

SENATE, No. 3126

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:
Senator NILSA CRUZ-PEREZ
District 5 (Camden and Gloucester)

SYNOPSIS

The “Farm Labor Equality Act.”

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning conditions of employment for farmworkers,
2 revising various portions of the statutory law, and supplementing
3 Title 34 of the Revised Statutes.

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

7
8 1. Section 7 of P.L.1940, c. 153 (C.34:2-21.7) is amended to
9 read as follows:

10 7. (a) Except as permitted under section 15 of this act, no
11 minor under 18 years of age shall be employed, permitted, or
12 suffered to work in, about, or in connection with any gainful
13 occupation, unless and until the person employing such minor shall
14 procure and keep on file an employment certificate or special
15 permit for such minor, issued by the issuing officer of the school
16 district in which the child resides, or of the district in which the
17 child has obtained a promise of employment if the child is a
18 nonresident of the State; provided, that:

19 (1) **【No certificate or special permit shall be required for any**
20 **child 16 years of age or over employed in agricultural pursuits】**
21 **(deleted by amendment; P.L. _____, c. _____)(now pending before the**
22 **Legislature as this bill);**

23 (2) No certificate or special permit shall be required for any
24 child 14 years of age or over employed at such times as the schools
25 of his district are not in session, at any agricultural fair, horse, dog,
26 or farm show the duration of which does not exceed 10 days; and

27 (3) No vacation certificate shall be required in the first 14 days
28 of employment for any minor 15 years of age or over employed in
29 seasonal amusement, food service, restaurant or retail occupations,
30 at such times as the schools of his district are not in session,
31 provided that no minor under 16 years of age shall be permitted to
32 operate, or service, or to work in, about, or in connection with
33 power-driven machinery.

34 (b) The employment covered under this section shall not require
35 or involve work in, about, or in connection with employments
36 prohibited by P.L. 1970, c. 115 (C. 34:2-21.15) and P.L. 1973, c.
37 204 (C. 34:2-21.17) of the child labor laws.

38 (c) Such certificate or special permit shall be issued in triplicate
39 in such form and in accordance with such instructions as may be
40 prescribed by the Commissioner of Education. The Commissioner
41 of Education shall supply to the issuing officers all blank forms to
42 be used in connection with the issuance of such certificates, and
43 special permits as provided for in section 15 of this act.

44 (d) Employment certificates shall be of two kinds, regular
45 certificates permitting employment during school hours, and

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 vacation certificates permitting employment during the school
2 vacation and during the school term at such times as the public
3 schools are not in session.

4 (e) The original copy of the employment certificate shall be
5 mailed by the issuing officer to the prospective employer of the
6 minor for whom it is issued; a duplicate copy shall be mailed to the
7 Department of Labor in Trenton as provided in section 12 of this
8 act, and a triplicate copy shall be kept in the files of the issuing
9 officer. The issuing officer may refuse to grant a certificate, if in
10 his judgment, the best interests of the minor would be served by
11 such refusal and he shall keep a record of such refusals, and the
12 reasons therefor.

13 (cf: P.L.1987, c.125)

14

15 2. Section 15 of P.L.1940, c. 153 (C.34:2-21.15) is amended to
16 read as follows:

17 15. Except as hereinafter provided as to newspaper carriers, no
18 minor under 14 years of age may engage in any street trade, which
19 term, for the purpose of this section shall include the selling,
20 offering for sale, soliciting for, collecting for, displaying, or
21 distributing any articles, goods, merchandise, commercial service,
22 posters, circulars, newspapers or magazines or in blacking shoes on
23 any street or other public place or from house to house. **【No】** Until
24 December 31, 2020, no minor under 12 years of age may be
25 employed in agricultural pursuits. After December 31, 2020, no
26 minor under 14 years of age may be employed in agricultural
27 pursuits, and minors under 18 years of age shall be subject to the
28 provisions of section 3 of P.L.1940, c.153 (C.34:2-21.3).

29 Whenever a minor has graduated from vocational school,
30 approved by the Commissioner of Education and is 17 years of age,
31 the minor's diploma or certified copy thereof and an employment
32 certificate mailed to the employer by the issuing officer shall be
33 deemed a special permit to engage in those pursuits in which the
34 minor majored in said vocational school during those hours
35 permitted for persons 18 years of age and over.

36 Except as hereinafter provided as to newspaper carriers,
37 whenever a minor under 16 years of age desires to work during such
38 times as the schools of the district in which the minor resides are
39 not in session in any street trade or in agricultural pursuits, the
40 parent, guardian or other person having the custody and control of
41 the minor may file with the issuing officer in the school district in
42 which the minor resides an application for a special permit
43 authorizing such work. Such application shall show the exact
44 character of the work the minor is to do, and the hours and wages
45 and special conditions under which said work is to be performed.

46 If upon investigation it is found that the facts set forth in the
47 application are true and that the work will not interfere with the

1 minor's health or standing in school, the issuing officer shall, upon
2 presentation to the issuing officer of the same proof of age as is
3 required for the issuance of an employment certificate, issue a
4 special permit, allowing the minor to work at such times as the
5 public schools in the district are not in session, but such work
6 except in agricultural pursuits, and as newspaper carriers, to be
7 otherwise subject to the maximum hours of labor provisions set for
8 minors under 16 years of age in section 3 of this act; provided, that
9 nothing in this act shall prevent newspaper carriers as defined in
10 this act, between 11 and 14 years of age, from delivering,
11 soliciting, selling and collecting for newspapers on routes in
12 residential neighborhoods between the hours of 6:00 o'clock in the
13 morning and 7:00 o'clock in the evening of any day; and newspaper
14 carriers 14 years of age and older from delivering, soliciting, selling
15 and collecting for newspapers on routes in residential
16 neighborhoods between the hours of 5:30 o'clock in the morning
17 and 8:00 o'clock in the evening of any day; and provided further
18 that no newspaper carrier under the age of 18 years shall be
19 permitted to engage in such occupation beyond the period of time
20 wherein the combined hours devoted to said occupation as a
21 newspaper carrier and the hours in school shall exceed a total of 40
22 hours per week and not more than 8 hours in any 1 day; and
23 provided, further, that, prior to January 1, 2021, minors engaged in
24 agricultural pursuits may be employed no more than 10 hours per
25 day, and, after December 31, 2020, minors engaged in agricultural
26 pursuits shall be subject to the limits in the number of hours they
27 may be employed stipulated in the provisions of section 3 of
28 P.L.1940, c.153 (C.34:2-21.3).

29 Such special permit shall show the name, address, and date of
30 birth of the minor for whom it is issued, the kind of proof of age
31 submitted, the nature of the occupation in which the minor is to
32 engage, and such other information as the commissioner of
33 Education may require.

34 Any such special permit for work in agriculture shall be issued
35 for a period not to exceed 6 months and shall show its date of
36 expiration. Any person employing a minor under 16 years of age
37 in agriculture shall obtain such a certificate from the minor and
38 keep it on file during the period of the minor's employment and
39 shall return it to the minor to whom it is issued upon termination of
40 the minor's employment.

41 Upon application by the parent, guardian or other person having
42 custody and control of a newspaper carrier as defined in this act,
43 between the ages of 11 and 18 years of age, to the publisher of any
44 newspaper in this State and upon receiving satisfactory proof of
45 age and a signed statement of physical fitness, such publisher may
46 issue to such newspaper carrier a special permit on a form
47 prescribed and approved by the Commissioner of Education,

1 whereby the newspaper carrier shall be permitted to deliver, solicit,
2 sell and collect for newspapers outside of the newspaper carrier's
3 school hours on residential routes, and on Sundays and during
4 school vacations and no other employment certificate shall be
5 required.

6 Such special permit shall show the name, address and date of
7 birth of the newspaper carrier for whom it is issued, and such other
8 information as the Commissioner of Education may require.

9 The publisher shall forthwith mail 3 copies of such special
10 permit to the issuing officer as defined in section 1 of this act, one
11 of which copies shall be forwarded to the Commissioner of
12 Education and one copy to the Commissioner of Labor and Industry
13 in such manner as may be provided by regulation of said
14 commissioners. A copy of such special permit shall also be
15 furnished by the publisher to the parent, guardian or other person
16 having custody and control of the newspaper carrier and the
17 publisher shall retain at all times a file copy thereof.

18 The special permit shall remain in full force and effect unless
19 and until the publisher has knowledge of or is notified by the
20 issuing officer or the Commissioner of Labor and Industry that the
21 newspaper carrier is not physically fit or that in the opinion of the
22 issuing officer or the Commissioner of Labor and Industry,
23 engaging in the occupation as a newspaper carrier will be harmful
24 to the newspaper carrier's education. In such case, the said special
25 permit shall be suspended unless and until the issuing officer shall
26 revoke said notification. In the event of such notification and
27 suspension, however, if either the parent, guardian or other person
28 having custody and control of the newspaper carrier or the
29 publisher shall deem such decision to be erroneous, an appeal may
30 be made to the Commissioner of Education who shall have
31 authority to affirm, reverse or modify such decision of the issuing
32 officer or the Commissioner of Labor and Industry.

33 The publisher shall keep a record of the name, address and birth
34 date of each newspaper carrier to whom such special permit is
35 issued; the date said newspaper carrier commenced and ceased
36 delivering newspapers published by said publisher together with a
37 record of the number of newspapers sold to each newspaper carrier
38 and a general description of the area of the route served by each
39 newspaper carrier. Such records shall be kept on file by said
40 publisher for a period of 2 years after the newspaper carrier has
41 ceased delivering newspapers published by said publisher.

42 The special permit shall remain in full force and effect unless
43 and until the publisher is notified by the issuing officer or the
44 Commissioner of Labor and Industry that the newspaper carrier is
45 not physically fit or that the newspaper carrier's school record is
46 such that engaging in the occupation of a newspaper carrier will be
47 harmful to the newspaper carrier's education. In such case, however,

1 if either the parent, guardian or other person having custody and
2 control of the newspaper carrier or the publisher shall deem such
3 decision to be erroneous, an appeal may be made to the
4 Commissioner of Education who shall have authority to reverse or
5 modify such decision of the issuing officer or the Commissioner of
6 Labor and Industry.
7 (cf: P.L.1981, c.490)

8
9 3. Section 5 of P.L. 1966, c.113 (C.34:11-56a4) is amended to
10 read as follows:

11 5. a. Except as provided in subsections c., d., e. and g. of this
12 section, each employer shall pay to each of his employees wages at
13 a rate of not less than \$8.85 per hour as of January 1, 2019 and, on
14 January 1 of 2020 and January 1 of each subsequent year, the
15 minimum wage shall be increased by any increase in the consumer
16 price index for all urban wage earners and clerical workers (CPI-W)
17 as calculated by the federal government for the 12 months prior to
18 the September 30 preceding that January 1, except that any of the
19 following rates shall apply if it exceeds the rate determined in
20 accordance with the applicable increase in the CPI-W for the
21 indicated year: on July 1, 2019, the minimum wage shall be \$10.00
22 per hour; on January 1, 2020, the minimum wage shall be \$11.00
23 per hour; and on January 1 of each year from 2021 to 2024,
24 inclusive, the minimum wage shall be increased from the rate of the
25 preceding year by \$1.00 per hour. If the federal minimum hourly
26 wage rate set by section 6 of the federal "Fair Labor Standards Act
27 of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
28 level higher than the State minimum wage rate set by this
29 subsection, then the State minimum wage rate shall be increased to
30 the level of the federal minimum wage rate and subsequent
31 increases based on increases in the CPI-W pursuant to this section
32 shall be applied to the higher minimum wage rate. If an applicable
33 wage order has been issued by the commissioner under section 17
34 (C.34:11-56a16) of this act, the employer shall also pay not less
35 than the wages prescribed in said order. The wage rates fixed in
36 this section shall not be applicable to part-time employees primarily
37 engaged in the care and tending of children in the home of the
38 employer, to persons under the age of 18 not possessing a special
39 vocational school graduate permit issued pursuant to section 15 of
40 P.L.1940, c.153 (C.34:2-21.15), or to persons employed as
41 salesmen of motor vehicles, or to persons employed as outside
42 salesmen as such terms shall be defined and delimited in regulations
43 adopted by the commissioner, or to persons employed in a volunteer
44 capacity and receiving only incidental benefits at a county or other
45 agricultural fair by a nonprofit or religious corporation or a
46 nonprofit or religious association which conducts or participates in
47 that fair.

1 b. (1) An employer shall also pay each employee not less than
2 1 1/2 times such employee's regular hourly rate for each hour of
3 working time in excess of 40 hours in any week, except that this
4 overtime rate shall not apply: to any individual employed in a bona
5 fide executive, administrative, or professional capacity; or to
6 employees, prior to January 1, 2021, engaged to labor on a farm; or
7 employees employed in a hotel; or to an employee of a common
8 carrier of passengers by motor bus; or to a limousine driver who is
9 an employee of an employer engaged in the business of operating
10 limousines; or to employees engaged in labor relative to the raising
11 or care of livestock. On or after January 1, 2021, this overtime rate
12 shall apply to employees engaged to labor on a farm.

13 (2) Employees engaged on a piece-rate or regular hourly rate
14 basis to labor on a farm shall be paid for each day worked not less
15 than the applicable minimum hourly wage rate multiplied by the
16 total number of hours worked.

17 (3) Full-time students may be employed by the college or
18 university at which they are enrolled at not less than 85% of the
19 effective applicable minimum wage rate.

20 c. Employees of a small employer, and employees who are
21 engaged in seasonal employment, except for employees who
22 customarily and regularly receive gratuities or tips who shall be
23 subject to the provisions of subsections a. and d. of this section,
24 shall be paid \$8.85 per hour as of January 1, 2019 and, on January 1
25 of 2020 and January 1 of each subsequent year, that minimum wage
26 rate shall be increased by any increase in the consumer price index
27 for all urban wage earners and clerical workers (CPI-W) as
28 calculated by the federal government for the 12 months prior to the
29 September 30 preceding that January 1, except that any of the
30 following rates shall apply if it exceeds the rate determined in
31 accordance with the applicable increase in the CPI-W for the
32 indicated year: on January 1, 2020, the minimum wage shall be
33 \$10.30 per hour; and on January 1 of each year from 2021 to 2025,
34 inclusive, the minimum wage shall be increased from the rate of the
35 preceding year by eighty cents per hour, and, in 2026, the minimum
36 wage shall be increased from the rate of the preceding year by
37 seventy cents per hour, and, in each year from 2027 to 2028
38 inclusive, the minimum wage for employees subject to this
39 subsection c. shall be increased by the same amount as the increase
40 for employees subject to subsection a. of this section based on CPI-
41 W increases, plus one half of the difference between \$15.00 per
42 hour and the minimum wage in effect in 2026 for employees
43 pursuant to subsection a. of this section, so that, by 2028, the
44 minimum wage for employees subject to this subsection shall be the
45 same as the minimum wage in effect for employees subject to
46 subsection a. of this section. If the federal minimum hourly wage
47 rate set by section 6 of the federal "Fair Labor Standards Act of

1 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a
2 level higher than the State minimum wage rate set by this
3 subsection, then the State minimum wage rate shall be increased to
4 the level of the federal minimum wage rate and subsequent
5 increases based on increases in the CPI-W pursuant to this
6 subsection shall be applied to the higher minimum wage rate.

7 d. Employees engaged on a piece-rate or regular hourly rate
8 basis to labor on a farm shall be paid \$8.85 per hour as of January
9 1, 2019 and, on January 1 of 2020 and January 1 of each subsequent
10 year, that minimum wage rate shall be increased by any increase in
11 the consumer price index for all urban wage earners and clerical
12 workers (CPI-W) as calculated by the federal government for the 12
13 months prior to the September 30 preceding that January 1, except
14 that any of the following rates shall apply if it exceeds the rate
15 determined in accordance with the applicable increase in the CPI-W
16 for the indicated year:

17 (1) on January 1, 2020, the minimum wage shall be \$10.30 per
18 hour; on January 1, 2022, the minimum wage shall be \$10.90 per
19 hour; and on January 1 of each year from 2023 to 2024, inclusive,
20 the minimum wage shall be increased from the rate of the preceding
21 year by eighty cents per hour; and

22 (2) subject to the provisions of paragraph (3) of this subsection
23 d., minimum wage rates shall be increased as follows: on January 1
24 of 2025, the minimum wage shall be increased to \$13.40, and on
25 January 1 of each year from 2026 to 2027, inclusive, the minimum
26 wage shall be increased from the rate of the preceding year by
27 eighty cents per hour, and, in each year from 2028 to 2030
28 inclusive, the minimum wage for employees subject to this
29 subsection d. shall be increased during that year by the same
30 amount as the increase in that year for employees subject to
31 subsection a. of this section based on CPI-W increases, plus one
32 third of the difference between \$15.00 per hour and the minimum
33 wage in effect in 2027 for employees pursuant to subsection a. of
34 this section, so that, by 2030, the minimum wage for employees
35 subject to this subsection shall be the same as the minimum wage in
36 effect for employees subject to subsection a. of this section.

37 (3) Not later than March 31, 2024, the commissioner and the
38 Secretary of Agriculture shall review the report issued by the
39 commissioner pursuant to subsection b. of section 4 of P.L.2019,
40 c.32 (C.34:11-56a4.10) and shall consider any information provided
41 by the secretary regarding the impact on farm employers and the
42 viability of the State's agricultural industry of the increases of the
43 minimum wage made pursuant to paragraph (1) of this subsection,
44 and the potential impact of the increases which would be set by
45 paragraph (2) of this subsection, including comparisons with the
46 wage rates in the agricultural industries in other states, and shall
47 recommend: approval of the increases set forth in paragraph (2) of

1 this subsection; disapproval of the increases set forth in paragraph
2 (2) of this subsection; or an alternative manner of changing the
3 minimum wage after 2024 for employees engaged on a piece-rate or
4 regular hourly rate basis to labor on a farm. In contemplation of the
5 possibility that the commissioner and the secretary are unable to
6 agree on the recommendation required by this paragraph, by
7 December 31, 2021, the Governor shall appoint a public member
8 subject to advice and consent by the Senate, who will serve as a tie-
9 breaking member if needed. The increases set forth in paragraph (2)
10 of this subsection shall take effect unless there is a recommendation
11 pursuant to this paragraph to disapprove the increases or for an
12 alternative manner of changing the minimum wage after 2024 for
13 employees engaged on a piece-rate or regular hourly rate basis to
14 labor on a farm and the Legislature, not later than June 30, 2024,
15 enacts a concurrent resolution approving the implementation of that
16 recommendation. Beginning in 2024, the commissioner, secretary,
17 and public member shall meet biennially to make either a one or
18 two year recommendation to the Legislature for implementation by
19 way of concurrent resolution.

20 (4) If the federal minimum hourly wage rate set by section 6 of
21 the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or
22 a successor federal law, is raised to a level higher than the State
23 minimum wage rate set by this subsection, then the State minimum
24 wage rate shall be increased to the level of the federal minimum
25 wage rate and subsequent increases based on increases in the CPI-
26 W pursuant to this subsection shall be applied to the higher
27 minimum wage rate.

28 e. With respect to an employee who customarily and regularly
29 receives gratuities or tips, every employer is entitled to a credit for
30 the gratuities or tips received by the employee against the hourly
31 wage rate that would otherwise be paid to the employee pursuant to
32 subsection a. of this section of the following amounts: after
33 December 31, 2018 and before July 1, 2019, \$6.72 per hour; after
34 June 30, 2019 and before January 1, 2020, \$7.37 per hour; during
35 calendar years 2020, 2021 and 2022, \$7.87 per hour; during
36 calendar year 2023, \$8.87 per hour; and during calendar year 2024
37 and subsequent calendar years, \$9.87 per hour.

38 f. Notwithstanding the provisions of this section to the
39 contrary, every trucking industry employer shall pay to all drivers,
40 helpers, loaders and mechanics for whom the Secretary of
41 Transportation may prescribe maximum hours of work for the safe
42 operation of vehicles, pursuant to section 31502(b) of the federal
43 Motor Carrier Act, 49 U.S.C.s.31502(b), an overtime rate not less
44 than 1 1/2 times the minimum wage required pursuant to this
45 section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking
46 industry shall be paid no less than the minimum wage rate as
47 provided in this section and N.J.A.C. 12:56-3.1. As used in this

1 section, "trucking industry employer" means any business or
2 establishment primarily operating for the purpose of conveying
3 property from one place to another by road or highway, including
4 the storage and warehousing of goods and property. Such an
5 employer shall also be subject to the jurisdiction of the Secretary of
6 Transportation pursuant to the federal Motor Carrier Act, 49
7 U.S.C.s.31501 et seq., whose employees are exempt under section
8 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29
9 U.S.C. s.213(b)(1), which provides an exemption to employees
10 regulated by section 207 of the federal "Fair Labor Standards Act of
11 1938," 29 U.S.C. s.207, and the Interstate Commerce Act,
12 49 U.S.C. s.501 et al.

13 g. Commencing on January 1, 2020, a training wage of not less
14 than 90 percent of the minimum wage rate otherwise set pursuant to
15 subsection a. of this section may be paid to an employee who is
16 enrolled in an established employer on-the-job or other training
17 program which meets standards set by regulations adopted by the
18 commissioner. The period during which an employer may pay the
19 training wage to the employee shall be the first 120 hours of work
20 after hiring the employee in employment in an occupation in which
21 the employee has no previous similar or related experience. An
22 employer shall not utilize any employee paid the training wage in a
23 manner which causes, induces, encourages or assists any
24 displacement or partial displacement of any currently employed
25 worker, including any previous recipient of the training wage, by
26 reducing hours of a currently employed worker, replacing a current
27 or laid off employee with a trainee, or by relocating operations
28 resulting in a loss of employment at a previous workplace, or in a
29 manner which replaces, supplants, competes with or duplicates any
30 approved apprenticeship program. An employer who pays an
31 employee a training wage shall make a good faith effort to continue
32 to employ the employee after the period of the training wage
33 expires and shall not hire the employee at the training wage unless
34 there is a reasonable expectation that there will be regular
35 employment, paying at or above the effective minimum wage, for
36 the trainee upon the successful completion of the period of the
37 training wage. If the commissioner determines that an employer
38 has made repeated, knowing violations of the provisions of this
39 subsection regarding the payment of a training wage, the
40 commissioner shall suspend the employer's right to pay a training
41 wage for a period set pursuant to regulations adopted by the
42 commissioner, but not less than three years.

43 h. The provisions of this section shall not be construed as
44 prohibiting any political subdivision of the State from adopting an
45 ordinance, resolution, regulation or rule, or entering into any
46 agreement, establishing any standard for vendors, contractors and
47 subcontractors of the subdivision regarding wage rates or overtime

1 compensation which is higher than the standards provided for in
2 this section, and no provision of any other State or federal law
3 establishing a minimum standard regarding wages or other terms
4 and conditions of employment shall be construed as preventing a
5 political subdivision of the State from adopting an ordinance,
6 resolution, regulation or rule, or entering into any agreement,
7 establishing a standard for vendors, contractors and subcontractors
8 of the subdivision which is higher than the State or federal law or
9 which otherwise provides greater protections or rights to employees
10 of the vendors, contractors and subcontractors of the subdivision,
11 unless the State or federal law expressly prohibits the subdivision
12 from adopting the ordinance, resolution, regulation or rule, or
13 entering into the agreement.

14 (cf: P.L.2019, c.32, s.2)

15

16 4. Section 5 of P.L.1968, c.303 (C.34:13A-5.1) is amended to
17 read as follows:

18 5. There is hereby established a Division of Public
19 Employment Relations and a Division of Private Employment
20 Dispute Settlement.

21 (a) The Division of Public Employment Relations shall be
22 concerned exclusively with matters of public employment related to
23 determining negotiating units, elections, certifications and
24 settlement of public employee representative and public employer
25 disputes and grievance procedures. For the purpose of complying
26 with the provisions of Article V, Section IV, paragraph 1 of the
27 New Jersey Constitution, the Division of Public Employment
28 Relations is hereby allocated within the Department of Labor and
29 Workforce Development, and located in the city of Trenton, but
30 notwithstanding said allocation, the office shall be independent of
31 any supervision or control by the department or by any board or
32 officer thereof.

33 (b) The Division of Private Employment Dispute Settlement
34 shall assist the New Jersey State Board of Mediation in the
35 resolution of disputes in private employment. The New Jersey State
36 Board of Mediation, its objectives and the powers and duties
37 granted by this act and the act of which this act is amendatory and
38 supplementary shall be concerned exclusively with matters of
39 private employment and the office shall continue to be located in
40 the city of Newark.

41 (c) In the case of a private employer not regulated by the
42 National Labor Relations Board pursuant to the National Labor
43 Relations Act (29 U.S.C. s.151 et seq.), the New Jersey State Board
44 of Mediation shall designate a representative for a unit of
45 employees of the private employer for the purposes of collective
46 bargaining when:

1 (1) In any case in which the board determines that there is no
2 current majority representative and only one employee organization
3 is seeking to be the majority representative, that organization
4 demonstrates that a majority of employees in the unit have shown
5 their preference to have that organization be their representative by
6 signing authorization cards indicating that preference; or

7 (2) The employees in the unit have selected a representative by
8 an election that conforms with the procedures outlined in section
9 159 of the National Labor Relations Act (29 U.S.C. s.159).

10 For the purposes of paragraph (1) of this subsection, an
11 authorization card indicating preference shall not be valid unless it
12 is printed in a language understood by the employee who signs it.

13 An employee organization seeking to be recognized as a majority
14 representative, either by a card authorization procedure pursuant to
15 paragraph (1) of this subsection or by an election pursuant to
16 paragraph (2) of this subsection, is permitted, but not required, to
17 petition the New Jersey State Board of Mediation to require the
18 employer to file, within not more than 48 hours, and in the manner
19 required by the board, a complete and accurate list of the full
20 names, current street addresses, and job classifications of the
21 current employees, and phone numbers or other employee contact
22 information available to the employer, which the board shall
23 immediately convey to the employee organization. Any employer
24 who refuses to provide information requested by the New Jersey
25 State Board of Mediation or otherwise acts to prevent the board
26 from carrying out its responsibilities pursuant to this subsection (c)
27 shall have violated this subsection and shall be liable to a fine of not
28 more than **[\$1,000]** \$5,000 for each day that the employer fails to
29 provide a complete response or otherwise prevents the board from
30 carrying out its responsibilities, to be recovered under the "Penalty
31 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in
32 the name of the board and to be used by the board for costs of
33 implementing this subsection. In addition, an employee
34 organization seeking to represent the employees of the employer
35 may institute an action in a court of competent jurisdiction to obtain
36 an injunction to restrain any continuation of the violation, to
37 reimburse the employee organization or any affected employee for
38 any damages caused by the violation plus reasonable costs and
39 attorney's fees of the action.

40 The provisions of this subsection (c) shall not apply to religious
41 or parochial schools or their employees or to any private nonprofit
42 organization exempt from federal taxation under section 501 of the
43 Internal Revenue Code of 1986 (26 U.S.C. s. 501).

44 (d) In the case of a private employer regulated by the National
45 Labor Relations Board pursuant to the National Labor Relations Act
46 (29 U.S.C. s. 151 et seq.), the New Jersey State Board of Mediation
47 shall, based on the mutual agreement of the private employer and an

1 organization seeking to represent employees of the employer,
2 designate a representative for a unit of employees of the private
3 employer for the purposes of collective bargaining when:

4 (1) In any case in which the board determines that only one
5 employee organization is seeking to be the majority representative,
6 that organization demonstrates, in a manner mutually agreed upon
7 by the representative and the employer, that a majority of
8 employees in the unit have shown their preference to have that
9 organization be their representative by signing authorization cards
10 indicating that preference; or

11 (2) the employees in the unit have selected the representative by
12 an election that conforms with the procedures outlined in section
13 159 of the National Labor Relations Act (29 U.S.C. s.159).

14 (e) For the purposes of subsections (c) and (d) of this section,
15 "employee unit" means an appropriate group of employees for the
16 purposes of collective bargaining as determined, if necessary, by
17 the New Jersey State Board of Mediation.

18 (cf: P.L.2005, c.161, s.1)

19

20 5. (New section) a. Agricultural employers and their
21 representatives and agents are prohibited from the following unfair
22 practices:

23 (1) Interfering with, restraining, or coercing employees in their
24 exercise of rights guaranteed by this act.

25 (2) Dominating or interfering with the formation, existence or
26 administration of any employee organization, including any
27 violation of the provisions of section 6 of P.L. , c. (C.)(pending
28 before the Legislature as this bill).

29 (3) Discharging, threatening to discharge, or otherwise
30 discriminating with respect to hire or tenure of employment or any
31 term or condition of employment to encourage or discourage
32 employees from signing or filing an affidavit, petition or complaint
33 or disclosing any information or testimony, or exercising any other
34 rights guaranteed by this act.

35 (4) Refusing to negotiate in good faith with a majority
36 representative of employees concerning terms and conditions of
37 employment, refusing to process grievances, or refusing to reduce
38 to writing and sign a negotiated agreement.

39 (5) Violating any regulations adopted by the division.

40 b. Employee organizations and their representatives and agents
41 are prohibited from the following unfair practices:

42 (1) Interfering with, restraining or coercing employees in the
43 exercise of the rights guaranteed to them by this act.

44 (2) Interfering with, restraining or coercing an agricultural
45 employer in the selection of the employer's representative for the
46 purposes of negotiations or the adjustment of grievances.

1 (3) Refusing to negotiate in good faith with an agricultural
2 employer concerning terms and conditions of employment, or
3 refusing to reduce to writing and sign a negotiated agreement.

4 (4) Violating any regulations adopted by the division.

5 c. The division shall have exclusive power to prevent anyone
6 from engaging in any unfair practice listed in subsections a. and b.
7 of this section. Whenever it is charged that any party has engaged
8 or is engaging in an unfair practice, the division, or its designated
9 agent, shall have authority to issue and cause to be served upon the
10 party a complaint stating the specific unfair practice charged and
11 including a notice of hearing containing the date and place of
12 hearing before the division or its designated agent, except that no
13 complaint shall be based on an unfair practice occurring more than
14 six months prior to the filing of the charge unless the aggrieved
15 person was prevented from filing the charge, in which event the six-
16 month period shall be computed from the day the person was no
17 longer prevented. If the division determines that any party charged
18 has engaged or is engaging in an unfair practice, the division shall
19 state its findings of fact and conclusions of law and issue and cause
20 to be served on the party an order requiring the party to cease and
21 desist from the unfair practice, and to take reasonable remedial or
22 affirmative action as will effectuate the policies of this act, which
23 shall, in the case of a discharge or other discrimination against any
24 employee for exercising rights guaranteed by this act, include
25 reinstatement to any employment from which the employee was
26 discharged, the payment of any wages lost due to the
27 discrimination, reasonable costs of action, and liquidated damages
28 equal to the wages due. Any case in which a complaint and notice
29 of hearing are issued by the division shall be prosecuted before the
30 division by a representative of the employee organization or other
31 party filing the charge.

32 d. The division shall have the power to apply to the Appellate
33 Division of the Superior Court for an appropriate order enforcing
34 any order of the division issued pursuant to subsection c. of this
35 section, and its findings of fact, if based upon substantial evidence
36 on the record as a whole, shall not be set aside or modified, and any
37 order for remedial or affirmative action, if reasonably designed to
38 effectuate the provisions of this act, shall be affirmed and enforced.

39
40 6. (New section) a. If an employee organization seeking to be
41 a majority representative of employees of an agricultural employer
42 petitions the New Jersey State Board of Mediation to require the
43 employer to provide a list of the current employees with contact
44 information pursuant to section 5 of P.L.1968, c.303 (C.34:13A-
45 5.1), the employer shall, along with providing the list and contact
46 information, provide the employee organization access to the
47 employees. The required access to employees shall include, but not be

1 limited to, permitting representatives of the organization to meet with
2 employees on the premises of the employer during the work day, and
3 permitting representatives of the organization to meet with employees
4 at any employee living quarters under the control of the employer.

5 b. An agricultural employer shall permit any employee
6 organization which is a majority representative of employees of the
7 employer:

8 (1) to access the employer's premises to investigate and discuss
9 with the employees grievances, workplace-related complaints, and
10 other workplace issues;

11 (2) to conduct worksite meetings during non-work breaks, and
12 before and after the workday, to discuss workplace issues, collective
13 negotiations, the administration of collective negotiations agreements,
14 other matters related to the governance, business, and duties of the
15 employee organization; and

16 (3) to meet with a newly hired employee within five days after
17 hire, without charge to the pay or leave time of the employee.

18 c. An agricultural employer shall provide the majority
19 representative with timely notification of any new hiring by the
20 employer or change in the contact information of current employees.

21 d. An agricultural employer shall carry out payroll deductions
22 for membership dues for the majority representative, and payroll
23 deductions for representation fees from non-members, as agreed to
24 in negotiations between the employer and the majority
25 representative, or, if an agreement is not reached, as set by the
26 division.

27 e. An agricultural employer shall not discourage an employee
28 from joining, forming or assisting an employee organization, or
29 encourage employees to resign or relinquish membership in an
30 employee organization, or revoke authorization of the deduction of
31 dues or fees to an employee organization.

32 f. An agricultural employer who violates any provision of this
33 section shall be regarded as having engaged in an unfair practice in
34 violation of section 5 of P.L. , c. (C.) (pending before the
35 Legislature as this bill), and, upon a finding that the violation has
36 occurred, the division, in addition to implementing any other
37 remedies authorized by that section, shall order the agricultural
38 employer to make whole the employee organization for any losses
39 suffered by the organization as a result of the violation.

40
41 7. (New section) Notwithstanding any law to the contrary, an
42 organization representing agricultural laborers, and its members,
43 representatives, and supporters, shall have the right to engage in
44 publicity, including picketing, for the purpose of truthfully advising
45 the public, including consumers, that products or the ingredients of
46 products are produced by an agricultural employer with which the
47 organization has a dispute, including publicity which has the effect

1 of requesting the public to cease patronizing businesses which
2 distribute or sell those products.

3
4 8. (New section) The division, in consultation with the New
5 Jersey State Board of Mediation, shall adopt regulations as needed
6 regarding the conduct of the selection of majority representatives
7 through election or authorization card procedures pursuant to
8 subsection (c) of section 5 of P.L.1968, c.303 (C.34:13A-5.1),
9 procedures for negotiations between majority representatives and
10 agricultural employers, the resolution of grievances, the collection
11 of dues and fees for the majority representatives, and other matters
12 concerning terms and conditions of employment.

13
14 9. (New section) For the purposes of sections 2 through 6 of
15 P.L. , c. (C.)(pending before the Legislature as this bill):

16 “Agricultural employer” means any private employer of
17 agriculture laborers who is not regulated by the National Labor
18 Relations Board pursuant to the National Labor Relations Act
19 (29 U.S.C. s.151 et seq.).

20 “Division” means the Division of Private Employment Dispute
21 Settlement established pursuant to section 5 of P.L.1968, c.303
22 (C.34:13A-5.1).

23 “Majority representative” means an employee organization
24 designated by the State Board of Mediation pursuant to subsection
25 (c) of section 5 of P.L.1968, c.303 (C.34:13A-5.1) to be a
26 representative of a unit of employees of an agricultural employer.

27
28 10. (New section) This act shall be known and may be cited as
29 the “Farm Labor Equality Act.”

30
31 11. R.S.43:21-19 is amended to read as follows:

32 43:21-19. Definitions. As used in this chapter (R.S.43:21-
33 1 et seq.), unless the context clearly requires otherwise:

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

37 (2) "Average annual payroll" means the average of the annual
38 payrolls of any employer for the last three or five preceding
39 calendar years, whichever average is higher, except that any year or
40 years throughout which an employer has had no "annual payroll"
41 because of military service shall be deleted from the reckoning; the
42 "average annual payroll" in such case is to be determined on the
43 basis of the prior three or five calendar years in each of which the
44 employer had an "annual payroll" in the operation of his business, if
45 the employer resumes his business within 12 months after
46 separation, discharge or release from such service, under conditions
47 other than dishonorable, and makes application to have his "average

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

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

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

20 With respect to a benefit year commencing on or after July 1,
21 1995, if an individual does not have sufficient qualifying weeks or
22 wages in his base year to qualify for benefits, the individual shall
23 have the option of designating that his base year shall be the
24 "alternative base year," which means the last four completed
25 calendar quarters immediately preceding the individual's benefit
26 year; except that, with respect to a benefit year commencing on or
27 after October 1, 1995, if the individual also does not have sufficient
28 qualifying weeks or wages in the last four completed calendar
29 quarters immediately preceding his benefit year to qualify for
30 benefits, "alternative base year" means the last three completed
31 calendar quarters immediately preceding his benefit year and, of the
32 calendar quarter in which the benefit year commences, the portion
33 of the quarter which occurs before the commencing of the benefit
34 year.

35 The division shall inform the individual of his options under this
36 section as amended by P.L.1995, c.234. If information regarding
37 weeks and wages for the calendar quarter or quarters immediately
38 preceding the benefit year is not available to the division from the
39 regular quarterly reports of wage information and the division is not
40 able to obtain the information using other means pursuant to State
41 or federal law, the division may base the determination of eligibility
42 for benefits on the affidavit of an individual with respect to weeks
43 and wages for that calendar quarter. The individual shall furnish
44 payroll documentation, if available, in support of the affidavit. A
45 determination of benefits based on an alternative base year shall be
46 adjusted when the quarterly report of wage information from the

1 employer is received if that information causes a change in the
2 determination.

3 (2) With respect to a benefit year commencing on or after June
4 1, 1990 for an individual who immediately preceding the benefit
5 year was subject to a disability compensable under the provisions of
6 the "Temporary Disability Benefits Law," P.L.1948, c.110
7 (C.43:21-25 et seq.), "base year" shall mean the first four of the last
8 five completed calendar quarters immediately preceding the
9 individual's period of disability, if the employment held by the
10 individual immediately preceding the period of disability is no
11 longer available at the conclusion of that period and the individual
12 files a valid claim for unemployment benefits after the conclusion
13 of that period. For the purposes of this paragraph, "period of
14 disability" means the period defined as a period of disability by
15 section 3 of the "Temporary Disability Benefits Law," P.L.1948,
16 c.110 (C.43:21-27). An individual who files a claim under the
17 provisions of this paragraph (2) shall not be regarded as having left
18 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

19 (3) With respect to a benefit year commencing on or after June
20 1, 1990 for an individual who immediately preceding the benefit
21 year was subject to a disability compensable under the provisions of
22 the workers' compensation law (chapter 15 of Title 34 of the
23 Revised Statutes), "base year" shall mean the first four of the last
24 five completed calendar quarters immediately preceding the
25 individual's period of disability, if the period of disability was not
26 longer than two years, if the employment held by the individual
27 immediately preceding the period of disability is no longer
28 available at the conclusion of that period and if the individual files a
29 valid claim for unemployment benefits after the conclusion of that
30 period. For the purposes of this paragraph, "period of disability"
31 means the period from the time at which the individual becomes
32 unable to work because of the compensable disability until the time
33 that the individual becomes able to resume work and continue work
34 on a permanent basis. An individual who files a claim under the
35 provisions of this paragraph (3) shall not be regarded as having left
36 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

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

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

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

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

40 (h) "Employer" means:

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

44 (2) Any employing unit (whether or not an employing unit at the
45 time of acquisition) which acquired the organization, trade or
46 business, or substantially all the assets thereof, of another which, at

1 the time of such acquisition, was an employer subject to this chapter
2 (R.S.43:21-1 et seq.);

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

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

15 (5) Any employing unit for which service in employment as
16 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
17 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
18 performed after December 31, 1977;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) (1) (B), if such service is performed by an individual in the
2 exercise of duties
- 3 (aa) as an elected official;
- 4 (bb) as a member of a legislative body, or a member of the
5 judiciary, of a state or political subdivision;
- 6 (cc) as a member of the State National Guard or Air National
7 Guard;
- 8 (dd) as an employee serving on a temporary basis in case of
9 fire, storm, snow, earthquake, flood or similar emergency;
- 10 (ee) in a position which, under or pursuant to the laws of this
11 State, is designated as a major nontenured policy making or
12 advisory position, or a policy making or advisory position, the
13 performance of the duties of which ordinarily does not require more
14 than eight hours per week; or
- 15 (iv) By an individual receiving rehabilitation or remunerative
16 work in a facility conducted for the purpose of carrying out a
17 program of rehabilitation of individuals whose earning capacity is
18 impaired by age or physical or mental deficiency or injury or
19 providing remunerative work for individuals who because of their
20 impaired physical or mental capacity cannot be readily absorbed in
21 the competitive labor market;
- 22 (v) By an individual receiving work-relief or work-training as
23 part of an unemployment work-relief or work-training program
24 assisted in whole or in part by any federal agency or an agency of a
25 state or political subdivision thereof; or
- 26 (vi) Prior to January 1, 1978, for a hospital in a State prison or
27 other State correctional institution by an inmate of the prison or
28 correctional institution and after December 31, 1977, by an inmate
29 of a custodial or penal institution.
- 30 (E) The term "employment" shall include the services of an
31 individual who is a citizen of the United States, performed outside
32 the United States after December 31, 1971 (except in Canada and in
33 the case of the Virgin Islands, after December 31, 1971) and prior
34 to January 1 of the year following the year in which the U.S.
35 Secretary of Labor approves the unemployment compensation law
36 of the Virgin Islands, under section 3304 (a) of the Internal
37 Revenue Code of 1986 (26 U.S.C. s.3304 (a)) in the employ of an
38 American employer (other than the service which is deemed
39 employment under the provisions of R.S.43:21-19 (i) (2) or (5) or
40 the parallel provisions of another state's unemployment
41 compensation law), if
- 42 (i) The American employer's principal place of business in the
43 United States is located in this State; or
- 44 (ii) The American employer has no place of business in the
45 United States, but (I) the American employer is an individual who
46 is a resident of this State; or (II) the American employer is a
47 corporation which is organized under the laws of this State; or (III)

1 the American employer is a partnership or trust and the number of
2 partners or trustees who are residents of this State is greater than the
3 number who are residents of another state; or

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

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

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

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

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

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

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

1 (bb) for some portion of a day in each of 20 different calendar
2 weeks, whether or not such weeks were consecutive, in either the
3 current or the preceding calendar year, employed in agricultural
4 labor 10 or more individuals, regardless of whether they were
5 employed at the same moment in time, except that the conditions of
6 R.S.34:21-19(i)(1)(I)(aa) and (bb) shall not apply after December
7 31, 2021.

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

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

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

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

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

27 (bb) such other entity shall be treated as having paid cash
28 remuneration to such individual in an amount equal to the amount
29 of cash remuneration paid to such individual by the crew leader
30 (either on his own behalf or on behalf of such other entity) for the
31 service in agricultural labor performed for such other entity.

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

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

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

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

42 (J) Domestic service after December 31, 1977 performed in the
43 private home of an employing unit which paid cash remuneration of
44 \$1,000.00 or more to one or more individuals for such domestic
45 service in any calendar quarter in the current or preceding calendar
46 year.

- 1 (2) The term "employment" shall include an individual's entire
2 service performed within or both within and without this State if:
- 3 (A) The service is localized in this State; or
- 4 (B) The service is not localized in any state but some of the
5 service is performed in this State, and (i) the base of operations, or,
6 if there is no base of operations, then the place from which such
7 service is directed or controlled, is in this State; or (ii) the base of
8 operations or place from which such service is directed or
9 controlled is not in any state in which some part of the service is
10 performed, but the individual's residence is in this State.
- 11 (3) Services performed within this State but not covered under
12 paragraph (2) of this subsection shall be deemed to be employment
13 subject to this chapter (R.S.43:21-1 et seq.) if contributions are not
14 required and paid with respect to such services under an
15 unemployment compensation law of any other state or of the federal
16 government.
- 17 (4) Services not covered under paragraph (2) of this subsection
18 and performed entirely without this State, with respect to no part of
19 which contributions are required and paid under an unemployment
20 compensation law of any other state or of the federal government,
21 shall be deemed to be employment subject to this chapter
22 (R.S.43:21-1 et seq.) if the individual performing such services is a
23 resident of this State and the employing unit for whom such
24 services are performed files with the division an election that the
25 entire service of such individual shall be deemed to be employment
26 subject to this chapter (R.S.43:21-1 et seq.).
- 27 (5) Service shall be deemed to be localized within a state if:
- 28 (A) The service is performed entirely within such state; or
- 29 (B) The service is performed both within and without such state,
30 but the service performed without such state is incidental to the
31 individual's service within the state; for example, is temporary or
32 transitory in nature or consists of isolated transactions.
- 33 (6) Services performed by an individual for remuneration shall
34 be deemed to be employment subject to this chapter (R.S.43:21-
35 1 et seq.) unless and until it is shown to the satisfaction of the
36 division that:
- 37 (A) Such individual has been and will continue to be free from
38 control or direction over the performance of such service, both
39 under his contract of service and in fact; and
- 40 (B) Such service is either outside the usual course of the
41 business for which such service is performed, or that such service is
42 performed outside of all the places of business of the enterprise for
43 which such service is performed; and
- 44 (C) Such individual is customarily engaged in an independently
45 established trade, occupation, profession or business.
- 46 (7) Provided that such services are also exempt under the
47 Federal Unemployment Tax Act, as amended, or that contributions

1 with respect to such services are not required to be paid into a state
2 unemployment fund as a condition for a tax offset credit against the
3 tax imposed by the Federal Unemployment Tax Act, as amended,
4 the term "employment" shall not include:

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

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

13 (ii) for some portion of a day in each of 20 different calendar
14 weeks, whether or not such weeks were consecutive, in either the
15 current or the preceding calendar year, employed in agricultural
16 labor 10 or more individuals, regardless of whether they were
17 employed at the same moment in time] Deleted by amendment,
18 P.L. , c. (C.) (pending before the Legislature as this bill);

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

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

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

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

40 (F) Service performed in the employ of the United States
41 Government or of any instrumentality of the United States exempt
42 under the Constitution of the United States from the contributions
43 imposed by the "unemployment compensation law," except that to
44 the extent that the Congress of the United States shall permit states
45 to require any instrumentalities of the United States to make
46 payments into an unemployment fund under a state unemployment
47 compensation law, all of the provisions of this act shall be

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

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

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

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

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

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

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

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

45 (N) Services performed after January 1, 1973 by an individual
46 for a labor union organization, known and recognized as a union
47 local, as a member of a committee or committees reimbursed by the

1 union local for time lost from regular employment, or as a part-time
2 officer of a union local and the remuneration for such services is
3 less than \$1,000.00 in a calendar year;

4 (O) Services performed in the sale or distribution of merchandise
5 by home-to-home salespersons or in-the-home demonstrators whose
6 remuneration consists wholly of commissions or commissions and
7 bonuses;

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

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

21 (R) Service in the employ of an international organization
22 entitled to enjoy the privileges, exemptions and immunities under
23 the International Organizations Immunities Act
24 (22 U.S.C. s.288 et seq.);

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

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

41 (U) Service performed by an individual who is enrolled at a
42 nonprofit or public educational institution which normally
43 maintains a regular faculty and curriculum and normally has a
44 regularly organized body of students in attendance at the place
45 where its educational activities are carried on, as a student in a full-
46 time program, taken for credit at such institution, which combines
47 academic instruction with work experience, if such service is an

1 integral part of such program, and such institution has so certified
2 to the employer, except that this subparagraph shall not apply to
3 service performed in a program established for or on behalf of an
4 employer or group of employers;

5 (V) Service performed in the employ of a hospital, if such
6 service is performed by a patient of the hospital; service performed
7 as a student nurse in the employ of a hospital or a nurses' training
8 school by an individual who is enrolled and regularly attending
9 classes in a nurses' training school approved under the laws of this
10 State;

11 (W) Services performed after the effective date of this
12 amendatory act by agents of mutual benefit associations if the
13 compensation to such agents for such services is wholly on a
14 commission basis;

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

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

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

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

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

46 (A) The limousine franchisee is incorporated;

1 (B) The franchisee is subject to regulation by the Interstate
2 Commerce Commission;

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

6 (D) The franchisee registers with the Department of Labor and
7 Workforce Development and receives an employer registration
8 number.

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

20 For purposes of this paragraph (10): "legal transcription service"
21 and "legal transcribing" mean making use, by audio, video or voice
22 recording, of a verbatim record of court proceedings, depositions,
23 other judicial proceedings, meetings of boards, agencies,
24 corporations, or other bodies or groups, and causing that record to
25 be printed in readable form or produced on a computer screen in
26 readable form; and "legal transcriber" means a person who engages
27 in "legal transcribing."

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

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

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

35 (m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (A) Any calendar week during which the individual earned in
44 employment from an employer remuneration not less than an
45 amount which is 20% of the Statewide average weekly
46 remuneration defined in subsection (c) of R.S.43:21-3 which
47 amount shall be adjusted to the next higher multiple of \$1.00 if not

1 already a multiple thereof, except that if in any calendar week an
2 individual subject to this subparagraph (A) is in employment with
3 more than one employer, the individual may in that calendar week
4 establish a base week with respect to each of the employers from
5 whom the individual earns remuneration equal to not less than the
6 amount defined in this subparagraph (A) during that week; or

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

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

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

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

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

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

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

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

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

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

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

35 (2) "Institution of higher education" means an educational
36 institution which:

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

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

42 (C) Provides an educational program for which it awards a
43 bachelor's or higher degree, or provides a program which is
44 acceptable for full credit toward such a degree, a program of post-
45 graduate or post-doctoral studies, or a program of training to
46 prepare students for gainful employment in a recognized
47 occupation; and

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

2 Notwithstanding any of the foregoing provisions of this
3 subsection, all colleges and universities in this State are institutions
4 of higher education for purposes of this section.

5 (z) "Hospital" means an institution which has been licensed,
6 certified or approved under the law of this State as a hospital.
7 (cf: P.L.2017, c.230).

8

9 12. This act shall take effect immediately.

10

11

12

STATEMENT

13

14 This bill, the "Farm Labor Equality Act," modifies a number of
15 labor laws to provide farmworkers with rights and protections equal
16 to the rights and protections provided to other workers, specifically
17 in the areas of child labor, overtime pay, employee representation
18 and collective bargaining, and unemployment benefits.

19

Child labor:

20
21 This bill repeals provisions of the State child labor law,
22 P.L.1940, c.153 (C.34:2-21.1 et seq.), that currently exempt minors
23 employed in agriculture from requirements of that law which apply
24 to most other minors. The bill:

25 1. raises the minimum age that minors may work in agriculture
26 from 12 years old to 14 years old;

27 2. reduces the number of hours per day that a minor may work
28 in agriculture from 10 to 8 hours, and clarifies that various limits to
29 work time that apply to most minors also apply to minors employed
30 in agriculture, including not working more than six days, or 40
31 hours, per week, and not working before 7 a.m. or after 7 p.m.; and

32 3. Makes employment of minors from 16 to 18 years old in
33 agriculture subject to the same certification and permitting
34 requirements, and oversight by parents and schools, as employment
35 of other minors of those ages.

36 The bill does not change the provisions of P.L.1940, c.153 which
37 exempt from its provisions agricultural work done by a minor in
38 connection with the minor's own home under the minor's parent or
39 guardian while school is not in session.

40

Overtime pay:

41
42 The bill repeals provisions of the State wage and hour law,
43 P.L.1966, c.113 (C.34:11-56a et seq.), that currently exclude
44 farmworkers from overtime pay, thus requiring employers to pay
45 farmworkers 1½ times their regular wage for each hour excess of 40
46 hours per week, as is currently required for most other workers.

1 Employee representation and collective bargaining:

2 Currently, farmworkers are excluded from the protections against
3 unfair labor practices provided to most private sector workers by
4 the federal National Labor Relations Act (29 U.S.C. s.151 et
5 seq.)(“NLRA”), and provided to public employees by the State
6 public employment relations law, P.L.1968, c.303 (C.34:13A-5.1 et
7 seq.)(“PERL”) and the Workplace Democracy Enhancement Act,
8 P.L.2018, c.15 (C.34:13A-5.11 et seq.) (“WDEA”).

9 This bill brings farmworkers under protections similar to those
10 laws, by expanding the responsibilities of the Division of Private
11 Employment Dispute Settlement in the Department of Labor and
12 Workforce Development regarding agricultural employment not
13 regulated by the NLRA. It provides the division with the power to
14 prevent specified unfair labor practices, thus providing rights to the
15 farmworkers similar to the rights provided to other private sector
16 workers under the NLRA, and the rights provided to public
17 employees under the PERL and the WDEA.

18 The bill prohibits agricultural employers and their
19 representatives and agents from the following unfair practices:

- 20 1. Interfering with, restraining, or coercing employees in the
21 exercise of the rights granted by the bill.
- 22 2. Dominating or interfering with any employee organization.
- 23 3. Discriminating against employees for making disclosures or
24 otherwise exercising their rights.
- 25 4. Refusing to negotiate in good faith or sign a negotiated
26 agreement.
- 27 5. Violating any division regulation.

28 The bill similarly prohibits employee organizations and their
29 representatives and agents from the following unfair practices:

- 30 1. Interfering with, restraining or coercing employees in the
31 exercise of their rights.
- 32 2. Interfering with, restraining or coercing an agricultural
33 employer in the selection of a representative for negotiations or
34 grievance procedures.
- 35 3. Refusing to negotiate in good faith or sign a negotiated
36 agreement.
- 37 4. Violating any division regulation.

38 The division may order an offending party to cease any unfair
39 practice and take reasonable remedial action, including, in the case
40 of a discharge, reinstatement, paying lost wages, costs of action,
41 and damages equal to the wages due. It is also an unfair practice
42 under the bill for an agricultural employer to encourage or
43 discourage employees from joining, forming or assisting an
44 employee organization, or encourage them to end their employee
45 organization membership or revoke authorization of the deduction
46 of dues or fees. The division is required to order the employer to

1 make whole the employee organization for any resulting losses to
2 the organization.

3 Current law, section 5 of P.L.1968, c.303 (C.34:13A-5.1),
4 permits the New Jersey State Board of Mediation to designate a
5 labor organization to represent employees of a private sector
6 employer not regulated under the NLRA, if the employees select the
7 organization in an election conforming with NLRA procedures, or,
8 if only one labor organization seeks to represent the employees, a
9 majority of the employees sign cards showing that they prefer that
10 organization.

11 The bill provides that in such cases the employee organization
12 may petition the board to require the employer to provide a list of
13 current employees with contact information. If the organization
14 petitions the board for that information, the employer must also
15 give the organization access to the employees, including allowing
16 meetings in the workplace and employer-controlled living quarters.

17 The bill provides that once an employee organization is designated
18 as the employee representative, the employer must give the
19 organization access to the employer's premises to investigate and
20 discuss grievances and other issues, conduct meetings, and meet newly
21 hired employees.

22 The bill gives farmworker organizations the right to engage in
23 publicity regarding products produced by an employer with which
24 the organization has a dispute, including publicity asking the public
25 to not patronize businesses distributing or selling the products.

26

27 Unemployment benefits:

28 The bill repeals provisions of the State "unemployment
29 compensation law," R.S.43:21-1 et seq., that currently exclude
30 farmworkers from unemployment benefits if their employer
31 employs less than 10 farmworkers during each of 20 weeks in the
32 preceding year or pays less than \$20,000 in wages to farmworkers
33 during any calendar quarter in the current or preceding year. This
34 exclusion applies only to farmworkers, and may prevent laid-off
35 farmworkers from receiving benefits even if their combined
36 employment with multiple employers would otherwise make them
37 eligible.