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P.L. 2005, CHAPTER 239, *approved December 15, 2005*  
Senate Committee Substitute for  
Senate, No. 1847

1 AN ACT to deter unemployment tax avoidance and amending  
2 R.S.43:21-7, 43:21-11, 43:21-14 and 43:21-16.

3

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

6

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

8 43:21-7. Contributions. Employers other than governmental  
9 entities, whose benefit financing provisions are set forth in section 4  
10 of P.L.1971, c.346 (C.43:21-7.3), and those nonprofit organizations  
11 liable for payment in lieu of contributions on the basis set forth in  
12 section 3 of P.L.1971, c.346 (C.43:21-7.2), shall pay to the controller  
13 for the unemployment compensation fund, contributions as set forth  
14 in subsections (a), (b) and (c) hereof, and the provisions of subsections  
15 (d) and (e) shall be applicable to all employers, consistent with the  
16 provisions of the "unemployment compensation law" and the  
17 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et  
18 seq.).

19 (a) Payment.

20 (1) Contributions shall accrue and become payable by each  
21 employer for each calendar year in which he is subject to this chapter  
22 (R.S.43:21-1 et seq.), with respect to having individuals in his employ  
23 during that calendar year, at the rates and on the basis hereinafter set  
24 forth. Such contributions shall become due and be paid by each  
25 employer to the controller for the fund, in accordance with such  
26 regulations as may be prescribed, and shall not be deducted, in whole  
27 or in part, from the remuneration of individuals in his employ.

28 (2) In the payment of any contributions, a fractional part of a cent  
29 shall be disregarded unless it amounts to \$0.005 or more, in which  
30 case it shall be increased to \$0.01.

31 (b) Rate of contributions. Each employer shall pay the following  
32 contributions:

33 (1) For the calendar year 1947, and each calendar year thereafter,  
34 2 7/10% of wages paid by him during each such calendar year, except  
35 as otherwise prescribed by subsection (c) of this section.

36 (2) The "wages" of any individual, with respect to any one  
37 employer, as the term is used in this subsection (b) and in subsections  
38 (c), (d) and (e) of this section 7, shall include the first \$4,800.00 paid  
39 during calendar year 1975, for services performed either within or  
40 without this State; provided that no contribution shall be required by

**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 this State with respect to services performed in another state if such  
2 other state imposes contribution liability with respect thereto. If an  
3 employer (hereinafter referred to as a successor employer) during any  
4 calendar year acquires substantially all the property used in a trade or  
5 business of another employer (hereinafter referred to as a  
6 predecessor), or used in a separate unit of a trade or business of a  
7 predecessor, and immediately after the acquisition employs in his trade  
8 or business an individual who immediately prior to the acquisition was  
9 employed in the trade or business of such predecessors, then, for the  
10 purpose of determining whether the successor employer has paid  
11 wages with respect to employment equal to the first \$4,800.00 paid  
12 during calendar year 1975, any wages paid to such individual by such  
13 predecessor during such calendar year and prior to such acquisition  
14 shall be considered as having been paid by such successor employer.

15 (3) For calendar years beginning on and after January 1, 1976, the  
16 "wages" of any individual, as defined in the preceding paragraph (2)  
17 of this subsection (b), shall be established and promulgated by the  
18 Commissioner of Labor and Workforce Development on or before  
19 September 1 of the preceding year and shall be, 28 times the Statewide  
20 average weekly remuneration paid to workers by employers, as  
21 determined under R.S.43:21-3(c), raised to the next higher multiple of  
22 \$100.00 if not already a multiple thereof, provided that if the amount  
23 of wages so determined for a calendar year is less than the amount  
24 similarly determined for the preceding year, the greater amount will be  
25 used; provided, further, that if the amount of such wages so  
26 determined does not equal or exceed the amount of wages as defined  
27 in subsection (b) of section 3306 of the Federal Unemployment Tax  
28 Act, Chapter 23 of the Internal Revenue Code of 1986 (26 U.S.C.  
29 s.3306(b)), the wages as determined in this paragraph in any calendar  
30 year shall be raised to equal the amount established under the Federal  
31 Unemployment Tax Act for that calendar year.

32 (c) Future rates based on benefit experience.

33 (1) A separate account for each employer shall be maintained and  
34 this shall be credited with all the contributions which he has paid on  
35 his own behalf on or before January 31 of any calendar year with  
36 respect to employment occurring in the preceding calendar year;  
37 provided, however, that if January 31 of any calendar year falls on a  
38 Saturday or Sunday, an employer's account shall be credited as of  
39 January 31 of such calendar year with all the contributions which he  
40 has paid on or before the next succeeding day which is not a Saturday  
41 or Sunday. But nothing in this chapter (R.S.43:21-1 et seq.) shall be  
42 construed to grant any employer or individuals in his service prior  
43 claims or rights to the amounts paid by him into the fund either on his  
44 own behalf or on behalf of such individuals. Benefits paid with respect  
45 to benefit years commencing on and after January 1, 1953, to any  
46 individual on or before December 31 of any calendar year with respect

1 to unemployment in such calendar year and in preceding calendar years  
2 shall be charged against the account or accounts of the employer or  
3 employers in whose employment such individual established base  
4 weeks constituting the basis of such benefits, except that, with respect  
5 to benefit years commencing after January 4, 1998, an employer's  
6 account shall not be charged for benefits paid to a claimant if the  
7 claimant's employment by that employer was ended in any way which,  
8 pursuant to subsection (a), (b), (c), (f), (g) or (h) of R.S.43:21-5,  
9 would have disqualified the claimant for benefits if the claimant had  
10 applied for benefits at the time when that employment ended. Benefits  
11 paid under a given benefit determination shall be charged against the  
12 account of the employer to whom such determination relates. When  
13 each benefit payment is made, either a copy of the benefit check or  
14 other form of notification shall be promptly sent to the employer  
15 against whose account the benefits are to be charged. Such copy or  
16 notification shall identify the employer against whose account the  
17 amount of such payment is being charged, shall show at least the name  
18 and social security account number of the claimant and shall specify  
19 the period of unemployment to which said check applies. If the total  
20 amount of benefits paid to a claimant and charged to the account of  
21 the appropriate employer exceeds 50% of the total base year, base  
22 week wages paid to the claimant by that employer, then such employer  
23 shall have canceled from his account such excess benefit charges as  
24 specified above.

25 Each employer shall be furnished an annual summary statement of  
26 benefits charged to his account.

27 (2) Regulations may be prescribed for the establishment,  
28 maintenance, and dissolution of joint accounts by two or more  
29 employers, and shall, in accordance with such regulations and upon  
30 application by two or more employers to establish such an account, or  
31 to merge their several individual accounts in a joint account, maintain  
32 such joint account as if it constituted a single employer's account.

33 (3) No employer's rate shall be lower than 5.4% unless assignment  
34 of such lower rate is consistent with the conditions applicable to  
35 additional credit allowance for such year under section 3303(a)(1) of  
36 the Internal Revenue Code of 1986 (26 U.S.C. s.3303(a)(1)), any  
37 other provision of this section to the contrary notwithstanding.

38 (4) Employer Reserve Ratio. (A) Each employer's rate shall be 2  
39 8/10%, except as otherwise provided in the following provisions. No  
40 employer's rate for the 12 months commencing July 1 of any calendar  
41 year shall be other than 2 8/10%, unless as of the preceding January 31  
42 such employer shall have paid contributions with respect to wages paid  
43 in each of the three calendar years immediately preceding such year,  
44 in which case such employer's rate for the 12 months commencing July  
45 1 of any calendar year shall be determined on the basis of his record up  
46 to the beginning of such calendar year. If, at the beginning of such

1 calendar year, the total of all his contributions, paid on his own behalf,  
2 for all past years exceeds the total benefits charged to his account for  
3 all such years, his contribution rate shall be:

4 (1)  $2\frac{5}{10}\%$ , if such excess equals or exceeds 4%, but less than  
5 5%, of his average annual payroll (as defined in paragraph (2),  
6 subsection (a) of R.S.43:21-19);

7 (2)  $2\frac{2}{10}\%$ , if such excess equals or exceeds 5%, but is less than  
8 6%, of his average annual payroll;

9 (3)  $1\frac{9}{10}\%$ , if such excess equals or exceeds 6%, but is less than  
10 7%, of his average annual payroll;

11 (4)  $1\frac{6}{10}\%$ , if such excess equals or exceeds 7%, but is less than  
12 8%, of his average annual payroll;

13 (5)  $1\frac{3}{10}\%$ , if such excess equals or exceeds 8%, but is less than  
14 9%, of his average annual payroll;

15 (6) 1%, if such excess equals or exceeds 9%, but is less than 10%,  
16 of his average annual payroll;

17 (7)  $\frac{7}{10}$  of 1%, if such excess equals or exceeds 10%, but is less  
18 than 11%, of his average annual payroll;

19 (8)  $\frac{4}{10}$  of 1%, if such excess equals or exceeds 11% of his  
20 average annual payroll.

21 (B) If the total of an employer's contributions, paid on his own  
22 behalf, for all past periods for the purposes of this paragraph (4), is  
23 less than the total benefits charged against his account during the same  
24 period, his rate shall be:

25 (1) 4%, if such excess is less than 10% of his average annual  
26 payroll;

27 (2)  $4\frac{3}{10}\%$ , if such excess equals or exceeds 10%, but is less than  
28 20%, of his average annual payroll;

29 (3)  $4\frac{6}{10}\%$ , if such excess equals or exceeds 20% of his average  
30 annual payroll.

31 (C) Specially assigned rates.

32 (i) If no contributions were paid on wages for employment in any  
33 calendar year used in determining the average annual payroll of an  
34 employer eligible for an assigned rate under this paragraph (4), the  
35 employer's rate shall be specially assigned as follows:

36 [(i)] if the reserve balance in its account is positive, its assigned  
37 rate shall be the highest rate in effect for positive balance accounts for  
38 that period, or 5.4%, whichever is higher, and

39 [(ii)] if the reserve balance in its account is negative, its assigned  
40 rate shall be the highest rate in effect for deficit accounts for that  
41 period.

42 (ii) If, following the purchase of a corporation with little or no  
43 activity, known as a corporate shell, the resulting employing unit  
44 operates a new or different business activity, the employing unit shall  
45 be assigned a new employer rate.

46 (iii) Entities operating under common ownership, management or

1 control, when the operation of the entities is not identifiable,  
2 distinguishable and severable, shall be considered a single employer for  
3 the purposes of this chapter ( R.S. 43:21-1 et seq.).

4 (D) The contribution rates prescribed by subparagraphs (A) and  
5 (B) of this paragraph (4) shall be increased or decreased in accordance  
6 with the provisions of paragraph (5) of this subsection (c) for  
7 experience rating periods through June 30, 1986.

8 (5) (A) Unemployment Trust Fund Reserve Ratio. If on March 31  
9 of any calendar year the balance in the unemployment trust fund equals  
10 or exceeds 4% but is less than 7% of the total taxable wages reported  
11 to the controller as of that date in respect to employment during the  
12 preceding calendar year, the contribution rate, effective July 1  
13 following, of each employer eligible for a contribution rate calculation  
14 based upon benefit experience, shall be increased by 3/10 of 1% over  
15 the contribution rate otherwise established under the provisions of  
16 paragraph (3) or (4) of this subsection. If on March 31 of any  
17 calendar year the balance of the unemployment trust fund exceeds  
18 1/2% but is less than 4% of the total taxable wages reported to the  
19 controller as of that date in respect to employment during the  
20 preceding calendar year, the contribution rate, effective July 1  
21 following, of each employer eligible for a contribution rate calculation  
22 based upon benefit experience, shall be increased by 6/10 of 1% over  
23 the contribution rate otherwise established under the provisions of  
24 paragraph (3) or (4) of this subsection.

25 If on March 31 of any calendar year the balance of the  
26 unemployment trust fund is less than 2 1/2% of the total taxable wages  
27 reported to the controller as of that date in respect to employment  
28 during the preceding calendar year, the contribution rate, effective  
29 July 1 following, of each employer (1) eligible for a contribution rate  
30 calculation based upon benefit experience, shall be increased by (i)  
31 6/10 of 1% over the contribution rate otherwise established under the  
32 provisions of paragraph (3), (4)(A) or (4)(B) of this subsection, and  
33 (ii) an additional amount equal to 20% of the total rate established  
34 herein, provided, however, that the final contribution rate for each  
35 employer shall be computed to the nearest multiple of 1/10% if not  
36 already a multiple thereof; (2) not eligible for a contribution rate  
37 calculation based upon benefit experience, shall be increased by 6/10  
38 of 1% over the contribution rate otherwise established under the  
39 provisions of paragraph (4) of this subsection. For the period  
40 commencing July 1, 1984 and ending June 30, 1986, the contribution  
41 rate for each employer liable to pay contributions under R.S.43:21-7  
42 shall be increased by a factor of 10% computed to the nearest multiple  
43 of 1/10% if not already a multiple thereof.

44 (B) If on March 31 of any calendar year the balance in the  
45 unemployment trust fund equals or exceeds 10% but is less than 12  
46 1/2% of the total taxable wages reported to the controller as of that

1 date in respect to employment during the preceding calendar year, the  
2 contribution rate, effective July 1 following, of each employer eligible  
3 for a contribution rate calculation based upon benefit experience, shall  
4 be reduced by 3/10 of 1% under the contribution rate otherwise  
5 established under the provisions of paragraphs (3) and (4) of this  
6 subsection; provided that in no event shall the contribution rate of any  
7 employer be reduced to less than 4/10 of 1%. If on March 31 of any  
8 calendar year the balance in the unemployment trust fund equals or  
9 exceeds 12 1/2% of the total taxable wages reported to the controller  
10 as of that date in respect to employment during the preceding calendar  
11 year, the contribution rate, effective July 1 following, of each  
12 employer eligible for a contribution rate calculation based upon benefit  
13 experience, shall be reduced by 6/10 of 1% if his account for all past  
14 periods reflects an excess of contributions paid over total benefits  
15 charged of 3% or more of his average annual payroll, otherwise by  
16 3/10 of 1% under the contribution rate otherwise established under the  
17 provisions of paragraphs (3) and (4) of this subsection; provided that  
18 in no event shall the contribution rate of any employer be reduced to  
19 less than 4/10 of 1%.

20 (C) The "balance" in the unemployment trust fund, as the term is  
21 used in subparagraphs (A) and (B) above, shall not include moneys  
22 credited to the State's account under section 903 of the Social Security  
23 Act, as amended (42 U.S.C.s.1103), during any period in which such  
24 moneys are appropriated for the payment of expenses incurred in the  
25 administration of the "unemployment compensation law."

26 (D) Prior to July 1 of each calendar year the controller shall  
27 determine the Unemployment Trust Reserve Ratio, which shall be  
28 calculated by dividing the balance of the unemployment trust fund as  
29 of the prior March 31 by total taxable wages reported to the controller  
30 by all employers as of March 31 with respect to their employment  
31 during the last calendar year.

32 (E) (i) (Deleted by amendment, P.L.1997, c.263).

33 (ii) (Deleted by amendment, P.L.2001, c.152).

34 (iii) (Deleted by amendment, P.L.2003, c.107).

35 (iv) (Deleted by amendment, P.L.2004, c.45).

36 (v) With respect to the experience rating year beginning on July 1,  
37 2003, the new employer rate or the unemployment experience rate of  
38 an employer under this section shall be the rate which appears in the  
39 column headed by the Unemployment Trust Fund Reserve Ratio as of  
40 the applicable calculation date and on the line with the Employer  
41 Reserve Ratio, as defined in paragraph 4 of this subsection  
42 (R.S.43:21-7 (c)(4)), as set forth in the following table:

43

44

#### EXPERIENCE RATING TAX TABLE

45

Fund Reserve Ratio<sup>1</sup>

46



SCS for S1847

	2.50%	2.00%	1.50%	1.00%	0.99%
Employer Reserve Ratio <sup>2</sup>	and Over A	to 2.49% B	to 1.99% C	to 1.49% D	and Under E
Positive Reserve Ratio:					
17% and over	0.3	0.4	0.5	0.6	1.2
16.00% to 16.99%	0.4	0.5	0.6	0.6	1.2
15.00% to 15.99%	0.4	0.6	0.7	0.7	1.2
14.00% to 14.99%	0.5	0.6	0.7	0.8	1.2
13.00% to 13.99%	0.6	0.7	0.8	0.9	1.2
12.00% to 12.99%	0.6	0.8	0.9	1.0	1.2
11.00% to 11.99%	0.7	0.8	1.0	1.1	1.2
10.00% to 10.99%	0.9	1.1	1.3	1.5	1.6
9.00% to 9.99%	1.0	1.3	1.6	1.7	1.9
8.00% to 8.99%	1.3	1.6	1.9	2.1	2.3
7.00% to 7.99%	1.4	1.8	2.2	2.4	2.6
6.00% to 6.99%	1.7	2.1	2.5	2.8	3.0
5.00% to 5.99%	1.9	2.4	2.8	3.1	3.4
4.00% to 4.99%	2.0	2.6	3.1	3.4	3.7
3.00% to 3.99%	2.1	2.7	3.2	3.6	3.9
2.00% to 2.99%	2.2	2.8	3.3	3.7	4.0
1.00% to 1.99%	2.3	2.9	3.4	3.8	4.1
0.00% to 0.99%	2.4	3.0	3.6	4.0	4.3
Deficit Reserve Ratio:					
-0.00% to -2.99%	3.4	4.3	5.1	5.6	6.1
-3.00% to -5.99%	3.4	4.3	5.1	5.7	6.2
-6.00% to -8.99%	3.5	4.4	5.2	5.8	6.3
-9.00% to -11.99%	3.5	4.5	5.3	5.9	6.4
-12.00% to -14.99%	3.6	4.6	5.4	6.0	6.5
-15.00% to -19.99%	3.6	4.6	5.5	6.1	6.6
-20.00% to -24.99%	3.7	4.7	5.6	6.2	6.7
-25.00% to -29.99%	3.7	4.8	5.6	6.3	6.8
-30.00% to -34.99%	3.8	4.8	5.7	6.3	6.9
-35.00% and under	5.4	5.4	5.8	6.4	7.0
New Employer Rate	2.8	2.8	2.8	3.1	3.4

<sup>1</sup>Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

<sup>2</sup>Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

(vi) With respect to experience rating years beginning on or after July 1, 2004, the new employer rate or the unemployment experience rate of an employer under this section shall be the rate which appears in the column headed by the Unemployment Trust Fund Reserve Ratio as of the applicable calculation date and on the line with the Employer Reserve Ratio, as defined in paragraph 4 of this subsection (R.S.43:21-7 (c)(4)), as set forth in the following table:

EXPERIENCE RATING TAX TABLE					
Fund Reserve Ratio <sup>1</sup>					
	1.40%	1.00%	0.75%	0.50%	0.49%
Employer Reserve Ratio <sup>2</sup>	and Over A	to B	to C	to D	and Under E
Positive Reserve Ratio:					
17% and over	0.3	0.4	0.5	0.6	1.2
16.00% to 16.99%	0.4	0.5	0.6	0.6	1.2
15.00% to 15.99%	0.4	0.6	0.7	0.7	1.2
14.00% to 14.99%	0.5	0.6	0.7	0.8	1.2
13.00% to 13.99%	0.6	0.7	0.8	0.9	1.2
12.00% to 12.99%	0.6	0.8	0.9	1.0	1.2
11.00% to 11.99%	0.7	0.8	1.0	1.1	1.2
10.00% to 10.99%	0.9	1.1	1.3	1.5	1.6
9.00% to 9.99%	1.0	1.3	1.6	1.7	1.9
8.00% to 8.99%	1.3	1.6	1.9	2.1	2.3
7.00% to 7.99%	1.4	1.8	2.2	2.4	2.6
6.00% to 6.99%	1.7	2.1	2.5	2.8	3.0
5.00% to 5.99%	1.9	2.4	2.8	3.1	3.4
4.00% to 4.99%	2.0	2.6	3.1	3.4	3.7
3.00% to 3.99%	2.1	2.7	3.2	3.6	3.9
2.00% to 2.99%	2.2	2.8	3.3	3.7	4.0
1.00% to 1.99%	2.3	2.9	3.4	3.8	4.1
0.00% to 0.99%	2.4	3.0	3.6	4.0	4.3
Deficit Reserve Ratio:					
-0.00% to -2.99%	3.4	4.3	5.1	5.6	6.1
-3.00% to -5.99%	3.4	4.3	5.1	5.7	6.2
-6.00% to -8.99%	3.5	4.4	5.2	5.8	6.3
-9.00% to -11.99%	3.5	4.5	5.3	5.9	6.4
-12.00% to -14.99%	3.6	4.6	5.4	6.0	6.5
-15.00% to -19.99%	3.6	4.6	5.5	6.1	6.6
-20.00% to -24.99%	3.7	4.7	5.6	6.2	6.7
-25.00% to -29.99%	3.7	4.8	5.6	6.3	6.8
-30.00% to -34.99%	3.8	4.8	5.7	6.3	6.9
-35.00% and under	5.4	5.4	5.8	6.4	7.0
New Employer Rate	2.8	2.8	2.8	3.1	3.4

<sup>1</sup>Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

<sup>2</sup>Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

(F) (i) (Deleted by amendment, P.L.1997, c.263).

(ii) With respect to experience rating years beginning on or after July 1, 1997, if the fund reserve ratio, based on the fund balance as of the prior March 31, is less than 1.00%, the contribution rate for each

1 employer liable to pay contributions, as computed under subparagraph  
2 (E) of this paragraph (5), shall be increased by a factor of 10%  
3 computed to the nearest multiple of 1/10% if not already a multiple  
4 thereof.

5 (iii) With respect to experience rating years beginning on or after  
6 July 1, 2004, if the fund reserve ratio, based on the fund balance as of  
7 the prior March 31, is less than 0.50%, the contribution rate for each  
8 employer liable to pay contributions, as computed under subparagraph  
9 (E) of this paragraph (5), shall be increased by a factor of 10%  
10 computed to the nearest multiple of 1/10% if not already a multiple  
11 thereof.

12 (G) On or after January 1, 1993, notwithstanding any other  
13 provisions of this paragraph (5), the contribution rate for each  
14 employer liable to pay contributions, as computed under subparagraph  
15 (E) of this paragraph (5), shall be decreased by 0.1%, except that,  
16 during any experience rating year starting before January 1, 1998 in  
17 which the fund reserve ratio is equal to or greater than 7.00% or  
18 during any experience rating year starting on or after January 1, 1998,  
19 in which the fund reserve ratio is equal to or greater than 3.5%, there  
20 shall be no decrease pursuant to this subparagraph (G) in the  
21 contribution of any employer who has a deficit reserve ratio of  
22 negative 35.00% or under.

23 (H) On or after January 1, 1993 until December 31, 1993,  
24 notwithstanding any other provisions of this paragraph (5), the  
25 contribution rate for each employer liable to pay contributions, as  
26 computed under subparagraph (E) of this paragraph (5), shall be  
27 decreased by a factor of 52.0% computed to the nearest multiple of  
28 1/10%, except that, if an employer has a deficit reserve ratio of  
29 negative 35.0% or under, the employer's rate of contribution shall not  
30 be reduced pursuant to this subparagraph (H) to less than 5.4%. The  
31 amount of the reduction in the employer contributions stipulated by  
32 this subparagraph (H) shall be in addition to the amount of the  
33 reduction in the employer contributions stipulated by subparagraph (G)  
34 of this paragraph (5), except that the rate of contribution of an  
35 employer who has a deficit reserve ratio of negative 35.0% or under  
36 shall not be reduced pursuant to this subparagraph (H) to less than  
37 5.4% and the rate of contribution of any other employer shall not be  
38 reduced to less than 0.0%. On or after January 1, 1994 until  
39 December 31, 1995, except as provided pursuant to subparagraph (I)  
40 of this paragraph (5), notwithstanding any other provisions of this  
41 paragraph (5), the contribution rate for each employer liable to pay  
42 contributions, as computed under subparagraph (E) of this paragraph  
43 (5), shall be decreased by a factor of 36.0% computed to the nearest  
44 multiple of 1/10%, except that, if an employer has a deficit reserve  
45 ratio of negative 35.0% or under, the employer's rate of contribution  
46 shall not be reduced pursuant to this subparagraph (H) to less than

1 5.4%. The amount of the reduction in the employer contributions  
2 stipulated by this subparagraph (H) shall be in addition to the amount  
3 of the reduction in the employer contributions stipulated by  
4 subparagraph (G) of this paragraph (5), except that the rate of  
5 contribution of an employer who has a deficit reserve ratio of negative  
6 35.0% or under shall not be reduced pursuant to this subparagraph (H)  
7 to less than 5.4% and the rate of contribution of any other employer  
8 shall not be reduced to less than 0.0%.

9 On or after April 1, 1996 until December 31, 1996, the  
10 contribution rate for each employer liable to pay contributions, as  
11 computed under subparagraph (E) of this paragraph (5), shall be  
12 decreased by a factor of 25.0% computed to the nearest multiple of  
13 1/10%, except that, if an employer has a deficit reserve ratio of  
14 negative 35.0% or under, the employer's rate of contribution shall not  
15 be reduced pursuant to this subparagraph (H) to less than 5.4%. The  
16 amount of the reduction in the employer contributions stipulated by  
17 this subparagraph (H) shall be in addition to the amount of the  
18 reduction in the employer contributions stipulated by subparagraph (G)  
19 of this paragraph (5), except that the rate of contribution of an  
20 employer who has a deficit reserve ratio of negative 35.0% or under  
21 shall not be reduced pursuant to this subparagraph (H) to less than  
22 5.4% and the rate of contribution of any other employer shall not be  
23 reduced to less than 0.0%.

24 On or after January 1, 1997 until December 31, 1997, the  
25 contribution rate for each employer liable to pay contributions, as  
26 computed under subparagraph (E) of this paragraph (5), shall be  
27 decreased by a factor of 10.0% computed to the nearest multiple of  
28 1/10%, except that, if an employer has a deficit reserve ratio of  
29 negative 35.0% or under, the employer's rate of contribution shall not  
30 be reduced pursuant to this subparagraph (H) to less than 5.4%. The  
31 amount of the reduction in the employer contributions stipulated by  
32 this subparagraph (H) shall be in addition to the amount of the  
33 reduction in the employer contributions stipulated by subparagraph (G)  
34 of this paragraph (5), except that the rate of contribution of an  
35 employer who has a deficit reserve ratio of negative 35.0% or under  
36 shall not be reduced pursuant to this subparagraph (H) to less than  
37 5.4% and the rate of contribution of any other employer shall not be  
38 reduced to less than 0.0%.

39 On and after January 1, 1998 until December 31, 2000 and on or  
40 after January 1, 2002 until June 30, 2006, the contribution rate for  
41 each employer liable to pay contributions, as computed under  
42 subparagraph (E) of this paragraph (5), shall be decreased by a factor,  
43 as set out below, computed to the nearest multiple of 1/10%, except  
44 that, if an employer has a deficit reserve ratio of negative 35.0% or  
45 under, the employer's rate of contribution shall not be reduced  
46 pursuant to this subparagraph (H) to less than 5.4%:

1 From January 1, 1998 until December 31, 1998, a factor of 12%;  
2 From January 1, 1999 until December 31, 1999, a factor of 10%;  
3 From January 1, 2000 until December 31, 2000, a factor of 7%;  
4 From January 1, 2002 until March 31, 2002, a factor of 36%;  
5 From April 1, 2002 until June 30, 2002, a factor of 85%;  
6 From July 1, 2002 until June 30, 2003, a factor of 15%;  
7 From July 1, 2003 until June 30, 2004, a factor of 15%; and  
8 From July 1, 2004 until June 30, 2005, a factor of 7%; and  
9 From July 1, 2005 until June 30, 2006, a factor of 16%.

10 The amount of the reduction in the employer contributions  
11 stipulated by this subparagraph (H) shall be in addition to the amount  
12 of the reduction in the employer contributions stipulated by  
13 subparagraph (G) of this paragraph (5), except that the rate of  
14 contribution of an employer who has a deficit reserve ratio of negative  
15 35.0% or under shall not be reduced pursuant to this subparagraph (H)  
16 to less than 5.4% and the rate of contribution of any other employer  
17 shall not be reduced to less than 0.0%.

18 (I) the fund reserve ratio decreases to a level of less than 4.00% on  
19 March 31 of calendar year 1994 or calendar year 1995, the provisions  
20 of subparagraph (H) of this paragraph (5) shall cease to be in effect as  
21 of July 1 of that calendar year.

22 If, upon calculating the unemployment compensation fund reserve  
23 ratio pursuant to R.S.43:21-7(c)(5)(D) prior to March 31, 1997,  
24 March 31, 1998 or March 31, 1999, the controller finds that the fund  
25 reserve ratio has decreased to a level of less than 3.00%, the  
26 Commissioner of Labor and Workforce Development shall notify the  
27 State Treasurer of this fact and of the dollar amount necessary to bring  
28 the fund reserve ratio up to a level of 3.00%. The State Treasurer  
29 shall, prior to March 31, 1997, March 31, 1998 or March 31, 1999, as  
30 applicable, transfer from the General Fund to the unemployment  
31 compensation fund, revenues in the amount specified by the  
32 commissioner and which, upon deposit in the unemployment  
33 compensation fund, shall result, upon recalculation, in a fund reserve  
34 ratio used to determine employer contributions beginning July 1, 1997,  
35 July 1, 1998, July 1, 1999, as applicable, of at least 3.00%. If, upon  
36 calculating the unemployment compensation fund reserve ratio  
37 pursuant to R.S.43:21-7(c)(5)(D) prior to March 31, 2000, the  
38 controller finds that the fund reserve ratio has decreased to a level of  
39 less than 3.00%, the Commissioner of Labor and Workforce  
40 Development shall notify the State Treasurer of this fact and of the  
41 dollar amount necessary to bring the fund reserve ratio up to a level of  
42 3.00%. The State Treasurer shall, prior to March 31, 2000, transfer  
43 from the General Fund to the unemployment compensation fund,  
44 revenues in the amount specified by the commissioner and which, upon  
45 deposit in the unemployment compensation fund, shall result, upon  
46 recalculation, in a fund reserve ratio used to determine employer

1 contributions beginning July 1, 2000 of at least 3.00%.

2 (J) On or after July 1, 2001, notwithstanding any other provisions  
3 of this paragraph (5), the contribution rate for each employer liable to  
4 pay contributions, as computed under subparagraph (E) of this  
5 paragraph (5), shall be decreased by 0.0175%, except that, during any  
6 experience rating year starting on or after July 1, 2001, in which the  
7 fund reserve ratio is equal to or greater than 3.5%, there shall be no  
8 decrease pursuant to this subparagraph (J) in the contribution of any  
9 employer who has a deficit reserve ratio of negative 35.00% or under.  
10 The amount of the reduction in the employer contributions stipulated  
11 by this subparagraph (J) shall be in addition to the amount of the  
12 reduction in the employer contributions stipulated by subparagraphs  
13 (G) and (H) of this paragraph (5), except that the rate of contribution  
14 of an employer who has a deficit reserve ratio of negative 35.0% or  
15 under shall not be reduced pursuant to this subparagraph (J) to less  
16 than 5.4% and the rate of contribution of any other employer shall not  
17 be reduced to less than 0.0%.

18 (6) Additional contributions.

19 Notwithstanding any other provision of law, any employer who has  
20 been assigned a contribution rate pursuant to subsection (c) of this  
21 section for the year commencing July 1, 1948, and for any year  
22 commencing July 1 thereafter, may voluntarily make payment of  
23 additional contributions, and upon such payment shall receive a  
24 recomputation of the experience rate applicable to such employer,  
25 including in the calculation the additional contribution so made, except  
26 that, following a transfer as described under R.S.43:21-7(c)(7)(D),  
27 neither the predecessor nor successor in interest shall be eligible to  
28 make a voluntary payment of additional contributions during the year  
29 the transfer occurs and the next full calendar year. Any such  
30 additional contribution shall be made during the 30-day period  
31 following the date of the mailing to the employer of the notice of his  
32 contribution rate as prescribed in this section, unless, for good cause,  
33 the time for payment has been extended by the controller for not to  
34 exceed an additional 60 days; provided that in no event may such  
35 payments which are made later than 120 days after the beginning of  
36 the year for which such rates are effective be considered in  
37 determining the experience rate for the year in which the payment is  
38 made. Any employer receiving any extended period of time within  
39 which to make such additional payment and failing to make such  
40 payment timely shall be, in addition to the required amount of  
41 additional payment, liable for a penalty of 5% thereof or \$5.00,  
42 whichever is greater, not to exceed \$50.00. Any adjustment under this  
43 subsection shall be made only in the form of credits against accrued or  
44 future contributions.

45 (7) Transfers.

46 (A) Upon the transfer of the organization, trade or business, or

1 substantially all the assets of an employer to a successor in interest,  
2 whether by merger, consolidation, sale, transfer, descent or otherwise,  
3 the controller shall transfer the employment experience of the  
4 predecessor employer to the successor in interest, including credit for  
5 past years, contributions paid, annual payrolls, benefit charges, et  
6 cetera, applicable to such predecessor employer, pursuant to  
7 regulation, if it is determined that the employment experience of the  
8 predecessor employer with respect to the organization, trade, assets  
9 or business which has been transferred may be considered indicative  
10 of the future employment experience of the successor in interest.  
11 [Unless the predecessor employer was owned or controlled (by legally  
12 enforceable means or otherwise), directly or indirectly, by the  
13 successor in interest, or the predecessor employer and the successor  
14 in interest were owned or controlled (by legally enforceable means or  
15 otherwise), directly or indirectly, by the same interest or interests, the  
16 transfer of the employment experience of the predecessor shall not be  
17 effective if such] The successor in interest may, within four months of  
18 the date of such transfer of the organization, trade, assets or business,  
19 or thereafter upon good cause shown, [files a written notice protesting  
20 the transfer of the employment experience of the predecessor  
21 employer] request a reconsideration of the transfer of employment  
22 experience of the predecessor employer. The request for  
23 reconsideration shall demonstrate, to the satisfaction of the controller,  
24 that the employment experience of the predecessor is not indicative of  
25 the future employment experience of the successor.

26 (B) An employer who transfers part of his or its organization,  
27 trade, assets or business to a successor in interest, whether by merger,  
28 consolidation, sale, transfer, descent or otherwise, may jointly make  
29 application with such successor in interest for transfer of that portion  
30 of the employment experience of the predecessor employer relating to  
31 the portion of the organization, trade, assets or business transferred to  
32 the successor in interest, including credit for past years, contributions  
33 paid, annual payrolls, benefit charges, et cetera, applicable to such  
34 predecessor employer. The transfer of employment experience may be  
35 allowed pursuant to regulation only if it is found that the employment  
36 experience of the predecessor employer with respect to the portion of  
37 the organization, trade, assets or business which has been transferred  
38 may be considered indicative of the future employment experience of  
39 the successor in interest. Credit shall be given to the successor in  
40 interest only for the years during which contributions were paid by the  
41 predecessor employer with respect to that part of the organization,  
42 trade, assets or business transferred.

43 (C) A transfer of the employment experience in whole or in part  
44 having become final, the predecessor employer thereafter shall not be  
45 entitled to consideration for an adjusted rate based upon his or its  
46 experience or the part thereof, as the case may be, which has thus been

1 transferred. A successor in interest to whom employment experience  
2 or a part thereof is transferred pursuant to this subsection shall, as of  
3 the date of the transfer of the organization, trade, assets or business,  
4 or part thereof, immediately become an employer if not theretofore an  
5 employer subject to this chapter (R.S.43:21-1 et seq.).

6 (D) If an employer who transfers in whole or in part his or its  
7 organization, trade, assets or business to a successor in interest,  
8 whether by merger, consolidation, sale, transfer, descent or otherwise  
9 and both the employer and successor in interest are at the time of the  
10 transfer under common ownership, management or control, then the  
11 employment experience attributable to the transferred business shall  
12 also be transferred to and combined with the employment experience  
13 of the successor in interest. The transfer of the employment  
14 experience is mandatory and not subject to appeal or protest.

15 (E) The transfer of part of an employer's employment experience  
16 to a successor in interest shall become effective as of the first day of  
17 the calendar quarter following the acquisition by the successor in  
18 interest. As of the effective date, the successor in interest shall have  
19 its employer rate recalculated by merging its existing employment  
20 experience, if any, with the employment experience acquired. If the  
21 successor in interest is not an employer as of the date of acquisition,  
22 it shall be assigned the new employer rate until the effective date of the  
23 transfer of employment experience.

24 (F) Upon the transfer in whole or in part of the organization, trade,  
25 assets or business to a successor in interest, the employment  
26 experience shall not be transferred if the successor in interest is not an  
27 employer at the time of the acquisition and the controller finds that the  
28 successor in interest acquired the business solely or primarily for the  
29 purpose of obtaining a lower rate of contributions.

30 (d) Contributions of workers to the unemployment compensation  
31 fund and the State disability benefits fund.

32 (1) (A) For periods after January 1, 1975, each worker shall  
33 contribute to the fund 1% of his wages with respect to his employment  
34 with an employer, which occurs on and after January 1, 1975, after  
35 such employer has satisfied the condition set forth in subsection (h) of  
36 R.S.43:21-19 with respect to becoming an employer; provided,  
37 however, that such contributions shall be at the rate of 1/2 of 1% of  
38 wages paid with respect to employment while the worker is in the  
39 employ of the State of New Jersey, or any governmental entity or  
40 instrumentality which is an employer as defined under  
41 R.S.43:21-19(h)(5), or is covered by an approved private plan under  
42 the "Temporary Disability Benefits Law" or while the worker is  
43 exempt from the provisions of the "Temporary Disability Benefits  
44 Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31).

45 (B) Effective January 1, 1978 there shall be no contributions by  
46 workers in the employ of any governmental or nongovernmental



1 employer electing or required to make payments in lieu of  
2 contributions unless the employer is covered by the State plan under  
3 the "Temporary Disability Benefits Law" (C.43:21-25 et seq.), and in  
4 that case contributions shall be at the rate of 1/2 of 1%, except that  
5 commencing July 1, 1986, workers in the employ of any  
6 nongovernmental employer electing or required to make payments in  
7 lieu of contributions shall be required to make contributions to the  
8 fund at the same rate prescribed for workers of other nongovernmental  
9 employers.

10 (C) (i) Notwithstanding the above provisions of this paragraph (1),  
11 during the period starting July 1, 1986 and ending December 31, 1992,  
12 each worker shall contribute to the fund 1.125% of wages paid with  
13 respect to his employment with a governmental employer electing or  
14 required to pay contributions or nongovernmental employer, including  
15 a nonprofit organization which is an employer as defined under  
16 R.S.43:21-19(h)(6), regardless of whether that nonprofit organization  
17 elects or is required to finance its benefit costs with contributions to  
18 the fund or by payments in lieu of contributions, after that employer  
19 has satisfied the conditions set forth in subsection R.S.43:21-19(h)  
20 with respect to becoming an employer. Contributions, however, shall  
21 be at the rate of 0.625% while the worker is covered by an approved  
22 private plan under the "Temporary Disability Benefits Law" while the  
23 worker is exempt under section 7 of that law, P.L.1948, c.110  
24 (C.43:21-31) or any other provision of that law; provided that such  
25 contributions shall be at the rate of 0.625% of wages paid with respect  
26 to employment with the State of New Jersey or any other  
27 governmental entity or instrumentality electing or required to make  
28 payments in lieu of contributions and which is covered by the State  
29 plan under the "Temporary Disability Benefits Law," except that, while  
30 the worker is exempt from the provisions of the "Temporary Disability  
31 Benefits Law" under section 7 of that law, P.L.1948, c.110  
32 (C.43:21-31) or any other provision of that law, or is covered for  
33 disability benefits by an approved private plan of the employer, the  
34 contributions to the fund shall be 0.125%.

35 (ii) (Deleted by amendment, P.L.1995, c.422.)

36 (D) Notwithstanding any other provisions of this paragraph (1),  
37 during the period starting January 1, 1993 and ending June 30, 1994,  
38 each worker shall contribute to the unemployment compensation fund  
39 0.5% of wages paid with respect to the worker's employment with a  
40 governmental employer electing or required to pay contributions or  
41 nongovernmental employer, including a nonprofit organization which  
42 is an employer as defined under paragraph (6) of subsection (h) of  
43 R.S.43:21-19, regardless of whether that nonprofit organization elects  
44 or is required to finance its benefit costs with contributions to the fund  
45 or by payments in lieu of contributions, after that employer has  
46 satisfied the conditions set forth in subsection (h) of R.S.43:21-19

1 with respect to becoming an employer. No contributions, however,  
2 shall be made by the worker while the worker is covered by an  
3 approved private plan under the "Temporary Disability Benefits Law,"  
4 P.L.1948, c.110 (C.43:21-25 et seq.) or while the worker is exempt  
5 under section 7 of P.L.1948, c.110 (C.43:21-31) or any other  
6 provision of that law; provided that the contributions shall be at the  
7 rate of 0.50% of wages paid with respect to employment with the  
8 State of New Jersey or any other governmental entity or  
9 instrumentality electing or required to make payments in lieu of  
10 contributions and which is covered by the State plan under the  
11 "Temporary Disability Benefits Law," except that, while the worker is  
12 exempt from the provisions of the "Temporary Disability Benefits  
13 Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31) or any  
14 other provision of that law, or is covered for disability benefits by an  
15 approved private plan of the employer, no contributions shall be made  
16 to the fund.

17 Each worker shall, starting on January 1, 1996 and ending March  
18 31, 1996, contribute to the unemployment compensation fund 0.60%  
19 of wages paid with respect to the worker's employment with a  
20 governmental employer electing or required to pay contributions or  
21 nongovernmental employer, including a nonprofit organization which  
22 is an employer as defined under paragraph (6) of subsection (h) of  
23 R.S.43:21-19, regardless of whether that nonprofit organization elects  
24 or is required to finance its benefit costs with contributions to the fund  
25 or by payments in lieu of contributions, after that employer has  
26 satisfied the conditions set forth in subsection (h) of R.S.43:21-19  
27 with respect to becoming an employer, provided that the contributions  
28 shall be at the rate of 0.10% of wages paid with respect to  
29 employment with the State of New Jersey or any other governmental  
30 entity or instrumentality electing or required to make payments in lieu  
31 of contributions.

32 Each worker shall, starting on January 1, 1998 and ending  
33 December 31, 1998, contribute to the unemployment compensation  
34 fund 0.10% of wages paid with respect to the worker's employment  
35 with a governmental employer electing or required to pay  
36 contributions or nongovernmental employer, including a nonprofit  
37 organization which is an employer as defined under paragraph (6) of  
38 subsection (h) of R.S.43:21-19, regardless of whether that nonprofit  
39 organization elects or is required to finance its benefit costs with  
40 contributions to the fund or by payments in lieu of contributions, after  
41 that employer has satisfied the conditions set forth in subsection (h) of  
42 R.S.43:21-19 with respect to becoming an employer, provided that the  
43 contributions shall be at the rate of 0.10% of wages paid with respect  
44 to employment with the State of New Jersey or any other  
45 governmental entity or instrumentality electing or required to make  
46 payments in lieu of contributions.

1 Each worker shall, starting on January 1, 1999 until December 31,  
2 1999, contribute to the unemployment compensation fund 0.15% of  
3 wages paid with respect to the worker's employment with a  
4 governmental employer electing or required to pay contributions or  
5 nongovernmental employer, including a nonprofit organization which  
6 is an employer as defined under paragraph (6) of subsection (h) of  
7 R.S.43:21-19, regardless of whether that nonprofit organization elects  
8 or is required to finance its benefit costs with contributions to the fund  
9 or by payments in lieu of contributions, after that employer has  
10 satisfied the conditions set forth in subsection (h) of R.S.43:21-19  
11 with respect to becoming an employer, provided that the contributions  
12 shall be at the rate of 0.10% of wages paid with respect to  
13 employment with the State of New Jersey or any other governmental  
14 entity or instrumentality electing or required to make payments in lieu  
15 of contributions.

16 Each worker shall, starting on January 1, 2000 until December 31,  
17 2001, contribute to the unemployment compensation fund 0.20% of  
18 wages paid with respect to the worker's employment with a  
19 governmental employer electing or required to pay contributions or  
20 nongovernmental employer, including a nonprofit organization which  
21 is an employer as defined under paragraph (6) of subsection (h) of  
22 R.S.43:21-19, regardless of whether that nonprofit organization elects  
23 or is required to finance its benefit costs with contributions to the fund  
24 or by payments in lieu of contributions, after that employer has  
25 satisfied the conditions set forth in subsection (h) of R.S.43:21-19  
26 with respect to becoming an employer, provided that the contributions  
27 shall be at the rate of 0.10% of wages paid with respect to  
28 employment with the State of New Jersey or any other governmental  
29 entity or instrumentality electing or required to make payments in lieu  
30 of contributions.

31 Each worker shall, starting on January 1, 2002 until June 30, 2004,  
32 contribute to the unemployment compensation fund 0.1825% of wages  
33 paid with respect to the worker's employment with a governmental  
34 employer electing or required to pay contributions or a  
35 nongovernmental employer, including a nonprofit organization which  
36 is an employer as defined under paragraph (6) of subsection (h) of  
37 R.S.43:21-19, regardless of whether that nonprofit organization elects  
38 or is required to finance its benefit costs with contributions to the fund  
39 or by payments in lieu of contributions, after that employer has  
40 satisfied the conditions set forth in subsection (h) of R.S.43:21-19  
41 with respect to becoming an employer, provided that the contributions  
42 shall be at the rate of 0.0825% of wages paid with respect to  
43 employment with the State of New Jersey or any other governmental  
44 entity or instrumentality electing or required to make payments in lieu  
45 of contributions.

46 Each worker shall, starting on and after July 1, 2004, contribute to

1 the unemployment compensation fund 0.3825% of wages paid with  
2 respect to the worker's employment with a governmental employer  
3 electing or required to pay contributions or nongovernmental  
4 employer, including a nonprofit organization which is an employer as  
5 defined under paragraph (6) of subsection (h) of R.S.43:21-19,  
6 regardless of whether that nonprofit organization elects or is required  
7 to finance its benefit costs with contributions to the fund or by  
8 payments in lieu of contributions, after that employer has satisfied the  
9 conditions set forth in subsection (h) of R.S.43:21-19 with respect to  
10 becoming an employer, provided that the contributions shall be at the  
11 rate of 0.0825% of wages paid with respect to employment with the  
12 State of New Jersey or any other governmental entity or  
13 instrumentality electing or required to make payments in lieu of  
14 contributions.

15 (E) Each employer shall, notwithstanding any provision of law in  
16 this State to the contrary, withhold in trust the amount of his workers'  
17 contributions from their wages at the time such wages are paid, shall  
18 show such deduction on his payroll records, shall furnish such  
19 evidence thereof to his workers as the division or controller may  
20 prescribe, and shall transmit all such contributions, in addition to his  
21 own contributions, to the office of the controller in such manner and  
22 at such times as may be prescribed. If any employer fails to deduct the  
23 contributions of any of his workers at the time their wages are paid, or  
24 fails to make a deduction therefor at the time wages are paid for the  
25 next succeeding payroll period, he alone shall thereafter be liable for  
26 such contributions, and for the purpose of R.S.43:21-14, such  
27 contributions shall be treated as employer's contributions required  
28 from him.

29 (F) As used in this chapter (R.S.43:21-1 et seq.), except when the  
30 context clearly requires otherwise, the term "contributions" shall  
31 include the contributions of workers pursuant to this section.

32 (G) Each worker shall, starting on July 1, 1994, contribute to the  
33 State disability benefits fund an amount equal to 0.50% of wages paid  
34 with respect to the worker's employment with a government employer  
35 electing or required to pay contributions to the State disability benefits  
36 fund or nongovernmental employer, including a nonprofit organization  
37 which is an employer as defined under paragraph (6) of subsection (h)  
38 of R.S.43:21-19, unless the employer is covered by an approved  
39 private disability plan or is exempt from the provisions of the  
40 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et  
41 seq.) under section 7 of that law (C.43:21-31) or any other provision  
42 of that law.

43 (2) (A) (Deleted by amendment, P.L.1984, c.24.)

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

45 (C) (Deleted by amendment, P.L.1994, c.112.)

46 (D) (Deleted by amendment, P.L.1994, c.112.)

1 (E) (i) (Deleted by amendment, P.L.1994, c.112.)  
2 (ii) (Deleted by amendment, P.L.1996, c.28.)  
3 (iii) (Deleted by amendment, P.L.1994, c.112.)  
4 (3) If an employee receives wages from more than one employer  
5 during any calendar year, and either the sum of his contributions  
6 deposited in and credited to the State disability benefits fund plus the  
7 amount of his contributions, if any, required towards the costs of  
8 benefits under one or more approved private plans under the  
9 provisions of section 9 of the "Temporary Disability Benefits Law"  
10 (C.43:21-33) and deducted from his wages, or the sum of such latter  
11 contributions, if the employee is covered during such calendar year  
12 only by two or more private plans, exceeds an amount equal to 1/2 of  
13 1% of the "wages" determined in accordance with the provisions of  
14 R.S.43:21-7(b)(3) during the calendar years beginning on or after  
15 January 1, 1976, the employee shall be entitled to a refund of the  
16 excess if he makes a claim to the controller within two years after the  
17 end of the calendar year in which the wages are received with respect  
18 to which the refund is claimed and establishes his right to such refund.  
19 Such refund shall be made by the controller from the State disability  
20 benefits fund. No interest shall be allowed or paid with respect to any  
21 such refund. The controller shall, in accordance with prescribed  
22 regulations, determine the portion of the aggregate amount of such  
23 refunds made during any calendar year which is applicable to private  
24 plans for which deductions were made under section 9 of the  
25 "Temporary Disability Benefits Law" (C.43:21-33) such determination  
26 to be based upon the ratio of the amount of such wages exempt from  
27 contributions to such fund, as provided in subparagraph (B) of  
28 paragraph (1) of this subsection with respect to coverage under private  
29 plans, to the total wages so exempt plus the amount of such wages  
30 subject to contributions to the disability benefits fund, as provided in  
31 subparagraph (G) of paragraph (1) of this subsection. The controller  
32 shall, in accordance with prescribed regulations, prorate the amount  
33 so determined among the applicable private plans in the proportion  
34 that the wages covered by each plan bear to the total private plan  
35 wages involved in such refunds, and shall assess against and recover  
36 from the employer, or the insurer if the insurer has indemnified the  
37 employer with respect thereto, the amount so prorated. The  
38 provisions of R.S.43:21-14 with respect to collection of employer  
39 contributions shall apply to such assessments. The amount so  
40 recovered by the controller shall be paid into the State disability  
41 benefits fund.  
42 (4) If an individual does not receive any wages from the employing  
43 unit which for the purposes of this chapter (R.S.43:21-1 et seq.) is  
44 treated as his employer, or receives his wages from some other  
45 employing unit, such employer shall nevertheless be liable for such  
46 individual's contributions in the first instance; and after payment

1 thereof such employer may deduct the amount of such contributions  
2 from any sums payable by him to such employing unit, or may recover  
3 the amount of such contributions from such employing unit, or, in the  
4 absence of such an employing unit, from such individual, in a civil  
5 action; provided proceedings therefor are instituted within three  
6 months after the date on which such contributions are payable. General  
7 rules shall be prescribed whereby such an employing unit may recover  
8 the amount of such contributions from such individuals in the same  
9 manner as if it were the employer.

10 (5) Every employer who has elected to become an employer  
11 subject to this chapter (R.S.43:21-1 et seq.), or to cease to be an  
12 employer subject to this chapter (R.S.43:21-1 et seq.), pursuant to the  
13 provisions of R.S.43:21-8, shall post and maintain printed notices of  
14 such election on his premises, of such design, in such numbers, and at  
15 such places as the director may determine to be necessary to give  
16 notice thereof to persons in his service.

17 (6) Contributions by workers, payable to the controller as herein  
18 provided, shall be exempt from garnishment, attachment, execution, or  
19 any other remedy for the collection of debts.

20 (e) Contributions by employers to State disability benefits fund.

21 (1) Except as hereinafter provided, each employer shall, in addition  
22 to the contributions required by subsections (a), (b), and (c) of this  
23 section, contribute 1/2 of 1% of the wages paid by such employer to  
24 workers with respect to employment unless he is not a covered  
25 employer as defined in section 3 of the "Temporary Disability Benefits  
26 Law" (C.43:21-27 (a)), except that the rate for the State of New  
27 Jersey shall be 1/10 of 1% for the calendar year 1980 and for the first  
28 six months of 1981. Prior to July 1, 1981 and prior to July 1 each year  
29 thereafter, the controller shall review the experience accumulated in  
30 the account of the State of New Jersey and establish a rate for the next  
31 following fiscal year which, in combination with worker contributions,  
32 will produce sufficient revenue to keep the account in balance; except  
33 that the rate so established shall not be less than 1/10 of 1%. Such  
34 contributions shall become due and be paid by the employer to the  
35 controller for the State disability benefits fund as established by law,  
36 in accordance with such regulations as may be prescribed, and shall  
37 not be deducted, in whole or in part, from the remuneration of  
38 individuals in his employ. In the payment of any contributions, a  
39 fractional part of a cent shall be disregarded unless it amounts to  
40 \$0.005 or more, in which case it shall be increased to \$0.01.

41 (2) During the continuance of coverage of a worker by an  
42 approved private plan of disability benefits under the "Temporary  
43 Disability Benefits Law," the employer shall be exempt from the  
44 contributions required by subparagraph (1) above with respect to  
45 wages paid to such worker.

46 (3) (A) The rates of contribution as specified in subparagraph (1)

1 above shall be subject to modification as provided herein with respect  
2 to employer contributions due on and after July 1, 1951.

3 (B) A separate disability benefits account shall be maintained for  
4 each employer required to contribute to the State disability benefits  
5 fund and such account shall be credited with contributions deposited  
6 in and credited to such fund with respect to employment occurring on  
7 and after January 1, 1949. Each employer's account shall be credited  
8 with all contributions paid on or before January 31 of any calendar  
9 year on his own behalf and on behalf of individuals in his service with  
10 respect to employment occurring in preceding calendar years;  
11 provided, however, that if January 31 of any calendar year falls on a  
12 Saturday or Sunday an employer's account shall be credited as of  
13 January 31 of such calendar year with all the contributions which he  
14 has paid on or before the next succeeding day which is not a Saturday  
15 or Sunday. But nothing in this act shall be construed to grant any  
16 employer or individuals in his service prior claims or rights to the  
17 amounts paid by him to the fund either on his own behalf or on behalf  
18 of such individuals. Benefits paid to any covered individual in  
19 accordance with Article III of the "Temporary Disability Benefits  
20 Law" on or before December 31 of any calendar year with respect to  
21 disability in such calendar year and in preceding calendar years shall be  
22 charged against the account of the employer by whom such individual  
23 was employed at the commencement of such disability or by whom he  
24 was last employed, if out of employment.

25 (C) The controller may prescribe regulations for the establishment,  
26 maintenance, and dissolution of joint accounts by two or more  
27 employers, and shall, in accordance with such regulations and upon  
28 application by two or more employers to establish such an account, or  
29 to merge their several individual accounts in a joint account, maintain  
30 such joint account as if it constituted a single employer's account.

31 (D) Prior to July 1 of each calendar year, the controller shall make  
32 a preliminary determination of the rate of contribution for the 12  
33 months commencing on such July 1 for each employer subject to the  
34 contribution requirements of this subsection (e).

35 (1) Such preliminary rate shall be  $\frac{1}{2}$  of 1% unless on the  
36 preceding January 31 of such year such employer shall have been a  
37 covered employer who has paid contributions to the State disability  
38 benefits fund with respect to employment in the three calendar years  
39 immediately preceding such year.

40 (2) If the minimum requirements in (1) above have been fulfilled  
41 and the credited contributions exceed the benefits charged by more  
42 than \$500.00, such preliminary rate shall be as follows:

43 (i)  $\frac{2}{10}$  of 1% if such excess over \$500.00 exceeds 1% but is less  
44 than  $1\frac{1}{4}$ % of his average annual payroll (as defined in this chapter  
45 (R.S.43:21-1 et seq.);

46 (ii)  $\frac{15}{100}$  of 1% if such excess over \$500.00 equals or exceeds 1

1 1/4% but is less than 1 1/2% of his average annual payroll;  
2 (iii) 1/10 of 1% if such excess over \$500.00 equals or exceeds 1  
3 1/2% of his average annual payroll.

4 (3) If the minimum requirements in (1) above have been fulfilled  
5 and the contributions credited exceed the benefits charged but by not  
6 more than \$500.00 plus 1% of his average annual payroll, or if the  
7 benefits charged exceed the contributions credited but by not more  
8 than \$500.00, the preliminary rate shall be 1/4 of 1%.

9 (4) If the minimum requirements in (1) above have been fulfilled  
10 and the benefits charged exceed the contributions credited by more  
11 than \$500.00, such preliminary rate shall be as follows:

12 (i) 35/100 of 1% if such excess over \$500.00 is less than 1/4 of 1%  
13 of his average annual payroll;

14 (ii) 45/100 of 1% if such excess over \$500.00 equals or exceeds  
15 1/4 of 1% but is less than 1/2 of 1% of his average annual payroll;

16 (iii) 55/100 of 1% if such excess over \$500.00 equals or exceeds  
17 1/2 of 1% but is less than 3/4 of 1% of his average annual payroll;

18 (iv) 65/100 of 1% if such excess over \$500.00 equals or exceeds  
19 3/4 of 1% but is less than 1% of his average annual payroll;

20 (v) 75/100 of 1% if such excess over \$500.00 equals or exceeds  
21 1% of his average annual payroll.

22 (5) Determination of the preliminary rate as specified in (2), (3)  
23 and (4) above shall be subject, however, to the condition that it shall  
24 in no event be decreased by more than 1/10 of 1% of wages or  
25 increased by more than 2/10 of 1% of wages from the preliminary rate  
26 determined for the preceding year in accordance with (1), (2), (3) or  
27 (4), whichever shall have been applicable.

28 (E) (1) Prior to July 1 of each calendar year the controller shall  
29 determine the amount of the State disability benefits fund as of  
30 December 31 of the preceding calendar year, increased by the  
31 contributions paid thereto during January of the current calendar year  
32 with respect to employment occurring in the preceding calendar year.  
33 If such amount exceeds the net amount withdrawn from the  
34 unemployment trust fund pursuant to section 23 of the "Temporary  
35 Disability Benefits Law," P.L.1948, c.110 (C.43:21-47) plus the  
36 amount at the end of such preceding calendar year of the  
37 unemployment disability account (as defined in section 22 of said law  
38 (C.43:21-46), such excess shall be expressed as a percentage of the  
39 wages on which contributions were paid to the State disability benefits  
40 fund on or before January 31 with respect to employment in the  
41 preceding calendar year.

42 (2) The controller shall then make a final determination of the rates  
43 of contribution for the 12 months commencing July 1 of such year for  
44 employers whose preliminary rates are determined as provided in (D)  
45 hereof, as follows:

46 (i) If the percentage determined in accordance with paragraph



1 (E)(1) of this subsection equals or exceeds 1 1/4%, the final employer  
2 rates shall be the preliminary rates determined as provided in (D)  
3 hereof, except that if the employer's preliminary rate is determined as  
4 provided in (D)(2) or (D)(3) hereof, the final employer rate shall be  
5 the preliminary employer rate decreased by such percentage of excess  
6 taken to the nearest 5/100 of 1%, but in no case shall such final rate  
7 be less than 1/10 of 1%.

8 (ii) If the percentage determined in accordance with paragraph  
9 (E)(1) of this subsection equals or exceeds 3/4 of 1% and is less than  
10 1 1/4 of 1%, the final employer rates shall be the preliminary employer  
11 rates.

12 (iii) If the percentage determined in accordance with paragraph  
13 (E)(1) of this subsection is less than 3/4 of 1%, but in excess of 1/4 of  
14 1%, the final employer rates shall be the preliminary employer rates  
15 determined as provided in (D) hereof increased by the difference  
16 between 3/4 of 1% and such percentage taken to the nearest 5/100 of  
17 1%; provided, however, that no such final rate shall be more than 1/4  
18 of 1% in the case of an employer whose preliminary rate is determined  
19 as provided in (D)(2) hereof, more than 1/2 of 1% in the case of an  
20 employer whose preliminary rate is determined as provided in (D)(1)  
21 and (D)(3) hereof, nor more than 3/4 of 1% in the case of an employer  
22 whose preliminary rate is determined as provided in (D)(4) hereof.

23 (iv) If the amount of the State disability benefits fund determined  
24 as provided in paragraph (E)(1) of this subsection is equal to or less  
25 than 1/4 of 1%, then the final rate shall be 2/5 of 1% in the case of an  
26 employer whose preliminary rate is determined as provided in (D)(2)  
27 hereof, 7/10 of 1% in the case of an employer whose preliminary rate  
28 is determined as provided in (D)(1) and (D)(3) hereof, and 1.1% in the  
29 case of an employer whose preliminary rate is determined as provided  
30 in (D)(4) hereof. Notwithstanding any other provision of law or any  
31 determination made by the controller with respect to any 12-month  
32 period commencing on July 1, 1970, the final rates for all employers  
33 for the period beginning January 1, 1971, shall be as set forth herein.  
34 (cf: P.L.2005, c.123, s.1)

35  
36 2. R.S.43:21-11 is amended to read as follows:

37 43:21-11. (a) Duties and powers of the Department of Labor and  
38 Workforce Development. The department shall have power and  
39 authority to adopt, amend, or rescind such rules and regulations,  
40 require such reports, make such investigations, and take such other  
41 action as it deems necessary or suitable or to administer this chapter;  
42 provided that the Commissioner of Labor and Workforce Development  
43 may delegate such power and authority, subject to his ultimate  
44 supervision and control. Such rules and regulations shall be effective  
45 upon publication in the manner, not inconsistent with the provisions of  
46 this chapter, which the department shall prescribe. The department

1 shall determine its own organization and methods of procedure, in  
2 accordance with the provisions of this chapter. Whenever the  
3 department believes that a change in contribution or benefit rates will  
4 become necessary to protect the solvency of the fund, it shall promptly  
5 so inform the Governor and the Legislature, and make  
6 recommendations with respect thereto.

7 (b) Regulations and general and special rules. General and special  
8 rules may be adopted, amended, or rescinded by the department.  
9 General rules shall become effective 10 days after filing with the  
10 Secretary of State and publication in one or more newspapers of  
11 general circulation in this State. Special rules shall become effective 10  
12 days after notification to or mailing to the last known address of the  
13 individuals or concerns affected thereby. Regulations may be adopted,  
14 amended, or rescinded by the department and shall become effective  
15 in the manner and at the time prescribed by the department.

16 (c) Publication. The department shall cause to be printed for  
17 distribution to the public the text of this chapter, the department's  
18 regulations and general rules, its annual reports to the Governor, and  
19 any other material the department deems relevant and suitable and  
20 shall furnish the same to any person upon application therefor.

21 (d) Personnel. Subject to other provisions of this chapter, the  
22 department is authorized to appoint (subject to the provisions of Title  
23 11, Civil Service), fix the compensation, and prescribe the duties and  
24 powers of such officers, accountants, attorneys, experts, and other  
25 persons as may be necessary in the performance of its duties under  
26 R.S. 43:21-1 et seq. All positions shall be filled by persons selected  
27 and appointed on a nonpartisan merit basis from lists of eligible  
28 persons prepared by the Civil Service Commission, in accordance with  
29 the provisions of Title 11, Civil Service, except that any attorney, now  
30 or hereafter in office or position of legal assistant for the department,  
31 shall be placed in the exempt class of the civil service and thereafter  
32 shall not be subject to removal except for cause and then only in  
33 accordance with the provisions of Title 11, Civil Service; provided,  
34 however, that nothing herein shall be construed to apply to any  
35 attorney designated as special counsel in accordance with the  
36 provisions of sections 43:21-6, subsection (h), and 43:21-17. The  
37 division shall not employ or pay any person who is an officer or  
38 committee member of any political party organization. The  
39 commissioner may delegate to any such person so appointed such  
40 power and authority as he deems reasonable and proper for the  
41 effective administration of this chapter, and may in his discretion bond  
42 any person handling moneys or signing checks hereunder.

43 (e) Employment Security Council. There shall be within the  
44 department an Employment Security Council, as established and  
45 constituted under the Department of Labor and Industry Act of 1948  
46 (P.L.1948, c. 446; C. 34:1A-1 et seq.).

1 (f) Employment stabilization. The department, with the advice  
2 and aid of the Employment Security Council, shall take all appropriate  
3 steps to reduce and prevent unemployment; to encourage and assist  
4 in the adoption of practical methods of vocational training, retraining  
5 and vocational guidance; to investigate, recommend, advise, and assist  
6 in the establishment and operation, by municipalities, counties, school  
7 districts, and the State, of reserves for public works to be used in  
8 times of business depression and unemployment; to promote the  
9 re-employment of unemployed workers throughout the State in every  
10 other way that may be feasible, and to these ends to carry on and  
11 publish the records of investigations and research studies.

12 (g) Records and reports. Each employing unit shall keep true and  
13 accurate employment records, containing such information as may be  
14 prescribed. Such records shall be open to inspection and be subject to  
15 being copied by the director of the division and the controller or their  
16 authorized representatives at any reasonable time. The department  
17 may require from any employing unit any sworn or unsworn reports,  
18 with respect to persons employed by it, which are deemed necessary  
19 for the effective administration of this chapter. Under such rules and  
20 regulations as may be adopted by the department, reports relative to  
21 wages and separation from employment may be required from any  
22 employer or employing unit at the time such employer or employing  
23 unit suspends business operations in this State, or from any employer  
24 or employing unit which fails to cooperate in submitting promptly the  
25 wage and employment data which may be required under paragraph  
26 (2) of subsection (b) of section 43:21-6 of this Title. If the nature of  
27 such suspension is temporary or in the nature of a transfer, then the  
28 employer or employing unit may be excused from furnishing such a  
29 termination report upon assurances that proper arrangements have  
30 been made to supply any information which may be required under  
31 paragraph (2) of subsection (b) of section 43:21-6 of this Title. The  
32 department may require from any employer or employing unit reports  
33 relative to wages and separation in such manner and at such time as  
34 may be necessary for the effective administration of this chapter.

35 All records, reports and other information obtained from employers  
36 and employees under this chapter, except to the extent necessary for  
37 the proper administration of this chapter, shall be confidential and shall  
38 not be published or open to public inspection other than to public  
39 employees in the performance of their public duties, and shall not be  
40 subject to subpoena or admissible in evidence in any civil action or  
41 proceeding other than one arising under this chapter, but any claimant  
42 at a hearing before an appeal tribunal, the division or the board of  
43 review shall be supplied with information from such records to the  
44 extent necessary for the proper presentation of his claim. Any officer  
45 or employee of the department who violates any provision of this  
46 section shall be liable to a fine of \$200.00, to be recovered in a civil

1 action in the name of the division, said fine when recovered to be paid  
2 to the unemployment compensation auxiliary fund for the use of said  
3 fund.

4 (h) Oaths and witnesses. In the discharge of the duties imposed  
5 by this chapter, the controller, the appeal tribunal and any duly  
6 authorized representative or member of the division, the director or  
7 any deputy director thereof or member of the board of review shall  
8 have power to administer oaths and affirmations, take depositions,  
9 certify to official acts, and issue subpoenas to compel the attendance of  
10 witnesses and the production of books, papers, correspondence,  
11 memoranda and other records deemed necessary as evidence in  
12 connection with a disputed claim or the administration of this chapter.  
13 Witnesses subpoenaed pursuant to this section shall in the discretion of  
14 the department be allowed fees at a rate to be fixed by it. Such fees  
15 shall be deemed a part of the expense of administering this chapter.

16 (i) Subpoenas. In case of contumacy by or refusal to obey a  
17 subpoena issued to any person, any court of this State within the  
18 jurisdiction of which the inquiry is carried on or within the jurisdiction  
19 of which said person guilty of contumacy or refusal to obey is found  
20 or resides or transacts business, upon application by the department or  
21 its duly authorized representative, or the board of review, shall have  
22 jurisdiction to issue to such person an order requiring such person to  
23 appear before the board of review or a member thereof, the  
24 department or its duly authorized representative, there to produce  
25 evidence if so ordered or there to give testimony touching the matter  
26 under investigation or in question; and any failure to obey such order  
27 of the court may be punished by said court as a contempt thereof. Any  
28 person who shall without just cause fail or refuse to attend and testify  
29 or to answer any lawful inquiry or to produce books, papers,  
30 correspondence, memoranda, and other records, if it is in his power so  
31 to do, in obedience to a subpoena of the division or of the board of  
32 review shall be punished by a fine of not more than \$200.00 or by  
33 imprisonment for not longer than 60 days, or by both such fine and  
34 imprisonment, and each day such violation continues shall be deemed  
35 to be a separate offense.

36 (j) Protection against self-incrimination. No person shall be  
37 excused from attending and testifying or from producing books,  
38 papers, correspondence, memoranda and other records before the  
39 department or the board of review or in obedience to the subpoena of  
40 a member of the department or the board of review or a member  
41 thereof, or any duly authorized representative thereof in any cause or  
42 proceeding before the department, the board of review or a member  
43 thereof, on the ground that the testimony or evidence, documentary or  
44 otherwise, required of him may tend to incriminate him or subject him  
45 to a penalty or forfeiture; but no individual shall be prosecuted or  
46 subject to any penalty or forfeiture for or on account of any

1 transaction, matter, or thing concerning which he is compelled, after  
2 having claimed his privilege against self-incrimination, to testify or  
3 produce evidence, documentary or otherwise, except that such  
4 individual so testifying shall not be exempt from prosecution and  
5 punishment for perjury committed in so testifying.

6 (k) State-Federal cooperation. In the administration of this chapter  
7 the department shall cooperate to the fullest extent, consistent with the  
8 provisions of this chapter, with the United States Department of Labor  
9 to secure to this State and its citizens all advantages available under  
10 the provisions of the Social Security Act (42 U.S.C. s. 301 et seq.), as  
11 amended, the Federal Unemployment Tax Act (26 U.S.C. s. 3301 et  
12 seq.), as amended, and the Wagner-Peyser Act (29 U.S.C. s. 49 et  
13 seq.), as amended; shall make such reports, in such form and  
14 containing such information as the United States Secretary of Labor  
15 may from time to time require; and shall comply with such provisions  
16 as the United States Secretary of Labor may from time to time find  
17 necessary to assure the correctness and verification of such reports;  
18 and shall comply with the regulations prescribed by the United States  
19 Secretary of Labor governing the expenditure of such sums as may be  
20 allotted and paid to this State under any of such federal acts.

21 Upon request therefor, the department shall furnish to any agency  
22 of the United States charged with the administration of public works  
23 or assistance through public employment, the name, address, ordinary  
24 occupation and employment status of each recipient of benefits and  
25 such recipient's rights to further benefits under this chapter.

26 The department may afford reasonable cooperation with every  
27 agency of the United States charged with the administration of any  
28 unemployment insurance law.

29 The department is authorized to make such investigations and  
30 exercise such of the other powers provided herein with respect to the  
31 administration of this chapter and to transmit such information and  
32 make available such services and facilities to the agency charged with  
33 the administration of any State or federal unemployment insurance or  
34 public employment service law as it deems necessary or appropriate to  
35 facilitate the administration of such law and to accept and utilize  
36 information, services and facilities made available to this State by such  
37 agency.

38 The department shall adopt regulations prescribed by the United  
39 States Secretary of Labor to address state unemployment tax  
40 avoidance and to insure that the transfer or acquisition of a business  
41 is not done for the specific purpose of avoiding higher contribution  
42 rates.

43 (l) The controller shall establish procedures to identify employers  
44 who engage in the transfer or acquisition of a business, trade or  
45 organization for the purposes of achieving an unemployment tax rate  
46 unrelated to employment experience.

1 (cf: P.L.1984, c. 24, s. 8)

2

3 3 R.S.43:21-14 is amended to read as follows:

4 43:21-14. (a) (1) In addition to such reports as may be required  
5 under the provisions of subsection (g) of R.S.43:21-11, every  
6 employer shall file with the controller periodic contribution reports on  
7 such forms and at such times as the controller shall prescribe, to  
8 disclose the employer's liability for contributions under the provisions  
9 of this chapter (R.S.43:21-1 et seq.), and at the time of filing each  
10 contribution report shall pay the contributions required by this chapter  
11 (R.S.43:21-1 et seq.), for the period covered by such report. The  
12 controller may require that such reports shall be under oath of the  
13 employer. Any employer who shall fail to file any report, required by  
14 the controller, on or before the last day for the filing thereof shall pay  
15 a penalty of \$10.00 for each day of delinquency until and including the  
16 fifth day following such last day and for any period of delinquency  
17 after such fifth day, a penalty of \$10.00 a day or 25% of the amount  
18 of the contributions due and payable by the employer for the period  
19 covered by the report, whichever is the lesser; if there be no liability  
20 for contributions for the period covered by any contribution report or  
21 in the case of any report other than a contribution report, the employer  
22 or employing unit shall pay a penalty of \$10.00 a day for each day of  
23 delinquency in filing or \$50.00, whichever is the lesser; provided,  
24 however, that when it is shown to the satisfaction of the controller that  
25 the failure to file any such report was not the result of fraud or an  
26 intentional disregard of this chapter (R.S.43:21-1 et seq.), or the  
27 regulations promulgated hereunder, the controller, in his discretion,  
28 may remit or abate any unpaid penalties heretofore or hereafter  
29 imposed under this section. On or before October 1 of each year, the  
30 controller shall submit to the Commissioner of Labor and Workforce  
31 Development a report covering the 12-month period ending on the  
32 preceding June 30, and showing the names and addresses of all  
33 employers for whom the controller remitted or abated any penalties,  
34 or ratified any remission or abatement of penalties, and the amount of  
35 such penalties with respect to each employer. Any employer who shall  
36 fail to pay the contributions due for any period, on or before the date  
37 they are required by the controller to be paid, shall pay interest on the  
38 amount thereof from such date until the date of payment thereof, at the  
39 rate of 1% a month through June 30, 1981 and at the rate of 1 1/4%  
40 a month after June 30, 1981. Upon the written request of any  
41 employer or employing unit, filed with the controller on or before the  
42 due date of any report or contribution payment, the controller, for  
43 good cause shown, may grant, in writing, an extension of time for the  
44 filing of such report or the paying of such contribution, with interest  
45 at the applicable rate; provided no such extension shall exceed 30 days  
46 and that no such extension shall postpone payment of any contribution

1 for any period beyond the day preceding the last day for filing tax  
2 returns under Title IX of the federal Social Security Act for the year  
3 in which said period occurs.

4 (2)(A) For the calendar quarter commencing July 1, 1984 and each  
5 successive quarter thereafter, each employer shall file a report with the  
6 controller within 30 days after the end of each quarter in a form and  
7 manner prescribed by the controller, listing the name, social security  
8 number and wages paid to each employee and the number of base  
9 weeks (as defined in subsection (t) of R.S.43:21-19) worked by the  
10 employee during the calendar quarter. (B) Any employer who fails  
11 without reasonable cause to comply with the reporting requirements  
12 of this paragraph (2) shall be liable for a penalty in the following  
13 amount for each employee with respect to whom the employer is  
14 required to file a report but who is not included in the report or for  
15 whom the required information is not accurately reported for each  
16 employee required to be included, whether or not the employee is  
17 included:

18 (i) For the first failure for one quarter in any eight consecutive  
19 quarters, \$5.00 for each employee;

20 (ii) For the second failure for any quarter in any eight consecutive  
21 quarters, \$10.00 for each employee; and

22 (iii) For the third failure for any quarter in any eight consecutive  
23 quarters, and for any failure in any eight consecutive quarters, which  
24 failure is subsequent to the third failure, \$25.00 for each employee.

25 (C) Information reported by employers as requested by this  
26 paragraph (2) shall be used by the Department of Labor and  
27 Workforce Development for the purpose of determining eligibility for  
28 benefits of individuals in accordance with the provisions of  
29 R.S.43:21-1 et seq. Notwithstanding the provisions of subsection (g)  
30 of R.S.43:21-11, the Department of Labor and Workforce  
31 Development is hereby authorized to provide the Department of  
32 Human Services and the Higher Education Assistance Authority with  
33 information reported by employers as required by this paragraph (2).  
34 For each fiscal year, the Director of the Division of Budget and  
35 Accounting of the Department of the Treasury shall charge the  
36 appropriate account of the Department of Human Services and the  
37 Higher Education Assistance Authority in amounts sufficient to  
38 reimburse the Department of Labor and Workforce Development for  
39 the cost of providing information under this subparagraph (C).

40 (D) For the purpose of administering the provisions of this  
41 paragraph (2), all appropriations, files, books, papers, records,  
42 equipment and other property, and employees currently assigned to the  
43 Division of Taxation for the implementation of the "Wage Reporting  
44 Act," P.L.1980, c.48 (C.54:1-55 et seq.), shall be transferred to the  
45 Department of Labor and Workforce Development as of September 1,  
46 1984 in accordance with the provisions of the "State Agency Transfer

1 Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

2 (b) The contributions, penalties, and interest due from any  
3 employer under the provisions of this chapter (R.S.43:21-1 et seq.),  
4 from the time they shall be due, shall be a personal debt of the  
5 employer to the State of New Jersey, recoverable in any court of  
6 competent jurisdiction in a civil action in the name of the State of New  
7 Jersey; provided, however, that except in the event of fraud, no  
8 employer shall be liable for contributions or penalties unless  
9 contribution reports have been filed or assessments have been made in  
10 accordance with subsection (c) or (d) of this section before four years  
11 have elapsed from the last day of the calendar year with respect to  
12 which any contributions become payable under this chapter  
13 (R.S.43:21-1 et seq.), nor shall any employer be required to pay  
14 interest on any such contribution unless contribution reports were filed  
15 or assessments made within such four-year period; provided further  
16 that if such contribution reports were filed or assessments made within  
17 the four-year period, no civil action shall be instituted, nor shall any  
18 certificate be issued to the Clerk of the Superior Court under  
19 subsection (e) of this section, except in the event of fraud, after six  
20 years have elapsed from the last day of the calendar year with respect  
21 to which any contributions become payable under this chapter  
22 (R.S.43:21-1 et seq.), or July 1, 1958, whichever is later. Payments  
23 received from an employer on account of any debt incurred under the  
24 provisions of this chapter (R.S.43:21-1 et seq.) may be applied by the  
25 controller on account of the contribution liability of the employer and  
26 then to interest and penalties, and any balance remaining shall be  
27 recoverable by the controller from the employer. Upon application  
28 therefor, the controller shall furnish interested persons and entities  
29 certificates of indebtedness covering employers, employing units and  
30 others for contributions, penalties and interest, for each of which  
31 certificates the controller shall charge and collect a fee of \$2.00 per  
32 name; no such certificate to be issued, however, for a fee of less than  
33 \$10.00. All fees so collected shall be paid into the unemployment  
34 compensation administration fund.

35 (c) If any employer shall fail to make any report as required by the  
36 rules and regulations of the division pursuant to the provisions of this  
37 chapter (R.S.43:21-1 et seq.), the controller may make an estimate of  
38 the liability of such employer from any information it may obtain, and,  
39 according to such estimate so made, assess such employer for the  
40 contributions, penalties, and interest due the State from him, give  
41 notice of such assessment to the employer, and make demand upon  
42 him for payment.

43 (d) After a report is filed under the provisions of this chapter  
44 (R.S.43:21-1 et seq.) and the rules and regulations thereof, the  
45 controller shall cause the report to be examined and shall make such  
46 further audit and investigation as it may deem necessary, and if



1 therefrom there shall be determined that there is a deficiency with  
2 respect to the payment of the contributions due from such employer,  
3 the controller shall assess the additional contributions, penalties, and  
4 interest due the State from such employer, give notice of such  
5 assessment to the employer, and make demand upon him for payment.

6 (e) As an additional remedy, the controller may issue to the Clerk  
7 of the Superior Court of New Jersey a certificate stating the amount  
8 of the employer's indebtedness under this chapter (R.S.43:21-1 et seq.)  
9 and describing the liability, and thereupon the clerk shall immediately  
10 enter upon his record of docketed judgments such certificate or an  
11 abstract thereof and duly index the same. Any such certificate or  
12 abstract, heretofore or hereafter docketed, from the time of docketing  
13 shall have the same force and effect as a judgment obtained in the  
14 Superior Court of New Jersey, and the controller shall have all the  
15 remedies and may take all the proceedings for the collection thereof  
16 which may be had or taken upon the recovery of such a judgment in a  
17 civil action upon contract in said court. Such debt, from the time of  
18 docketing thereof, shall be a lien on and bind the lands, tenements and  
19 hereditaments of the debtor.

20 The Clerk of the Superior Court shall be entitled to receive for  
21 docketing such certificate, \$0.50, and for a certified transcript of such  
22 docket, \$0.50. If the amount set forth in said certificate as a debt shall  
23 be modified or reversed upon review, as hereinafter provided, the  
24 Clerk of the Superior Court shall, when an order of modification or  
25 reversal is filed, enter in the margin of the docket opposite the entry  
26 of the judgment, the word "modified" or "reversed," as the case may  
27 be, and the date of such modification or reversal.

28 The employer, or any other party having an interest in the property  
29 upon which the debt is a lien, may deposit the amount claimed in the  
30 certificate with the Clerk of the Superior Court of New Jersey,  
31 together with an additional 10% of the amount thereof, or \$100.00,  
32 whichever amount is the greater, to cover interest and the costs of  
33 court, or in lieu of depositing the amount in cash, may give a bond to  
34 the State of New Jersey in double the amount claimed in the  
35 certificate, and file the same with the Clerk of the Superior Court. Said  
36 bond shall have such surety and shall be approved in the manner  
37 required by the Rules Governing the Courts of the State of New  
38 Jersey.

39 After the deposit of said money or the filing of said bond, the  
40 employer, or any other party having an interest in the said property,  
41 may, after exhausting all administrative remedies, secure judicial  
42 review of the legality or validity of the indebtedness or the amount  
43 thereof, and the said deposit of cash shall be as security for, and the  
44 bond shall be conditioned to prosecute, the judicial review with effect.

45 Upon the deposit of said money or the filing of the said bond with  
46 the Clerk of the Superior Court, all proceedings on such judgment

1 shall be stayed until the final determination of the cause, and the  
2 moneys so deposited shall be subject to the lien of the indebtedness  
3 and costs and interest thereon, and the lands, tenements, and  
4 hereditaments of said debtor shall forthwith be discharged from the  
5 lien of the State of New Jersey and no execution shall issue against the  
6 same by virtue of said judgment.

7 Notwithstanding the provisions of subsections (a) through (c) of  
8 this section, the Department of Labor and Workforce Development  
9 may, with the concurrence of the State Treasurer, when all reasonable  
10 efforts to collect amounts owed have been exhausted, or to avoid  
11 litigation, reduce any liability for contributions, penalties and interest,  
12 provided no portion of those amounts represents contributions made  
13 by an employee pursuant to subsection (d) of R.S.43:21-7.

14 (f) If, not later than two years after the calendar year in which any  
15 moneys were erroneously paid to or collected by the controller,  
16 whether such payments were voluntarily or involuntarily made or made  
17 under mistake of law or of fact, an employer, employing unit, or  
18 employee who has paid such moneys shall make application for an  
19 adjustment thereof, the said moneys shall, upon order of the controller,  
20 be either credited or refunded, without interest, from the appropriate  
21 fund. For like cause and within the same period, credit or refund may  
22 be so made on the initiative of the controller.

23 (g) All interest and penalties collected pursuant to this section shall  
24 be paid into a special fund to be known as the unemployment  
25 compensation auxiliary fund; all moneys in this special fund shall be  
26 deposited, administered and disbursed in the same manner and under  
27 the same conditions and requirements as is provided by law for other  
28 special funds in the State Treasury, and shall be expended, under  
29 legislative appropriation, for the purpose of aiding in defraying the  
30 cost of the administration of this chapter (R.S.43:21-1 et seq.); for the  
31 repayment of any interest bearing advances made from the federal  
32 unemployment account pursuant to the provisions of section 1202(b)  
33 of the Social Security Act, 42 U.S.C. s.1322; and for essential and  
34 necessary expenditures in connection with programs designed to  
35 stimulate employment, as determined by the Commissioner of Labor  
36 and Workforce Development, except that any moneys in this special  
37 fund shall be first applied to aiding in the defraying of necessary costs  
38 of the administration of this chapter (R.S.43:21-1 et seq.) as  
39 determined by the Commissioner of Labor and Workforce  
40 Development. The Treasurer of the State shall be ex officio the  
41 treasurer and custodian of this special fund and, subject to legislative  
42 appropriation, shall administer the fund in accordance with the  
43 directions of the controller. Any balances in this fund shall not lapse  
44 at any time, but shall be continuously available, subject to legislative  
45 appropriation, to the controller for expenditure. The State Treasurer  
46 shall give a separate and additional bond conditioned upon the faithful

1 performance of his duties in connection with the unemployment  
2 compensation auxiliary fund, in an amount to be fixed by the division,  
3 the premiums for such bond to be paid from the moneys in the said  
4 special fund.

5 (h) All disputes under R.S.43:21-1 et seq. unless specifically  
6 indicated otherwise, shall be resolved in accordance with the "New  
7 Jersey Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1  
8 et seq.).

9 (cf: P.L.2003, c.117, s.20)

10

11 4. R.S.43:21-16 is amended to read as follows:

12 43:21-16. (a) Whoever makes a false statement or representation,  
13 knowing it to be false, or knowingly fails to disclose a material fact,  
14 to obtain or increase or attempts to obtain or increase any benefit or  
15 other payment under this chapter (R.S.43:21-1 et seq.), or under an  
16 employment security law of any other state or of the federal  
17 government, either for himself or for any other person, shall be liable  
18 to a fine of \$20.00 for each offense, or 25% of the amount  
19 fraudulently obtained, whichever is greater, to be recovered in an  
20 action at law in the name of the Division of Unemployment and  
21 Temporary Disability Insurance of the Department of Labor and  
22 Workforce Development of the State of New Jersey or as provided in  
23 subsection (e) of R.S.43:21-14, said fine when recovered to be paid to  
24 the unemployment compensation auxiliary fund for the use of said  
25 fund; and each such false statement or representation or failure to  
26 disclose a material fact shall constitute a separate offense. Any  
27 penalties imposed by this subsection shall be in addition to those  
28 otherwise prescribed in this chapter (R.S.43:21-1 et seq.).

29 (b) (1) An employing unit or any officer or agent of an employing  
30 unit or any other person who makes a false statement or  
31 representation, knowing it to be false, or who knowingly fails to  
32 disclose a material fact, to prevent or reduce the payment of benefits  
33 to any individual entitled thereto or to avoid becoming or remaining  
34 subject hereto or to avoid or reduce any contribution or other payment  
35 required from an employing unit under this chapter (R.S.43:21-1 et  
36 seq.), or under an employment security law of any other state or of the  
37 federal government, or who willfully fails or refuses to furnish any  
38 reports required hereunder (except for such reports as may be required  
39 under subsection (b) of R.S.43:21-6) or to produce or permit the  
40 inspection or copying of records, as required hereunder, shall be liable  
41 to a fine of \$100.00, to be recovered in an action at law in the name  
42 of the Division of Unemployment and Temporary Disability Insurance  
43 of the Department of Labor and Workforce Development of the State  
44 of New Jersey or as provided in subsection (e) of R.S.43:21-14, said  
45 fine when recovered to be paid to the unemployment compensation  
46 auxiliary fund for the use of said fund; and each such false statement

1 or representation or failure to disclose a material fact, and each day of  
2 such failure or refusal shall constitute a separate offense. Any penalties  
3 imposed by this paragraph shall be in addition to those otherwise  
4 prescribed in this chapter (R.S.43:21-1 et seq.).

5 (2) Any employing unit or any officer or agent of an employing  
6 unit or any other person who fails to submit any report required under  
7 subsection (b) of R.S.43:21-6 shall be subject to a penalty of \$25.00  
8 for the first report not submitted within 10 days after the mailing of a  
9 request for such report, and an additional \$25.00 penalty may be  
10 assessed for the next 10-day period, which may elapse after the end of  
11 the initial 10-day period and before the report is filed; provided that  
12 when such report or reports are not filed within the prescribed time  
13 but it is shown to the satisfaction of the director that the failure was  
14 due to a reasonable cause, no such penalty shall be imposed. Any  
15 penalties imposed by this paragraph shall be recovered as provided in  
16 subsection (e) of R.S.43:21-14, and when recovered shall be paid to  
17 the unemployment compensation auxiliary fund for the use of said  
18 fund.

19 (3) Any employing unit, officer or agent of the employing unit, or  
20 any other person, determined by the controller to have knowingly  
21 violated, or attempted to violate, or advised another person to violate  
22 the transfer of employment experience provisions found at R.S.  
23 43:21-7 (c)(7), or who otherwise knowingly attempts to obtain a  
24 lower rate of contributions by failing to disclose material information,  
25 or by making a false statement, or by a misrepresentation of fact, shall  
26 be subject to a fine of \$5,000 or 25% of the contributions  
27 under-reported or attempted to be under-reported, whichever is  
28 greater, to be recovered as provided in subsection (e) of R.S.  
29 43:21-14, and when recovered to be paid to the unemployment  
30 compensation auxiliary fund for the use of said fund. For the purposes  
31 of this subsection, "knowingly" means having actual knowledge of, or  
32 acting with deliberate ignorance or reckless disregard for the  
33 prohibition involved.

34 (c) Any person who shall willfully violate any provision of this  
35 chapter (R.S.43:21-1 et seq.) or any rule or regulation thereunder, the  
36 violation of which is made unlawful or the observance of which is  
37 required under the terms of this chapter (R.S.43:21-1 et seq.), and for  
38 which a penalty is neither prescribed herein nor provided by any other  
39 applicable statute, shall be liable to a fine of \$50.00, to be recovered  
40 in an action at law in the name of the Division of Unemployment and  
41 Temporary Disability Insurance of the Department of Labor and  
42 Workforce Development of the State of New Jersey or as provided in  
43 subsection (e) of R.S.43:21-14, said fine when recovered to be paid to  
44 the unemployment compensation auxiliary fund for the use of said  
45 fund; and each day such violation continues shall be deemed to be a  
46 separate offense.

1 (d) (1) When it is determined by a representative or representatives  
2 designated by the Director of the Division of Unemployment and  
3 Temporary Disability Insurance of the Department of Labor and  
4 Workforce Development of the State of New Jersey that any person,  
5 whether (i) by reason of the nondisclosure or misrepresentation by him  
6 or by another of a material fact (whether or not such nondisclosure or  
7 misrepresentation was known or fraudulent), or (ii) for any other  
8 reason, has received any sum as benefits under this chapter  
9 (R.S.43:21-1 et seq.) while any conditions for the receipt of benefits  
10 imposed by this chapter (R.S.43:21-1 et seq.) were not fulfilled in his  
11 case, or while he was disqualified from receiving benefits, or while  
12 otherwise not entitled to receive such sum as benefits, such person,  
13 unless the director (with the concurrence of the controller) directs  
14 otherwise by regulation, shall be liable to repay those benefits in full.  
15 The sum shall be deducted from any future benefits payable to the  
16 individual under this chapter (R.S.43:21-1 et seq.) or shall be paid by  
17 the individual to the division for the unemployment compensation  
18 fund, and such sum shall be collectible in the manner provided for by  
19 law, including, but not limited to, the filing of a certificate of debt with  
20 the Clerk of the Superior Court of New Jersey; provided, however,  
21 that, except in the event of fraud, no person shall be liable for any such  
22 refunds or deductions against future benefits unless so notified before  
23 four years have elapsed from the time the benefits in question were  
24 paid. Such person shall be promptly notified of the determination and  
25 the reasons therefor. Unless such person, within seven calendar days  
26 after the delivery of such determination, or within 10 calendar days  
27 after such notification was mailed to his last-known address, files an  
28 appeal from such determination, such determination shall be final.

29 (2) Interstate and cross-offset of state and federal unemployment  
30 benefits. To the extent permissible under the laws and Constitution of  
31 the United States, the commissioner is authorized to enter into or  
32 cooperate in arrangements or reciprocal agreements with appropriate  
33 and duly authorized agencies of other states or the United States  
34 Secretary of Labor, or both, whereby:

35 (A) Overpayments of unemployment benefits as determined under  
36 subsection (d) of R.S.43:21-16 shall be recovered by offset from  
37 unemployment benefits otherwise payable under the unemployment  
38 compensation law of another state, and overpayments of  
39 unemployment benefits as determined under the unemployment  
40 compensation law of another state shall be recovered by offset from  
41 unemployment benefits otherwise payable under R.S.43:21-1 et seq.;

42 and

43 (B) Overpayments of unemployment benefits as determined under  
44 applicable federal law, with respect to benefits or allowances for  
45 unemployment provided under a federal program administered by this  
46 State under an agreement with the United States Secretary of Labor,

1 shall be recovered by offset from unemployment benefits otherwise  
2 payable under R.S.43:21-1 et seq., or any federal program  
3 administered by this State, or under the unemployment compensation  
4 law of another state or any federal unemployment benefit or allowance  
5 program administered by another state under an agreement with the  
6 United States Secretary of Labor, if the other state has in effect a  
7 reciprocal agreement with the United States Secretary of Labor as  
8 authorized by subsection (g) of 42 U.S.C.s.503, and if the United  
9 States agrees, as provided in the reciprocal agreement with this State  
10 entered into under subsection (g) of 42 U.S.C.s.503, that  
11 overpayments of unemployment benefits as determined under  
12 subsection (d) of R.S.43:21-16 and overpayments as determined under  
13 the unemployment compensation law of another state which has in  
14 effect a reciprocal agreement with the United States Secretary of  
15 Labor as authorized by subsection (g) of 42 U.S.C.s.503, shall be  
16 recovered by offset from benefits or allowances otherwise payable  
17 under a federal program administered by this State or another state  
18 under an agreement with the United States Secretary of Labor.

19 (e) (1) Any employing unit, or any officer or agent of an employing  
20 unit, which officer or agent is directly or indirectly responsible for  
21 collecting, truthfully accounting for, remitting when payable any  
22 contribution, or filing or causing to be filed any report or statement  
23 required by this chapter, or employer, or person failing to remit, when  
24 payable, any employer contributions, or worker contributions (if  
25 withheld or deducted), or the amount of such worker contributions (if  
26 not withheld or deducted), or filing or causing to be filed with the  
27 controller or the Division of Unemployment and Temporary Disability  
28 Insurance of the Department of Labor and Workforce Development  
29 of the State of New Jersey, any false or fraudulent report or statement,  
30 and any person who aids or abets an employing unit, employer, or any  
31 person in the preparation or filing of any false or fraudulent report or  
32 statement with intent to defraud the State of New Jersey or an  
33 employment security agency of any other state or of the federal  
34 government, or with intent to evade the payment of any contributions,  
35 interest or penalties, or any part thereof, which shall be due under the  
36 provisions of this chapter (R.S.43:21-1 et seq.), shall be liable for each  
37 offense upon conviction before any Superior Court or municipal court,  
38 to a fine not to exceed \$1,000.00 or by imprisonment for a term not  
39 to exceed 90 days, or both, at the discretion of the court. The fine  
40 upon conviction shall be payable to the unemployment compensation  
41 auxiliary fund. Any penalties imposed by this subsection shall be in  
42 addition to those otherwise prescribed in this chapter (R.S.43:21-1 et  
43 seq.).

44 (2) Any employing unit, officer or agent of the employing unit, or  
45 any other person, who knowingly violates, or attempts to violate, or  
46 advise another person to violate the transfer of employment experience

1 provisions found at R.S.43:21-7 (c)(7) shall be, upon conviction  
2 before any Superior Court or municipal court, guilty of a crime of the  
3 fourth degree. For the purposes of this subsection, "knowingly" means  
4 having actual knowledge of, or acting with deliberate ignorance or  
5 reckless disregard for the prohibition involved.

6 (f) Any employing unit or any officer or agent of an employing unit  
7 or any other person who aids and abets any person to obtain any sum  
8 of benefits under this chapter to which he is not entitled, or a larger  
9 amount as benefits than that to which he is justly entitled, shall be  
10 liable for each offense upon conviction before any Superior Court or  
11 municipal court, to a fine not to exceed \$1,000.00 or by imprisonment  
12 for a term not to exceed 90 days, or both, at the discretion of the  
13 court. The fine upon conviction shall be payable to the unemployment  
14 compensation auxiliary fund. Any penalties imposed by this subsection  
15 shall be in addition to those otherwise prescribed in this chapter  
16 (R.S.43:21-1 et seq.).

17 (g) There shall be created in the Division of Unemployment and  
18 Temporary Disability Insurance of the Department of Labor and  
19 Workforce Development of the State of New Jersey an investigative  
20 staff for the purpose of investigating violations referred to in this  
21 section and enforcing the provisions thereof.

22 (h) An employing unit or any officer or agent of an employing unit  
23 who makes a false statement or representation, knowing it to be false,  
24 or who knowingly fails to disclose a material fact, to reduce benefit  
25 charges to the employing unit pursuant to paragraph (1) of subsection  
26 (c) of R.S.43:21-7, shall be liable to a fine of \$1,000, to be recovered  
27 in an action at law in the name of the Division of Unemployment and  
28 Temporary Disability Insurance of the Department of Labor and  
29 Workforce Development of the State of New Jersey or as provided in  
30 subsection (e) of R.S.43:21-14. The fine when recovered shall be paid  
31 to the unemployment compensation auxiliary fund for the use of the  
32 fund. Each false statement or representation or failure to disclose a  
33 material fact, and each day of that failure or refusal shall constitute a  
34 separate offense. Any penalties imposed by this subsection shall be in  
35 addition to those otherwise prescribed in R.S.43:21-1 et seq.

36 (cf: P.L.1997, c. 255, s.4)

37  
38 5. This act shall take effect immediately.

39  
40  
41 \_\_\_\_\_  
42  
43 Deters unemployment tax avoidance.

**SENATE, No. 1847**

**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

INTRODUCED OCTOBER 4, 2004

**Sponsored by:**  
**Senator JOSEPH CONIGLIO**  
**District 38 (Bergen)**

**SYNOPSIS**

Deters State Unemployment Tax Avoidance by penalizing knowing avoidance of unemployment tax payment.

**CURRENT VERSION OF TEXT**

As introduced.





1 AN ACT to deter unemployment tax avoidance and supplementing  
2 Title 43 of the Revised Statutes.

3

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

6

7 1. a. If there is a transfer of business from one employer to  
8 another, while both employers are under substantially common  
9 ownership, management or control, then the unemployment benefit and  
10 contribution experience attributable to the transferred business shall be  
11 transferred to and combined with the unemployment benefit and  
12 contribution experience attributable to the employer to whom the  
13 business is transferred, provided that in no case, whether or not the  
14 employers are under substantially common ownership, management or  
15 control, shall unemployment benefit and contribution experience be  
16 transferred by virtue of a transfer of business if the Commissioner of  
17 Labor and Workforce Development determines that the transfer of the  
18 business is done primarily for the purpose of, or will result in,  
19 obtaining a lower total rate of contributions. The commissioner shall  
20 adopt regulations to ensure that lower total rates of contributions are  
21 not obtained, and higher total rates of contributions are not avoided,  
22 through the transfer or acquisition of a business.

23 b. Any employer or officer or agent of the employer who reduces  
24 or attempts to reduce contributions required to be paid pursuant to  
25 R.S.43:21-7 by knowingly making a false statement or representation,  
26 failing to disclose a material fact, or transferring its business to another  
27 employer or accepting a transfer of business from another employer in  
28 a manner which reduces contributions or avoids increased  
29 contributions in violation of the provisions of subsection a. of this act  
30 or any regulation adopted pursuant to that subsection, shall:

31 (1) Be liable for the payment of any amount of contributions not  
32 paid as the result of a violation of this act, together with accrued  
33 interest on the amounts not paid, to be collected by any of the means  
34 provided by R.S.43:21-14 for the collection of amounts of  
35 contributions owed by employers;

36 (2) Be charged, for five calendar quarters, at the highest rate of  
37 contribution charged to any employer pursuant to R.S.43:21-7 during  
38 those quarters; and

39 (3) Be guilty of a crime of the third degree, if the total amount of  
40 contributions not paid or, in the case of an attempt to reduce  
41 contributions in violation of this act which was prevented by action of  
42 the department, the total amount which would not have been paid  
43 during a twelve-month period had the attempt not been prevented, is  
44 more than \$50,000; be guilty of a crime of the fourth second degree  
45 if either total amount is more than \$5,000, but not more than \$50,000;  
46 or be guilty of a disorderly persons offense if either total amount is not

1 more than \$5,000, to be recovered in an action at law in the name of  
2 the Department of Labor and Workforce Development. Any penalties  
3 imposed by this paragraph shall be in addition to those otherwise  
4 prescribed in R.S.43:21-1 et seq.

5 c. Any tax preparer who advises or assists an employer, or acts on  
6 behalf of the employer, to make any transfer, false statement or  
7 representation indicated in subsection a. of this section, shall be guilty  
8 of a crime of the third degree, if the total amount of contributions not  
9 paid by the employer or, in the case of an attempt to reduce  
10 contributions in violation of this act which was prevented by action of  
11 the department, the total amount which would not have been paid by  
12 the employer during a 12-month period had the attempt not been  
13 prevented, is more than \$50,000; be guilty of a crime of the fourth  
14 degree if either total amount is more than \$5,000, but not more than  
15 \$50,000; or be guilty of a disorderly persons offense if either total  
16 amount is not more than \$5,000, to be recovered in an action at law  
17 in the name of the Department of Labor and Workforce Development.  
18 Any penalties imposed pursuant to this subsection shall be in addition  
19 to those otherwise prescribed in R.S.43:21-1 et seq.

20 d. Any fine recovered pursuant to this section shall be paid into the  
21 unemployment compensation auxiliary fund for the use of the fund.

22 e. For the purposes of this section:

23 "Employer" shall include any employee leasing company or client  
24 company of an employee leasing company which enters into an  
25 employee leasing agreement pursuant to P.L.2001, c.260 (C.34:8-67  
26 et seq.).

27 "Tax preparer" means a person who prepares for an employer the  
28 filing of payments, or claims for refunds, of contributions paid  
29 pursuant to R.S.43:21-1 et seq., or advises the employer regarding the  
30 payment of those contributions, but is not an employee of the  
31 employer.

32  
33 2. This act shall take effect immediately.  
34  
35

36 STATEMENT  
37

38 This bill is designed to deter the practice of state unemployment tax  
39 avoidance (SUTA dumping), in which an employer avoids an  
40 unemployment tax rate based on its history in the system by means of  
41 transfers or acquisitions of business, such as creating a "dummy"  
42 company and shifting employees there.

43 The bill requires that if business is transferred between employers  
44 while both employers are under substantially common ownership,  
45 management or control, the unemployment experience attributable to  
46 the transferred business shall also be transferred to and combined with

1 the unemployment experience attributable to the employer to whom  
2 the business is transferred, provided that in no case, whether or not the  
3 employers are under common ownership, management or control, shall  
4 unemployment experience be transferred by virtue of a transfer of  
5 business if the Commissioner of Labor and Workforce Development  
6 determines that the transfer of the business is done primarily for the  
7 purpose of, or will result in, obtaining a lower total rate of  
8 contributions. The bill directs the commissioner to adopt regulations  
9 to ensure that lower total rates of contributions are not obtained, and  
10 higher total rates of contributions are not avoided, through the transfer  
11 or acquisition of a business.

12 The bill provides that any employer or officer or agent of the  
13 employer who reduces or attempts to reduce unemployment  
14 contributions by knowingly making a false representation or  
15 withholding a material fact, transferring its business to another  
16 employer or accepting a transfer of business in violation of the  
17 provisions the bill or any regulation adopted under it:

- 18 1. Is liable for the payment of any amounts of contributions not  
19 paid in violation of the bill, with accrued interest;
- 20 2. Will be charged, for five calendar quarters, at the highest rate of  
21 contribution charged to any employer during those quarters; and
- 22 3. Is guilty of a crime of the third degree, if the total amount of  
23 unpaid contributions or, in the case of an attempt to reduce  
24 contributions prevented by department action, the amount which  
25 would have been unpaid during a 12-month period had the attempt not  
26 been prevented, is more than \$50,000; a crime of the fourth degree if  
27 either total amount is more than \$5,000, but not more than \$50,000;  
28 or a disorderly persons offense if either total amount is not more than  
29 \$5,000.

30 The bill provides that any tax preparer who advises or assists an  
31 employer, or acts on behalf of the employer, to make any of the  
32 indicated transfers, false statements or representations is also guilty of  
33 a crime, the degree of which is based on the same threshold amounts  
34 of unpaid contributions.

# SENATE LABOR COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1847**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 1, 2005

The Senate Labor Committee reports favorably the Senate Committee Substitute for Senate Bill No. 1847.

The committee substitute is designed to deter the practice of State unemployment tax avoidance (SUTA dumping), in which an employer avoids an unemployment tax rate based on its history in the system by means of transfers or acquisitions of business, such as creating a "dummy" company and shifting employees there.

The bill requires that when business entities operate under common ownership, management or control and the operation of those entities is not identifiable, distinguishable and severable, the business entities shall be considered a single employer for the purposes of determining unemployment insurance (UI) tax rates.

Following the purchase of a "corporate shell," that is, a corporation with little or no activity, the bill requires that if the resulting employing unit operates a new or different business activity, the employing unit shall be assigned a new employer UI tax rate.

If an employer transfers in whole or in part organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, and both the employer and successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business must also be transferred to and combined with the employment experience of the successor in interest. Following the transfer, neither the predecessor nor successor in interest would be eligible to make a voluntary payment of additional contributions during the year the transfer occurs and the next full calendar year.

The bill provides that if part of an employer's employment experience is transferred to a successor in interest, the successor in interest will have its employer rate recalculated, as of the first day of the calendar quarter following the transfer, by merging its existing employment experience, if any, with the employment experience acquired. If the successor in interest is not an employer as of the date of acquisition, it will be assigned the new employer rate until the effective date of the transfer of employment experience.

Upon the transfer in whole or in part of the organization, trade, assets or business to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of such acquisition and the controller finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

The Department of Labor and Workforce Development is required to adopt regulations prescribed by the United States Secretary of Labor to address State unemployment tax avoidance and to insure that the transfer or acquisition of a business is not done for the specific purpose of avoiding higher contribution rates.

If an employing unit, or officer or agent of the employing unit, or any other person, knowingly violates, or attempts to violate, or advises another person to violate the provisions of the bill regarding transfer of employment experience, or who otherwise knowingly attempts to obtain a lower rate of contributions by failing to disclose material information, or by making a false statement, or by a misrepresentation of fact, the bill imposes on the person a fine of \$5,000 or 25% of the contributions under-reported or attempted to be under-reported, whichever is greater, to be paid to the unemployment compensation auxiliary fund. The person, upon conviction before any Superior Court or municipal court, is guilty of a crime of the fourth degree.

As reported, this Senate Committee Substitute is identical to the Assembly Committee Substitute for Assembly Bill No. 2941.

# ASSEMBLY, No. 2941

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 27, 2004

**Sponsored by:**

**Assemblyman JOSEPH V. EGAN**

**District 17 (Middlesex and Somerset)**

**Assemblyman LOUIS MANZO**

**District 31 (Hudson)**

**Assemblyman ROBERT GORDON**

**District 38 (Bergen)**

**Co-Sponsored by:**

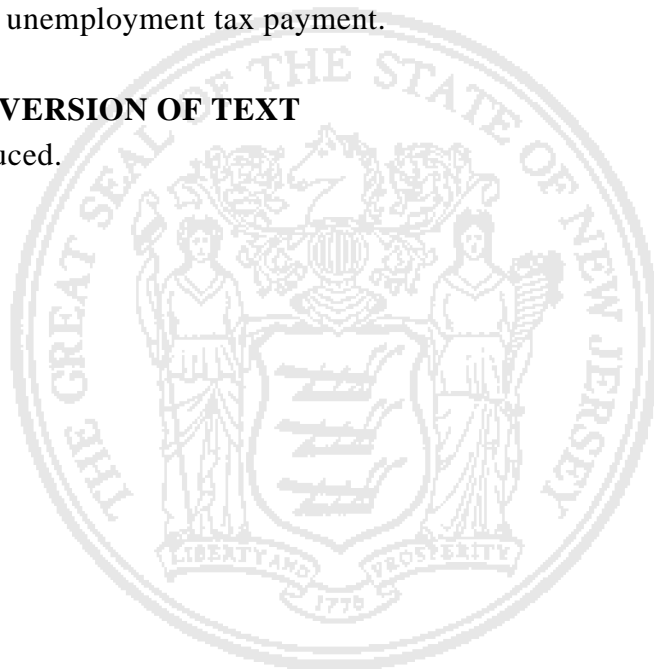
**Assemblymen Diegnan, Scalera, Barnes, Chivukula and Vas**

**SYNOPSIS**

Deters State Unemployment Tax Avoidance by penalizing knowing avoidance of unemployment tax payment.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/1/2004)**

1 AN ACT to deter unemployment tax avoidance and supplementing  
2 Title 43 of the Revised Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. a. If there is a transfer of business from one employer to  
8 another, while both employers are under substantially common  
9 ownership, management or control, then the unemployment benefit and  
10 contribution experience attributable to the transferred business shall be  
11 transferred to and combined with the unemployment benefit and  
12 contribution experience attributable to the employer to whom the  
13 business is transferred, provided that in no case, whether or not the  
14 employers are under substantially common ownership, management or  
15 control, shall unemployment benefit and contribution experience be  
16 transferred by virtue of a transfer of business if the Commissioner of  
17 Labor determines that the transfer of the business is done primarily for  
18 the purpose of, or will result in, obtaining a lower total rate of  
19 contributions. The commissioner shall adopt regulations to ensure that  
20 lower total rates of contributions are not obtained, and higher total  
21 rates of contributions are not avoided, through the transfer or  
22 acquisition of a business.

23 b. Any employer or officer or agent of the employer who reduces  
24 or attempts to reduce contributions required to be paid pursuant to  
25 R.S.43:21-7 by knowingly making a false statement or representation,  
26 failing to disclose a material fact, or transferring its business to another  
27 employer or accepting a transfer of business from another employer in  
28 a manner which reduces contributions or avoids increased  
29 contributions in violation of the provisions of subsection a. of this act  
30 or any regulation adopted pursuant to that subsection, shall:

31 (1) Be liable for the payment of any amount of contributions not  
32 paid as the result of a violation of this act, together with accrued  
33 interest on the amounts not paid, to be collected by any of the means  
34 provided by R.S.43:21-14 for the collection of amounts of  
35 contributions owed by employers;

36 (2) Be charged, for five calendar quarters, at the highest rate of  
37 contribution charged to any employer pursuant to R.S.43:21-7 during  
38 those quarters; and

39 (3) Be guilty of a crime of the third degree, if the total amount of  
40 contributions not paid or, in the case of an attempt to reduce  
41 contributions in violation of this act which was prevented by action of  
42 the department, the total amount which would not have been paid  
43 during a twelve-month period had the attempt not been prevented, is  
44 more than \$50,000; be guilty of a crime of the fourth second degree  
45 if either total amount is more than \$5,000, but not more than \$50,000;  
46 or be guilty of a disorderly persons offense if either total amount is not

1 more than \$5,000, to be recovered in an action at law in the name of  
2 the Department of Labor. Any penalties imposed by this paragraph  
3 shall be in addition to those otherwise prescribed in R.S.43:21-1 et  
4 seq.

5 c. Any tax preparer who advises or assists an employer, or acts on  
6 behalf of the employer, to make any transfer, false statement or  
7 representation indicated in subsection a. of this section, shall be guilty  
8 of a crime of the third degree, if the total amount of contributions not  
9 paid by the employer or, in the case of an attempt to reduce  
10 contributions in violation of this act which was prevented by action of  
11 the department, the total amount which would not have been paid by  
12 the employer during a 12-month period had the attempt not been  
13 prevented, is more than \$50,000; be guilty of a crime of the fourth  
14 degree if either total amount is more than \$5,000, but not more than  
15 \$50,000; or be guilty of a disorderly persons offense if either total  
16 amount is not more than \$5,000, to be recovered in an action at law  
17 in the name of the Department of Labor. Any penalties imposed  
18 pursuant to this subsection shall be in addition to those otherwise  
19 prescribed in R.S.43:21-1 et seq.

20 d. Any fine recovered pursuant to this section shall be paid into the  
21 unemployment compensation auxiliary fund for the use of the fund.

22 e. For the purposes of this section:

23 "Employer" shall include any employee leasing company or client  
24 company of an employee leasing company which enters into an  
25 employee leasing agreement pursuant to P.L.2001, c.260 (C.34:8-67  
26 et seq.).

27 "Tax preparer" means a person who prepares for an employer the  
28 filing of payments, or claims for refunds, of contributions paid  
29 pursuant to R.S.43:21-1 et seq., or advises the employer regarding the  
30 payment of those contributions, but is not an employee of the  
31 employer.

32

33 2. This act shall take effect immediately.

34

35

36

#### STATEMENT

37

38 This bill is designed to deter the practice of state unemployment tax  
39 avoidance (SUTA dumping), in which an employer avoids an  
40 unemployment tax rate based on its history in the system by means of  
41 transfers or acquisitions of business, such as creating a "dummy"  
42 company and shifting employees there.

43 The bill requires that if business is transferred between employers  
44 while both employers are under substantially common ownership,  
45 management or control, the unemployment experience attributable to  
46 the transferred business shall also be transferred to and combined with



1 the unemployment experience attributable to the employer to whom  
2 the business is transferred, provided that in no case, whether or not the  
3 employers are under common ownership, management or control, shall  
4 unemployment experience be transferred by virtue of a transfer of  
5 business if the Commissioner of Labor determines that the transfer of  
6 the business is done primarily for the purpose of, or will result in,  
7 obtaining a lower total rate of contributions. The bill directs the  
8 commissioner to adopt regulations to ensure that lower total rates of  
9 contributions are not obtained, and higher total rates of contributions  
10 are not avoided, through the transfer or acquisition of a business.

11 The bill provides that any employer or officer or agent of the  
12 employer who reduces or attempts to reduce unemployment  
13 contributions by knowingly making a false representation or  
14 withholding a material fact, transferring its business to another  
15 employer or accepting a transfer of business in violation of the  
16 provisions the bill or any regulation adopted under it:

17 1. Is liable for the payment of any amounts of contributions not  
18 paid in violation of the bill, with accrued interest;

19 2. Will be charged, for five calendar quarters, at the highest rate of  
20 contribution charged to any employer during those quarters; and

21 3. Is guilty of a crime of the third degree, if the total amount of  
22 unpaid contributions or, in the case of an attempt to reduce  
23 contributions prevented by department action, the amount which  
24 would have been unpaid during a 12-month period had the attempt not  
25 been prevented, is more than \$50,000; a crime of the fourth degree if  
26 either total amount is more than \$5,000, but not more than \$50,000;  
27 or a disorderly persons offense if either total amount is not more than  
28 \$5,000.

29 The bill provides that any tax preparer who advises or assists an  
30 employer, or acts on behalf of the employer, to make any of the  
31 indicated transfers, false statements or representations is also guilty of  
32 a crime, the degree of which is based on the same threshold amounts  
33 of unpaid contributions.

# ASSEMBLY LABOR COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2941**

# **STATE OF NEW JERSEY**

DATED: JUNE 13, 2005

The Assembly Labor Committee reports favorably this Assembly committee substitute for A-2941.

The bill is designed to deter the practice of State unemployment tax avoidance (SUTA dumping), in which an employer avoids an unemployment tax rate based on its history in the system by means of transfers or acquisitions of business, such as creating a "dummy" company and shifting employees there.

The bill requires that when business entities operating under common ownership, management or control and the operation of those entities is not identifiable, distinguishable and severable, the business entities shall be considered a single employer for the purposes of determining unemployment insurance (UI) tax rates.

Following the purchase of a "corporate shell," that is, a corporation with little or no activity, the bill requires that if the resulting employing unit operates a new or different business activity, the employing unit shall be assigned a new employer UI tax rate.

If an employer who transfers in whole or in part his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise and both the employer and successor in interest are at the time of the transfer under common ownership, management or control, then the employment experience attributable to the transferred business must also be transferred to and combined with the employment experience of the successor in interest. Following the transfer, neither the predecessor nor successor in interest would be eligible to make a voluntary payment of additional contributions during the year the transfer occurs and the next full calendar year.

The bill provides that if part of an employer's employment experience is transferred to a successor in interest, the successor in interest will have its employer rate recalculated, as of the first day of the calendar quarter following the transfer, by merging its existing employment experience, if any, with the employment experience acquired. If the successor in interest is not an employer as of the date of acquisition, it will be assigned the new employer rate until the effective date of the transfer of employment experience.

Upon the transfer in whole or in part of the organization, trade, assets or business to a successor in interest, the employment experience shall not be transferred if the successor in interest is not an employer at the time of such acquisition and the controller finds that the successor in interest acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

The Department of Labor and Workforce Development is required to adopt regulations prescribed by the United States Secretary of Labor to address State unemployment tax avoidance and to insure that the transfer or acquisition of a business is not done for the specific purpose of avoiding higher contribution rates.

If an employing unit, or officer or agent of the employing unit, or any other person, knowingly violates, or attempts to violate, or advises another person to violate the provisions of the bill regarding transfer of employment experience, or who otherwise knowingly attempts to obtain a lower rate of contributions by failing to disclose material information, or by making a false statement, or by a misrepresentation of fact, the bill imposes on the person a fine of \$5,000 or 25% of the contributions under-reported or attempted to be under-reported, whichever is greater, to be paid to the unemployment compensation auxiliary fund. The person, upon conviction before any Superior Court or municipal court, guilty of a crime of the fourth degree.