

SENATE, No. 103

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Concerns unemployment benefits for corporate owners and officers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S103 CARDINALE, OROHO

2

1 AN ACT concerning unemployment benefits for corporate owners
2 and officers and 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

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
32 Commissioner for Finance and Controller of the Department of
33 Labor and Workforce Development, established by the 1982
34 Reorganization 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-

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

17 (h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (A) Any service performed prior to January 1, 1972, which was
32 employment as defined in the "unemployment compensation law"
33 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
34 provisions of this subsection, service performed on or after January
35 1, 1972, including service in interstate commerce, performed for
36 remuneration or under any contract of hire, written or oral, express
37 or implied.

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

44 (ii) Service performed after December 31, 1977, in the employ
45 of this State or any of its instrumentalities or any political
46 subdivision thereof or any of its instrumentalities or any
47 instrumentality of more than one of the foregoing or any

- 1 instrumentality of the foregoing and one or more other states or
2 political subdivisions, if such service is not excluded from
3 "employment" under paragraph (D) below.
- 4 (C) Service performed after December 31, 1971 by an individual
5 in the employ of a religious, charitable, educational, or other
6 organization, which is excluded from "employment" as defined in
7 the Federal Unemployment Tax Act, solely by reason of section
8 3306 (c)(8) of that act, if such service is not excluded from
9 "employment" under paragraph (D) below.
- 10 (D) For the purposes of paragraphs (B) and (C), the term
11 "employment" does not apply to services performed
- 12 (i) In the employ of (I) a church or convention or association of
13 churches, or (II) an organization, or school which is operated
14 primarily for religious purposes and which is operated, supervised,
15 controlled or principally supported by a church or convention or
16 association of churches;
- 17 (ii) By a duly ordained, commissioned, or licensed minister of a
18 church in the exercise of his ministry or by a member of a religious
19 order in the exercise of duties required by such order;
- 20 (iii) Prior to January 1, 1978, in the employ of a school which is
21 not an institution of higher education, and after December 31, 1977,
22 in the employ of a governmental entity referred to in R.S.43:21-19
- 23 (i) (1) (B), if such service is performed by an individual in the
24 exercise of duties
- 25 (aa) as an elected official;
- 26 (bb) as a member of a legislative body, or a member of the
27 judiciary, of a state or political subdivision;
- 28 (cc) as a member of the State National Guard or Air National
29 Guard;
- 30 (dd) as an employee serving on a temporary basis in case of fire,
31 storm, snow, earthquake, flood or similar emergency;
- 32 (ee) in a position which, under or pursuant to the laws of this
33 State, is designated as a major nontenured policy making or
34 advisory position, or a policy making or advisory position, the
35 performance of the duties of which ordinarily does not require more
36 than eight hours per week; or
- 37 (iv) By an individual receiving rehabilitation or remunerative
38 work in a facility conducted for the purpose of carrying out a
39 program of rehabilitation of individuals whose earning capacity is
40 impaired by age or physical or mental deficiency or injury or
41 providing remunerative work for individuals who because of their
42 impaired physical or mental capacity cannot be readily absorbed in
43 the competitive labor market;
- 44 (v) By an individual receiving work-relief or work-training as
45 part of an unemployment work-relief or work-training program
46 assisted in whole or in part by any federal agency or an agency of a
47 state or political subdivision thereof; or

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

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

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

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

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

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

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

46 (G) Notwithstanding any other provision of this subsection,
47 service in this State with respect to which the taxes required to be

1 paid under any federal law imposing a tax against which credit may
2 be taken for contributions required to be paid into a state
3 unemployment fund or which as a condition for full tax credit
4 against the tax imposed by the Federal Unemployment Tax Act is
5 required to be covered under the "unemployment compensation
6 law" (R.S.43:21-1 et seq.).

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

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

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

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

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

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

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

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

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

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

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

2 (B) The service is performed both within and without such state,
3 but the service performed without such state is incidental to the
4 individual's service within the state; for example, is temporary or
5 transitory in nature or consists of isolated transactions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (I) Service with respect to which unemployment insurance is
45 payable under an unemployment insurance program established by
46 an Act of Congress;

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

1 unemployment compensation or employment security law, in
2 accordance with an arrangement pursuant to R.S.43:21-21 during
3 the effective period of such election;

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

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

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

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

38 (X) Services performed by operators of motor vehicles weighing
39 18,000 pounds or more, licensed for commercial use and used for
40 the highway movement of motor freight, who own their equipment
41 or who lease or finance the purchase of their equipment through an
42 entity which is not owned or controlled directly or indirectly by the
43 entity for which the services were performed and who were
44 compensated by receiving a percentage of the gross revenue
45 generated by the transportation move or by a schedule of payment
46 based on the distance and weight of the transportation move;

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

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

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

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

21 (A) The limousine franchisee is incorporated;

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

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

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

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

41 For purposes of this paragraph (10): "legal transcription service"
42 and "legal transcribing" mean making use, by audio, video or voice
43 recording, of a verbatim record of court proceedings, depositions,
44 other judicial proceedings, meetings of boards, agencies,
45 corporations, or other bodies or groups, and causing that record to
46 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, and ending before July 1, 2010, an officer of a
19 corporation, or a person who has more than a 5% equitable or debt
20 interest in the corporation, whose claim for benefits is based on
21 wages with that corporation shall not be deemed to be unemployed
22 in any week during the individual's term of office or ownership in
23 the corporation; or
- 24 (B) The individual is eligible for and receiving a self-
25 employment assistance allowance pursuant to the requirements of
26 P.L.1995, c.394 (C.43:21-67 et al.).
- 27 (2) The term "remuneration" with respect to any individual for
28 benefit years commencing on or after July 1, 1961, and as used in
29 this subsection, shall include only that part of the same which in
30 any week exceeds 20% of his weekly benefit rate (fractional parts
31 of a dollar omitted) or \$5.00, whichever is the larger, and shall not
32 include any moneys paid to an individual by a county board of
33 elections for work as a board worker on an election day.
- 34 (3) An individual's week of unemployment shall be deemed to
35 commence only after the individual has filed a claim at an
36 unemployment insurance claims office, except as the division may
37 by regulation otherwise prescribe.
- 38 (n) "Unemployment compensation administration fund" means
39 the unemployment compensation administration fund established by
40 this chapter (R.S.43:21-1 et seq.), from which administrative
41 expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.
- 42 (o) "Wages" means remuneration paid by employers for
43 employment. If a worker receives gratuities regularly in the course
44 of his employment from other than his employer, his "wages" shall
45 also include the gratuities so received, if reported in writing to his
46 employer in accordance with regulations of the division, and if not
47 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

1 amount 20 times the minimum wage in effect pursuant to section 5
2 of P.L.1966, c.113 (C.34:11-56a4) on October 1 of the calendar
3 year preceding the calendar year in which the benefit year
4 commences, which amount shall be adjusted to the next higher
5 multiple of \$1.00 if not already a multiple thereof, except that if in
6 any calendar week an individual subject to this paragraph (3) is in
7 employment with more than one employer, the individual may in
8 that calendar week establish a base week with respect to each of the
9 employers from whom the individual earns remuneration equal to
10 not less than the amount defined in this paragraph (3) during that
11 week.

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

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

33 (v) "Initial determination" means, subject to the provisions of
34 R.S.43:21-6(b)(2) and (3), a determination of benefit rights as
35 measured by an eligible individual's base year employment with a
36 single employer covering all periods of employment with that
37 employer during the base year.

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

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

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

46 (A) In which participants, trainees, or students are offered an
47 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 2. This act shall take effect immediately.

32

33

34

STATEMENT

35

36 This bill provides that an individual who is otherwise eligible for
37 unemployment benefits based on wages with a corporation shall not
38 be denied the benefits because the individual is an officer of a
39 corporation or has more than a 5% equitable or debt interest in the
40 corporation, even if the benefits are paid during the individual's
41 term of office or ownership in the corporation.

42 The bill applies to any claim occurring after June 30, 2010.