

43:21-19

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SPONSOR(S) Palaia

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[FIRST REPRINT]

SENATE, No. 64

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Senator PALAIA

1 AN ACT excluding certain professional services from
2 employment subject to unemployment compensation and
3 temporary disability contributions and amending R.S.43:21-19.
4

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

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

8 43:21-19. Definitions. As used in this chapter (R.S.43:21-1
9 et seq.), unless the context clearly requires otherwise:

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

13 (2) "Average annual payroll" means the average of the annual
14 payrolls of any employer for the last three or five preceding
15 calendar years, whichever average is higher, except that any year
16 or years throughout which an employer has had no "annual
17 payroll" because of military service shall be deleted from the
18 reckoning; the "average annual payroll" in such case is to be
19 determined on the basis of the prior three or five calendar years
20 in each of which the employer had an "annual payroll" in the
21 operation of his business, if the employer resumes his business
22 within 12 months after separation, discharge or release from such
23 service, under conditions other than dishonorable, and makes
24 application to have his "average annual payroll" determined on
25 the basis of such deletion within 12 months after he resumes his
26 business; provided, however, that "average annual payroll" solely
27 for the purposes of paragraph (3) of subsection (e) of R.S.43:21-7
28 means the average of the annual payrolls of any employer on
29 which he paid contributions to the State disability benefits fund
30 for the last three or five preceding calendar years, whichever
31 average is higher; provided further that only those wages be
32 included on which employer contributions have been paid on or
33 before January 31 (or the next succeeding day if such January 31
34 is a Saturday or Sunday) immediately preceding the beginning of
35 the 12-month period for which the employer's contribution rate
36 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 January 1, 1953, shall mean the 52 calendar weeks

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCM committee amendments adopted November 23, 1992.

1 ending with the second week immediately preceding an
2 individual's benefit year. "Base year" with respect to benefit
3 years commencing on or after July 1, 1986, shall mean the first
4 four of the last five completed calendar quarters immediately
5 preceding an individual's benefit year.

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

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

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

53 (e) (1) "Division" means the Division of Unemployment and
54 Temporary Disability Insurance of the Department of Labor, and

1 any transaction or exercise of authority by the director of the
2 division thereunder, or under this chapter (R.S.43:21-1 et seq.),
3 shall be deemed to be performed by the division.

4 (2) "Controller" means the Office of the Assistant
5 Commissioner for Finance and Controller of the Department of
6 Labor, established by the 1982 Reorganization Plan of the
7 Department of Labor.

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

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

38 (h) "Employer" means:

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

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

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

52 (4) Any employing unit which together with one or more other
53 employing units is owned or controlled (by legally enforceable
54 means or otherwise), directly or indirectly by the same interests,

1 or which owns or controls one or more other employing units (by
2 legally enforceable means or otherwise), and which, if treated as
3 a single unit with such other employing unit or interest, would be
4 an employer under paragraph (1) of this subsection;

5 (5) Any employing unit for which service in employment as
6 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
7 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
8 performed after December 31, 1977;

9 (6) Any employing unit for which service in employment as
10 defined in R.S.43:21-19 (i) (1) (C) is performed after December
11 31, 1971 and which in either the current or the preceding
12 calendar year paid remuneration for employment in the amount
13 of \$1,000.00 or more;

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

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

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

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

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

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

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

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

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

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

51 (B) (i) Service performed after December 31, 1971 by an
52 individual in the employ of this State or any of its
53 instrumentalities or in the employ of this State and one or more
54 other states or their instrumentalities for a hospital or institution

1 of higher education located in this State, if such service is not
2 excluded from "employment" under paragraph (D) below.

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

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

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

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

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

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

31 (aa) as an elected official;

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

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

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

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

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

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

54 (vi) Prior to January 1, 1978, for a hospital in a State prison or

1 other State correctional institution by an inmate of the prison or
2 correctional institution and after December 31, 1977, by an
3 inmate of a custodial or penal institution.

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

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

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

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

32 (iv) An "American employer," for the purposes of this
33 subparagraph (E), means (I) an individual who is a resident of the
34 United States; or (II) a partnership, if two-thirds or more of the
35 partners are residents of the United States; or (III) a trust, if all
36 the trustees are residents of the United States; or (IV) a
37 corporation organized under the laws of the United States or of
38 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
42 such vessel or aircraft, if the operating office from which the
43 operations of such vessel or aircraft operating within, or within
44 and without, the United States are ordinarily and regularly
45 supervised, managed, 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
48 be paid under any federal law imposing a tax against which credit
49 may be taken for contributions required to be paid into a state
50 unemployment fund or which as a condition for full tax credit
51 against the tax imposed by the Federal Unemployment Tax Act is
52 required to be covered under the "unemployment compensation
53 law" (R.S.43:21-1 et seq.).

54 (H) The term "United States" when used in a geographical

1 sense in subsection R.S.43:21-19 (i) includes the states, the
2 District of Columbia, the Commonwealth of Puerto Rico and,
3 effective on the day after the day on which the U.S. Secretary of
4 Labor approves for the first time under section 3304 (a) of the
5 Internal Revenue Code of 1986 (26 U.S.C §3304 (a)) an
6 unemployment compensation law submitted to the Secretary by
7 the Virgin Islands for such approval, the Virgin Islands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (7) Provided that such services are also exempt under the
53 Federal Unemployment Tax Act, as amended, or that
54 contributions with respect to such services are not required to be

1 paid into a state unemployment fund as a condition for a tax
2 offset credit against the tax imposed by the Federal
3 Unemployment Tax Act, as amended, the term "employment"
4 shall not include:

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

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

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

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

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

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

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

40 (F) Service performed in the employ of the United States
41 Government or of any instrumentality of the United States
42 except under the Constitution of the United States from the
43 contributions imposed by the "unemployment compensation law,"
44 except that to the extent that the Congress of the United States
45 shall permit states to require any instrumentalities of the United
46 States to make payments into an unemployment fund under a
47 state unemployment compensation law, all of the provisions of
48 this act shall be applicable to such instrumentalities, and to
49 service performed for such instrumentalities, in the same
50 manner, to the same extent and on the same terms as to all other
51 employers, employing units, individuals and services; provided
52 that if this State shall not be certified for any year by the
53 Secretary of Labor of the United States under section 3304 of the
54 federal Internal Revenue Code of 1986 (26 U.S.C. §3304), the

1 payments required of such instrumentalities with respect to such
2 year shall be refunded by the division from the fund in the same
3 manner and within the same period as is provided in R.S.43:21-14
4 (f) with respect to contributions erroneously paid to or collected
5 by the division;

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

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

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

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

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

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

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

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

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

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

53 (Q) Service performed in the employ of an instrumentality
54 wholly owned by a foreign government if (i) the service is of a

1 character similar to that performed in foreign countries by
2 employees of the United States Government or of an
3 instrumentality thereof, and (ii) the division finds that the United
4 States Secretary of State has certified to the United States
5 Secretary of the Treasury that the foreign government, with
6 respect to whose instrumentality exemption is claimed, grants an
7 equivalent exemption with respect to similar services performed
8 in the foreign country by employees of the United States
9 Government and of instrumentalities thereof;

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

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

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

31 (U) Service performed by an individual who is enrolled at a
32 nonprofit or public educational institution which normally
33 maintains a regular faculty and curriculum and normally has a
34 regularly organized body of students in attendance at the place
35 where its educational activities are carried on, as a student in a
36 full-time program, taken for credit at such institution, which
37 combines academic instruction with work experience, if such
38 service is an integral part of such program, and such institution
39 has so certified to the employer, except that this subparagraph
40 shall not apply to service performed in a program established for
41 or on behalf of an employer or group of employers;

42 (V) Service performed in the employ of a hospital, if such
43 service is performed by a patient of the hospital; service
44 performed as a student nurse in the employ of a hospital or a
45 nurses' training school by an individual who is enrolled and
46 regularly attending classes in a nurses' training school approved
47 under the laws of this State; and service performed as an intern
48 in the employ of a hospital by an individual who has completed a
49 four-year course in a medical school approved pursuant to the
50 laws of this State;

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

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

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

19 (Z) Services performed ¹[in the office of] , using facilities
20 provided by¹ a travel agent ^{1,1} by ¹a person, commonly known
21 as¹ an outside travel agent ¹, who acts as an independent
22 contractor, is paid¹ on a commission basis, ¹[provided that the
23 outside travel agent who is given the use of office space and
24 equipment by the travel agent does not have an
25 employer-employee relationship with that travel agent, has his
26 own clients separate from those of the travel agent,]¹ sets his
27 own work schedule and receives no benefits, sick leave, vacation
28 or other leave from the travel agent ¹owning the facilities¹.

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

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

43 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

4 (m) "Unemployment."

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

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.

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
24 may by regulation otherwise prescribe.

25 (n) "Unemployment compensation administration fund" means
26 the unemployment compensation administration fund established
27 by 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
31 course of his employment from other than his employer, his
32 "wages" shall also include the gratuities so received, if reported
33 in writing to his employer in accordance with regulations of the
34 division, and if not so reported, his "wages" shall be determined
35 in accordance with the minimum wage rates prescribed under any
36 labor law or regulation of this State or of the United States, or
37 the amount of remuneration actually received by the employee
38 from his employer, whichever is 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,
44 or 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.

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

50 (t) (1) "Base week" for a benefit year commencing prior to
51 October 1, 1984, means, except as otherwise provided in
52 paragraph (2) of this subsection, any calendar week of an
53 individual's base year during which he earned in employment
54 from an employer remuneration equal to not less than \$30.00.

1 "Base week" for a benefit year commencing on or after
2 October 1, 1984 and prior to October 1, 1985 means any calendar
3 week of an individual's base year during which the individual
4 earned in employment from an employer remuneration equal to
5 not less than 15% of the Statewide average weekly remuneration
6 defined in subsection (c) of R.S.43:21-3, which shall be adjusted
7 to the next higher multiple of \$1.00 if not already a multiple
8 thereof.

9 "Base week" for a benefit year commencing on or after
10 October 1, 1985 means, except as otherwise provided in
11 paragraph (2) of this subsection, any calendar week of an
12 individual's base year during which the individual earned in
13 employment from an employer remuneration equal to not less
14 than 20% of the Statewide average weekly remuneration defined
15 in subsection (c) of R.S.43:21-3 which shall be adjusted to the
16 next higher multiple of \$1.00 if not already a multiple thereof;
17 provided if in any calendar week an individual is in employment
18 with more than one employer, he may in such calendar week
19 establish a base week with respect to each such employer from
20 whom the individual earns remuneration equal to not less than the
21 amount defined in this paragraph (1) during such week.

22 (2) "Base week," with respect to an individual claiming
23 benefits on the basis of service performed in the production and
24 harvesting of agricultural crops, means, for a benefit year
25 commencing on or after October 1, 1984 and before January 1,
26 1985, any calendar week of an individual's base year during which
27 the individual earned in employment from an employer
28 remuneration equal to not less than \$30.00, except that if in any
29 calendar week an individual subject to this paragraph is in
30 employment with more than one employer, the individual may in
31 that calendar week establish a base week with respect to each of
32 the employers from whom the individual earns remuneration
33 equal to not less than the amount defined in this paragraph (2)
34 during that week.

35 (u) "Average weekly wage" means the amount derived by
36 dividing an individual's total wages received during his base year
37 base weeks (as defined in subsection (t) of this section) from that
38 most recent base year employer with whom he has established at
39 least 20 base weeks, by the number of base weeks in which such
40 wages were earned. In the event that such claimant had no
41 employer in his base year with whom he had established at least
42 20 base weeks, then such individual's average weekly wage shall
43 be computed as if all of his base week wages were received from
44 one employer and as if all his base weeks of employment had been
45 performed in the employ of one employer.

46 For the purpose of computing the average weekly wage, the
47 monetary alternative in subsection (e) of R.S.43:21-4 shall only
48 apply in those instances where the individual did not have at least
49 20 base weeks in the base year. For benefit years commencing on
50 or after July 1, 1986, "average weekly wage" means the amount
51 derived by dividing an individual's total base year wages by the
52 number of base weeks worked by the individual during the base
53 year, provided that for the purpose of computing the average
54 weekly wage, the maximum number of base weeks used in the

1 divisor shall be 52.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (cf: P.L.1991, c.486, s.1)

53 2. This act shall take effect immediately.

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Exempts certain services performed by outside travel agents
from unemployment and temporary disability contributions.

1 acceptable for full credit toward such a degree, a program of
2 post-graduate or post-doctoral studies, or a program of training
3 to prepare students for gainful employment in a recognized
4 occupation; and

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

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

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

11 (cf: P.L.1989, c.265, s.1)

12 2. This act shall take effect immediately.

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15 STATEMENT

16
17 This bill would exempt services performed by outside travel
18 agents on the premises of other travel agents from the definition
19 of "employment" subject to unemployment compensation and
20 temporary disability insurance contributions. In order to be
21 exempt as an outside travel agent, a travel agent who does not
22 have an employer-employee relationship with another travel
23 agent but uses the office space and equipment of that travel
24 agent would have to work on a commission-only basis, have his
25 own clients separate from those of the other travel agent, set his
26 own work schedule and receive no benefits, sick leave, vacation
27 or other leave from the other travel agent. This exemption is
28 intended to recognize outside travel agents as independent
29 contractors for purposes of unemployment compensation and
30 temporary disability insurance.

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34
35 Exempts certain services performed by outside travel agents
36 from unemployment and temporary disability contributions.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 64

STATE OF NEW JERSEY

DATED: JUNE 2, 1993

The Assembly Labor Committee reports favorably Senate Bill No. 64 [1R].

This bill exempts the services performed, using facilities provided by a travel agent, by a person, commonly known as an outside travel agent, from unemployment compensation and temporary disability insurance contributions if that person acts as an independent contractor; is paid solely 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.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 64

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 1993

The Assembly Appropriations Committee reports favorably Senate Bill No. 64 (1R).

Senate Bill No. 64 (1R) exempts the services performed by an outside travel agent from unemployment compensation and temporary disability insurance contributions. An outside travel agent is a person who, using facilities provided by a travel agent, acts as an independent contractor; is paid solely on a commission basis; self-determines work schedule; and receives no benefits, sick leave, vacation or other leave from the travel agent owning the facilities. In turn, the outside agent is ineligible for unemployment and disability insurance compensation based on those outside agent services.

This bill is identical to Assembly Bill No. 898(Acs).

FISCAL IMPACT:

In the fiscal note to this bill, the Department of the Treasury, Office of Management and Budget (OMB) and the Department of Labor (DOL) indicated that it was not possible to determine the number of travel agents who would be affected by the bill's provisions, but that any administrative and fiscal work performed by the DOL would be insignificant. The Office of Legislative Services noted that claims by outside travel agents to collect benefits would be rendered invalid since they would no longer contribute to the trust funds and the net impact on local office operations of the respective funds would most likely be minimal.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 64

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 1992

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 64.

This bill, as amended, exempts the services performed, using facilities provided by a travel agent, by a person, commonly known as an outside travel agent, from unemployment compensation and temporary disability insurance contributions if that person acts as an independent contractor; is paid solely 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.

This bill was pre-filed for introduction in the 1992 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

FISCAL NOTE TO

[FIRST REPRINT]

SENATE, No. 64

STATE OF NEW JERSEY

DATED: February 18, 1993

Senate Bill No. 64 (1R) of 1992 would exempt services performed by outside travel agents from the definition of "employment" subject to unemployment compensation and temporary disability insurance contributions. In order to be exempt as an outside travel agent, a person, using facilities provided by another travel agent, and acting as an independent contractor would: have to work on a commission-only basis; set his own work schedule, and receive no benefits, sick leave, vacation or other leave from the travel agent owning the facilities. In turn, the person would be ineligible for unemployment and disability insurance compensation.

The Department of the Treasury, Office of Management and Budget (OMB) and the Department of Labor (DOL) indicate that it is not possible to determine the number of travel agents who would be affected by the bill's provisions. The OMB and the DOL estimate that the bill's impact on the fiscal work performed by the department would be insignificant.

The Office of Legislative Services (OLS) concurs with the DOL's claim that the bill's provisions would have minimal fiscal impact on the department's operations and that it is not possible to determine the number of travel agents that would be affected by the legislation. The OLS notes that claims by outside travel agents attempting to collect benefits would be rendered invalid because these individuals would no longer make contributions into the unemployment and disability insurance trust funds. Therefore, the impact on local office operations of the respective funds would most likely be minimal.

This fiscal note has been prepared pursuant to P.L.1980, c.67.