

43:21-9

LEGISLATIVE HISTORY CHECKLIST

HJSA 43:21-9 (Unemployment compensation--exclude certain agents of mutual benefit associations)

LAWS OF 1979 CHAPTER 379

Bill No. A690

Sponsor(s) Schuck

Date Introduced Feb. 14, 1978

Committee: Assembly Labor

Senate Labor, Industry and Professions

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly June 21, 1979

Senate Dec. 17, 1979

Date of approval Feb. 5, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~ (Below)

Committee Statement: Assembly Yes ~~xxx~~

Senate Yes ~~xxx~~

Fiscal Note ~~xxx~~ No

Veto message ~~xxx~~ No

Message on signing Yes ~~xxx~~

Following were printed:

Reports ~~xxx~~ No

Hearings ~~xxx~~ No

Sponsor's statement:

This bill amends the unemployment compensation law to exclude from the definition of covered employment those services performed after January 1, 1969 by agents of mutual benefit associations where the compensation to such agents for such services is wholly on a commission basis.

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ASSEMBLY, No. 690

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 14, 1978

By Assemblyman SCHUCK

Referred to Committee on Labor

AN ACT concerning unemployment compensation 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:

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 3 or 5 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 3 to 5 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 "aver-
age annual payroll" determined on the basis of such deletion
within 12 months after he resumes his business; provided, how-
ever, that "average annual payroll" solely for the purposes of
paragraph (3) of subsection (e) of section 43:21-7 of this Title
means the average of the annual payrolls of any employer on
which he paid contributions to the State Disability Benefits Fund
for the last 3 or 5 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

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

28 or Sunday) immediately preceding the beginning of the 12 months'
29 period for which the employer's contribution rate is computed.

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

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

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

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

57 (f) "Contributions" means the money payments to the State
58 Unemployment Compensation Fund required by R. S. 43:21-7.
59 "Payments in lieu of contributions" means the money payments
60 to the State Unemployment Compensation Fund by employers
61 electing or required to make payments in lieu of contributions as
62 provided in section 3 or section 4 of this act (C. 43:21-7.2 and
63 43:21-7.3).

64 (g) "Employing unit" means the State or any of its instrumen-
65 talities or any political subdivision thereof or any of its instru-
66 mentalities or any instrumentality of more than one of the fore-
67 going or any instrumentality of any of the foregoing and one or
68 more other States or political subdivisions or any individual or type
69 of organization, any partnership, association, trust, estate, joint-

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

86 (h) "Employer" means:

87 (1) Any employing unit which in either the current or the preced-
88 ing calendar year paid remuneration for employment in the amount
89 of \$1,000.00 or more;

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

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

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

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

111 (6) Any employing unit for which service in employment as
112 defined in R. S. 43:21-19 (i) (1) (C) is performed after December
113 31, 1971 and which in either the current or the preceding calendar
114 year paid remuneration for employment in the amount of \$1,000.00
115 or more;

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

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

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

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

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

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

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

139 (14) Any employing unit which, having become an employer
140 under the Unemployment Compensation Law (R. S. 43:21-1 et
141 seq.), has not under R. S. 43:21-8 ceased to be an employer; or for
142 the effective period of its election pursuant to R. S. 43:21-8, any
143 other employing unit which has elected to become fully subject to
144 this chapter (R. S. 43:21-1 et seq.);

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

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

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

159 (ii) Service performed after December 31, 1977, in the em-
 160 ploy of this State or any of its instrumentalities or any political
 161 subdivision thereof or any of its instrumentalities or any
 162 instrumentality of more than one of the foregoing or any in-
 163 strumentality of the foregoing and one or more other states
 164 or political subdivisions if such service is not excluded from
 165 "employment" under paragraph (D) below.

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

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

174 (i) In the employ of (I) a church or convention or associa-
 175 tion of churches, or (II) an organization or school which is
 176 operated primarily for religious purposes and which is oper-
 177 ated, supervised, controlled or principally supported by a
 178 church or convention or association of churches;

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

183 (iii) Prior to January 1, 1978, in the employ of a school
 184 which is not an institution of higher education, and after
 185 December 31, 1977, in the employ of a governmental entity
 186 referred to in section 19 (i) (1) (B) if such service is per-
 187 formed by an individual in the exercise of duties

188 (aa) as an elected official;

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

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

193 (dd) as an employee serving on a temporary basis in
 194 case of fire, storm, snow, earthquake, flood or similar emer-
 195 gency;

196 (ee) in a position which, under or pursuant to the laws
197 of this State, is designated as a major nontenured policy-
198 making or advisory position, or a policymaking or advisory
199 position the performance of the duties of which ordinarily
200 does not require more than 8 hours per week; or

201 (iv) By an individual receiving rehabilitation or remunera-
202 tive work in a facility conducted for the purpose of carrying
203 out a program of rehabilitation of individuals whose earning
204 capacity is impaired by age or physical or mental deficiency
205 or injury or providing remunerative work for individuals who
206 because of their impaired physical or mental capacity cannot
207 be readily absorbed in the competitive labor market.

208 (v) By an individual receiving work-relief or work-training
209 as part of an unemployment work-relief or work-training
210 program assisted in whole or in part by any Federal agency
211 or an agency of a State or political subdivision thereof; or

212 (vi) Prior to January 1, 1978, for a hospital in a State
213 prison or other State correctional institution by an inmate of
214 the prison or correction institution and after December 31,
215 1977, by an inmate of a custodial or penal institution.

216 (E) The term "employment" shall include the services of
217 an individual who is a citizen of the United States, performed
218 outside the United States after December 31, 1971 (except in
219 Canada and in the case of the Virgin Islands, after December
220 31, 1971 and prior to January 1 of the year follow-
221 ing the year in which the U.S. Secretary of Labor approves
222 the unemployment compensation law of the Virgin Islands
223 under section 3304 (a) of the Internal Revenue Code of 1954)
224 in the employ of an American employer (other than the ser-
225 vice which is deemed employment under the provisions of
226 paragraphs 43:21-19 (i) (2) or (5) or the parallel provisions
227 of another state's Unemployment Compensation Law), if

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

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

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

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

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

260 (G) Notwithstanding any other provision of this subsection,
 261 service in this State with respect to which the taxes required
 262 to be paid under any Federal law imposing a tax against which
 263 credit may be taken for contributions required to be paid into
 264 a State unemployment fund or which as a condition for full
 265 tax credit against the tax imposed by the Federal Unemploy-
 266 ment Tax Act is required to be covered under the Unemploy-
 267 ment Compensation Law (R. S. 43:21-1 et seq.).

268 (H) The term "United States" when used in a geographical
 269 sense in subsection R. S. 43:21-19 (i) includes the states, the
 270 District of Columbia the commonwealth of Puerto Rico and,
 271 effective on the day after the day on which the U.S. Secretary
 272 of Labor approves for the first time under section 3304 (a) of
 273 the Internal Revenue Code of 1954 an unemployment com-
 274 pensation law submitted to the Secretary by the Virgin Islands
 275 for such approval, the Virgin Islands.

276 (I) (i) Service performed after December 31, 1977 in agri-
 277 cultural labor in a calendar year for an entity which is an
 278 employer as defined in the Unemployment Compensation Law
 279 (R. S. 43:21-1 et seq.) as of January 1 of such year; or for
 280 an employing unit which

281 (aa) during any calendar quarter in either the current or
282 the preceding calendar year paid remuneration in cash of
283 \$20,000.00 or more to individuals employed in agricultural
284 labor, or

285 (bb) for some portion of a day in each of 20 different
286 calendar weeks, whether or not such weeks were consecutive,
287 in either the current or the preceding calendar year, em-
288 ployed in agricultural labor 10 or more individuals, regard-
289 less of whether they were employed at the same moment
290 of time.

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

295 (aa) if such crew leader holds a valid certification of reg-
296 istration under the Farm Labor Contractor Registration Act
297 of 1963; or P. L. 1971, c. 192 (C. 34:8A-7 et seq.); or sub-
298 stantially all the members of such crew operate or maintain
299 tractors, mechanized harvesting or cropdusting equipment,
300 or any other mechanized equipment, which is provided by
301 such crew leader; and

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

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

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

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

316 (iv) For the purposes of subparagraph (I) (i), the term
317 "crew leader" means an individual who

318 (aa) furnishes individual to perform service in agricul-
319 tural labor for any other entity;

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

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

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

331 (2) The term "employment" shall include an individual's en-
 332 tire service performed within or both within and without this
 333 State if:

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

335 (B) The service is not localized in any state but some of the
 336 service is performed in this State, and (i) the base of opera-
 337 tions, or, if there is no base of operations, then the place from
 338 which such service is directed or controlled, is in this State;
 339 or (ii) the base of operations or place from which such service
 340 is directed or controlled is not in any state in which some part
 341 of the service is performed, but the individual's residence is
 342 in this State.

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

349 (4) Services not covered under paragraph (2) of this subsection
 350 and performed entirely without this State, with respect to no part
 351 of which contributions are required and paid under an Unemploy-
 352 ment Compensation Law of any other state or of the Federal
 353 Government, shall be deemed to be employment subject to this
 354 chapter (R. S. 43:21-1 et seq.) if the individual performing such
 355 services is a resident of this State and the employing unit for
 356 whom such services are performed files with the division an election
 357 that the entire service of such individual shall be deemed to be
 358 employment subject to this chapter (R. S. 43:21-1 et seq.).

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

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

361 (B) The service is performed both within and without such
 362 state, but the service performed without such state is incidental
 363 to the individual's service within the State, for example, is
 364 temporary or transitory in nature or consists of isolated trans-
 365 actions.

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

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

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

377 (C) Such individual is customarily engaged in an inde-
378 pendently established trade, occupation, profession or business.

379 (7) Provided that such services are also exempted under the
380 Federal Unemployment Tax Act, as amended, or that contributions
381 with respect to such services are not required to be paid into a
382 State Unemployment Fund as a condition for a tax offset credit
383 against the tax imposed by the Federal Unemployment Tax Act,
384 as amended, the term "employment" shall not include:

385 (A) Agricultural labor performed prior to January 1, 1978;
386 and after December 31, 1977, only if performed in a calendar
387 year for an entity which is not an employer as defined in the
388 Unemployment Compensation Law (R. S. 43:21-1 et seq.) as
389 of January 1 of such calendar year; or unless performed for
390 an employing unit which

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

394 (ii) for some portion of a day in each of 20 different calendar
395 weeks, whether or not such weeks were consecutive, in either
396 the current or the preceding calendar year, employed in agricul-
397 tural labor 10 or more individuals, regardless of whether they
398 were employed at the same moment of time.

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

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

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

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

422 (F) Service performed in the employ of the United States
423 Government or of an instrumentality of the United States
424 exempt under the Constitution of the United States from the
425 contributions imposed by the Unemployment Compensation
426 Law, except that to the extent that the Congress of the United
427 States shall permit states to require any instrumentalities of
428 the United States to make payments into an unemployment
429 fund under a State Unemployment Compensation Law, all of
430 the provisions of this act shall be applicable to such instru-
431 mentalities, and to service performed for such instrumentali-
432 ties, in the same manner, to the same extent and on the same
433 terms as to all other employers, employing units, individuals
434 and services; provided, that if this State shall not be certified
435 for any year by the Secretary of Labor of the United States
436 under section 3304 of the Federal Internal Revenue Code (26
437 U. S. C., sec. 3304), the payments required of such instrumentali-
438 ties with respect to such year shall be refunded by the division
439 from the fund in the same manner and within the same period
440 as is provided in R. S. 43:21-14 (f) with respect to contribu-
441 tions erroneously paid to or collected by the division;

442 (G) Services performed in the employ of fraternal bene-
443 ficiary societies, orders, or associations operating under the
444 lodge system or for the exclusive benefit of the members of a
445 fraternity itself operating under the lodge system and provid-
446 ing for the payment of life, sick, accident, or other benefits
447 to the members of such society, order, or association, or their
448 dependents;

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

455 (I) Service with respect to which unemployment insurance
 456 is payable under an unemployment insurance program estab-
 457 lished by an Act of Congress;

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

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

466 (L) Services performed in the employ of any veterans'
 467 organization chartered by Act of Congress or of any auxiliary
 468 thereof, no part of the net earnings of which organization, or
 469 auxiliary thereof, inures to the benefit of any private share-
 470 holder or individual;

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

478 (N) Services performed after January 1, 1973 by an indi-
 479 vidual for a labor union organization, known and recognized as
 480 a union local, as a member of a committee or committees reim-
 481 bursed by the union local for time lost from regular employ-
 482 ment, or as a part-time officer of a union local and the
 483 remuneration for such services is less than \$1,000.00 in a
 484 calendar year;

485 (O) Services performed in the sale or distribution of mer-
 486 chandise by home-to-home salespersons or in-the-home
 487 demonstrators whose remuneration consists wholly of commis-
 488 sions or commissions and bonuses.

489 (P) Service performed in the employ of a foreign govern-
 490 ment, including service as a consular, nondiplomatic repre-
 491 sentative, or other officer or employee;

492 (Q) Service performed in the employ of an instrumentality
493 wholly owned by a foreign government if (i) the service is of
494 a character similar to that performed in foreign countries by
495 employees of the United States Government or of an instru-
496 mentality thereof, and (ii) the division finds that the United
497 States Secretary of State has certified to the United States
498 Secretary of the Treasury that the foreign government with
499 respect to whose instrumentality exemption is claimed, grants
500 an equivalent exemption with respect to similar services per-
501 formed in the foreign country by employees of the United
502 States Government and of instrumentalities thereof;

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

507 (S) Service covered by an election duly approved by an
508 agency charged with the administration of any other state or
509 Federal Unemployment Compensation or Employment Secu-
510 rity Law, in accordance with an arrangement pursuant to
511 R. S. 43:21-21 during the effective period of such election;

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

524 (U) Service performed by an individual under the age of
525 22 who is enrolled at a nonprofit or public educational institu-
526 tion which normally maintains a regular faculty and curricu-
527 lum and normally has a regularly organized body of students
528 in attendance at the place where its educational activities are
529 carried on, as a student in a full-time program, taken for
530 credit at such institution, which combines academic instruction
531 with work experience, if such service is an integral part of such
532 program, and such institution has so certified to the employer,
533 except that this subparagraph shall not apply to service

534 performed in a program established for or on behalf of an
535 employer or group of employers;

536 (V) Service performed in the employ of a hospital, if such
537 service is performed by a patient of the hospital; service
538 performed as a student nurse in the employ of a hospital or a
539 nurses' training school by an individual who is enrolled and
540 regularly attending classes in a nurses' training school
541 approved under the laws of this State; and service performed
542 as an intern in the employ of a hospital by an individual who
543 has completed a 4-year course in a medical school approved
544 pursuant to the law of this State.

545 (W) Services performed after ***[January 1, 1969]*** *after
545A the effective date of this amendatory act* by agents of
546 mutual benefit associations if the compensation to such agents
547 for such services is wholly on a commission basis.

548 (8) If one-half or more of the services in any pay period per-
549 formed by an individual for an employing unit constitutes employ-
550 ment, all the services of such individual shall be deemed to be
551 employment; but if more than one-half of the service in any pay
552 period performed by an individual for an employing unit does
553 not constitute employment, then none of the service of such
554 individual shall be deemed to be employment. As used in this
555 paragraph, the term "pay period" means a period of not more
556 than 31 consecutive days for which a payment for service is ordi-
557 narily made by an employing unit to individuals in its employ.

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

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

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

568 (m) Unemployment.

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

575 (2) The term "remuneration" with respect to any individual
576 for benefit years commencing on or after July 1, 1961, and as used

577 in this subsection, shall include only that part of the same which
578 in any week exceeds 20% of his weekly benefit rate (fractional
579 parts of a dollar omitted) or \$5.00 whichever is the larger.

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

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

587 (o) "Wages" means remuneration paid by employers for em-
588 ployment; provided, however, that for eligibility and benefit pur-
589 poses wages earned but not paid when the amount thereof has been
590 calculated and is due as determined by the established and custo-
591 mary practices of the employer shall be construed as having been
592 paid when earned. If a worker receives gratuities regularly in
593 the course of his employment from others than his employer, his
594 "wages" shall also include the gratuities so received if reported
595 in writing to his employer in accordance with regulations of the
596 division, and if not so reported, his "wages" shall be determined
597 in accordance with the minimum wage rates prescribed under any
598 labor law or regulation of this State or of the United States, or the
599 amount or remuneration actually received by the employee from
600 his employer, whichever is the higher.

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

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

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

609 (s) "Investment company" means any company as defined in
610 paragraph 1-a of c. 322 of the laws of 1938, entitled "An act con-
611 cerning investment companies, and supplementing Title 17 of the
612 Revised Statutes by adding thereto a new chapter entitled 'invest-
613 ment companies.' "

614 (t) "Base week" means any calendar week of an individual's
615 base year during which he earned in employment from an employer
616 remuneration equal to not less than \$40.00; provided, if in any
617 calendar week, an individual is in employment with more than
618 one employer, he may in such calendar week establish a base week

619 with respect to each such employer from whom the individual earns
620 remuneration equal to not less than \$30.00 during such week.

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

632 If on applicaiton of a claimant it is determined that he has been
633 employed during at least the 4 weeks immediately preceding his
634 separation from employment by an employer on a substantially
635 reduced schedule of weekly hours due to lack of work, all weeks
636 of substantially reduced schedule within the base period and his
637 wages therefor shall be disregarded in computing his average
638 weekly wage.

639 (v) "Initial determination" means, subject to the provisions of
640 R. S. 43:21-6 (b) (2) and (3), a determination of benefit rights as
641 measured by an eligible individual's base year employment with a
642 single employer covering all periods of employment with that
643 employer during the base year. Subject to the provisions of R. S.
644 43:21-3 (d) (3) if an individual has been in employment in his
645 base year with more than one employer, no benefits shall be paid to
646 that individual under any successive initial determination until his
647 benefit rights have been exhausted under the next preceding initial
648 determination.

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

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

655 (y) (1) "Education institution" means any public or other
655a nonprofit institution (including an institution of higher education)

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

661 (B) Which is approved, licensed or issued a permit to oper-
662 ate as a school by the State Department of Education or other
663 government agency that is authorized within the State to
664 approve, license or issue a permit for the operation of a
665 school; and

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

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

671 (A) Admits as regular students only individuals having
672 a certificate of graduation from a high school, or the recog-
673 nized equivalent of such a certificate;

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

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

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

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

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

1 2. This act shall take effect immediately.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 690

STATE OF NEW JERSEY

DATED: APRIL 9, 1979

The Assembly Labor Committee favorably reports this legislation, with amendments, to exempt any mutual benefit association operating in the State from coverage and therefore payment of unemployment compensation taxes for the service of its wholly commissioned agents. The exemption is made through a modification of the definition of (covered) "employment" in the unemployment compensation law.

At least one firm, a mutual company which the committee knows would be affected, has about twenty agents—most of whom work 10 to 12 hours a week for the firm—and who receive income from a variety of other sources. The bill is not without precedent since the law already exempts from coverage many workers in a similar class, such as those in commissioned home to home sales and demonstration, commissioned real estate sales and brokerage and commissioned agents of mutual fund brokers or dealers.

The committee amended the bill to delete the originally proposed retroactivity feature.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO
ASSEMBLY, No. 690

[OFFICIAL COPY REPRINT]

—◆—
STATE OF NEW JERSEY
—◆—

DATED: DECEMBER 10, 1979

This bill amends the unemployment compensation law to exclude from the definition of covered employment those services performed after the effective date of the act by agents of mutual benefit associations where the compensation to such agents for such services is wholly on a commission basis.

S-3293, sponsored by Senator Charles B. Yates (D-Burlington), which repeals certain necessary sections of Title 9 of the Revised Statutes pertaining to children.

The bill repeals the following section of Title 9:

- prohibiting the sale of cigarettes or tobacco to minors;
- making it unlawful for a minor to play billiards or pool in any saloon or other public profit-making establishment;
- authorizing courts, constables, sheriffs and police officers to assist in the prevention of cruelty to children;
- authorizing benevolent and fraternal organizations to act as a guardian of a child; and
- providing for the establishment of a Juvenile Delinquency Commission.

These sections have been repealed because they are superseded by pursuant statutes.

S-3309, sponsored by Senator John F. Russo (D-Ocean), which provides for the sale of a 4.5 acre parcel of land declared surplus by the Department of Defense located in Woodbridge across Route 1 from the Rahway State Prison.

S-3314, sponsored by Senator Frank J. Dodd (D-Essex), which provides for the sale of an approximately 1.4 acre parcel of land (the Orange Armory) in the City of Orange.

S-3477, sponsored by Senator Eugene J. Bedell (D-Monmouth), which authorizes the exchange of 44.918 acres of State land for a parcel of identical size now owned by the county of Monmouth. This exchange allows both parties to round out existing holdings in the Turkey Swamp area.

A-690, sponsored by Assemblyman Ernest F. Schuck (D-Camden), which exempts agents of mutual benefit associations from the provisions of the unemployment compensation law if the agents are solely paid through commissions.

Currently, mutual fund and securities brokers, insurance agents, real estate agents and door-to-door sales people are exempt from the law.