

43: 21-4

LEGISLATIVE HISTORY CHECKLIST  
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(Unemployment compensation--  
benefits)

NJSA: 43:21-4 et al

LAWS OF: 1991 CHAPTER: 486

BILL NO: A2893

SPONSOR(S): Foy

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SENATE: Labor

AMENDED DURING PASSAGE: No Assembly Committee  
Substitute enacted

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ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 2893

STATE OF NEW JERSEY

ADOPTED FEBRUARY 8, 1990

Sponsored by Assemblyman FOY

1 AN ACT concerning eligibility for unemployment compensation  
2 under certain circumstances and amending R.S.43:21-19 and  
3 supplementing P.L.1948, c.110 (C.43:21-25 et seq.) and  
4 chapter 15 of Title 34 of the Revised Statutes.

5

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 respect to his unemployment.

2 (c) (1) "Base year" with respect to benefit years commencing  
3 on or after January 1, 1953, shall mean the 52 calendar weeks  
4 ending with the second week immediately preceding an  
5 individual's benefit year. "Base year" with respect to benefit  
6 years commencing on or after July 1, 1986, shall mean the first  
7 four of the last five completed calendar quarters immediately  
8 preceding an individual's benefit year.

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

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

45 (d) "Benefit year" with respect to any individual means the  
46 364 consecutive calendar days beginning with the day on, or as of,  
47 which he first files a valid claim for benefits, and thereafter  
48 beginning with the day on, or as of, which the individual next files  
49 a valid claim for benefits after the termination of his last

1 preceding benefit year. Any claim for benefits made in  
2 accordance with subsection (a) of R.S.43:21-6 shall be deemed to  
3 be a "valid claim" for the purpose of this subsection if (1) he is  
4 unemployed for the week in which, or as of which, he files a  
5 claim for benefits; and (2) he has fulfilled the conditions imposed  
6 by subsection (e) of R.S.43:21-4.

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

12 (2) "Controller" means the Office of the Assistant  
13 Commissioner for Finance and Controller of the Department of  
14 Labor, established by the 1982 Reorganization Plan of the  
15 Department of Labor.

16 (f) "Contributions" means the money payments to the State  
17 Unemployment Compensation Fund, required by R.S.43:21-7.  
18 "Payments in lieu of contributions" means the money payments  
19 to the State Unemployment Compensation Fund by employers  
20 electing or required to make payments in lieu of contributions, as  
21 provided in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2  
22 [and] or 43:21-7.3).

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

46 (h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

48 (13) Any employing unit for which domestic service in  
49 employment as defined in R.S.43:21-19 (i) (1) (J) is performed

1 after December 31, 1977;

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

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

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

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

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

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

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

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

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

45 (iii) Prior to January 1, 1978, in the employ of a school which  
46 is not an institution of higher education, and after December 31,  
47 1977, in the employ of a governmental entity referred to in  
48 R.S.43:21-19 (i) (1) (B), if such service is performed by an  
49 individual in the exercise of duties

- 1 (aa) as an elected official;
- 2 (bb) as a member of a legislative body, or a member of the  
3 judiciary, of a state or political subdivision;
- 4 (cc) as a member of the State National Guard or Air National  
5 Guard;
- 6 (dd) as an employee serving on a temporary basis in case of  
7 fire, storm, snow, earthquake, flood or similar emergency;
- 8 (ee) in a position which, under or pursuant to the laws of this  
9 State, is designated as a major nontenured policy making or  
10 advisory position, or a policy making or advisory position, the  
11 performance of the duties of which ordinarily does not require  
12 more than eight hours per week; or
- 13 (iv) By an individual receiving rehabilitation or remunerative  
14 work in a facility conducted for the purpose of carrying out a  
15 program of rehabilitation of individuals whose earning capacity is  
16 impaired by age or physical or mental deficiency or injury or  
17 providing remunerative work for individuals who because of their  
18 impaired physical or mental capacity cannot be readily absorbed  
19 in the competitive labor market;
- 20 (v) By an individual receiving work-relief or work-training as  
21 part of an unemployment work-relief or work-training program  
22 assisted in whole or in part by any federal agency or an agency of  
23 a state or political subdivision thereof; or
- 24 (vi) Prior to January 1, 1978, for a hospital in a State prison or  
25 other State correctional institution by an inmate of the prison or  
26 correctional institution and after December 31, 1977, by an  
27 inmate of a custodial or penal institution.
- 28 (E) The term "employment" shall include the services of an  
29 individual who is a citizen of the United States, performed  
30 outside the United States after December 31, 1971 (except in  
31 Canada and in the case of the Virgin Islands, after December 31,  
32 1971 and prior to January 1 of the year following the year in  
33 which the U.S. Secretary of Labor approves the unemployment  
34 compensation law of the Virgin Islands, under section 3304 (a) of  
35 the Internal Revenue Code of [1954] 1986 (26 U.S.C. §3304 (a) ) in  
36 the employ of an American employer (other than the service  
37 which is deemed employment under the provisions of  
38 R.S.43:21-19 (i) (2) or (5) of the parallel provisions of another  
39 state's unemployment compensation law), if
- 40 (i) The American employer's principal place of business in the  
41 United States is located in this State; or
- 42 (ii) The American employer has no place of business in the  
43 United States, but (I) the American employer is an individual who  
44 is a resident of this State; or (II) the American employer is a  
45 corporation which is organized under the laws of this State; or  
46 (III) the American employer is a partnership or trust and the  
47 number of partners or trustees who are residents of this State is  
48 greater than the number who are residents of another state; or
- 49 (iii) None of the criteria of divisions (i) and (ii) of this

1 subparagraph (E) is met but the American employer has elected  
2 to become an employer subject to the "unemployment  
3 compensation law" (R.S.43:21-1 et seq.) in this State, or the  
4 American employer having failed to elect to become an employer  
5 in any state, the individual has filed a claim for benefits, based  
6 on such service, under the law of this State;

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

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

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

29 (H) The term "United States" when used in a geographical  
30 sense in subsection R.S.43:21-19 (i) includes the states, the  
31 District of Columbia, the Commonwealth of Puerto Rico and,  
32 effective on the day after the day on which the U.S. Secretary of  
33 Labor approves for the first time under section 3304 (a) of the  
34 Internal Revenue Code of [1954] 1986 (26 U.S.C. §3304 (a)) an  
35 unemployment compensation law submitted to the Secretary by  
36 the Virgin Islands for such approval, the Virgin Islands.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ACS for A2893

11

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

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

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

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

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

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

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

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

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

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

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

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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  
4 United States Secretary of State has certified to the United  
5 States Secretary of the Treasury that the foreign government,  
6 with respect to whose instrumentality exemption is claimed,  
7 grants an equivalent exemption with respect to similar services  
8 performed in the foreign country by employees of the United  
9 States 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  
13 et 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

1 laws of this State;

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

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

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

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

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

38 (A) The limousine franchisee is incorporated;

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

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

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

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

49 (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).

1 (t) (1) "Base week" for a benefit year commencing prior to  
2 October 1, 1984, means, except as otherwise provided in  
3 paragraph (2) of this subsection, any calendar week of an  
4 individual's base year during which he earned in employment  
5 from an employer remuneration equal to not less than  
6 \$30.00."Base week" for a benefit year commencing on or after  
7 October 1, 1984 and prior to October 1, 1985 means any calendar  
8 week of an individual's base year during which the individual  
9 earned in employment from an employer remuneration equal to  
10 not less than 15% of the Statewide average weekly remuneration  
11 defined in subsection (c) of R.S.43:21-3, which shall be adjusted  
12 to the next higher multiple of \$1.00 if not already a multiple  
13 thereof.

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

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

40 (u) "Average weekly wage" means the amount derived by  
41 dividing an individual's total wages received during his base year  
42 base weeks (as defined in subsection (t) of this section) from that  
43 most recent base year employer with whom he has established at  
44 least 20 base weeks, by the number of base weeks in which such  
45 wages were earned. In the event that such claimant had no  
46 employer in his base year with whom he had established at least  
47 20 base weeks, then such individual's average weekly wage shall  
48 be computed as if all of his base week wages were received from  
49 one employer and as if all his base weeks of employment had been



1 performed in the employ of one employer.

2 For the purpose of computing the average weekly wage, the  
3 monetary alternative in subsection (e) of R.S.43:21-4 shall only  
4 apply in those instances where the individual did not have at least  
5 20 base weeks in the base year. For benefit years commencing on  
6 or after July 1, 1986, "average weekly wage" means the amount  
7 derived by dividing an individual's total base year wages by the  
8 number of base weeks worked by the individual during the base  
9 year; provided that for the purpose of computing the average  
10 weekly wage, the maximum number of base weeks used in the  
11 divisor shall be 52.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 2. (New section) The Division of Unemployment and  
15 Temporary Disability Insurance shall provide notice to each  
16 individual receiving compensation under the provisions of the  
17 "Temporary Disability Benefits Law," P.L. 1948, c.110  
18 (C.43:21-25 et seq.) explaining the conditions under which the  
19 individual may receive unemployment compensation pursuant to  
20 this 1990 amendatory and supplementary act.

21 3. (New section) The Division of Workers' Compensation shall  
22 provide notice to each individual receiving compensation under  
23 the provisions of the workers' compensation law (chapter 15 of  
24 Title 34 of the Revised Statutes), explaining the conditions under  
25 which the individual may receive unemployment compensation  
26 pursuant to this 1990 amendatory and supplementary act.

27 4. This act shall take effect immediately.

28

29

30

LABOR

31

32 Permits workers to receive unemployment compensation benefits  
33 following a period of disability compensable under the workers  
34 compensation or temporary disability laws.

ASSEMBLY, No. 2893  
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1990

By Assemblyman FOY

1 AN ACT concerning eligibility for unemployment compensation  
2 under certain circumstances and amending R.S.43:21-4,  
3 R.S.43:21-7 and 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.43:21-4 is amended to read as follows:

8 43:21-4. Benefit eligibility conditions. An unemployed  
9 individual shall be eligible to receive benefits with respect to any  
10 week only if:

11 (a) The individual has filed a claim at an unemployment  
12 insurance claims office and thereafter continues to report at an  
13 employment service office or unemployment insurance claims  
14 office, as directed by the division in accordance with such  
15 regulations as the division may prescribe, except that the division  
16 may, by regulation, waive or alter either or both of the  
17 requirements of this subsection as to individuals attached to  
18 regular jobs, and as to such other types of cases or situations with  
19 respect to which the division finds that compliance with such  
20 requirements would be oppressive, or would be inconsistent with  
21 the purpose of this act; provided that no such regulation shall  
22 conflict with subsection (a) of R.S.43:21-3.

23 (b) The individual has made a claim for benefits in accordance  
24 with the provisions of subsection (a) of R.S.43:21-6.

25 (c) (1) The individual is able to work, and is available for  
26 work, and has demonstrated to be actively seeking work, except  
27 as hereinafter provided in this subsection or in subsection (f) of  
28 this section.

29 (2) The director may modify the requirement of actively  
30 seeking work if such modification of this requirement is  
31 warranted by economic conditions.

32 (3) No individual, who is otherwise eligible, shall be deemed  
33 ineligible, or unavailable for work, because the individual is on  
34 vacation, without pay, during said week, if said vacation is not  
35 the result of the individual's own action as distinguished from  
36 any collective action of a collective bargaining agent or other  
37 action beyond the individual's control.

38 (4) Subject to such limitations and conditions as the division

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

Matter underlined thus is new matter.

1 may prescribe, an individual, who is otherwise eligible, shall not  
2 be deemed unavailable for work or ineligible because the  
3 individual is attending a training program approved for the  
4 individual by the division to enhance the individual's employment  
5 opportunities or because the individual failed or refused to accept  
6 work while attending such program.

7 (5) An unemployed individual, who is otherwise eligible, shall  
8 not be deemed unavailable for work or ineligible solely by reason  
9 of the individual's attendance before a court in response to a  
10 summons for service on a jury.

11 (6) An unemployed individual, who is otherwise eligible, shall  
12 not be deemed unavailable for work or ineligible solely by reason  
13 of the individual's attendance at the funeral of an immediate  
14 family member, provided that the duration of the attendance  
15 does not extend beyond a two day period.

16 For purposes of this paragraph, "immediate family member"  
17 includes any of the following individuals: father, mother,  
18 mother-in-law, father-in-law, grandmother, grandfather,  
19 grandchild, spouse, child, foster child, sister or brother of the  
20 unemployed individual and any relatives of the unemployed  
21 individual residing in the unemployed individual's household.

22 (d) The individual has been totally or partially unemployed for  
23 a waiting period of one week in the benefit year which includes  
24 that week. When benefits become payable with respect to the  
25 third consecutive week next following the waiting period, the  
26 individual shall be eligible to receive benefits as appropriate with  
27 respect to the waiting period. No week shall be counted as a week  
28 of unemployment for the purposes of this subsection:

29 (1) If benefits have been paid, or are payable with respect  
30 thereto; provided that the requirements of this paragraph shall be  
31 waived with respect to any benefits paid or payable for a waiting  
32 period as provided in this subsection;

33 (2) If it has constituted a waiting period week under the  
34 "Temporary Disability Benefits Law," P.L.1948, c.110  
35 (C.43:21-25 et seq.);

36 (3) Unless the individual fulfills the requirements of  
37 subsections (a) and (c) of this section;

38 (4) If with respect thereto, claimant was disqualified for  
39 benefits in accordance with the provisions of subsection (d) of  
40 R.S.43:21-5.

41 (e) (1) With respect to a base year as defined in subsection (c)  
42 of R.S.43:21-19, the individual has established at least 20 base  
43 weeks as defined in paragraph (1) of subsection (t) of  
44 R.S.43:21-19, or, in those instances in which the individual has  
45 not established 20 base weeks, the individual has earned \$2,200.00  
46 for benefit years commencing prior to October 1, 1984; and,  
47 except as otherwise provided in paragraph (2) or paragraph (3) of  
48 this subsection, for benefit years commencing on or after

1 October 1, 1984, the individual has earned 12 times the Statewide  
2 average weekly remuneration paid to workers, as determined  
3 under R.S.43:21-3(c), raised to the next higher multiple of  
4 \$100.00 if not already a multiple thereof, or more in the  
5 individual's base year.

6 (2) Notwithstanding the provisions of paragraph (1) of this  
7 subsection, for benefit years commencing on or after October 1,  
8 1984 and before January 1, 1985, an unemployed individual  
9 claiming benefits on the basis of service performed in the  
10 production and harvesting of agricultural crops shall, subject to  
11 the limitations of subsection (i) of R.S.43:21-19, be eligible to  
12 receive benefits if it appears that the individual has established  
13 at least 20 base weeks as defined in paragraph (2) of subsection  
14 (t) of R.S.43:21-19, or, in those instances in which the individual  
15 has not established 20 base weeks, the individual has earned  
16 \$2,200.00.

17 (3) Notwithstanding the provisions of paragraph (1) of this  
18 subsection, an unemployed individual claiming benefits on the  
19 basis of service performed in the production and harvesting of  
20 agricultural crops shall, subject to the limitations of subsection  
21 (i) of R.S.43:21-19, be eligible to receive benefits if during his  
22 base year, as defined in subsection (c) of R.S.43:21-19, the  
23 individual:

24 (A) Has established at least 20 base weeks as defined in  
25 paragraph (1) of subsection (t) of R.S.43:21-19; or

26 (B) Has earned 12 times the Statewide average weekly  
27 remuneration paid to workers, as determined under  
28 R.S.43:21-3(c), raised to the next higher multiple of \$100.00 if  
29 not already a multiple thereof, or more; or

30 (C) Has performed at least 770 hours of service in the  
31 production and harvesting of agricultural crops.

32 (4) The individual applying for benefits in any successive  
33 benefit year has earned at least six times his previous weekly  
34 benefit amount and has had four weeks of employment since the  
35 beginning of the immediately preceding benefit year. This  
36 provision shall be in addition to the earnings requirements  
37 specified in paragraph (1), (2), or (3) of this subsection, as  
38 applicable.

39 (5) If an individual does not meet the requirements of  
40 paragraph (1) of this subsection after receiving workers'  
41 compensation benefits under chapter 15 of Title 34 of the  
42 Revised Statutes, then for the purposes of determining eligibility  
43 under this subsection, the number of weeks during which the  
44 individual received workers' compensation benefits shall be  
45 counted toward the minimum base weeks required under  
46 paragraph (1) of this subsection.

47 (f) (1) The individual has suffered any accident or sickness not  
48 compensable under the [Workers' Compensation Law] workers'

1 compensation law (Title 34 of the Revised Statutes) and resulting  
2 in the individual's total disability to perform any work for  
3 remuneration, and would be eligible to receive benefits under this  
4 chapter (R.S.43:21-1 et seq.) (without regard to the maximum  
5 amount of benefits payable during any benefit year) except for  
6 the inability to work and has furnished notice and proof of claim  
7 to the division, in accordance with its rules and regulations, and  
8 payment is not precluded by the provisions of R.S.43:21-3 (d);  
9 provided, however, that benefits paid under this subsection (f)  
10 shall be computed on the basis of only those base year wages  
11 earned by the claimant as a "covered individual," as defined in  
12 R.S.43:21-27 (b); provided further that no benefits shall be  
13 payable under this subsection to any individual:

14 (A) For any period during which such individual is not under  
15 the care of a legally licensed physician, dentist, optometrist,  
16 podiatrist, practicing psychologist or chiropractor;

17 (B) (Deleted by amendment, P.L.1980, c.90.)

18 (C) For any period of disability due to willfully or intentionally  
19 self-inflicted injury, or to injuries sustained in the perpetration  
20 by the individual of a crime of the first, second or third degree;

21 (D) For any week with respect to which or a part of which the  
22 individual has received or is seeking benefits under any  
23 unemployment compensation or disability benefits law of any  
24 other state or of the United States; provided that if the  
25 appropriate agency of such other state or the United States  
26 finally determines that the individual is not entitled to such  
27 benefits, this disqualification shall not apply;

28 (E) For any week with respect to which or part of which the  
29 individual has received or is seeking disability benefits under the  
30 "Temporary Disability Benefits Law," P.L.1948, c.110  
31 (C.43:21-25 et seq.);

32 (F) For any period of disability commencing while such  
33 individual is a "covered individual," as defined in subsection 3 (b)  
34 of the "Temporary Disability Benefits Law," P.L.1948, c.110  
35 (C.43:21-25 et seq.).

36 (2) Benefit payments under this subsection shall be charged to  
37 and paid from the State disability benefits fund established by the  
38 "Temporary Disability Benefits Law," P.L.1948, c.110  
39 (C.43:21-25 et seq.), and shall not be charged to any employer  
40 account in computing any employer's experience rate for  
41 contributions payable under this chapter.

42 (3) This subsection shall not be construed to preclude  
43 eligibility under paragraph (5) of subsection (e) of this section.

44 (g) Benefits based on service in employment defined in  
45 subparagraphs (B) and (C) of R.S.43:21-19 (i) (1) shall be payable  
46 in the same amount and on the terms and subject to the same  
47 conditions as benefits payable on the basis of other service  
48 subject to the "unemployment compensation law;" except that,

1 notwithstanding any other provisions of the "unemployment  
2 compensation law:"

3 (1) With respect to service performed after December 31,  
4 1977, in an instructional research, or principal administrative  
5 capacity for an educational institution, benefits shall not be paid  
6 based on such services for any week of unemployment  
7 commencing during the period between two successive academic  
8 years, or during a similar period between two regular terms,  
9 whether or not successive, or during a period of paid sabbatical  
10 leave provided for in the individual's contract, to any individual  
11 if such individual performs such services in the first of such  
12 academic years (or terms) and if there is a contract or a  
13 reasonable assurance that such individual will perform services in  
14 any such capacity for any educational institution in the second of  
15 such academic years or terms;

16 (2) With respect to weeks of unemployment beginning after  
17 September 3, 1982, on the basis of service performed in any other  
18 capacity for an educational institution, benefits shall not be paid  
19 on the basis of such services to any individual for any week which  
20 commences during a period between two successive academic  
21 years or terms if such individual performs such services in the  
22 first of such academic years or terms and there is a reasonable  
23 assurance that such individual will perform such services in the  
24 second of such academic years or terms, except that if benefits  
25 are denied to any individual under this paragraph (2) and the  
26 individual was not offered an opportunity to perform these  
27 services for the educational institution for the second of any  
28 academic years or terms, the individual shall be entitled to a  
29 retroactive payment of benefits for each week for which the  
30 individual filed a timely claim for benefits and for which benefits  
31 were denied solely by reason of this clause;

32 (3) With respect to those services described in paragraphs (1)  
33 and (2) above, benefits shall not be paid on the basis of such  
34 services to any individual for any week which commences during  
35 an established and customary vacation period or holiday recess if  
36 such individual performs such services in the period immediately  
37 before such vacation period or holiday recess, and there is a  
38 reasonable assurance that such individual will perform such  
39 services in the period immediately following such period or  
40 holiday recess;

41 (4) With respect to any services described in paragraphs (1) and  
42 (2) above, benefits shall not be paid as specified in paragraphs (1),  
43 (2), and (3) above to any individual who performed those services  
44 in an educational institution while in the employ of an  
45 educational service agency, and for this purpose the term  
46 "educational service agency" means a governmental agency or  
47 governmental entity which is established and operated exclusively  
48 for the purpose of providing those services to one or more

1 educational institutions.

2 (h) Benefits shall not be paid to any individual on the basis of  
3 any services, substantially all of which consist of participating in  
4 sports or athletic events or training or preparing to so  
5 participate, for any week which commences during the period  
6 between two successive sports seasons (or similar periods) if such  
7 individual performed such services in the first of such seasons (or  
8 similar periods) and there is a reasonable assurance that such  
9 individual will perform such services in the later of such seasons  
10 (or similar periods).

11 (i) (1) Benefits shall not be paid on the basis of services  
12 performed by an alien unless such alien is an individual who was  
13 lawfully admitted for permanent residence at the time the  
14 services were performed and was lawfully present for the purpose  
15 of performing the services or otherwise was permanently residing  
16 in the United States under color of law at the time the services  
17 were performed (including an alien who is lawfully present in the  
18 United States as a result of the application of the provisions of  
19 section 203 (a) (7) (8 U.S.C. §1153 (a) (7)) or section 212 (d) (5)  
20 (8 U.S.C. §1182 (d)(5)) of the Immigration and Nationality Act (8  
21 U.S.C. §1101 et seq.)); provided that any modifications of the  
22 provisions of section 3304 (a) (14) of the [federal] Federal  
23 Unemployment Tax Act (26 U.S.C. §3304 (a) (14)), as provided by  
24 Public Law 94-566, which specify other conditions or other  
25 effective dates than stated herein for the denial of benefits based  
26 on services performed by aliens and which modifications are  
27 required to be implemented under State law as a condition for  
28 full tax credit against the tax imposed by the [federal] Federal  
29 Unemployment Tax Act, shall be deemed applicable under the  
30 provisions of this section.

31 (2) Any data or information required of individuals applying for  
32 benefits to determine whether benefits are not payable to them  
33 because of their alien status shall be uniformly required from all  
34 applicants for benefits.

35 (3) In the case of an individual whose application for benefits  
36 would otherwise be approved, no determination that benefits to  
37 such individual are not payable because of alien status shall be  
38 made except upon a preponderance of the evidence.

39 (j) Notwithstanding any other provision of this chapter, the  
40 director may, to the extent that it may be deemed efficient and  
41 economical, provide for consolidated administration by one or  
42 more representatives or deputies of claims made pursuant to  
43 subsection (f) of this section with those made pursuant to Article  
44 III (State plan) of the "Temporary Disability Benefits Law,"  
45 P.L.1948, c.110 (C.43:21-25 et seq.).

46 (cf: P.L.1989, c.213, s.1)

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

48 43:21-7. Contributions. Employers other than governmental



1 entities, whose benefit financing provisions are set forth in  
2 section 4 of P.L.1971, c.346 (C.43:21-7.3), and those nonprofit  
3 organizations liable for payment in lieu of contributions on the  
4 basis set forth in section 3 of P.L.1971, c.346 (C.43:21-7.2), shall  
5 pay to the controller for the Unemployment Compensation Fund,  
6 contributions as set forth in subsections (a), (b) and (c) hereof,  
7 and the provisions of subsections (d) and (e) shall be applicable to  
8 all employers, consistent with the provisions of the  
9 [Unemployment Compensation Law] "unemployment  
10 compensation law" and the [Temporary Disability Benefits Law.]  
11 "Temporary Disability Benefits Law."

12 (a) Payment.

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

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

25 (b) Rate of contributions. Each employer shall pay the  
26 following contributions:

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

31 (2) The "wages" of any individual, with respect to any one  
32 employer, as the term is used in this subsection (b) and in  
33 subsections (c), (d) and (e) of this section 7, shall include the first  
34 \$4,800.00 paid during calendar year 1975, for services performed  
35 either within or without this State; provided that no contribution  
36 shall be required by this State with respect to services performed  
37 in another state if such other state imposes contribution liability  
38 with respect thereto. If an employer (hereinafter referred to as a  
39 successor employer) during any calendar year acquires  
40 substantially all the property used in a trade or business of  
41 another employer (hereinafter referred to as a predecessor), or  
42 used in a separate unit of a trade or business of a predecessor,  
43 and immediately after the acquisition employs in his trade or  
44 business an individual who immediately prior to the acquisition  
45 was employed in the trade or business of such predecessor, then,  
46 for the purpose of determining whether the successor employer  
47 has paid wages with respect to employment equal to the first  
48 \$4,800.00 paid during calendar year 1975, any wages paid to such

1 individual by such predecessor during such calendar year and prior  
2 to such acquisition shall be considered as having been paid by  
3 such successor employer.

4 (3) For calendar years beginning on and after January 1, 1976,  
5 the "wages" of any individual, as defined in the preceding  
6 paragraph (2) of this subsection (b), shall be established and  
7 promulgated by the Commissioner of Labor on or before  
8 September 1 of the preceding year and shall be 28 times the  
9 Statewide average weekly remuneration paid to workers by  
10 employers, as determined under R.S.43:21-2(c), raised to the next  
11 higher multiple of \$100.00 if not already a multiple thereof,  
12 provided that if the amount of wages so determined for a  
13 calendar year is less than the amount similarly determined for  
14 the preceding year, the greater amount will be used; provided,  
15 further, that if the amount of such wages so determined does not  
16 equal or exceed the amount of wages as defined in subsection (b)  
17 of section 3306 of the [federal] Federal Unemployment Tax Act,  
18 Chapter 23 of the Internal Revenue Code of [1954] of 1986  
19 (26 U.S.C. §3306(b)), the wages as determined in this paragraph in  
20 any calendar year shall be raised to equal the amount established  
21 under the [federal] Federal Unemployment Tax Act for that  
22 calendar year.

23 (c) Future rates based on benefit experience.

24 (1) A separate account for each employer shall be maintained  
25 and this shall be credited with all the contributions which he has  
26 paid on his own behalf on or before January 31 of any calendar  
27 year with respect to employment occurring in preceding calendar  
28 year; provided, however, that if January 31 of any calendar year  
29 falls on a Saturday or Sunday, an employer's account shall be  
30 credited as of January 31 of such calendar year with all the  
31 contributions which he has paid on or before the next succeeding  
32 day which is not a Saturday or Sunday. But nothing in this  
33 chapter (R.S.43:21-1 et seq.) shall be construed to grant any  
34 employer or individuals in his service prior claims or rights to the  
35 amounts paid by him into the fund either on his own behalf or on  
36 behalf of such individuals. Benefits paid with respect to benefit  
37 years commencing on and after January 1, 1953, to any individual  
38 on or before December 31 of any calendar year with respect to  
39 unemployment in such calendar year and in preceding calendar  
40 years shall be charged against the account or accounts of the  
41 employer or employers in whose employment such individual  
42 established base weeks constituting the basis of such benefits.  
43 Benefits paid under a given benefit determination shall be  
44 charged against the account of the employer to whom such  
45 determination relates. When each benefit payment is made,  
46 either a copy of the benefit check or other form of notification  
47 shall be promptly sent to the employer against whose account the  
48 benefits are to be charged. Such copy or notification shall

1 identify the employer against whose account the amount of such  
2 payment is being charged, shall show at least the name and social  
3 security account number of the claimant and shall specify the  
4 period of unemployment to which said check applies. If the total  
5 amount of benefits paid to a claimant and charged to the account  
6 of the appropriate employer exceeds 50% of the total base year,  
7 base week wages paid to the claimant by that employer, then  
8 such employer shall have canceled from his account such excess  
9 benefit charges as specified above.

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

12 (2) Regulations may be prescribed for the establishment,  
13 maintenance, and dissolution of joint accounts by two or more  
14 employers, and shall, in accordance with such regulations and  
15 upon application by two or more employers to establish such an  
16 account, or to merge their several individual accounts in a joint  
17 account, maintain such joint account as if it constituted a single  
18 employer's account.

19 (3) No employer's rate shall be lower than 5.4% unless  
20 assignment of such lower rate is consistent with the conditions  
21 applicable to additional credit allowance for such year under  
22 section 3303 (a) (1) of the Internal Revenue Code of 1986  
23 (26 U.S.C. §3303 (a) (1)), any other provision of this section to the  
24 contrary notwithstanding.

25 (4) Employer Reserve Ratio. (A) Each employer's rate shall  
26 be  $2 \frac{8}{10}\%$ , except as otherwise provided in the following  
27 provisions. No employer's rate for the 12 months commencing  
28 July 1 of any calendar year shall be other than  $2 \frac{8}{10}\%$ , unless as  
29 of the preceding January 31 such employer shall have paid  
30 contributions with respect to wages paid in each of the three  
31 calendar years immediately preceding such year, in which case  
32 such employer's rate for the 12 months commencing July 1 of  
33 any calendar year shall be determined on the basis of his record  
34 up to the beginning of such calendar year. If, at the beginning of  
35 such calendar year, the total of all his contributions, paid on his  
36 own behalf, for all past years exceeds the total benefits charged  
37 to his account for all such years, his contribution rate shall be:

38 (1)  $2 \frac{5}{10}\%$ , if such excess equals or exceeds 4%, but less than  
39 5%, of his average annual payroll (as defined in paragraph (2)[.] of  
40 subsection (a) of [section] R.S.43:21-19 [of this Title] );

41 (2)  $2 \frac{2}{10}\%$ , if such excess equals or exceeds 5%, but is less  
42 than 6%, of his average annual payroll;

43 (3)  $1 \frac{9}{10}\%$ , if such excess equals or exceeds 6%, but is less  
44 than 7%, of his average annual payroll;

45 (4)  $1 \frac{6}{10}\%$ , if such excess equals or exceeds 7%, but is less  
46 than 8%, of his average annual payroll;

47 (5)  $1 \frac{3}{10}\%$ , if such excess equals or exceeds 8%, but is less  
48 than 9%, of his average annual payroll;

1 (6) 1%, if such excess equals or exceeds 9%, but is less than  
2 10%, of his average annual payroll;

3 (7) 7/10 of 1%, if such excess equals or exceeds 10%, but is  
4 less than 11%, of his average annual payroll;

5 (8) 4/10 of 1%, if such excess equals or exceeds 11% of his  
6 average annual payroll.

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

11 (1) 4%, if such excess is less than 10% of his average annual  
12 payroll;

13 (2) 4 3/10%, if such excess equals or exceeds 10%, but is less  
14 than 20%, of his average annual payroll;

15 (3) 4 6/10%, if such excess equals or exceeds 20% of his  
16 average annual payroll.

17 (C) Specially assigned rates. If no contributions were paid on  
18 wages for employment in any calendar year used in determining  
19 the average annual payroll of an employer eligible for an assigned  
20 rate under this paragraph (4), the employer's rate shall be  
21 specially assigned as follows: (i) if the reserve balance in its  
22 account is positive, its assigned rate shall be the highest rate in  
23 effect for positive balance accounts for that period, or 5.4%,  
24 whichever is higher, and (ii) if the reserve balance in its account  
25 is negative, its assigned rate shall be the highest rate in effect  
26 for deficit accounts for that period.

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

31 (5) (A) Unemployment Trust Fund Reserve Ratio. If on March  
32 31 of any calendar year the balance in the unemployment trust  
33 fund equals or exceeds 4% but is less than 7% of the total taxable  
34 wages reported to the controller as of that date in respect to  
35 employment during the preceding calendar year, the contribution  
36 rate, effective July 1 following, of each employer eligible for a  
37 contribution rate calculation based upon benefit experience, shall  
38 be increased by 3/10 of 1% over the contribution rate otherwise  
39 established under the provisions of paragraph (3) or (4) of this  
40 subsection. If on March 31 of any calendar year the balance of  
41 the unemployment trust fund exceeds 2 1/2% but is less than 4%  
42 of the total taxable wages reported to the controller as of that  
43 date in respect to employment during the preceding calendar  
44 year, the contribution rate, effective July 1 following, of each  
45 employer eligible for a contribution rate calculation based upon  
46 benefit experience, shall be increased by 6/10 of 1% over the  
47 contribution rate otherwise established under the provisions of  
48 paragraph (3) or (4) of this subsection.

1       If on March 31 of any calendar year the balance of the  
2 unemployment trust fund is less than 2 1/2% of the total taxable  
3 wages reported to the controller as of that date in respect to  
4 employment during the preceding calendar year, the contribution  
5 rate, effective July 1 following, of each employer (1) eligible for  
6 a contribution rate calculation based upon benefit experience,  
7 shall be increased by (i) 6/10 of 1% over the contribution rate  
8 otherwise established under the provisions of paragraph (3), (4)  
9 (A) or (4) (B) of this subsection, and (ii) an additional amount  
10 equal to 20% of the total rate established herein, provided,  
11 however, that the final contribution rate for each employer shall  
12 be computed to the nearest multiple of 1/10% if not already a  
13 multiple thereof; (2) not eligible for a contribution rate  
14 calculation based upon benefit experience, shall be increased by  
15 6/10 of 1% over the contribution rate otherwise established under  
16 the provisions of paragraph (4) of this subsection. For the period  
17 commencing July 1, 1984 and ending June 30, 1986, the  
18 contribution rate for each employer liable to pay contributions  
19 under R.S.43:21-7 shall be increased by a factor of 10% computed  
20 to the nearest multiple of 1/10% if not already a multiple thereof.

21       (B) If on March 31 of any calendar year the balance in the  
22 unemployment trust fund equals or exceeds 10% but is less than  
23 12 1/2% of the total taxable wages reported to the controller as  
24 of that date in respect to employment during the preceding  
25 calendar year, the contribution rate, effective July 1 following,  
26 of each employer eligible for a contribution rate calculation  
27 based upon benefit experience, shall be reduced by 3/10 of 1%  
28 under the contribution rate otherwise established under the  
29 provisions of paragraphs (3) and (4) of this subsection; provided  
30 that in no event shall the contribution rate of any employer be  
31 reduced to less than 4/10 of 1%. If on March 31 of any calendar  
32 year the balance in the unemployment trust fund equals or  
33 exceeds 12 1/2% of the total taxable wages reported to the  
34 controller as of that date in respect to employment during the  
35 preceding calendar year, the contribution rate, effective July 1  
36 following, of each employer eligible for a contribution rate  
37 calculation based upon benefit experience, shall be reduced by  
38 6/10 of 1% if his account for all past periods reflects an excess of  
39 contributions paid over total benefits charged of 3% or more of  
40 his average annual payroll, otherwise by 3/10 of 1% under the  
41 contribution rate otherwise established under the provisions of  
42 paragraphs (3) and (4) of this subsection; provided that in no event  
43 shall the contribution rate of any employer be reduced to less  
44 than 4/10 of 1%.

45       (C) The "balance" in the unemployment trust fund, as the term  
46 is used in subparagraphs (A) and (B) above, shall not include  
47 moneys credited to the State's account under section 903 of the  
48 Social Security Act, as amended (42 U.S.C. §1103), during any

1 period in which such moneys are appropriated for the payment of  
 2 expenses incurred in the administration of [Unemployment  
 3 Compensation Law.] "unemployment compensation law."

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

10 (E) With respect to experience rating years beginning on or  
 11 after July 1, 1986, the new employer rate or the unemployment  
 12 experience rate of an employer under this section shall be the  
 13 rate which appears in the column headed by the Unemployment  
 14 Trust Fund Reserve Ratio as of the applicable calculation date  
 15 and on the line with the Employer Reserve Ratio, as defined in  
 16 paragraph 4 of this subsection (R.S.43:21-7 (c) (4)), as set forth in  
 17 the following table:

18  
 19 EXPERIENCE RATING TAX TABLE  
 20 FUND RESERVE RATIO<sup>1</sup>

21 Employer	10.00%	7.00%	4.00%	2.50%	2.49%	
22 Reserve	and	to	to	to	and	
23 Ratio <sup>2</sup>	Over	9.99%	6.99%	3.99%	Under	
24	A	B	C	D	E	
25						
26	Positive Reserve Ratio:					
27	17% and over .....	0.3	0.4	0.5	0.6	1.2
28	16.00% to 16.99%	0.4	0.5	0.6	0.6	1.2
29	15.00% to 15.99%	0.4	0.6	0.7	0.7	1.2
30	14.00% to 14.99%	0.5	0.6	0.7	0.8	1.2
31	13.00% to 13.99%	0.6	0.7	0.8	0.9	1.2
32	12.00% to 12.99%	0.6	0.8	0.9	1.0	1.2
33	11.00% to 11.99%	0.7	0.8	1.0	1.1	1.2
34	10.00% to 10.99%	0.9	1.1	1.3	1.5	1.6
35	9.00% to 9.99%	1.0	1.3	1.6	1.7	1.9
36	8.00% to 8.99%	1.3	1.6	1.9	2.1	2.3
37	7.00% to 7.99%	1.4	1.8	2.2	2.4	2.6
38	6.00% to 6.99%	1.7	2.1	2.5	2.8	3.0
39	5.00% to 5.99%	1.9	2.4	2.8	3.1	3.4
40	4.00% to 4.99%	2.0	2.6	3.1	3.4	3.7
41	3.00% to 3.99%	2.1	2.7	3.2	3.6	3.9
42	2.00% to 2.99%	2.2	2.8	3.3	3.7	4.0
43	1.00% to 1.99%	2.3	2.9	3.4	3.8	4.1
44	0.00% to 0.99%	2.4	3.0	3.6	4.0	4.3
45						
46	Deficit Reserve Ratio:					
47	- 0.00% to - 2.99%	3.4	4.3	5.1	5.6	6.1
48	- 3.00% to - 5.99%	3.4	4.3	5.1	5.7	6.2

1	Deficit Reserve Ratio:					
2	- 6.00% to - 8.99%	3.5	4.4	5.2	5.8	6.3
3	- 9.00% to -11.99%	3.5	4.5	5.3	5.9	6.4
4	-12.00% to -14.99%	3.6	4.6	5.4	6.0	6.5
5	-15.00% to -19.99%	3.6	4.6	5.5	6.1	6.6
6	-20.00% to -24.99%	3.7	4.7	5.6	6.2	6.7
7	-25.00% to -29.99%	3.7	4.8	5.6	6.3	6.8
8	-30.00% to -34.99%	3.8	4.8	5.7	6.3	6.9
9	-35.00% and under	5.4	5.4	5.8	6.4	7.0
10	New Employer Rate	2.8	2.8	2.8	3.1	3.4

11

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

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

16

17 (F) With respect to experience rating years beginning on or  
 18 after July 1, 1986, if the balance of the unemployment trust  
 19 fund as of the prior March 31 is negative, the contribution rate  
 20 for each employer liable to pay contributions, as computed  
 21 under subparagraph E of this paragraph (5), shall be increased by  
 22 a factor of 10% computed to the nearest multiple of 1/10% if  
 23 not already a multiple thereof.

24 (6) Additional contributions.

25 Notwithstanding any other provision of law, any employer who  
 26 has been assigned a contribution rate pursuant to subsection (c)  
 27 of this section for the year commencing July 1, 1948, and for  
 28 any year commencing July 1 thereafter, may voluntarily make  
 29 payment of additional contributions, and upon such payment  
 30 shall receive a recomputation of the experience rate applicable  
 31 to such employer, including in the calculation the additional  
 32 contribution so made. Any such additional contribution shall be  
 33 made during the 30-day period following the date of the mailing  
 34 to the employer of the notice of his contribution rate as  
 35 prescribed in this section, unless, for good cause, the time for  
 36 payment has been extended by the controller for not to exceed  
 37 an additional 60 days; provided that in no event may such  
 38 payments which are made later than 120 days after the  
 39 beginning of the year for which such rates are effective be  
 40 considered in determining the experience rate for the year in  
 41 which the payment is made. Any employer receiving any  
 42 extended period of time within which to make such additional  
 43 payment and failing to make such payment timely shall be, in  
 44 addition to the required amount of additional payment, a penalty  
 45 of 5% thereof or \$5.00, whichever is greater, not to exceed  
 46 \$50.00. Any adjustment under this subsection shall be made only  
 47 in the form of credits against accrued or future contributions.

48 (7) Transfers.

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

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

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



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

7 (d) Contributions of workers, transfers to temporary  
8 disability benefit fund.

9 (1) (A) For periods after January 1, 1975, each worker shall  
10 contribute to the fund 1% of his wages with respect to his  
11 employment with an employer, which occurs on and after  
12 January 1, 1975, after such employer has satisfied the condition  
13 set forth in subsection (h) of [section] R.S.43:21-19 [of this  
14 Title] with respect to becoming an employer; provided, however,  
15 that such contributions shall be at the rate of 1/2 of 1% of  
16 wages paid with respect to employment while the worker is in  
17 the employ of the State of New Jersey, or any governmental  
18 entity or instrumentality which is an employer as defined under  
19 R.S.43:21-19 (h) (5), or is covered by an approved private plan  
20 under the [Temporary Disability Benefits Law] "Temporary  
21 Disability Benefits Law" or while the worker is exempt from the  
22 provisions of the [Temporary Disability Benefits Law]  
23 "Temporary Disability Benefits Law" under section 7 of [that  
24 law] P.L.1948, c.110 (C.43:21-31).

25 (B) Effective January 1, 1978 there shall be no contributions  
26 by workers in the employ of any governmental or  
27 nongovernmental employer electing or required to make  
28 payments in lieu of contributions unless the employer is covered  
29 by the State plan under the [Temporary Disability Benefits Law]  
30 "Temporary Disability Benefits Law" (C.43:21-37 et seq.), and  
31 in that case contributions shall be at the rate of 1/2 of 1%,  
32 except that commencing July 1, 1986, workers in the employ of  
33 any nongovernmental employer electing or required to make  
34 payments in lieu of contributions shall be required to make  
35 contributions to the fund at the same rate prescribed for  
36 workers of other nongovernmental employers.

37 (C) Notwithstanding the above provisions of this paragraph  
38 (1), on or after July 1, 1986, each worker shall contribute to the  
39 fund 1.125% of wages paid with respect to his employment with  
40 a governmental employer electing or required to pay  
41 contributions or nongovernmental employer, including a  
42 nonprofit organization which is an employer as defined under  
43 R.S.43:21-19 (h) (6), regardless of whether that nonprofit  
44 organization elects or is required to finance its benefit costs  
45 with contributions to the fund or by payments in lieu of  
46 contributions, after that employer has satisfied the conditions  
47 set forth in [subsection] R.S. 43:21-19 (h) [of this Title] with  
48 respect to becoming an employer. Contributions, however, shall

1 be at the rate of 0.625% while the worker is covered by an  
2 approved private plan under the [Temporary Disability Benefits  
3 Law] "Temporary Disability Benefits Law" or while the worker  
4 is exempt under section 7 of [that law] P.L.1948, c.110  
5 (C.43:21-31) or any other provision of [that law] P.L.1948, c.110  
6 (C.43:21-25 et seq.); provided that such contributions shall be at  
7 the rate of 0.625% of wages paid with respect to employment  
8 with the State of New Jersey or any other governmental entity  
9 or instrumentality electing or required to make payments in lieu  
10 of contributions and which is covered by the State plan under  
11 the [Temporary Disability Benefits Law,] "Temporary Disability  
12 Benefits Law," except that, while the worker is exempt from  
13 the provisions of the [Temporary Disability Benefits Law]  
14 "Temporary Disability Benefits Law" under section 7 of [that  
15 law] P.L.1948, c.110 (C.43:21-31) or any other provision of [that  
16 law] P.L.1948, c.110 (C.43:21-25 et seq.), or is covered for  
17 disability benefits by an approved private plan of the employer,  
18 the contributions to the fund shall be 0.125%.

19 (D) Each employer shall, notwithstanding any provision of law  
20 in this State to the contrary, withhold in trust the amount of his  
21 workers' contributions from their wages at the time such wages  
22 are paid, shall show such deduction on his payroll records, shall  
23 furnish such evidence thereof to his workers as the division or  
24 controller may prescribe, and if a worker is receiving workers'  
25 compensation benefits, the employer shall direct the insurance  
26 carrier paying the benefits to deduct the worker's contribution  
27 from the worker's compensation benefits and transmit the  
28 contribution to the employer, or in the case of a self-insured  
29 employer, make the deduction for the contribution from the  
30 worker's compensation benefits, and shall transmit all such  
31 contributions, in addition to his own contributions, to the office  
32 of the controller in such manner and at such times as may be  
33 prescribed. If any employer fails to deduct the contributions of  
34 any of his workers at the time their wages are paid, or fails to  
35 make a deduction therefor at the time wages are paid for the  
36 next succeeding payroll period, he alone shall thereafter be  
37 liable for such contributions, and for the purpose of [section]  
38 R.S.43:21-14 [of this Title], such contributions shall be treated  
39 as employer's contributions required from him.

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

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

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

46 (C) With respect to wages paid on and after January 1, 1975,  
47 there shall be deposited in and credited to the State [Disability  
48 Benefits Fund] disability benefits fund , as established by law,

1 one-half of all worker contributions received by the controller  
2 upon which the rate of contributions is 1%.

3 (D) [All] There shall be deposited in and credited to the State  
4 disability benefits fund, as established by law, all worker  
5 contributions received by the controller from all employers  
6 electing or required to make payments in lieu of contributions,  
7 upon which the rate of contribution is 1/2 of 1%, except the  
8 State of New Jersey or any other governmental entity or  
9 instrumentality defined as an employer under R.S.43:21-19 (h)  
10 (5), unless the State of New Jersey or such other governmental  
11 entity or instrumentality is a "covered employer," as defined in  
12 R.S.43:21-27.

13 (E) Notwithstanding the above with respect to wages on or  
14 after July 1, 1986, there shall be deposited in and credited to  
15 the State [Disability Benefits Fund] disability benefits fund 4/9  
16 of all worker contributions received by the controller upon  
17 which the rate of contribution is 1.125% and 4/5 of the  
18 contributions received by the controller upon which the rate of  
19 contribution is 0.625% of wages paid with respect to  
20 employment with the State of New Jersey or any other  
21 governmental entity or instrumentality electing or required to  
22 make payments in lieu of contributions and which is covered by  
23 the State plan under the [Temporary Disability Benefits Law.]  
24 "Temporary Disability Benefits Law."

25 (3) If an employee receives wages from more than one  
26 employer during any calendar year, and either the sum of his  
27 contributions deposited in and credited to the State [Disability  
28 Benefits Fund] disability benefits fund (in accordance with  
29 paragraph (2) of this subsection) plus the amount of his  
30 contributions, if any, required towards the costs of benefits  
31 under one or more approved private plans under the provisions of  
32 section 9 of the [Temporary Disability Benefits Law]  
33 "Temporary Disability Benefits Law" (C.43:21-33) and deducted  
34 from his wages, or the sum of such latter contributions, if the  
35 employee is covered during such calendar year only by two or  
36 more private plans, exceeds an amount equal to 1/2 of 1% of the  
37 "wages" determined in accordance with the provisions of  
38 R.S.43:21-7(b) (3) during the calendar years beginning on or  
39 after January 1, 1976, the employee shall be entitled to a refund  
40 of the excess if he makes a claim to the controller within two  
41 years after the end of the calendar year in which the wages are  
42 received with respect to which the refund is claimed and  
43 establishes his right to such refund. Such refund shall be made  
44 by the controller from the State [Disability Benefits Fund]  
45 disability benefits fund. No interest shall be allowed or paid  
46 with respect to any such refund. The controller shall, in  
47 accordance with prescribed regulations, determine the portion  
48 of the aggregate amount of such refunds made during any

1 calendar year which is applicable to private plans for which  
2 deductions were made under section 9 of the [Temporary  
3 Disability Benefits Law,] "Temporary Disability Benefits Law,"  
4 such determination to be based upon the ratio of the amount of  
5 such wages exempt from contributions to such fund, as provided  
6 in subparagraph (B) of paragraph (1) of this subsection with  
7 respect to coverage under private plans, to the total wages so  
8 exempt plus the amount of such wages subject to contributions  
9 to the State disability benefits fund, as provided in subparagraph  
10 (B) of paragraph (2) of this subsection. The controller shall, in  
11 accordance with prescribed regulations, prorate the amount so  
12 determined among the applicable private plans in the proportion  
13 that the wages covered by each plan bear to the total private  
14 plan wages involved in such refunds, and shall assess against and  
15 recover from the employer, or the insurer if the insurer has  
16 indemnified the employer with respect thereto, the amount so  
17 prorated. The provisions of R.S. 43:21-14 with respect to  
18 collection of employer contributions shall apply to such  
19 assessments. The amount so recovered by the controller shall be  
20 paid into the State [Disability Benefits Fund] disability benefits  
21 fund.

22 (4) If an individual does not receive any wages from the  
23 employing unit which for the purposes of this chapter  
24 (R.S.43:21-1 et seq.) is treated as his employer, or receives his  
25 wages from some other employing unit, such employer shall  
26 nevertheless be liable for such individual's contributions in the  
27 first instance; and after payment thereof such employer may  
28 deduct the amount of such contributions from any sums payable  
29 by him to such employing unit, or may recover the amount of  
30 such contributions from such employing unit, or, in the absence  
31 of such an employing unit, from such individual, in a civil action;  
32 provided proceedings therefor are instituted within three months  
33 after the date on which such contributions are payable. General  
34 rules shall be prescribed whereby such an employing unit may  
35 recover the amount of such contributions from such individuals  
36 in the same manner as if it were the employer.

37 (5) Every employer who has elected to become an employer  
38 subject to this chapter (R.S.43:21-1 et seq.), or to cease to be an  
39 employer subject to this chapter (R.S.43:21-1 et seq.), pursuant  
40 to the provisions of [section] R.S.43:21-8 [of this Title], shall  
41 post and maintain printed notices of such election on his  
42 premises, of such design, in such numbers, and at such places as  
43 the director may determine to be necessary to give notice  
44 thereof to persons in his service.

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

48 (e) Contributions by employers to State [Disability Benefits

1 Fund] disability benefits fund.

2 (1) Except as hereinafter provided, each employer shall, in  
3 addition to the contributions required by subsections (a), (b), and  
4 (c) of this section, contribute 1/2 of 1% of the wages paid by  
5 such employer to workers with respect to employment unless he  
6 is not a covered employer as defined in subsection a. of section  
7 3 of the [Temporary Disability Benefits Law] "Temporary  
8 Disability Benefits Law" (C.43:21-27 (a)), except that the rate  
9 for the State of New Jersey shall be 1/10 of 1% for the calendar  
10 year 1980 and for the first six months of 1981. Prior to July 1,  
11 1981 and prior to July 1 each year thereafter, the controller  
12 shall review the experience accumulated in the account of the  
13 State of New Jersey and establish a rate for the next following  
14 fiscal year which, in combination with worker contributions, will  
15 produce sufficient revenue to keep the account in balance;  
16 except that the rate so established shall not be less than 1/10 of  
17 1%. Such contributions shall become due and be paid by the  
18 employer to the controller for the State [Disability Benefits  
19 Fund] disability benefits fund as established by law, in  
20 accordance with such regulations as may be prescribed, and shall  
21 not be deducted, in whole or in part, from the remuneration of  
22 individuals in his employ. In the payment of any contributions, a  
23 fractional part of a cent shall be disregarded unless it amounts  
24 to \$0.005 or more, in which case it shall be increased to \$0.01.

25 (2) During the continuance of coverage of a worker by an  
26 approved private plan of disability benefits under the  
27 [Temporary Disability Benefits Law,] "Temporary Disability  
28 Benefits Law," the employer shall be exempt from the  
29 contributions required by subparagraph (1) above with respect to  
30 wages paid to such worker.

31 (3) (A) The rates of contribution as specified in subparagraph  
32 (1) above shall be subject to modification as provided herein  
33 with respect to employer contributions due on and after July 1,  
34 1951.

35 (B) A separate disability benefits account shall be maintained  
36 for each employer required to contribute to the State [Disability  
37 Benefits Fund] disability benefits fund and such account shall be  
38 credited with contributions deposited in and credited to such  
39 fund with respect to employment occurring on and after  
40 January 1, 1949. Each employer's account shall be credited  
41 with all contributions paid on or before January 31 of any  
42 calendar year on his own behalf and on behalf of individuals in  
43 his service with respect to employment occurring in preceding  
44 calendar years; provided, however, that if January 31 of any  
45 calendar year falls on a Saturday or Sunday an employer's  
46 account shall be credited as of January 31 of such calendar year  
47 with all the contributions which he has paid on or before the  
48 next succeeding day which is not a Saturday or Sunday. But

1 nothing in this act shall be construed to grant any employer or  
2 individuals in his service prior claims or rights to the amounts  
3 paid by him to the fund either on his own behalf or on behalf of  
4 such individuals. Benefits paid to any covered individual in  
5 accordance with Article III of the [Temporary Disability  
6 Benefits Law] "Temporary Disability Benefits Law" on or before  
7 December 31 of any calendar year with respect to disability in  
8 such calendar year and in preceding calendar years shall be  
9 charged against the account of the employer by whom such  
10 individual was employed at the commencement of such disability  
11 or by whom he was last employed, if out of employment.

12 (C) The controller may prescribe regulations for the  
13 establishment, maintenance, and dissolution of joint accounts by  
14 two or more employers, and shall, in accordance with such  
15 regulations and upon application by two or more employers to  
16 establish such an account, or to merge their several individual  
17 accounts in a joint account, maintain such joint account as if it  
18 constituted a single employer's account.

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

23 (1) Such preliminary rate shall be 1/2 of 1% unless on the  
24 preceding January 31 of such year such employer shall have been  
25 a covered employer who has paid contributions to the State  
26 [Disability Benefits Fund] disability benefits fund with respect  
27 to employment in the three calendar years immediately  
28 preceding such year.

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

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

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

39 (iii) 1/10 of 1% if such excess over \$500.00 equals or exceeds  
40 1 1/2 of his average annual payroll.

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

47 (4) If the minimum requirements in (1) above have been  
48 fulfilled and the benefits charged exceed the contributions

1 credited by more than \$500.00, such preliminary rate shall be as  
2 follows:

3 (i)  $\frac{35}{100}$  of 1% if such excess over \$500.00 is less than  $\frac{1}{4}$   
4 of 1% of his average annual payroll;

5 (ii)  $\frac{45}{100}$  of 1% if such excess over \$500.00 equals or  
6 exceeds  $\frac{1}{4}$  of 1% but is less than  $\frac{1}{2}$  of 1% of his average  
7 annual payroll;

8 (iii)  $\frac{55}{100}$  of 1% if such excess over \$500.00 equals or  
9 exceeds  $\frac{1}{2}$  of 1% but is less than  $\frac{3}{4}$  of 1% of his average  
10 annual payroll;

11 (iv)  $\frac{65}{100}$  of 1% if such excess over \$500.00 equals or  
12 exceeds  $\frac{3}{4}$  of 1% but is less than 1% of his average annual  
13 payroll;

14 (v)  $\frac{75}{100}$  of 1% if such excess over \$500.00 equals or  
15 exceeds 1% of his average annual payroll.

16 (5) Determination of the preliminary rate as specified in (2),  
17 (3) and (4) above shall be subject, however, to the condition that  
18 it shall in no event be decreased by more than  $\frac{1}{10}$  of 1% of  
19 wages or increased by more than  $\frac{2}{10}$  of 1% of wages from the  
20 preliminary rate determined for the preceding year in  
21 accordance with (1), (2), (3) or (4), whichever shall have been  
22 applicable.

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

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

44 (i) If the percentage determined in accordance with  
45 paragraph (E) (1) of this subsection equals or exceeds  $1\frac{1}{4}\%$ ,  
46 the final employer rates shall be the preliminary rates  
47 determined as provided in (D) hereof, except that if the  
48 employer's preliminary rate is determined as provided in (D) (2)

1 or (D) (3) hereof, the final employer rate shall be the  
2 preliminary employer rate decreased by such percentage of  
3 excess taken to the nearest 5/100 of 1%, but in no case shall  
4 such final rate be less than 1/10 of 1%.

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

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

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

35 (cf: P.L.1984, c.24, s.5)

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

37 43:21-19. Definitions. As used in this chapter (R.S.43:21-1  
38 et seq.), unless the context clearly requires otherwise:

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

42 (2) "Average annual payroll" means the average of the annual  
43 payrolls of any employer for the last three or five preceding  
44 calendar years, whichever average is higher, except that any  
45 year or years throughout which an employer has had no "annual  
46 payroll" because of military service shall be deleted from the  
47 reckoning; the "average annual payroll" in such case is to be  
48 determined on the basis of the prior three or five calendar years



1 in each of which the employer had an "annual payroll" in the  
2 operation of his business, if the employer resumes his business  
3 within 12 months after separation, discharge or release from  
4 such service, under conditions other than dishonorable, and  
5 makes application to have his "average annual payroll"  
6 determined on the basis of such deletion within 12 months after  
7 he resumes his business; provided, however, that "average  
8 annual payroll" solely for the purposes of paragraph (3) of  
9 subsection (e) of R.S.43:21-7 means the average of the annual  
10 payrolls of any employer on which he paid contributions to the  
11 State disability benefits fund for the last three or five preceding  
12 calendar years, whichever average is higher; provided further  
13 that only those wages be included on which employer  
14 contributions have been paid on or before January 31 (or the  
15 next succeeding day if such January 31 is a Saturday or Sunday)  
16 immediately preceding the beginning of the 12-month period for  
17 which the employer's contribution rate is computed.

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

21 (c) "Base year" with respect to benefit years commencing on  
22 or after January 1, 1953, shall mean the 52 calendar weeks  
23 ending with the second week immediately preceding an  
24 individual's benefit year. "Base year" with respect to benefit  
25 years commencing on or after July 1, 1986, shall mean the first  
26 four of the last five completed calendar quarters immediately  
27 preceding an individual's benefit year.

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

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

44 (2) "Controller" means the Office of the Assistant  
45 Commissioner for Finance and Controller of the Department of  
46 Labor, established by the 1982 Reorganization Plan of the  
47 Department of Labor.

48 (f) "Contributions" means the money payments to the State

1 Unemployment Compensation Fund, required by R.S.43:21-7.  
2 "Payments in lieu of contributions" means the money payments  
3 to the State Unemployment Compensation Fund by employers  
4 electing or required to make payments in lieu of contributions,  
5 as provided in section 3 or section 4 of P.L.1971, c.346  
6 (C.43:21-7.2 [and] or 43:21-7.3).

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

30 (h) "Employer" means:

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

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

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

44 (4) Any employing unit which together with one or more other  
45 employing units is owned or controlled (by legally enforceable  
46 means or otherwise), directly or indirectly by the same  
47 interests, or which owns or controls one or more other  
48 employing units (by legally enforceable means or otherwise), and

1 which, if treated as a single unit with such other employing unit  
2 or interest, would be an employer under paragraph (1) of this  
3 subsection;

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

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

13 (7) Any employing unit not an employer by reason of any  
14 other paragraph of this subsection (h) for which, within either  
15 the current or preceding calendar year, service is or was  
16 performed with respect to which such employing unit is liable  
17 for any federal tax against which credit may be taken for  
18 contributions required to be paid into a state unemployment  
19 fund; or which, as a condition for approval of the  
20 "unemployment compensation law" for full tax credit against  
21 the tax imposed by the [federal] Federal Unemployment Tax  
22 Act, is required pursuant to such act to be an employer under  
23 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] Federal Unemployment Tax Act within either the  
29 current or the preceding calendar year, except for employment  
30 hereinafter excluded under paragraph (7) of subsection (i) of this  
31 section;

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

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

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

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

45 (A) Any service performed prior to January 1, 1972, which  
46 was employment as defined in the "unemployment compensation  
47 law" (R.S.43:21-1 et seq.) prior to such date, and, subject to the  
48 other provisions of this subsection, service performed on or

1 after January 1, 1972, including service in interstate commerce,  
2 performed for remuneration or under any contract of hire,  
3 written or oral, express or implied.

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

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

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

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

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

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

34 (iii) Prior to January 1, 1978, in the employ of a school which  
35 is not an institution of higher education, and after December 31,  
36 1977, in the employ of a governmental entity referred to in  
37 R.S.43:21-19 (i) (1) (B), if such service is performed by an  
38 individual in the exercise of duties

39 (aa) as an elected official;

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

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

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

46 (ee) in a position which, under or pursuant to the laws of this  
47 State, is designated as a major nontenured policy making or  
48 advisory position, or a policy making or advisory position, the

1 performance of the duties of which ordinarily does not require  
2 more than eight hours per week; or

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

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

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

18 (E) The term "employment" shall include the services of an  
19 individual who is a citizen of the United States, performed  
20 outside the United States after December 31, 1971 (except in  
21 Canada and in the case of the Virgin Islands, after December 31,  
22 1971 and prior to January 1 of the year following the year in  
23 which the U.S. Secretary of Labor approves the unemployment  
24 compensation law of the Virgin Islands, under section 3304 (a) of  
25 the Internal Revenue Code of [1954] 1986 (26 U.S.C. §3304(a) )  
26 in the employ of an American employer (other than the service  
27 which is deemed employment under the provisions of  
28 R.S.43:21-19 (i) (2) or (5) of the parallel provisions of another  
29 state's unemployment compensation law), if

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

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

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

46 (iv) An "American employer," for the purposes of this  
47 subparagraph (E), means (I) an individual who is a resident of the  
48 United States; or (II) a partnership, if two-thirds or more of the

1 partners are residents of the United States; or (III) a trust, if all  
2 the trustees are residents of the United States; or (IV) a  
3 corporation organized under the laws of the United States or of  
4 any state.

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

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

21 (H) The term "United States" when used in a geographical  
22 sense in subsection R.S.43:21-19 (i) includes the states, the  
23 District of Columbia, the Commonwealth of Puerto Rico and,  
24 effective on the day after the day on which the U.S. Secretary  
25 of Labor approves for the first time under section 3304 (a) of  
26 the Internal Revenue Code of [1954] 1986 (26 U.S.C. §3304 (a))  
27 an unemployment compensation law submitted to the Secretary  
28 by the Virgin Islands for such approval, the Virgin Islands.

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

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

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

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

46 (aa) if such crew leader holds a certification of registration  
47 under the Migrant and Seasonal Agricultural Work Protection  
48 Act, Pub. L. 97-470 (29 U.S.C. §1801 et seq.), or P.L.1971, c.192

1 (C.34:8A-7 et seq.); or substantially all the members of such  
2 crew operate or maintain tractors, mechanized harvesting or  
3 cropdusting equipment, or any other mechanized equipment,  
4 which is provided by such crew leader; and

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

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

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

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

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

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

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

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

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

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

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

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

46 (3) Services performed within this State but not covered  
47 under paragraph (2) of this subsection shall be deemed to be  
48 employment subject to this chapter (R.S.43:21-1 et seq.) if

1 contributions are not required and paid with respect to such  
2 services under an unemployment compensation law of any other  
3 state or of the federal government.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

1 contributions erroneously paid to or collected by the division;

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

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

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

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

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

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

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

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

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

47 (P) Service performed in the employ of a foreign government,  
48 including service as a consular, nondiplomatic representative, or

1 other officer or employee;

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

13 (R) Service in the employ of an international organization  
14 entitled to enjoy the privileges, exemptions and immunities  
15 under the International Organizations Immunities Act (22 U.S.C.  
16 §288 et seq.);

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

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

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

45 (V) Service performed in the employ of a hospital, if such  
46 service is performed by a patient of the hospital; service  
47 performed as a student nurse in the employ of a hospital or a  
48 nurses' training school by an individual who is enrolled and

1 regularly attending classes in a nurses' training school approved  
2 under the laws of this State; and service performed as an intern  
3 in the employ of a hospital by an individual who has completed a  
4 four-year course in a medical school approved pursuant to the  
5 laws of this State;

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

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

20 (Y) Services performed by a certified shorthand reporter  
21 certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.),  
22 provided to a third party by the reporter who is referred to the  
23 third party pursuant to an agreement with another certified  
24 shorthand reporter or shorthand reporting service, on a  
25 freelance basis, compensation for which is based upon a fee per  
26 transcript page, flat attendance fee, or other flat minimum fee,  
27 or combination thereof, set forth in the agreement.

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

39 (9) Services performed by the owner of a limousine franchise  
40 (franchisee) shall not be deemed to be employment subject to  
41 the "unemployment compensation law," R.S.43:21-1 et seq.,  
42 with 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  
48 franchisor as defined by section 3 of P.L.1971, c.356

1 (C.56:10-3); and

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

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

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

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

12 (m) "Unemployment."

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

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

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

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

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

1 from his employer, whichever is the higher.

2 (p) "Remuneration" means all compensation for personal  
3 services, including commission and bonuses, workers'  
4 compensation benefits received under chapter 15 of Title 34 of  
5 the Revised Statutes, and the cash value of all compensation in  
6 any medium other than cash.

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

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

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

15 (t) (1) "Base week" for a benefit year commencing prior to  
16 October 1, 1984, means, except as otherwise provided in  
17 [paragraph (2)] paragraphs (2) and (3) of this subsection, any  
18 calendar week of an individual's base year during which he  
19 earned in employment from an employer remuneration equal to  
20 not less than \$30.00. "Base week" for a benefit year commencing  
21 on or after October 1, 1984 and prior to October 1, 1985 means  
22 any calendar week of an individual's base year during which the  
23 individual earned in employment from an employer remuneration  
24 equal to not less than 15% of the Statewide average weekly  
25 remuneration defined in subsection (c) of R.S.43:21-3, which  
26 shall be adjusted to the next higher multiple of \$1.00 if not  
27 already a multiple thereof.

28 "Base week" for a benefit year commencing on or after  
29 October 1, 1985 means, except as otherwise provided in  
30 [paragraph (2)] paragraphs (2) and (3) of this subsection, any  
31 calendar week of an individual's base year during which the  
32 individual earned in employment from an employer remuneration  
33 equal to not less than 20% of the Statewide average weekly  
34 remuneration defined in subsection (c) of R.S.43:21-3 which  
35 shall be adjusted to the next higher multiple of \$1.00 if not  
36 already a multiple thereof; provided if in any calendar week an  
37 individual is in employment with more than one employer, he  
38 may in such calendar week establish a base week with respect to  
39 each such employer from whom the individual earns  
40 remuneration equal to not less than the amount defined in this  
41 paragraph (1) during such week.

42 (2) "Base week," with respect to an individual claiming  
43 benefits on the basis of service performed in the production and  
44 harvesting of agricultural crops, means, for a benefit year  
45 commencing on or after October 1, 1984 and before January 1,  
46 1985, any calendar week of an individual's base year during  
47 which the individual earned in employment from an employer  
48 remuneration equal to not less than \$30.00, except that if in any

1 calendar week an individual subject to this paragraph is in  
2 employment with more than one employer, the individual may in  
3 that calendar week establish a base week with respect to each  
4 of the employers from whom the individual earns remuneration  
5 equal to not less than the amount defined in this paragraph (2)  
6 during that week.

7 (3) "Base week," with respect to an individual claiming  
8 benefits on the basis of workers' compensation received, means  
9 any calendar week of an individual's base year during which the  
10 individual received in workers' compensation benefits,  
11 remuneration equal to not less than 20% of the Statewide  
12 average weekly remuneration defined in subsection (c) of  
13 R.S.43:21-3 which shall be adjusted to the next higher multiple  
14 of \$1.00 if not already a multiple thereof.

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

27 For the purpose of computing the average weekly wage, the  
28 monetary alternative in subsection (e) of R.S.43:21-4 shall only  
29 apply in those instances where the individual did not have at  
30 least 20 base weeks in the base year. For benefit years  
31 commencing on or after July 1, 1986, "average weekly wage"  
32 means the amount derived by dividing an individual's total base  
33 year wages by the number of base weeks worked by the  
34 individual during the base year; provided that for the purpose of  
35 computing the average weekly wage, the maximum number of  
36 base weeks used in the divisor shall be 52.

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

48 (w) "Last date of employment" means the last calendar day

1 in the base year of an individual on which he performed services  
2 in employment for a given employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 4. This act shall take effect on the 90th day following  
43 enactment.

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45

#### STATEMENT

46

47 This bill remedies the situation arising in cases where  
48 individuals who have been out of work receiving workers'



1 compensation benefits and return to work to find that their jobs  
2 are no longer available. Often these individuals do not qualify  
3 for unemployment compensation benefits under the present law  
4 because they do not meet the minimum number of base weeks or  
5 minimum earned wages requirement. This is so because  
6 workers' compensation benefits are not considered  
7 "remuneration" under the "unemployment compensation law,"  
8 R.S.43:21-1 et seq. This bill amends the "unemployment  
9 compensation law" to include those benefits as "remuneration"  
10 and also amends the law to count the weeks out on workers'  
11 compensation towards the minimum number of base weeks.

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## LABOR

15

16 Amends "unemployment compensation law" to include workers'  
17 compensation benefits as "remuneration."

ASSEMBLY LABOR COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 2893**  
**STATE OF NEW JERSEY**

DATED: FEBRUARY 8, 1990

The Assembly Labor Committee reports favorably the Assembly Committee Substitute for Assembly Bill No. 2893.

This committee substitute amends the "unemployment compensation law," (R.S.43:21-1 et seq.) to provide that if an individual, after receiving temporary disability or workers' compensation benefits, applies for unemployment compensation benefits, the base year used to determine the individual's eligibility for unemployment benefits and the level of benefits shall be the first four of the last five full calendar quarters immediately preceding the individual's period of disability. In the case of an individual who received worker's compensation, the provisions of the substitute apply only if the period of disability is not more than two years.

At present, the base year for determining unemployment compensation benefit eligibility is the first four of the last five full calendar quarters immediately prior to the application for the benefits. Consequently, an individual who is unable to obtain work after being disabled for a large part of the base year is often prevented from obtaining unemployment benefits, no matter how long the individual was employed before the disability. This substitute would remedy that situation by insuring that, with respect to unemployment compensation benefits, a worker unable to find work is not penalized for a previous disability.

The bill also requires the Department of Labor to notify individuals receiving temporary disability or workers' compensation benefits of the conditions under which they are eligible to receive unemployment compensation benefits following or period of disability.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2893

STATE OF NEW JERSEY

DATED: JANUARY 9, 1992

The Senate Labor, Industry and Professions Committee reports favorably Assembly, No. 2893 ACS.

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