder, shall be liable to a fine of \$100.00, to be re-
32 covered in an action at law in the name of the Division of Unem-
33 ployment and Temporary Disability Insurance of the Department
34 of Labor of the State of New Jersey or as provided in subsection
35 (e) of section 43:21-14, said fine when recovered to be paid to the
36 unemployment compensation auxiliary fund for the use of said
37 fund; and each such false statement or representation or failure
38 to disclose a material fact, and each day of such failure or refusal
39 shall constitute a separate offense. Any penalties imposed by this
40 paragraph shall be in addition to those otherwise prescribed in this
41 chapter (R. S. 43:21-1 et seq.).

42 Any employing unit or any officer or agent of an employing unit
43 or any other person who fails to submit any report required under
44 paragraph 43:21-6 (b) of this Title shall be subject to a penalty of
45 \$25.00 for the first report not submitted within 10 days after the
46 mailing of a request for such report, and an additional \$25.00 pen-
47 alty may be assessed for the next 10-day period which may elapse
48 after the end of the initial 10-day period and before the report is
49 filed; provided, that when such report or reports are not filed within
50 the prescribed time but it is shown to the satisfaction of the director
51 that the failure was due to a reasonable cause, no such penalty shall
52 be imposed. Any penalties imposed by this paragraph shall be re-
53 covered as provided in subsection (e) of section 43:21-14 of this
54 Title, and when recovered shall be paid to the unemployment com-
55 pensation auxiliary fund for the use of said fund.

56 (c) Any person who shall willfully violate any provision of this
57 chapter (R. S. 43:21-1 et seq.) or any rule or regulation thereunder,
58 the violation of which is made unlawful or the observance of which
59 is required under the terms of this chapter (R. S. 43:21-1 et seq.),
60 and for which a penalty is neither prescribed herein nor provided
61 by any other applicable statute, shall be liable to a fine of \$50.00, to
62 be recovered in an action at law in the name of the Division of
63 Unemployment and Temporary Disability Insurance of the Depart-
64 ment of Labor of the State of New Jersey or as provided in sub-

65 section (e) of section 43:21-14, said fine when recovered to be paid
66 to the unemployment compensation auxiliary fund for the use of
67 said fund; and each day such violation continues shall be deemed
68 to be a separate offense.

69 (d) When it is determined by a representative or representatives
70 designated by the Director of the Division of Unemployment and
71 Temporary Disability Insurance of the Department of Labor of the
72 State of New Jersey that any person, whether (i) by reason of the
73 nondisclosure or misrepresentation by him or by another, of a ma-
74 terial fact (whether or not such nondisclosure or misrepresentation
75 was known or fraudulent), or (ii) for any other reason, has re-
76 ceived any sum as benefits under this chapter (R. S. 43:21-1 et seq.)
77 while any conditions for the receipt of benefits imposed by this
78 chapter (R. S. 43:21-1 et seq.) were not fulfilled in his case, or
79 while he was disqualified from receiving benefits, or while otherwise
80 not entitled to receive such sum as benefits, such person unless the
81 director (with the concurrence of the controller) directs otherwise
82 by regulation, shall be liable to repay those benefits in full. The
83 sum shall be deducted from any future benefits payable to the indi-
84 vidual under this chapter (R. S. 43:21-1 et seq.) or shall be paid
85 by the individual to the division for the unemployment compensa-
86 tion fund, and such sum shall be collectible in the manner provided
87 for by law including, but not limited to, the filing of a certificate of
88 debt with the Clerk of the Superior Court of New Jersey; provided,
89 however, that, except in the event of fraud, no person shall be liable
90 for any such refunds or deductions against future benefits unless
91 so notified before four years have elapsed from the time the bene-
92 fits in question were paid. Such person shall be promptly notified
93 of the determination and the reasons therefor. Unless such person,
94 within seven calendar days after the delivery of such determina-
95 tion, or within 10 calendar days after such notification was mailed
96 to his last-known address, files an appeal from such determination,
97 such determination shall be final.

98 (e) Any employing unit, or any officer or agent of an employing
99 unit *which officer or agent is **directly or indirectly** respon-*
100 *sible for collecting, truthfully accounting for, remitting when*
101 *payable, any contribution, or filing or causing to be filed any re-*
102 *port or statement, required by this chapter, or employer, or per-*
103 *son failing to remit, when payable, any employer contributions,*
104 *or worker contributions (if withheld or deducted), or the amount*
105 *of such worker contributions (if not withheld or deducted), or*
106 *filing or causing to be filed with the controller or the Division of*

107 Unemployment and Temporary Disability Insurance of the De-
 108 partment of Labor of the State of New Jersey, any false or
 109 fraudulent report or statement, and any person who aids or abets
 110 an employing unit, employer, or any person in the preparation
 111 or filing of any false or fraudulent report or statement with
 111A intent to defraud the State of New Jersey or an employment
 112 security agency of any other state or of the federal government, or
 113 with intent to evade the payment of any contributions, interest or
 114 penalties, or any part thereof, which shall be due under the provi-
 115 sions of this chapter (R. S. 43:21-1 et seq.), shall be liable for each
 116 offense upon conviction before any [court of competent jurisdic-
 117 tion] *Superior Court or municipal court*, to a fine not to exceed
 118 \$1,000.00 or by imprisonment for a term not to exceed 90 days, or
 119 both, at the discretion of the court. The fine upon conviction shall
 120 be payable to the unemployment compensation auxiliary fund. Any
 121 penalties imposed by this subsection shall be in addition to those
 122 otherwise prescribed in this chapter (R. S. 43:21-1 et seq.).

123 (f) Any employing unit or any officer or agent of an employing
 124 unit or any other person who aids and abets any person to obtain
 125 any sum of benefits under this chapter to which he is not entitled,
 126 or a larger amount as benefits than that to which he is justly en-
 127 titled, shall be liable for each offense upon conviction before any
 128 [court of competent jurisdiction] *Superior Court or municipal*
 129 *court*, to a fine not to exceed \$1,000.00 or by imprisonment for a
 130 term not to exceed 90 days or both, at the discretion of the court.
 131 The fine upon conviction shall be payable to the unemployment
 132 compensation auxiliary fund. Any penalties imposed by this sub-
 133 section shall be in addition to those otherwise prescribed in this
 134 chapter (R. S. 43:21-1 et seq.).

135 (g) There shall be created in the Division of Unemployment and
 136 Temporary Disability Insurance of the Department of Labor of the
 137 State of New Jersey an investigative staff for the purpose of in-
 138 vestigating violations referred to in this section and enforcing the
 139 provisions thereof.

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

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

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

7 (2) "Average annual payroll" means the average of the annual
 8 payrolls of any employer for the last three or five preceding cal-
 9 endar years, whichever average is higher, except that any year]**

10 **[For years throughout which an employer has had no “annual
11 payroll” because of military service shall be deleted from the
12 reckoning; the “average annual payroll” in such case is to be de-
13 termined on the basis of the prior three to five calendar years in
14 each of which the employer had an “annual payroll,” in the oper-
15 ation of his business, if the employer resumes his business within
16 12 months after separation, discharge or release from such ser-
17 vice, under conditions other than dishonorable, and makes appli-
18 cation to have his “average annual payroll” determined on the
19 basis of such deletion within 12 months after he resumes his busi-
20 ness; provided, however, that “average annual payroll” solely for
21 the purposes of paragraph (3) of subsection (e) of section 43:21-7
22 of this Title means the average of the annual payrolls of any em-
23 ployer on which he paid contributions to the State Disability Ben-
24 efits Fund for the last three or five preceding calendar years,
25 whichever average is higher; provided further[.] that only those
26 wages be included on which employer contributions have been
27 paid on or before January 31 (or the next succeeding day if such
28 January 31 is a Saturday or Sunday) immediately preceding the
29 beginning of the 12-month period for which the employer’s con-
30 tribution rate is computed.

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

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

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

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

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

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

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

89 (h) "Employer" means:

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

93 (2) Any employing unit (whether or not an employing unit at)**

94 **[the time of acquisition) which acquired the organization, trade
95 or business, or substantially all the assets thereof, of another
96 which, at the time of such acquisition, was an employer subject
97 to this chapter (R. S. 43:21-1 et seq.);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 (i) In the employ of (I) a church or convention or asso-]**

178 **[ciation of churches, or (II) an organization or school which
 179 is operated primarily for religious purposes and which is op-
 180 erated, supervised, controlled or principally supported by a
 181 church or convention or association of churches;

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

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

191 (aa) as an elected official;

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

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

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

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

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

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

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

219 (E) The term "employment" shall include the services of]**

220 **[an individual who is a citizen of the United States, per-
 221 formed outside the United States after December 31, 1971
 222 (except in Canada and in the case of the Virgin Islands, after
 223 December 31, 1971 and prior to January 1 of the year follow-
 224 ing the year in which the U. S. Secretary of Labor approves
 225 the unemployment compensation law of the Virgin Islands,
 226 under section 3304 (a) of the Internal Revenue Code of 1954)
 227 in the employ of an American employer (other than the ser-
 228 vice which is deemed employment under the provisions of
 229 paragraph 43:21-19 (i) (2) or (5) or the parallel provisions
 230 of another state's [Unemployment Compensation Law] *un-*
 231 *employment compensation law*), if

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

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

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

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

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

262 **[narily and regularly supervised, managed, directed, and
263 controlled, is within this State.

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

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

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

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

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

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

299 (aa) if such crew leader holds a valid certification of reg-
300 istration under the Migrant and Seasonal Agricultural
301 Worker Protection Act, Pub. L. 97-470 (29 U. S. C. § 1801
302 et seq.) [;] or P. L. 1971, c. 192 (C. 34:8A-7 et seq.); or sub-
303 stantially all the members of such crew operate or main-] **

304 **[tain tractors, mechanized harvesting or cropdusting
305 equipment, or any other mechanized equipment, which is
306 provided by such crew leader; and

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

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

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

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

321 (iv) For the purposes of subparagraph (I) (i), the term
322 “crew leader” means an individual who

323 (aa) furnishes individuals to perform service in agricul-
324 tural labor for any other entity;

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

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

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

336 (2) The term “employment” shall include an individual’s entire
337 service performed within or both within and without this State if:

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

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

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

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

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

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

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

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

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

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

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

383 (7) Provided that such services are also [exempted] *exempt*
 384 under the federal Unemployment Tax Act, as amended, or that
 385 contributions with respect to such services are not required to be
 386 paid into a [State Unemployment Fund] *state unemployment*
 387 *fund* as a condition for a tax offset credit against the tax im-]**

388 **[p]osed by the federal Unemployment Tax Act, as amended,
389 the term "employment" shall not include:

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

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

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

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

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

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

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

427 (F) Service performed in the employ of the United States
428 Government or of an instrumentality of the United States ex-
429 exempt under the Constitution of the United States from the]**

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

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

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

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

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

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

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

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

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

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

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

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

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

512 (S) Service covered by an election duly approved by an ag-
513 ency charged with the administration of any other state or]**

514 **[federal [Unemployment Compensation or Employment Se-
 515 curity Law] *unemployment compensation or employment se-*
 516 *curity law*, in accordance with an arrangement pursuant to
 517 R. S. 43:21-21 during the effective period of such election;

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

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

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

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

555 (X) *Services performed by travel agents or their salesmen*
 556 *who are compensated wholly on a commission basis.]***

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

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

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

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

574 (m) "Unemployment."

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

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

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

595 (n) "Unemployment compensation administration fund" means
 596 the unemployment compensation administration fund established
 597 by this chapter (R. S. 43:21-1 et seq.), from which administrative
 598 expenses under this chapter (R. S. 43:21-1 et seq.) shall be
 598A paid.]**

599 **[(o) “Wages” means remuneration paid by employers for em-
 600 ployment. If a worker receives gratuities regularly in the course
 601 of his employment from others than his employer, his “wages”
 602 shall also include the gratuities so received, if reported in writing
 603 to his employer in accordance with regulations of the division, and
 604 if not so reported, his “wages” shall be determined in accordance
 605 with the minimum wage rates prescribed under any labor law or
 606 regulation of this State or of the United States, or the amount
 607 [or] of remuneration actually received by the employee from his
 608 employer, whichever is the higher.

609 (p) “Remuneration” means all compensation for personal ser-
 610 vices, including commissions and bonuses and the cash value of all
 611 compensation in any medium other than cash.

612 (q) “Week” means for benefit years commencing on or after
 613 October 1, 1984, the calendar week ending at midnight Saturday,
 614 or as the division may by regulation prescribe.

615 (r) “Calendar quarter” means the period of three consecutive
 616 calendar months ending on March 31, June 30, September 30, or
 617 December 31.

618 (s) “Investment company” means any company as defined in
 619 paragraph 1-a of c. 322 of the laws of 1938, entitled “An act con-
 620 cerning investment companies, and supplementing Title 17 of the
 621 Revised Statutes by adding thereto a new chapter entitled ‘invest-
 622 ment companies.’ ”

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

635 “Base week” for a benefit year commencing on or after October 1,
 636 1985 means, except as otherwise provided in paragraph (2) of this
 637 subsection, any calendar week of an individual’s base year during
 638 which the individual earned in employment from an employer
 639 remuneration equal to not less than 20% of the Statewide average
 640 weekly remuneration defined in subsection (c) of R. S. 43:21-3,]**

641 **[which shall be adjusted to the next higher multiple of \$1.00 if
 642 not already a multiple thereof; provided[.] if in any calendar
 643 week[.] an individual is in employment with more than one em-
 644 ployer, he may in such calendar week establish a base week with
 645 respect to each such employer from whom the individual earns
 646 remuneration equal to not less than the amount defined in this
 647 paragraph (1) during such week.

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

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

671 For the purpose of computing the average weekly wage, the
 672 monetary alternative in subsection (e) of R. S. 43:21-4 shall
 673 only apply in those instances where the individual did not have
 674 at least 20 base weeks in the base year. For benefit years com-
 675 mencing on or after July 1, 1986, "average weekly wage" means
 676 the amount derived by dividing an individual's total base year
 677 wages by the number of base weeks worked by the individual dur-
 678 ing the base year; provided[.] that for the purpose of computing
 679 the average weekly wage, the maximum number of base weeks used
 680 in the divisor shall be 52.

681 (v) "Initial determination" means, subject to the provisions of
 682 R. S. 43:21-6 (b) (2) and (3), a determination of benefit rights]**

683 **[as measured by an eligible individual's base year employment
 684 with a single employer covering all periods of employment with
 685 that employer during the base year. For benefit years commencing
 686 prior to July 1, 1986, subject to the provisions of R. S. 43:21-3 (d)
 687 (3), if an individual has been in employment in his base year with
 688 more than one employer, no benefits shall be paid to that individual
 689 under any successive initial determination until his benefit rights
 690 have been exhausted under the next preceding initial deter-
 690A mination.

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

694 (x) "Most recent base year employer" means that employer with
 695 whom the individual most recently, in point of time, performed
 696 [service] *services* in employment in the base year.

697 (y) (1) "[Education] *Educational* institution" means any pub-
 698 lic or other nonprofit institution (including an institution of higher
 699 education):

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

705 (B) Which is approved, licensed or issued a permit to oper-
 706 ate as a school by the State Department of Education or other
 707 government agency that is authorized within the State to
 708 approve, license or issue a permit for the operation of a school;
 709 and

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

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

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

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

720 (C) Provides an educational program for which it awards a
 721 bachelor's or higher degree, or provides a program which is
 722 acceptable for full credit toward such a degree, a program of
 723 post-graduate or post-doctoral studies, or a program of train-
 724 ing to prepare students for gainful employment in a recognized
 725 occupation; and]**

726 **[(D) Is a public or other nonprofit institution.

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

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

1 *[(2.)* **[(3.*)** **2.**] This act shall take effect immediately.

109 aids or abets an employing unit, employer, or any person in the
 110 preparation or filing of any false or fraudulent report or statement
 111 with intent to defraud the State of New Jersey or an employment
 112 security agency of any other state or of the federal government, or
 113 with intent to evade the payment of any contributions, interest or
 114 penalties, or any part thereof, which shall be due under the provi-
 115 sions of this chapter (R. S. 43:21-1 et seq.), shall be liable for each
 116 offense upon conviction before any [court of competent jurisdic-
 117 tion] *Superior Court or municipal court*, to a fine not to exceed
 118 \$1,000.00 or by imprisonment for a term not to exceed 90 days, or
 119 both, at the discretion of the court. The fine upon conviction shall
 120 be payable to the unemployment compensation auxiliary fund. Any
 121 penalties imposed by this subsection shall be in addition to those
 122 otherwise prescribed in this chapter (R. S. 43:21-1 et seq.).

123 (f) Any employing unit or any officer or agent of an employing
 124 unit or any other person who aids and abets any person to obtain
 125 any sum of benefits under this chapter to which he is not entitled,
 126 or a larger amount as benefits than that to which he is justly en-
 127 titled, shall be liable for each offense upon conviction before any
 128 [court of competent jurisdiction] *Superior Court or municipal*
 129 *court*, to a fine not to exceed \$1,000.00 or by imprisonment for a
 130 term not to exceed 90 days or both, at the discretion of the court.
 131 The fine upon conviction shall be payable to the unemployment
 132 compensation auxiliary fund. Any penalties imposed by this sub-
 133 section shall be in addition to those otherwise prescribed in this
 134 chapter (R. S. 43:21-1 et seq.).

135 (g) There shall be created in the Division of Unemployment and
 136 Temporary Disability Insurance of the Department of Labor of the
 137 State of New Jersey an investigative staff for the purpose of in-
 138 vestigating violations referred to in this section and enforcing the
 139 provisions thereof.

1 2. This act shall take effect immediately.

STATEMENT

This bill amends R. S. 43:21-16 to clarify that criminal prosecu-
 tion for certain reporting and filing offenses concerning employer
 or worker contributions with the Division of Unemployment and
 Temporary Disability Insurance of the Department of Labor may
 be heard in either the Superior Court or appropriate municipal
 court. This bill also restricts the prosecution to officers or agents
 of an employing unit responsible for handling and filing of con-
 tributions or reports.

51929 (1985)

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1929

STATE OF NEW JERSEY

DATED: JULY 30, 1984

Presently, failure to remit employer or workers contributions for unemployment and temporary disability insurance or the filing of fraudulent reports with regard to these contributions by an employer can result in criminal prosecution. These offenses are punishable by a fine of up to \$1,000.00 and/or imprisonment for up to 90 days.

This bill would make two clarifications with regard to offenses concerning unemployment and disability insurance. First, the bill would change the phrase "court of competent jurisdiction" to "Superior Court or municipal court" in order to allow the Attorney General the option of prosecuting these cases in either court.

The second clarification proposed by the bill would provide that only those officers of corporations who have the responsibility to file the required reports or to pay the unemployment compensation contributions could be held criminally liable.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 13, 1986

SENATE BILL NO. 1929 (AR)

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1929 (AR) with my objections and recommendations for amendment.

This legislation delineates the liability of employers who fail to remit unemployment compensation contributions and exempts from the provisions of the Unemployment Compensation Law travel agents or their salesmen who are compensated solely on a commission basis. The bill also provides that criminal complaints brought under the Unemployment Compensation Law are to be heard in Superior Court or municipal court rather than in the court of competent jurisdiction.

Criminal complaints are the final and most drastic remedy which the State pursues against employers who have shown flagrant disregard of the filing and payment provisions of the Unemployment Compensation Law. Under current law, any employer or officer or agent of an employing unit who fails to remit required contributions or who files or causes to be filed any false or fraudulent report shall be subject upon conviction to a fine of up to \$1,000 or 90 days imprisonment, or both. This bill specifies that only those officers who have the responsibility for filing required reports or remitting contributions can be held criminally liable for violations of the statute.

This proposed provision would make it more difficult for the State to pursue criminal prosecutions while not affording any additional protection to defendants. Because the State must prove intent to evade the payment of taxes before a criminal prosecution can be obtained, it is unlikely that any individual not responsible for the filing or payment of taxes would be found guilty in a court of law. This would also place upon the State the burden of establishing the individual business duties and responsibilities of each defendant. Furthermore, this provision could lead to situations in which certain responsible individuals could evade criminal prosecution on narrow, technical grounds. For example, the president of a corporation could escape criminal prosecution because the corporate treasurer or even an outside

STATE OF NEW JERSEY
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accountant was responsible for the filing of tax return for payment of taxes. In order to ensure that responsible officers or agents of employing units cannot evade criminal prosecution under these circumstances, I am recommending that this language be amended to apply to officers or agents "directly or indirectly" responsible for the filing and payment of taxes.

This legislation would also exempt from unemployment and disability insurance coverage travel agents or their salesmen who are compensated wholly on a commission basis. The unemployment and disability insurance laws in New Jersey are designed to provide certain benefits to those who depend on others for their livelihood. In keeping with this policy, these laws are construed very broadly and any exceptions to them must be convincingly justified and narrowly drawn. In recent years, the trend on the State and federal level has been to provide more expansive coverage rather than to carve additional exemptions.

This bill, according to its proponents, was designed to exclude from unemployment insurance coverage certain outside sales representatives who do not work full-time for travel agencies but who arrange tours under the auspices of an agency and receive a percentage of the agency's commission. While these individuals operate independently to a certain extent, they cannot make arrangements with airlines or hotels unless they are affiliated with an agency. The major problems with this proposal are that it exempts individuals who are totally dependent upon travel agencies for their ability to operate and exempts employees regardless of any existing employer/employee relationship. While outside sales representatives possess certain attributes of independent contractors, they can arrange tours only as representatives of travel agencies and as such are not independently engaged in their own business. In addition, by exempting all services performed by travel agents or their salesmen who are compensated wholly on a commission basis, this bill would exempt numerous individuals who are directly employed by travel agencies. Some travel agencies pay all of their salesmen wholly on a commission basis and these individuals, although employees in every sense of the word, could be disenfranchised from unemployment and disability insurance coverage as a result of this bill. In addition, the enactment of this law could induce a number of travel agents to

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begin compensating their salaried salesmen on a commission basis, plus denying unemployment and disability insurance coverage to the affected salesmen.

In conclusion, this proposal does not meet the standards of compelling justification or narrow delineation which are essential for a statutory exemption from the Unemployment and Disability Insurance Law.

Therefore, I herewith return Senate Bill No. 1929 (AR) and recommend that it be amended as follows:

Page 1, Title, Line 2: Delete "and R.S. 43:21-19"

Page 3, Section 1, Line 99: After "is" insert "directly or indirectly"

Page 17, Section 2, Lines 555-556: Delete in entirety

Respectfully,
/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:
/s/ W. Cary Edwards
Chief Counsel