

STATE OF NEW JERSEY

INTRODUCED MAY 20, 1968

By Senators McDERMOTT, RINALDO and DUMONT

Referred to Committee on Labor Relations

AN ACT amending Revised Statutes 43:21-19 and supplementing the Unemployment Compensation Act and the Temporary Disability Benefits Law (Revised Statutes, Title 43, chapter 21) and providing coverage under these acts for certain employees of the State, counties, municipalities, school districts, and other political subdivisions of the State of New Jersey.

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

1 1. Section 43:21-19 of the Revised Statutes is amended to read
2 as follows:

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

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

8 (2) "Average annual payroll" means the average of the annual
9 payrolls of any employer for the last 3 or 5 preceding calendar
10 years, whichever average is higher, except that any year or years
11 throughout which an employer has had no "annual payroll" be-
12 cause of military service shall be deleted from the reckoning;
13 the "average annual payroll" in such case is to be determined on
14 the basis of the prior 3 or 5 calendar years in each of which the
15 employer had an "annual payroll" in the operation of his busi-
16 ness, if the employer resumes his business within 12 months after
17 separation, discharge or release from such service, under con-
18 ditions other than dishonorable, and makes application to have
19 his "average annual payroll" determined on the basis of such
20 deletion within 12 months after he resumes his business; provided,
21 however, that "average annual payroll" solely for the purposes
22 of paragraph (3) of subsection (e) of section 43:21-7 of this Title
23 means the average of the annual payrolls of any employer on

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

24 which he paid contributions to the State disability benefits fund,
25 for the last 3 or 5 preceding calendar years, whichever average is
26 higher; provided further, that only those wages be included in
27 which employer contributions have been paid on or before January
28 31 (or the next succeeding day if such January 31 is a Saturday
29 or Sunday) immediately preceding the beginning of the 12 months'
30 period for which the employer's contribution rate is computed.

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

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

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

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

58 (f) "Contributions" means the money payments to the State
59 unemployment compensation fund required by this chapter (R. S.
60 43:21-1 et seq.).

61 (g) "Employing unit" means any individual or type of organi-
62 zation, including any partnership, association, trust, estate, joint-
63 stock company, insurance company or corporation, whether domes-
64 tic or foreign, or the receiver, trustee in bankruptcy, trustee or
65 successor thereof, or the legal representative of a deceased person,
66 which has or subsequent to January 1, 1936, had in its employ one

67 or more individuals performing services for it within this State.
68 All individuals performing services within this State for any em-
69 ploying unit which maintains 2 or more separate establishments
70 within this State shall be deemed to be employed by a single
71 employing unit for all the purposes of this chapter (R. S. 43:21-1
72 et seq.). Whenever any employing unit contracts with or has
73 under it any contractor or subcontractor for any employment which
74 is part of its usual trade, occupation, profession, or business,
75 unless the employing unit as well as each such contractor or sub-
76 contractor is an employer by reason of subsection (c) of section
77 43:21-8 of this Title or subsection (h) of this section, the employ-
78 ing unit shall for all the purposes of this chapter be deemed to
79 employ each individual in the employ of each such contractor or
80 subcontractor for each day during which such individual is engaged
81 in performing such employment; except that each such contractor
82 or subcontractor who is an employer by reason of subsection (c)
83 of section 43:21-8 of this Title or subsection (h) of this section,
84 shall alone be liable for the contributions measured by wages
85 payable to individuals in his employ, and except that any employ-
86 ing unit who shall become liable for and pay contributions with
87 respect to individuals in the employ of any such contractor or
88 subcontractor who is not an employer by reason of subsection (c)
89 of section 43:21-8 of this Title or subsection (h) of this section,
90 may recover the same from such contractor or subcontractor. Each
91 individual employed to perform or to assist in performing the
92 work of any agent or employee of an employing unit shall be
93 deemed to be employed by such employing unit for all the purposes
94 of this chapter (R. S. 43:21-1 et seq.), whether such individual
95 was hired or paid directly by such employing unit or by such agent
96 or employee; provided, the employing unit had actual or construc-
97 tive knowledge of the work.

98 (h) "Employer" means:

99 (1) Any employing unit which for some portion of a day, but not
100 necessarily simultaneously, in each of 20 different weeks, whether
101 or not such weeks are or were consecutive, within either the current
102 or the preceding calendar year has or had in employment 4 or more
103 individuals (irrespective of whether the same individuals are or
104 were employed in each such day);

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

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

115 (4) Any employing unit which together with one or more other
116 employing units is owned or controlled (by legally enforceable
117 means or otherwise), directly or indirectly by the same interests,
118 or which owns or controls one or more other employing units (by
119 legally enforceable means or otherwise), and which, if treated as a
120 single unit with such other employing unit or interest, would be
121 an employer under paragraph (1) of this subsection;

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

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

130 (7) *Any employing unit subject to the provisions of the Federal*
131 *Unemployment Tax Act except those engaged in employment here-*
132 *inafter; excluded under paragraph (7) of subsection (i) of this*
133 *section.*

134 (i) (1) "Employment" means service, including service in inter-
135 state commerce performed for remuneration or under any contract
136 of hire, written or oral, express or implied.

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

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

140 (B) The service is not localized in any State but some of
141 the service is performed in this State, and (i) the base of
142 operations, or, if there is no base of operations, then the place
143 from which such service is directed or controlled, is in this
144 State; or (ii) the base of operations or place from which such
145 service is directed or controlled is not in any State in which
146 some part of the service is performed, but the individual's
147 residence is in this State.

148 (3) Services performed within this State but not covered under
149 paragraph (2) of this subsection shall be deemed to be employ-
150 ment subject to this chapter (R. S. 43:21-1 et seq.) if contributions
151 are not required and paid with respect to such services under an
152 unemployment compensation law of any other State or of the
153 Federal Government.

154 (4) Services not covered under paragraph (2) of this subsection,
155 and performed entirely without this State, with respect to no part
156 of which contributions are required and paid under an unemploy-
157 ment compensation law of any other State or of the Federal Gov-
158 ernment, shall be deemed to be employment subject to this chapter
159 (R. S. 43:21-1 et seq.) if the individual performing such services
160 is a resident of this State and the employing unit for whom such
161 services are performed files with the division an election that the
162 entire service of such individual shall be deemed to be employment
163 subject to this chapter (R. S. 43:21-1 et seq.).

164 (5) Service shall be deemed to be localized within a State if

165 (A) The service is performed entirely within such State; or

166 (B) The service is performed both within and without such
167 State, but the service performed without such State is in-
168 cidental to the individual's service within the State, for ex-
169 ample, is temporary or transitory in nature or consists of
170 isolated transactions.

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

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

178 (B) Such service is either outside the usual course of the
179 business for which such service is performed, or that such
180 service is performed outside of all the places of business of
181 the enterprise for which such service is performed; and

182 (C) Such individual is customarily engaged in an independ-
183 ently established trade, occupation, profession or business.

184 (7) The term "employment" shall not include:

185 (A) Agricultural labor;

186 (B) Domestic service in a private home;

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

190 (D) Service performed in the employ of this State or of
191 any political subdivision thereof or of any instrumentality of
192 this State or its political subdivisions;

193 (E) Service performed in the employ of any other State
194 or its political subdivisions, or of the United States Govern-
195 ment, or of an instrumentality of any other State or States
196 or their political subdivisions or of the United States;

197 (F) Services performed in the employ of a corporation,
198 community chest, fund, or foundation, organized and operated
199 exclusively for religious, charitable, scientific, literary, hos-
200 pital, benevolent, philanthropic, or educational purposes, or
201 for the prevention of cruelty to children or animals, no part
202 of the net earnings of which inures to the benefit of any private
203 shareholder or individual;

204 (G) Services performed in the employ of fraternal bene-
205 ficiary societies, orders, or associations operating under the
206 lodge system or for the exclusive benefit of the members of a
207 fraternity itself operating under the lodge system and pro-
208 viding for the payment of life, sick, accident, or other benefits
209 to the members of such society, order, or association, or their
210 dependents;

211 (H) Services performed as an officer or other employee
212 of any building and loan association of this State, except
213 where such services constitute the principal employment of
214 the individual; services performed as an officer or other em-
215 ployee of any building and loan association where such as-
216 sociation is a member of the Federal Home Loan Bank System;
217 services performed as an officer or other employee of any
218 bank which is a member of the Federal Reserve System;
219 services performed by a director or member of a committee
220 of a savings and loan association incorporated or organized
221 under the laws of this State or of the United States;

222 (I) Service with respect to which unemployment insurance
223 is payable under an unemployment insurance program estab-
224 lished by an Act of Congress;

225 (J) Service performed by agents of mutual fund brokers or
226 dealers in the sale of mutual funds or other securities, by
227 agents of insurance companies, exclusive of industrial in-
228 surance agents, or by agents of investment companies, if the
229 compensation to such agents for such services is wholly on a
230 commission basis;

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

233 (L) Services performed in the employ of any veterans'
234 organization chartered by Act of Congress or of any auxiliary
235 thereof, no part of the net earnings of which organization, or
236 auxiliary thereof, inures to the benefit of any private share-
237 holder or individual;

238 (M) Service performed for or in behalf of the owner or
239 operator of any theatre, ballroom, amusement hall or other
240 place of entertainment, not in excess of 10 weeks in any calen-
241 dar year for the same owner or operator, by any leader or
242 musician of a band or orchestra, commonly called a "name
243 band," entertainer, vaudeville artist, actor, actress, singer or
244 other entertainer;

245 (N) Services performed by an individual for a labor union
246 organization, known and recognized as a union local, as a
247 member of a committee or committees reimbursed by the union
248 local for time lost from regular employment, or as a part-time
249 officer of a union local and the remuneration for such services
250 is less than \$250.00 in a calendar year;

251 (O) Services performed in the sale or distribution of mer-
252 chandise by home-to-home salespersons or in-the-home demon-
253 strators whose remuneration consists wholly of commissions
254 or commissions and bonuses.

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

258 (k) "Fund" means the unemployment compensation fund estab-
259 lished by this chapter (R. S. 43:21-1 et seq.), to which all contribu-
260 tions required and from which all benefits provided under this
261 chapter (R. S. 43:21-1 et seq.) shall be paid.

262 (l) "State" includes, in addition to the States of the United
263 States of America, the District of Columbia, the Virgin Islands and
264 Puerto Rico.

265 (m) Unemployment.

266 (1) An individual shall be deemed "unemployed" for any week
267 during which he is not engaged in full-time work and with respect
268 to which his remuneration is less than his weekly benefit rate, in-
269 cluding any week during which he is on vacation without pay;
270 provided, such vacation is not the result of the individual's volun-
271 tary action.

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

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

280 (u) "Unemployment compensation administration fund" means
281 the unemployment compensation administration fund established
282 by this chapter (R. S. 43:21-1 et seq.), from which administrative
283 expenses under this chapter (R. S. 43:21-1 et seq.) shall be paid.

284 (o) "Wages" means remuneration paid subsequent to Decem-
285 ber 31, 1946, by employers for employment; provided, however, that
286 for eligibility and benefit purposes wages earned but not paid when
287 the amount thereof has been calculated and is due as determined
288 by the established and customary practices of the employer shall be
289 construed as having been paid when earned.

290 (p) "Remuneration" means all compensation for personal
291 services, including commissions and bonuses and the cash value of
292 all compensation in any medium other than cash.

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

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

298 (s) "Investment company" means any company as defined in
299 paragraph 1-a of chapter 322 of the laws of 1938, entitled "An act
300 concerning investment companies, and supplementing Title 17 of
301 the Revised Statutes by adding thereto a new chapter entitled
302 'investment companies.'"

303 (t) "Base week" means any calendar week of an individual's
304 base year during which he earned in employment from an employer
305 remuneration equal to not less than \$15.00; provided, if in any
306 calendar week, an individual is in employment with more than one
307 employer, he may in such calendar week establish a base week with
308 respect to each such employer from whom the individual earns
309 remuneration equal to not less than \$15.00 during such week,

310 (u) "Average weekly wage" means the amount derived by divid-
311 ing an individual's total wages received during his base year base
312 weeks (as defined in subsection (t) of this section) from that most
313 recent base year employer with whom he had established at least 17
314 base weeks, by the number of base weeks in which such wages were
315 earned. In the event that such claimant had no employer in his
316 base year with whom he had established at least 17 base weeks,
317 then such individual's average weekly wage shall be computed as if
318 all of his base week wages were received from one employer and as
319 if all his base weeks of employment had been performed in the em-
320 ploy of one employer.

321 If on application of a claimant it is determined that he has been
322 employed during at least the 4 weeks immediately preceding his
323 separation from employment by an employer on a substantially
324 reduced schedule of weekly hours due to lack of work, all weeks of
325 substantially reduced schedule within the base period and his wages
326 therefor shall be disregarded in computing his average weekly
327 wage.

328 (v) "Initial determination" means, subject to the provisions of
329 Revised Statutes 43:21-6 (b) (2) and (3), a determination of benefit
330 rights as measured by an eligible individual's base year employ-
331 ment with a single employer covering all periods of employment
332 with that employer during the base year. Subject to the provisions
333 of Revised Statutes 43:21-3 (d) (3) if an individual has been in
334 employment in his base year with more than one employer, no
335 benefits shall be paid to that individual under any successive initial
336 determination until his benefit rights have been exhausted under
337 the next preceding initial determination.

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

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

1 2. With respect to service performed in the employ of this State
2 or of any political subdivision thereof or of any instrumentality of
3 this State or its political subdivisions which is not excluded from
4 the definition of "employment" by the provisions of Revised Stat-
5 utes 43:21-19 (i) (7) (D), as amended, the employing authority,
6 whether it may be the State or a political subdivision or any in-
7 strumentality of the State or a political subdivision, shall be
8 considered as an employer, as defined by Revised Statutes 43:21-19
9 (h), and shall make all payments and perform all acts, with regard
10 to employees performing such service, as may be required by the
11 provisions of Title 43 of any other employer.

1 3. This act shall take effect on January 1 following the adoption
2 of this act.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 10, 1968

SENATE BILL NO. 769

To the Senate:

Pursuant to Article V , Section 1, paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 769, with my objections, for reconsideration.

The bill would require all employers subject to the Federal Unemployment Tax Act to provide unemployment compensation and temporary disability benefits for their employees, except for those expressly excluded by R.S.43:21-19 (i)(7). Among those groups exempted by this subsection are employees of the State or any of its political subdivisions, or any instrumentality of the State or any of its political subdivisions.

I am in full agreement with the expansion of coverage provided by this bill. However, notwithstanding the specific exemption of public employees, the title and section 2 of the bill seem to imply that certain public employees may be entitled to unemployment compensation and temporary disability benefits. Since this is not the case, I believe the bill should be amended to eliminate the language creating this ambiguity.

Also, it has been pointed out that some employing units may be subject to the federal employment tax one year, and not the next. Therefore, as presently provided in this bill, it would be impossible, in the early part of any given year, to determine whether or not an employee is eligible under the provisions of this bill for unemployment compensation and temporary disability benefits. In order to avoid any delay in processing such applications, I would suggest that the eligibility of any such employee be based on whether or not the employing unit was subject to said tax either during the current year, or the preceding year.

I am accordingly returning Senate Bill No. 769 for reconsideration with the recommendation that it be amended as follows:

On page 1, title, lines 1 through 6, delete the title in its entirety, and insert in lieu thereof: "An Act concerning unemployment compensation and temporary disability benefits, and amending section 43:21-19 of the Revised Statutes."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 769

- 2 -

On page 4, section 1, line 131, following "Act", insert "within either the current or the preceding calendar year".

On page 4, section 1, line 131, delete "those engaged in", and insert in lieu thereof "for".

On page 4, section 1, line 132, delete ";".

On page 9, section 2, lines 1 through 11, delete the section in its entirety.

On page 9, section 3, line 1, delete "3", and insert in lieu thereof "2".

[seal]

Respectfully,

/S/ RICHARD J. HUGHES

GOVERNOR

Attest:

/S/ ALAN J. KARCHER

Acting Secretary to the Governor

SENATE AMENDMENTS TO
SENATE, No. 769

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 10, 1968

Amend page 1, title, lines 1 through 6, delete the title in its entirety, and insert in lieu thereof "An act concerning unemployment compensation and temporary disability benefits, and amending section 43:21-19 of the Revised Statutes."

Amend page 4, section 1, line 131, following "Act", insert "within either the current or the preceding calendar year".

Amend page 4, section 1, line 131, delete "those engaged in", and insert in lieu thereof "for".

Amend page 4, section 1, line 132, delete " ;".

Amend page 9, section 2, lines 1 through 11, delete the section in its entirety.

Amend page 9, section 3, line 1, delete "3", and insert in lieu thereof "2".

CHAPTER 366 LAWS OF N. J. 1968

APPROVED 12/26/68
[OFFICIAL COPY REPRINT]

SENATE, No. 769

STATE OF NEW JERSEY

INTRODUCED MAY 20, 1968

By Senators McDERMOTT, RINALDO and DUMONT

Referred to Committee on Labor Relations

[AN ACT amending Revised Statutes 43:21-19 and supplementing the Unemployment Compensation Act and the Temporary Disability Benefits Law (Revised Statutes, Title 43, chapter 21) and providing coverage under these acts for certain employees of the State, counties, municipalities, school districts, and other political subdivisions of the State of New Jersey.] **An act concerning unemployment compensation and temporary disability benefits, and amending section 43:21-19 of the Revised Statutes.**

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

1 1. Section 43:21-19 of the Revised Statutes is amended to read
2 as follows:

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

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

8 (2) "Average annual payroll" means the average of the annual
9 payrolls of any employer for the last 3 or 5 preceding calendar
10 years, whichever average is higher, except that any year or years
11 throughout which an employer has had no "annual payroll" be-
12 cause of military service shall be deleted from the reckoning;
13 the "average annual payroll" in such case is to be determined on
14 the basis of the prior 3 or 5 calendar years in each of which the
15 employer had an "annual payroll" in the operation of his busi-
16 ness, if the employer resumes his business within 12 months after
17 separation, discharge or release from such service, under con-
18 ditions other than dishonorable, and makes application to have
19 his "average annual payroll" determined on the basis of such

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

20 deletion within 12 months after he resumes his business; provided,
21 however, that "average annual payroll" solely for the purposes
22 of paragraph (3) of subsection (e) of section 43:21-7 of this Title
23 means the average of the annual payrolls of any employer on
24 which he paid contributions to the State disability benefits fund,
25 for the last 3 or 5 preceding calendar years, whichever average is
26 higher; provided further, that only those wages be included in
27 which employer contributions have been paid on or before January
28 31 (or the next succeeding day if such January 31 is a Saturday
29 or Sunday) immediately preceding the beginning of the 12 months'
30 period for which the employer's contribution rate is computed.

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

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

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

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

58 (f) "Contributions" means the money payments to the State
59 unemployment compensation fund required by this chapter (R. S.
60 43:21-1 et seq.).

61 (g) "Employing unit" means any individual or type of organi-
62 zation, including any partnership, association, trust, estate, joint-

63 stock company, insurance company or corporation, whether domes-
64 tic or foreign, or the receiver, trustee in bankruptcy, trustee or
65 successor thereof, or the legal representative of a deceased person,
66 which has or subsequent to January 1, 1936, had in its employ one
67 or more individuals performing services for it within this State.
68 All individuals performing services within this State for any em-
69 ploying unit which maintains 2 or more separate establishments
70 within this State shall be deemed to be employed by a single
71 employing unit for all the purposes of this chapter (R. S. 43:21-1
72 et seq.). Whenever any employing unit contracts with or has
73 under it any contractor or subcontractor for any employment which
74 is part of its usual trade, occupation, profession, or business,
75 unless the employing unit as well as each such contractor or sub-
76 contractor is an employer by reason of subsection (c) of section
77 43:21-8 of this Title or subsection (h) of this section, the employ-
78 ing unit shall for all the purposes of this chapter be deemed to
79 employ each individual in the employ of each such contractor or
80 subcontractor for each day during which such individual is engaged
81 in performing such employment; except that each such contractor
82 or subcontractor who is an employer by reason of subsection (c)
83 of section 43:21-8 of this Title or subsection (h) of this section,
84 shall alone be liable for the contributions measured by wages
85 payable to individuals in his employ, and except that any employ-
86 ing unit who shall become liable for and pay contributions with
87 respect to individuals in the employ of any such contractor or
88 subcontractor who is not an employer by reason of subsection (c)
89 of section 43:21-8 of this Title or subsection (h) of this section,
90 may recover the same from such contractor or subcontractor. Each
91 individual employed to perform or to assist in performing the
92 work of any agent or employee of an employing unit shall be
93 deemed to be employed by such employing unit for all the purposes
94 of this chapter (R. S. 43:21-1 et seq.), whether such individual
95 was hired or paid directly by such employing unit or by such agent
96 or employee; provided, the employing unit had actual or construc-
97 tive knowledge of the work.

98 (h) "Employer" means:

99 (1) Any employing unit which for some portion of a day, but not
100 necessarily simultaneously, in each of 20 different weeks, whether
101 or not such weeks are or were consecutive, within either the current
102 or the preceding calendar year has or had in employment 4 or more
103 individuals (irrespective of whether the same individuals are or
104 were employed in each such day);

105 (2) Any employing unit (whether or not an employing unit at

106 the time of acquisition) which acquired the organization, trade or
 107 business, or substantially all the assets thereof, of another which
 108 at the time of such acquisition was an employer subject to this
 109 chapter (R. S. 43:21-1 et seq.);

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

115 (4) Any employing unit which together with one or more other
 116 employing units is owned or controlled (by legally enforceable
 117 means or otherwise), directly or indirectly by the same interests,
 118 or which owns or controls one or more other employing units (by
 119 legally enforceable means or otherwise), and which, if treated as a
 120 single unit with such other employing unit or interest, would be
 121 an employer under paragraph (1) of this subsection;

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

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

130 (7) *Any employing unit subject to the provisions of the Federal*
 131 *Unemployment Tax Act *within either the current or the preceding*
 132 *calendar year* except ***[those engaged in]*** *for* employment*
 133 *hereinafter ***[;]*** excluded under paragraph (7) of subsection (i)*
 133A *of this section.*

134 (i) (1) "Employment" means service, including service in inter-
 135 state commerce performed for remuneration or under any contract
 136 of hire, written or oral, express or implied.

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

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

140 (B) The service is not localized in any State but some of
 141 the service is performed in this State, and (i) the base of
 142 operations, or, if there is no base of operations, then the place
 143 from which such service is directed or controlled, is in this
 144 State; or (ii) the base of operations or place from which such
 145 service is directed or controlled is not in any State in which
 146 some part of the service is performed, but the individual's
 147 residence is in this State.

148 (3) Services performed within this State but not covered under
149 paragraph (2) of this subsection shall be deemed to be employ-
150 ment subject to this chapter (R. S. 43:21-1 et seq.) if contributions
151 are not required and paid with respect to such services under an
152 unemployment compensation law of any other State or of the
153 Federal Government.

154 (4) Services not covered under paragraph (2) of this subsection,
155 and performed entirely without this State, with respect to no part
156 of which contributions are required and paid under an unemploy-
157 ment compensation law of any other State or of the Federal Gov-
158 ernment, shall be deemed to be employment subject to this chapter
159 (R. S. 43:21-1 et seq.) if the individual performing such services
160 is a resident of this State and the employing unit for whom such
161 services are performed files with the division an election that the
162 entire service of such individual shall be deemed to be employment
163 subject to this chapter (R. S. 43:21-1 et seq.).

164 (5) Service shall be deemed to be localized within a State if

165 (A) The service is performed entirely within such State; or

166 (B) The service is performed both within and without such
167 State, but the service performed without such State is in-
168 cidental to the individual's service within the State, for ex-
169 ample, is temporary or transitory in nature or consists of
170 isolated transactions.

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

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

178 (B) Such service is either outside the usual course of the
179 business for which such service is performed, or that such
180 service is performed outside of all the places of business of
181 the enterprise for which such service is performed; and

182 (C) Such individual is customarily engaged in an independ-
183 ently established trade, occupation, profession or business.

184 (7) The term "employment" shall not include:

185 (A) Agricultural labor;

186 (B) Domestic service in a private home;

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

190 (D) Service performed in the employ of this State or of

191 any political subdivision thereof or of any instrumentality of
192 this State or its political subdivisions;

193 (E) Service performed in the employ of any other State
194 or its political subdivisions, or of the United States Govern-
195 ment, or of an instrumentality of any other State or States
196 or their political subdivisions or of the United States;

197 (F) Services performed in the employ of a corporation,
198 community chest, fund, or foundation, organized and operated
199 exclusively for religious, charitable, scientific, literary, hos-
200 pital, benevolent, philanthropic, or educational purposes, or
201 for the prevention of cruelty to children or animals, no part
202 of the net earnings of which inures to the benefit of any private
203 shareholder or individual;

204 (G) Services performed in the employ of fraternal bene-
205 ficiary societies, orders, or associations operating under the
206 lodge system or for the exclusive benefit of the members of a
207 fraternity itself operating under the lodge system and pro-
208 viding for the payment of life, sick, accident, or other benefits
209 to the members of such society, order, or association, or their
210 dependents;

211 (H) Services performed as an officer or other employee
212 of any building and loan association of this State, except
213 where such services constitute the principal employment of
214 the individual; services performed as an officer or other em-
215 ployee of any building and loan association where such as-
216 sociation is a member of the Federal Home Loan Bank System;
217 services performed as an officer or other employee of any
218 bank which is a member of the Federal Reserve System;
219 services performed by a director or member of a committee
220 of a savings and loan association incorporated or organized
221 under the laws of this State or of the United States;

222 (I) Service with respect to which unemployment insurance
223 is payable under an unemployment insurance program estab-
224 lished by an Act of Congress;

225 (J) Service performed by agents of mutual fund brokers or
226 dealers in the sale of mutual funds or other securities, by
227 agents of insurance companies, exclusive of industrial in-
228 surance agents, or by agents of investment companies, if the
229 compensation to such agents for such services is wholly on a
230 commission basis;

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

233 (L) Services performed in the employ of any veterans'

234 organization chartered by Act of Congress or of any auxiliary
 235 thereof, no part of the net earnings of which organization, or
 236 auxiliary thereof, inures to the benefit of any private share-
 237 holder or individual;

238 (M) Service performed for or in behalf of the owner or
 239 operator of any theatre, ballroom, amusement hall or other
 240 place of entertainment, not in excess of 10 weeks in any calen-
 241 dar year for the same owner or operator, by any leader or
 242 musician of a band or orchestra, commonly called a "name
 243 band," entertainer, vaudeville artist, actor, actress, singer or
 244 other entertainer;

245 (N) Services performed by an individual for a labor union
 246 organization, known and recognized as a union local, as a
 247 member of a committee or committees reimbursed by the union
 248 local for time lost from regular employment, or as a part-time
 249 officer of a union local and the remuneration for such services
 250 is less than \$250.00 in a calendar year;

251 (O) Services performed in the sale or distribution of mer-
 252 chandise by home-to-home salespersons or in-the-home demon-
 253 strators whose remuneration consists wholly of commissions
 254 or commissions and bonuses.

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

258 (k) "Fund" means the unemployment compensation fund estab-
 259 lished by this chapter (R. S. 43:21-1 et seq.), to which all contribu-
 260 tions required and from which all benefits provided under this
 261 chapter (R. S. 43:21-1 et seq.) shall be paid.

262 (l) "State" includes, in addition to the States of the United
 263 States of America, the District of Columbia, the Virgin Islands and
 264 Puerto Rico.

265 (m) Unemployment.

266 (1) An individual shall be deemed "unemployed" for any week
 267 during which he is not engaged in full-time work and with respect
 268 to which his remuneration is less than his weekly benefit rate, in-
 269 cluding any week during which he is on vacation without pay;
 270 provided, such vacation is not the result of the individual's volun-
 271 tary action.

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

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

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

284 (o) "Wages" means remuneration paid subsequent to Decem-
285 ber 31, 1946, by employers for employment; provided, however, that
286 for eligibility and benefit purposes wages earned but not paid when
287 the amount thereof has been calculated and is due as determined
288 by the established and customary practices of the employer shall be
289 construed as having been paid when earned.

290 (p) "Remuneration" means all compensation for personal
291 services, including commissions and bonuses and the cash value of
292 all compensation in any medium other than cash.

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

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

298 (s) "Investment company" means any company as defined in
299 paragraph 1-a of chapter 322 of the laws of 1938, entitled "An act
300 concerning investment companies, and supplementing Title 17 of
301 the Revised Statutes by adding thereto a new chapter entitled
302 'investment companies.'"

303 (t) "Base week" means any calendar week of an individual's
304 base year during which he earned in employment from an employer
305 remuneration equal to not less than \$15.00; provided, if in any
306 calendar week, an individual is in employment with more than one
307 employer, he may in such calendar week establish a base week with
308 respect to each such employer from whom the individual earns
309 remuneration equal to not less than \$15.00 during such week,

310 (u) "Average weekly wage" means the amount derived by divid-
311 ing an individual's total wages received during his base year base
312 weeks (as defined in subsection (t) of this section) from that most
313 recent base year employer with whom he had established at least 17
314 base weeks, by the number of base weeks in which such wages were
315 earned. In the event that such claimant had no employer in his
316 base year with whom he had established at least 17 base weeks,
317 then such individual's average weekly wage shall be computed as if
318 all of his base week wages were received from one employer and as

319 if all his base weeks of employment had been performed in the em-
320 ploy of one employer.

321 If on application of a claimant it is determined that he has been
322 employed during at least the 4 weeks immediately preceding his
323 separation from employment by an employer on a substantially
324 reduced schedule of weekly hours due to lack of work, all weeks of
325 substantially reduced schedule within the base period and his wages
326 therefor shall be disregarded in computing his average weekly
327 wage.

328 (v) "Initial determination" means, subject to the provisions of
329 Revised Statutes 43:21-6 (b) (2) and (3), a determination of benefit
330 rights as measured by an eligible individual's base year employ-
331 ment with a single employer covering all periods of employment
332 with that employer during the base year. Subject to the provisions
333 of Revised Statutes 43:21-3 (d) (3) if an individual has been in
334 employment in his base year with more than one employer, no
335 benefits shall be paid to that individual under any successive initial
336 determination until his benefit rights have been exhausted under
337 the next preceding initial determination.

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

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

1 ***[2.** With respect to service performed in the employ of this State
2 or of any political subdivision thereof or of any instrumentality of
3 this State or its political subdivisions which is not excluded from
4 the definition of "employment" by the provisions of Revised Stat-
5 utes 43:21-19 (i) (7) (D), as amended, the employing authority,
6 whether it may be the State or a political subdivision or any in-
7 strumentality of the State or a political subdivision, shall be
8 considered as an employer, as defined by Revised Statutes 43:21-19
9 (h), and shall make all payments and perform all acts, with regard
10 to employees performing such service, as may be required by the
11 provisions of Title 43 of any other employer.]*

1 ***[3.]** *2.* This act shall take effect on January 1 following the
2 adoption of this act.