



**SENATE:** No

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**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

RWH/JA



P.L. 2021, CHAPTER 346, *approved January 10, 2022*

Senate, No. 3501

1 AN ACT exempting certain commercial fishermen from coverage  
2 under the "unemployment compensation law" and amending  
3 R.S.43:21-19.

4

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

7

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

9 43:21-19. Definitions. As used in this chapter (R.S.43:21-  
10 1 et seq.), unless the context clearly requires otherwise:

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

14 (2) "Average annual payroll" means the average of the annual  
15 payrolls of any employer for the last three or five preceding  
16 calendar years, whichever average is higher, except that any year or  
17 years throughout which an employer has had no "annual payroll"  
18 because of military service shall be deleted from the reckoning; the  
19 "average annual payroll" in such case is to be determined on the  
20 basis of the prior three or five calendar years in each of which the  
21 employer had an "annual payroll" in the operation of his business, if  
22 the employer resumes his business within 12 months after  
23 separation, discharge or release from such service, under conditions  
24 other than dishonorable, and makes application to have his "average  
25 annual payroll" determined on the basis of such deletion within 12  
26 months after he resumes his business; provided, however, that  
27 "average annual payroll" solely for the purposes of paragraph (3) of  
28 subsection (e) of R.S.43:21-7 means the average of the annual  
29 payrolls of any employer on which he paid contributions to the  
30 State disability benefits fund for the last three or five preceding  
31 calendar years, whichever average is higher; provided further that  
32 only those wages be included on which employer contributions have  
33 been paid on or before January 31 (or the next succeeding day if  
34 such January 31 is a Saturday or Sunday) immediately preceding  
35 the beginning of the 12-month period for which the employer's  
36 contribution rate is computed.

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

40 (c) (1) "Base year" with respect to benefit years commencing  
41 on or after July 1, 1986, shall mean the first four of the last five

**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 completed calendar quarters immediately preceding an individual's  
2 benefit year.

3 With respect to a benefit year commencing on or after July 1,  
4 1995, if an individual does not have sufficient qualifying weeks or  
5 wages in his base year to qualify for benefits, the individual shall  
6 have the option of designating that his base year shall be the  
7 "alternative base year," which means the last four completed  
8 calendar quarters immediately preceding the individual's benefit  
9 year; except that, with respect to a benefit year commencing on or  
10 after October 1, 1995, if the individual also does not have sufficient  
11 qualifying weeks or wages in the last four completed calendar  
12 quarters immediately preceding his benefit year to qualify for  
13 benefits, "alternative base year" means the last three completed  
14 calendar quarters immediately preceding his benefit year and, of the  
15 calendar quarter in which the benefit year commences, the portion  
16 of the quarter which occurs before the commencing of the benefit  
17 year.

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

32 (2) With respect to a benefit year commencing on or after June  
33 1, 1990 for an individual who immediately preceding the benefit  
34 year was subject to a disability compensable under the provisions of  
35 the "Temporary Disability Benefits Law," P.L.1948, c.110  
36 (C.43:21-25 et seq.), "base year" shall mean the first four of the last  
37 five completed calendar quarters immediately preceding the  
38 individual's period of disability, if the employment held by the  
39 individual immediately preceding the period of disability is no  
40 longer available at the conclusion of that period and the individual  
41 files a valid claim for unemployment benefits after the conclusion  
42 of that period. For the purposes of this paragraph, "period of  
43 disability" means the period defined as a period of disability by  
44 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
45 c.110 (C.43:21-27). An individual who files a claim under the  
46 provisions of this paragraph (2) shall not be regarded as having left  
47 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

1 (3) With respect to a benefit year commencing on or after June  
2 1, 1990 for an individual who immediately preceding the benefit  
3 year was subject to a disability compensable under the provisions of  
4 the workers' compensation law (chapter 15 of Title 34 of the  
5 Revised Statutes), "base year" shall mean the first four of the last  
6 five completed calendar quarters immediately preceding the  
7 individual's period of disability, if the period of disability was not  
8 longer than two years, if the employment held by the individual  
9 immediately preceding the period of disability is no longer  
10 available at the conclusion of that period and if the individual files a  
11 valid claim for unemployment benefits after the conclusion of that  
12 period. For the purposes of this paragraph, "period of disability"  
13 means the period from the time at which the individual becomes  
14 unable to work because of the compensable disability until the time  
15 that the individual becomes able to resume work and continue work  
16 on a permanent basis. An individual who files a claim under the  
17 provisions of this paragraph (3) shall not be regarded as having left  
18 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

30 (e) (1) "Division" means the Division of Unemployment and  
31 Temporary Disability Insurance of the Department of Labor and  
32 Workforce Development, and any transaction or exercise of  
33 authority by the director of the division thereunder, or under this  
34 chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by  
35 the division.

36 (2) "Controller" means the Office of the Assistant  
37 Commissioner for Finance and Controller of the Department of  
38 Labor and Workforce Development, established by the 1982  
39 Reorganization Plan of the Department of Labor.

40 (f) "Contributions" means the money payments to the State  
41 Unemployment Compensation Fund, required by R.S.43:21-7.  
42 "Payments in lieu of contributions" means the money payments to  
43 the State Unemployment Compensation Fund by employers electing  
44 or required to make payments in lieu of contributions, as provided  
45 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-  
46 7.3).

47 (g) "Employing unit" means the State or any of its  
48 instrumentalities or any political subdivision thereof or any of its

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

21 (h) "Employer" means:

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

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

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

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

42 (5) Any employing unit for which service in employment as  
43 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December  
44 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is  
45 performed after December 31, 1977;

46 (6) Any employing unit for which service in employment as  
47 defined in R.S.43:21-19 (i) (1) (c) is performed after December 31,  
48 1971 and which in either the current or the preceding calendar year

1 paid remuneration for employment in the amount of \$1,000.00 or  
2 more;

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

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

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

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

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

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

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

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

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

33 (A) Any service performed prior to January 1, 1972, which was  
34 employment as defined in the "unemployment compensation law"  
35 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other  
36 provisions of this subsection, service performed on or after January  
37 1, 1972, including service in interstate commerce, performed for  
38 remuneration or under any contract of hire, written or oral, express  
39 or implied.

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

46 (ii) Service performed after December 31, 1977, in the employ  
47 of this State or any of its instrumentalities or any political  
48 subdivision thereof or any of its instrumentalities or any



1 instrumentality of more than one of the foregoing or any  
2 instrumentality of the foregoing and one or more other states or  
3 political subdivisions, if such service is not excluded from  
4 "employment" under paragraph (D) below.

5 (C) Service performed after December 31, 1971 by an individual  
6 in the employ of a religious, charitable, educational, or other  
7 organization, which is excluded from "employment" as defined in  
8 the Federal Unemployment Tax Act, solely by reason of section  
9 3306 (c)(8) of that act, if such service is not excluded from  
10 "employment" under paragraph (D) below.

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

13 (i) In the employ of (I) a church or convention or association of  
14 churches, or (II) an organization, or school which is operated  
15 primarily for religious purposes and which is operated, supervised,  
16 controlled or principally supported by a church or convention or  
17 association of churches;

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

21 (iii) Prior to January 1, 1978, in the employ of a school which  
22 is not an institution of higher education, and after December 31,  
23 1977, in the employ of a governmental entity referred to in  
24 R.S.43:21-19 (i) (1) (B), if such service is performed by an  
25 individual in the exercise of duties

26 (aa) as an elected official;

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

29 (cc) as a member of the State National Guard or Air National  
30 Guard;

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

33 (ee) in a position which, under or pursuant to the laws of this  
34 State, is designated as a major nontenured policy making or  
35 advisory position, or a policy making or advisory position, the  
36 performance of the duties of which ordinarily does not require more  
37 than eight hours per week; or

38 (iv) By an individual receiving rehabilitation or remunerative  
39 work in a facility conducted for the purpose of carrying out a  
40 program of rehabilitation of individuals whose earning capacity is  
41 impaired by age or physical or mental deficiency or injury or  
42 providing remunerative work for individuals who because of their  
43 impaired physical or mental capacity cannot be readily absorbed in  
44 the competitive labor market;

45 (v) By an individual receiving work-relief or work-training as  
46 part of an unemployment work-relief or work-training program  
47 assisted in whole or in part by any federal agency or an agency of a  
48 state or political subdivision thereof; or

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

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

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

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

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

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

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

46 (G) Notwithstanding any other provision of this subsection,  
47 service in this State with respect to which the taxes required to be  
48 paid under any federal law imposing a tax against which credit may

1 be taken for contributions required to be paid into a state  
2 unemployment fund or which as a condition for full tax credit  
3 against the tax imposed by the Federal Unemployment Tax Act is  
4 required to be covered under the "unemployment compensation  
5 law" (R.S.43:21-1 et seq.).

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

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

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

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

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

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

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

40 (iii) For the purposes of subparagraph (I) (i) in the case of any  
41 individual who is furnished by a crew leader to perform service in  
42 agricultural labor or any other entity and who is not treated as an  
43 employee of such crew leader under (I) (ii)

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

46 (bb) such other entity shall be treated as having paid cash  
47 remuneration to such individual in an amount equal to the amount  
48 of cash remuneration paid to such individual by the crew leader

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

1 individual's service within the state; for example, is temporary or  
2 transitory in nature or consists of isolated transactions.

3 (6) Services performed by an individual for remuneration shall  
4 be deemed to be employment subject to this chapter (R.S.43:21-  
5 1 et seq.) unless and until it is shown to the satisfaction of the  
6 division that:

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

10 (B) Such service is either outside the usual course of the  
11 business for which such service is performed, or that such service is  
12 performed outside of all the places of business of the enterprise for  
13 which such service is performed; and

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

16 (7) Provided that such services are also exempt under the  
17 Federal Unemployment Tax Act, as amended, or that contributions  
18 with respect to such services are not required to be paid into a state  
19 unemployment fund as a condition for a tax offset credit against the  
20 tax imposed by the Federal Unemployment Tax Act, as amended,  
21 the term "employment" shall not include:

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

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

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

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

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

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

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

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

27 (G) Services performed in the employ of fraternal beneficiary  
28 societies, orders, or associations operating under the lodge system  
29 or for the exclusive benefit of the members of a fraternity itself  
30 operating under the lodge system and providing for the payment of  
31 life, sick, accident, or other benefits to the members of such society,  
32 order, or association, or their dependents;

33 (H) Services performed as a member of the board of directors, a  
34 board of trustees, a board of managers, or a committee of any bank,  
35 building and loan, or savings and loan association, incorporated or  
36 organized under the laws of this State or of the United States, where  
37 such services do not constitute the principal employment of the  
38 individual;

39 (I) Service with respect to which unemployment insurance is  
40 payable under an unemployment insurance program established by  
41 an Act of Congress;

42 (J) Service performed by agents of mutual fund brokers or  
43 dealers in the sale of mutual funds or other securities, by agents of  
44 insurance companies, exclusive of industrial insurance agents or by  
45 agents of investment companies, if the compensation to such agents  
46 for such services is wholly on a commission basis;

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

- 1 (L) Services performed in the employ of any veterans'  
2 organization chartered by Act of Congress or of any auxiliary  
3 thereof, no part of the net earnings of which organization, or  
4 auxiliary thereof, inures to the benefit of any private shareholder or  
5 individual;
- 6 (M) Service performed for or in behalf of the owner or operator  
7 of any theater, ballroom, amusement hall or other place of  
8 entertainment, not in excess of 10 weeks in any calendar year for  
9 the same owner or operator, by any leader or musician of a band or  
10 orchestra, commonly called a "name band," entertainer, vaudeville  
11 artist, actor, actress, singer or other entertainer;
- 12 (N) Services performed after January 1, 1973 by an individual  
13 for a labor union organization, known and recognized as a union  
14 local, as a member of a committee or committees reimbursed by the  
15 union local for time lost from regular employment, or as a part-time  
16 officer of a union local and the remuneration for such services is  
17 less than \$1,000.00 in a calendar year;
- 18 (O) Services performed in the sale or distribution of merchandise  
19 by home-to-home salespersons or in-the-home demonstrators whose  
20 remuneration consists wholly of commissions or commissions and  
21 bonuses;
- 22 (P) Service performed in the employ of a foreign government,  
23 including service as a consular, nondiplomatic representative, or  
24 other officer or employee;
- 25 (Q) Service performed in the employ of an instrumentality  
26 wholly owned by a foreign government if (i) the service is of a  
27 character similar to that performed in foreign countries by  
28 employees of the United States Government or of an instrumentality  
29 thereof, and (ii) the division finds that the United States Secretary  
30 of State has certified to the United States Secretary of the Treasury  
31 that the foreign government, with respect to whose instrumentality  
32 exemption is claimed, grants an equivalent exemption with respect  
33 to similar services performed in the foreign country by employees  
34 of the United States Government and of instrumentalities thereof;
- 35 (R) Service in the employ of an international organization  
36 entitled to enjoy the privileges, exemptions and immunities under  
37 the International Organizations Immunities Act  
38 (22 U.S.C. s.288 et seq.);
- 39 (S) Service covered by an election duly approved by an agency  
40 charged with the administration of any other state or federal  
41 unemployment compensation or employment security law, in  
42 accordance with an arrangement pursuant to R.S.43:21-21 during  
43 the effective period of such election;
- 44 (T) Service performed in the employ of a school, college, or  
45 university if such service is performed (i) by a student enrolled at  
46 such school, college, or university on a full-time basis in an  
47 educational program or completing such educational program  
48 leading to a degree at any of the severally recognized levels, or (ii)

1 by the spouse of such a student, if such spouse is advised at the time  
2 such spouse commences to perform such service that (I) the  
3 employment of such spouse to perform such service is provided  
4 under a program to provide financial assistance to such student by  
5 such school, college, or university, and (II) such employment will  
6 not be covered by any program of unemployment insurance;

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

18 (V) Service performed in the employ of a hospital, if such  
19 service is performed by a patient of the hospital; service performed  
20 as a student nurse in the employ of a hospital or a nurses' training  
21 school by an individual who is enrolled and regularly attending  
22 classes in a nurses' training school approved under the laws of this  
23 State;

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

28 (X) Services performed by operators of motor vehicles weighing  
29 18,000 pounds or more, licensed for commercial use and used for  
30 the highway movement of motor freight, who own their equipment  
31 or who lease or finance the purchase of their equipment through an  
32 entity which is not owned or controlled directly or indirectly by the  
33 entity for which the services were performed and who were  
34 compensated by receiving a percentage of the gross revenue  
35 generated by the transportation move or by a schedule of payment  
36 based on the distance and weight of the transportation move;

37 (Y) (Deleted by amendment, P.L.2009, c.211.)

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

44 (AA) Services provided by a commercial fisherman whose  
45 compensation is comprised solely of a percentage of fish caught or  
46 a percentage of the proceeds from the sale of the catch.

47 (8) If one-half or more of the services in any pay period  
48 performed by an individual for an employing unit constitutes



1 employment, all the services of such individual shall be deemed to  
2 be employment; but if more than one-half of the service in any pay  
3 period performed by an individual for an employing unit does not  
4 constitute employment, then none of the service of such individual  
5 shall be deemed to be employment. As used in this paragraph, the  
6 term "pay period" means a period of not more than 31 consecutive  
7 days for which a payment for service is ordinarily made by an  
8 employing unit to individuals in its employ.

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

13 (A) The limousine franchisee is incorporated;

14 (B) The franchisee is subject to regulation by the Interstate  
15 Commerce Commission;

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

19 (D) The franchisee registers with the Department of Labor and  
20 Workforce Development and receives an employer registration  
21 number.

22 (10) Services performed by a legal transcriber, or certified court  
23 reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),  
24 shall not be deemed to be employment subject to the  
25 "unemployment compensation law," R.S.43:21-1 et seq., if those  
26 services are provided to a third party by the transcriber or reporter  
27 who is referred to the third party pursuant to an agreement with  
28 another legal transcriber or legal transcription service, or certified  
29 court reporter or court reporting service, on a freelance basis,  
30 compensation for which is based upon a fee per transcript page, flat  
31 attendance fee, or other flat minimum fee, or combination thereof,  
32 set forth in the agreement.

33 For purposes of this paragraph (10): "legal transcription service"  
34 and "legal transcribing" mean making use, by audio, video or voice  
35 recording, of a verbatim record of court proceedings, depositions,  
36 other judicial proceedings, meetings of boards, agencies,  
37 corporations, or other bodies or groups, and causing that record to  
38 be printed in readable form or produced on a computer screen in  
39 readable form; and "legal transcriber" means a person who engages  
40 in "legal transcribing."

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

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

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

48 (m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (v) "Initial determination" means, subject to the provisions of  
23 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as  
24 measured by an eligible individual's base year employment with a  
25 single employer covering all periods of employment with that  
26 employer during the base year.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (cf: P.L.2017, c.230)

19

20 2. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill exempts from coverage under the "unemployment  
26 compensation law," R.S.43:21-1 et seq., any services provided by a  
27 commercial fisherman whose compensation is comprised solely of a  
28 percentage of fish caught or a percentage of the proceeds from the  
29 sale of the catch. The exempted commercial fisherman would not  
30 be subject to unemployment insurance (UI) taxes and not be eligible  
31 for UI benefits.

32

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35

36 Exempts certain commercial fishermen from coverage under  
37 "unemployment compensation law."

**CHAPTER 346**  
**(CORRECTED COPY)**

**AN ACT** exempting certain commercial fishermen from coverage under the "unemployment compensation law" and amending R.S.43:21-19.

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

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

Definitions.

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

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

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher, except that any year or years throughout which an employer has had no "annual payroll" because of military service shall be deleted from the reckoning; the "average annual payroll" in such case is to be determined on the basis of the prior three or five calendar years in each of which the employer had an "annual payroll" in the operation of his business, if the employer resumes his business within 12 months after separation, discharge or release from such service, under conditions other than dishonorable, and makes application to have his "average annual payroll" determined on the basis of such deletion within 12 months after he resumes his business; provided, however, that "average annual payroll" solely for the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means the average of the annual payrolls of any employer on which he paid contributions to the State disability benefits fund for the last three or five preceding calendar years, whichever average is higher; provided further that only those wages be included on which employer contributions have been paid on or before January 31 (or the next succeeding day if such January 31 is a Saturday or Sunday) immediately preceding the beginning of the 12-month period for which the employer's contribution rate is computed.

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

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

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

The division shall inform the individual of his options under this section as amended by P.L.1995, c.234. If information regarding weeks and wages for the calendar quarter or quarters immediately preceding the benefit year is not available to the division from the regular quarterly reports of wage information and the division is not able to obtain the information

using other means pursuant to State or federal law, the division may base the determination of eligibility for benefits on the affidavit of an individual with respect to weeks and wages for that calendar quarter. The individual shall furnish payroll documentation, if available, in support of the affidavit. A determination of benefits based on an alternative base year shall be adjusted when the quarterly report of wage information from the employer is received if that information causes a change in the determination.

(2) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period defined as a period of disability by section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual who files a claim under the provisions of this paragraph (2) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

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

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

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

(f) "Contributions" means the money payments to the State Unemployment Compensation Fund, required by R.S.43:21-7. "Payments in lieu of contributions" means the money

payments to the State Unemployment Compensation Fund by employers electing or required to make payments in lieu of contributions, as provided in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

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

(h) "Employer" means:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(i) (1) "Employment" means:

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

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

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

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

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

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

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

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

(aa) as an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Services not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if the individual performing such services is a resident of this State and the employing unit for whom such services are performed files with the division an election that the entire service of such individual shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(U) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph

shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(V) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital; service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school approved under the laws of this State;

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

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

(Y) (Deleted by amendment, P.L.2009, c.211.)

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

(AA) Services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch.

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

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

(A) The limousine franchisee is incorporated;

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

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

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

(10) Services performed by a legal transcriber, or certified court reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.), shall not be deemed to be employment subject to the "unemployment compensation law," R.S.43:21-1 et seq., if those services are provided to a third party by the transcriber or reporter who is referred to the third party pursuant to an agreement with another legal transcriber or legal transcription service, or certified court reporter or court reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement.

For purposes of this paragraph (10): "legal transcription service" and "legal transcribing" mean making use, by audio, video or voice recording, of a verbatim record of court proceedings, depositions, other judicial proceedings, meetings of boards, agencies, corporations, or other bodies or groups, and causing that record to be printed in readable form or produced on a computer screen in readable form; and "legal transcriber" means a person who engages in "legal transcribing."

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

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

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

(m) "Unemployment."

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

For the purpose of computing the average weekly wage, the monetary alternative in subparagraph (B) of paragraph (2) of subsection (e) of R.S.43:21-4 shall only apply in those instances where the individual did not have at least 20 base weeks in the base year. For benefit years commencing on or after July 1, 1986, "average weekly wage" means the amount derived by dividing an individual's total base year wages by the number of base weeks worked by the

individual during the base year; provided that for the purpose of computing the average weekly wage, the maximum number of base weeks used in the divisor shall be 52.

(v) "Initial determination" means, subject to the provisions of R.S.43:21-6(b)(2) and (3), a determination of benefit rights as measured by an eligible individual's base year employment with a single employer covering all periods of employment with that employer during the base year.

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

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

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

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

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

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

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

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

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

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

(D) Is a public or other nonprofit institution.

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

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

2. This act shall take effect immediately.

Approved January 10, 2022.

# SENATE, No. 3501

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 9, 2021

**Sponsored by:**

**Senator MICHAEL L. TESTA, JR.**

**District 1 (Atlantic, Cape May and Cumberland)**

**Senator FRED H. MADDEN, JR.**

**District 4 (Camden and Gloucester)**

**Assemblyman VINCENT MAZZEO**

**District 2 (Atlantic)**

**SYNOPSIS**

Exempts certain commercial fishermen from coverage under "unemployment compensation law."

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 12/20/2021)

1 AN ACT exempting certain commercial fishermen from coverage  
2 under the "unemployment compensation law" and amending  
3 R.S.43:21-19.

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

7  
8 1. R.S.43:21-19 is amended to read as follows:  
9 43:21-19. Definitions. As used in this chapter (R.S.43:21-  
10 1 et seq.), unless the context clearly requires otherwise:

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

14 (2) "Average annual payroll" means the average of the annual  
15 payrolls of any employer for the last three or five preceding  
16 calendar years, whichever average is higher, except that any year or  
17 years throughout which an employer has had no "annual payroll"  
18 because of military service shall be deleted from the reckoning; the  
19 "average annual payroll" in such case is to be determined on the  
20 basis of the prior three or five calendar years in each of which the  
21 employer had an "annual payroll" in the operation of his business, if  
22 the employer resumes his business within 12 months after  
23 separation, discharge or release from such service, under conditions  
24 other than dishonorable, and makes application to have his "average  
25 annual payroll" determined on the basis of such deletion within 12  
26 months after he resumes his business; provided, however, that  
27 "average annual payroll" solely for the purposes of paragraph (3) of  
28 subsection (e) of R.S.43:21-7 means the average of the annual  
29 payrolls of any employer on which he paid contributions to the  
30 State disability benefits fund for the last three or five preceding  
31 calendar years, whichever average is higher; provided further that  
32 only those wages be included on which employer contributions have  
33 been paid on or before January 31 (or the next succeeding day if  
34 such January 31 is a Saturday or Sunday) immediately preceding  
35 the beginning of the 12-month period for which the employer's  
36 contribution rate is computed.

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

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

44 With respect to a benefit year commencing on or after July 1,  
45 1995, if an individual does not have sufficient qualifying weeks or

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

**Matter underlined thus is new matter.**

1 wages in his base year to qualify for benefits, the individual shall  
2 have the option of designating that his base year shall be the  
3 "alternative base year," which means the last four completed  
4 calendar quarters immediately preceding the individual's benefit  
5 year; except that, with respect to a benefit year commencing on or  
6 after October 1, 1995, if the individual also does not have sufficient  
7 qualifying weeks or wages in the last four completed calendar  
8 quarters immediately preceding his benefit year to qualify for  
9 benefits, "alternative base year" means the last three completed  
10 calendar quarters immediately preceding his benefit year and, of the  
11 calendar quarter in which the benefit year commences, the portion  
12 of the quarter which occurs before the commencing of the benefit  
13 year.

14 The division shall inform the individual of his options under this  
15 section as amended by P.L.1995, c.234. If information regarding  
16 weeks and wages for the calendar quarter or quarters immediately  
17 preceding the benefit year is not available to the division from the  
18 regular quarterly reports of wage information and the division is not  
19 able to obtain the information using other means pursuant to State  
20 or federal law, the division may base the determination of eligibility  
21 for benefits on the affidavit of an individual with respect to weeks  
22 and wages for that calendar quarter. The individual shall furnish  
23 payroll documentation, if available, in support of the affidavit. A  
24 determination of benefits based on an alternative base year shall be  
25 adjusted when the quarterly report of wage information from the  
26 employer is received if that information causes a change in the  
27 determination.

28 (2) With respect to a benefit year commencing on or after June  
29 1, 1990 for an individual who immediately preceding the benefit  
30 year was subject to a disability compensable under the provisions of  
31 the "Temporary Disability Benefits Law," P.L.1948, c.110  
32 (C.43:21-25 et seq.), "base year" shall mean the first four of the last  
33 five completed calendar quarters immediately preceding the  
34 individual's period of disability, if the employment held by the  
35 individual immediately preceding the period of disability is no  
36 longer available at the conclusion of that period and the individual  
37 files a valid claim for unemployment benefits after the conclusion  
38 of that period. For the purposes of this paragraph, "period of  
39 disability" means the period defined as a period of disability by  
40 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
41 c.110 (C.43:21-27). An individual who files a claim under the  
42 provisions of this paragraph (2) shall not be regarded as having left  
43 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

44 (3) With respect to a benefit year commencing on or after June  
45 1, 1990 for an individual who immediately preceding the benefit  
46 year was subject to a disability compensable under the provisions of  
47 the workers' compensation law (chapter 15 of Title 34 of the  
48 Revised Statutes), "base year" shall mean the first four of the last

1 five completed calendar quarters immediately preceding the  
2 individual's period of disability, if the period of disability was not  
3 longer than two years, if the employment held by the individual  
4 immediately preceding the period of disability is no longer  
5 available at the conclusion of that period and if the individual files a  
6 valid claim for unemployment benefits after the conclusion of that  
7 period. For the purposes of this paragraph, "period of disability"  
8 means the period from the time at which the individual becomes  
9 unable to work because of the compensable disability until the time  
10 that the individual becomes able to resume work and continue work  
11 on a permanent basis. An individual who files a claim under the  
12 provisions of this paragraph (3) shall not be regarded as having left  
13 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

14 (d) "Benefit year" with respect to any individual means the 364  
15 consecutive calendar days beginning with the day on, or as of,  
16 which he first files a valid claim for benefits, and thereafter  
17 beginning with the day on, or as of, which the individual next files a  
18 valid claim for benefits after the termination of his last preceding  
19 benefit year. Any claim for benefits made in accordance with  
20 subsection (a) of R.S.43:21-6 shall be deemed to be a "valid claim"  
21 for the purpose of this subsection if (1) he is unemployed for the  
22 week in which, or as of which, he files a claim for benefits; and (2)  
23 he has fulfilled the conditions imposed by subsection (e) of  
24 R.S.43:21-4.

25 (e) (1) "Division" means the Division of Unemployment and  
26 Temporary Disability Insurance of the Department of Labor and  
27 Workforce Development, and any transaction or exercise of  
28 authority by the director of the division thereunder, or under this  
29 chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by  
30 the division.

31 (2) "Controller" means the Office of the Assistant  
32 Commissioner for Finance and Controller of the Department of  
33 Labor and Workforce Development, established by the 1982  
34 Reorganization Plan of the Department of Labor.

35 (f) "Contributions" means the money payments to the State  
36 Unemployment Compensation Fund, required by R.S.43:21-7.  
37 "Payments in lieu of contributions" means the money payments to  
38 the State Unemployment Compensation Fund by employers electing  
39 or required to make payments in lieu of contributions, as provided  
40 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-  
41 7.3).

42 (g) "Employing unit" means the State or any of its  
43 instrumentalities or any political subdivision thereof or any of its  
44 instrumentalities or any instrumentality of more than one of the  
45 foregoing or any instrumentality of any of the foregoing and one or  
46 more other states or political subdivisions or any individual or type  
47 of organization, any partnership, association, trust, estate, joint-  
48 stock company, insurance company or corporation, whether

1 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or  
2 successor thereof, or the legal representative of a deceased person,  
3 which has or subsequent to January 1, 1936, had in its employ one  
4 or more individuals performing services for it within this State. All  
5 individuals performing services within this State for any employing  
6 unit which maintains two or more separate establishments within  
7 this State shall be deemed to be employed by a single employing  
8 unit for all the purposes of this chapter (R.S.43:21-1 et seq.). Each  
9 individual employed to perform or to assist in performing the work  
10 of any agent or employee of an employing unit shall be deemed to  
11 be employed by such employing unit for all the purposes of this  
12 chapter (R.S.43:21-1 et seq.), whether such individual was hired or  
13 paid directly by such employing unit or by such agent or employee;  
14 provided the employing unit had actual or constructive knowledge  
15 of the work.

16 (h) "Employer" means:

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

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

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

30 (4) Any employing unit which together with one or more other  
31 employing units is owned or controlled (by legally enforceable  
32 means or otherwise), directly or indirectly by the same interests, or  
33 which owns or controls one or more other employing units (by  
34 legally enforceable means or otherwise), and which, if treated as a  
35 single unit with such other employing unit or interest, would be an  
36 employer under paragraph (1) of this subsection;

37 (5) Any employing unit for which service in employment as  
38 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December  
39 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is  
40 performed after December 31, 1977;

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

46 (7) Any employing unit not an employer by reason of any other  
47 paragraph of this subsection (h) for which, within either the current  
48 or preceding calendar year, service is or was performed with respect

1 to which such employing unit is liable for any federal tax against  
2 which credit may be taken for contributions required to be paid into  
3 a state unemployment fund; or which, as a condition for approval of  
4 the "unemployment compensation law" for full tax credit against  
5 the tax imposed by the Federal Unemployment Tax Act, is required  
6 pursuant to such act to be an employer under this chapter  
7 (R.S.43:21-1 et seq.);

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

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

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

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

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

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

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

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

28 (A) Any service performed prior to January 1, 1972, which was  
29 employment as defined in the "unemployment compensation law"  
30 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other  
31 provisions of this subsection, service performed on or after January  
32 1, 1972, including service in interstate commerce, performed for  
33 remuneration or under any contract of hire, written or oral, express  
34 or implied.

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

41 (ii) Service performed after December 31, 1977, in the employ  
42 of this State or any of its instrumentalities or any political  
43 subdivision thereof or any of its instrumentalities or any  
44 instrumentality of more than one of the foregoing or any  
45 instrumentality of the foregoing and one or more other states or  
46 political subdivisions, if such service is not excluded from  
47 "employment" under paragraph (D) below.



1 (C) Service performed after December 31, 1971 by an individual  
2 in the employ of a religious, charitable, educational, or other  
3 organization, which is excluded from "employment" as defined in  
4 the Federal Unemployment Tax Act, solely by reason of section  
5 3306 (c)(8) of that act, if such service is not excluded from  
6 "employment" under paragraph (D) below.

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

9 (i) In the employ of (I) a church or convention or association of  
10 churches, or (II) an organization, or school which is operated  
11 primarily for religious purposes and which is operated, supervised,  
12 controlled or principally supported by a church or convention or  
13 association of churches;

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

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

22 (aa) as an elected official;

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

25 (cc) as a member of the State National Guard or Air National  
26 Guard;

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

29 (ee) in a position which, under or pursuant to the laws of this  
30 State, is designated as a major nontenured policy making or  
31 advisory position, or a policy making or advisory position, the  
32 performance of the duties of which ordinarily does not require more  
33 than eight hours per week; or

34 (iv) By an individual receiving rehabilitation or remunerative  
35 work in a facility conducted for the purpose of carrying out a  
36 program of rehabilitation of individuals whose earning capacity is  
37 impaired by age or physical or mental deficiency or injury or  
38 providing remunerative work for individuals who because of their  
39 impaired physical or mental capacity cannot be readily absorbed in  
40 the competitive labor market;

41 (v) By an individual receiving work-relief or work-training as  
42 part of an unemployment work-relief or work-training program  
43 assisted in whole or in part by any federal agency or an agency of a  
44 state or political subdivision thereof; or

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

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

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

15 (ii) The American employer has no place of business in the  
16 United States, but (I) the American employer is an individual who  
17 is a resident of this State; or (II) the American employer is a  
18 corporation which is organized under the laws of this State; or (III)  
19 the American employer is a partnership or trust and the number of  
20 partners or trustees who are residents of this State is greater than the  
21 number who are residents of another state; or

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

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

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

42 (G) Notwithstanding any other provision of this subsection,  
43 service in this State with respect to which the taxes required to be  
44 paid under any federal law imposing a tax against which credit may  
45 be taken for contributions required to be paid into a state  
46 unemployment fund or which as a condition for full tax credit  
47 against the tax imposed by the Federal Unemployment Tax Act is

1 required to be covered under the "unemployment compensation  
2 law" (R.S.43:21-1 et seq.).

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

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

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

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

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

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

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

37 (iii) For the purposes of subparagraph (I) (i) in the case of any  
38 individual who is furnished by a crew leader to perform service in  
39 agricultural labor or any other entity and who is not treated as an  
40 employee of such crew leader under (I) (ii)

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

43 (bb) such other entity shall be treated as having paid cash  
44 remuneration to such individual in an amount equal to the amount  
45 of cash remuneration paid to such individual by the crew leader  
46 (either on his own behalf or on behalf of such other entity) for the  
47 service in agricultural labor performed for such other entity.

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

1 (6) Services performed by an individual for remuneration shall  
2 be deemed to be employment subject to this chapter (R.S.43:21-  
3 1 et seq.) unless and until it is shown to the satisfaction of the  
4 division that:

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

8 (B) Such service is either outside the usual course of the  
9 business for which such service is performed, or that such service is  
10 performed outside of all the places of business of the enterprise for  
11 which such service is performed; and

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

14 (7) Provided that such services are also exempt under the  
15 Federal Unemployment Tax Act, as amended, or that contributions  
16 with respect to such services are not required to be paid into a state  
17 unemployment fund as a condition for a tax offset credit against the  
18 tax imposed by the Federal Unemployment Tax Act, as amended,  
19 the term "employment" shall not include:

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

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

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

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

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

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

47 (E) Service performed in the employ of any other state or its  
48 political subdivisions or of an instrumentality of any other state or

1 states or their political subdivisions to the extent that such  
2 instrumentality is with respect to such service exempt under the  
3 Constitution of the United States from the tax imposed under the  
4 Federal Unemployment Tax Act, as amended, except as provided in  
5 R.S.43:21-19 (i) (1) (B) above;

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

25 (G) Services performed in the employ of fraternal beneficiary  
26 societies, orders, or associations operating under the lodge system  
27 or for the exclusive benefit of the members of a fraternity itself  
28 operating under the lodge system and providing for the payment of  
29 life, sick, accident, or other benefits to the members of such society,  
30 order, or association, or their dependents;

31 (H) Services performed as a member of the board of directors, a  
32 board of trustees, a board of managers, or a committee of any bank,  
33 building and loan, or savings and loan association, incorporated or  
34 organized under the laws of this State or of the United States, where  
35 such services do not constitute the principal employment of the  
36 individual;

37 (I) Service with respect to which unemployment insurance is  
38 payable under an unemployment insurance program established by  
39 an Act of Congress;

40 (J) Service performed by agents of mutual fund brokers or  
41 dealers in the sale of mutual funds or other securities, by agents of  
42 insurance companies, exclusive of industrial insurance agents or by  
43 agents of investment companies, if the compensation to such agents  
44 for such services is wholly on a commission basis;

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

47 (L) Services performed in the employ of any veterans'  
48 organization chartered by Act of Congress or of any auxiliary

1 thereof, no part of the net earnings of which organization, or  
2 auxiliary thereof, inures to the benefit of any private shareholder or  
3 individual;

4 (M) Service performed for or in behalf of the owner or operator  
5 of any theater, ballroom, amusement hall or other place of  
6 entertainment, not in excess of 10 weeks in any calendar year for  
7 the same owner or operator, by any leader or musician of a band or  
8 orchestra, commonly called a "name band," entertainer, vaudeville  
9 artist, actor, actress, singer or other entertainer;

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

16 (O) Services performed in the sale or distribution of merchandise  
17 by home-to-home salespersons or in-the-home demonstrators whose  
18 remuneration consists wholly of commissions or commissions and  
19 bonuses;

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

23 (Q) Service performed in the employ of an instrumentality  
24 wholly owned by a foreign government if (i) the service is of a  
25 character similar to that performed in foreign countries by  
26 employees of the United States Government or of an instrumentality  
27 thereof, and (ii) the division finds that the United States Secretary  
28 of State has certified to the United States Secretary of the Treasury  
29 that the foreign government, with respect to whose instrumentality  
30 exemption is claimed, grants an equivalent exemption with respect  
31 to similar services performed in the foreign country by employees  
32 of the United States Government and of instrumentalities thereof;

33 (R) Service in the employ of an international organization  
34 entitled to enjoy the privileges, exemptions and immunities under  
35 the International Organizations Immunities Act  
36 (22 U.S.C. s.288 et seq.);

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

42 (T) Service performed in the employ of a school, college, or  
43 university if such service is performed (i) by a student enrolled at  
44 such school, college, or university on a full-time basis in an  
45 educational program or completing such educational program  
46 leading to a degree at any of the severally recognized levels, or (ii)  
47 by the spouse of such a student, if such spouse is advised at the time  
48 such spouse commences to perform such service that (I) the

1 employment of such spouse to perform such service is provided  
2 under a program to provide financial assistance to such student by  
3 such school, college, or university, and (II) such employment will  
4 not be covered by any program of unemployment insurance;

5 (U) Service performed by an individual who is enrolled at a  
6 nonprofit or public educational institution which normally  
7 maintains a regular faculty and curriculum and normally has a  
8 regularly organized body of students in attendance at the place  
9 where its educational activities are carried on, as a student in a full-  
10 time program, taken for credit at such institution, which combines  
11 academic instruction with work experience, if such service is an  
12 integral part of such program, and such institution has so certified  
13 to the employer, except that this subparagraph shall not apply to  
14 service performed in a program established for or on behalf of an  
15 employer or group of employers;

16 (V) Service performed in the employ of a hospital, if such  
17 service is performed by a patient of the hospital; service performed  
18 as a student nurse in the employ of a hospital or a nurses' training  
19 school by an individual who is enrolled and regularly attending  
20 classes in a nurses' training school approved under the laws of this  
21 State;

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

26 (X) Services performed by operators of motor vehicles weighing  
27 18,000 pounds or more, licensed for commercial use and used for  
28 the highway movement of motor freight, who own their equipment  
29 or who lease or finance the purchase of their equipment through an  
30 entity which is not owned or controlled directly or indirectly by the  
31 entity for which the services were performed and who were  
32 compensated by receiving a percentage of the gross revenue  
33 generated by the transportation move or by a schedule of payment  
34 based on the distance and weight of the transportation move;

35 (Y) (Deleted by amendment, P.L.2009, c.211.)

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

42 (AA) Services provided by a commercial fisherman whose  
43 compensation is comprised solely of a percentage of fish caught or  
44 a percentage of the proceeds from the sale of the catch.

45 (8) If one-half or more of the services in any pay period  
46 performed by an individual for an employing unit constitutes  
47 employment, all the services of such individual shall be deemed to  
48 be employment; but if more than one-half of the service in any pay



1 period performed by an individual for an employing unit does not  
2 constitute employment, then none of the service of such individual  
3 shall be deemed to be employment. As used in this paragraph, the  
4 term "pay period" means a period of not more than 31 consecutive  
5 days for which a payment for service is ordinarily made by an  
6 employing unit to individuals in its employ.

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

11 (A) The limousine franchisee is incorporated;

12 (B) The franchisee is subject to regulation by the Interstate  
13 Commerce Commission;

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

17 (D) The franchisee registers with the Department of Labor and  
18 Workforce Development and receives an employer registration  
19 number.

20 (10) Services performed by a legal transcriber, or certified court  
21 reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),  
22 shall not be deemed to be employment subject to the  
23 "unemployment compensation law," R.S.43:21-1 et seq., if those  
24 services are provided to a third party by the transcriber or reporter  
25 who is referred to the third party pursuant to an agreement with  
26 another legal transcriber or legal transcription service, or certified  
27 court reporter or court reporting service, on a freelance basis,  
28 compensation for which is based upon a fee per transcript page, flat  
29 attendance fee, or other flat minimum fee, or combination thereof,  
30 set forth in the agreement.

31 For purposes of this paragraph (10): "legal transcription service"  
32 and "legal transcribing" mean making use, by audio, video or voice  
33 recording, of a verbatim record of court proceedings, depositions,  
34 other judicial proceedings, meetings of boards, agencies,  
35 corporations, or other bodies or groups, and causing that record to  
36 be printed in readable form or produced on a computer screen in  
37 readable form; and "legal transcriber" means a person who engages  
38 in "legal transcribing."

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

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

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

46 (m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (u) "Average weekly wage" means the amount derived by  
47 dividing an individual's total wages received during his base year  
48 base weeks (as defined in subsection (t) of this section) from that

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

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

19 (v) "Initial determination" means, subject to the provisions of  
20 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as  
21 measured by an eligible individual's base year employment with a  
22 single employer covering all periods of employment with that  
23 employer during the base year.

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

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

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

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

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

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

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

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

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

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

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

10 Notwithstanding any of the foregoing provisions of this  
11 subsection, all colleges and universities in this State are institutions  
12 of higher education for purposes of this section.

13 (z) "Hospital" means an institution which has been licensed,  
14 certified or approved under the law of this State as a hospital.  
15 (cf: P.L.2017, c.230)

16

17 2. This act shall take effect immediately.

18

19

20

#### STATEMENT

21

22 This bill exempts from coverage under the "unemployment  
23 compensation law," R.S.43:21-1 et seq., any services provided by a  
24 commercial fisherman whose compensation is comprised solely of a  
25 percentage of fish caught or a percentage of the proceeds from the  
26 sale of the catch. The exempted commercial fisherman would not  
27 be subject to unemployment insurance (UI) taxes and not be eligible  
28 for UI benefits.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 3501

# STATE OF NEW JERSEY

DATED: DECEMBER 13, 2021

The Assembly Appropriations Committee reports favorably Senate Bill No. 3501.

This bill exempts from coverage under the "unemployment compensation law," R.S.43:21-1 et seq., any services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch. The exempted commercial fisherman would not be subject to unemployment insurance (UI) taxes and not be eligible for UI benefits.

As reported by the committee, Senate Bill No. 3501 is identical to Assembly Bill No. 5531 which was also reported by the committee on this date.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill will result in annual indeterminate, likely marginal, decreases in revenues and expenditures to the Unemployment Compensation (UI) Fund. The revenue and expenditure decreases will be realized by exempting commercial fishermen, whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch, from UI compensation benefits and also exempting them from liability to UI taxes. The OLS also notes that the bill may potentially decrease revenues and expenditures to the State Disability Benefit Fund by an indeterminate and nominal amount.

SENATE LABOR COMMITTEE

STATEMENT TO

**SENATE, No. 3501**

**STATE OF NEW JERSEY**

DATED: MAY 6, 2021

The Senate Labor Committee reports favorably Senate Bill No. 3501.

This bill exempts from coverage under the "unemployment compensation law," R.S.43:21-1 et seq., any services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch. The exempted commercial fisherman would not be subject to unemployment insurance (UI) taxes and not be eligible for UI benefits.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

**SENATE, No. 3501**

**STATE OF NEW JERSEY**

DATED: JUNE 22, 2021

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3501.

This bill exempts from coverage under the "unemployment compensation law," R.S.43:21-1 et seq., any services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch. The exempted commercial fisherman would not be subject to unemployment insurance (UI) taxes and not be eligible for UI benefits.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill.



**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 3501**  
**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

DATED: JUNE 29, 2021

**SUMMARY**

**Synopsis:** Exempts certain commercial fishermen from coverage under “unemployment compensation law.”

**Type of Impact:** Annual decrease in revenue and expenditures to the Unemployment Compensation Fund

**Agencies Affected:** Department of Labor and Workforce Development

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>Expenditure Decrease to UI Fund</b>	Indeterminate
<b>Revenue Decrease to UI Fund</b>	Indeterminate

- The Office of Legislative Services (OLS) notes that the bill will result in annual indeterminate, likely marginal, decreases in revenues and expenditures to the Unemployment Compensation (UI) Fund. The revenue and expenditure decreases will be realized by exempting commercial fishermen, whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch, from UI compensation benefits and also exempting them from liability to UI taxes.

**BILL DESCRIPTION**

This bill exempts from coverage under the unemployment compensation law any services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch. The exempted commercial fisherman would not be subject to UI taxes and not be eligible for UI benefits.

**FISCAL ANALYSIS**

***EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that the bill will result in annual indeterminate, likely marginal, decreases in revenues and expenditures to the UI Fund. The revenue and expenditure decreases will be realized by exempting commercial fishermen, whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch, from UI compensation benefits and also exempting them from liability to UI taxes.

*Section: Commerce, Labor and Industry*

*Analyst: Juan C. Rodriguez*  
*Senior Fiscal Analyst*

*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# ASSEMBLY, No. 5531

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 25, 2021

**Sponsored by:**

**Assemblyman VINCENT MAZZEO**

**District 2 (Atlantic)**

**SYNOPSIS**

Exempts certain commercial fishermen from coverage under "unemployment compensation law."

**CURRENT VERSION OF TEXT**

As introduced.



A5531 MAZZEO

2

1 AN ACT exempting certain commercial fishermen from coverage  
2 under the "unemployment compensation law" and amending  
3 R.S.43:21-19.

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

7  
8 1. R.S.43:21-19 is amended to read as follows:

9 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et  
10 seq.), unless the context clearly requires otherwise:

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

14 (2) "Average annual payroll" means the average of the annual  
15 payrolls of any employer for the last three or five preceding  
16 calendar years, whichever average is higher, except that any year or  
17 years throughout which an employer has had no "annual payroll"  
18 because of military service shall be deleted from the reckoning; the  
19 "average annual payroll" in such case is to be determined on the  
20 basis of the prior three or five calendar years in each of which the  
21 employer had an "annual payroll" in the operation of his business, if  
22 the employer resumes his business within 12 months after  
23 separation, discharge or release from such service, under conditions  
24 other than dishonorable, and makes application to have his "average  
25 annual payroll" determined on the basis of such deletion within 12  
26 months after he resumes his business; provided, however, that  
27 "average annual payroll" solely for the purposes of paragraph (3) of  
28 subsection (e) of R.S.43:21-7 means the average of the annual  
29 payrolls of any employer on which he paid contributions to the  
30 State disability benefits fund for the last three or five preceding  
31 calendar years, whichever average is higher; provided further that  
32 only those wages be included on which employer contributions have  
33 been paid on or before January 31 (or the next succeeding day if  
34 such January 31 is a Saturday or Sunday) immediately preceding  
35 the beginning of the 12-month period for which the employer's  
36 contribution rate is computed.

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

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

44 With respect to a benefit year commencing on or after July 1,  
45 1995, if an individual does not have sufficient qualifying weeks or

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

**Matter underlined thus is new matter.**

1 wages in his base year to qualify for benefits, the individual shall  
2 have the option of designating that his base year shall be the  
3 "alternative base year," which means the last four completed  
4 calendar quarters immediately preceding the individual's benefit  
5 year; except that, with respect to a benefit year commencing on or  
6 after October 1, 1995, if the individual also does not have sufficient  
7 qualifying weeks or wages in the last four completed calendar  
8 quarters immediately preceding his benefit year to qualify for  
9 benefits, "alternative base year" means the last three completed  
10 calendar quarters immediately preceding his benefit year and, of the  
11 calendar quarter in which the benefit year commences, the portion  
12 of the quarter which occurs before the commencing of the benefit  
13 year.

14 The division shall inform the individual of his options under this  
15 section as amended by P.L.1995, c.234. If information regarding  
16 weeks and wages for the calendar quarter or quarters immediately  
17 preceding the benefit year is not available to the division from the  
18 regular quarterly reports of wage information and the division is not  
19 able to obtain the information using other means pursuant to State  
20 or federal law, the division may base the determination of eligibility  
21 for benefits on the affidavit of an individual with respect to weeks  
22 and wages for that calendar quarter. The individual shall furnish  
23 payroll documentation, if available, in support of the affidavit. A  
24 determination of benefits based on an alternative base year shall be  
25 adjusted when the quarterly report of wage information from the  
26 employer is received if that information causes a change in the  
27 determination.

28 (2) With respect to a benefit year commencing on or after June  
29 1, 1990 for an individual who immediately preceding the benefit  
30 year was subject to a disability compensable under the provisions of  
31 the "Temporary Disability Benefits Law," P.L.1948, c.110  
32 (C.43:21-25 et seq.), "base year" shall mean the first four of the last  
33 five completed calendar quarters immediately preceding the  
34 individual's period of disability, if the employment held by the  
35 individual immediately preceding the period of disability is no  
36 longer available at the conclusion of that period and the individual  
37 files a valid claim for unemployment benefits after the conclusion  
38 of that period. For the purposes of this paragraph, "period of  
39 disability" means the period defined as a period of disability by  
40 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
41 c.110 (C.43:21-27). An individual who files a claim under the  
42 provisions of this paragraph (2) shall not be regarded as having left  
43 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

44 (3) With respect to a benefit year commencing on or after June  
45 1, 1990 for an individual who immediately preceding the benefit  
46 year was subject to a disability compensable under the provisions of  
47 the workers' compensation law (chapter 15 of Title 34 of the  
48 Revised Statutes), "base year" shall mean the first four of the last

1 five completed calendar quarters immediately preceding the  
2 individual's period of disability, if the period of disability was not  
3 longer than two years, if the employment held by the individual  
4 immediately preceding the period of disability is no longer  
5 available at the conclusion of that period and if the individual files a  
6 valid claim for unemployment benefits after the conclusion of that  
7 period. For the purposes of this paragraph, "period of disability"  
8 means the period from the time at which the individual becomes  
9 unable to work because of the compensable disability until the time  
10 that the individual becomes able to resume work and continue work  
11 on a permanent basis. An individual who files a claim under the  
12 provisions of this paragraph (3) shall not be regarded as having left  
13 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

14 (d) "Benefit year" with respect to any individual means the 364  
15 consecutive calendar days beginning with the day on, or as of,  
16 which he first files a valid claim for benefits, and thereafter  
17 beginning with the day on, or as of, which the individual next files a  
18 valid claim for benefits after the termination of his last preceding  
19 benefit year. Any claim for benefits made in accordance with  
20 subsection (a) of R.S.43:21-6 shall be deemed to be a "valid claim"  
21 for the purpose of this subsection if (1) he is unemployed for the  
22 week in which, or as of which, he files a claim for benefits; and (2)  
23 he has fulfilled the conditions imposed by subsection (e) of  
24 R.S.43:21-4.

25 (e) (1) "Division" means the Division of Unemployment and  
26 Temporary Disability Insurance of the Department of Labor and  
27 Workforce Development, and any transaction or exercise of  
28 authority by the director of the division thereunder, or under this  
29 chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by  
30 the division.

31 (2) "Controller" means the Office of the Assistant  
32 Commissioner for Finance and Controller of the Department of  
33 Labor and Workforce Development, established by the 1982  
34 Reorganization Plan of the Department of Labor.

35 (f) "Contributions" means the money payments to the State  
36 Unemployment Compensation Fund, required by R.S.43:21-7.  
37 "Payments in lieu of contributions" means the money payments to  
38 the State Unemployment Compensation Fund by employers electing  
39 or required to make payments in lieu of contributions, as provided  
40 in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-  
41 7.3).

42 (g) "Employing unit" means the State or any of its  
43 instrumentalities or any political subdivision thereof or any of its  
44 instrumentalities or any instrumentality of more than one of the  
45 foregoing or any instrumentality of any of the foregoing and one or  
46 more other states or political subdivisions or any individual or type  
47 of organization, any partnership, association, trust, estate, joint-  
48 stock company, insurance company or corporation, whether

1 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or  
2 successor thereof, or the legal representative of a deceased person,  
3 which has or subsequent to January 1, 1936, had in its employ one  
4 or more individuals performing services for it within this State. All  
5 individuals performing services within this State for any employing  
6 unit which maintains two or more separate establishments within  
7 this State shall be deemed to be employed by a single employing  
8 unit for all the purposes of this chapter (R.S.43:21-1 et seq.). Each  
9 individual employed to perform or to assist in performing the work  
10 of any agent or employee of an employing unit shall be deemed to  
11 be employed by such employing unit for all the purposes of this  
12 chapter (R.S.43:21-1 et seq.), whether such individual was hired or  
13 paid directly by such employing unit or by such agent or employee;  
14 provided the employing unit had actual or constructive knowledge  
15 of the work.

16 (h) "Employer" means:

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

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

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

30 (4) Any employing unit which together with one or more other  
31 employing units is owned or controlled (by legally enforceable  
32 means or otherwise), directly or indirectly by the same interests, or  
33 which owns or controls one or more other employing units (by  
34 legally enforceable means or otherwise), and which, if treated as a  
35 single unit with such other employing unit or interest, would be an  
36 employer under paragraph (1) of this subsection;

37 (5) Any employing unit for which service in employment as  
38 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December  
39 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is  
40 performed after December 31, 1977;

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

46 (7) Any employing unit not an employer by reason of any other  
47 paragraph of this subsection (h) for which, within either the current  
48 or preceding calendar year, service is or was performed with respect

1 to which such employing unit is liable for any federal tax against  
2 which credit may be taken for contributions required to be paid into  
3 a state unemployment fund; or which, as a condition for approval of  
4 the "unemployment compensation law" for full tax credit against  
5 the tax imposed by the Federal Unemployment Tax Act, is required  
6 pursuant to such act to be an employer under this chapter  
7 (R.S.43:21-1 et seq.);

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

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

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

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

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

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

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

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

28 (A) Any service performed prior to January 1, 1972, which was  
29 employment as defined in the "unemployment compensation law"  
30 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other  
31 provisions of this subsection, service performed on or after January  
32 1, 1972, including service in interstate commerce, performed for  
33 remuneration or under any contract of hire, written or oral, express  
34 or implied.

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

41 (ii) Service performed after December 31, 1977, in the employ  
42 of this State or any of its instrumentalities or any political  
43 subdivision thereof or any of its instrumentalities or any  
44 instrumentality of more than one of the foregoing or any  
45 instrumentality of the foregoing and one or more other states or  
46 political subdivisions, if such service is not excluded from  
47 "employment" under paragraph (D) below.



1 (C) Service performed after December 31, 1971 by an individual  
2 in the employ of a religious, charitable, educational, or other  
3 organization, which is excluded from "employment" as defined in  
4 the Federal Unemployment Tax Act, solely by reason of section  
5 3306 (c)(8) of that act, if such service is not excluded from  
6 "employment" under paragraph (D) below.

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

9 (i) In the employ of (I) a church or convention or association of  
10 churches, or (II) an organization, or school which is operated  
11 primarily for religious purposes and which is operated, supervised,  
12 controlled or principally supported by a church or convention or  
13 association of churches;

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

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

22 (aa) as an elected official;

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

25 (cc) as a member of the State National Guard or Air National  
26 Guard;

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

29 (ee) in a position which, under or pursuant to the laws of this  
30 State, is designated as a major nontenured policy making or  
31 advisory position, or a policy making or advisory position, the  
32 performance of the duties of which ordinarily does not require more  
33 than eight hours per week; or

34 (iv) By an individual receiving rehabilitation or remunerative  
35 work in a facility conducted for the purpose of carrying out a  
36 program of rehabilitation of individuals whose earning capacity is  
37 impaired by age or physical or mental deficiency or injury or  
38 providing remunerative work for individuals who because of their  
39 impaired physical or mental capacity cannot be readily absorbed in  
40 the competitive labor market;

41 (v) By an individual receiving work-relief or work-training as  
42 part of an unemployment work-relief or work-training program  
43 assisted in whole or in part by any federal agency or an agency of a  
44 state or political subdivision thereof; or

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

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

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

15 (ii) The American employer has no place of business in the  
16 United States, but (I) the American employer is an individual who  
17 is a resident of this State; or (II) the American employer is a  
18 corporation which is organized under the laws of this State; or (III)  
19 the American employer is a partnership or trust and the number of  
20 partners or trustees who are residents of this State is greater than the  
21 number who are residents of another state; or

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

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

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

42 (G) Notwithstanding any other provision of this subsection,  
43 service in this State with respect to which the taxes required to be  
44 paid under any federal law imposing a tax against which credit may  
45 be taken for contributions required to be paid into a state  
46 unemployment fund or which as a condition for full tax credit  
47 against the tax imposed by the Federal Unemployment Tax Act is

1 required to be covered under the "unemployment compensation  
2 law" (R.S.43:21-1 et seq.).

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

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

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

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

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

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

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

37 (iii) For the purposes of subparagraph (I) (i) in the case of any  
38 individual who is furnished by a crew leader to perform service in  
39 agricultural labor or any other entity and who is not treated as an  
40 employee of such crew leader under (I) (ii)

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

43 (bb) such other entity shall be treated as having paid cash  
44 remuneration to such individual in an amount equal to the amount  
45 of cash remuneration paid to such individual by the crew leader  
46 (either on his own behalf or on behalf of such other entity) for the  
47 service in agricultural labor performed for such other entity.

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

1 (6) Services performed by an individual for remuneration shall  
2 be deemed to be employment subject to this chapter (R.S.43:21-  
3 1 et seq.) unless and until it is shown to the satisfaction of the  
4 division that:

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

8 (B) Such service is either outside the usual course of the  
9 business for which such service is performed, or that such service is  
10 performed outside of all the places of business of the enterprise for  
11 which such service is performed; and

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

14 (7) Provided that such services are also exempt under the  
15 Federal Unemployment Tax Act, as amended, or that contributions  
16 with respect to such services are not required to be paid into a state  
17 unemployment fund as a condition for a tax offset credit against the  
18 tax imposed by the Federal Unemployment Tax Act, as amended,  
19 the term "employment" shall not include:

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

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

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

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

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

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

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

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

27 (G) Services performed in the employ of fraternal beneficiary  
28 societies, orders, or associations operating under the lodge system  
29 or for the exclusive benefit of the members of a fraternity itself  
30 operating under the lodge system and providing for the payment of  
31 life, sick, accident, or other benefits to the members of such society,  
32 order, or association, or their dependents;

33 (H) Services performed as a member of the board of directors, a  
34 board of trustees, a board of managers, or a committee of any bank,  
35 building and loan, or savings and loan association, incorporated or  
36 organized under the laws of this State or of the United States, where  
37 such services do not constitute the principal employment of the  
38 individual;

39 (I) Service with respect to which unemployment insurance is  
40 payable under an unemployment insurance program established by  
41 an Act of Congress;

42 (J) Service performed by agents of mutual fund brokers or  
43 dealers in the sale of mutual funds or other securities, by agents of  
44 insurance companies, exclusive of industrial insurance agents or by  
45 agents of investment companies, if the compensation to such agents  
46 for such services is wholly on a commission basis;

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

3 (L) Services performed in the employ of any veterans'  
4 organization chartered by Act of Congress or of any auxiliary  
5 thereof, no part of the net earnings of which organization, or  
6 auxiliary thereof, inures to the benefit of any private shareholder or  
7 individual;

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

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

20 (O) Services performed in the sale or distribution of merchandise  
21 by home-to-home salespersons or in-the-home demonstrators whose  
22 remuneration consists wholly of commissions or commissions and  
23 bonuses;

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

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

37 (R) Service in the employ of an international organization  
38 entitled to enjoy the privileges, exemptions and immunities under  
39 the International Organizations Immunities Act  
40 (22 U.S.C. s.288 et seq.);

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

46 (T) Service performed in the employ of a school, college, or  
47 university if such service is performed (i) by a student enrolled at  
48 such school, college, or university on a full-time basis in an

1 educational program or completing such educational program  
2 leading to a degree at any of the severally recognized levels, or (ii)  
3 by the spouse of such a student, if such spouse is advised at the time  
4 such spouse commences to perform such service that (I) the  
5 employment of such spouse to perform such service is provided  
6 under a program to provide financial assistance to such student by  
7 such school, college, or university, and (II) such employment will  
8 not be covered by any program of unemployment insurance;

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

20 (V) Service performed in the employ of a hospital, if such  
21 service is performed by a patient of the hospital; service performed  
22 as a student nurse in the employ of a hospital or a nurses' training  
23 school by an individual who is enrolled and regularly attending  
24 classes in a nurses' training school approved under the laws of this  
25 State;

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

30 (X) Services performed by operators of motor vehicles weighing  
31 18,000 pounds or more, licensed for commercial use and used for  
32 the highway movement of motor freight, who own their equipment  
33 or who lease or finance the purchase of their equipment through an  
34 entity which is not owned or controlled directly or indirectly by the  
35 entity for which the services were performed and who were  
36 compensated by receiving a percentage of the gross revenue  
37 generated by the transportation move or by a schedule of payment  
38 based on the distance and weight of the transportation move;

39 (Y) (Deleted by amendment, P.L.2009, c.211.)

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

46 (AA) Services provided by a commercial fisherman whose  
47 compensation is comprised solely of a percentage of fish caught or  
48 a percentage of the proceeds from the sale of the catch.



1 (8) If one-half or more of the services in any pay period  
2 performed by an individual for an employing unit constitutes  
3 employment, all the services of such individual shall be deemed to  
4 be employment; but if more than one-half of the service in any pay  
5 period performed by an individual for an employing unit does not  
6 constitute employment, then none of the service of such individual  
7 shall be deemed to be employment. As used in this paragraph, the  
8 term "pay period" means a period of not more than 31 consecutive  
9 days for which a payment for service is ordinarily made by an  
10 employing unit to individuals in its employ.

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

15 (A) The limousine franchisee is incorporated;

16 (B) The franchisee is subject to regulation by the Interstate  
17 Commerce Commission;

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

21 (D) The franchisee registers with the Department of Labor and  
22 Workforce Development and receives an employer registration  
23 number.

24 (10) Services performed by a legal transcriber, or certified court  
25 reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),  
26 shall not be deemed to be employment subject to the  
27 "unemployment compensation law," R.S.43:21-1 et seq., if those  
28 services are provided to a third party by the transcriber or reporter  
29 who is referred to the third party pursuant to an agreement with  
30 another legal transcriber or legal transcription service, or certified  
31 court reporter or court reporting service, on a freelance basis,  
32 compensation for which is based upon a fee per transcript page, flat  
33 attendance fee, or other flat minimum fee, or combination thereof,  
34 set forth in the agreement.

35 For purposes of this paragraph (10): "legal transcription service"  
36 and "legal transcribing" mean making use, by audio, video or voice  
37 recording, of a verbatim record of court proceedings, depositions,  
38 other judicial proceedings, meetings of boards, agencies,  
39 corporations, or other bodies or groups, and causing that record to  
40 be printed in readable form or produced on a computer screen in  
41 readable form; and "legal transcriber" means a person who engages  
42 in "legal transcribing."

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

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

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

5 (m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 employers from whom the individual earns remuneration equal to  
2 not less than the amount defined in this paragraph (3) during that  
3 week.

4 (u) "Average weekly wage" means the amount derived by  
5 dividing an individual's total wages received during his base year  
6 base weeks (as defined in subsection (t) of this section) from that  
7 most recent base year employer with whom he has established at  
8 least 20 base weeks, by the number of base weeks in which such  
9 wages were earned. In the event that such claimant had no employer  
10 in his base year with whom he had established at least 20 base  
11 weeks, then such individual's average weekly wage shall be  
12 computed as if all of his base week wages were received from one  
13 employer and as if all his base weeks of employment had been  
14 performed in the employ of one employer.

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

25 (v) "Initial determination" means, subject to the provisions of  
26 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as  
27 measured by an eligible individual's base year employment with a  
28 single employer covering all periods of employment with that  
29 employer during the base year.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (cf: P.L.2017, c.230)

21

22 2. This act shall take effect immediately.

23

24

25

#### STATEMENT

26

27 This bill exempts from coverage under the "unemployment  
28 compensation law," R.S.43:21-1 et seq., any services provided by a  
29 commercial fisherman whose compensation is comprised solely of a  
30 percentage of fish caught or a percentage of the proceeds from the  
31 sale of the catch. The exempted commercial fisherman would not  
32 be subject to unemployment insurance (UI) taxes and not be eligible  
33 for UI benefits.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 5531**

**STATE OF NEW JERSEY**

DATED: MAY 17, 2021

The Assembly Labor Committee reports favorably Assembly Bill No. 5531.

This bill exempts from coverage under the "unemployment compensation law," R.S.43:21-1 et seq., any services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch. The exempted commercial fisherman would not be subject to unemployment insurance (UI) taxes and not be eligible for UI benefits.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 5531**

**STATE OF NEW JERSEY**

DATED: DECEMBER 13, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5531.

This bill exempts from coverage under the "unemployment compensation law," R.S.43:21-1 et seq., any services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch. The exempted commercial fisherman would not be subject to unemployment insurance (UI) taxes and not be eligible for UI benefits.

As reported by the committee, Assembly Bill No. 5531 is identical to Senate Bill No. 3501 which was also reported by the committee on this date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the bill will result in annual indeterminate, likely marginal, decreases in revenues and expenditures to the Unemployment Compensation (UI) Fund. The revenue and expenditure decreases will be realized by exempting commercial fishermen, whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch, from UI compensation benefits and also exempting them from liability to UI taxes. The OLS also notes that the bill may potentially decrease revenues and expenditures to the State Disability Benefit Fund by an indeterminate and nominal amount.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 5531**  
**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

DATED: DECEMBER 16, 2021

**SUMMARY**

**Synopsis:** Exempts certain commercial fishermen from coverage under “unemployment compensation law.”

**Type of Impact:** Annual decrease in revenue and expenditures to the Unemployment Compensation Fund.

**Agencies Affected:** Department of Labor and Workforce Development

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>Expenditure Decrease to UI Fund</b>	Indeterminate
<b>Revenue Decrease to UI Fund</b>	Indeterminate

- The Office of Legislative Services (OLS) notes that the bill will result in annual indeterminate, likely marginal, decreases in revenues and expenditures to the Unemployment Compensation (UI) Fund. The revenue and expenditure decreases will be realized by exempting commercial fishermen, whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch, from UI compensation benefits and also exempting them from liability to UI taxes.
- The OLS also notes that the bill may potentially decrease revenues and expenditures to the State Disability Benefit Fund by an indeterminate and nominal amount.

**BILL DESCRIPTION**

This bill exempts from coverage under the unemployment compensation law any services provided by a commercial fisherman whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch. The exempted commercial fisherman would not be subject to UI taxes and not be eligible for UI benefits.



## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that the bill will result in annual indeterminate, likely marginal, decreases in revenues and expenditures to the UI Fund. The revenue and expenditure decreases will be realized by exempting commercial fishermen, whose compensation is comprised solely of a percentage of fish caught or a percentage of the proceeds from the sale of the catch, from UI compensation benefits and also exempting them from liability to UI taxes.

The OLS also notes that, while the bill does not have an explicit impact on either the Temporary Disability Leave or Family Leave programs, exempting the abovementioned fishermen may potentially result in an indeterminate, likely nominal, impact to the State Disability Benefit Fund. Under the statute governing programs, a covered individual is defined as any person who is in employment, as defined in the unemployment compensation law. By exempting commercial fishermen from the definition of employment in the UI law, the bill may lead to an indeterminate decrease in revenues and expenditures to the State Disability Benefit Fund.

*Section:*            *Commerce, Labor and Industry*  
*Analyst:*          *Juan C. Rodriguez*  
                         *Senior Fiscal Analyst*  
*Approved:*        *Thomas Koenig*  
                         *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).