

43:21-4

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2002 **CHAPTER:** 94
NJSA: 43:21-4 (Election board work - unemployment benefits)
BILL NO: S1213 (Substituted A1903)

SPONSOR(S): Martin and others

DATE INTRODUCED: February 28, 2002

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: Labor

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** October 7, 2002

SENATE: March 25, 2002

DATE OF APPROVAL: November 8, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

S1213

[SPONSORS STATEMENT:](#) (Begins on page 26 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A1903

[SPONSORS STATEMENT:](#) (Begins on page 26 of original bill) [Yes](#)

Bill and Sponsors Statement identical to S1213

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

Identical to Senate Statement to S1213

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

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P.L. 2002, CHAPTER 94, *approved November 8, 2002*

Senate, No. 1213

1 **AN ACT** exempting pay for election board work on election day from
2 the calculation of unemployment benefits and amending R.S.43:21-
3 4 and R.S.43:21-19.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.43:21-4 is amended to read as follows:

9 43:21-4. Benefit eligibility conditions. An unemployed individual
10 shall be eligible to receive benefits with respect to any week only if:

11 (a) The individual has filed a claim at an unemployment insurance
12 claims office and thereafter continues to report at an employment
13 service office or unemployment insurance claims office, as directed by
14 the division in accordance with such regulations as the division may
15 prescribe, except that the division may, by regulation, waive or alter
16 either or both of the requirements of this subsection as to individuals
17 attached to regular jobs, and as to such other types of cases or
18 situations with respect to which the division finds that compliance with
19 such requirements would be oppressive, or would be inconsistent with
20 the purpose of this act; provided that no such regulation shall conflict
21 with subsection (a) of R.S.43:21-3.

22 (b) The individual has made a claim for benefits in accordance with
23 the provisions of subsection (a) of R.S.43:21-6.

24 (c) (1) The individual is able to work, and is available for work,
25 and has demonstrated to be actively seeking work, except as
26 hereinafter provided in this subsection or in subsection (f) of this
27 section.

28 (2) The director may modify the requirement of actively seeking
29 work if such modification of this requirement is warranted by
30 economic conditions.

31 (3) No individual, who is otherwise eligible, shall be deemed
32 ineligible, or unavailable for work, because the individual is on
33 vacation, without pay, during said week, if said vacation is not the
34 result of the individual's own action as distinguished from any
35 collective action of a collective bargaining agent or other action
36 beyond the individual's control.

37 (4) (A) Subject to such limitations and conditions as the division
38 may prescribe, an individual, who is otherwise eligible, shall not be
39 deemed unavailable for work or ineligible because the individual is
40 attending a training program approved for the individual by the
41 division to enhance the individual's employment opportunities or

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

Matter underlined thus is new matter.

1 because the individual failed or refused to accept work while attending
2 such program.

3 (B) For the purpose of this paragraph (4), any training program
4 shall be regarded as approved by the division for the individual if the
5 program and the individual meet the following requirements:

6 (i) The training is for a labor demand occupation and is likely to
7 enhance the individual's marketable skills and earning power;

8 (ii) The training is provided by a competent and reliable private or
9 public entity approved by the Commissioner of Labor pursuant to the
10 provisions of section 8 of the "1992 New Jersey Employment and
11 Workforce Development Act," P.L.1992, c.43 (C.34:15D-8);

12 (iii) The individual can reasonably be expected to complete the
13 program, either during or after the period of benefits;

14 (iv) The training does not include on the job training or other
15 training under which the individual is paid by an employer for work
16 performed by the individual during the time that the individual receives
17 benefits; and

18 (v) The individual enrolls in vocational training, remedial education
19 or a combination of both on a full-time basis.

20 (C) If the requirements of subparagraph (B) of this paragraph (4)
21 are met, the division shall not withhold approval of the training
22 program for the individual for any of the following reasons:

23 (i) The training includes remedial basic skills education necessary
24 for the individual to successfully complete the vocational component
25 of the training;

26 (ii) The training is provided in connection with a program under
27 which the individual may obtain a college degree, including a
28 post-graduate degree;

29 (iii) The length of the training period under the program; or

30 (iv) The lack of a prior guarantee of employment upon completion
31 of the training.

32 (D) For the purpose of this paragraph (4), "labor demand
33 occupation" means an occupation for which there is or is likely to be
34 an excess of demand over supply for adequately trained workers,
35 including, but not limited to, an occupation designated as a labor
36 demand occupation by the New Jersey Occupational Information
37 Coordinating Committee pursuant to the provisions of subsection h.
38 of section 1 of P.L.1987, c.457 (C.34:1A-76) or section 12 of
39 P.L.1992, c.43 (C.34:1A-78).

40 (5) An unemployed individual, who is otherwise eligible, shall not
41 be deemed unavailable for work or ineligible solely by reason of the
42 individual's attendance before a court in response to a summons for
43 service on a jury.

44 (6) An unemployed individual, who is otherwise eligible, shall not
45 be deemed unavailable for work or ineligible solely by reason of the
46 individual's attendance at the funeral of an immediate family member,

1 provided that the duration of the attendance does not extend beyond
2 a two-day period.

3 For purposes of this paragraph, "immediate family member"
4 includes any of the following individuals: father, mother,
5 mother-in-law, father-in-law, grandmother, grandfather, grandchild,
6 spouse, child, foster child, sister or brother of the unemployed
7 individual and any relatives of the unemployed individual residing in
8 the unemployed individual's household.

9 (7) No individual, who is otherwise eligible, shall be deemed
10 ineligible or unavailable for work with respect to any week because,
11 during that week, the individual fails or refuses to accept work while
12 the individual is participating on a full-time basis in self-employment
13 assistance activities authorized by the division, whether or not the
14 individual is receiving a self-employment allowance during that week.

15 (8) Any individual who is determined to be likely to exhaust
16 regular benefits and need reemployment services based on information
17 obtained by the worker profiling system shall not be eligible to receive
18 benefits if the individual fails to participate in available reemployment
19 services to which the individual is referred by the division or in similar
20 services, unless the division determines that:

21 (A) The individual has completed the reemployment services; or

22 (B) There is justifiable cause for the failure to participate, which
23 shall include participation in employment and training,
24 self-employment assistance activities or other activities authorized by
25 the division to assist reemployment or enhance the marketable skills
26 and earning power of the individual and which shall include any other
27 circumstance indicated pursuant to this section in which an individual
28 is not required to be available for and actively seeking work to receive
29 benefits.

30 (9) An unemployed individual, who is otherwise eligible, shall not
31 be deemed unavailable for work or ineligible solely by reason of the
32 individual's work as a board worker for a county board of elections on
33 an election day.

34 (d) The individual has been totally or partially unemployed for a
35 waiting period of one week in the benefit year which includes that
36 week. When benefits become payable with respect to the third
37 consecutive week next following the waiting period, the individual
38 shall be eligible to receive benefits as appropriate with respect to the
39 waiting period. No week shall be counted as a week of unemployment
40 for the purposes of this subsection:

41 (1) If benefits have been paid, or are payable with respect thereto;
42 provided that the requirements of this paragraph shall be waived with
43 respect to any benefits paid or payable for a waiting period as provided
44 in this subsection;

45 (2) If it has constituted a waiting period week under the
46 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et

1 seq.);

2 (3) Unless the individual fulfills the requirements of subsections (a)
3 and (c) of this section;

4 (4) If with respect thereto, claimant was disqualified for benefits
5 in accordance with the provisions of subsection (d) of R.S.43:21-5.

6 (e) (1) (Deleted by amendment, P.L.2001, c.17).

7 (2) With respect to benefit years commencing on or after January
8 1, 1996 and before January 7, 2001, except as otherwise provided in
9 paragraph (3) of this subsection, the individual has, during his base
10 year as defined in subsection (c) of R.S.43:21-19:

11 (A) Established at least 20 base weeks as defined in paragraph (2)
12 of subsection (t) of R.S.43:21-19; or

13 (B) If the individual has not met the requirements of subparagraph
14 (A) of this paragraph (2), earned remuneration not less than an amount
15 12 times the Statewide average weekly remuneration paid to workers,
16 as determined under R.S.43:21-3(c), which amount shall be adjusted
17 to the next higher multiple of \$100.00 if not already a multiple thereof;
18 or

19 (C) If the individual has not met the requirements of subparagraph
20 (A) or (B) of this paragraph (2), earned remuneration not less than an
21 amount 1,000 times the minimum wage in effect pursuant to section
22 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
23 year preceding the calendar year in which the benefit year commences,
24 which amount shall be adjusted to the next higher multiple of \$100.00
25 if not already a multiple thereof.

26 (3) With respect to benefit years commencing before January 7,
27 2001, notwithstanding the provisions of paragraph (2) of this
28 subsection, an unemployed individual claiming benefits on the basis of
29 service performed in the production and harvesting of agricultural
30 crops shall, subject to the limitations of subsection (i) of R.S.43:21-19,
31 be eligible to receive benefits if during his base year, as defined in
32 subsection (c) of R.S.43:21-19, the individual:

33 (A) Has established at least 20 base weeks as defined in paragraph
34 (2) of subsection (t) of R.S.43:21-19; or

35 (B) Has earned 12 times the Statewide average weekly
36 remuneration paid to workers, as determined under R.S.43:21-3(c),
37 raised to the next higher multiple of \$100.00 if not already a multiple
38 thereof, or more; or

39 (C) Has performed at least 770 hours of service in the production
40 and harvesting of agricultural crops.

41 (4) With respect to benefit years commencing on or after January
42 7, 2001, except as otherwise provided in paragraph (5) of this
43 subsection, the individual has, during his base year as defined in
44 subsection (c) of R.S.43:21-19:

45 (A) Established at least 20 base weeks as defined in paragraphs (2)
46 and (3) of subsection (t) of R.S.43:21-19; or

1 (B) If the individual has not met the requirements of subparagraph
2 (A) of this paragraph (4), earned remuneration not less than an amount
3 1,000 times the minimum wage in effect pursuant to section 5 of
4 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
5 preceding the calendar year in which the benefit year commences,
6 which amount shall be adjusted to the next higher multiple of \$100 if
7 not already a multiple thereof.

8 (5) With respect to benefit years commencing on or after January
9 7, 2001, notwithstanding the provisions of paragraph (4) of this
10 subsection, an unemployed individual claiming benefits on the basis of
11 service performed in the production and harvesting of agricultural
12 crops shall, subject to the limitations of subsection (i) of R.S.43:21-19,
13 be eligible to receive benefits if during his base year, as defined in
14 subsection (c) of R.S.43:21-19, the individual:

15 (A) Has established at least 20 base weeks as defined in paragraphs
16 (2) and (3) of subsection (t) of R.S.43:21-19; or

17 (B) Has earned remuneration not less than an amount 1,000 times
18 the minimum wage in effect pursuant to section 5 of P.L.1966, c.113
19 (C.34:11-56a4) on October 1 of the calendar year preceding the
20 calendar year in which the benefit year commences, which amount
21 shall be adjusted to the next higher multiple of \$100 if not already a
22 multiple thereof; or

23 (C) Has performed at least 770 hours of service in the production
24 and harvesting of agricultural crops.

25 (6) The individual applying for benefits in any successive benefit
26 year has earned at least six times his previous weekly benefit amount
27 and has had four weeks of employment since the beginning of the
28 immediately preceding benefit year. This provision shall be in addition
29 to the earnings requirements specified in paragraph (2), (3), (4) or (5)
30 of this subsection, as applicable.

31 (f) (1) The individual has suffered any accident or sickness not
32 compensable under the workers' compensation law, R.S.34:15-1 et
33 seq. and resulting in the individual's total disability to perform any
34 work for remuneration, and would be eligible to receive benefits under
35 this chapter (R.S.43:21-1 et seq.) (without regard to the maximum
36 amount of benefits payable during any benefit year) except for the
37 inability to work and has furnished notice and proof of claim to the
38 division, in accordance with its rules and regulations, and payment is
39 not precluded by the provisions of R.S.43:21-3(d); provided, however,
40 that benefits paid under this subsection (f) shall be computed on the
41 basis of only those base year wages earned by the claimant as a
42 "covered individual," as defined in R.S.43:21-27(b); provided further
43 that no benefits shall be payable under this subsection to any
44 individual:

45 (A) For any period during which such individual is not under the
46 care of a legally licensed physician, dentist, optometrist, podiatrist,

1 practicing psychologist or chiropractor;

2 (B) (Deleted by amendment, P.L.1980, c.90.)

3 (C) For any period of disability due to willfully or intentionally
4 self-inflicted injury, or to injuries sustained in the perpetration by the
5 individual of a crime of the first, second or third degree;

6 (D) For any week with respect to which or a part of which the
7 individual has received or is seeking benefits under any unemployment
8 compensation or disability benefits law of any other state or of the
9 United States; provided that if the appropriate agency of such other
10 state or the United States finally determines that the individual is not
11 entitled to such benefits, this disqualification shall not apply;

12 (E) For any week with respect to which or part of which the
13 individual has received or is seeking disability benefits under the
14 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
15 seq.);

16 (F) For any period of disability commencing while such individual
17 is a "covered individual," as defined in subsection (b) of section 3 of
18 the "Temporary Disability Benefits Law," P.L.1948, c.110
19 (C.43:21-27).

20 (2) Benefit payments under this subsection (f) shall be charged to
21 and paid from the State disability benefits fund established by the
22 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
23 seq.), and shall not be charged to any employer account in computing
24 any employer's experience rate for contributions payable under this
25 chapter.

26 (g) Benefits based on service in employment defined in
27 subparagraphs (B) and (C) of R.S.43:21-19(i)(1) shall be payable in
28 the same amount and on the terms and subject to the same conditions
29 as benefits payable on the basis of other service subject to the
30 "unemployment compensation law"; except that, notwithstanding any
31 other provisions of the "unemployment compensation law":

32 (1) With respect to service performed after December 31, 1977, in
33 an instructional research, or principal administrative capacity for an
34 educational institution, benefits shall not be paid based on such
35 services for any week of unemployment commencing during the period
36 between two successive academic years, or during a similar period
37 between two regular terms, whether or not successive, or during a
38 period of paid sabbatical leave provided for in the individual's contract,
39 to any individual if such individual performs such services in the first
40 of such academic years (or terms) and if there is a contract or a
41 reasonable assurance that such individual will perform services in any
42 such capacity for any educational institution in the second of such
43 academic years or terms;

44 (2) With respect to weeks of unemployment beginning after
45 September 3, 1982, on the basis of service performed in any other
46 capacity for an educational institution, benefits shall not be paid on the

1 basis of such services to any individual for any week which commences
2 during a period between two successive academic years or terms if
3 such individual performs such services in the first of such academic
4 years or terms and there is a reasonable assurance that such individual
5 will perform such services in the second of such academic years or
6 terms, except that if benefits are denied to any individual under this
7 paragraph (2) and the individual was not offered an opportunity to
8 perform these services for the educational institution for the second of
9 any academic years or terms, the individual shall be entitled to a
10 retroactive payment of benefits for each week for which the individual
11 filed a timely claim for benefits and for which benefits were denied
12 solely by reason of this clause;

13 (3) With respect to those services described in paragraphs (1) and
14 (2) above, benefits shall not be paid on the basis of such services to
15 any individual for any week which commences during an established
16 and customary vacation period or holiday recess if such individual
17 performs such services in the period immediately before such vacation
18 period or holiday recess, and there is a reasonable assurance that such
19 individual will perform such services in the period immediately
20 following such period or holiday recess;

21 (4) With respect to any services described in paragraphs (1) and
22 (2) above, benefits shall not be paid as specified in paragraphs (1), (2),
23 and (3) above to any individual who performed those services in an
24 educational institution while in the employ of an educational service
25 agency, and for this purpose the term "educational service agency"
26 means a governmental agency or governmental entity which is
27 established and operated exclusively for the purpose of providing
28 those services to one or more educational institutions.

29 (h) Benefits shall not be paid to any individual on the basis of any
30 services, substantially all of which consist of participating in sports or
31 athletic events or training or preparing to so participate, for any week
32 which commences during the period between two successive sports
33 seasons (or similar periods) if such individual performed such services
34 in the first of such seasons (or similar periods) and there is a
35 reasonable assurance that such individual will perform such services in
36 the later of such seasons (or similar periods).

37 (i) (1) Benefits shall not be paid on the basis of services performed
38 by an alien unless such alien is an individual who was lawfully admitted
39 for permanent residence at the time the services were performed and
40 was lawfully present for the purpose of performing the services or
41 otherwise was permanently residing in the United States under color
42 of law at the time the services were performed (including an alien who
43 is lawfully present in the United States as a result of the application of
44 the provisions of section 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the
45 Immigration and Nationality Act (8 U.S.C. s.1101 et seq.)); provided
46 that any modifications of the provisions of section 3304(a)(14) of the

1 Federal Unemployment Tax Act (26 U.S.C. s.3304 (a)(14)), as
2 provided by Pub.L.94-566, which specify other conditions or other
3 effective dates than stated herein for the denial of benefits based on
4 services performed by aliens and which modifications are required to
5 be implemented under State law as a condition for full tax credit
6 against the tax imposed by the Federal Unemployment Tax Act, shall
7 be deemed applicable under the provisions of this section.

8 (2) Any data or information required of individuals applying for
9 benefits to determine whether benefits are not payable to them because
10 of their alien status shall be uniformly required from all applicants for
11 benefits.

12 (3) In the case of an individual whose application for benefits
13 would otherwise be approved, no determination that benefits to such
14 individual are not payable because of alien status shall be made except
15 upon a preponderance of the evidence.

16 (j) Notwithstanding any other provision of this chapter, the
17 director may, to the extent that it may be deemed efficient and
18 economical, provide for consolidated administration by one or more
19 representatives or deputies of claims made pursuant to subsection (f)
20 of this section with those made pursuant to Article III (State plan) of
21 the "Temporary Disability Benefits Law," P.L.1948, c.110
22 (C.43:21-25 et seq.).
23 (cf: P.L.2001, c.17, s.1)

24

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

26 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
27 seq.), unless the context clearly requires otherwise:

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

31 (2) "Average annual payroll" means the average of the annual
32 payrolls of any employer for the last three or five preceding calendar
33 years, whichever average is higher, except that any year or years
34 throughout which an employer has had no "annual payroll" because of
35 military service shall be deleted from the reckoning; the "average
36 annual payroll" in such case is to be determined on the basis of the
37 prior three or five calendar years in each of which the employer had an
38 "annual payroll" in the operation of his business, if the employer
39 resumes his business within 12 months after separation, discharge or
40 release from such service, under conditions other than dishonorable,
41 and makes application to have his "average annual payroll" determined
42 on the basis of such deletion within 12 months after he resumes his
43 business; provided, however, that "average annual payroll" solely for
44 the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means
45 the average of the annual payrolls of any employer on which he paid
46 contributions to the State disability benefits fund for the last three or

1 five preceding calendar years, whichever average is higher; provided
2 further that only those wages be included on which employer
3 contributions have been paid on or before January 31 (or the next
4 succeeding day if such January 31 is a Saturday or Sunday)
5 immediately preceding the beginning of the 12-month period for which
6 the employer's contribution rate is computed.

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

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

14 With respect to a benefit year commencing on or after July 1, 1995,
15 if an individual does not have sufficient qualifying weeks or wages in
16 his base year to qualify for benefits, the individual shall have the option
17 of designating that his base year shall be the "alternative base year,"
18 which means the last four completed calendar quarters immediately
19 preceding the individual's benefit year; except that, with respect to a
20 benefit year commencing on or after October 1, 1995, if the individual
21 also does not have sufficient qualifying weeks or wages in the last four
22 completed calendar quarters immediately preceding his benefit year to
23 qualify for benefits, "alternative base year" means the last three
24 completed calendar quarters immediately preceding his benefit year
25 and, of the calendar quarter in which the benefit year commences, the
26 portion of the quarter which occurs before the commencing of the
27 benefit year.

28 The division shall inform the individual of his options under this
29 section as amended by P.L.1995, c.234. If information regarding
30 weeks and wages for the calendar quarter or quarters immediately
31 preceding the benefit year is not available to the division from the
32 regular quarterly reports of wage information and the division is not
33 able to obtain the information using other means pursuant to State or
34 federal law, the division may base the determination of eligibility for
35 benefits on the affidavit of an individual with respect to weeks and
36 wages for that calendar quarter. The individual shall furnish payroll
37 documentation, if available, in support of the affidavit. A
38 determination of benefits based on an alternative base year shall be
39 adjusted when the quarterly report of wage information from the
40 employer is received if that information causes a change in the
41 determination.

42 (2) With respect to a benefit year commencing on or after June 1,
43 1990 for an individual who immediately preceding the benefit year was
44 subject to a disability compensable under the provisions of the
45 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
46 seq.), "base year" shall mean the first four of the last five completed

1 calendar quarters immediately preceding the individual's period of
2 disability, if the employment held by the individual immediately
3 preceding the period of disability is no longer available at the
4 conclusion of that period and the individual files a valid claim for
5 unemployment benefits after the conclusion of that period. For the
6 purposes of this paragraph, "period of disability" means the period
7 defined as a period of disability by section 3 of the "Temporary
8 Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual
9 who files a claim under the provisions of this paragraph (2) shall not
10 be regarded as having left work voluntarily for the purposes of
11 subsection (a) of R.S.43:21-5.

12 (3) With respect to a benefit year commencing on or after June 1,
13 1990 for an individual who immediately preceding the benefit year was
14 subject to a disability compensable under the provisions of the
15 workers' compensation law (chapter 15 of Title 34 of the Revised
16 Statutes), "base year" shall mean the first four of the last five
17 completed calendar quarters immediately preceding the individual's
18 period of disability, if the period of disability was not longer than two
19 years, if the employment held by the individual immediately preceding
20 the period of disability is no longer available at the conclusion of that
21 period and if the individual files a valid claim for unemployment
22 benefits after the conclusion of that period. For the purposes of this
23 paragraph, "period of disability" means the period from the time at
24 which the individual becomes unable to work because of the
25 compensable disability until the time that the individual becomes able
26 to resume work and continue work on a permanent basis. An
27 individual who files a claim under the provisions of this paragraph (3)
28 shall not be regarded as having left work voluntarily for the purposes
29 of subsection (a) of R.S.43:21-5.

30 (d) "Benefit year" with respect to any individual means the 364
31 consecutive calendar days beginning with the day on, or as of, which
32 he first files a valid claim for benefits, and thereafter beginning with
33 the day on, or as of, which the individual next files a valid claim for
34 benefits after the termination of his last preceding benefit year. Any
35 claim for benefits made in accordance with subsection (a) of
36 R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of
37 this subsection if (1) he is unemployed for the week in which, or as of
38 which, he files a claim for benefits; and (2) he has fulfilled the
39 conditions imposed by subsection (e) of R.S.43:21-4.

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

45 (2) "Controller" means the Office of the Assistant Commissioner
46 for Finance and Controller of the Department of Labor, established by

1 the 1982 Reorganization Plan of the Department of Labor.

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

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

29 (h) "Employer" means:

30 (1) Any employing unit which in either the current or the preceding
31 calendar year paid remuneration for employment in the amount of
32 \$1,000.00 or more;

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

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

42 (4) Any employing unit which together with one or more other
43 employing units is owned or controlled (by legally enforceable means
44 or otherwise), directly or indirectly by the same interests, or which
45 owns or controls one or more other employing units (by legally
46 enforceable means or otherwise), and which, if treated as a single unit

1 with such other employing unit or interest, would be an employer
2 under paragraph (1) of this subsection;

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

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

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

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

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

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

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

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

30 (13) Any employing unit for which domestic service in employment
31 as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31,
32 1977;

33 (14) Any employing unit which having become an employer under
34 the "unemployment compensation law" (R.S.43:21-1 et seq.), has not
35 under R.S.43:21-8 ceased to be an employer; or for the effective
36 period of its election pursuant to R.S.43:21-8, any other employing
37 unit which has elected to become fully subject to this chapter
38 (R.S.43:21-1 et seq.).

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

40 (A) Any service performed prior to January 1, 1972, which was
41 employment as defined in the "unemployment compensation law"
42 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
43 provisions of this subsection, service performed on or after January 1,
44 1972, including service in interstate commerce, performed for
45 remuneration or under any contract of hire, written or oral, express or
46 implied.

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

7 (ii) Service performed after December 31, 1977, in the employ of
8 this State or any of its instrumentalities or any political subdivision
9 thereof or any of its instrumentalities or any instrumentality of more
10 than one of the foregoing or any instrumentality of the foregoing and
11 one or more other states or political subdivisions, if such service is not
12 excluded from "employment" under paragraph (D) below.

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

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

21 (i) In the employ of (I) a church or convention or association of
22 churches, or (II) an organization, or school which is operated primarily
23 for religious purposes and which is operated, supervised, controlled or
24 principally supported by a church or convention or association of
25 churches;

26 (ii) By a duly ordained, commissioned, or licensed minister of a
27 church in the exercise of his ministry or by a member of a religious
28 order in the exercise of duties required by such order;

29 (iii) Prior to January 1, 1978, in the employ of a school which is
30 not an institution of higher education, and after December 31, 1977,
31 in the employ of a governmental entity referred to in R.S.43:21-19 (i)
32 (1) (B), if such service is performed by an individual in the exercise of
33 duties

34 (aa) as an elected official;

35 (bb) as a member of a legislative body, or a member of the
36 judiciary, of a state or political subdivision;

37 (cc) as a member of the State National Guard or Air National
38 Guard;

39 (dd) as an employee serving on a temporary basis in case of fire,
40 storm, snow, earthquake, flood or similar emergency;

41 (ee) in a position which, under or pursuant to the laws of this
42 State, is designated as a major nontenured policy making or advisory
43 position, or a policy making or advisory position, the performance of
44 the duties of which ordinarily does not require more than eight hours
45 per week; or

46 (iv) By an individual receiving rehabilitation or remunerative work

1 in a facility conducted for the purpose of carrying out a program of
2 rehabilitation of individuals whose earning capacity is impaired by age
3 or physical or mental deficiency or injury or providing remunerative
4 work for individuals who because of their impaired physical or mental
5 capacity cannot be readily absorbed in the competitive labor market;

6 (v) By an individual receiving work-relief or work-training as part
7 of an unemployment work-relief or work-training program assisted in
8 whole or in part by any federal agency or an agency of a state or
9 political subdivision thereof; or

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

14 (E) The term "employment" shall include the services of an
15 individual who is a citizen of the United States, performed outside the
16 United States after December 31, 1971 (except in Canada and in the
17 case of the Virgin Islands, after December 31, 1971) and prior to
18 January 1 of the year following the year in which the U.S. Secretary
19 of Labor approves the unemployment compensation law of the Virgin
20 Islands, under section 3304 (a) of the Internal Revenue Code of 1986
21 (26 U.S.C. s.3304 (a)) in the employ of an American employer (other
22 than the service which is deemed employment under the provisions of
23 R.S.43:21-19 (i) (2) or (5) or the parallel provisions of another state's
24 unemployment compensation law), if

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

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

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

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

1 (F) Notwithstanding R.S.43:21-19 (i) (2), all service performed
2 after January 1, 1972 by an officer or member of the crew of an
3 American vessel or American aircraft on or in connection with such
4 vessel or aircraft, if the operating office from which the operations of
5 such vessel or aircraft operating within, or within and without, the
6 United States are ordinarily and regularly supervised, managed,
7 directed, and controlled, is within this State.

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

15 (H) The term "United States" when used in a geographical sense
16 in subsection R.S.43:21-19 (i) includes the states, the District of
17 Columbia, the Commonwealth of Puerto Rico and, effective on the day
18 after the day on which the U.S. Secretary of Labor approves for the
19 first time under section 3304 (a) of the Internal Revenue Code of 1986
20 (26 U.S.C. s.3304 (a)) an unemployment compensation law submitted
21 to the Secretary by the Virgin Islands for such approval, the Virgin
22 Islands.

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

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

30 (bb) for some portion of a day in each of 20 different calendar
31 weeks, whether or not such weeks were consecutive, in either the
32 current or the preceding calendar year, employed in agricultural labor
33 10 or more individuals, regardless of whether they were employed at
34 the same moment in time.

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

39 (aa) if such crew leader holds a certification of registration under
40 the Migrant and Seasonal Agricultural Worker Protection Act,
41 Pub.L.97-470 (29 U.S.C. s.1801 et seq.), or P.L.1971, c.192
42 (C.34:8A-7 et seq.); or substantially all the members of such crew
43 operate or maintain tractors, mechanized harvesting or cropdusting
44 equipment, or any other mechanized equipment, which is provided by
45 such crew leader; and

46 (bb) if such individual is not an employee of such other person for

- 1 whom services were performed.
- 2 (iii) For the purposes of subparagraph (I) (i) in the case of any
3 individual who is furnished by a crew leader to perform service in
4 agricultural labor or any other entity and who is not treated as an
5 employee of such crew leader under (I) (ii)
- 6 (aa) such other entity and not the crew leader shall be treated as
7 the employer of such individual; and
- 8 (bb) such other entity shall be treated as having paid cash
9 remuneration to such individual in an amount equal to the amount of
10 cash remuneration paid to such individual by the crew leader (either on
11 his own behalf or on behalf of such other entity) for the service in
12 agricultural labor performed for such other entity.
- 13 (iv) For the purpose of subparagraph (I)(ii), the term "crew leader"
14 means an individual who
- 15 (aa) furnishes individuals to perform service in agricultural labor
16 for any other entity;
- 17 (bb) pays (either on his own behalf or on behalf of such other
18 entity) the individuals so furnished by him for the service in
19 agricultural labor performed by them; and
- 20 (cc) has not entered into a written agreement with such other entity
21 under which such individual is designated as an employee of such other
22 entity.
- 23 (J) Domestic service after December 31, 1977 performed in the
24 private home of an employing unit which paid cash remuneration of
25 \$1,000.00 or more to one or more individuals for such domestic
26 service in any calendar quarter in the current or preceding calendar
27 year.
- 28 (2) The term "employment" shall include an individual's entire
29 service performed within or both within and without this State if:
- 30 (A) The service is localized in this State; or
- 31 (B) The service is not localized in any state but some of the service
32 is performed in this State, and (i) the base of operations, or, if there is
33 no base of operations, then the place from which such service is
34 directed or controlled, is in this State; or (ii) the base of operations or
35 place from which such service is directed or controlled is not in any
36 state in which some part of the service is performed, but the
37 individual's residence is in this State.
- 38 (3) Services performed within this State but not covered under
39 paragraph (2) of this subsection shall be deemed to be employment
40 subject to this chapter (R.S.43:21-1 et seq.) if contributions are not
41 required and paid with respect to such services under an
42 unemployment compensation law of any other state or of the federal
43 government.
- 44 (4) Services not covered under paragraph (2) of this subsection and
45 performed entirely without this State, with respect to no part of which
46 contributions are required and paid under an unemployment

1 compensation law of any other state or of the federal government,
2 shall be deemed to be employment subject to this chapter (R.S.43:21-1
3 et seq.) if the individual performing such services is a resident of this
4 State and the employing unit for whom such services are performed
5 files with the division an election that the entire service of such
6 individual shall be deemed to be employment subject to this chapter
7 (R.S.43:21-1 et seq.).

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

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

10 (B) The service is performed both within and without such state,
11 but the service performed without such state is incidental to the
12 individual's service within the state; for example, is temporary or
13 transitory in nature or consists of isolated transactions.

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

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

20 (B) Such service is either outside the usual course of the business
21 for which such service is performed, or that such service is performed
22 outside of all the places of business of the enterprise for which such
23 service is performed; and

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

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

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

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

40 (ii) for some portion of a day in each of 20 different calendar
41 weeks, whether or not such weeks were consecutive, in either the
42 current or the preceding calendar year, employed in agricultural labor
43 10 or more individuals, regardless of whether they were employed at
44 the same moment in time;

45 (B) Domestic service in a private home performed prior to January
46 1, 1978; and after December 31, 1977, unless performed in the private

1 home of an employing unit which paid cash remuneration of \$1,000.00
2 or more to one or more individuals for such domestic service in any
3 calendar quarter in the current or preceding calendar year;

4 (C) Service performed by an individual in the employ of his son,
5 daughter or spouse, and service performed by a child under the age of
6 18 in the employ of his father or mother;

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

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

19 (F) Service performed in the employ of the United States
20 Government or of any instrumentality of the United States except
21 under the Constitution of the United States from the contributions
22 imposed by the "unemployment compensation law," except that to the
23 extent that the Congress of the United States shall permit states to
24 require any instrumentalities of the United States to make payments
25 into an unemployment fund under a state unemployment compensation
26 law, all of the provisions of this act shall be applicable to such
27 instrumentalities, and to service performed for such instrumentalities,
28 in the same manner, to the same extent and on the same terms as to all
29 other employers, employing units, individuals and services; provided
30 that if this State shall not be certified for any year by the Secretary of
31 Labor of the United States under section 3304 of the federal Internal
32 Revenue Code of 1986 (26 U.S.C. s.3304), the payments required of
33 such instrumentalities with respect to such year shall be refunded by
34 the division from the fund in the same manner and within the same
35 period as is provided in R.S.43:21-14 (f) with respect to contributions
36 erroneously paid to or collected by the division;

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

43 (H) Services performed as a member of the board of directors, a
44 board of trustees, a board of managers, or a committee of any bank,
45 building and loan, or savings and loan association, incorporated or
46 organized under the laws of this State or of the United States, where

1 such services do not constitute the principal employment of the
2 individual;

3 (I) Service with respect to which unemployment insurance is
4 payable under an unemployment insurance program established by an
5 Act of Congress;

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

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

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

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

23 (N) Services performed after January 1, 1973 by an individual for
24 a labor union organization, known and recognized as a union local, as
25 a member of a committee or committees reimbursed by the union local
26 for time lost from regular employment, or as a part-time officer of a
27 union local and the remuneration for such services is less than
28 \$1,000.00 in a calendar year;

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

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

36 (Q) Service performed in the employ of an instrumentality wholly
37 owned by a foreign government if (i) the service is of a character
38 similar to that performed in foreign countries by employees of the
39 United States Government or of an instrumentality thereof, and (ii) the
40 division finds that the United States Secretary of State has certified to
41 the United States Secretary of the Treasury that the foreign
42 government, with respect to whose instrumentality exemption is
43 claimed, grants an equivalent exemption with respect to similar
44 services performed in the foreign country by employees of the United
45 States Government and of instrumentalities thereof;

46 (R) Service in the employ of an international organization entitled

1 to enjoy the privileges, exemptions and immunities under the
2 International Organizations Immunities Act (22 U.S.C. s.288 et seq.);

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

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

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

29 (V) Service performed in the employ of a hospital, if such service
30 is performed by a patient of the hospital; service performed as a
31 student nurse in the employ of a hospital or a nurses' training school
32 by an individual who is enrolled and regularly attending classes in a
33 nurses' training school approved under the laws of this State; and
34 service performed as an intern in the employ of a hospital by an
35 individual who has completed a four-year course in a medical school
36 approved pursuant to the laws of this State;

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

40 (X) Services performed by operators of motor vehicles weighing
41 18,000 pounds or more, licensed for commercial use and used for the
42 highway movement of motor freight, who own their equipment or who
43 lease or finance the purchase of their equipment through an entity
44 which is not owned or controlled directly or indirectly by the entity for
45 which the services were performed and who were compensated by
46 receiving a percentage of the gross revenue generated by the

1 transportation move or by a schedule of payment based on the distance
2 and weight of the transportation move;

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

10 (Z) Services performed, using facilities provided by a travel agent,
11 by a person, commonly known as an outside travel agent, who acts as
12 an independent contractor, is paid on a commission basis, sets his own
13 work schedule and receives no benefits, sick leave, vacation or other
14 leave from the travel agent owning the facilities.

15 (8) If one-half or more of the services in any pay period performed
16 by an individual for an employing unit constitutes employment, all the
17 services of such individual shall be deemed to be employment; but if
18 more than one-half of the service in any pay period performed by an
19 individual for an employing unit does not constitute employment, then
20 none of the service of such individual shall be deemed to be
21 employment. As used in this paragraph, the term "pay period" means
22 a period of not more than 31 consecutive days for which a payment for
23 service is ordinarily made by an employing unit to individuals in its
24 employ.

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

29 (A) The limousine franchisee is incorporated;

30 (B) The franchisee is subject to regulation by the Interstate
31 Commerce Commission;

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

35 (D) The franchisee registers with the Department of Labor and
36 receives an employer registration number.

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

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

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

44 (m) "Unemployment."

45 (1) An individual shall be deemed "unemployed" for any week
46 during which:

1 (A) The individual is not engaged in full-time work and with
2 respect to which his remuneration is less than his weekly benefit rate,
3 including any week during which he is on vacation without pay;
4 provided such vacation is not the result of the individual's voluntary
5 action, except that for benefit years commencing on or after July 1,
6 1984, an officer of a corporation, or a person who has more than a 5%
7 equitable or debt interest in the corporation, whose claim for benefits
8 is based on wages with that corporation shall not be deemed to be
9 unemployed in any week during the individual's term of office or
10 ownership in the corporation; or

11 (B) The individual is eligible for and receiving a self-employment
12 assistance allowance pursuant to the requirements of P.L.1995, c.394
13 (C.43:21-67 et al.).

14 (2) The term "remuneration" with respect to any individual for
15 benefit years commencing on or after July 1, 1961, and as used in this
16 subsection, shall include only that part of the same which in any week
17 exceeds 20% of his weekly benefit rate (fractional parts of a dollar
18 omitted) or \$5.00, whichever is the larger, and shall not include any
19 moneys paid to an individual by a county board of elections for work
20 as a board worker on an election day.

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

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

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

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

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

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

1 December 31.

2 (s) "Investment company" means any company as defined in
3 subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

4 (t) (1) (Deleted by amendment, P.L.2001, c.17).

5 (2) "Base week," commencing on or after January 1, 1996 and
6 before January 1 2001, means:

7 (A) Any calendar week during which the individual earned in
8 employment from an employer remuneration not less than an amount
9 which is 20% of the Statewide average weekly remuneration defined
10 in subsection (c) of R.S.43:21-3 which amount shall be adjusted to the
11 next higher multiple of \$1.00 if not already a multiple thereof, except
12 that if in any calendar week an individual subject to this subparagraph
13 (A) is in employment with more than one employer, the individual may
14 in that calendar week establish a base week with respect to each of the
15 employers from whom the individual earns remuneration equal to not
16 less than the amount defined in this subparagraph (A) during that
17 week; or

18 (B) If the individual does not establish in his base year 20 or more
19 base weeks as defined in subparagraph (A) of this paragraph (2), any
20 calendar week of an individual's base year during which the individual
21 earned in employment from an employer remuneration not less than an
22 amount 20 times the minimum wage in effect pursuant to section 5 of
23 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
24 preceding the calendar year in which the benefit year commences,
25 which amount shall be adjusted to the next higher multiple of \$1.00 if
26 not already a multiple thereof, except that if in any calendar week an
27 individual subject to this subparagraph (B) is in employment with more
28 than one employer, the individual may in that calendar week establish
29 a base week with respect to each of the employers from whom the
30 individual earns remuneration not less than the amount defined in this
31 subparagraph (B) during that week.

32 (3) "Base week," commencing on or after January 1, 2001, means
33 any calendar week during which the individual earned in employment
34 from an employer remuneration not less than an amount 20 times the
35 minimum wage in effect pursuant to section 5 of P.L.1966, c.113
36 (C.34:11-56a4) on October 1 of the calendar year preceding the
37 calendar year in which the benefit year commences, which amount
38 shall be adjusted to the next higher multiple of \$1.00 if not already a
39 multiple thereof, except that if in any calendar week an individual
40 subject to this paragraph (3) is in employment with more than one
41 employer, the individual may in that calendar week establish a base
42 week with respect to each of the employers from whom the individual
43 earns remuneration equal to not less than the amount defined in this
44 paragraph (3) during that week.

45 (u) "Average weekly wage" means the amount derived by dividing
46 an individual's total wages received during his base year base weeks

1 (as defined in subsection (t) of this section) from that most recent base
2 year employer with whom he has established at least 20 base weeks,
3 by the number of base weeks in which such wages were earned. In the
4 event that such claimant had no employer in his base year with whom
5 he had established at least 20 base weeks, then such individual's
6 average weekly wage shall be computed as if all of his base week
7 wages were received from one employer and as if all his base weeks of
8 employment had been performed in the employ of one employer.

9 For the purpose of computing the average weekly wage, the
10 monetary alternative in subparagraph (B) of paragraph (2) of
11 subsection (e) of R.S.43:21-4 shall only apply in those instances where
12 the individual did not have at least 20 base weeks in the base year. For
13 benefit years commencing on or after July 1, 1986, "average weekly
14 wage" means the amount derived by dividing an individual's total base
15 year wages by the number of base weeks worked by the individual
16 during the base year; provided that for the purpose of computing the
17 average weekly wage, the maximum number of base weeks used in the
18 divisor shall be 52.

19 (v) "Initial determination" means, subject to the provisions of
20 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as
21 measured by an eligible individual's base year employment with a
22 single employer covering all periods of employment with that employer
23 during the base year. For benefit years commencing prior to July 1,
24 1986, subject to the provisions of R.S.43:21-3(d)(3), if an individual
25 has been in employment in his base year with more than one employer,
26 no benefits shall be paid to that individual under any successive initial
27 determination until his benefit rights have been exhausted under the
28 next preceding initial determination.

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

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

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

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

41 (B) Which is approved, licensed or issued a permit to operate as a
42 school by the State Department of Education or other government
43 agency that is authorized within the State to approve, license or issue
44 a permit for the operation of a school; and

45 (C) Which offers courses of study or training which may be
46 academic, technical, trade, or preparation for gainful employment in

1 a recognized occupation.

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

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

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

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

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

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

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

20 (cf: P.L.2001, c.17, s.2)

21

22 3. This act shall take effect immediately.

23

24

25

STATEMENT

26

27 This bill provides that, for the purposes of unemployment benefits,
28 an unemployed individual, who is otherwise eligible, shall not be
29 deemed unavailable for work or ineligible solely by reason of the
30 individual's work as a board worker for a county board of elections on
31 an election day. The bill also amends the definition of "remuneration"
32 within R.S.43:21-19(m)(2) to exclude an individual's pay for work as
33 a board worker on an election day from calculation of that individual's
34 unemployment benefits. Thus, under this bill, an individual's eligibility
35 for unemployment benefits will not be affected, and the amount of
36 benefits received by the individual will not be reduced, as a result of
37 election day work at the polls, and persons receiving unemployment
38 will not be discouraged from performing election work.

39

40

41

42

43 Exempts election board work on election day from calculation of
44 unemployment benefits.

SENATE, No. 1213

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 28, 2002

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Morris and Passaic)

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Assemblyman ALEX DECROCE

District 26 (Morris and Passaic)

Assemblyman JOSEPH PENNACCHIO

District 26 (Morris and Passaic)

Co-Sponsored by:

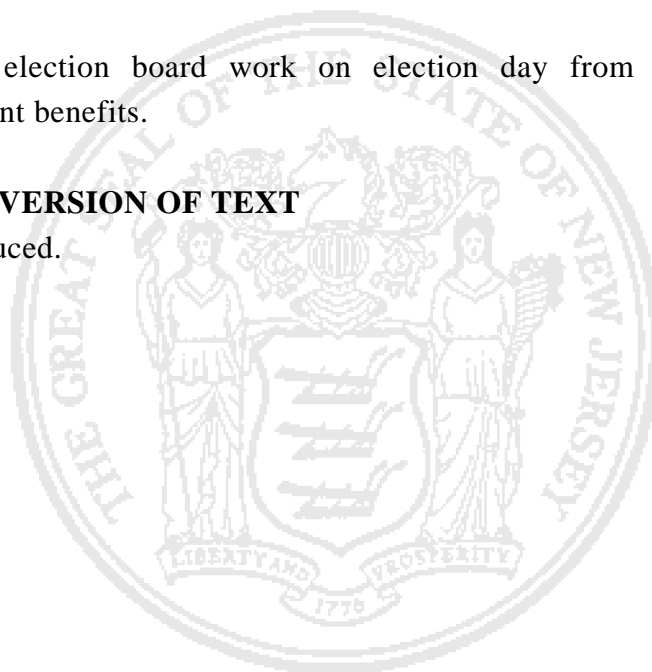
Assemblyman Eagler

SYNOPSIS

Exempts election board work on election day from calculation of unemployment benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/8/2002)

1 AN ACT exempting pay for election board work on election day from
2 the calculation of unemployment benefits and amending R.S.43:21-
3 4 and R.S.43:21-19.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.43:21-4 is amended to read as follows:

9 43:21-4. Benefit eligibility conditions. An unemployed individual
10 shall be eligible to receive benefits with respect to any week only if:

11 (a) The individual has filed a claim at an unemployment insurance
12 claims office and thereafter continues to report at an employment
13 service office or unemployment insurance claims office, as directed by
14 the division in accordance with such regulations as the division may
15 prescribe, except that the division may, by regulation, waive or alter
16 either or both of the requirements of this subsection as to individuals
17 attached to regular jobs, and as to such other types of cases or
18 situations with respect to which the division finds that compliance with
19 such requirements would be oppressive, or would be inconsistent with
20 the purpose of this act; provided that no such regulation shall conflict
21 with subsection (a) of R.S.43:21-3.

22 (b) The individual has made a claim for benefits in accordance with
23 the provisions of subsection (a) of R.S.43:21-6.

24 (c) (1) The individual is able to work, and is available for work,
25 and has demonstrated to be actively seeking work, except as
26 hereinafter provided in this subsection or in subsection (f) of this
27 section.

28 (2) The director may modify the requirement of actively seeking
29 work if such modification of this requirement is warranted by
30 economic conditions.

31 (3) No individual, who is otherwise eligible, shall be deemed
32 ineligible, or unavailable for work, because the individual is on
33 vacation, without pay, during said week, if said vacation is not the
34 result of the individual's own action as distinguished from any
35 collective action of a collective bargaining agent or other action
36 beyond the individual's control.

37 (4) (A) Subject to such limitations and conditions as the division
38 may prescribe, an individual, who is otherwise eligible, shall not be
39 deemed unavailable for work or ineligible because the individual is
40 attending a training program approved for the individual by the
41 division to enhance the individual's employment opportunities or
42 because the individual failed or refused to accept work while attending
43 such program.

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

Matter underlined thus is new matter.

1 (B) For the purpose of this paragraph (4), any training program
2 shall be regarded as approved by the division for the individual if the
3 program and the individual meet the following requirements:

4 (i) The training is for a labor demand occupation and is likely to
5 enhance the individual's marketable skills and earning power;

6 (ii) The training is provided by a competent and reliable private or
7 public entity approved by the Commissioner of Labor pursuant to the
8 provisions of section 8 of the "1992 New Jersey Employment and
9 Workforce Development Act," P.L.1992, c.43 (C.34:15D-8);

10 (iii) The individual can reasonably be expected to complete the
11 program, either during or after the period of benefits;

12 (iv) The training does not include on the job training or other
13 training under which the individual is paid by an employer for work
14 performed by the individual during the time that the individual receives
15 benefits; and

16 (v) The individual enrolls in vocational training, remedial education
17 or a combination of both on a full-time basis.

18 (C) If the requirements of subparagraph (B) of this paragraph (4)
19 are met, the division shall not withhold approval of the training
20 program for the individual for any of the following reasons:

21 (i) The training includes remedial basic skills education necessary
22 for the individual to successfully complete the vocational component
23 of the training;

24 (ii) The training is provided in connection with a program under
25 which the individual may obtain a college degree, including a
26 post-graduate degree;

27 (iii) The length of the training period under the program; or

28 (iv) The lack of a prior guarantee of employment upon completion
29 of the training.

30 (D) For the purpose of this paragraph (4), "labor demand
31 occupation" means an occupation for which there is or is likely to be
32 an excess of demand over supply for adequately trained workers,
33 including, but not limited to, an occupation designated as a labor
34 demand occupation by the New Jersey Occupational Information
35 Coordinating Committee pursuant to the provisions of subsection h.
36 of section 1 of P.L.1987, c.457 (C.34:1A-76) or section 12 of
37 P.L.1992, c.43 (C.34:1A-78).

38 (5) An unemployed individual, who is otherwise eligible, shall not
39 be deemed unavailable for work or ineligible solely by reason of the
40 individual's attendance before a court in response to a summons for
41 service on a jury.

42 (6) An unemployed individual, who is otherwise eligible, shall not
43 be deemed unavailable for work or ineligible solely by reason of the
44 individual's attendance at the funeral of an immediate family member,
45 provided that the duration of the attendance does not extend beyond
46 a two-day period.

1 For purposes of this paragraph, "immediate family member"
2 includes any of the following individuals: father, mother,
3 mother-in-law, father-in-law, grandmother, grandfather, grandchild,
4 spouse, child, foster child, sister or brother of the unemployed
5 individual and any relatives of the unemployed individual residing in
6 the unemployed individual's household.

7 (7) No individual, who is otherwise eligible, shall be deemed
8 ineligible or unavailable for work with respect to any week because,
9 during that week, the individual fails or refuses to accept work while
10 the individual is participating on a full-time basis in self-employment
11 assistance activities authorized by the division, whether or not the
12 individual is receiving a self-employment allowance during that week.

13 (8) Any individual who is determined to be likely to exhaust
14 regular benefits and need reemployment services based on information
15 obtained by the worker profiling system shall not be eligible to receive
16 benefits if the individual fails to participate in available reemployment
17 services to which the individual is referred by the division or in similar
18 services, unless the division determines that:

19 (A) The individual has completed the reemployment services; or

20 (B) There is justifiable cause for the failure to participate, which
21 shall include participation in employment and training,
22 self-employment assistance activities or other activities authorized by
23 the division to assist reemployment or enhance the marketable skills
24 and earning power of the individual and which shall include any other
25 circumstance indicated pursuant to this section in which an individual
26 is not required to be available for and actively seeking work to receive
27 benefits.

28 (9) An unemployed individual, who is otherwise eligible, shall not
29 be deemed unavailable for work or ineligible solely by reason of the
30 individual's work as a board worker for a county board of elections on
31 an election day.

32 (d) The individual has been totally or partially unemployed for a
33 waiting period of one week in the benefit year which includes that
34 week. When benefits become payable with respect to the third
35 consecutive week next following the waiting period, the individual
36 shall be eligible to receive benefits as appropriate with respect to the
37 waiting period. No week shall be counted as a week of unemployment
38 for the purposes of this subsection:

39 (1) If benefits have been paid, or are payable with respect thereto;
40 provided that the requirements of this paragraph shall be waived with
41 respect to any benefits paid or payable for a waiting period as provided
42 in this subsection;

43 (2) If it has constituted a waiting period week under the
44 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
45 seq.);

46 (3) Unless the individual fulfills the requirements of subsections (a)

1 and (c) of this section;

2 (4) If with respect thereto, claimant was disqualified for benefits
3 in accordance with the provisions of subsection (d) of R.S.43:21-5.

4 (e) (1) (Deleted by amendment, P.L.2001, c.17).

5 (2) With respect to benefit years commencing on or after January
6 1, 1996 and before January 7, 2001, except as otherwise provided in
7 paragraph (3) of this subsection, the individual has, during his base
8 year as defined in subsection (c) of R.S.43:21-19:

9 (A) Established at least 20 base weeks as defined in paragraph (2)
10 of subsection (t) of R.S.43:21-19; or

11 (B) If the individual has not met the requirements of subparagraph
12 (A) of this paragraph (2), earned remuneration not less than an amount
13 12 times the Statewide average weekly remuneration paid to workers,
14 as determined under R.S.43:21-3(c), which amount shall be adjusted
15 to the next higher multiple of \$100.00 if not already a multiple thereof;
16 or

17 (C) If the individual has not met the requirements of subparagraph
18 (A) or (B) of this paragraph (2), earned remuneration not less than an
19 amount 1,000 times the minimum wage in effect pursuant to section
20 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
21 year preceding the calendar year in which the benefit year commences,
22 which amount shall be adjusted to the next higher multiple of \$100.00
23 if not already a multiple thereof.

24 (3) With respect to benefit years commencing before January 7,
25 2001, notwithstanding the provisions of paragraph (2) of this
26 subsection, an unemployed individual claiming benefits on the basis of
27 service performed in the production and harvesting of agricultural
28 crops shall, subject to the limitations of subsection (i) of R.S.43:21-19,
29 be eligible to receive benefits if during his base year, as defined in
30 subsection (c) of R.S.43:21-19, the individual:

31 (A) Has established at least 20 base weeks as defined in paragraph
32 (2) of subsection (t) of R.S.43:21-19; or

33 (B) Has earned 12 times the Statewide average weekly
34 remuneration paid to workers, as determined under R.S.43:21-3(c),
35 raised to the next higher multiple of \$100.00 if not already a multiple
36 thereof, or more; or

37 (C) Has performed at least 770 hours of service in the production
38 and harvesting of agricultural crops.

39 (4) With respect to benefit years commencing on or after January
40 7, 2001, except as otherwise provided in paragraph (5) of this
41 subsection, the individual has, during his base year as defined in
42 subsection (c) of R.S.43:21-19:

43 (A) Established at least 20 base weeks as defined in paragraphs (2)
44 and (3) of subsection (t) of R.S.43:21-19; or

45 (B) If the individual has not met the requirements of subparagraph
46 (A) of this paragraph (4), earned remuneration not less than an amount

1 1,000 times the minimum wage in effect pursuant to section 5 of
2 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
3 preceding the calendar year in which the benefit year commences,
4 which amount shall be adjusted to the next higher multiple of \$100 if
5 not already a multiple thereof.

6 (5) With respect to benefit years commencing on or after January
7 7, 2001, notwithstanding the provisions of paragraph (4) of this
8 subsection, an unemployed individual claiming benefits on the basis of
9 service performed in the production and harvesting of agricultural
10 crops shall, subject to the limitations of subsection (i) of R.S.43:21-19,
11 be eligible to receive benefits if during his base year, as defined in
12 subsection (c) of R.S.43:21-19, the individual:

13 (A) Has established at least 20 base weeks as defined in paragraphs
14 (2) and (3) of subsection (t) of R.S.43:21-19; or

15 (B) Has earned remuneration not less than an amount 1,000 times
16 the minimum wage in effect pursuant to section 5 of P.L.1966, c.113
17 (C.34:11-56a4) on October 1 of the calendar year preceding the
18 calendar year in which the benefit year commences, which amount
19 shall be adjusted to the next higher multiple of \$100 if not already a
20 multiple thereof; or

21 (C) Has performed at least 770 hours of service in the production
22 and harvesting of agricultural crops.

23 (6) The individual applying for benefits in any successive benefit
24 year has earned at least six times his previous weekly benefit amount
25 and has had four weeks of employment since the beginning of the
26 immediately preceding benefit year. This provision shall be in addition
27 to the earnings requirements specified in paragraph (2), (3), (4) or (5)
28 of this subsection, as applicable.

29 (f) (1) The individual has suffered any accident or sickness not
30 compensable under the workers' compensation law, R.S.34:15-1 et
31 seq. and resulting in the individual's total disability to perform any
32 work for remuneration, and would be eligible to receive benefits under
33 this chapter (R.S.43:21-1 et seq.) (without regard to the maximum
34 amount of benefits payable during any benefit year) except for the
35 inability to work and has furnished notice and proof of claim to the
36 division, in accordance with its rules and regulations, and payment is
37 not precluded by the provisions of R.S.43:21-3(d); provided, however,
38 that benefits paid under this subsection (f) shall be computed on the
39 basis of only those base year wages earned by the claimant as a
40 "covered individual," as defined in R.S.43:21-27(b); provided further
41 that no benefits shall be payable under this subsection to any
42 individual:

43 (A) For any period during which such individual is not under the
44 care of a legally licensed physician, dentist, optometrist, podiatrist,
45 practicing psychologist or chiropractor;

46 (B) (Deleted by amendment, P.L.1980, c.90.)

1 (C) For any period of disability due to willfully or intentionally
2 self-inflicted injury, or to injuries sustained in the perpetration by the
3 individual of a crime of the first, second or third degree;

4 (D) For any week with respect to which or a part of which the
5 individual has received or is seeking benefits under any unemployment
6 compensation or disability benefits law of any other state or of the
7 United States; provided that if the appropriate agency of such other
8 state or the United States finally determines that the individual is not
9 entitled to such benefits, this disqualification shall not apply;

10 (E) For any week with respect to which or part of which the
11 individual has received or is seeking disability benefits under the
12 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
13 seq.);

14 (F) For any period of disability commencing while such individual
15 is a "covered individual," as defined in subsection (b) of section 3 of
16 the "Temporary Disability Benefits Law," P.L.1948, c.110
17 (C.43:21-27).

18 (2) Benefit payments under this subsection (f) shall be charged to
19 and paid from the State disability benefits fund established by the
20 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
21 seq.), and shall not be charged to any employer account in computing
22 any employer's experience rate for contributions payable under this
23 chapter.

24 (g) Benefits based on service in employment defined in
25 subparagraphs (B) and (C) of R.S.43:21-19(i)(1) shall be payable in
26 the same amount and on the terms and subject to the same conditions
27 as benefits payable on the basis of other service subject to the
28 "unemployment compensation law"; except that, notwithstanding any
29 other provisions of the "unemployment compensation law":

30 (1) With respect to service performed after December 31, 1977, in
31 an instructional research, or principal administrative capacity for an
32 educational institution, benefits shall not be paid based on such
33 services for any week of unemployment commencing during the period
34 between two successive academic years, or during a similar period
35 between two regular terms, whether or not successive, or during a
36 period of paid sabbatical leave provided for in the individual's contract,
37 to any individual if such individual performs such services in the first
38 of such academic years (or terms) and if there is a contract or a
39 reasonable assurance that such individual will perform services in any
40 such capacity for any educational institution in the second of such
41 academic years or terms;

42 (2) With respect to weeks of unemployment beginning after
43 September 3, 1982, on the basis of service performed in any other
44 capacity for an educational institution, benefits shall not be paid on the
45 basis of such services to any individual for any week which commences
46 during a period between two successive academic years or terms if

1 such individual performs such services in the first of such academic
2 years or terms and there is a reasonable assurance that such individual
3 will perform such services in the second of such academic years or
4 terms, except that if benefits are denied to any individual under this
5 paragraph (2) and the individual was not offered an opportunity to
6 perform these services for the educational institution for the second of
7 any academic years or terms, the individual shall be entitled to a
8 retroactive payment of benefits for each week for which the individual
9 filed a timely claim for benefits and for which benefits were denied
10 solely by reason of this clause;

11 (3) With respect to those services described in paragraphs (1) and
12 (2) above, benefits shall not be paid on the basis of such services to
13 any individual for any week which commences during an established
14 and customary vacation period or holiday recess if such individual
15 performs such services in the period immediately before such vacation
16 period or holiday recess, and there is a reasonable assurance that such
17 individual will perform such services in the period immediately
18 following such period or holiday recess;

19 (4) With respect to any services described in paragraphs (1) and
20 (2) above, benefits shall not be paid as specified in paragraphs (1), (2),
21 and (3) above to any individual who performed those services in an
22 educational institution while in the employ of an educational service
23 agency, and for this purpose the term "educational service agency"
24 means a governmental agency or governmental entity which is
25 established and operated exclusively for the purpose of providing
26 those services to one or more educational institutions.

27 (h) Benefits shall not be paid to any individual on the basis of any
28 services, substantially all of which consist of participating in sports or
29 athletic events or training or preparing to so participate, for any week
30 which commences during the period between two successive sports
31 seasons (or similar periods) if such individual performed such services
32 in the first of such seasons (or similar periods) and there is a
33 reasonable assurance that such individual will perform such services in
34 the later of such seasons (or similar periods).

35 (i) (1) Benefits shall not be paid on the basis of services performed
36 by an alien unless such alien is an individual who was lawfully admitted
37 for permanent residence at the time the services were performed and
38 was lawfully present for the purpose of performing the services or
39 otherwise was permanently residing in the United States under color
40 of law at the time the services were performed (including an alien who
41 is lawfully present in the United States as a result of the application of
42 the provisions of section 212(d)(5) (8 U.S.C. s.1182 (d)(5)) of the
43 Immigration and Nationality Act (8 U.S.C. s.1101 et seq.)); provided
44 that any modifications of the provisions of section 3304(a)(14) of the
45 Federal Unemployment Tax Act (26 U.S.C. s.3304 (a)(14)), as
46 provided by Pub.L.94-566, which specify other conditions or other

1 effective dates than stated herein for the denial of benefits based on
2 services performed by aliens and which modifications are required to
3 be implemented under State law as a condition for full tax credit
4 against the tax imposed by the Federal Unemployment Tax Act, shall
5 be deemed applicable under the provisions of this section.

6 (2) Any data or information required of individuals applying for
7 benefits to determine whether benefits are not payable to them because
8 of their alien status shall be uniformly required from all applicants for
9 benefits.

10 (3) In the case of an individual whose application for benefits
11 would otherwise be approved, no determination that benefits to such
12 individual are not payable because of alien status shall be made except
13 upon a preponderance of the evidence.

14 (j) Notwithstanding any other provision of this chapter, the
15 director may, to the extent that it may be deemed efficient and
16 economical, provide for consolidated administration by one or more
17 representatives or deputies of claims made pursuant to subsection (f)
18 of this section with those made pursuant to Article III (State plan) of
19 the "Temporary Disability Benefits Law," P.L.1948, c.110
20 (C.43:21-25 et seq.).
21 (cf: P.L.2001, c.17, s.1)

22

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

24 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
25 seq.), unless the context clearly requires otherwise:

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

29 (2) "Average annual payroll" means the average of the annual
30 payrolls of any employer for the last three or five preceding calendar
31 years, whichever average is higher, except that any year or years
32 throughout which an employer has had no "annual payroll" because of
33 military service shall be deleted from the reckoning; the "average
34 annual payroll" in such case is to be determined on the basis of the
35 prior three or five calendar years in each of which the employer had an
36 "annual payroll" in the operation of his business, if the employer
37 resumes his business within 12 months after separation, discharge or
38 release from such service, under conditions other than dishonorable,
39 and makes application to have his "average annual payroll" determined
40 on the basis of such deletion within 12 months after he resumes his
41 business; provided, however, that "average annual payroll" solely for
42 the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means
43 the average of the annual payrolls of any employer on which he paid
44 contributions to the State disability benefits fund for the last three or
45 five preceding calendar years, whichever average is higher; provided
46 further that only those wages be included on which employer

1 contributions have been paid on or before January 31 (or the next
2 succeeding day if such January 31 is a Saturday or Sunday)
3 immediately preceding the beginning of the 12-month period for which
4 the employer's contribution rate is computed.

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

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

12 With respect to a benefit year commencing on or after July 1, 1995,
13 if an individual does not have sufficient qualifying weeks or wages in
14 his base year to qualify for benefits, the individual shall have the option
15 of designating that his base year shall be the "alternative base year,"
16 which means the last four completed calendar quarters immediately
17 preceding the individual's benefit year; except that, with respect to a
18 benefit year commencing on or after October 1, 1995, if the individual
19 also does not have sufficient qualifying weeks or wages in the last four
20 completed calendar quarters immediately preceding his benefit year to
21 qualify for benefits, "alternative base year" means the last three
22 completed calendar quarters immediately preceding his benefit year
23 and, of the calendar quarter in which the benefit year commences, the
24 portion of the quarter which occurs before the commencing of the
25 benefit year.

26 The division shall inform the individual of his options under this
27 section as amended by P.L.1995, c.234. If information regarding
28 weeks and wages for the calendar quarter or quarters immediately
29 preceding the benefit year is not available to the division from the
30 regular quarterly reports of wage information and the division is not
31 able to obtain the information using other means pursuant to State or
32 federal law, the division may base the determination of eligibility for
33 benefits on the affidavit of an individual with respect to weeks and
34 wages for that calendar quarter. The individual shall furnish payroll
35 documentation, if available, in support of the affidavit. A
36 determination of benefits based on an alternative base year shall be
37 adjusted when the quarterly report of wage information from the
38 employer is received if that information causes a change in the
39 determination.

40 (2) With respect to a benefit year commencing on or after June 1,
41 1990 for an individual who immediately preceding the benefit year was
42 subject to a disability compensable under the provisions of the
43 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
44 seq.), "base year" shall mean the first four of the last five completed
45 calendar quarters immediately preceding the individual's period of
46 disability, if the employment held by the individual immediately

1 preceding the period of disability is no longer available at the
2 conclusion of that period and the individual files a valid claim for
3 unemployment benefits after the conclusion of that period. For the
4 purposes of this paragraph, "period of disability" means the period
5 defined as a period of disability by section 3 of the "Temporary
6 Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual
7 who files a claim under the provisions of this paragraph (2) shall not
8 be regarded as having left work voluntarily for the purposes of
9 subsection (a) of R.S.43:21-5.

10 (3) With respect to a benefit year commencing on or after June 1,
11 1990 for an individual who immediately preceding the benefit year was
12 subject to a disability compensable under the provisions of the
13 workers' compensation law (chapter 15 of Title 34 of the Revised
14 Statutes), "base year" shall mean the first four of the last five
15 completed calendar quarters immediately preceding the individual's
16 period of disability, if the period of disability was not longer than two
17 years, if the employment held by the individual immediately preceding
18 the period of disability is no longer available at the conclusion of that
19 period and if the individual files a valid claim for unemployment
20 benefits after the conclusion of that period. For the purposes of this
21 paragraph, "period of disability" means the period from the time at
22 which the individual becomes unable to work because of the
23 compensable disability until the time that the individual becomes able
24 to resume work and continue work on a permanent basis. An
25 individual who files a claim under the provisions of this paragraph (3)
26 shall not be regarded as having left work voluntarily for the purposes
27 of subsection (a) of R.S.43:21-5.

28 (d) "Benefit year" with respect to any individual means the 364
29 consecutive calendar days beginning with the day on, or as of, which
30 he first files a valid claim for benefits, and thereafter beginning with
31 the day on, or as of, which the individual next files a valid claim for
32 benefits after the termination of his last preceding benefit year. Any
33 claim for benefits made in accordance with subsection (a) of
34 R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of
35 this subsection if (1) he is unemployed for the week in which, or as of
36 which, he files a claim for benefits; and (2) he has fulfilled the
37 conditions imposed by subsection (e) of R.S.43:21-4.

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

43 (2) "Controller" means the Office of the Assistant Commissioner
44 for Finance and Controller of the Department of Labor, established by
45 the 1982 Reorganization Plan of the Department of Labor.

46 (f) "Contributions" means the money payments to the State

1 Unemployment Compensation Fund, required by R.S.43:21-7.
2 "Payments in lieu of contributions" means the money payments to the
3 State Unemployment Compensation Fund by employers electing or
4 required to make payments in lieu of contributions, as provided in
5 section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

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

27 (h) "Employer" means:

28 (1) Any employing unit which in either the current or the preceding
29 calendar year paid remuneration for employment in the amount of
30 \$1,000.00 or more;

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

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

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

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

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

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

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

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

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

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

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

28 (13) Any employing unit for which domestic service in employment
29 as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31,
30 1977;

31 (14) Any employing unit which having become an employer under
32 the "unemployment compensation law" (R.S.43:21-1 et seq.), has not
33 under R.S.43:21-8 ceased to be an employer; or for the effective
34 period of its election pursuant to R.S.43:21-8, any other employing
35 unit which has elected to become fully subject to this chapter
36 (R.S.43:21-1 et seq.).

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

38 (A) Any service performed prior to January 1, 1972, which was
39 employment as defined in the "unemployment compensation law"
40 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
41 provisions of this subsection, service performed on or after January 1,
42 1972, including service in interstate commerce, performed for
43 remuneration or under any contract of hire, written or oral, express or
44 implied.

45 (B) (i) Service performed after December 31, 1971 by an
46 individual in the employ of this State or any of its instrumentalities or

1 in the employ of this State and one or more other states or their
2 instrumentalities for a hospital or institution of higher education
3 located in this State, if such service is not excluded from
4 "employment" under paragraph (D) below.

5 (ii) Service performed after December 31, 1977, in the employ of
6 this State or any of its instrumentalities or any political subdivision
7 thereof or any of its instrumentalities or any instrumentality of more
8 than one of the foregoing or any instrumentality of the foregoing and
9 one or more other states or political subdivisions, if such service is not
10 excluded from "employment" under paragraph (D) below.

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

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

19 (i) In the employ of (I) a church or convention or association of
20 churches, or (II) an organization, or school which is operated primarily
21 for religious purposes and which is operated, supervised, controlled or
22 principally supported by a church or convention or association of
23 churches;

24 (ii) By a duly ordained, commissioned, or licensed minister of a
25 church in the exercise of his ministry or by a member of a religious
26 order in the exercise of duties required by such order;

27 (iii) Prior to January 1, 1978, in the employ of a school which is
28 not an institution of higher education, and after December 31, 1977,
29 in the employ of a governmental entity referred to in R.S.43:21-19 (i)
30 (1) (B), if such service is performed by an individual in the exercise of
31 duties

32 (aa) as an elected official;

33 (bb) as a member of a legislative body, or a member of the
34 judiciary, of a state or political subdivision;

35 (cc) as a member of the State National Guard or Air National
36 Guard;

37 (dd) as an employee serving on a temporary basis in case of fire,
38 storm, snow, earthquake, flood or similar emergency;

39 (ee) in a position which, under or pursuant to the laws of this
40 State, is designated as a major nontenured policy making or advisory
41 position, or a policy making or advisory position, the performance of
42 the duties of which ordinarily does not require more than eight hours
43 per week; or

44 (iv) By an individual receiving rehabilitation or remunerative work
45 in a facility conducted for the purpose of carrying out a program of
46 rehabilitation of individuals whose earning capacity is impaired by age

1 or physical or mental deficiency or injury or providing remunerative
2 work for individuals who because of their impaired physical or mental
3 capacity cannot be readily absorbed in the competitive labor market;

4 (v) By an individual receiving work-relief or work-training as part
5 of an unemployment work-relief or work-training program assisted in
6 whole or in part by any federal agency or an agency of a state or
7 political subdivision thereof; or

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

12 (E) The term "employment" shall include the services of an
13 individual who is a citizen of the United States, performed outside the
14 United States after December 31, 1971 (except in Canada and in the
15 case of the Virgin Islands, after December 31, 1971) and prior to
16 January 1 of the year following the year in which the U.S. Secretary
17 of Labor approves the unemployment compensation law of the Virgin
18 Islands, under section 3304 (a) of the Internal Revenue Code of 1986
19 (26 U.S.C. s.3304 (a)) in the employ of an American employer (other
20 than the service which is deemed employment under the provisions of
21 R.S.43:21-19 (i) (2) or (5) or the parallel provisions of another state's
22 unemployment compensation law), if

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

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

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

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

45 (F) Notwithstanding R.S.43:21-19 (i) (2), all service performed
46 after January 1, 1972 by an officer or member of the crew of an

1 American vessel or American aircraft on or in connection with such
2 vessel or aircraft, if the operating office from which the operations of
3 such vessel or aircraft operating within, or within and without, the
4 United States are ordinarily and regularly supervised, managed,
5 directed, and controlled, is within this State.

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

13 (H) The term "United States" when used in a geographical sense
14 in subsection R.S.43:21-19 (i) includes the states, the District of
15 Columbia, the Commonwealth of Puerto Rico and, effective on the day
16 after the day on which the U.S. Secretary of Labor approves for the
17 first time under section 3304 (a) of the Internal Revenue Code of 1986
18 (26 U.S.C. s.3304 (a)) an unemployment compensation law submitted
19 to the Secretary by the Virgin Islands for such approval, the Virgin
20 Islands.

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

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

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

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

37 (aa) if such crew leader holds a certification of registration under
38 the Migrant and Seasonal Agricultural Worker Protection Act,
39 Pub.L.97-470 (29 U.S.C. s.1801 et seq.), or P.L.1971, c.192
40 (C.34:8A-7 et seq.); or substantially all the members of such crew
41 operate or maintain tractors, mechanized harvesting or cropdusting
42 equipment, or any other mechanized equipment, which is provided by
43 such crew leader; and

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

46 (iii) For the purposes of subparagraph (I) (i) in the case of any

1 individual who is furnished by a crew leader to perform service in
2 agricultural labor or any other entity and who is not treated as an
3 employee of such crew leader under (I) (ii)

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

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

11 (iv) For the purpose of subparagraph (I)(ii), the term "crew leader"
12 means an individual who

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

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

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

21 (J) Domestic service after December 31, 1977 performed in the
22 private home of an employing unit which paid cash remuneration of
23 \$1,000.00 or more to one or more individuals for such domestic
24 service in any calendar quarter in the current or preceding calendar
25 year.

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

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

29 (B) The service is not localized in any state but some of the service
30 is performed in this State, and (i) the base of operations, or, if there is
31 no base of operations, then the place from which such service is
32 directed or controlled, is in this State; or (ii) the base of operations or
33 place from which such service is directed or controlled is not in any
34 state in which some part of the service is performed, but the
35 individual's residence is in this State.

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

42 (4) Services not covered under paragraph (2) of this subsection and
43 performed entirely without this State, with respect to no part of which
44 contributions are required and paid under an unemployment
45 compensation law of any other state or of the federal government,
46 shall be deemed to be employment subject to this chapter (R.S.43:21-1

1 et seq.) if the individual performing such services is a resident of this
2 State and the employing unit for whom such services are performed
3 files with the division an election that the entire service of such
4 individual shall be deemed to be employment subject to this chapter
5 (R.S.43:21-1 et seq.).

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

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

8 (B) The service is performed both within and without such state,
9 but the service performed without such state is incidental to the
10 individual's service within the state; for example, is temporary or
11 transitory in nature or consists of isolated transactions.

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

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

18 (B) Such service is either outside the usual course of the business
19 for which such service is performed, or that such service is performed
20 outside of all the places of business of the enterprise for which such
21 service is performed; and

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

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

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

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

38 (ii) for some portion of a day in each of 20 different calendar
39 weeks, whether or not such weeks were consecutive, in either the
40 current or the preceding calendar year, employed in agricultural labor
41 10 or more individuals, regardless of whether they were employed at
42 the same moment in time;

43 (B) Domestic service in a private home performed prior to January
44 1, 1978; and after December 31, 1977, unless performed in the private
45 home of an employing unit which paid cash remuneration of \$1,000.00
46 or more to one or more individuals for such domestic service in any

1 calendar quarter in the current or preceding calendar year;

2 (C) Service performed by an individual in the employ of his son,
3 daughter or spouse, and service performed by a child under the age of
4 18 in the employ of his father or mother;

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

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

17 (F) Service performed in the employ of the United States
18 Government or of any instrumentality of the United States except
19 under the Constitution of the United States from the contributions
20 imposed by the "unemployment compensation law," except that to the
21 extent that the Congress of the United States shall permit states to
22 require any instrumentalities of the United States to make payments
23 into an unemployment fund under a state unemployment compensation
24 law, all of the provisions of this act shall be applicable to such
25 instrumentalities, and to service performed for such instrumentalities,
26 in the same manner, to the same extent and on the same terms as to all
27 other employers, employing units, individuals and services; provided
28 that if this State shall not be certified for any year by the Secretary of
29 Labor of the United States under section 3304 of the federal Internal
30 Revenue Code of 1986 (26 U.S.C. s.3304), the payments required of
31 such instrumentalities with respect to such year shall be refunded by
32 the division from the fund in the same manner and within the same
33 period as is provided in R.S.43:21-14 (f) with respect to contributions
34 erroneously paid to or collected by the division;

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

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

1 (I) Service with respect to which unemployment insurance is
2 payable under an unemployment insurance program established by an
3 Act of Congress;

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

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

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

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

21 (N) Services performed after January 1, 1973 by an individual for
22 a labor union organization, known and recognized as a union local, as
23 a member of a committee or committees reimbursed by the union local
24 for time lost from regular employment, or as a part-time officer of a
25 union local and the remuneration for such services is less than
26 \$1,000.00 in a calendar year;

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

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

34 (Q) Service performed in the employ of an instrumentality wholly
35 owned by a foreign government if (i) the service is of a character
36 similar to that performed in foreign countries by employees of the
37 United States Government or of an instrumentality thereof, and (ii) the
38 division finds that the United States Secretary of State has certified to
39 the United States Secretary of the Treasury that the foreign
40 government, with respect to whose instrumentality exemption is
41 claimed, grants an equivalent exemption with respect to similar
42 services performed in the foreign country by employees of the United
43 States Government and of instrumentalities thereof;

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

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

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

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

27 (V) Service performed in the employ of a hospital, if such service
28 is performed by a patient of the hospital; service performed as a
29 student nurse in the employ of a hospital or a nurses' training school
30 by an individual who is enrolled and regularly attending classes in a
31 nurses' training school approved under the laws of this State; and
32 service performed as an intern in the employ of a hospital by an
33 individual who has completed a four-year course in a medical school
34 approved pursuant to the laws of this State;

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

38 (X) Services performed by operators of motor vehicles weighing
39 18,000 pounds or more, licensed for commercial use and used for the
40 highway movement of motor freight, who own their equipment or who
41 lease or finance the purchase of their equipment through an entity
42 which is not owned or controlled directly or indirectly by the entity for
43 which the services were performed and who were compensated by
44 receiving a percentage of the gross revenue generated by the
45 transportation move or by a schedule of payment based on the distance
46 and weight of the transportation move;

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

8 (Z) Services performed, using facilities provided by a travel agent,
9 by a person, commonly known as an outside travel agent, who acts as
10 an independent contractor, is paid on a commission basis, sets his own
11 work schedule and receives no benefits, sick leave, vacation or other
12 leave from the travel agent owning the facilities.

13 (8) If one-half or more of the services in any pay period performed
14 by an individual for an employing unit constitutes employment, all the
15 services of such individual shall be deemed to be employment; but if
16 more than one-half of the service in any pay period performed by an
17 individual for an employing unit does not constitute employment, then
18 none of the service of such individual shall be deemed to be
19 employment. As used in this paragraph, the term "pay period" means
20 a period of not more than 31 consecutive days for which a payment for
21 service is ordinarily made by an employing unit to individuals in its
22 employ.

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

27 (A) The limousine franchisee is incorporated;

28 (B) The franchisee is subject to regulation by the Interstate
29 Commerce Commission;

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

33 (D) The franchisee registers with the Department of Labor and
34 receives an employer registration number.

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

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

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

42 (m) "Unemployment."

43 (1) An individual shall be deemed "unemployed" for any week
44 during which:

45 (A) The individual is not engaged in full-time work and with
46 respect to which his remuneration is less than his weekly benefit rate,

1 including any week during which he is on vacation without pay;
2 provided such vacation is not the result of the individual's voluntary
3 action, except that for benefit years commencing on or after July 1,
4 1984, an officer of a corporation, or a person who has more than a 5%
5 equitable or debt interest in the corporation, whose claim for benefits
6 is based on wages with that corporation shall not be deemed to be
7 unemployed in any week during the individual's term of office or
8 ownership in the corporation; or

9 (B) The individual is eligible for and receiving a self-employment
10 assistance allowance pursuant to the requirements of P.L.1995, c.394
11 (C.43:21-67 et al.).

12 (2) The term "remuneration" with respect to any individual for
13 benefit years commencing on or after July 1, 1961, and as used in this
14 subsection, shall include only that part of the same which in any week
15 exceeds 20% of his weekly benefit rate (fractional parts of a dollar
16 omitted) or \$5.00, whichever is the larger, and shall not include any
17 moneys paid to an individual by a county board of elections for work
18 as a board worker on an election day.

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

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

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

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

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

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

46 (s) "Investment company" means any company as defined in

1 subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

2 (t) (1) (Deleted by amendment, P.L.2001, c.17).

3 (2) "Base week," commencing on or after January 1, 1996 and
4 before January 1 2001, means:

5 (A) Any calendar week during which the individual earned in
6 employment from an employer remuneration not less than an amount
7 which is 20% of the Statewide average weekly remuneration defined
8 in subsection (c) of R.S.43:21-3 which amount shall be adjusted to the
9 next higher multiple of \$1.00 if not already a multiple thereof, except
10 that if in any calendar week an individual subject to this subparagraph
11 (A) is in employment with more than one employer, the individual may
12 in that calendar week establish a base week with respect to each of the
13 employers from whom the individual earns remuneration equal to not
14 less than the amount defined in this subparagraph (A) during that
15 week; or

16 (B) If the individual does not establish in his base year 20 or more
17 base weeks as defined in subparagraph (A) of this paragraph (2), any
18 calendar week of an individual's base year during which the individual
19 earned in employment from an employer remuneration not less than an
20 amount 20 times the minimum wage in effect pursuant to section 5 of
21 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
22 preceding the calendar year in which the benefit year commences,
23 which amount shall be adjusted to the next higher multiple of \$1.00 if
24 not already a multiple thereof, except that if in any calendar week an
25 individual subject to this subparagraph (B) is in employment with more
26 than one employer, the individual may in that calendar week establish
27 a base week with respect to each of the employers from whom the
28 individual earns remuneration not less than the amount defined in this
29 subparagraph (B) during that week.

30 (3) "Base week," commencing on or after January 1, 2001, means
31 any calendar week during which the individual earned in employment
32 from an employer remuneration not less than an amount 20 times the
33 minimum wage in effect pursuant to section 5 of P.L.1966, c.113
34 (C.34:11-56a4) on October 1 of the calendar year preceding the
35 calendar year in which the benefit year commences, which amount
36 shall be adjusted to the next higher multiple of \$1.00 if not already a
37 multiple thereof, except that if in any calendar week an individual
38 subject to this paragraph (3) is in employment with more than one
39 employer, the individual may in that calendar week establish a base
40 week with respect to each of the employers from whom the individual
41 earns remuneration equal to not less than the amount defined in this
42 paragraph (3) during that week.

43 (u) "Average weekly wage" means the amount derived by dividing
44 an individual's total wages received during his base year base weeks
45 (as defined in subsection (t) of this section) from that most recent base
46 year employer with whom he has established at least 20 base weeks,

1 by the number of base weeks in which such wages were earned. In the
2 event that such claimant had no employer in his base year with whom
3 he had established at least 20 base weeks, then such individual's
4 average weekly wage shall be computed as if all of his base week
5 wages were received from one employer and as if all his base weeks of
6 employment had been performed in the employ of one employer.

7 For the purpose of computing the average weekly wage, the
8 monetary alternative in subparagraph (B) of paragraph (2) of
9 subsection (e) of R.S.43:21-4 shall only apply in those instances where
10 the individual did not have at least 20 base weeks in the base year. For
11 benefit years commencing on or after July 1, 1986, "average weekly
12 wage" means the amount derived by dividing an individual's total base
13 year wages by the number of base weeks worked by the individual
14 during the base year; provided that for the purpose of computing the
15 average weekly wage, the maximum number of base weeks used in the
16 divisor shall be 52.

17 (v) "Initial determination" means, subject to the provisions of
18 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as
19 measured by an eligible individual's base year employment with a
20 single employer covering all periods of employment with that employer
21 during the base year. For benefit years commencing prior to July 1,
22 1986, subject to the provisions of R.S.43:21-3(d)(3), if an individual
23 has been in employment in his base year with more than one employer,
24 no benefits shall be paid to that individual under any successive initial
25 determination until his benefit rights have been exhausted under the
26 next preceding initial determination.

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

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

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

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

39 (B) Which is approved, licensed or issued a permit to operate as a
40 school by the State Department of Education or other government
41 agency that is authorized within the State to approve, license or issue
42 a permit for the operation of a school; and

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

46 (2) "Institution of higher education" means an educational

1 institution which:

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

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

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

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

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

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

18 (cf: P.L.2001, c.17, s.2)

19

20 3. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill provides that, for the purposes of unemployment benefits,
26 an unemployed individual, who is otherwise eligible, shall not be
27 deemed unavailable for work or ineligible solely by reason of the
28 individual's work as a board worker for a county board of elections on
29 an election day. The bill also amends the definition of "remuneration"
30 within R.S.43:21-19(m)(2) to exclude an individual's pay for work as
31 a board worker on an election day from calculation of that individual's
32 unemployment benefits. Thus, under this bill, an individual's eligibility
33 for unemployment benefits will not be affected, and the amount of
34 benefits received by the individual will not be reduced, as a result of
35 election day work at the polls, and persons receiving unemployment
36 will not be discouraged from performing election work.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1213

STATE OF NEW JERSEY

DATED: SEPTEMBER 12, 2002

The Assembly Judiciary Committee reports favorably Senate Bill No. 1213.

This bill provides that an unemployed individual, who is otherwise eligible for unemployment benefits, shall not be ineligible because the individual works as a board worker for a county board of elections on election day.

The bill also excludes an individual's pay for work as a board worker on election day from calculation of that individual's unemployment benefits. Thus, the amount of benefits received by the individual will not be reduced as a result of election day work at the polls and persons receiving unemployment will not be discouraged from performing election work.

This bill is identical to Assembly Bill No.1903.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1213

STATE OF NEW JERSEY

DATED: MARCH 14, 2002

The Senate Labor Committee reports favorably Senate Bill No. 1213.

This bill provides that an unemployed individual, who is otherwise eligible for unemployment benefits, shall not be ineligible because the individual works as a board worker for a county board of elections on election day.

The bill also excludes an individual's pay for work as a board worker on election day from calculation of that individual's unemployment benefits. Thus, the amount of benefits received by the individual will not be reduced as a result of election day work at the polls and persons receiving unemployment will not be discouraged from performing election work.

ASSEMBLY, No. 1903

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Assemblyman ALEX DECROCE

District 26 (Morris and Passaic)

Assemblyman JOSEPH PENNACCHIO

District 26 (Morris and Passaic)

Co-Sponsored by:

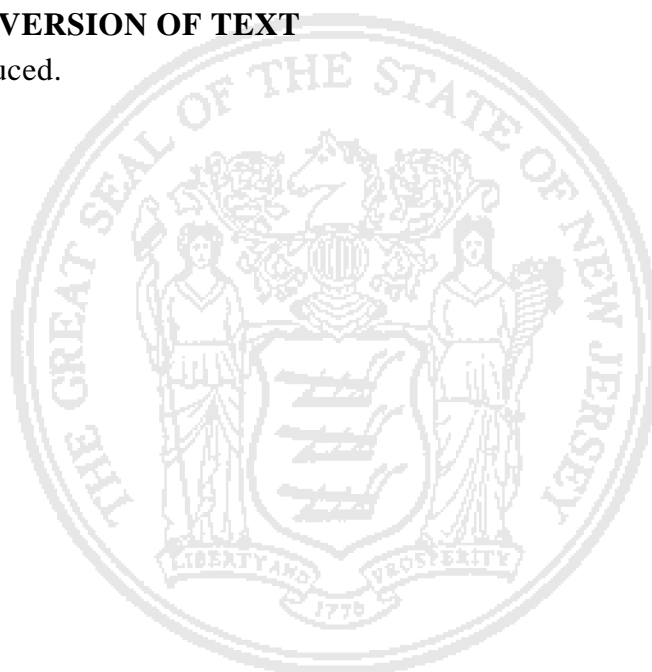
Assemblyman Eagler

SYNOPSIS

Exempts election board work on election day from calculation of unemployment benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/8/2002)

1 AN ACT exempting pay for election board work on election day from
2 the calculation of unemployment benefits and amending R.S.43:21-
3 4 and R.S.43:21-19.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.43:21-4 is amended to read as follows:

9 43:21-4. Benefit eligibility conditions. An unemployed individual
10 shall be eligible to receive benefits with respect to any week only if:

11 (a) The individual has filed a claim at an unemployment insurance
12 claims office and thereafter continues to report at an employment
13 service office or unemployment insurance claims office, as directed by
14 the division in accordance with such regulations as the division may
15 prescribe, except that the division may, by regulation, waive or alter
16 either or both of the requirements of this subsection as to individuals
17 attached to regular jobs, and as to such other types of cases or
18 situations with respect to which the division finds that compliance with
19 such requirements would be oppressive, or would be inconsistent with
20 the purpose of this act; provided that no such regulation shall conflict
21 with subsection (a) of R.S.43:21-3.

22 (b) The individual has made a claim for benefits in accordance with
23 the provisions of subsection (a) of R.S.43:21-6.

24 (c) (1) The individual is able to work, and is available for work,
25 and has demonstrated to be actively seeking work, except as
26 hereinafter provided in this subsection or in subsection (f) of this
27 section.

28 (2) The director may modify the requirement of actively seeking
29 work if such modification of this requirement is warranted by
30 economic conditions.

31 (3) No individual, who is otherwise eligible, shall be deemed
32 ineligible, or unavailable for work, because the individual is on
33 vacation, without pay, during said week, if said vacation is not the
34 result of the individual's own action as distinguished from any
35 collective action of a collective bargaining agent or other action
36 beyond the individual's control.

37 (4) (A) Subject to such limitations and conditions as the division
38 may prescribe, an individual, who is otherwise eligible, shall not be
39 deemed unavailable for work or ineligible because the individual is
40 attending a training program approved for the individual by the
41 division to enhance the individual's employment opportunities or
42 because the individual failed or refused to accept work while attending
43 such program.

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

Matter underlined thus is new matter.

1 (B) For the purpose of this paragraph (4), any training program
2 shall be regarded as approved by the division for the individual if the
3 program and the individual meet the following requirements:

4 (i) The training is for a labor demand occupation and is likely to
5 enhance the individual's marketable skills and earning power;

6 (ii) The training is provided by a competent and reliable private or
7 public entity approved by the Commissioner of Labor pursuant to the
8 provisions of section 8 of the "1992 New Jersey Employment and
9 Workforce Development Act," P.L.1992, c.43 (C.34:15D-8);

10 (iii) The individual can reasonably be expected to complete the
11 program, either during or after the period of benefits;

12 (iv) The training does not include on the job training or other
13 training under which the individual is paid by an employer for work
14 performed by the individual during the time that the individual receives
15 benefits; and

16 (v) The individual enrolls in vocational training, remedial education
17 or a combination of both on a full-time basis.

18 (C) If the requirements of subparagraph (B) of this paragraph (4)
19 are met, the division shall not withhold approval of the training
20 program for the individual for any of the following reasons:

21 (i) The training includes remedial basic skills education necessary
22 for the individual to successfully complete the vocational component
23 of the training;

24 (ii) The training is provided in connection with a program under
25 which the individual may obtain a college degree, including a
26 post-graduate degree;

27 (iii) The length of the training period under the program; or

28 (iv) The lack of a prior guarantee of employment upon completion
29 of the training.

30 (D) For the purpose of this paragraph (4), "labor demand
31 occupation" means an occupation for which there is or is likely to be
32 an excess of demand over supply for adequately trained workers,
33 including, but not limited to, an occupation designated as a labor
34 demand occupation by the New Jersey Occupational Information
35 Coordinating Committee pursuant to the provisions of subsection h.
36 of section 1 of P.L.1987, c.457 (C.34:1A-76) or section 12 of
37 P.L.1992, c.43 (C.34:1A-78).

38 (5) An unemployed individual, who is otherwise eligible, shall not
39 be deemed unavailable for work or ineligible solely by reason of the
40 individual's attendance before a court in response to a summons for
41 service on a jury.

42 (6) An unemployed individual, who is otherwise eligible, shall not
43 be deemed unavailable for work or ineligible solely by reason of the
44 individual's attendance at the funeral of an immediate family member,
45 provided that the duration of the attendance does not extend beyond
46 a two-day period.

1 For purposes of this paragraph, "immediate family member"
2 includes any of the following individuals: father, mother,
3 mother-in-law, father-in-law, grandmother, grandfather, grandchild,
4 spouse, child, foster child, sister or brother of the unemployed
5 individual and any relatives of the unemployed individual residing in
6 the unemployed individual's household.

7 (7) No individual, who is otherwise eligible, shall be deemed
8 ineligible or unavailable for work with respect to any week because,
9 during that week, the individual fails or refuses to accept work while
10 the individual is participating on a full-time basis in self-employment
11 assistance activities authorized by the division, whether or not the
12 individual is receiving a self-employment allowance during that week.

13 (8) Any individual who is determined to be likely to exhaust
14 regular benefits and need reemployment services based on information
15 obtained by the worker profiling system shall not be eligible to receive
16 benefits if the individual fails to participate in available reemployment
17 services to which the individual is referred by the division or in similar
18 services, unless the division determines that:

19 (A) The individual has completed the reemployment services; or

20 (B) There is justifiable cause for the failure to participate, which
21 shall include participation in employment and training,
22 self-employment assistance activities or other activities authorized by
23 the division to assist reemployment or enhance the marketable skills
24 and earning power of the individual and which shall include any other
25 circumstance indicated pursuant to this section in which an individual
26 is not required to be available for and actively seeking work to receive
27 benefits.

28 (9) An unemployed individual, who is otherwise eligible, shall not
29 be deemed unavailable for work or ineligible solely by reason of the
30 individual's work as a board worker for a county board of elections on
31 an election day.

32 (d) The individual has been totally or partially unemployed for a
33 waiting period of one week in the benefit year which includes that
34 week. When benefits become payable with respect to the third
35 consecutive week next following the waiting period, the individual
36 shall be eligible to receive benefits as appropriate with respect to the
37 waiting period. No week shall be counted as a week of unemployment
38 for the purposes of this subsection:

39 (1) If benefits have been paid, or are payable with respect thereto;
40 provided that the requirements of this paragraph shall be waived with
41 respect to any benefits paid or payable for a waiting period as provided
42 in this subsection;

43 (2) If it has constituted a waiting period week under the
44 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
45 seq.);

46 (3) Unless the individual fulfills the requirements of subsections (a)

1 and (c) of this section;

2 (4) If with respect thereto, claimant was disqualified for benefits
3 in accordance with the provisions of subsection (d) of R.S.43:21-5.

4 (e) (1) (Deleted by amendment, P.L.2001, c.17).

5 (2) With respect to benefit years commencing on or after January
6 1, 1996 and before January 7, 2001, except as otherwise provided in
7 paragraph (3) of this subsection, the individual has, during his base
8 year as defined in subsection (c) of R.S.43:21-19:

9 (A) Established at least 20 base weeks as defined in paragraph (2)
10 of subsection (t) of R.S.43:21-19; or

11 (B) If the individual has not met the requirements of subparagraph
12 (A) of this paragraph (2), earned remuneration not less than an amount
13 12 times the Statewide average weekly remuneration paid to workers,
14 as determined under R.S.43:21-3(c), which amount shall be adjusted
15 to the next higher multiple of \$100.00 if not already a multiple thereof;
16 or

17 (C) If the individual has not met the requirements of subparagraph
18 (A) or (B) of this paragraph (2), earned remuneration not less than an
19 amount 1,000 times the minimum wage in effect pursuant to section
20 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
21 year preceding the calendar year in which the benefit year commences,
22 which amount shall be adjusted to the next higher multiple of \$100.00
23 if not already a multiple thereof.

24 (3) With respect to benefit years commencing before January 7,
25 2001, notwithstanding the provisions of paragraph (2) of this
26 subsection, an unemployed individual claiming benefits on the basis of
27 service performed in the production and harvesting of agricultural
28 crops shall, subject to the limitations of subsection (i) of R.S.43:21-19,
29 be eligible to receive benefits if during his base year, as defined in
30 subsection (c) of R.S.43:21-19, the individual:

31 (A) Has established at least 20 base weeks as defined in paragraph
32 (2) of subsection (t) of R.S.43:21-19; or

33 (B) Has earned 12 times the Statewide average weekly
34 remuneration paid to workers, as determined under R.S.43:21-3(c),
35 raised to the next higher multiple of \$100.00 if not already a multiple
36 thereof, or more; or

37 (C) Has performed at least 770 hours of service in the production
38 and harvesting of agricultural crops.

39 (4) With respect to benefit years commencing on or after January
40 7, 2001, except as otherwise provided in paragraph (5) of this
41 subsection, the individual has, during his base year as defined in
42 subsection (c) of R.S.43:21-19:

43 (A) Established at least 20 base weeks as defined in paragraphs (2)
44 and (3) of subsection (t) of R.S.43:21-19; or

45 (B) If the individual has not met the requirements of subparagraph
46 (A) of this paragraph (4), earned remuneration not less than an amount

1 1,000 times the minimum wage in effect pursuant to section 5 of
2 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
3 preceding the calendar year in which the benefit year commences,
4 which amount shall be adjusted to the next higher multiple of \$100 if
5 not already a multiple thereof.

6 (5) With respect to benefit years commencing on or after January
7 7, 2001, notwithstanding the provisions of paragraph (4) of this
8 subsection, an unemployed individual claiming benefits on the basis of
9 service performed in the production and harvesting of agricultural
10 crops shall, subject to the limitations of subsection (i) of R.S.43:21-19,
11 be eligible to receive benefits if during his base year, as defined in
12 subsection (c) of R.S.43:21-19, the individual:

13 (A) Has established at least 20 base weeks as defined in paragraphs
14 (2) and (3) of subsection (t) of R.S.43:21-19; or

15 (B) Has earned remuneration not less than an amount 1,000 times
16 the minimum wage in effect pursuant to section 5 of P.L.1966, c.113
17 (C.34:11-56a4) on October 1 of the calendar year preceding the
18 calendar year in which the benefit year commences, which amount
19 shall be adjusted to the next higher multiple of \$100 if not already a
20 multiple thereof; or

21 (C) Has performed at least 770 hours of service in the production
22 and harvesting of agricultural crops.

23 (6) The individual applying for benefits in any successive benefit
24 year has earned at least six times his previous weekly benefit amount
25 and has had four weeks of employment since the beginning of the
26 immediately preceding benefit year. This provision shall be in addition
27 to the earnings requirements specified in paragraph (2), (3), (4) or (5)
28 of this subsection, as applicable.

29 (f) (1) The individual has suffered any accident or sickness not
30 compensable under the workers' compensation law, R.S.34:15-1 et
31 seq. and resulting in the individual's total disability to perform any
32 work for remuneration, and would be eligible to receive benefits under
33 this chapter (R.S.43:21-1 et seq.) (without regard to the maximum
34 amount of benefits payable during any benefit year) except for the
35 inability to work and has furnished notice and proof of claim to the
36 division, in accordance with its rules and regulations, and payment is
37 not precluded by the provisions of R.S.43:21-3(d); provided, however,
38 that benefits paid under this subsection (f) shall be computed on the
39 basis of only those base year wages earned by the claimant as a
40 "covered individual," as defined in R.S.43:21-27(b); provided further
41 that no benefits shall be payable under this subsection to any
42 individual:

43 (A) For any period during which such individual is not under the
44 care of a legally licensed physician, dentist, optometrist, podiatrist,
45 practicing psychologist or chiropractor;

46 (B) (Deleted by amendment, P.L.1980, c.90.)

1 (C) For any period of disability due to willfully or intentionally
2 self-inflicted injury, or to injuries sustained in the perpetration by the
3 individual of a crime of the first, second or third degree;

4 (D) For any week with respect to which or a part of which the
5 individual has received or is seeking benefits under any unemployment
6 compensation or disability benefits law of any other state or of the
7 United States; provided that if the appropriate agency of such other
8 state or the United States finally determines that the individual is not
9 entitled to such benefits, this disqualification shall not apply;

10 (E) For any week with respect to which or part of which the
11 individual has received or is seeking disability benefits under the
12 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
13 seq.);

14 (F) For any period of disability commencing while such individual
15 is a "covered individual," as defined in subsection (b) of section 3 of
16 the "Temporary Disability Benefits Law," P.L.1948, c.110
17 (C.43:21-27).

18 (2) Benefit payments under this subsection (f) shall be charged to
19 and paid from the State disability benefits fund established by the
20 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
21 seq.), and shall not be charged to any employer account in computing
22 any employer's experience rate for contributions payable under this
23 chapter.

24 (g) Benefits based on service in employment defined in
25 subparagraphs (B) and (C) of R.S.43:21-19(i)(1) shall be payable in
26 the same amount and on the terms and subject to the same conditions
27 as benefits payable on the basis of other service subject to the
28 "unemployment compensation law"; except that, notwithstanding any
29 other provisions of the "unemployment compensation law":

30 (1) With respect to service performed after December 31, 1977, in
31 an instructional research, or principal administrative capacity for an
32 educational institution, benefits shall not be paid based on such
33 services for any week of unemployment commencing during the period
34 between two successive academic years, or during a similar period
35 between two regular terms, whether or not successive, or during a
36 period of paid sabbatical leave provided for in the individual's contract,
37 to any individual if such individual performs such services in the first
38 of such academic years (or terms) and if there is a contract or a
39 reasonable assurance that such individual will perform services in any
40 such capacity for any educational institution in the second of such
41 academic years or terms;

42 (2) With respect to weeks of unemployment beginning after
43 September 3, 1982, on the basis of service performed in any other
44 capacity for an educational institution, benefits shall not be paid on the
45 basis of such services to any individual for any week which commences
46 during a period between two successive academic years or terms if

1 such individual performs such services in the first of such academic
2 years or terms and there is a reasonable assurance that such individual
3 will perform such services in the second of such academic years or
4 terms, except that if benefits are denied to any individual under this
5 paragraph (2) and the individual was not offered an opportunity to
6 perform these services for the educational institution for the second of
7 any academic years or terms, the individual shall be entitled to a
8 retroactive payment of benefits for each week for which the individual
9 filed a timely claim for benefits and for which benefits were denied
10 solely by reason of this clause;

11 (3) With respect to those services described in paragraphs (1) and
12 (2) above, benefits shall not be paid on the basis of such services to
13 any individual for any week which commences during an established
14 and customary vacation period or holiday recess if such individual
15 performs such services in the period immediately before such vacation
16 period or holiday recess, and there is a reasonable assurance that such
17 individual will perform such services in the period immediately
18 following such period or holiday recess;

19 (4) With respect to any services described in paragraphs (1) and
20 (2) above, benefits shall not be paid as specified in paragraphs (1), (2),
21 and (3) above to any individual who performed those services in an
22 educational institution while in the employ of an educational service
23 agency, and for this purpose the term "educational service agency"
24 means a governmental agency or governmental entity which is
25 established and operated exclusively for the purpose of providing
26 those services to one or more educational institutions.

27 (h) Benefits shall not be paid to any individual on the basis of any
28 services, substantially all of which consist of participating in sports or
29 athletic events or training or preparing to so participate, for any week
30 which commences during the period between two successive sports
31 seasons (or similar periods) if such individual performed such services
32 in the first of such seasons (or similar periods) and there is a
33 reasonable assurance that such individual will perform such services in
34 the later of such seasons (or similar periods).

35 (i) (1) Benefits shall not be paid on the basis of services performed
36 by an alien unless such alien is an individual who was lawfully admitted
37 for permanent residence at the time the services were performed and
38 was lawfully present for the purpose of performing the services or
39 otherwise was permanently residing in the United States under color
40 of law at the time the services were performed (including an alien who
41 is lawfully present in the United States as a result of the application of
42 the provisions of section 212(d)(5) (8 U.S.C.s.1182 (d)(5)) of the
43 Immigration and Nationality Act (8 U.S.C.s.1101 et seq.)); provided
44 that any modifications of the provisions of section 3304(a)(14) of the
45 Federal Unemployment Tax Act (26 U.S.C.s.3304 (a)(14)), as
46 provided by Pub.L.94-566, which specify other conditions or other

1 effective dates than stated herein for the denial of benefits based on
2 services performed by aliens and which modifications are required to
3 be implemented under State law as a condition for full tax credit
4 against the tax imposed by the Federal Unemployment Tax Act, shall
5 be deemed applicable under the provisions of this section.

6 (2) Any data or information required of individuals applying for
7 benefits to determine whether benefits are not payable to them because
8 of their alien status shall be uniformly required from all applicants for
9 benefits.

10 (3) In the case of an individual whose application for benefits
11 would otherwise be approved, no determination that benefits to such
12 individual are not payable because of alien status shall be made except
13 upon a preponderance of the evidence.

14 (j) Notwithstanding any other provision of this chapter, the
15 director may, to the extent that it may be deemed efficient and
16 economical, provide for consolidated administration by one or more
17 representatives or deputies of claims made pursuant to subsection (f)
18 of this section with those made pursuant to Article III (State plan) of
19 the "Temporary Disability Benefits Law," P.L.1948, c.110
20 (C.43:21-25 et seq.).
21 (cf: P.L.2001, c.17, s.1)

22

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

24 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
25 seq.), unless the context clearly requires otherwise:

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

29 (2) "Average annual payroll" means the average of the annual
30 payrolls of any employer for the last three or five preceding calendar
31 years, whichever average is higher, except that any year or years
32 throughout which an employer has had no "annual payroll" because of
33 military service shall be deleted from the reckoning; the "average
34 annual payroll" in such case is to be determined on the basis of the
35 prior three or five calendar years in each of which the employer had an
36 "annual payroll" in the operation of his business, if the employer
37 resumes his business within 12 months after separation, discharge or
38 release from such service, under conditions other than dishonorable,
39 and makes application to have his "average annual payroll" determined
40 on the basis of such deletion within 12 months after he resumes his
41 business; provided, however, that "average annual payroll" solely for
42 the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means
43 the average of the annual payrolls of any employer on which he paid
44 contributions to the State disability benefits fund for the last three or
45 five preceding calendar years, whichever average is higher; provided
46 further that only those wages be included on which employer

1 contributions have been paid on or before January 31 (or the next
2 succeeding day if such January 31 is a Saturday or Sunday)
3 immediately preceding the beginning of the 12-month period for which
4 the employer's contribution rate is computed.

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

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

12 With respect to a benefit year commencing on or after July 1, 1995,
13 if an individual does not have sufficient qualifying weeks or wages in
14 his base year to qualify for benefits, the individual shall have the option
15 of designating that his base year shall be the "alternative base year,"
16 which means the last four completed calendar quarters immediately
17 preceding the individual's benefit year; except that, with respect to a
18 benefit year commencing on or after October 1, 1995, if the individual
19 also does not have sufficient qualifying weeks or wages in the last four
20 completed calendar quarters immediately preceding his benefit year to
21 qualify for benefits, "alternative base year" means the last three
22 completed calendar quarters immediately preceding his benefit year
23 and, of the calendar quarter in which the benefit year commences, the
24 portion of the quarter which occurs before the commencing of the
25 benefit year.

26 The division shall inform the individual of his options under this
27 section as amended by P.L.1995, c.234. If information regarding
28 weeks and wages for the calendar quarter or quarters immediately
29 preceding the benefit year is not available to the division from the
30 regular quarterly reports of wage information and the division is not
31 able to obtain the information using other means pursuant to State or
32 federal law, the division may base the determination of eligibility for
33 benefits on the affidavit of an individual with respect to weeks and
34 wages for that calendar quarter. The individual shall furnish payroll
35 documentation, if available, in support of the affidavit. A
36 determination of benefits based on an alternative base year shall be
37 adjusted when the quarterly report of wage information from the
38 employer is received if that information causes a change in the
39 determination.

40 (2) With respect to a benefit year commencing on or after June 1,
41 1990 for an individual who immediately preceding the benefit year was
42 subject to a disability compensable under the provisions of the
43 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et
44 seq.), "base year" shall mean the first four of the last five completed
45 calendar quarters immediately preceding the individual's period of
46 disability, if the employment held by the individual immediately

1 preceding the period of disability is no longer available at the
2 conclusion of that period and the individual files a valid claim for
3 unemployment benefits after the conclusion of that period. For the
4 purposes of this paragraph, "period of disability" means the period
5 defined as a period of disability by section 3 of the "Temporary
6 Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual
7 who files a claim under the provisions of this paragraph (2) shall not
8 be regarded as having left work voluntarily for the purposes of
9 subsection (a) of R.S.43:21-5.

10 (3) With respect to a benefit year commencing on or after June 1,
11 1990 for an individual who immediately preceding the benefit year was
12 subject to a disability compensable under the provisions of the
13 workers' compensation law (chapter 15 of Title 34 of the Revised
14 Statutes), "base year" shall mean the first four of the last five
15 completed calendar quarters immediately preceding the individual's
16 period of disability, if the period of disability was not longer than two
17 years, if the employment held by the individual immediately preceding
18 the period of disability is no longer available at the conclusion of that
19 period and if the individual files a valid claim for unemployment
20 benefits after the conclusion of that period. For the purposes of this
21 paragraph, "period of disability" means the period from the time at
22 which the individual becomes unable to work because of the
23 compensable disability until the time that the individual becomes able
24 to resume work and continue work on a permanent basis. An
25 individual who files a claim under the provisions of this paragraph (3)
26 shall not be regarded as having left work voluntarily for the purposes
27 of subsection (a) of R.S.43:21-5.

28 (d) "Benefit year" with respect to any individual means the 364
29 consecutive calendar days beginning with the day on, or as of, which
30 he first files a valid claim for benefits, and thereafter beginning with
31 the day on, or as of, which the individual next files a valid claim for
32 benefits after the termination of his last preceding benefit year. Any
33 claim for benefits made in accordance with subsection (a) of
34 R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of
35 this subsection if (1) he is unemployed for the week in which, or as of
36 which, he files a claim for benefits; and (2) he has fulfilled the
37 conditions imposed by subsection (e) of R.S.43:21-4.

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

43 (2) "Controller" means the Office of the Assistant Commissioner
44 for Finance and Controller of the Department of Labor, established by
45 the 1982 Reorganization Plan of the Department of Labor.

46 (f) "Contributions" means the money payments to the State

1 Unemployment Compensation Fund, required by R.S.43:21-7.
2 "Payments in lieu of contributions" means the money payments to the
3 State Unemployment Compensation Fund by employers electing or
4 required to make payments in lieu of contributions, as provided in
5 section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

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

27 (h) "Employer" means:

28 (1) Any employing unit which in either the current or the preceding
29 calendar year paid remuneration for employment in the amount of
30 \$1,000.00 or more;

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

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

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

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

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

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

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

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

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

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

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

28 (13) Any employing unit for which domestic service in employment
29 as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31,
30 1977;

31 (14) Any employing unit which having become an employer under
32 the "unemployment compensation law" (R.S.43:21-1 et seq.), has not
33 under R.S.43:21-8 ceased to be an employer; or for the effective
34 period of its election pursuant to R.S.43:21-8, any other employing
35 unit which has elected to become fully subject to this chapter
36 (R.S.43:21-1 et seq.).

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

38 (A) Any service performed prior to January 1, 1972, which was
39 employment as defined in the "unemployment compensation law"
40 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
41 provisions of this subsection, service performed on or after January 1,
42 1972, including service in interstate commerce, performed for
43 remuneration or under any contract of hire, written or oral, express or
44 implied.

45 (B) (i) Service performed after December 31, 1971 by an
46 individual in the employ of this State or any of its instrumentalities or

1 in the employ of this State and one or more other states or their
2 instrumentalities for a hospital or institution of higher education
3 located in this State, if such service is not excluded from
4 "employment" under paragraph (D) below.

5 (ii) Service performed after December 31, 1977, in the employ of
6 this State or any of its instrumentalities or any political subdivision
7 thereof or any of its instrumentalities or any instrumentality of more
8 than one of the foregoing or any instrumentality of the foregoing and
9 one or more other states or political subdivisions, if such service is not
10 excluded from "employment" under paragraph (D) below.

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

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

19 (i) In the employ of (I) a church or convention or association of
20 churches, or (II) an organization, or school which is operated primarily
21 for religious purposes and which is operated, supervised, controlled or
22 principally supported by a church or convention or association of
23 churches;

24 (ii) By a duly ordained, commissioned, or licensed minister of a
25 church in the exercise of his ministry or by a member of a religious
26 order in the exercise of duties required by such order;

27 (iii) Prior to January 1, 1978, in the employ of a school which is
28 not an institution of higher education, and after December 31, 1977,
29 in the employ of a governmental entity referred to in R.S.43:21-19 (i)
30 (1) (B), if such service is performed by an individual in the exercise of
31 duties

32 (aa) as an elected official;

33 (bb) as a member of a legislative body, or a member of the
34 judiciary, of a state or political subdivision;

35 (cc) as a member of the State National Guard or Air National
36 Guard;

37 (dd) as an employee serving on a temporary basis in case of fire,
38 storm, snow, earthquake, flood or similar emergency;

39 (ee) in a position which, under or pursuant to the laws of this
40 State, is designated as a major nontenured policy making or advisory
41 position, or a policy making or advisory position, the performance of
42 the duties of which ordinarily does not require more than eight hours
43 per week; or

44 (iv) By an individual receiving rehabilitation or remunerative work
45 in a facility conducted for the purpose of carrying out a program of
46 rehabilitation of individuals whose earning capacity is impaired by age

1 or physical or mental deficiency or injury or providing remunerative
2 work for individuals who because of their impaired physical or mental
3 capacity cannot be readily absorbed in the competitive labor market;

4 (v) By an individual receiving work-relief or work-training as part
5 of an unemployment work-relief or work-training program assisted in
6 whole or in part by any federal agency or an agency of a state or
7 political subdivision thereof; or

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

12 (E) The term "employment" shall include the services of an
13 individual who is a citizen of the United States, performed outside the
14 United States after December 31, 1971 (except in Canada and in the
15 case of the Virgin Islands, after December 31, 1971) and prior to
16 January 1 of the year following the year in which the U.S. Secretary
17 of Labor approves the unemployment compensation law of the Virgin
18 Islands, under section 3304 (a) of the Internal Revenue Code of 1986
19 (26 U.S.C.s.3304 (a)) in the employ of an American employer (other
20 than the service which is deemed employment under the provisions of
21 R.S.43:21-19 (i) (2) or (5) or the parallel provisions of another state's
22 unemployment compensation law), if

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

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

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

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

45 (F) Notwithstanding R.S.43:21-19 (i) (2), all service performed
46 after January 1, 1972 by an officer or member of the crew of an

1 American vessel or American aircraft on or in connection with such
2 vessel or aircraft, if the operating office from which the operations of
3 such vessel or aircraft operating within, or within and without, the
4 United States are ordinarily and regularly supervised, managed,
5 directed, and controlled, is within this State.

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

13 (H) The term "United States" when used in a geographical sense
14 in subsection R.S.43:21-19 (i) includes the states, the District of
15 Columbia, the Commonwealth of Puerto Rico and, effective on the day
16 after the day on which the U.S. Secretary of Labor approves for the
17 first time under section 3304 (a) of the Internal Revenue Code of 1986
18 (26 U.S.C.s.3304 (a)) an unemployment compensation law submitted
19 to the Secretary by the Virgin Islands for such approval, the Virgin
20 Islands.

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

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

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

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

37 (aa) if such crew leader holds a certification of registration under
38 the Migrant and Seasonal Agricultural Worker Protection Act,
39 Pub.L.97-470 (29 U.S.C.s.1801 et seq.), or P.L.1971, c.192
40 (C.34:8A-7 et seq.); or substantially all the members of such crew
41 operate or maintain tractors, mechanized harvesting or cropdusting
42 equipment, or any other mechanized equipment, which is provided by
43 such crew leader; and

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

46 (iii) For the purposes of subparagraph (I) (i) in the case of any

1 individual who is furnished by a crew leader to perform service in
2 agricultural labor or any other entity and who is not treated as an
3 employee of such crew leader under (I) (ii)

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

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

11 (iv) For the purpose of subparagraph (I)(ii), the term "crew leader"
12 means an individual who

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

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

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

21 (J) Domestic service after December 31, 1977 performed in the
22 private home of an employing unit which paid cash remuneration of
23 \$1,000.00 or more to one or more individuals for such domestic
24 service in any calendar quarter in the current or preceding calendar
25 year.

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

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

29 (B) The service is not localized in any state but some of the service
30 is performed in this State, and (i) the base of operations, or, if there is
31 no base of operations, then the place from which such service is
32 directed or controlled, is in this State; or (ii) the base of operations or
33 place from which such service is directed or controlled is not in any
34 state in which some part of the service is performed, but the
35 individual's residence is in this State.

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

42 (4) Services not covered under paragraph (2) of this subsection and
43 performed entirely without this State, with respect to no part of which
44 contributions are required and paid under an unemployment
45 compensation law of any other state or of the federal government,
46 shall be deemed to be employment subject to this chapter (R.S.43:21-1

1 et seq.) if the individual performing such services is a resident of this
2 State and the employing unit for whom such services are performed
3 files with the division an election that the entire service of such
4 individual shall be deemed to be employment subject to this chapter
5 (R.S.43:21-1 et seq.).

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

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

8 (B) The service is performed both within and without such state,
9 but the service performed without such state is incidental to the
10 individual's service within the state; for example, is temporary or
11 transitory in nature or consists of isolated transactions.

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

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

18 (B) Such service is either outside the usual course of the business
19 for which such service is performed, or that such service is performed
20 outside of all the places of business of the enterprise for which such
21 service is performed; and

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

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

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

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

38 (ii) for some portion of a day in each of 20 different calendar
39 weeks, whether or not such weeks were consecutive, in either the
40 current or the preceding calendar year, employed in agricultural labor
41 10 or more individuals, regardless of whether they were employed at
42 the same moment in time;

43 (B) Domestic service in a private home performed prior to January
44 1, 1978; and after December 31, 1977, unless performed in the private
45 home of an employing unit which paid cash remuneration of \$1,000.00
46 or more to one or more individuals for such domestic service in any

1 calendar quarter in the current or preceding calendar year;

2 (C) Service performed by an individual in the employ of his son,
3 daughter or spouse, and service performed by a child under the age of
4 18 in the employ of his father or mother;

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

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

17 (F) Service performed in the employ of the United States
18 Government or of any instrumentality of the United States except
19 under the Constitution of the United States from the contributions
20 imposed by the "unemployment compensation law," except that to the
21 extent that the Congress of the United States shall permit states to
22 require any instrumentalities of the United States to make payments
23 into an unemployment fund under a state unemployment compensation
24 law, all of the provisions of this act shall be applicable to such
25 instrumentalities, and to service performed for such instrumentalities,
26 in the same manner, to the same extent and on the same terms as to all
27 other employers, employing units, individuals and services; provided
28 that if this State shall not be certified for any year by the Secretary of
29 Labor of the United States under section 3304 of the federal Internal
30 Revenue Code of 1986 (26 U.S.C.s.3304), the payments required of
31 such instrumentalities with respect to such year shall be refunded by
32 the division from the fund in the same manner and within the same
33 period as is provided in R.S.43:21-14 (f) with respect to contributions
34 erroneously paid to or collected by the division;

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

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

1 (I) Service with respect to which unemployment insurance is
2 payable under an unemployment insurance program established by an
3 Act of Congress;

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

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

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

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

21 (N) Services performed after January 1, 1973 by an individual for
22 a labor union organization, known and recognized as a union local, as
23 a member of a committee or committees reimbursed by the union local
24 for time lost from regular employment, or as a part-time officer of a
25 union local and the remuneration for such services is less than
26 \$1,000.00 in a calendar year;

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

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

34 (Q) Service performed in the employ of an instrumentality wholly
35 owned by a foreign government if (i) the service is of a character
36 similar to that performed in foreign countries by employees of the
37 United States Government or of an instrumentality thereof, and (ii) the
38 division finds that the United States Secretary of State has certified to
39 the United States Secretary of the Treasury that the foreign
40 government, with respect to whose instrumentality exemption is
41 claimed, grants an equivalent exemption with respect to similar
42 services performed in the foreign country by employees of the United
43 States Government and of instrumentalities thereof;

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

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

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

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

27 (V) Service performed in the employ of a hospital, if such service
28 is performed by a patient of the hospital; service performed as a
29 student nurse in the employ of a hospital or a nurses' training school
30 by an individual who is enrolled and regularly attending classes in a
31 nurses' training school approved under the laws of this State; and
32 service performed as an intern in the employ of a hospital by an
33 individual who has completed a four-year course in a medical school
34 approved pursuant to the laws of this State;

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

38 (X) Services performed by operators of motor vehicles weighing
39 18,000 pounds or more, licensed for commercial use and used for the
40 highway movement of motor freight, who own their equipment or who
41 lease or finance the purchase of their equipment through an entity
42 which is not owned or controlled directly or indirectly by the entity for
43 which the services were performed and who were compensated by
44 receiving a percentage of the gross revenue generated by the
45 transportation move or by a schedule of payment based on the distance
46 and weight of the transportation move;

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

8 (Z) Services performed, using facilities provided by a travel agent,
9 by a person, commonly known as an outside travel agent, who acts as
10 an independent contractor, is paid on a commission basis, sets his own
11 work schedule and receives no benefits, sick leave, vacation or other
12 leave from the travel agent owning the facilities.

13 (8) If one-half or more of the services in any pay period performed
14 by an individual for an employing unit constitutes employment, all the
15 services of such individual shall be deemed to be employment; but if
16 more than one-half of the service in any pay period performed by an
17 individual for an employing unit does not constitute employment, then
18 none of the service of such individual shall be deemed to be
19 employment. As used in this paragraph, the term "pay period" means
20 a period of not more than 31 consecutive days for which a payment for
21 service is ordinarily made by an employing unit to individuals in its
22 employ.

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

27 (A) The limousine franchisee is incorporated;

28 (B) The franchisee is subject to regulation by the Interstate
29 Commerce Commission;

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

33 (D) The franchisee registers with the Department of Labor and
34 receives an employer registration number.

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

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

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

42 (m) "Unemployment."

43 (1) An individual shall be deemed "unemployed" for any week
44 during which:

45 (A) The individual is not engaged in full-time work and with
46 respect to which his remuneration is less than his weekly benefit rate,

1 including any week during which he is on vacation without pay;
2 provided such vacation is not the result of the individual's voluntary
3 action, except that for benefit years commencing on or after July 1,
4 1984, an officer of a corporation, or a person who has more than a 5%
5 equitable or debt interest in the corporation, whose claim for benefits
6 is based on wages with that corporation shall not be deemed to be
7 unemployed in any week during the individual's term of office or
8 ownership in the corporation; or

9 (B) The individual is eligible for and receiving a self-employment
10 assistance allowance pursuant to the requirements of P.L.1995, c.394
11 (C.43:21-67 et al.).

12 (2) The term "remuneration" with respect to any individual for
13 benefit years commencing on or after July 1, 1961, and as used in this
14 subsection, shall include only that part of the same which in any week
15 exceeds 20% of his weekly benefit rate (fractional parts of a dollar
16 omitted) or \$5.00, whichever is the larger, and shall not include any
17 moneys paid to an individual by a county board of elections for work
18 as a board worker on an election day.

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

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

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

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

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

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

46 (s) "Investment company" means any company as defined in

1 subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

2 (t) (1) (Deleted by amendment, P.L.2001, c.17).

3 (2) "Base week," commencing on or after January 1, 1996 and
4 before January 1 2001, means:

5 (A) Any calendar week during which the individual earned in
6 employment from an employer remuneration not less than an amount
7 which is 20% of the Statewide average weekly remuneration defined
8 in subsection (c) of R.S.43:21-3 which amount shall be adjusted to the
9 next higher multiple of \$1.00 if not already a multiple thereof, except
10 that if in any calendar week an individual subject to this subparagraph
11 (A) is in employment with more than one employer, the individual may
12 in that calendar week establish a base week with respect to each of the
13 employers from whom the individual earns remuneration equal to not
14 less than the amount defined in this subparagraph (A) during that
15 week; or

16 (B) If the individual does not establish in his base year 20 or more
17 base weeks as defined in subparagraph (A) of this paragraph (2), any
18 calendar week of an individual's base year during which the individual
19 earned in employment from an employer remuneration not less than an
20 amount 20 times the minimum wage in effect pursuant to section 5 of
21 P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar year
22 preceding the calendar year in which the benefit year commences,
23 which amount shall be adjusted to the next higher multiple of \$1.00 if
24 not already a multiple thereof, except that if in any calendar week an
25 individual subject to this subparagraph (B) is in employment with more
26 than one employer, the individual may in that calendar week establish
27 a base week with respect to each of the employers from whom the
28 individual earns remuneration not less than the amount defined in this
29 subparagraph (B) during that week.

30 (3) "Base week," commencing on or after January 1, 2001, means
31 any calendar week during which the individual earned in employment
32 from an employer remuneration not less than an amount 20 times the
33 minimum wage in effect pursuant to section 5 of P.L.1966, c.113
34 (C.34:11-56a4) on October 1 of the calendar year preceding the
35 calendar year in which the benefit year commences, which amount
36 shall be adjusted to the next higher multiple of \$1.00 if not already a
37 multiple thereof, except that if in any calendar week an individual
38 subject to this paragraph (3) is in employment with more than one
39 employer, the individual may in that calendar week establish a base
40 week with respect to each of the employers from whom the individual
41 earns remuneration equal to not less than the amount defined in this
42 paragraph (3) during that week.

43 (u) "Average weekly wage" means the amount derived by dividing
44 an individual's total wages received during his base year base weeks
45 (as defined in subsection (t) of this section) from that most recent base
46 year employer with whom he has established at least 20 base weeks,

1 by the number of base weeks in which such wages were earned. In the
2 event that such claimant had no employer in his base year with whom
3 he had established at least 20 base weeks, then such individual's
4 average weekly wage shall be computed as if all of his base week
5 wages were received from one employer and as if all his base weeks of
6 employment had been performed in the employ of one employer.

7 For the purpose of computing the average weekly wage, the
8 monetary alternative in subparagraph (B) of paragraph (2) of
9 subsection (e) of R.S.43:21-4 shall only apply in those instances where
10 the individual did not have at least 20 base weeks in the base year. For
11 benefit years commencing on or after July 1, 1986, "average weekly
12 wage" means the amount derived by dividing an individual's total base
13 year wages by the number of base weeks worked by the individual
14 during the base year; provided that for the purpose of computing the
15 average weekly wage, the maximum number of base weeks used in the
16 divisor shall be 52.

17 (v) "Initial determination" means, subject to the provisions of
18 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as
19 measured by an eligible individual's base year employment with a
20 single employer covering all periods of employment with that employer
21 during the base year. For benefit years commencing prior to July 1,
22 1986, subject to the provisions of R.S.43:21-3(d)(3), if an individual
23 has been in employment in his base year with more than one employer,
24 no benefits shall be paid to that individual under any successive initial
25 determination until his benefit rights have been exhausted under the
26 next preceding initial determination.

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

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

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

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

39 (B) Which is approved, licensed or issued a permit to operate as a
40 school by the State Department of Education or other government
41 agency that is authorized within the State to approve, license or issue
42 a permit for the operation of a school; and

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

46 (2) "Institution of higher education" means an educational

1 institution which:

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

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

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

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

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

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

18 (cf: P.L.2001, c.17, s.2)

19

20 3. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill provides that, for the purposes of unemployment benefits,
26 an unemployed individual, who is otherwise eligible, shall not be
27 deemed unavailable for work or ineligible solely by reason of the
28 individual's work as a board worker for a county board of elections on
29 an election day. The bill also amends the definition of "remuneration"
30 within R.S.43:21-19(m)(2) to exclude an individual's pay for work as
31 a board worker on an election day from calculation of that individual's
32 unemployment benefits. Thus, under this bill, an individual's eligibility
33 for unemployment benefits will not be affected, and the amount of
34 benefits received by the individual will not be reduced, as a result of
35 election day work at the polls, and persons receiving unemployment
36 will not be discouraged from performing election work.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1903

STATE OF NEW JERSEY

DATED: SEPTEMBER 12, 2002

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1903.

This bill provides that an unemployed individual, who is otherwise eligible for unemployment benefits, shall not be ineligible because the individual works as a board worker for a county board of elections on election day.

The bill also excludes an individual's pay for work as a board worker on election day from calculation of that individual's unemployment benefits. Thus, the amount of benefits received by the individual will not be reduced as a result of election day work at the polls and persons receiving unemployment will not be discouraged from performing election work.

This bill is identical to Senate Bill No.1213.