

**LEGISLATIVE HISTORY CHECKLIST**  
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(Unemployment--eligibility)

**NJSA:** 43:21-4

**LAWS OF:** 1995 **CHAPTER:** 234

**BILL NO:** A2653

**SPONSOR(S):** Collins and others

**DATE INTRODUCED:** March 13, 1995

**COMMITTEE:** **ASSEMBLY** Labor  
**SENATE:** Commerce

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
 Second reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** May 1, 1995  
**SENATE:** June 22, 1995

**DATE OF APPROVAL:** August 22, 1995

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** Yes

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

See newspaper clippings--attached:

"Whitman signs change to aid seasonal workers," 8-23-95, Asbury Park Press.  
 "Benefits made more available," 8-23-95, Home News.

KBG:pp

[SECOND REPRINT]  
ASSEMBLY, No. 2653

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1995

By Assemblymen COLLINS, ROMA, Mikulak, Hayden,  
Asselta, Felice, Garcia and Assemblywoman Heck

1 AN ACT modifying certain unemployment insurance benefit  
2 eligibility requirements and amending R.S.43:21-4<sup>2</sup>,  
3 R.S.43:21-14<sup>2</sup> 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) (A) Subject to such limitations and conditions as the  
39 division may prescribe, an individual, who is otherwise eligible,  
40 shall not be deemed unavailable for work or ineligible because the  
41 individual is attending a training program approved for the  
42 individual by the division to enhance the individual's employment

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly ALA committee amendments adopted March 23, 1995.

<sup>2</sup> Assembly floor amendments adopted May 1, 1995.

1 opportunities or because the individual failed or refused to accept  
2 work while attending such program.

3 (B) For the purpose of this paragraph (4), any training program  
4 shall be regarded as approved by the division for the individual if  
5 the program and the individual meet the following requirements:

6 (i) The training is for a labor demand occupation and is likely  
7 to enhance the individual's marketable skills and earning power;

8 (ii) The training is provided by a competent and reliable  
9 private or public entity approved by the Commissioner of Labor  
10 <sup>1</sup>[, which approval shall be made, if the "1992 New Jersey  
11 Employment and Workforce Development Act," P.L.1992, c.43  
12 (C.34:15D-1 et al.) is enacted,<sup>1</sup> pursuant to the provisions of  
13 section 8 of <sup>1</sup>[that act] the "1992 New Jersey Employment and  
14 Workforce Development Act," P.L.1992, c.43 (C.34:15D-8)<sup>1</sup>;

15 (iii) The individual can reasonably be expected to complete the  
16 program, either during or after the period of benefits;

17 (iv) The training does not include on the job training or other  
18 training under which the individual is paid by an employer for  
19 work performed by the individual during the time that the  
20 individual receives benefits; and

21 (v) The individual enrolls in vocational training, remedial  
22 education or a combination of both on a full-time basis.

23 (C) If the requirements of subparagraph (B) of this paragraph  
24 (4) are met, the division shall not withhold approval of the  
25 training program for the individual for any of the following  
26 reasons:

27 (i) The training includes remedial basic skills education  
28 necessary for the individual to successfully complete the  
29 vocational component of the training;

30 (ii) The training is provided in connection with a program  
31 under which the individual may obtain a college degree, including  
32 a post-graduate degree;

33 (iii) The length of the training period under the program; or

34 (iv) The lack of a prior guarantee of employment upon  
35 completion of the training.

36 (D) For the purpose of this paragraph (4), "labor demand  
37 occupation" means an occupation for which there is or is likely to  
38 be an excess of demand over supply for adequately trained  
39 workers, including, but not limited to, an occupation designated  
40 as a labor demand occupation by the New Jersey Occupational  
41 Information Coordinating Committee pursuant to the provisions  
42 of subsection h. of section 1 of P.L.1987, c.457 (C.34:1A-76) or  
43 section 12 of P.L.1992, c.43 (C.34:15D-12).

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

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

53 For purposes of this paragraph, "immediate family member"  
54 includes any of the following individuals: father, mother,

1 mother-in-law, father-in-law, grandmother, grandfather,  
2 grandchild, spouse, child, foster child, sister or brother of the  
3 unemployed individual and any relatives of the unemployed  
4 individual residing in the unemployed individual's household.

5 (d) The individual has been totally or partially unemployed for  
6 a waiting period of one week in the benefit year which includes  
7 that week. When benefits become payable with respect to the  
8 third consecutive week next following the waiting period, the  
9 individual shall be eligible to receive benefits as appropriate with  
10 respect to the waiting period. No week shall be counted as a week  
11 of unemployment for the purposes of this subsection:

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

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

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

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

24 (e) (1) With respect to a base year as defined in subsection (c)  
25 of R.S.43:21-19, the individual has established at least 20 base  
26 weeks as defined in [paragraph (1) of] subsection (t) of  
27 R.S.43:21-19, or, in those instances in which the individual has  
28 not established 20 base weeks, [the individual has earned  
29 \$2,200.00 for benefit years commencing prior to October 1, 1984;  
30 and,] except as otherwise provided in [paragraph (2) or] paragraph  
31 (3) of this subsection, for benefit years commencing on or after  
32 October 1, 1984 and before <sup>1</sup>[October] January<sup>1</sup> 1, 1996, the  
33 individual has earned 12 times the Statewide average weekly  
34 remuneration paid to workers, as determined under  
35 R.S.43:21-3(c), raised to the next higher multiple of \$100.00 if  
36 not already a multiple thereof, or more in the individual's base  
37 year.

38 (2) [Notwithstanding the provisions of paragraph (1) of this  
39 subsection, for benefit years commencing on or after October 1,  
40 1984 and before January 1, 1985, an unemployed individual  
41 claiming benefits on the basis of service performed in the  
42 production and harvesting of agricultural crops shall, subject to  
43 the limitations of subsection (i) of R.S.43:21-19, be eligible to  
44 receive benefits if it appears that the individual has established  
45 at least 20 base weeks as defined in paragraph (2) of subsection  
46 (t) of R.S.43:21-19, or, in those instances in which the individual  
47 has not established 20 base weeks, the individual has earned  
48 \$2,200.00.] With respect to benefit years commencing on or after  
49 <sup>1</sup>[October] January<sup>1</sup> 1, 1996, except as otherwise provided in  
50 paragraph (3) of this subsection, the individual has, during his  
51 base year as defined in subsection (c) of R.S.43:21-19:

52 (A) Established at least 20 base weeks as defined in paragraph  
53 (2) of subsection (t) of R.S.43:21-19; or,

54 (B) If the individual has not met the requirements of

1 subparagraph (A) of this paragraph (2), earned <sup>1</sup>remuneration not  
2 less than an amount<sup>1</sup> 12 times the Statewide average weekly  
3 remuneration paid to workers, as determined under  
4 R.S.43:21-3(c), <sup>1</sup>[raised] which amount shall be adjusted<sup>1</sup> to the  
5 next higher multiple of \$100.00 if not already a multiple thereof  
6 <sup>1</sup>[, or more]<sup>1</sup>; or

7 (C) If the individual has not met the requirements of  
8 subparagraphs (A) or (B) of this paragraph (2), <sup>1</sup>[worked for a  
9 total of not less than 1,000 hours for one or more employers]  
10 earned remuneration not less than an amount 1,000 times the  
11 minimum wage in effect pursuant to section 5 of P.L.1966, c.113  
12 (C.34:11-56a4) on October 1 of the calendar year preceding the  
13 calendar year in which the benefit year commences, which  
14 amount shall be adjusted to the next higher multiple of \$100.00 if  
15 not already a multiple thereof<sup>1</sup>.

16 (3) Notwithstanding the provisions of paragraph (1) or  
17 paragraph (2) of this subsection, an unemployed individual  
18 claiming benefits on the basis of service performed in the  
19 production and harvesting of agricultural crops shall, subject to  
20 the limitations of subsection (i) of R.S.43:21-19, be eligible to  
21 receive benefits if during his base year, as defined in subsection  
22 (c) of R.S.43:21-19, the individual:

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

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

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

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

38 (f) (1) The individual has suffered any accident or sickness not  
39 compensable under the workers' compensation law, R.S.34:15-1  
40 et seq. and resulting in the individual's total disability to perform  
41 any work for remuneration, and would be eligible to receive  
42 benefits under this chapter (R.S.43:21-1 et seq.) (without regard  
43 to the maximum amount of benefits payable during any benefit  
44 year) except for the inability to work and has furnished notice  
45 and proof of claim to the division, in accordance with its rules  
46 and regulations, and payment is not precluded by the provisions of  
47 R.S.43:21-3(d); provided, however, that benefits paid under this  
48 subsection (f) shall be computed on the basis of only those base  
49 year wages earned by the claimant as a "covered individual," as  
50 defined in R.S.43:21-27(b); provided further that no benefits shall  
51 be payable under this subsection to any individual:

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

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

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

5 (D) For any week with respect to which or a part of which the  
6 individual has received or is seeking benefits under any  
7 unemployment compensation or disability benefits law of any  
8 other state or of the United States; provided that if the  
9 appropriate agency of such other state or the United States  
10 finally determines that the individual is not entitled to such  
11 benefits, this disqualification shall not apply;

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

16 (F) For any period of disability commencing while such  
17 individual is a "covered individual," as defined in subsection (b) of  
18 section 3 of the "Temporary Disability Benefits Law," P.L.1948,  
19 c.110 (C.43:21-27).

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

26 (g) Benefits based on service in employment defined in  
27 subparagraphs (B) and (C) of R.S.43:21-19(i)(1) shall be payable in  
28 the same amount and on the terms and subject to the same  
29 conditions as benefits payable on the basis of other service  
30 subject to the "unemployment compensation law"; except that,  
31 notwithstanding any other provisions of the "unemployment  
32 compensation law":

33 (1) With respect to service performed after December 31,  
34 1977, in an instructional research, or principal administrative  
35 capacity for an educational institution, benefits shall not be paid  
36 based on such services for any week of unemployment  
37 commencing during the period between two successive academic  
38 years, or during a similar period between two regular terms,  
39 whether or not successive, or during a period of paid sabbatical  
40 leave provided for in the individual's contract, to any individual  
41 if such individual performs such services in the first of such  
42 academic years (or terms) and if there is a contract or a  
43 reasonable assurance that such individual will perform services in  
44 any such capacity for any educational institution in the second of  
45 such academic years or terms;

46 (2) With respect to weeks of unemployment beginning after  
47 September 3, 1982, on the basis of service performed in any other  
48 capacity for an educational institution, benefits shall not be paid  
49 on the basis of such services to any individual for any week which  
50 commences during a period between two successive academic  
51 years or terms if such individual performs such services in the  
52 first of such academic years or terms and there is a reasonable  
53 assurance that such individual will perform such services in the  
54 second of such academic years or terms, except that if benefits

1 are denied to any individual under this paragraph (2) and the  
2 individual was not offered an opportunity to perform these  
3 services for the educational institution for the second of any  
4 academic years or terms, the individual shall be entitled to a  
5 retroactive payment of benefits for each week for which the  
6 individual filed a timely claim for benefits and for which benefits  
7 were denied solely by reason of this clause;

8 (3) With respect to those services described in paragraphs (1)  
9 and (2) above, benefits shall not be paid on the basis of such  
10 services to any individual for any week which commences during  
11 an established and customary vacation period or holiday recess if  
12 such individual performs such services in the period immediately  
13 before such vacation period or holiday recess, and there is a  
14 reasonable assurance that such individual will perform such  
15 services in the period immediately following such period or  
16 holiday recess;

17 (4) With respect to any services described in paragraphs (1) and  
18 (2) above, benefits shall not be paid as specified in paragraphs (1),  
19 (2), and (3) above to any individual who performed those services  
20 in an educational institution while in the employ of an  
21 educational service agency, and for this purpose the term  
22 "educational service agency" means a governmental agency or  
23 governmental entity which is established and operated exclusively  
24 for the purpose of providing those services to one or more  
25 educational institutions.

26 (h) Benefits shall not be paid to any individual on the basis of  
27 any services, substantially all of which consist of participating in  
28 sports or athletic events or training or preparing to so  
29 participate, for any week which commences during the period  
30 between two successive sports seasons (or similar periods) if such  
31 individual performed such services in the first of such seasons (or  
32 similar periods) and there is a reasonable assurance that such  
33 individual will perform such services in the later of such seasons  
34 (or similar periods).

35 (i) (1) Benefits shall not be paid on the basis of services  
36 performed by an alien unless such alien is an individual who was  
37 lawfully admitted for permanent residence at the time the  
38 services were performed and was lawfully present for the purpose  
39 of performing the services or otherwise was permanently residing  
40 in the United States under color of law at the time the services  
41 were performed (including an alien who is lawfully present in the  
42 United States as a result of the application of the provisions of  
43 section 203(a)(7) (8 U.S.C. §1153 (a)(7)) or section 212(d)(5) (8  
44 U.S.C. §1182 (d)(5)) of the Immigration and Nationality Act (8  
45 U.S.C. §1101 et seq.); provided that any modifications of the  
46 provisions of section 3304(a)(14) of the Federal Unemployment  
47 Tax Act (26 U.S.C. §3304 (a)(14)), as provided by Pub.L.94-566,  
48 which specify other conditions or other effective dates than  
49 stated herein for the denial of benefits based on services  
50 performed by aliens and which modifications are required to be  
51 implemented under State law as a condition for full tax credit  
52 against the tax imposed by the Federal Unemployment Tax Act,  
53 shall be deemed applicable under the provisions of this section.

54 (2) Any data or information required of individuals applying for

1 benefits to determine whether benefits are not payable to them  
2 because of their alien status shall be uniformly required from all  
3 applicants for benefits.

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

8 (j) Notwithstanding any other provision of this chapter, the  
9 director may, to the extent that it may be deemed efficient and  
10 economical, provide for consolidated administration by one or  
11 more representatives or deputies of claims made pursuant to  
12 subsection (f) of this section with those made pursuant to Article  
13 III (State plan) of the "Temporary Disability Benefits Law,"  
14 P.L.1948, c.110 (C.43:21-25 et seq.).  
15 (cf: P.L.1992, c.46, s.1)

16 22. R.S.43:21-14 is amended to read as follows:

17 43:21-14. (a)(1) In addition to such reports as may be required  
18 under the provisions of subsection (g) of [section] R.S.43:21-11 [of  
19 this chapter (R.S.43:21-1 et seq.)], every employer shall file with  
20 the controller periodical contribution reports on such forms and  
21 at such times as the controller shall prescribe, to disclose the  
22 employer's liability for contributions under the provisions of this  
23 chapter (R.S.43:21-1 et seq.), and at the time of filing each  
24 contribution report shall pay the contributions required by this  
25 chapter (R.S.43:21-1 et seq.), for the period covered by such  
26 report. The controller may require that such reports shall be  
27 under oath of the employer. Any employer who shall fail to file  
28 any report, required by the controller, on or before the last day  
29 for the filing thereof shall pay a penalty of \$5.00 for each day of  
30 delinquency until and including the fifth day following such last  
31 day and for any period of delinquency after such fifth day, a  
32 penalty of \$5.00 a day or 20% of the amount of the contributions  
33 due and payable by the employer for the period covered by the  
34 report, whichever is the lesser; if there be no liability for  
35 contributions for the period covered by any contribution report or  
36 in the case of any report other than a contribution report, the  
37 employer or employing unit shall pay a penalty of \$5.00 a day for  
38 each day of delinquency in filing or \$25.00, whichever is the  
39 lesser; provided, however, that when it is shown to the  
40 satisfaction of the controller that the failure to file any such  
41 report was not the result of fraud or an intentional disregard of  
42 this chapter (R.S.43:21-1 et seq.), or the regulations promulgated  
43 hereunder, the controller, in his discretion, may remit or abate  
44 any unpaid penalties heretofore or hereafter imposed under this  
45 section. On or before October 1 of each year, the controller shall  
46 submit to the Commissioner of Labor a report covering the  
47 12-month period ending on the preceding June 30, and showing  
48 the names and addresses of all employers for whom the controller  
49 remitted or abated any penalties, or ratified any remission or  
50 abatement of penalties, and the amount of such penalties with  
51 respect to each employer. Any employer who shall fail to pay the  
52 contributions due for any period, on or before the date they are  
53 required by the controller to be paid, shall pay interest on the  
54 amount thereof from such date until the date of payment



1 thereof, at the rate of 1% a month through June 30, 1981 and at  
2 the rate of 1 1/4% a month after June 30, 1981. Upon the  
3 written request of any employer or employing unit, filed with the  
4 controller on or before the due date of any report or contribution  
5 payment, the controller, for good cause shown, may grant, in  
6 writing, an extension of time for the filing of such report or the  
7 paying of such contribution, with interest at the applicable rate;  
8 provided no such extension shall exceed 30 days and that no such  
9 extension shall postpone payment of any contribution for any  
10 period beyond the day preceding the last day for filing tax returns  
11 under Title IX of the federal Social Security Act for the year in  
12 which said period occurs.

13 (2)(A) For the calendar quarter commencing July 1, 1984 and  
14 each successive quarter thereafter, each employer shall file a  
15 report with the controller within 30 days after the end of each  
16 quarter in a form and manner prescribed by the controller, listing  
17 the name, social security number and wages paid to each  
18 employee and the number of base weeks (as defined in subsection  
19 (t) of R.S.43:21-19) worked by the employee during the calendar  
20 quarter. (B) Any employer who fails without reasonable cause to  
21 comply with the reporting requirements of this paragraph (2) shall  
22 be liable for a penalty in the following amount for each employee  
23 with respect to whom the employer is required to file a report  
24 but who is not included in the report or for whom the required  
25 information is not accurately reported for each employee  
26 required to be included, whether or not the employee is included:

27 (i) For the first failure for one quarter in any eight  
28 consecutive quarters, \$5.00 for each employee;

29 (ii) For the second failure for any quarter in any eight  
30 consecutive quarters, \$10.00 for each employee; and

31 (iii) For the third failure for any quarter in any eight  
32 consecutive quarters, and for any failure in any eight consecutive  
33 quarters, which failure is subsequent to the third failure, \$25.00  
34 for each employee.

35 (C) Information reported by employers as requested by this  
36 paragraph (2) shall be used by the Department of Labor for the  
37 purpose of determining eligibility for benefits of individuals in  
38 accordance with the provisions of R.S. 43:21-1 et seq.  
39 Notwithstanding the provisions of subsection (g) of R.S.43:21-11,  
40 the Department of Labor is hereby authorized to provide the  
41 Department of Human Services and the Higher Education  
42 Assistance Authority with information reported by employers as  
43 required by this paragraph (2). For each fiscal year, the Director  
44 of the Division of Budget and Accounting of the Department of  
45 the Treasury shall charge the appropriate account of the  
46 Department of Human Services and the Higher Education  
47 Assistance Authority in amounts sufficient to reimburse the  
48 Department of Labor for the cost of providing information under  
49 this subparagraph (C).

50 (D) For the purpose of administering the provisions of this  
51 paragraph (2), all appropriations, files, books, papers, records,  
52 equipment and other property, and employees currently assigned  
53 to the Division of Taxation for the implementation of the "Wage  
54 Reporting Act," P.L.1980, c.48 (C.54:1-55 et seq.), shall be

1 transferred to the Department of Labor as of September 1, 1984  
2 in accordance with the provisions of the "State Agency Transfer  
3 Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

4 (b) The contributions, penalties, and interest due from any  
5 employer under the provisions of this chapter (R.S.43:21-1 et  
6 seq.), from the time they shall be due, shall be a personal debt of  
7 the employer to the State of New Jersey, recoverable in any  
8 court of competent jurisdiction in a civil action in the name of  
9 the State of New Jersey; provided, however, that except in the  
10 event of fraud, no employer shall be liable for contributions or  
11 penalties unless contribution reports have been filed or  
12 assessments have been made in accordance with subsection (c) or  
13 (d) of this section before four years have elapsed from the last  
14 day of the calendar year with respect to which any contributions  
15 become payable under this chapter (R.S.43:21-1 et seq.), nor shall  
16 any employer be required to pay interest on any such contribution  
17 unless contribution reports were filed or assessments made within  
18 such four-year period; provided further that if such contribution  
19 reports were filed or assessments made within the four-year  
20 period, no civil action shall be instituted, nor shall any certificate  
21 be issued to the Clerk of the Superior Court under subsection (e)  
22 of this section, except in the event of fraud, after six years have  
23 elapsed from the last day of the calendar year with respect to  
24 which any contributions become payable under this chapter  
25 (R.S.43:21-1 et seq.), or July 1, 1958, whichever is later.  
26 Payments received from an employer on account of any debt  
27 incurred under the provisions of this chapter (R.S.43:21-1 et seq.)  
28 may be applied by the controller on account of the contribution  
29 liability of the employer and then to interest and penalties, and  
30 any balance remaining shall be recoverable by the controller from  
31 the employer. Upon application therefor, the controller shall  
32 furnish interested persons and entities certificates of  
33 indebtedness covering employers, employing units and others for  
34 contributions, penalties and interest, for each of which  
35 certificates the controller shall charge and collect a fee of \$2.00  
36 per name; no such certificate to be issued, however, for a fee of  
37 less than \$10.00. All fees so collected shall be paid into the  
38 unemployment compensation administration fund.

39 (c) If any employer shall fail to make any report as required by  
40 the rules and regulations of the division pursuant to the provisions  
41 of this chapter (R.S.43:21-1 et seq.), the controller may make an  
42 estimate of the liability of such employer from any information it  
43 may obtain, and, according to such estimate so made, assess such  
44 employer for the contributions, penalties, and interest due the  
45 State from him, give notice of such assessment to the employer,  
46 and make demand upon him for payment.

47 (d) After a report is filed under the provisions of this chapter  
48 (R.S.43:21-1 et seq.) and the rules and regulations thereof, the  
49 controller shall cause the report to be examined and shall make  
50 such further audit and investigation as it may deem necessary,  
51 and if therefrom there shall be determined that there is a  
52 deficiency with respect to the payment of the contributions due  
53 from such employer, the controller shall assess the additional  
54 contributions, penalties, and interest due the State from such

1 employer, give notice of such assessment to the employer, and  
2 make demand upon him for payment.

3 (e) As an additional remedy, the controller may issue to the  
4 Clerk of the Superior Court of New Jersey a certificate stating  
5 the amount of the employer's indebtedness under this chapter  
6 (R.S.43:21-1 et seq.) and describing the liability, and thereupon  
7 the clerk shall immediately enter upon his record of docketed  
8 judgments such certificate or an abstract thereof and duly index  
9 the same. Any such certificate or abstract, heretofore or  
10 hereafter docketed, from the time of docketing shall have the  
11 same force and effect as a judgment obtained in the Superior  
12 Court of New Jersey, and the controller shall have all the  
13 remedies and may take all the proceedings for the collection  
14 thereof which may be had or taken upon the recovery of such a  
15 judgment in a civil action upon contract in said court. Such debt,  
16 from the time of docketing thereof, shall be a lien on and bind  
17 the lands, tenements and hereditaments of the debtor.

18 The Clerk of the Superior Court shall be entitled to receive for  
19 docketing such certificate, \$0.50, and for a certified transcript of  
20 such docket, \$0.50. If the amount set forth in said certificate as a  
21 debt shall be modified or reversed upon review, as hereinafter  
22 provided, the Clerk of the Superior Court shall, when an order of  
23 modification or reversal is filed, enter in the margin of the  
24 docket opposite the entry of the judgment, the word "modified"  
25 or "reversed," as the case may be, and the date of such  
26 modification or reversal.

27 The employer, or any other party having an interest in the  
28 property upon which the debt is a lien, may deposit the amount  
29 claimed in the certificate with the Clerk of the Superior Court of  
30 New Jersey, together with an additional 10% of the amount  
31 thereof, or \$100.00, whichever amount is the greater, to cover  
32 interest and the costs of court, or in lieu of depositing the  
33 amount in cash, may give a bond to the State of New Jersey in  
34 double the amount claimed in the certificate, and file the same  
35 with the Clerk of the Superior Court. Said bond shall have such  
36 surety and shall be approved in the manner required by the Rules  
37 [of the Supreme Court] Governing the Courts of the State of New  
38 Jersey.

39 After the deposit of said money or the filing of said bond, the  
40 employer, or any other party having an interest in the said  
41 property, may, after exhausting all administrative remedies,  
42 secure judicial review of the legality or validity of the  
43 indebtedness or the amount thereof, and the said deposit of cash  
44 shall be as security for, and the bond shall be conditioned to  
45 prosecute, the judicial review with effect.

46 Upon the deposit of said money or the filing of the said bond  
47 with the Clerk of the Superior Court, all proceedings on such  
48 judgment shall be stayed until the final determination of the  
49 cause, and the moneys so deposited shall be subject to the lien of  
50 the indebtedness and costs and interest thereon, and the lands,  
51 tenements, and hereditaments of said debtor shall forthwith be  
52 discharged from the lien of the State of New Jersey and no  
53 execution shall issue against the same by virtue of said judgment.

1 Notwithstanding the provisions of subsections (a) through (c) of  
2 this section, the Department of Labor may, with the concurrence  
3 of the State Treasurer, when all reasonable efforts to collect  
4 amounts owed have been exhausted, or to avoid litigation, reduce  
5 any liability for contributions, penalties and interest, provided no  
6 portion of those amounts represents contributions made by an  
7 employee pursuant to subsection (d) of R.S.43:21-7.

8 (f) If, not later than two years after the calendar year in which  
9 any moneys were erroneously paid to or collected by the  
10 controller, whether such payments were voluntarily or  
11 involuntarily made or made under mistake of law or of fact, an  
12 employer, employing unit, or employee who has paid such moneys  
13 shall make application for an adjustment thereof, the said moneys  
14 shall, upon order of the controller, be either credited or refunded,  
15 without interest, from the appropriate fund. For like cause and  
16 within the same period, credit or refund may be so made on the  
17 initiative of the controller.

18 (g) All interest and penalties collected pursuant to this section  
19 shall be paid into a special fund to be known as the unemployment  
20 compensation auxiliary fund; all moneys in this special fund shall  
21 be deposited, administered and disbursed in the same manner and  
22 under the same conditions and requirements as is provided by law  
23 for other special funds in the State Treasury, and shall be  
24 expended, under legislative appropriation, for the purpose of  
25 aiding in defraying the cost of the administration of this chapter  
26 (R.S. 43:21-1 et seq.); for the repayment of any interest bearing  
27 advances made from the federal unemployment account pursuant  
28 to the provisions of section 1202(b) of the Social Security Act, 42  
29 U.S.C. § 1322; and for essential and necessary expenditures in  
30 connection with programs designed to stimulate employment, as  
31 determined by the Commissioner of Labor, except that any  
32 moneys in this special fund which are not otherwise appropriated  
33 shall be applied to aiding in the defraying of necessary costs of  
34 the administration of this chapter (R.S.43:21-1 et seq.) as  
35 determined by the Commissioner of Labor. The Treasurer of the  
36 State shall be ex officio the treasurer and custodian of this  
37 special fund and, subject to legislative appropriation, shall  
38 administer the fund in accordance with the directions of the  
39 controller. Any balances in this fund shall not lapse at any time,  
40 but shall be continuously available, subject to legislative  
41 appropriation, to the controller for expenditure. The State  
42 Treasurer shall give a separate and additional bond conditioned  
43 upon the faithful performance of his duties in connection with the  
44 unemployment compensation auxiliary fund, in an amount to be  
45 fixed by the division, the premiums for such bond to be paid from  
46 the moneys in the said special fund.<sup>2</sup>

47 (cf: P.L.1986, c.191, s.1)

48 <sup>2</sup>[2.] 3.<sup>2</sup> R.S.43:21-19 is amended to read as follows:

49 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et  
50 seq.), unless the context clearly requires otherwise:

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

54 (2) "Average annual payroll" means the average of the annual

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

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

27 (c) (1) ["Base year" with respect to benefit years commencing  
28 on or after January 1, 1953, shall mean the 52 calendar weeks  
29 ending with the second week immediately preceding an  
30 individual's benefit year.] "Base year" with respect to benefit  
31 years commencing on or after July 1, 1986, shall mean the first  
32 four of the last five completed calendar quarters immediately  
33 preceding an individual's benefit year.

34 With respect to a benefit year commencing on or after July 1,  
35 1995, if an individual does not have sufficient qualifying weeks  
36 <sup>1</sup>[,] or<sup>1</sup> wages <sup>1</sup>[or hours]<sup>1</sup> in his base year to qualify for <sup>1</sup>[26  
37 weeks of]<sup>1</sup> benefits, the individual shall have the option of  
38 designating that his base year shall be the "alternative base  
39 year," which means the last four completed calendar quarters  
40 immediately preceding the individual's benefit year; except that,  
41 <sup>2</sup>with respect to a benefit year commencing on or after October  
42 1, 1995,<sup>2</sup> if the individual also does not have sufficient qualifying  
43 weeks <sup>1</sup>[,] or<sup>1</sup> wages <sup>1</sup>[or hours]<sup>1</sup> in the last four completed  
44 calendar quarters immediately preceding his benefit year to  
45 qualify for <sup>1</sup>[26 weeks of]<sup>1</sup> benefits, "alternative base year"  
46 means the last three completed calendar quarters immediately  
47 preceding his benefit year and, of the calendar quarter in which  
48 the benefit year commences, the portion of the quarter which  
49 occurs before the commencing of the benefit year.

50 The division shall inform the individual of his options under this  
51 1995 amendatory act. If information regarding weeks <sup>1</sup>[,] and<sup>1</sup>  
52 wages <sup>1</sup>[and hours]<sup>1</sup> for the calendar quarter or quarters  
53 immediately preceding the benefit year is not available to the  
54 division from the regular quarterly reports of wage <sup>1</sup>[and hour]<sup>1</sup>

1 information <sup>1</sup>and the division is not able to obtain the  
2 information using other means pursuant to State or federal law<sup>1</sup> ,  
3 the division may base the determination of eligibility for benefits  
4 on the affidavit of an individual with respect to weeks <sup>1</sup>[,] and<sup>1</sup>  
5 wages <sup>1</sup>[and hours]<sup>1</sup> for that calendar quarter. The individual  
6 shall furnish payroll documentation, if available, in support of the  
7 affidavit. A determination of benefits based on an alternative  
8 base year shall be adjusted when the quarterly report of wage  
9 <sup>1</sup>[and hour]<sup>1</sup> information from the employer is received if that  
10 information causes a change in the determination.

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

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

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

1 unemployed for the week in which, or as of which, he files a  
2 claim for benefits; and (2) he has fulfilled the conditions imposed  
3 by subsection (e) of R.S.43:21-4.

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

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

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

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

44 (h) "Employer" means:

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

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

53 (3) Any employing unit which acquired the organization, trade  
54 or business, or substantially all the assets thereof, of another

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

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

11 (5) Any employing unit for which service in employment as  
12 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December  
13 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is  
14 performed after December 31, 1977;

15 (6) Any employing unit for which service in employment as  
16 defined in R.S.43:21-19 (i) (1) (C) is performed after December  
17 31, 1971 and which in either the current or the preceding  
18 calendar year paid remuneration for employment in the amount  
19 of \$1,000.00 or more;

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

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

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

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

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

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

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

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

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

50 (A) Any service performed prior to January 1, 1972, which was  
51 employment as defined in the "unemployment compensation law"  
52 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other  
53 provisions of this subsection, service performed on or after  
54 January 1, 1972, including service in interstate commerce,



1 performed for remuneration or under any contract of hire,  
2 written or oral, express or implied.

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

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

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

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

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

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

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

37 (aa) as an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (G) Notwithstanding any other provision of this subsection,  
52 service in this State with respect to which the taxes required to  
53 be paid under any federal law imposing a tax against which credit  
54 may be taken for contributions required to be paid into a state

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

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

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

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

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

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

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

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

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

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

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

50 (iv) For the purpose of subparagraph (I) (i), the term "crew  
51 leader" means an individual who:

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

54 (bb) pays (either on his own behalf or on behalf of such other

1 entity) the individuals so furnished by him for the service in  
2 agricultural labor performed by them; and

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

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

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

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

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

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

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

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

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

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

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

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

51 (B) Such service is either outside the usual course of the  
52 business for which such service is performed, or that such service  
53 is performed outside of all the places of business of the

1 enterprise for which such service is performed; and

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

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

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

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

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

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

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

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

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

46 (F) Service performed in the employ of the United States  
47 Government or of any instrumentality of the United States  
48 except under the Constitution of the United States from the  
49 contributions imposed by the "unemployment compensation law,"  
50 except that to the extent that the Congress of the United States  
51 shall permit states to require any instrumentalities of the United  
52 States to make payments into an unemployment fund under a  
53 state unemployment compensation law, all of the provisions of  
54 this act shall be applicable to such instrumentalities, and to

1 service performed for such instrumentalities, in the same  
2 manner, to the same extent and on the same terms as to all other  
3 employers, employing units, individuals and services; provided  
4 that if this State shall not be certified for any year by the  
5 Secretary of Labor of the United States under section 3304 of the  
6 federal Internal Revenue Code of 1986 (26 U.S.C. §3304), the  
7 payments required of such instrumentalities with respect to such  
8 year shall be refunded by the division from the fund in the same  
9 manner and within the same period as is provided in R.S.43:21-14  
10 (f) with respect to contributions erroneously paid to or collected  
11 by the division;

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

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

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

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

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

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

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

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

52 (O) Services performed in the sale or distribution of  
53 merchandise by home-to-home salespersons or in-the-home  
54 demonstrators whose remuneration consists wholly of

1 commissions or commissions and bonuses;

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

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

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

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

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

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

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

1 four-year course in a medical school approved pursuant to the  
2 laws of this State;

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

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

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

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

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

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

45 (A) The limousine franchisee is incorporated;

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

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

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

53 (j) "Employment office" means a free public employment  
54 office, or branch thereof operated by this State or maintained as



- 1 a part of a State-controlled system of public employment offices.
- 2 (k) (Deleted by amendment, P.L.1984, c.24.)
- 3 (l) "State" includes, in addition to the states of the United  
4 States of America, the District of Columbia, the Virgin Islands  
5 and Puerto Rico.
- 6 (m) "Unemployment."
- 7 (1) An individual shall be deemed "unemployed" for any week  
8 during which he is not engaged in full-time work and with respect  
9 to which his remuneration is less than his weekly benefit rate,  
10 including any week during which he is on vacation without pay;  
11 provided such vacation is not the result of the individual's  
12 voluntary action, except that for benefit years commencing on or  
13 after July 1, 1984, an officer of a corporation, or a person who  
14 has more than a 5% equitable or debt interest in the corporation,  
15 whose claim for benefits is based on wages with that corporation  
16 shall not be deemed to be unemployed in any week during the  
17 individual's term of office or ownership in the corporation.
- 18 (2) The term "remuneration" with respect to any individual for  
19 benefit years commencing on or after July 1, 1961, and as used in  
20 this subsection, shall include only that part of the same which in  
21 any week exceeds 20% of his weekly benefit rate (fractional parts  
22 of a dollar omitted) or \$5.00, whichever is the larger.
- 23 (3) An individual's week of unemployment shall be deemed to  
24 commence only after the individual has filed a claim at an  
25 unemployment insurance claims office, except as the division  
26 may by regulation otherwise prescribe.
- 27 (n) "Unemployment compensation administration fund" means  
28 the unemployment compensation administration fund established  
29 by this chapter (R.S.43:21-1 et seq.), from which administrative  
30 expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.
- 31 (o) "Wages" means remuneration paid by employers for  
32 employment. If a worker receives gratuities regularly in the  
33 course of his employment from other than his employer, his  
34 "wages" shall also include the gratuities so received, if reported  
35 in writing to his employer in accordance with regulations of the  
36 division, and if not so reported, his "wages" shall be determined  
37 in accordance with the minimum wage rates prescribed under any  
38 labor law or regulation of this State or of the United States, or  
39 the amount of remuneration actually received by the employee  
40 from his employer, whichever is the higher.
- 41 (p) "Remuneration" means all compensation for personal  
42 services, including commission and bonuses and the cash value of  
43 all compensation in any medium other than cash.
- 44 (q) "Week" means for benefit years commencing on or after  
45 October 1, 1984, the calendar week ending at midnight Saturday,  
46 or as the division may by regulation prescribe.
- 47 (r) "Calendar quarter" means the period of three consecutive  
48 calendar months ending March 31, June 30, September 30, or  
49 December 31.
- 50 (s) "Investment company" means any company as defined in  
51 subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).
- 52 (t) (1) ["Base week" for a benefit year commencing prior to  
53 October 1, 1984, means, except as otherwise provided in  
54 paragraph (2) of this subsection, any calendar week of an

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

10 "Base week" for a benefit year commencing on or after  
11 October 1, 1985 and before <sup>1</sup>[October] January<sup>1</sup> 1, 1996 means,  
12 [except as otherwise provided in paragraph (2) of this subsection,]  
13 any calendar week of an individual's base year during which the  
14 individual earned in employment from an employer remuneration  
15 equal to not less than 20% of the Statewide average weekly  
16 remuneration defined in subsection (c) of R.S.43:21-3 which shall  
17 be adjusted to the next higher multiple of \$1.00 if not already a  
18 multiple thereof; provided if in any calendar week an individual is  
19 in employment with more than one employer, he may in such  
20 calendar week establish a base week with respect to each such  
21 employer from whom the individual earns remuneration equal to  
22 not less than the amount defined in this paragraph (1) during such  
23 week.

24 (2) "Base week," [with respect to an individual claiming  
25 benefits on the basis of service performed in the production and  
26 harvesting of agricultural crops, means,] for a benefit year  
27 commencing on or after <sup>1</sup>[October] January<sup>1</sup> 1, [1984 and before  
28 January 1, 1985, any calendar week of an individual's base year  
29 during which the individual earned in employment from an  
30 employer remuneration equal to not less than \$30.00,] 1996,  
31 means:

32 (A) Any calendar week of an individual's base year during  
33 which the individual earned in employment from an employer  
34 remuneration <sup>1</sup>[equal to]<sup>1</sup> not less than <sup>1</sup>an amount which is<sup>1</sup> 20%  
35 of the Statewide average weekly remuneration defined in  
36 subsection (c) of R.S.43:21-3 which <sup>1</sup>amount<sup>1</sup> shall be adjusted to  
37 the next higher multiple of \$1.00 if not already a multiple  
38 thereof, except that if in any calendar week an individual subject  
39 to this [paragraph] subparagraph (A) is in employment with more  
40 than one employer, the individual may in that calendar week  
41 establish a base week with respect to each of the employers from  
42 whom the individual earns remuneration equal to not less than the  
43 amount defined in this [paragraph (2)] subparagraph (A) during  
44 that week; or,

45 (B) If the individual does not establish in his base year 20 or  
46 more base weeks as defined in subparagraph (A) of this paragraph  
47 (2), any calendar week of an individual's base year during which  
48 the individual <sup>1</sup>[worked for an employer for 20 or more hours,]  
49 earned in employment from an employer remuneration not less  
50 than an amount 20 times the minimum wage in effect pursuant to  
51 section 5 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the  
52 calendar year preceding the calendar year in which the benefit  
53 year commences, which amount shall be adjusted to the next  
54 higher multiple of \$1.00 if not already a multiple thereof,<sup>1</sup>

1 except that if in any calendar week an individual subject to this  
2 subparagraph (B) is in employment with more than one employer,  
3 the individual may in that calendar week establish a base week  
4 with respect to each of the employers from whom the individual  
5 <sup>1</sup>[works a number of hours equal to not less than the number of  
6 hours] earns remuneration not less than the amount<sup>1</sup> defined in  
7 this subparagraph (B) during that week.

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

19 For the purpose of computing the average weekly wage, the  
20 monetary alternative in subparagraph (B) of paragraph (2) of  
21 subsection (e) of R.S.43:21-4 shall only apply in those instances  
22 where the individual did not have at least 20 base weeks in the  
23 base year. For benefit years commencing on or after July 1,  
24 1986, "average weekly wage" means the amount derived by  
25 dividing an individual's total base year wages by the number of  
26 base weeks worked by the individual during the base year;  
27 provided that for the purpose of computing the average weekly  
28 wage, the maximum number of base weeks used in the divisor  
29 shall be 52. <sup>1</sup>[For the purpose of computing the average weekly  
30 wage, the hours alternative in subparagraph (C) of paragraph (2)  
31 of subsection (e) of R.S.43:21-4 shall only apply in those instances  
32 where the individual did not have at least 20 base weeks in the  
33 base year or has not earned an amount sufficient to qualify under  
34 the monetary alternative in subparagraph (B) of that paragraph.  
35 The "average weekly wage" under the hours alternative in  
36 subparagraph (C) of paragraph (2) of subsection (e) of R.S.43:21-4  
37 means the amount derived by dividing an individual's total base  
38 year wages by the number of weeks during the base year in which  
39 the individual worked a total of 15 or more hours.]<sup>1</sup>

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

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

- 1 (x) "Most recent base year employer" means that employer  
2 with whom the individual most recently, in point of time,  
3 performed service in employment in the base year.
- 4 (y) (1) "Educational institution" means any public or other  
5 nonprofit institution (including an institution of higher education):  
6 (A) In which participants, trainees, or students are offered an  
7 organized course of study or training designed to transfer to them  
8 knowledge, skills, information, doctrines, attitudes or abilities  
9 from, by or under the guidance of an instructor (s) or teacher (s);  
10 (B) Which is approved, licensed or issued a permit to operate  
11 as a school by the State Department of Education or other  
12 government agency that is authorized within the State to  
13 approve, license or issue a permit for the operation of a school;  
14 and  
15 (C) Which offers courses of study or training which may be  
16 academic, technical, trade, or preparation for gainful  
17 employment in a recognized occupation.
- 18 (2) "Institution of higher education" means an educational  
19 institution which:  
20 (A) Admits as regular students only individuals having a  
21 certificate of graduation from a high school, or the recognized  
22 equivalent of such a certificate;  
23 (B) Is legally authorized in this State to provide a program of  
24 education beyond high school;  
25 (C) Provides an educational program for which it awards a  
26 bachelor's or higher degree, or provides a program which is  
27 acceptable for full credit toward such a degree, a program of  
28 post-graduate or post-doctoral studies, or a program of training  
29 to prepare students for gainful employment in a recognized  
30 occupation; and  
31 (D) Is a public or other nonprofit institution.
- 32 Notwithstanding any of the foregoing provisions of this  
33 subsection, all colleges and universities in this State are  
34 institutions of higher education for purposes of this section.
- 35 (z) "Hospital" means an institution which has been licensed,  
36 certified or approved under the law of this State as a hospital.  
37 (cf: P.L.1994, c.112, s.2)
- 38 <sup>2</sup>[3.] 4.2 This act shall take effect immediately.  
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43 \_\_\_\_\_  
Modifies eligibility for UI benefits.

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

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

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

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

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

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

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

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

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

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

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

34 (cf: P.L.1994, c.112, s.2)

35 3. This act shall take effect immediately.

36

37

38

#### STATEMENT

39

40 This bill revises the method used to determine eligibility for  
41 unemployment insurance (UI) benefits by providing alternative  
42 eligibility standards to laid off workers who are not able to obtain  
43 UI benefits under current standards.

44 First, the bill provides the option of an "alternative base year"  
45 to laid off workers who do not qualify for UI benefits under  
46 current law because their earnings during their base years are  
47 insufficient to qualify them for benefits. Currently, eligibility  
48 for UI benefits is based on the worker's earnings during a "base  
49 year," which is defined as the first four of the last five  
50 completed calendar quarters immediately preceding the date of  
51 the worker's claim for benefits. The alternative base years  
52 provided by the bill are the last four completed calendar quarters  
53 preceding the date of the claim or, if the worker does not qualify  
54 for UI benefits under that alternative, the last three completed

LEGISLATIVE FISCAL ESTIMATE TO

[FIRST REPRINT]

ASSEMBLY, No. 2653

STATE OF NEW JERSEY

DATED: May 5, 1995

Assembly Bill No. 2653 (1R) of 1995 revises the method used to determine eligibility for unemployment insurance (UI) benefits by providing alternative eligibility standards to laid off workers who are not able to obtain UI benefits under current standards.

First, the bill provides the option of an "alternative base year" to laid off workers who do not qualify for UI benefits under current law because their earnings during their base years are insufficient to qualify them for benefits. Currently, eligibility for UI benefits is based on the worker's earnings during a "base year," which is defined as the first four of the last five completed calendar quarters immediately preceding the date of the worker's claim for benefits. The alternative base years provided by the bill are the last four completed calendar quarters preceding the date of the claim or, if the worker does not qualify for UI benefits under that alternative, the last three completed calendar quarters before the date of the claim and the period of time between the last completed quarter and the filing of the claim. This provision of the bill corrects the current situation in which earnings of a laid off worker, particularly a seasonal worker, during the last three to six months before the layoff are not counted towards eligibility for UI benefits.

Second, the bill makes a laid off worker eligible for UI benefits if the worker earned a minimum of 1,000 times the current minimum wage during the worker's base year or 20 times the current minimum wage during each of the worker's base weeks. Under present law, the worker is not eligible for the benefits unless the worker earned at least 12 times the average weekly wage for all workers in the State during the worker's base year or during each of 20 base weeks. During 1995, the minimum earnings required, based on the State-wide average weekly wage, were \$7,600 per base year or \$126 per base week.

To facilitate the efficient administration of UI benefits, the bill also provides that only workers who are unable to obtain any benefits based on their regular base year may use the alternative base year.

The Office of Legislative Services (OLS) is unable to estimate the fiscal impact of this legislation on the Unemployment Compensation Fund, due to the refusal of the department, and other sources, to respond to the OLS's request for information, particularly with regard to the number of seasonal and minimum wage State and non-State employees who might be affected by the bill.

The OLS notes that the State employs approximately 3,000 seasonal employees, such as lifeguards and park employees during the summer months, as well as approximately 1,200 "intermittent hourly," workers, such as those required to process tax forms during

tax season. Although the number of these individuals which might be affected by this legislation is unknown, any increase in claims by these workers would require the State to make additional contributions, from General Fund monies, to the Unemployment Compensation Fund.

Finally, the OLS further notes that the administrative costs associated with the implementation of this legislation, including the costs of retraining department employees or reprogramming department computers, will have no impact on the State budget, as the administrative expenditures of the Unemployment Insurance program are covered by federal funds.

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

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

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2653

STATE OF NEW JERSEY

DATED: MARCH 23, 1995

The Assembly Labor, Business and Industry Committee reports favorably, Assembly No. 2653, with committee amendments.

As amended by the committee, the bill revises the method used to determine eligibility for unemployment insurance (UI) benefits by providing alternative eligibility standards to laid off workers who are not able to obtain UI benefits under current standards.

First, the bill provides the option of an "alternative base year" to laid off workers who do not qualify for UI benefits under current law because their earnings during their base years are insufficient to qualify them for benefits. Currently, eligibility for UI benefits is based on the worker's earnings during a "base year," which is defined as the first four of the last five completed calendar quarters immediately preceding the date of the worker's claim for benefits. The alternative base years provided by the bill are the last four completed calendar quarters preceding the date of the claim or, if the worker does not qualify for UI benefits under that alternative, the last three completed calendar quarters before the date of the claim and the period of time between the last completed quarter and the filing of the claim.

This provision of the bill corrects the current situation in which earnings of a laid off worker during the last three to six months before the layoff are not counted towards eligibility towards UI benefits. This causes particular hardship to workers in seasonal industries, like construction.

Second, the bill makes a laid off worker eligible for UI benefits if the worker earned a minimum of 1,000 times the current minimum wage during the worker's base year or 20 times the current minimum wage during each of the worker's base weeks. Under present law, the worker is not eligible for the benefits unless the worker earned at least 12 times the average weekly wage for all workers in the State during the worker's base year or during each of 20 base weeks. During 1995, the minimum earnings required, based on the State-wide average weekly wage, were \$7,600 per base year or \$126 per base week.

This provision of the bill corrects an inequity in the current law which makes it harder for laid off, low-wage workers to obtain UI benefits. For example, a worker who is paid the current minimum wage must work more than 1,500 hours in a year to attain the required minimum base year earnings or at least 25 hour per week to obtain the minimum base week earnings. As the value of the minimum wage declines compared to the average wage in the State, it is becoming increasingly difficult for minimum wage workers to obtain UI benefits.



The portion of all laid off workers in this State who receive UI benefits declined from more than 75% during most years in the 1970's to only 36% in 1993.

The committee amendments make changes in the bill to facilitate the efficient administration of UI benefits. The amendments provide that only workers who are unable to obtain any benefits based on their regular base year may use the alternative base year. Unamended, the bill made any worker eligible to use the alternative base year if the worker was unable to obtain the maximum number of weeks of benefits, 26 weeks, using the regular base year.

The committee amendments also change the alternative base week from a minimum of 20 hours of work to minimum earnings of 20 times the current minimum wage and change the alternative minimum standard for a base year from 1,000 hours of work to earnings of at least 1,000 times the current minimum wage.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[SECOND REPRINT]

ASSEMBLY, No. 2653

STATE OF NEW JERSEY

DATED: JUNE 12, 1995

The Senate Commerce Committee reports favorably Assembly, No. 2653 (2R).

This bill revises the method used to determine eligibility for unemployment insurance (UI) benefits by providing alternative eligibility standards to laid off workers who are not able to obtain UI benefits under current standards.

The bill provides the option of an "alternative base year" to laid off workers who do not qualify for UI benefits under current law because their earnings during their base years are insufficient to qualify them for benefits. Currently, eligibility for UI benefits is based on the worker's earnings during a "base year," which is defined as the first four of the last five completed calendar quarters immediately preceding the date of the worker's claim for benefits. The "alternative base year" provided by the bill is the last four completed calendar quarters preceding the date of the claim or, if the worker does not qualify for UI benefits under that alternative and with respect to a UI benefit year commencing on or after October 1, 1995, the last three completed calendar quarters before the date of the claim and the period of time between the last completed quarter and the filing of the claim. This change addresses a particular hardship affecting some workers in seasonal jobs, such as construction jobs or garment workers, whose most recent earnings often must be counted to be eligible for UI benefits.

The bill also reduces the eligibility standards for UI benefits by making a laid off worker eligible for UI benefits if the worker earned a minimum of 1,000 times the current minimum wage (\$5.05) during the worker's base year or 20 times the current minimum wage during each of the worker's 20 base weeks. Under present law, a worker is not eligible for benefits unless the worker earned at least 12 times the Statewide average weekly wage during the worker's base year or earned not less than 20% of the Statewide average weekly wage during each of 20 base weeks. During 1995, the minimum earnings required, based on the Statewide average weekly wage of \$625.77, were \$7,600 per base year or \$126 per base week. This bill lowers the minimum earnings required to \$5,100 per base year or \$101 per base week.

The bill provides that any moneys in the Unemployment Compensation Auxiliary Fund which are not otherwise appropriated be applied to aiding in the defrayal of necessary costs in the administration of unemployment compensation.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[SECOND REPRINT]

ASSEMBLY, No. 2653

STATE OF NEW JERSEY

DATED: JUNE 12, 1995

The Senate Commerce Committee reports favorably Assembly, No. 2653 (2R).

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2 time between the last completed quarter and the filing of the  
3 claim.

4 This provision of the bill corrects the current situation in which  
5 earnings of a laid off worker during the last three to six months  
6 before the layoff are not counted towards eligibility towards UI  
7 benefits. This causes particular hardship to workers in seasonal  
8 industries, like construction.

9 Second, the bill makes a laid off worker eligible for UI benefits  
10 if the worker was employed for a minimum of 1,000 hours during  
11 the worker's base year or 20 hours during each of the worker's  
12 base weeks. Under current law, the worker is not eligible for the  
13 benefits unless the worker earned at least 12 times the average  
14 weekly wage for all workers in the State during the worker's base  
15 year or during each of 20 base weeks. During 1995, the minimum  
16 earnings required, based on the State-wide average weekly wage,  
17 were \$7,600 per base year or \$126 per base week.

18 This provision of the bill corrects an inequity in the current law  
19 which makes it harder for laid off, low-wage workers to obtain UI  
20 benefits. For example, a worker who is paid the current  
21 minimum wage must work more than 1,500 hours in a year to  
22 attain the required minimum base year earnings or at least 25  
23 hour per week to obtain the minimum base week earnings. As the  
24 value of the minimum wage declines compared to the average  
25 wage in the State, it is becoming increasingly difficult for  
26 minimum wage workers to obtain UI benefits.

27 The portion of all laid off workers who receive UI benefits  
28 declined from more than 75% during most years in the 1970's to  
29 only 36% in 1993.

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34 \_\_\_\_\_  
Modifies eligibility for UI benefits.

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G61



## OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**  
**Contact:**

JAYNE REBOVICH  
609-777-2600

**TRENTON, N.J. 08625**

**Release:** TUESDAY  
AUG. 22, 1995

Gov. Christie Whitman today signed legislation expanding unemployment insurance benefits for seasonal and other workers.

“These men and women play a vital role in our economy and it’s right that we treat them fairly and give them the income security they need and deserve during unemployment,” said Gov. Whitman.

The bill, A-2653/S-1961, sponsored by Assemblymen Jack Collins (R-Salem) and Patrick Roma (R-Bergen) and Senators Andrew Ciesla (R-Monmouth) and John Matheussen (R-Camden), modifies the current requirements for obtaining unemployment insurance benefits by providing two alternative definitions of “base year.”

Workers who do not qualify for benefits under the current base year, defined as the first four of the last five completed calendar quarters immediately preceding the date of the worker’s claim, may qualify under one of the alternative base years. The first allows the worker to count towards eligibility the last four completed calendar quarters prior to the claim. The second allows the worker to count the last three completed calendar quarters before the date of the claim and a partial quarter; the period of time between the last completed quarter and the filing of the claim.

These changes will benefit seasonal or temporary workers who, under current law, must often wait between three and six months before qualifying for benefits because their most recent earnings are not counted towards eligibility.

The legislation also expands the pool of individuals eligible for benefits by reducing the amount of money a worker needs to earn during the base year.

Currently, a worker must have earned either 12 times the statewide average weekly wage (\$7560) during the year or 20% of the statewide average weekly wage (\$126) for 20 weeks during the year. Beginning January 1, 1996, a worker would also be eligible for unemployment benefits if, during the base year, he or she earned at least 1,000 times the current minimum wage (\$5100) or 20 times the current minimum wage (\$101) for at least 20 weeks.