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SENATE, No. 982

STATE OF NEW JERSEY

INTRODUCED MAY 4, 1972

By Senators BROWN, AZZOLINA, ITALIANO, DODD, GIULIANO,
MARAZITI, HIRKALA, CAFIERO and HOLLENBECK

Referred to Committee on Labor, Industry and Professions

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

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

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

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

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

7 (2) "Average annual payroll" means the average of the annual
8 payrolls of any employer for the last 3 or 5 preceding calendar
9 years, whichever average is higher, except that any year or years
10 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 3 or 5 calendar years in each of which the
14 employer had an "annual payroll" in the operation of his business,
15 if the employer resumes his business within 12 months after
16 separation, discharge or release from such service, under conditions
17 other than dishonorable, and makes application to have his "aver-
18 age annual payroll" determined on the basis of such deletion
19 within 12 months after he resumes his business; provided, how-
20 ever, that "average annual payroll" solely for the purposes of
21 paragraph (3) of subsection (e) of section 43:21-7 of this Title
22 means the average of the annual payrolls of any employer on
23 which he paid contributions to the State disability benefits fund
24 for the last 3 or 5 preceding calendar years, whichever average is
25 higher; provided further, that only those wages be included on

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

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 months'
29 period for which the employer's contribution rate is computed.

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

33 (c) "Base year" with respect to benefit years commencing on
34 or after January 1, 1953, shall mean the 52 calendar weeks ending
35 with the second week immediately preceding an individual's benefit
36 year.

37 (d) "Benefit year" with respect to any individual means the
38 364 consecutive calendar days beginning with the day on, or as of,
39 which he first files a valid claim for benefits, and thereafter
40 beginning with the day on, or as of, which the individual next files
41 a valid claim for benefits after the termination of his last preceding
42 benefit year. Any claim for benefits made in accordance with sub-
43 section (a) of section 43:21-6 of this Title shall be deemed to be a
44 "valid claim" for the purpose of this subsection if (1) no remunera-
45 tion was paid or is payable for the day on which, or as of which he
46 files a claim for benefits, and no work is available to him with his
47 current employing unit on such day, or, he is unemployed for the
48 week in which, or as of which, he files a claim for benefits; and (2)
49 he has fulfilled the conditions imposed by subsection (e) of section
50 43:21-4 of this Title.

51 (e) "Division" means the Division of Employment Security of
52 the Department of Labor and Industry established by c. 446, P. L.
53 1948, and any transaction or exercise of authority by the director
54 of the division thereunder, or under this chapter (R. S. 43:21-1 et
55 seq.), shall be deemed to be performed by the division.

56 (f) "Contributions" means the money payments to the State
57 Unemployment Compensation Fund required by R. S. 43:21-7.
58 "Payments in lieu of contributions" means the money payments
59 to the State Unemployment Compensation Fund by employers
60 electing or required to make payments in lieu of contributions as
61 provided in section 3 or section 4 of this act (C. 43:21-7.2 and
62 43:21-7.3).

63 (g) "Employing unit" means any individual or type of orga-
64 nization, including the State, its political subdivisions, the State and
65 one or more other states, and the instrumentalities of the State and
66 of the State and one or more other states any partnership, associa-
67 tion, trust, estate, joint-stock company, insurance company or

68 corporation, whether domestic or foreign, or the receiver, trustee
69 in bankruptcy, trustee or successor thereof, or the legal repre-
70 sentative of a deceased person, which has or subsequent to January
71 1, 1936, had in its employ one or more individuals performing
72 services for it within this State. All individuals performing
73 services within this State for any employing unit which maintains
74 two or more separate establishments within this State shall be
75 deemed to be employed by a single employing unit for all the pur-
76 poses of this chapter (R. S. 43:21-1 et seq.). Each individual em-
77 ployed to perform or to assist in performing the work of any agent
78 or employee of an employing unit shall be deemed to be employed
79 by such employing unit for all the purposes of this chapter (R. S.
80 43:21-1 et seq.), whether such individual was hired or paid directly
81 by such employing unit or by such agent or employee; provided,
82 the employing unit had actual or constructive knowledge of the
83 work.

84 (h) "Employer" means:

85 (1) Any employing unit which after December 31, 1971, in either
86 the current or the preceding calendar year paid remuneration for
87 employment in the amount of \$1,000.00 or more;

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

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

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

105 (5) Any employing unit for which service in employment as
106 defined in R. S. 43:21-19 (i) (1) (B), is performed after December
107 31, 1971;

108 (6) Any employing unit for which service in employment as
109 defined in R. S. 43:21-19 (i) (1) (C) is performed after December

110 31, 1971 and which in either the current or the preceding calendar
111 year paid remuneration for employment in the amount of \$1,000.00
112 or more;

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

123 (8) Any employing unit which, having become an employer under
124 paragraphs (1), (2), (3), (4), (5), (6) or (7) has not, under section
125 43:21-8 ceased to be an employer subject to this chapter (R. S.
126 43:21-1 et seq.); or

127 (9) For the effective period of its election pursuant to R. S.
128 43:21-8 any other employing unit which has elected to become
129 fully subject to this chapter (R. S. 43:21-1 et seq.);

130 (10) For the purposes of paragraphs (1) and (6), employment
131 shall include service which would constitute employment but for
132 the fact that such services deemed to be performed entirely within
133 another state pursuant to an election under an arrangement
134 entered into under R. S. 43:21-21 between this State and an agency
135 charged with the administration of any other state or Federal
136 Unemployment Compensation Law.

137 (11) Any employing unit subject to the provisions of the Federal
138 Unemployment Tax Act within either the current or the preceding
139 calendar year except for employment hereinafter excluded under
140 paragraph (7) of subsection (i) of this section.

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

142 (A) Any service performed prior to January 1, 1972, which was
143 employment as defined in the Unemployment Compensation Law
144 (R. S. 43:21-1 et seq.) prior to such date, and, subject to the other
145 provisions of this subsection, service performed on or after January
146 1, 1972, including service in interstate commerce, performed for
147 remuneration or under any contract of hire, written or oral, ex-
148 press or implied.

149 (B) Service performed after December 31, 1971 by an individual
150 in the employ of this State or any of its instrumentalities or in
151 the employ of this State and one or more other states or their

152 instrumentalities for a hospital or institution of higher education
153 located in this State, if such service is not excluded from employ-
154 ment under paragraph (D) below.

155 (C) Service performed after December 31, 1971 by an individual
156 in the employ of a religious, charitable, educational, or other
157 organization, which is excluded from "employment" as defined in
158 the Federal Unemployment Tax Act solely by reason of section
159 3306 (c) (8) of that act, if such service is not excluded from em-
160 ployment under paragraph (D) below.

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

163 (i) in the employ of (I) a church or convention or association
164 of churches, or (II) an organization which is operated pri-
165 marily for religious purposes and which is operated, super-
166 vised, controlled or principally supported by a church or
167 convention or association of churches;

168 (ii) by a duly ordained, commissioned, or licensed minister
169 of a church in the exercise of his ministry or by a member
170 of a religious order in the exercise of duties required by such
171 order;

172 (iii) in the employ of a school which is not an institution
173 of higher education;

174 (iv) in a facility conducted for the purpose of carrying out
175 a program of rehabilitation of individuals whose earning
176 capacity is impaired by age or physical or mental deficiency
177 or injury or providing remunerative work for individuals who
178 because of their impaired physical or mental capacity cannot
179 be readily absorbed in the competitive labor market by an
180 individual receiving such rehabilitation or remunerative work;

181 (v) as part of an unemployment work-relief or work-training
182 program assisted in whole or in part by any Federal agency
183 or an agency of a State or political subdivision thereof, by an
184 individual receiving such work relief or work training; or

185 (vi) for a hospital in a State prison or other State cor-
186 rectional institution by an inmate of the prison or correctional
187 institution.

188 (E) The term "employment" shall include the services of an
189 individual who is a citizen of the United States, performed outside
190 the United States (except in Canada or the Virgin Islands) after
191 December 31, 1971 in the employ of an American employer (other
192 than the service which is deemed employment under the provisions
193 of paragraphs 43:21-19 (i) (2) or (5) or the parallel provisions of
194 another State's Unemployment Compensation Law), if

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

197 (E) (ii) The American employer has no place of business in
198 the United States, but (I) the American employer is an individual
199 who is a resident of this State; or (II) the American employer is
200 a corporation which is organized under the laws of this State; or
201 (III) the American employer is a partnership or trust and the
202 number of partners or trustees who are residents of this State is
203 greater than the number who are residents of any other state; or

204 (E) (iii) None of the criteria of divisions (i) and (ii) of this sub-
205 paragraph (E) is met but the American employer has elected to
206 become an employer subject to the Unemployment Compensation
207 Law (R. S. 43:21-1 et seq.) in this State, or the American employer
208 having failed to elect to become an employer in any state, the
209 individual has filed a claim for benefits, based on such service,
210 under the law of this State.

211 (E) (iv) An "American employer" for the purposes of this
212 subparagraph (E), means (I) an individual who is a resident of
213 the United States; or (II) a partnership if $\frac{2}{3}$ or more of the
214 partners are residents of the United States; or (III) a trust, if
215 all the trustees are residents of the United States; or (IV) a
216 corporation organized under the laws of the United States or of
217 any state.

218 (F) Notwithstanding R. S. 43:21-19 (i) (2), all service per-
219 formed after January 1, 1972 by an officer or member of the crew
220 of an American vessel or American aircraft on or in connection
221 with such vessel or aircraft, if the operating office from which the
222 operations of such vessel or aircraft operating within, or within
223 and without, the United States are ordinarily and regularly super-
224 vised, managed, directed, and controlled, is within this State.

225 (G) Notwithstanding any other provision of this subsection,
226 service in this State with respect to which the taxes required to
227 be paid under any Federal law imposing a tax against which credit
228 may be taken for contributions required to be paid into a State
229 unemployment fund or which as a condition for full tax credit
230 against the tax imposed by the Federal Unemployment Tax Act is
231 required to be covered under the Unemployment Compensation Law
232 (R. S. 43:21-1 et seq.).

233 (H) The term "United States" when used in a geographical
234 sense in subsection R. S. 43:21-19 (i) includes the States, the
235 District of Columbia, and the Commonwealth of Puerto Rico.

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

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

239 (B) The service is not localized in any state but some of the
240 service is performed in this State, and (i) the base of operations,
241 or, if there is no base of operations, then the place from which
242 such service is directed or controlled, is in this State; or (ii) the
243 base of operations or place from which such service is directed or
244 controlled is not in any state in which some part of the service is
245 performed, but the individual's residence is in this State.

246 (3) Services performed within this State but not covered under
247 paragraph (2) of this subsection shall be deemed to be employment
248 subject to this chapter (R. S. 43:21-1 et seq.) if contributions are
249 not required and paid with respect to such services under an unem-
250 ployment compensation law of any other state or of the Federal
251 Government.

252 (4) Services not covered under paragraph (2) of this subsection
253 and performed entirely without this State, with respect to no part
254 of which contributions are required and paid under an Unemploy-
255 ment Compensation Law of any other state or of the Federal
256 Government, shall be deemed to be employment subject to this
257 chapter (R. S. 43:21-1 et seq.) if the individual performing such
258 services is a resident of this State and the employing unit for
259 whom such services are performed files with the division an election
260 that the entire service of such individual shall be deemed to be
261 employment subject to this chapter (R. S. 43:21-1 et seq.).

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

263 (A) the service is performed entirely within such state; or

264 (B) the service is performed both within and without such state,
265 but the service performed without such state is incidental to the
266 individual's service within the State, for example, is temporary
267 or transitory in nature or consists of isolated transactions.

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

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

275 (B) such service is either outside the usual course of the business
276 for which such service is performed, or that such service is per-
277 formed outside of all the places of business of the enterprise for
278 which such service is performed; and

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

281 (7) Provided that such services are also exempted under the
282 Federal Unemployment Tax Act, as amended, or that contributions
283 with respect to such services are not required to be paid into a
284 State Unemployment Fund as a condition for a tax offset credit
285 against the tax imposed by the Federal Unemployment Tax Act,
286 as amended, the term "employment" shall not include

287 (A) Agricultural labor;

288 (B) Domestic service in a private home;

289 (C) Service performed by an individual in the employ of his
290 son, daughter or spouse, and service performed by a child under
291 the age of 21 in the employ of his father or mother;

292 (D) Service performed in the employ of this State or of any
293 political subdivision thereof or of any instrumentality of this State
294 or its political subdivisions except as provided in R. S. 43:21-19
295 (i) (1) (B) above, and service in the employ of the South Jersey
296 Port Commission or its successors;

297 (E) Service performed in the employ of any other state or its
298 political subdivisions or of an instrumentality of any other state
299 or states or their political subdivisions: to the extent that such
300 instrumentality is with respect to such service exempt under the
301 Constitution of the United States from the tax imposed under the
302 Federal Unemployment Tax Act, as amended, except as provided
303 in R. S. 43:21-19 (i) (1) (B) above;

304 (F) Service performed in the employ of the United States
305 Government or of an instrumentality of the United States exempt
306 under the Constitution of the United States from the contributions
307 imposed by the Unemployment Compensation Law, except that to
308 the extent that the Congress of the United States shall permit
309 states to require any instrumentalities of the United States to make
310 payments into an unemployment fund under a State Unemployment
311 Compensation Law, all of the provisions of this act shall be
312 applicable to such instrumentalities, and to service performed for
313 such instrumentalities, in the same manner, to the same extent and
314 on the same terms as to all other employers, employing units,
315 individuals and services; provided, that if this State shall not be
316 certified for any year by the Secretary of Labor of the United
317 States under section 3304 of the Federal Internal Revenue Code
318 (26 U. S. C., sec. 3304), the payments required of such instru-
319 mentalities with respect to such year shall be refunded by the

320 division from the fund in the same manner and within the same
321 period as is provided in R. S. 43:21-14 (f) with respect to con-
322 tributions erroneously paid to or collected by the division;

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

329 (H) Services performed as a member of the board of directors,
330 a board of trustees, a board of managers, or a committee of any
331 bank, building and loan or savings and loan association, incorpo-
332 rated or organized under the laws of this State or of the United
333 States, where such services do not constitute the principal employ-
334 ment of the individual;

335 (I) Service with respect to which unemployment insurance is
336 payable under an unemployment insurance program established
337 by an Act of Congress;

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

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

345 (L) Services performed in the employ of any veterans' organiza-
346 tion chartered by Act of Congress or of any auxiliary thereof,
347 no part of the net earnings of which organization, or auxiliary
348 thereof, inures to the benefit of any private shareholder or
349 individual;

350 (M) Service performed for or in behalf of the owner or operator
351 of any theatre, ballroom, amusement hall or other place of enter-
352 tainment, not in excess of 10 weeks in any calendar year for the
353 same owner or operator, by any leader or musician of a band or
354 orchestra, commonly called a "name band," entertainer, vaudeville
355 artist, actor, actress, singer or other entertainer;

356 (N) Services performed *after January 1, 1971* by an individual
357 for a labor union organization, known and recognized as a union
358 local, as a member of a committee or committees reimbursed by
359 the union local for time lost from regular employment, or as a
360 part-time officer of a union local and the remuneration for such
361 services is less than ~~[\$250.00]~~ \$1,000.00 in a calendar year;

362 (O) Services performed in the sale or distribution of merchan-
363 dise by home-to-home salespersons or in-the-home demonstrators
364 whose remuneration consists wholly of commissions or commissions
365 and bonuses,

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

369 (Q) Service performed in the employ of an instrumentality
370 wholly owned by a foreign government if (i) the service is of a
371 character similar to that performed in foreign countries by em-
372 ployees of the United States Government or of an instrumentality
373 thereof, and (ii) the division finds that the United States Secretary
374 of State has certified to the United States Secretary of the Treasury
375 that the foreign government with respect to whose instrumentality
376 exemption is claimed, grants an equivalent exemption with respect
377 to similar services performed in the foreign country by employees
378 of the United States Government and of instrumentalities thereof;

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

383 (S) Service covered by an election duly approved by an agency
384 charged with the administration of any other state or Federal
385 Unemployment Compensation or Employment Security Law, in
386 accordance with an arrangement pursuant to R. S. 43:21-21 during
387 the effective period of such election;

388 (T) Service performed in the employ of a school, college, or
389 university if such service is performed (i) by a student enrolled
390 at such school, college, or university on a full-time basis in an
391 educational program or completing such educational program
392 leading to a degree at any of the severally recognized levels, or
393 (ii) by the spouse of such a student, if such spouse is advised at
394 the time such spouse commences to perform such service that (I)
395 the employment of such spouse to perform such service is provided
396 under a program to provide financial assistance to such student
397 by such school, college, or university, and (II) such employment
398 will not be covered by any program of unemployment insurance;

399 (U) Service performed by an individual under the age of 22 who
400 is enrolled at a nonprofit or public educational institution which
401 normally maintains a regular faculty and curriculum and normally
402 has a regularly organized body of students in attendance at the
403 place where its educational activities are carried on, as a student

404 in a full-time program, taken for credit at such institution, which
405 combines academic instruction with work experience, if such service
406 is an integral part of such program, and such institution has so
407 certified to the employer, except that this subparagraph shall not
408 apply to service performed in a program established for or on
409 behalf of an employer or group of employers;

410 (V) Service performed in the employ of a hospital, if such ser-
411 vice is performed by a patient of the hospital; service performed
412 as a student nurse in the employ of a hospital or a nurses' training
413 school by an individual who is enrolled and regularly attending
414 classes in a nurses' training school approved under the laws of
415 this State; and service performed as an intern in the employ of
416 a hospital by an individual who has completed a 4-year course in
417 a medical school approved pursuant to the law of this State.

418 (8) If $\frac{1}{2}$ or more of the services in any pay period performed
419 by an individual for an employing unit constitutes employment,
420 all the services of such individual shall be deemed to be employ-
421 ment; but if less than $\frac{1}{2}$ of the service in any pay period performed
422 by an individual for an employing unit does not constitute employ-
423 ment, then none of the service of such individual shall be deemed
424 to be employment. As used in this paragraph, the term "pay
425 period" means a period of not more than 31 consecutive days for
426 which a payment for service is ordinarily made by an employing
427 unit to individuals in its employ.

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

431 (k) "Fund" means the unemployment compensation fund estab-
432 lished by this chapter (R. S. 43:21-1 et seq.), to which all con-
433 tributions required and from which all benefits provided under this
434 chapter (R. S. 43:21-1 et seq.) shall be paid.

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

438 (m) Unemployment.

439 (1) An individual shall be deemed "unemployed" for any week
440 during which he is not engaged in full-time work and with respect
441 to which his remuneration is less than his weekly benefit rate,
442 including any week during which he is on vacation without pay;
443 provided, such vacation is not the result of the individual's volun-
444 tary action.

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

450 (3) An individual's week of unemployment shall be deemed to
451 commence only after his registration at an employment office,
452 except as the division may by regulation otherwise prescribe.

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

457 (o) "Wages" means remuneration paid by employers for em-
458 ployment; provided, however, that for eligibility and benefit pur-
459 poses wages earned but not paid when the amount thereof has
460 been calculated and is due as determined by the established and
461 customary practices of the employer shall be construed as having
462 been paid when earned. If a worker receives gratuities regularly
463 in the course of his employment from others than his employer,
464 his "wages" shall also include the gratuities so received if reported
465 in writing to his employer in accordance with regulations of the
466 Division of Employment Security, and if not so reported, his
467 "wages" shall be determined in accordance with the minimum
468 wage rates prescribed under any labor law or regulation of this
469 State or of the United States, or the amount or remuneration
470 actually received by the employee from his employer, whichever
471 is the higher.

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

475 (q) "Week" means such period or periods of 7 consecutive days
476 ending at midnight, as the division may by regulation prescribe.

477 (r) "Calendar quarter" means the period of 3 consecutive
478 calendar months ending on March 31, June 30, September 30, or
479 December 31.

480 (s) "Investment company" means any company as defined in
481 paragraph 1-a of c. 322 of the laws of 1938, entitled "An act
482 concerning investment companies, and supplementing Title 17 of
483 the Revised Statutes by adding thereto a new chapter entitled
484 'investment companies.' "

485 (t) "Base week" means any calendar week of an individual's
486 base year during which he earned in employment from an employer
487 remuneration equal to not less than \$15.00; provided, if in any

488 calendar week, an individual is in employment with more than
489 one employer, he may in such calendar week establish a base week
490 with respect to each such employer from whom the individual
491 earns remuneration equal to not less than \$15.00 during such week.

492 (u) "Average weekly wage" means the amount derived by
493 dividing an individual's total wages received during his base year
494 base weeks (as defined in subsection (t) of this section) from that
495 most recent base year employer with whom he has established at
496 least 17 base weeks, by the number of base weeks in which such
497 wages were earned. In the event that such claimant had no em-
498 ployer in his base year with whom he had established at least 17
499 base weeks, then such individual's average weekly wage shall be
500 computed as if all of his base week wages were received from one
501 employer and as if all his base weeks of employment had been
502 performed in the employ of one employer.

503 If on application of a claimant it is determined that he has been
504 employed during at least the 4 weeks immediately preceding his
505 separation from employment by an employer on a substantially
506 reduced schedule of weekly hours due to lack of work, all weeks
507 of substantially reduced schedule within the base period and his
508 wages therefor shall be disregarded in computing his average
509 weekly wage.

510 (v) "Initial determination" means, subject to the provisions of
511 R. S. 43:21-6 (b) (2) and (3), a determination of benefit rights as
512 measured by an eligible individual's base year employment with a
513 single employer covering all periods of employment with that em-
514 ployer during the base year. Subject to the provisions of R. S.
515 43:21-3 (d) (3) if an individual has been in employment in his
516 base year with more than one employer, no benefits shall be paid to
517 that individual under any successive initial determination until his
518 benefit rights have been exhausted under the next preceding initial
519 determination.

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

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

526 (y) "Institution of higher education" means an educational
527 institution which

528 (1) admits as regular students only individuals having a cer-
529 tificate of graduation from a high school, or the recognized equiv-
530 alent of such a certificate;

531 (2) is legally authorized in this State to provide a program of
532 education beyond high school;

533 (3) provides an educational program for which it awards a
534 bachelor's or higher degree, or provides a program which is
535 acceptable for full credit toward such a degree, a program of post-
536 graduate or post-doctoral studies, or a program of training to
537 prepare students for gainful employment in a recognized occupa-
538 tion; and

539 (4) is a public or other nonprofit institution.

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

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

1 2. This act shall take effect immediately.

STATEMENT

In 1951, an amendment to the Unemployment Compensation Law excluded from the definition of "employment" certain services performed by a committee member or part-time officer for a labor union organization. The exclusion applies where remuneration for services is less than \$250.00 per calendar year.

This bill would increase the exclusion amount from \$250.00 to \$1,000.00 per calendar year for services rendered after January 1, 1971. In the 21 years since this provision was written in the law, salary and wage levels have more than trebled. The proposed exclusion amount recognizes the inflation and wage level changes that have occurred since 1951.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

March 2, 1973

SENATE BILL NO. 982

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 982 with my objections, for reconsideration.

Senate Bill No. 982 would make a slight change in the State's Unemployment Compensation Law. In 1951, an amendment to the Unemployment Compensation Law was enacted to exclude from the definition of "employment" those services performed by a committee member or part-time officer of a labor union local when the remuneration for such services is less than \$250 in a calendar year. Senate Bill No. 982 would increase the amount of remuneration in this exclusion from \$250 to \$1,000 in recognition of inflation and wage level changes since 1951. The amendment would apply to all services performed after January 1, 1971.

I am in agreement with the change which would be made in the amount of remuneration involved, but the retroactive aspect of the bill creates unnecessary and unacceptable problems. The United States Secretary of Labor must review and approve all State unemployment compensation legislation adopted pursuant to the Federal Unemployment Tax Act, and he has advised me that the effective date of January 1, 1971 set forth in Senate Bill No. 982 on page 9, line 356 should be changed to January 1, 1973 in order to avoid a problem of conformity with Federal law.

If the January 1, 1971 date were to become law in New Jersey, it could be construed to require New Jersey to refund 1971 and 1972 contributions which were made in compliance with the law in those years. However, federal law provides only for refunds of "erroneous" payments. Since the 1971 and 1972 contributions, being required by law, were not "erroneous" payments, they could not be refunded without creating a lack of conformity with Federal legislation. One consequence would be that the United States Secretary of Labor could refuse to certify for payment to New Jersey the amount otherwise available to this State for the purpose of assisting in the administration of our unemployment compensation law. 42 U.S.C. §§501 et seq. The other adverse consequence would be that employers could lose their credit against

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 982

-2-

the Federal Unemployment Tax Act for the amount of contributions paid into the State Unemployment Compensation Fund if the law is found to be non-conforming. 26 U.S.C. §§ 3301 et seq.

These serious problems would be avoided if the change from \$250 to \$1,000 in R.S. 43:21-19(i)(7)(N) were made applicable to services performed after January 1, 1973.

Accordingly, I herewith return Senate Bill No. 982 for reconsideration and recommend the following change:

Page 9, Section 1, Line 356: Delete "1971" and insert "1973" in lieu thereof.

Respectfully,

/s/ William T. Cahill

GOVERNOR

[seal]

Attest:

/s/ Jean E. Mulford

Acting Secretary to the Governor

SENATE AMENDMENT TO
SENATE, No. 982

STATE OF NEW JERSEY

ADOPTED MARCH 26, 1973

Amend page 9, section 1, line 356, delete "1971", and insert "1973"
in lieu thereof.

CHAPTER 94 LAWS OF N. J. 19 73
APPROVED 4-25-73

[OFFICIAL COPY REPRINT]

SENATE, No. 982

STATE OF NEW JERSEY

INTRODUCED MAY 4, 1972

By Senators BROWN, AZZOLINA, ITALIANO, DODD, GIULIANO,
MARAZITI, HIRKALA, CAFIERO and HOLLENBECK

Referred to Committee on Labor, Industry and Professions

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

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

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

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

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

7 (2) "Average annual payroll" means the average of the annual
8 payrolls of any employer for the last 3 or 5 preceding calendar
9 years, whichever average is higher, except that any year or years
10 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 3 or 5 calendar years in each of which the
14 employer had an "annual payroll" in the operation of his business,
15 if the employer resumes his business within 12 months after
16 separation, discharge or release from such service, under conditions
17 other than dishonorable, and makes application to have his "aver-
18 age annual payroll" determined on the basis of such deletion
19 within 12 months after he resumes his business; provided, how-
20 ever, that "average annual payroll" solely for the purposes of
21 paragraph (3) of subsection (e) of section 43:21-7 of this Title
22 means the average of the annual payrolls of any employer on
23 which he paid contributions to the State disability benefits fund
24 for the last 3 or 5 preceding calendar years, whichever average is
25 higher; provided further, that only those wages be included on

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

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 months'
29 period for which the employer's contribution rate is computed.

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

33 (c) "Base year" with respect to benefit years commencing on
34 or after January 1, 1953, shall mean the 52 calendar weeks ending
35 with the second week immediately preceding an individual's benefit
36 year.

37 (d) "Benefit year" with respect to any individual means the
38 364 consecutive calendar days beginning with the day on, or as of,
39 which he first files a valid claim for benefits, and thereafter
40 beginning with the day on, or as of, which the individual next files
41 a valid claim for benefits after the termination of his last preceding
42 benefit year. Any claim for benefits made in accordance with sub-
43 section (a) of section 43:21-6 of this Title shall be deemed to be a
44 "valid claim" for the purpose of this subsection if (1) no remunera-
45 tion was paid or is payable for the day on which, or as of which he
46 files a claim for benefits, and no work is available to him with his
47 current employing unit on such day, or, he is unemployed for the
48 week in which, or as of which, he files a claim for benefits; and (2)
49 he has fulfilled the conditions imposed by subsection (e) of section
50 43:21-4 of this Title.

51 (e) "Division" means the Division of Employment Security of
52 the Department of Labor and Industry established by c. 446, P. L.
53 1948, and any transaction or exercise of authority by the director
54 of the division thereunder, or under this chapter (R. S. 43:21-1 et
55 seq.), shall be deemed to be performed by the division.

56 (f) "Contributions" means the money payments to the State
57 Unemployment Compensation Fund required by R. S. 43:21-7.
58 "Payments in lieu of contributions" means the money payments
59 to the State Unemployment Compensation Fund by employers
60 electing or required to make payments in lieu of contributions as
61 provided in section 3 or section 4 of this act (C. 43:21-7.2 and
62 43:21-7.3).

63 (g) "Employing unit" means any individual or type of orga-
64 nization, including the State, its political subdivisions, the State and
65 one or more other states, and the instrumentalities of the State and
66 of the State and one or more other states any partnership, associa-
67 tion, trust, estate, joint-stock company, insurance company or

68 corporation, whether domestic or foreign, or the receiver, trustee
69 in bankruptcy, trustee or successor thereof, or the legal repre-
70 sentative of a deceased person, which has or subsequent to January
71 1, 1936, had in its employ one or more individuals performing
72 services for it within this State. All individuals performing
73 services within this State for any employing unit which maintains
74 two or more separate establishments within this State shall be
75 deemed to be employed by a single employing unit for all the pur-
76 poses of this chapter (R. S. 43:21-1 et seq.). Each individual em-
77 ployed to perform or to assist in performing the work of any agent
78 or employee of an employing unit shall be deemed to be employed
79 by such employing unit for all the purposes of this chapter (R. S.
80 43:21-1 et seq.), whether such individual was hired or paid directly
81 by such employing unit or by such agent or employee; provided,
82 the employing unit had actual or constructive knowledge of the
83 work.

84 (h) "Employer" means:

85 (1) Any employing unit which after December 31, 1971, in either
86 the current or the preceding calendar year paid remuneration for
87 employment in the amount of \$1,000.00 or more;

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

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

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

105 (5) Any employing unit for which service in employment as
106 defined in R. S. 43:21-19 (i) (1) (B), is performed after December
107 31, 1971;

108 (6) Any employing unit for which service in employment as
109 defined in R. S. 43:21-19 (i) (1) (C) is performed after December

110 31, 1971 and which in either the current or the preceding calendar
111 year paid remuneration for employment in the amount of \$1,000.00
112 or more;

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

123 (8) Any employing unit which, having become an employer under
124 paragraphs (1), (2), (3), (4), (5), (6) or (7) has not, under section
125 43:21-8 ceased to be an employer subject to this chapter (R. S.
126 43:21-1 et seq.); or

127 (9) For the effective period of its election pursuant to R. S.
128 43:21-8 any other employing unit which has elected to become
129 fully subject to this chapter (R. S. 43:21-1 et seq.);

130 (10) For the purposes of paragraphs (1) and (6), employment
131 shall include service which would constitute employment but for
132 the fact that such services deemed to be performed entirely within
133 another state pursuant to an election under an arrangement
134 entered into under R. S. 43:21-21 between this State and an agency
135 charged with the administration of any other state or Federal
136 Unemployment Compensation Law.

137 (11) Any employing unit subject to the provisions of the Federal
138 Unemployment Tax Act within either the current or the preceding
139 calendar year except for employment hereinafter excluded under
140 paragraph (7) of subsection (i) of this section.

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

142 (A) Any service performed prior to January 1, 1972, which was
143 employment as defined in the Unemployment Compensation Law
144 (R. S. 43:21-1 et seq.) prior to such date, and, subject to the other
145 provisions of this subsection, service performed on or after January
146 1, 1972, including service in interstate commerce, performed for
147 remuneration or under any contract of hire, written or oral, ex-
148 press or implied.

149 (B) Service performed after December 31, 1971 by an individual
150 in the employ of this State or any of its instrumentalities or in
151 the employ of this State and one or more other states or their

152 instrumentalities for a hospital or institution of higher education
153 located in this State, if such service is not excluded from employ-
154 ment under paragraph (D) below.

155 (C) Service performed after December 31, 1971 by an individual
156 in the employ of a religious, charitable, educational, or other
157 organization, which is excluded from "employment" as defined in
158 the Federal Unemployment Tax Act solely by reason of section
159 3306 (c) (8) of that act, if such service is not excluded from em-
160 ployment under paragraph (D) below.

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

163 (i) in the employ of (I) a church or convention or association
164 of churches, or (II) an organization which is operated pri-
165 marily for religious purposes and which is operated, super-
166 vised, controlled or principally supported by a church or
167 convention or association of churches;

168 (ii) by a duly ordained, commissioned, or licensed minister
169 of a church in the exercise of his ministry or by a member
170 of a religious order in the exercise of duties required by such
171 order;

172 (iii) in the employ of a school which is not an institution
173 of higher education;

174 (iv) in a facility conducted for the purpose of carrying out
175 a program of rehabilitation of individuals whose earning
176 capacity is impaired by age or physical or mental deficiency
177 or injury or providing remunerative work for individuals who
178 because of their impaired physical or mental capacity cannot
179 be readily absorbed in the competitive labor market by an
180 individual receiving such rehabilitation or remunerative work;

181 (v) as part of an unemployment work-relief or work-training
182 program assisted in whole or in part by any Federal agency
183 or an agency of a State or political subdivision thereof, by an
184 individual receiving such work relief or work training; or

185 (vi) for a hospital in a State prison or other State cor-
186 rectional institution by an inmate of the prison or correctional
187 institution.

188 (E) The term "employment" shall include the services of an
189 individual who is a citizen of the United States, performed outside
190 the United States (except in Canada or the Virgin Islands) after
191 December 31, 1971 in the employ of an American employer (other
192 than the service which is deemed employment under the provisions
193 of paragraphs 43:21-19 (i) (2) or (5) or the parallel provisions of
194 another State's Unemployment Compensation Law), if

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

197 (E) (ii) The American employer has no place of business in
198 the United States, but (I) the American employer is an individual
199 who is a resident of this State; or (II) the American employer is
200 a corporation which is organized under the laws of this State; or
201 (III) the American employer is a partnership or trust and the
202 number of partners or trustees who are residents of this State is
203 greater than the number who are residents of any other state; or

204 (E) (iii) None of the criteria of divisions (i) and (ii) of this sub-
205 paragraph (E) is met but the American employer has elected to
206 become an employer subject to the Unemployment Compensation
207 Law (R. S. 43:21-1 et seq.) in this State, or the American employer
208 having failed to elect to become an employer in any state, the
209 individual has filed a claim for benefits, based on such service,
210 under the law of this State.

211 (E) (iv) An "American employer" for the purposes of this
212 subparagraph (E), means (I) an individual who is a resident of
213 the United States; or (II) a partnership if $\frac{2}{3}$ or more of the
214 partners are residents of the United States; or (III) a trust, if
215 all the trustees are residents of the United States; or (IV) a
216 corporation organized under the laws of the United States or of
217 any state.

218 (F) Notwithstanding R. S. 43:21-19 (i) (2), all service per-
219 formed after January 1, 1972 by an officer or member of the crew
220 of an American vessel or American aircraft on or in connection
221 with such vessel or aircraft, if the operating office from which the
222 operations of such vessel or aircraft operating within, or within
223 and without, the United States are ordinarily and regularly super-
224 vised, managed, directed, and controlled, is within this State.

225 (G) Notwithstanding any other provision of this subsection,
226 service in this State with respect to which the taxes required to
227 be paid under any Federal law imposing a tax against which credit
228 may be taken for contributions required to be paid into a State
229 unemployment fund or which as a condition for full tax credit
230 against the tax imposed by the Federal Unemployment Tax Act is
231 required to be covered under the Unemployment Compensation Law
232 (R. S. 43:21-1 et seq.).

233 (H) The term "United States" when used in a geographical
234 sense in subsection R. S. 43:21-19 (i) includes the States, the
235 District of Columbia, and the Commonwealth of Puerto Rico.

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

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

239 (B) The service is not localized in any state but some of the
240 service is performed in this State, and (i) the base of operations,
241 or, if there is no base of operations, then the place from which
242 such service is directed or controlled, is in this State; or (ii) the
243 base of operations or place from which such service is directed or
244 controlled is not in any state in which some part of the service is
245 performed, but the individual's residence is in this State.

246 (3) Services performed within this State but not covered under
247 paragraph (2) of this subsection shall be deemed to be employment
248 subject to this chapter (R. S. 43:21-1 et seq.) if contributions are
249 not required and paid with respect to such services under an unem-
250 ployment compensation law of any other state or of the Federal
251 Government.

252 (4) Services not covered under paragraph (2) of this subsection
253 and performed entirely without this State, with respect to no part
254 of which contributions are required and paid under an Unemploy-
255 ment Compensation Law of any other state or of the Federal
256 Government, shall be deemed to be employment subject to this
257 chapter (R. S. 43:21-1 et seq.) if the individual performing such
258 services is a resident of this State and the employing unit for
259 whom such services are performed files with the division an election
260 that the entire service of such individual shall be deemed to be
261 employment subject to this chapter (R. S. 43:21-1 et seq.).

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

263 (A) the service is performed entirely within such state; or

264 (B) the service is performed both within and without such state,
265 but the service performed without such state is incidental to the
266 individual's service within the State, for example, is temporary
267 or transitory in nature or consists of isolated transactions.

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

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

275 (B) such service is either outside the usual course of the business
276 for which such service is performed, or that such service is per-
277 formed outside of all the places of business of the enterprise for
278 which such service is performed; and

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

281 (7) Provided that such services are also exempted under the
282 Federal Unemployment Tax Act, as amended, or that contributions
283 with respect to such services are not required to be paid into a
284 State Unemployment Fund as a condition for a tax offset credit
285 against the tax imposed by the Federal Unemployment Tax Act,
286 as amended, the term "employment" shall not include

287 (A) Agricultural labor;

288 (B) Domestic service in a private home;

289 (C) Service performed by an individual in the employ of his
290 son, daughter or spouse, and service performed by a child under
291 the age of 21 in the employ of his father or mother;

292 (D) Service performed in the employ of this State or of any
293 political subdivision thereof or of any instrumentality of this State
294 or its political subdivisions except as provided in R. S. 43:21-19
295 (i) (1) (B) above, and service in the employ of the South Jersey
296 Port Commission or its successors;

297 (E) Service performed in the employ of any other state or its
298 political subdivisions or of an instrumentality of any other state
299 or states or their political subdivisions: to the extent that such
300 instrumentality is with respect to such service exempt under the
301 Constitution of the United States from the tax imposed under the
302 Federal Unemployment Tax Act, as amended, except as provided
303 in R. S. 43:21-19 (i) (1) (B) above;

304 (F) Service performed in the employ of the United States
305 Government or of an instrumentality of the United States exempt
306 under the Constitution of the United States from the contributions
307 imposed by the Unemployment Compensation Law, except that to
308 the extent that the Congress of the United States shall permit
309 states to require any instrumentalities of the United States to make
310 payments into an unemployment fund under a State Unemployment
311 Compensation Law, all of the provisions of this act shall be
312 applicable to such instrumentalities, and to service performed for
313 such instrumentalities, in the same manner, to the same extent and
314 on the same terms as to all other employers, employing units,
315 individuals and services; provided, that if this State shall not be
316 certified for any year by the Secretary of Labor of the United
317 States under section 3304 of the Federal Internal Revenue Code
318 (26 U. S. C., sec. 3304), the payments required of such instru-
319 mentalities with respect to such year shall be refunded by the

320 division from the fund in the same manner, and within the same
321 period as is provided in R. S. 43:21-14 (f) with respect to con-
322 tributions erroneously paid to or collected by the division;

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

329 (H) Services performed as a member of the board of directors,
330 a board of trustees, a board of managers, or a committee of any
331 bank, building and loan or savings and loan association, incorpo-
332 rated or organized under the laws of this State or of the United
333 States, where such services do not constitute the principal employ-
334 ment of the individual;

335 (I) Service with respect to which unemployment insurance is
336 payable under an unemployment insurance program established
337 by an Act of Congress;

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

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

345 (L) Services performed in the employ of any veterans' organiza-
346 tion chartered by Act of Congress or of any auxiliary thereof,
347 no part of the net earnings of which organization, or auxiliary
348 thereof, inures to the benefit of any private shareholder or
349 individual;

350 (M) Service performed for or in behalf of the owner or operator
351 of any theatre, ballroom, amusement hall or other place of enter-
352 tainment, not in excess of 10 weeks in any calendar year for the
353 same owner or operator, by any leader or musician of a band or
354 orchestra, commonly called a "name band," entertainer, vaudeville
355 artist, actor, actress, singer or other entertainer;

356 (N) Services performed *after January 1, *1971* *1973** by an
357 individual for a labor union organization, known and recognized as
358 a union local, as a member of a committee or committees reimbursed
359 by the union local for time lost from regular employment, or as a
360 part-time officer of a union local and the remuneration for such
361 services is less than **[\$250.00]** \$1,000.00 in a calendar year;

362 (O) Services performed in the sale or distribution of merchan-
363 dise by home-to-home salespersons or in-the-home demonstrators
364 whose remuneration consists wholly of commissions or commissions
365 and bonuses.

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

369 (Q) Service performed in the employ of an instrumentality
370 wholly owned by a foreign government if (i) the service is of a
371 character similar to that performed in foreign countries by em-
372 ployees of the United States Government or of an instrumentality
373 thereof, and (ii) the division finds that the United States Secretary
374 of State has certified to the United States Secretary of the Treasury
375 that the foreign government with respect to whose instrumentality
376 exemption is claimed, grants an equivalent exemption with respect
377 to similar services performed in the foreign country by employees
378 of the United States Government and of instrumentalities thereof;

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

383 (S) Service covered by an election duly approved by an agency
384 charged with the administration of any other state or Federal
385 Unemployment Compensation or Employment Security Law, in
386 accordance with an arrangement pursuant to R. S. 43:21-21 during
387 the effective period of such election;

388 (T) Service performed in the employ of a school, college, or
389 university if such service is performed (i) by a student enrolled
390 at such school, college, or university on a full-time basis in an
391 educational program or completing such educational program
392 leading to a degree at any of the severally recognized levels, or
393 (ii) by the spouse of such a student, if such spouse is advised at
394 the time such spouse commences to perform such service that (I)
395 the employment of such spouse to perform such service is provided
396 under a program to provide financial assistance to such student
397 by such school, college, or university, and (II) such employment
398 will not be covered by any program of unemployment insurance;

399 (U) Service performed by an individual under the age of 22 who
400 is enrolled at a nonprofit or public educational institution which
401 normally maintains a regular faculty and curriculum and normally
402 has a regularly organized body of students in attendance at the
403 place where its educational activities are carried on, as a student

404 in a full-time program, taken for credit at such institution, which
405 combines academic instruction with work experience, if such service
406 is an integral part of such program, and such institution has so
407 certified to the employer, except that this subparagraph shall not
408 apply to service performed in a program established for or on
409 behalf of an employer or group of employers;

410 (V) Service performed in the employ of a hospital, if such ser-
411 vice is performed by a patient of the hospital; service performed
412 as a student nurse in the employ of a hospital or a nurses' training
413 school by an individual who is enrolled and regularly attending
414 classes in a nurses' training school approved under the laws of
415 this State; and service performed as an intern in the employ of
416 a hospital by an individual who has completed a 4-year course in
417 a medical school approved pursuant to the law of this State.

418 (8) If $\frac{1}{2}$ or more of the services in any pay period performed
419 by an individual for an employing unit constitutes employment,
420 all the services of such individual shall be deemed to be employ-
421 ment; but if less than $\frac{1}{2}$ of the service in any pay period performed
422 by an individual for an employing unit does not constitute employ-
423 ment, then none of the service of such individual shall be deemed
424 to be employment. As used in this paragraph, the term "pay
425 period" means a period of not more than 31 consecutive days for
426 which a payment for service is ordinarily made by an employing
427 unit to individuals in its employ.

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

431 (k) "Fund" means the unemployment compensation fund estab-
432 lished by this chapter (R. S. 43:21-1 et seq.), to which all con-
433 tributions required and from which all benefits provided under this
434 chapter (R. S. 43:21-1 et seq.) shall be paid.

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

438 (m) Unemployment.

439 (1) An individual shall be deemed "unemployed" for any week
440 during which he is not engaged in full-time work and with respect
441 to which his remuneration is less than his weekly benefit rate,
442 including any week during which he is on vacation without pay;
443 provided, such vacation is not the result of the individual's volun-
444 tary action.

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

450 (3) An individual's week of unemployment shall be deemed to
451 commence only after his registration at an employment office,
452 except as the division may by regulation otherwise prescribe.

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

457 (o) "Wages" means remuneration paid by employers for em-
458 ployment; provided, however, that for eligibility and benefit pur-
459 poses wages earned but not paid when the amount thereof has
460 been calculated and is due as determined by the established and
461 customary practices of the employer shall be construed as having
462 been paid when earned. If a worker receives gratuities regularly
463 in the course of his employment from others than his employer,
464 his "wages" shall also include the gratuities so received if reported
465 in writing to his employer in accordance with regulations of the
466 Division of Employment Security, and if not so reported, his
467 "wages" shall be determined in accordance with the minimum
468 wage rates prescribed under any labor law or regulation of this
469 State or of the United States, or the amount or remuneration
470 actually received by the employee from his employer, whichever
471 is the higher.

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

475 (q) "Week" means such period or periods of 7 consecutive days
476 ending at midnight, as the division may by regulation prescribe.

477 (r) "Calendar quarter" means the period of 3 consecutive
478 calendar months ending on March 31, June 30, September 30, or
479 December 31.

480 (s) "Investment company" means any company as defined in
481 paragraph 1-a of c. 322 of the laws of 1938, entitled "An act
482 concerning investment companies, and supplementing Title 17 of
483 the Revised Statutes by adding thereto a new chapter entitled
484 'investment companies.' "

485 (t) "Base week" means any calendar week of an individual's
486 base year during which he earned in employment from an employer
487 remuneration equal to not less than \$15.00; provided, if in any

488 calendar week, an individual is in employment with more than
489 one employer, he may in such calendar week establish a base week
490 with respect to each such employer from whom the individual
491 earns remuneration equal to not less than \$15.00 during such week.

492 (u) "Average weekly wage" means the amount derived by
493 dividing an individual's total wages received during his base year
494 base weeks (as defined in subsection (t) of this section) from that
495 most recent base year employer with whom he has established at
496 least 17 base weeks, by the number of base weeks in which such
497 wages were earned. In the event that such claimant had no em-
498 ployer in his base year with whom he had established at least 17
499 base weeks, then such individual's average weekly wage shall be
500 computed as if all of his base week wages were received from one
501 employer and as if all his base weeks of employment had been
502 performed in the employ of one employer.

503 If on application of a claimant it is determined that he has been
504 employed during at least the 4 weeks immediately preceding his
505 separation from employment by an employer on a substantially
506 reduced schedule of weekly hours due to lack of work, all weeks
507 of substantially reduced schedule within the base period and his
508 wages therefor shall be disregarded in computing his average
509 weekly wage.

510 (v) "Initial determination" means, subject to the provisions of
511 R. S. 43:21-6 (b) (2) and (3), a determination of benefit rights as
512 measured by an eligible individual's base year employment with a
513 single employer covering all periods of employment with that em-
514 ployer during the base year. Subject to the provisions of R. S.
515 43:21-3 (d) (3) if an individual has been in employment in his
516 base year with more than one employer, no benefits shall be paid to
517 that individual under any successive initial determination until his
518 benefit rights have been exhausted under the next preceding initial
519 determination.

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

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

526 (y) "Institution of higher education" means an educational
527 institution which

528 (1) admits as regular students only individuals having a cer-
529 tificate of graduation from a high school, or the recognized equiv-
530 alent of such a certificate;

531 (2) is legally authorized in this State to provide a program of
532 education beyond high school;

533 (3) provides an educational program for which it awards a
534 bachelor's or higher degree, or provides a program which is
535 acceptable for full credit toward such a degree, a program of post-
536 graduate or post-doctoral studies, or a program of training to
537 prepare students for gainful employment in a recognized occupa-
538 tion; and

539 (4) is a public or other nonprofit institution.

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

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

1 2. This act shall take effect immediately.