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A Statement from the Coalition for Healthy Ports:

Today, Governor Chris Christie vetoed A1578/S1450. This important piece of legislation would have modernized the trucking industry in New Jersey by establishing new tools for the State to crack down on the pervasive misclassification of workers that has allowed trucking companies to cheat drivers out of rights, and states out of revenue, while putting law abiding companies at a competitive disadvantage.

The economy does better when all companies in an industry are required to play by the same rules and those rules are uniformly enforced. Unfortunately, Governor Christie's record of enforcement on companies that knowingly misclassify their workers is woefully thin. Lax enforcement encourages other companies to cheat.

It's a shame that the Governor allows the pervasive practice of worker misclassification to go on unchecked in New Jersey when so many workers, and the state, are being cheated. Economists estimate that in the port trucking industry alone, the State of New Jersey loses an estimated \$7 million annually in unpaid disability and unemployment insurance premiums.

Across America, the trucking industry is being modernized as states crack down on the misclassification of truck drivers. A worker misclassification law was recently signed in Illinois and another one is expected to be signed in New York.

And port truck drivers are not waiting for new laws to assert their rights as employees. In California over 500 claims have been filed with the CA Division of Labor Standards Enforcement (CA DLSE) by port truck drivers who say their companies have misclassified them. Some of these claims have already been decided by the CA DLSE and each claim can cost the employer hundreds of thousands of dollars per worker. In addition, many workers are seeking remedies for misclassification in the courts.

At a time when so many agencies and Legislatures are moving in the right direction on worker misclassification, Governor Christie's veto is in the wrong direction.

“Governor Christie has demonstrated time after time that he does not care about New Jersey’s working families. He is leaving New Jersey behind by doing the bidding for law-breaking trucking companies that willfully misclassify drivers to avoid paying employer taxes and to push the most basic cost of doing business onto the workforce,” said Fred Potter, President, Teamsters Local 469 and Vice President, International Brotherhood of Teamsters.

Statement supported by:

Amy Goldsmith, New Jersey Environmental Federation

Rev. Fletcher Harper, GreenFaith

Dr. Ana Baptista, Ironbound Community Corporation

The Coalition for Healthy Ports is a bi-state alliance of environmental activists, truck drivers, faith leaders, labor unions and community advocates fighting for environmental and economic justice at the ports of New York and New Jersey. The Coalition for Healthy Ports is the East Coast arm of the Coalition for Clean & Safe Ports.



September 9, 2013

**ASSEMBLY BILL NO. 1578
(First Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1578 (First Reprint) without my approval.

The independent contractor model is a common approach by which trucking businesses engage drivers in this State. This bill, however, seeks to establish a presumption that truck drivers in the drayage and parcel delivery industries are presumed to be employees rather than independent contractors. It further seeks to impose criminal penalties upon businesses that classify their drivers as independent contractors if the presumption is not overcome.

The willful misclassification of workers as independent contractors denies drivers the benefits and protections that come with employee status. Misclassification may also place honest businesses at a competitive disadvantage and may serve as a means of avoiding tax obligations. Nevertheless, the approach taken in this bill is overreaching and has the potential to cause severe and significant economic harms to New Jersey's trucking industry.

I am especially troubled by the criminal penalties imposed by this bill on businesses that misclassify their drivers, even if the misclassification is not willful. Given that the inquiry as to whether a truck driver is an independent contractor or an employee is necessarily fact-sensitive, a prudent trucking business seeking to use the independent contractor model may choose to leave the State rather than risk criminal culpability. Thus, this bill not only impacts willful misclassifiers, but may harm virtually any trucking business engaging drivers as independent contractors.

In addition to making New Jersey unfriendly to the trucking industry, the bill would likely have other undesirable consequences. For example, if trucking businesses flee the State, overseas shippers are likely to deliver goods to ports in other states and all manner of commerce could see adverse price impacts. In light of the need to continue to improve the economic climate in New Jersey, I cannot sign a bill that would have such a chilling effect on business.

Accordingly, I herewith return Assembly Bill No. 1578 (First Reprint) without my approval.

[seal]

Respectfully,
/s/ Chris Christie
Governor

Attest:

/s/ Charles B. McKenna
Chief Counsel to the Governor

[First Reprint]

ASSEMBLY, No. 1578

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Co-Sponsored by:

**Assemblymen Johnson, Singleton, Assemblywoman Stender,
Assemblyman Egan, Senators Weinberg and Lesniak**

SYNOPSIS

Establishes "Truck Operator Independent Contractor Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Transportation, Public Works and Independent Authorities Committee on March 14, 2013, with amendments.



(Sponsorship Updated As Of: 5/31/2013)

1 AN ACT concerning the classification of truck operators for certain
2 purposes, supplementing Title 34 of the Revised Statutes and
3 amending R.S.43:21-19.
4

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

8 1. (New section) Sections 1 through 8, 10, and 11 of this act
9 shall be known and may be cited as the “Truck Operator
10 Independent Contractor Act.”
11

12 2. (New section) The Legislature finds and declares that:

13 a. Employers in the trucking industry who improperly classify
14 employees as independent contractors deprive their employees of
15 proper Social Security benefits¹, workers’ compensation,¹ and other
16 employee benefits while reducing the employers’ State and federal
17 tax withholdings and related obligations.

18 b. The practice of employee misclassification fraud forces
19 other businesses to bear higher costs for complying with the law
20 and places them at a competitive disadvantage with those
21 businesses circumventing their legal obligations.

22 c. The State has a responsibility to enforce long-standing
23 employment laws, ensure compliance with essential social
24 insurance protections, and eliminate unfair competitive advantage
25 in the trucking industry.
26

27 3. (New section) As used in this act:

28 “Commissioner” means the Commissioner of Labor and
29 Workforce Development.

30 “Department” means the Department of Labor and Workforce
31 Development.

32 “Drayage truck operator” means the driver ¹**[of, or any person,**
33 **party, or entity that controls the operation]**¹ of any on-use in-road
34 vehicle with a gross vehicle weight rating greater than 33,000
35 pounds operating on or transgressing through port or intermodal rail
36 yard property for the purpose of loading, unloading, or transporting
37 cargo, including containerized, bulk, or break-bulk goods.

38 “Employer” means a partnership, association, joint stock
39 company, trust, corporation, or other legal business entity or
40 successor thereof who is primarily engaged in the business of, or
41 enters into a contract with a drayage truck operator or small
42 package operator for trucking services.

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:

¹Assembly ATR committee amendments adopted March 14, 2013.

1 "Parcel delivery truck operator" means the driver ¹【of, or any
2 person or entity, that controls the operation】¹ of a vehicle used in
3 the business of small package delivery. ¹"Parcel delivery truck
4 operator" shall not include an individual delivering newspapers.¹
5

6 4. (New section) For purposes of ¹【the "New Jersey Prevailing
7 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),】¹ the
8 "unemployment compensation law," R.S.43:21-1 et seq., the
9 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
10 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
11 seq., P.L.1965, c.173 (C.34:11-4.1 et seq.) or other applicable State
12 tax laws, ¹the workers' compensation law, R.S.34:15-1 et seq.,¹ and
13 the "New Jersey State Wage and Hour Law," P.L.1966, c.113
14 (C.34:11-56a et seq.), services performed for a fee or other
15 compensation paid by an employer shall be deemed to be
16 employment unless and until it is shown to the satisfaction of the
17 department that:

18 a. the individual has been and will continue to be free from
19 control or direction over the performance of that service, both under
20 his contract of service and in fact;

21 b. the service is either outside the usual course of the business
22 for which the service is performed, or the service is performed
23 outside of all the places of business of the employer for which the
24 service is performed; and

25 c. the individual is customarily engaged in an independently
26 established trade, occupation, profession or business.

27 The failure to withhold federal or State income taxes or to pay
28 unemployment compensation contributions or workers'
29 compensation premiums with respect to an individual's wages shall
30 not be considered in making a determination under this section.
31

32 5. (New section) a. An employer, or any officer, agent,
33 superintendent, foreman, or employee of the employer who fails to
34 properly classify an individual as an employee in accordance with
35 section 4 of this act, for purposes of ¹【the "New Jersey Prevailing
36 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),】¹ the
37 "unemployment compensation law," R.S.43:21-1 et seq., the
38 "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25
39 et seq.), the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
40 seq., P.L.1965, c.173 (C.34:11-4.1 et seq.) or other applicable State
41 tax laws, ¹the workers' compensation law, R.S.34:15-1 et seq.,¹ and
42 the "New Jersey State Wage and Hour Law," P.L.1966, c.113
43 (C.34:11-56a et seq.), and fails to pay wages, benefits, taxes, or
44 other contributions required by any of those acts, shall be:

45 (1) Guilty of a disorderly persons offense and shall, upon
46 conviction, be fined not less than \$100 nor more than \$1,000 or be
47 imprisoned for not less than 10 nor more than 90 days, or both.

1 Each week, in any day of which an employee is misclassified, and
2 each employee so misclassified, shall constitute a separate offense.

3 (2) If the failure is done knowingly, guilty of a crime of the
4 second degree if the contract amount is for \$75,000 or above; guilty
5 of a crime of the third degree if the contract amount exceeds
6 \$2,500, but is less than \$75,000; and guilty of a crime of the fourth
7 degree if the contract amount is for \$2,500 or less. In addition, the
8 violator shall be deemed to have caused loss to the employees in
9 any amount by which the employees were underpaid in connection
10 with the misclassification and shall be subject to the provisions of
11 N.J.S.2C:43-3 regarding fines and restitution to victims and be
12 subject to other pertinent provisions of Title 2C of the New Jersey
13 Statutes, including, but not limited to, N.J.S.2C:43-4, 2C:43-6 and
14 2C:44-1.

15 b. As an alternative to or in addition to any other sanctions
16 provided by law for violations of any provision of this act, when the
17 commissioner finds that an employer has violated this act, the
18 commissioner is authorized to assess and collect administrative
19 penalties, up to a maximum of \$2,500 for a first violation and up to
20 a maximum of \$5,000 for each subsequent violation, specified in a
21 schedule of penalties to be promulgated by regulation by the
22 commissioner in accordance with the "Administrative Procedure
23 Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the
24 amount of the penalty imposed because of a violation, the
25 commissioner shall consider factors which include the history of
26 previous violations by the employer, the seriousness of the
27 violation, the good faith of the employer and the size of the
28 employer's business. No administrative penalty shall be levied
29 pursuant to this section unless the commissioner provides the
30 alleged violator with notification of the violation and the amount of
31 the penalty by certified mail and an opportunity to request a hearing
32 before the commissioner or his designee within 15 days following
33 the receipt of the notice. If a hearing is requested, the
34 commissioner shall issue a final order upon that hearing and a
35 finding that a violation has occurred. If no hearing is requested, the
36 notice shall become a final order upon expiration of the 15-day
37 period. Payment of the penalty is due when a final order is issued
38 or when the notice becomes a final order. Any penalty imposed
39 pursuant to this section may be recovered with costs in a summary
40 proceeding commenced by the commissioner pursuant to the
41 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
42 et seq.).

43 c. Any sum collected as a penalty pursuant to this section shall
44 be applied toward enforcement and administration costs of the
45 Division of Workplace Standards in the department.

46 d. When the commissioner finds that the employer has violated
47 provisions of this act, the commissioner may refer the matter to the

1 Attorney General or his designee for investigation and prosecution.
2 Nothing in this subsection shall be deemed to limit the authority of
3 the Attorney General to investigate and prosecute violations of the
4 New Jersey Code of Criminal Justice, nor to limit the
5 commissioner's ability to refer any matter for criminal investigation
6 or prosecution.

7 e. A complaint or indictment under the provisions of
8 subsection a. or subsection d. of this section may be brought in
9 Superior Court in accordance with the Rules of Court of the State of
10 New Jersey.

11

12 6. (New section) In the case of a determination by the
13 commissioner, if the person responsible denies that a failure to
14 properly classify an employee has occurred, he shall have the right
15 to apply to the commissioner for a hearing in accordance with the
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), which shall be afforded and a decision shall be rendered
18 within 48 hours of the request for a hearing. The commissioner
19 may bring an action in Superior Court to enjoin or invalidate any
20 contract award made in violation of this section.

21

22 7. (New section) a. No employer shall require or request that
23 any individual enter into an agreement or sign a document which
24 results in the misclassification of the individual as an independent
25 contractor or otherwise does not accurately reflect the employment
26 relationship with the employer.

27 b. An individual employed as a drayage truck operator or a
28 parcel delivery truck operator who has not been properly classified
29 as an employee may bring a civil action for damages against the
30 employer or any other employer who was in contract with the
31 employee, for failing to properly classify the employee if the
32 employer had knowledge of the misclassification. An individual
33 representative, including a labor organization, may bring the action
34 on behalf of the individual or as a class action. The court may
35 award attorney's fees and other costs of the action in addition to
36 damages to an individual or class of individuals who have not been
37 properly classified as employees in accordance with section 4 of
38 this act.

39

40 8. (New section) It shall be unlawful for an employer or any
41 other party to discriminate in any manner or take adverse action
42 against any person in retaliation for exercising rights protected
43 under this act. Rights protected under this act include, but are not
44 limited to, the right to file a complaint or inform any person about
45 an employer's noncompliance with this act and the right to inform
46 any person of his potential rights and to assist him in asserting those
47 rights. Any person who in good faith alleges noncompliance with

1 this act shall be afforded the rights provided by this act,
2 notwithstanding his failure on the merits. Taking adverse action
3 against a person within 90 days of the person's exercise of rights
4 protected under this act shall raise a rebuttable presumption of
5 having done so in retaliation for the exercise of those rights.

6
7 9. 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
46 have the option of designating that his base year shall be the
47 "alternative base year," which means the last four completed

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

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

25 (2) With respect to a benefit year commencing on or after June
26 1, 1990 for an individual who immediately preceding the benefit
27 year was subject to a disability compensable under the provisions of
28 the "Temporary Disability Benefits Law," P.L.1948, c.110
29 (C.43:21-25 et seq.), "base year" shall mean the first four of the last
30 five completed calendar quarters immediately preceding the
31 individual's period of disability, if the employment held by the
32 individual immediately preceding the period of disability is no
33 longer available at the conclusion of that period and the individual
34 files a valid claim for unemployment benefits after the conclusion
35 of that period. For the purposes of this paragraph, "period of
36 disability" means the period defined as a period of disability by
37 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
38 c.110 (C.43:21-27). An individual who files a claim under the
39 provisions of this paragraph (2) shall not be regarded as having left
40 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

41 (3) With respect to a benefit year commencing on or after June
42 1, 1990 for an individual who immediately preceding the benefit
43 year was subject to a disability compensable under the provisions of
44 the workers' compensation law (chapter 15 of Title 34 of the
45 Revised Statutes), "base year" shall mean the first four of the last
46 five completed calendar quarters immediately preceding the
47 individual's period of disability, if the period of disability was not

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

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

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

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

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

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

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 after
20 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

1 correctional institution and after December 31, 1977, by an inmate
2 of a custodial or penal institution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (bb) such other entity shall be treated as having paid cash
46 remuneration to such individual in an amount equal to the amount
47 of cash remuneration paid to such individual by the crew leader

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

1 individual's service within the state; for example, is temporary or
2 transitory in nature or consists of isolated transactions.

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

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

10 (B) Such service is either outside the usual course of the
11 business for which such service is performed, or that such service is
12 performed outside of all the places of business of the enterprise for
13 which such service is performed; and

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

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

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

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

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

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

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

44 (D) Service performed prior to January 1, 1978, in the employ of
45 this State or of any political subdivision thereof or of any
46 instrumentality of this State or its political subdivisions, except as

1 provided in R.S.43:21-19 (i) (1) (B) above, and service in the
2 employ of the South Jersey Port Corporation or its successors;

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

10 (F) Service performed in the employ of the United States
11 Government or of any instrumentality of the United States exempt
12 under the Constitution of the United States from the contributions
13 imposed by the "unemployment compensation law," except that to
14 the extent that the Congress of the United States shall permit states
15 to require any instrumentalities of the United States to make
16 payments into an unemployment fund under a state unemployment
17 compensation law, all of the provisions of this act shall be
18 applicable to such instrumentalities, and to service performed for
19 such instrumentalities, in the same manner, to the same extent and
20 on the same terms as to all other employers, employing units,
21 individuals and services; provided that if this State shall not be
22 certified for any year by the Secretary of Labor of the United States
23 under section 3304 of the federal Internal Revenue Code of 1986
24 (26 U.S.C. s.3304), the payments required of such instrumentalities
25 with respect to such year shall be refunded by the division from the
26 fund in the same manner and within the same period as is provided
27 in R.S.43:21-14 (f) with respect to contributions erroneously paid to
28 or collected by the division;

29 (G) Services performed in the employ of fraternal beneficiary
30 societies, orders, or associations operating under the lodge system
31 or for the exclusive benefit of the members of a fraternity itself
32 operating under the lodge system and providing for the payment of
33 life, sick, accident, or other benefits to the members of such society,
34 order, or association, or their dependents;

35 (H) Services performed as a member of the board of directors, a
36 board of trustees, a board of managers, or a committee of any bank,
37 building and loan, or savings and loan association, incorporated or
38 organized under the laws of this State or of the United States, where
39 such services do not constitute the principal employment of the
40 individual;

41 (I) Service with respect to which unemployment insurance is
42 payable under an unemployment insurance program established by
43 an Act of Congress;

44 (J) Service performed by agents of mutual fund brokers or
45 dealers in the sale of mutual funds or other securities, by agents of
46 insurance companies, exclusive of industrial insurance agents or by

- 1 agents of investment companies, if the compensation to such agents
2 for such services is wholly on a commission basis;
- 3 (K) Services performed by real estate salesmen or brokers who
4 are compensated wholly on a commission basis;
- 5 (L) Services performed in the employ of any veterans'
6 organization chartered by Act of Congress or of any auxiliary
7 thereof, no part of the net earnings of which organization, or
8 auxiliary thereof, inures to the benefit of any private shareholder or
9 individual;
- 10 (M) Service performed for or in behalf of the owner or operator
11 of any theater, ballroom, amusement hall or other place of
12 entertainment, not in excess of 10 weeks in any calendar year for
13 the same owner or operator, by any leader or musician of a band or
14 orchestra, commonly called a "name band," entertainer, vaudeville
15 artist, actor, actress, singer or other entertainer;
- 16 (N) Services performed after January 1, 1973 by an individual
17 for a labor union organization, known and recognized as a union
18 local, as a member of a committee or committees reimbursed by the
19 union local for time lost from regular employment, or as a part-time
20 officer of a union local and the remuneration for such services is
21 less than \$1,000.00 in a calendar year;
- 22 (O) Services performed in the sale or distribution of merchandise
23 by home-to-home salespersons or in-the-home demonstrators whose
24 remuneration consists wholly of commissions or commissions and
25 bonuses;
- 26 (P) Service performed in the employ of a foreign government,
27 including service as a consular, nondiplomatic representative, or
28 other officer or employee;
- 29 (Q) Service performed in the employ of an instrumentality
30 wholly owned by a foreign government if (i) the service is of a
31 character similar to that performed in foreign countries by
32 employees of the United States Government or of an instrumentality
33 thereof, and (ii) the division finds that the United States Secretary
34 of State has certified to the United States Secretary of the Treasury
35 that the foreign government, with respect to whose instrumentality
36 exemption is claimed, grants an equivalent exemption with respect
37 to similar services performed in the foreign country by employees
38 of the United States Government and of instrumentalities thereof;
- 39 (R) Service in the employ of an international organization
40 entitled to enjoy the privileges, exemptions and immunities under
41 the International Organizations Immunities Act (22 U.S.C. s.288 et
42 seq.);
- 43 (S) Service covered by an election duly approved by an agency
44 charged with the administration of any other state or federal
45 unemployment compensation or employment security law, in
46 accordance with an arrangement pursuant to R.S.43:21-21 during
47 the effective period of such election;

1 (T) Service performed in the employ of a school, college, or
2 university if such service is performed (i) by a student enrolled at
3 such school, college, or university on a full-time basis in an
4 educational program or completing such educational program
5 leading to a degree at any of the severally recognized levels, or (ii)
6 by the spouse of such a student, if such spouse is advised at the time
7 such spouse commences to perform such service that (I) the
8 employment of such spouse to perform such service is provided
9 under a program to provide financial assistance to such student by
10 such school, college, or university, and (II) such employment will
11 not be covered by any program of unemployment insurance;

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

23 (V) Service performed in the employ of a hospital, if such
24 service is performed by a patient of the hospital; service performed
25 as a student nurse in the employ of a hospital or a nurses' training
26 school by an individual who is enrolled and regularly attending
27 classes in a nurses' training school approved under the laws of this
28 State; and service performed as an intern in the employ of a hospital
29 by an individual who has completed a four-year course in a medical
30 school approved pursuant to the laws of this State;

31 (W) Services performed after the effective date of this
32 amendatory act by agents of mutual benefit associations if the
33 compensation to such agents for such services is wholly on a
34 commission basis;

35 (X) Services performed by operators of motor vehicles weighing
36 18,000 pounds or more, licensed for commercial use and used for
37 the highway movement of motor freight, who own their equipment
38 or who lease or finance the purchase of their equipment through an
39 entity which is not owned or controlled directly or indirectly by the
40 entity for which the services were performed and who were
41 compensated by receiving a percentage of the gross revenue
42 generated by the transportation move or by a schedule of payment
43 based on the distance and weight of the transportation move, except
44 that the term "employment" shall include services performed by
45 drayage truck operators and parcel delivery truck operators as
46 defined in section 3 of P.L. , c. (C.) (pending before the
47 Legislature as this bill);

1 (Y) (Deleted by amendment, P.L.2009, c.211.)

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

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

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

22 (A) The limousine franchisee is incorporated;

23 (B) The franchisee is subject to regulation by the Interstate
24 Commerce Commission;

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

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

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

42 For purposes of this paragraph (10): "legal transcription service"
43 and "legal transcribing" mean making use, by audio, video or voice
44 recording, of a verbatim record of court proceedings, depositions,
45 other judicial proceedings, meetings of boards, agencies,
46 corporations, or other bodies or groups, and causing that record to
47 be printed in readable form or produced on a computer screen in

- 1 readable form; and "legal transcriber" means a person who engages
2 in "legal transcribing."
- 3 (j) "Employment office" means a free public employment
4 office, or branch thereof operated by this State or maintained as a
5 part of a State-controlled system of public employment offices.
- 6 (k) (Deleted by amendment, P.L.1984, c.24.)
- 7 (l) "State" includes, in addition to the states of the United States
8 of America, the District of Columbia, the Virgin Islands and Puerto
9 Rico.
- 10 (m) "Unemployment."
- 11 (1) An individual shall be deemed "unemployed" for any week
12 during which:
- 13 (A) The individual is not engaged in full-time work and with
14 respect to which his remuneration is less than his weekly benefit
15 rate, including any week during which he is on vacation without
16 pay; provided such vacation is not the result of the individual's
17 voluntary action, except that for benefit years commencing on or
18 after July 1, 1984, an officer of a corporation, or a person who has
19 more than a 5% equitable or debt interest in the corporation, whose
20 claim for benefits is based on wages with that corporation shall not
21 be deemed to be unemployed in any week during the individual's
22 term of office or ownership in the corporation; or
- 23 (B) The individual is eligible for and receiving a self-
24 employment assistance allowance pursuant to the requirements of
25 P.L.1995, c.394 (C.43:21-67 et al.).
- 26 (2) The term "remuneration" with respect to any individual for
27 benefit years commencing on or after July 1, 1961, and as used in
28 this subsection, shall include only that part of the same which in
29 any week exceeds 20% of his weekly benefit rate (fractional parts
30 of a dollar omitted) or \$5.00, whichever is the larger, and shall not
31 include any moneys paid to an individual by a county board of
32 elections for work as a board worker on an election day.
- 33 (3) An individual's week of unemployment shall be deemed to
34 commence only after the individual has filed a claim at an
35 unemployment insurance claims office, except as the division may
36 by regulation otherwise prescribe.
- 37 (n) "Unemployment compensation administration fund" means
38 the unemployment compensation administration fund established by
39 this chapter (R.S.43:21-1 et seq.), from which administrative
40 expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.
- 41 (o) "Wages" means remuneration paid by employers for
42 employment. If a worker receives gratuities regularly in the course
43 of his employment from other than his employer, his "wages" shall
44 also include the gratuities so received, if reported in writing to his
45 employer in accordance with regulations of the division, and if not
46 so reported, his "wages" shall be determined in accordance with the
47 minimum wage rates prescribed under any labor law or regulation

1 of this State or of the United States, or the amount of remuneration
2 actually received by the employee from his employer, whichever is
3 the higher.

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

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

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

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

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

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

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

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

44 (3) "Base week," commencing on or after January 1, 2001,
45 means any calendar week during which the individual earned in
46 employment from an employer remuneration not less than an
47 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.

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

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

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

45 (A) In which participants, trainees, or students are offered an
46 organized course of study or training designed to transfer to them

1 knowledge, skills, information, doctrines, attitudes or abilities from,
2 by or under the guidance of an instructor or teacher;

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

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

10 (2) "Institution of higher education" means an educational
11 institution which:

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

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

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

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

24 Notwithstanding any of the foregoing provisions of this
25 subsection, all colleges and universities in this State are institutions
26 of higher education for purposes of this section.

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

29 (cf: P.L.2009, c.211, s.1)

30

31 10. The commissioner shall, pursuant to the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), make and
33 promulgate rules and regulations necessary to implement the
34 purposes of this act.

35

36 11. This act shall take effect immediately.