

43:21-19

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2009 **CHAPTER:** 211

NJSA: 43:21-19 (Concerns eligibility for unemployment compensation for certain legal transcribers)

BILL NO: S825 (Substituted for A3770)

SPONSOR(S) Ciesla and Others

DATE INTRODUCED: January 28, 2008

COMMITTEE: **ASSEMBLY:** Labor

SENATE: Labor

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 7, 2010

SENATE: June 25, 2009

DATE OF APPROVAL: January 16, 2010

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint enacted) Yes

S825

SPONSOR'S STATEMENT: (Begins on page 19 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A3770

SPONSOR'S STATEMENT: (Begins on page 19 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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LAW/RWH

[First Reprint]

SENATE, No. 825

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JANUARY 28, 2008

Sponsored by:

Senator ANDREW R. CIESLA

District 10 (Monmouth and Ocean)

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Assemblywoman ELEASE EVANS

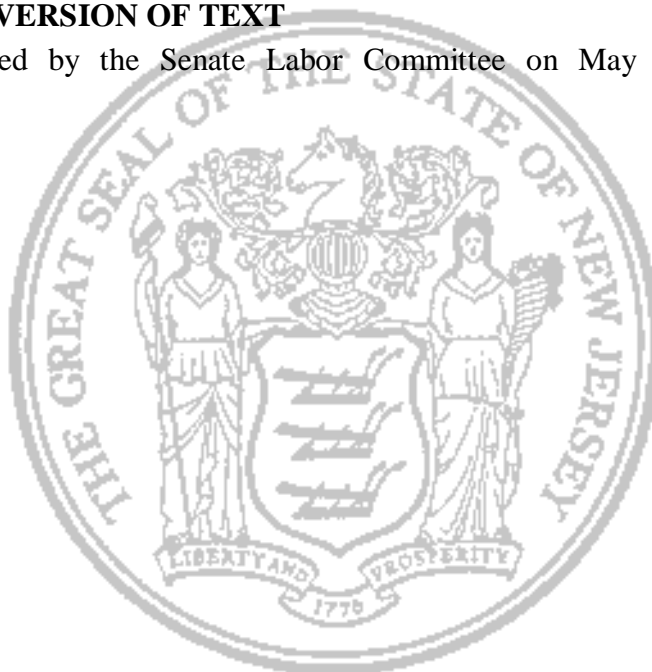
District 35 (Bergen and Passaic)

SYNOPSIS

Concerns eligibility for unemployment compensation for certain legal transcribers.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on May 4, 2009, with amendments.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning eligibility for unemployment compensation and
2 amending R.S.43:21-19.

3

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

6

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

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

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

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

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

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

43 With respect to a benefit year commencing on or after July 1,
44 1995, if an individual does not have sufficient qualifying weeks or
45 wages in his base year to qualify for benefits, the individual shall

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:

¹Senate SLA committee amendments adopted May 4, 2009.

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

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

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

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

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

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

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

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

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

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

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

15 (h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (C) Service performed after December 31, 1971 by an individual
48 in the employ of a religious, charitable, educational, or other

1 organization, which is excluded from "employment" as defined in
2 the Federal Unemployment Tax Act, solely by reason of section
3 3306 (c)(8) of that act, if such service is not excluded from
4 "employment" under paragraph (D) below.

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

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

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

15 (iii) Prior to January 1, 1978, in the employ of a school which is
16 not an institution of higher education, and after December 31, 1977,
17 in the employ of a governmental entity referred to in R.S.43:21-19

18 (i) (1) (B), if such service is performed by an individual in the
19 exercise of duties

20 (aa) as an elected official;

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

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

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

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

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

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

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

47 (E) The term "employment" shall include the services of an
48 individual who is a citizen of the United States, performed outside

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (B) The service is performed both within and without such state,
41 but the service performed without such state is incidental to the
42 individual's service within the state; for example, is temporary or
43 transitory in nature or consists of isolated 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 et
46 seq.) unless and until it is shown to the satisfaction of the division
47 that:

- 1 (A) Such individual has been and will continue to be free from
2 control or direction over the performance of such service, both
3 under his contract of service and in fact; and
- 4 (B) Such service is either outside the usual course of the
5 business for which such service is performed, or that such service is
6 performed outside of all the places of business of the enterprise for
7 which such service is performed; and
- 8 (C) Such individual is customarily engaged in an independently
9 established trade, occupation, profession or business.
- 10 (7) Provided that such services are also exempt under the
11 Federal Unemployment Tax Act, as amended, or that contributions
12 with respect to such services are not required to be paid into a state
13 unemployment fund as a condition for a tax offset credit against the
14 tax imposed by the Federal Unemployment Tax Act, as amended,
15 the term "employment" shall not include:
- 16 (A) Agricultural labor performed prior to January 1, 1978; and
17 after December 31, 1977, only if performed in a calendar year for
18 an entity which is not an employer as defined in the "unemployment
19 compensation law," (R.S.43:21-1 et seq.) as of January 1 of such
20 calendar year; or unless performed for an employing unit which
- 21 (i) during a calendar quarter in either the current or the
22 preceding calendar year paid remuneration in cash of \$20,000.00 or
23 more to individuals employed in agricultural labor, or
- 24 (ii) for some portion of a day in each of 20 different calendar
25 weeks, whether or not such weeks were consecutive, in either the
26 current or the preceding calendar year, employed in agricultural
27 labor 10 or more individuals, regardless of whether they were
28 employed at the same moment in time;
- 29 (B) Domestic service in a private home performed prior to
30 January 1, 1978; and after December 31, 1977, unless performed in
31 the private home of an employing unit which paid cash
32 remuneration of \$1,000.00 or more to one or more individuals for
33 such domestic service in any calendar quarter in the current or
34 preceding calendar year;
- 35 (C) Service performed by an individual in the employ of his son,
36 daughter or spouse, and service performed by a child under the age
37 of 18 in the employ of his father or mother;
- 38 (D) Service performed prior to January 1, 1978, in the employ of
39 this State or of any political subdivision thereof or of any
40 instrumentality of this State or its political subdivisions, except as
41 provided in R.S.43:21-19 (i) (1) (B) above, and service in the
42 employ of the South Jersey Port Corporation or its successors;
- 43 (E) Service performed in the employ of any other state or its
44 political subdivisions or of an instrumentality of any other state or
45 states or their political subdivisions to the extent that such
46 instrumentality is with respect to such service exempt under the
47 Constitution of the United States from the tax imposed under the

1 Federal Unemployment Tax Act, as amended, except as provided in
2 R.S.43:21-19 (i) (1) (B) above;

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

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

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

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

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

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

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

- 1 (M) Service performed for or in behalf of the owner or operator
2 of any theater, ballroom, amusement hall or other place of
3 entertainment, not in excess of 10 weeks in any calendar year for
4 the same owner or operator, by any leader or musician of a band or
5 orchestra, commonly called a "name band," entertainer, vaudeville
6 artist, actor, actress, singer or other entertainer;
- 7 (N) Services performed after January 1, 1973 by an individual
8 for a labor union organization, known and recognized as a union
9 local, as a member of a committee or committees reimbursed by the
10 union local for time lost from regular employment, or as a part-time
11 officer of a union local and the remuneration for such services is
12 less than \$1,000.00 in a calendar year;
- 13 (O) Services performed in the sale or distribution of
14 merchandise by home-to-home salespersons or in-the-home
15 demonstrators whose remuneration consists wholly of commissions
16 or commissions and bonuses;
- 17 (P) Service performed in the employ of a foreign government,
18 including service as a consular, nondiplomatic representative, or
19 other officer or employee;
- 20 (Q) Service performed in the employ of an instrumentality
21 wholly owned by a foreign government if (i) the service is of a
22 character similar to that performed in foreign countries by
23 employees of the United States Government or of an instrumentality
24 thereof, and (ii) the division finds that the United States Secretary
25 of State has certified to the United States Secretary of the Treasury
26 that the foreign government, with respect to whose instrumentality
27 exemption is claimed, grants an equivalent exemption with respect
28 to similar services performed in the foreign country by employees
29 of the United States Government and of instrumentalities thereof;
- 30 (R) Service in the employ of an international organization
31 entitled to enjoy the privileges, exemptions and immunities under
32 the International Organizations Immunities Act (22 U.S.C. s.288 et
33 seq.);
- 34 (S) Service covered by an election duly approved by an agency
35 charged with the administration of any other state or federal
36 unemployment compensation or employment security law, in
37 accordance with an arrangement pursuant to R.S.43:21-21 during
38 the effective period of such election;
- 39 (T) Service performed in the employ of a school, college, or
40 university if such service is performed (i) by a student enrolled at
41 such school, college, or university on a full-time basis in an
42 educational program or completing such educational program
43 leading to a degree at any of the severally recognized levels, or (ii)
44 by the spouse of such a student, if such spouse is advised at the time
45 such spouse commences to perform such service that (I) the
46 employment of such spouse to perform such service is provided
47 under a program to provide financial assistance to such student by

1 such school, college, or university, and (II) such employment will
2 not be covered by any program of unemployment insurance;

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

14 (V) Service performed in the employ of a hospital, if such
15 service is performed by a patient of the hospital; service performed
16 as a student nurse in the employ of a hospital or a nurses' training
17 school by an individual who is enrolled and regularly attending
18 classes in a nurses' training school approved under the laws of this
19 State; and service performed as an intern in the employ of a hospital
20 by an individual who has completed a four-year course in a medical
21 school approved pursuant to the laws of this State;

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

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

35 (Y) ¹**[Services performed by a data collector, or certified]¹**
36 **[shorthand] ¹**[court reporter certified pursuant to P.L.1940, c.175****
37 **(C.45:15B-1 et seq.), provided to a third party by the collector or**
38 **reporter who is referred to the third party pursuant to an agreement**
39 **with another data collector or data collection service, or certified]¹**
40 **[shorthand] ¹**[court reporter or]¹ [shorthand] ¹**[court reporting****
41 **service, on a freelance basis, compensation for which is based upon**
42 **a fee per transcript page, flat attendance fee, or other flat minimum**
43 **fee, or combination thereof, set forth in the agreement.****

44 For purposes of this subparagraph (Y): “data collection service”
45 and “data collecting” means making use, by audio, video or voice
46 recording, of a verbatim record of court proceedings, depositions,
47 other judicial proceedings, meetings of boards, agencies,
48 corporations, or other bodies or groups, and causing that record to

1 be printed in readable form or produced on a computer screen in
2 readable form; and “data collector” means a person who engages in
3 “data collecting”] (Deleted by amendment, P.L. _____, c. _____.) (now
4 pending as this bill)¹;

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

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

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

25 (A) The limousine franchisee is incorporated;

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

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

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

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

45 For purposes of this paragraph (10): “legal transcription service”
46 and “legal transcribing” mean making use, by audio, video or voice
47 recording, of a verbatim record of court proceedings, depositions,
48 other judicial proceedings, meetings of boards, agencies,

1 corporations, or other bodies or groups, and causing that record to
2 be printed in readable form or produced on a computer screen in
3 readable form; and "legal transcriber" means a person who engages
4 in "legal transcribing"¹;

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

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

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

12 (m) "Unemployment."

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

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

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

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

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

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

43 (o) "Wages" means remuneration paid by employers for
44 employment. If a worker receives gratuities regularly in the course
45 of his employment from other than his employer, his "wages" shall
46 also include the gratuities so received, if reported in writing to his
47 employer in accordance with regulations of the division, and if not
48 so reported, his "wages" shall be determined in accordance with the

1 minimum wage rates prescribed under any labor law or regulation
2 of this State or of the United States, or the amount of remuneration
3 actually received by the employee from his employer, whichever is
4 the higher.

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

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

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

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

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

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

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

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

45 (3) "Base week," commencing on or after January 1, 2001,
46 means any calendar week during which the individual earned in
47 employment from an employer remuneration not less than an
48 amount 20 times the minimum wage in effect pursuant to section 5

1 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
2 year preceding the calendar year in which the benefit year
3 commences, which amount shall be adjusted to the next higher
4 multiple of \$1.00 if not already a multiple thereof, except that if in
5 any calendar week an individual subject to this paragraph (3) is in
6 employment with more than one employer, the individual may in
7 that calendar week establish a base week with respect to each of the
8 employers from whom the individual earns remuneration equal to
9 not less than the amount defined in this paragraph (3) during that
10 week.

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

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

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

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

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

- 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 from,
6 by or under the guidance of an instructor or teacher;
7 (B) Which is approved, licensed or issued a permit to operate as
8 a school by the State Department of Education or other government
9 agency that is authorized within the State to approve, license or
10 issue a permit for the operation of a school; and
11 (C) Which offers courses of study or training which may be
12 academic, technical, trade, or preparation for gainful employment in
13 a recognized occupation.
14 (2) "Institution of higher education" means an educational
15 institution which:
16 (A) Admits as regular students only individuals having a
17 certificate of graduation from a high school, or the recognized
18 equivalent of such a certificate;
19 (B) Is legally authorized in this State to provide a program of
20 education beyond high school;
21 (C) Provides an educational program for which it awards a
22 bachelor's or higher degree, or provides a program which is
23 acceptable for full credit toward such a degree, a program of post-
24 graduate or post-doctoral studies, or a program of training to
25 prepare students for gainful employment in a recognized
26 occupation; and
27 (D) Is a public or other nonprofit institution.
28 Notwithstanding any of the foregoing provisions of this
29 subsection, all colleges and universities in this State are institutions
30 of higher education for purposes of this section.
31 (z) "Hospital" means an institution which has been licensed,
32 certified or approved under the law of this State as a hospital.
33 (cf: P.L.2002, c.94, s.2)
34
35 2. This act shall take effect immediately.

SENATE, No. 825

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JANUARY 28, 2008

Sponsored by:

Senator ANDREW R. CIESLA
District 10 (Monmouth and Ocean)

SYNOPSIS

Concerns eligibility for unemployment compensation for data collectors.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning eligibility for unemployment compensation and
2 amending R.S.43:21-19.

3

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

6

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

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

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

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

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

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

43 With respect to a benefit year commencing on or after July 1,
44 1995, if an individual does not have sufficient qualifying weeks or
45 wages in his base year to qualify for benefits, the individual shall

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

15 (h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (C) Service performed after December 31, 1971 by an individual
48 in the employ of a religious, charitable, educational, or other

1 organization, which is excluded from "employment" as defined in
2 the Federal Unemployment Tax Act, solely by reason of section
3 3306 (c)(8) of that act, if such service is not excluded from
4 "employment" under paragraph (D) below.

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

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

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

15 (iii) Prior to January 1, 1978, in the employ of a school which is
16 not an institution of higher education, and after December 31, 1977,
17 in the employ of a governmental entity referred to in R.S.43:21-19

18 (i) (1) (B), if such service is performed by an individual in the
19 exercise of duties

20 (aa) as an elected official;

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

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

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

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

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

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

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

47 (E) The term "employment" shall include the services of an
48 individual who is a citizen of the United States, performed outside

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (A) Such individual has been and will continue to be free from
2 control or direction over the performance of such service, both
3 under his contract of service and in fact; and
- 4 (B) Such service is either outside the usual course of the
5 business for which such service is performed, or that such service is
6 performed outside of all the places of business of the enterprise for
7 which such service is performed; and
- 8 (C) Such individual is customarily engaged in an independently
9 established trade, occupation, profession or business.
- 10 (7) Provided that such services are also exempt under the
11 Federal Unemployment Tax Act, as amended, or that contributions
12 with respect to such services are not required to be paid into a state
13 unemployment fund as a condition for a tax offset credit against the
14 tax imposed by the Federal Unemployment Tax Act, as amended,
15 the term "employment" shall not include:
- 16 (A) Agricultural labor performed prior to January 1, 1978; and
17 after December 31, 1977, only if performed in a calendar year for
18 an entity which is not an employer as defined in the "unemployment
19 compensation law," (R.S.43:21-1 et seq.) as of January 1 of such
20 calendar year; or unless performed for an employing unit which
- 21 (i) during a calendar quarter in either the current or the
22 preceding calendar year paid remuneration in cash of \$20,000.00 or
23 more to individuals employed in agricultural labor, or
- 24 (ii) for some portion of a day in each of 20 different calendar
25 weeks, whether or not such weeks were consecutive, in either the
26 current or the preceding calendar year, employed in agricultural
27 labor 10 or more individuals, regardless of whether they were
28 employed at the same moment in time;
- 29 (B) Domestic service in a private home performed prior to
30 January 1, 1978; and after December 31, 1977, unless performed in
31 the private home of an employing unit which paid cash
32 remuneration of \$1,000.00 or more to one or more individuals for
33 such domestic service in any calendar quarter in the current or
34 preceding calendar year;
- 35 (C) Service performed by an individual in the employ of his son,
36 daughter or spouse, and service performed by a child under the age
37 of 18 in the employ of his father or mother;
- 38 (D) Service performed prior to January 1, 1978, in the employ of
39 this State or of any political subdivision thereof or of any
40 instrumentality of this State or its political subdivisions, except as
41 provided in R.S.43:21-19 (i) (1) (B) above, and service in the
42 employ of the South Jersey Port Corporation or its successors;
- 43 (E) Service performed in the employ of any other state or its
44 political subdivisions or of an instrumentality of any other state or
45 states or their political subdivisions to the extent that such
46 instrumentality is with respect to such service exempt under the
47 Constitution of the United States from the tax imposed under the

1 Federal Unemployment Tax Act, as amended, except as provided in
2 R.S.43:21-19 (i) (1) (B) above;

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

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

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

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

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

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

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

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- 1 (M) Service performed for or in behalf of the owner or operator
2 of any theater, ballroom, amusement hall or other place of
3 entertainment, not in excess of 10 weeks in any calendar year for
4 the same owner or operator, by any leader or musician of a band or
5 orchestra, commonly called a "name band," entertainer, vaudeville
6 artist, actor, actress, singer or other entertainer;
- 7 (N) Services performed after January 1, 1973 by an individual
8 for a labor union organization, known and recognized as a union
9 local, as a member of a committee or committees reimbursed by the
10 union local for time lost from regular employment, or as a part-time
11 officer of a union local and the remuneration for such services is
12 less than \$1,000.00 in a calendar year;
- 13 (O) Services performed in the sale or distribution of
14 merchandise by home-to-home salespersons or in-the-home
15 demonstrators whose remuneration consists wholly of commissions
16 or commissions and bonuses;
- 17 (P) Service performed in the employ of a foreign government,
18 including service as a consular, nondiplomatic representative, or
19 other officer or employee;
- 20 (Q) Service performed in the employ of an instrumentality
21 wholly owned by a foreign government if (i) the service is of a
22 character similar to that performed in foreign countries by
23 employees of the United States Government or of an instrumentality
24 thereof, and (ii) the division finds that the United States Secretary
25 of State has certified to the United States Secretary of the Treasury
26 that the foreign government, with respect to whose instrumentality
27 exemption is claimed, grants an equivalent exemption with respect
28 to similar services performed in the foreign country by employees
29 of the United States Government and of instrumentalities thereof;
- 30 (R) Service in the employ of an international organization
31 entitled to enjoy the privileges, exemptions and immunities under
32 the International Organizations Immunities Act (22 U.S.C. s.288 et
33 seq.);
- 34 (S) Service covered by an election duly approved by an agency
35 charged with the administration of any other state or federal
36 unemployment compensation or employment security law, in
37 accordance with an arrangement pursuant to R.S.43:21-21 during
38 the effective period of such election;
- 39 (T) Service performed in the employ of a school, college, or
40 university if such service is performed (i) by a student enrolled at
41 such school, college, or university on a full-time basis in an
42 educational program or completing such educational program
43 leading to a degree at any of the severally recognized levels, or (ii)
44 by the spouse of such a student, if such spouse is advised at the time
45 such spouse commences to perform such service that (I) the
46 employment of such spouse to perform such service is provided
47 under a program to provide financial assistance to such student by

1 such school, college, or university, and (II) such employment will
2 not be covered by any program of unemployment insurance;

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

14 (V) Service performed in the employ of a hospital, if such
15 service is performed by a patient of the hospital; service performed
16 as a student nurse in the employ of a hospital or a nurses' training
17 school by an individual who is enrolled and regularly attending
18 classes in a nurses' training school approved under the laws of this
19 State; and service performed as an intern in the employ of a hospital
20 by an individual who has completed a four-year course in a medical
21 school approved pursuant to the laws of this State;

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

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

35 (Y) Services performed by a data collector, or certified
36 **[shorthand]** court reporter certified pursuant to P.L.1940, c.175
37 (C.45:15B-1 et seq.), provided to a third party by the collector or
38 reporter who is referred to the third party pursuant to an agreement
39 with another data collector or data collection service, or certified
40 **[shorthand]** court reporter or **[shorthand]** court reporting service,
41 on a freelance basis, compensation for which is based upon a fee
42 per transcript page, flat attendance fee, or other flat minimum fee,
43 or combination thereof, set forth in the agreement.

44 For purposes of this subparagraph (Y): “data collection service”
45 and “data collecting” means making use, by audio, video or voice
46 recording, of a verbatim record of court proceedings, depositions,
47 other judicial proceedings, meetings of boards, agencies,
48 corporations, or other bodies or groups, and causing that record to

1 be printed in readable form or produced on a computer screen in
2 readable form; and "data collector" means a person who engages in
3 data collecting;

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

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

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

24 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

40 (m) "Unemployment."

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

43 (A) The individual is not engaged in full-time work and with
44 respect to which his remuneration is less than his weekly benefit
45 rate, including any week during which he is on vacation without
46 pay; provided such vacation is not the result of the individual's
47 voluntary action, except that for benefit years commencing on or
48 after July 1, 1984, an officer of a corporation, or a person who has

1 more than a 5% equitable or debt interest in the corporation, whose
2 claim for benefits is based on wages with that corporation shall not
3 be deemed to be unemployed in any week during the individual's
4 term of office or ownership in the corporation; or

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

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

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

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

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

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

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

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

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

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

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

47 (A) Any calendar week during which the individual earned in
48 employment from an employer remuneration not less than an

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

10 (B) If the individual does not establish in his base year 20 or
11 more base weeks as defined in subparagraph (A) of this paragraph
12 (2), any calendar week of an individual's base year during which the
13 individual earned in employment from an employer remuneration
14 not less than an amount 20 times the minimum wage in effect
15 pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4) on October
16 1 of the calendar year preceding the calendar year in which the
17 benefit year commences, which amount shall be adjusted to the next
18 higher multiple of \$1.00 if not already a multiple thereof, except
19 that if in any calendar week an individual subject to this
20 subparagraph (B) is in employment with more than one employer,
21 the individual may in that calendar week establish a base week with
22 respect to each of the employers from whom the individual earns
23 remuneration not less than the amount defined in this subparagraph
24 (B) during that week.

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

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

1 employer and as if all his base weeks of employment had been
2 performed in the employ of one employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (cf: P.L.2002, c.94, s.2)

14

15 2. This act shall take effect immediately.

16

17

18

STATEMENT

19

20 This bill makes an individual who is a data collector and who
21 works on a freelance basis, compensation for which is based upon a
22 fee per transcript page, flat attendance fee, or other flat minimum
23 fee, or combination thereof, ineligible for unemployment insurance
24 benefits and thus not subject to unemployment taxes.

25 A data collector is defined in the bill as a person who engages in
26 data collecting. Data collecting is defined as making use, by audio,
27 video or voice recording of a verbatim record of court proceedings,
28 depositions, other judicial proceedings, meetings of boards,
29 agencies, corporations, or other bodies or groups, and causing that
30 record to be printed in readable form or produced on a computer
31 screen in readable form.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 825

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 2009

The Senate Labor Committee reports favorably, and with committee amendments, Senate Bill No. 825.

As amended by the committee, the bill makes an individual who is a legal transcriber and who works on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, ineligible for unemployment insurance (UI) benefits and thus not subject to UI taxes. The bill provides the exemption to all such individuals categorically without requiring a demonstration that particular individuals are self-employed under the standards provided by either the State UI statute or federal tax rules.

A legal transcriber is defined in the bill as a person who engages in legal transcribing. Legal transcribing is defined as making use, by audio, video or voice recording of a verbatim record of court proceedings, depositions, other judicial proceedings, meetings of boards, agencies, corporations, or other bodies or groups, and causing that record to be printed in readable form or produced on a computer screen in readable form.

The committee amendments change the term used to describe the individuals exempted for UI benefits by the bill from “data collectors” to “legal transcribers.” The definition of the exempted work is unchanged by the amendments. The amendments also remove the requirement that the exemption applies only if there is a parallel exemption under federal UI law or if the individuals are found to be self-employed by the IRS under its tax rules.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 825

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Labor Committee reports favorably Senate Bill No. 825 (1R).

This bill makes an individual who is a legal transcriber and who works on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, ineligible for unemployment insurance (UI) benefits and thus not subject to UI taxes. The bill provides the exemption to all such individuals categorically without requiring a demonstration that particular individuals are self-employed under the standards provided by either the State UI statute or federal tax rules.

A legal transcriber is defined in the bill as a person who engages in legal transcribing. Legal transcribing is defined as making use, by audio, video or voice recording of a verbatim record of court proceedings, depositions, other judicial proceedings, meetings of boards, agencies, corporations, or other bodies or groups, and causing that record to be printed in readable form or produced on a computer screen in readable form.

ASSEMBLY, No. 3770

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2009

Sponsored by:

Assemblyman FREDERICK SCALERA

District 36 (Bergen, Essex and Passaic)

Assemblywoman ELEASE EVANS

District 35 (Bergen and Passaic)

SYNOPSIS

Excludes legal transcribers from eligibility for unemployment compensation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/8/2009)

1 AN ACT concerning eligibility for unemployment compensation and
2 amending R.S.43:21-19.

3

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

6

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

16 (h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (aa) as an elected official;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 seq.) unless and until it is shown to the satisfaction of the division
2 that:

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

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

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

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

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

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

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

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

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

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

45 (E) Service performed in the employ of any other state or its
46 political subdivisions or of an instrumentality of any other state or
47 states or their political subdivisions to the extent that such
48 instrumentality is with respect to such service exempt under the

1 Constitution of the United States from the tax imposed under the
2 Federal Unemployment Tax Act, as amended, except as provided in
3 R.S.43:21-19 (i) (1) (B) above;

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

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

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

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

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

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

45 (L) Services performed in the employ of any veterans'
46 organization chartered by Act of Congress or of any auxiliary
47 thereof, no part of the net earnings of which organization, or

1 auxiliary thereof, inures to the benefit of any private shareholder or
2 individual;

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

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

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

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

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

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

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

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

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

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

15 (V) Service performed in the employ of a hospital, if such
16 service is performed by a patient of the hospital; service performed
17 as a student nurse in the employ of a hospital or a nurses' training
18 school by an individual who is enrolled and regularly attending
19 classes in a nurses' training school approved under the laws of this
20 State; and service performed as an intern in the employ of a hospital
21 by an individual who has completed a four-year course in a medical
22 school approved pursuant to the laws of this State;

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

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

36 (Y) Services performed by a legal transcriber, or certified
37 **[shorthand]** court reporter certified pursuant to P.L.1940, c.175
38 (C.45:15B-1 et seq.), provided to a third party by the transcriber or
39 reporter who is referred to the third party pursuant to an agreement
40 with another legal transcriber or legal transcription service, or
41 certified [shorthand] court reporter or [shorthand] court reporting
42 service, on a freelance basis, compensation for which is based upon
43 a fee per transcript page, flat attendance fee, or other flat minimum
44 fee, or combination thereof, set forth in the agreement.

45 For purposes of this subparagraph (Y): "legal transcription
46 service" and "legal transcribing" mean making use, by audio, video
47 or voice recording, of a verbatim record of court proceedings,
48 depositions, other judicial proceedings, meetings of boards,

1 agencies, corporations, or other bodies or groups, and causing that
2 record to be printed in readable form or produced on a computer
3 screen in readable form; and "legal transcriber" means a person who
4 engages in legal transcribing;

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

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

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

25 (A) The limousine franchisee is incorporated;

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

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

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

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

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

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

41 (m) "Unemployment."

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

44 (A) The individual is not engaged in full-time work and with
45 respect to which his remuneration is less than his weekly benefit
46 rate, including any week during which he is on vacation without
47 pay; provided such vacation is not the result of the individual's
48 voluntary action, except that for benefit years commencing on or

1 after July 1, 1984, an officer of a corporation, or a person who has
2 more than a 5% equitable or debt interest in the corporation, whose
3 claim for benefits is based on wages with that corporation shall not
4 be deemed to be unemployed in any week during the individual's
5 term of office or ownership in the corporation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 computed as if all of his base week wages were received from one
2 employer and as if all his base weeks of employment had been
3 performed in the employ of one employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (z) "Hospital" means an institution which has been licensed,
14 certified or approved under the law of this State as a hospital.
15 (cf: P.L.2002, c.94, s.2)

16

17 2. This act shall take effect immediately.

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STATEMENT

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22 This bill makes legal transcribers ineligible for unemployment
23 insurance benefits and thus not subject to unemployment taxes. This
24 bill would apply to a legal transcriber who works on a freelance
25 basis, and whose compensation is based upon a fee per transcript
26 page, flat attendance fee, or other flat minimum fee, or combination
27 thereof.

28 A legal transcriber is defined in the bill as a person who engages
29 in legal transcribing. Legal transcribing is defined as making use,
30 by audio, video or voice recording of a verbatim record of court
31 proceedings, depositions, other judicial proceedings, meetings of
32 boards, agencies, corporations, or other bodies or groups, and
33 causing that record to be printed in readable form or produced on a
34 computer screen in readable form.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3770

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Labor Committee reports favorably, and with committee amendments, Assembly Bill No. 3770.

This bill makes legal transcribers both ineligible for unemployment insurance (UI) benefits and not subject to unemployment taxes. The bill would apply to a legal transcriber who works on a freelance basis, and whose compensation is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof. The bill provides the exemption to all such individuals categorically without requiring a demonstration that particular individuals are self-employed under the standards provided by either the State UI statute or federal tax rules.

A legal transcriber is defined in the bill as a person who engages in legal transcribing. Legal transcribing is defined as making use, by audio, video or voice recording of a verbatim record of court proceedings, depositions, other judicial proceedings, meetings of boards, agencies, corporations, or other bodies or groups, and causing that record to be printed in readable form or produced on a computer screen in readable form.

COMMITTEE AMENDMENTS

The amendments adopted by the committee remove the requirement of the bill and current law that the exemption applies only if there is a parallel exemption under federal law or if the individuals are found to be self-employed by the IRS under its tax rules.