

SENATE, No. 800

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Establishes “Truck Operator Independent Contractor Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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2

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

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

8 1. (New section) Sections 1 through 8, and 10 and 11 of
9 P.L. , c. (C.) (pending before the Legislature as this bill)
10 shall be known and may be cited as the “Truck Operator
11 Independent Contractor Act.”
12

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

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

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

23 c. The State has a responsibility to enforce long-standing
24 employment laws, ensure compliance with essential social
25 insurance protections, and eliminate unfair competitive advantage
26 in the trucking industry.
27

28 3. (New section) As used in P.L. , c. (C.) (pending
29 before the Legislature as this bill):

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

32 “Department” means the Department of Labor and Workforce
33 Development.

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

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

44 “Parcel delivery truck operator” means the driver of a vehicle
45 used in the business of small package delivery. “Parcel delivery

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 truck operator” shall not include an individual delivering
2 newspapers.

3
4 4. (New section) For purposes of the "unemployment
5 compensation law," R.S.43:21-1 et seq., the "Temporary Disability
6 Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New
7 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., P.L.1965,
8 c.173 (C.34:11-4.1 et seq.) or other applicable State tax laws, the
9 and the "New Jersey State Wage and Hour Law," P.L.1966, c.113
10 (C.34:11-56a et seq.), services performed for a fee or other
11 compensation paid by an employer shall be deemed to be
12 employment unless and until it is shown to the satisfaction of the
13 department that:

14 a. the individual has been and will continue to be free from
15 control or direction over the performance of that service, both under
16 the individual's contract of service and in fact;

17 b. the service is either outside the usual course of the business
18 for which the service is performed, or the service is performed
19 outside of all the places of business of the employer for which the
20 service is performed; and

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

23 The failure to withhold federal or State income taxes or to pay
24 unemployment compensation contributions or workers'
25 compensation premiums with respect to an individual's wages shall
26 not be considered in making a determination under this section.

27
28 5. (New section) a. An employer, or any officer, agent,
29 superintendent, foreman, or employee of the employer who fails to
30 properly classify an individual as an employee in accordance with
31 section 4 of this act, for purposes of the "unemployment
32 compensation law," R.S.43:21-1 et seq., the "Temporary Disability
33 Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), the "New
34 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., P.L.1965,
35 c.173 (C.34:11-4.1 et seq.) or other applicable State tax laws, the
36 workers' compensation law, R.S.34:15-1 et seq., and the "New
37 Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et
38 seq.), and fails to pay wages, benefits, taxes, or other contributions
39 required by any of those acts, shall be:

40 (1) Guilty of a disorderly persons offense and shall, upon
41 conviction, be fined not less than \$100 nor more than \$1,000 or be
42 imprisoned for not less than 10 or more than 90 days, or both. Each
43 week, in any day of which an employee is misclassified, and each
44 employee so misclassified, shall constitute a separate offense.

45 (2) If the failure is done knowingly, guilty of a crime of the
46 second degree if the contract amount is for \$75,000 or above; guilty
47 of a crime of the third degree if the contract amount exceeds
48 \$2,500, but is less than \$75,000; and guilty of a crime of the fourth

1 degree if the contract amount is for \$2,500 or less. In addition, the
2 violator shall be deemed to have caused loss to the employees in
3 any amount by which the employees were underpaid in connection
4 with the misclassification and shall be subject to the provisions of
5 N.J.S.2C:43-3 regarding fines and restitution to victims and be
6 subject to other pertinent provisions of Title 2C of the New Jersey
7 Statutes, including, but not limited to, N.J.S.2C:43-4, N.J.S.2C:43-6
8 and N.J.S.2C:44-1.

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

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

40 d. When the commissioner finds that the employer has violated
41 provisions of P.L. , c. (C.) (pending before the Legislature
42 as this bill), the commissioner may refer the matter to the Attorney
43 General or the Attorney General's designee for investigation and
44 prosecution. Nothing in this subsection shall be deemed to limit the
45 authority of the Attorney General to investigate and prosecute
46 violations of the New Jersey Code of Criminal Justice, or to limit
47 the commissioner's ability to refer any matter for criminal
48 investigation or prosecution.

1 e. A complaint or indictment under the provisions of
2 subsection a. or subsection d. of this section may be brought in
3 Superior Court in accordance with the Rules of Court of the State of
4 New Jersey.

5
6 6. (New section) In the case of a determination by the
7 commissioner, if the person responsible denies that a failure to
8 properly classify an employee has occurred, the person shall have
9 the right to apply to the commissioner for a hearing in accordance
10 with the "Administrative Procedure Act," P.L.1968, c.410
11 (C.52:14B-1 et seq.), which shall be afforded and a decision shall
12 be rendered within 48 hours of the request for a hearing. The
13 commissioner may bring an action in Superior Court to enjoin or
14 invalidate any contract award made in violation of this section.

15
16 7. (New section) a. No employer shall require or request that
17 any individual enter into an agreement or sign a document which
18 results in the misclassification of the individual as an independent
19 contractor or otherwise does not accurately reflect the employment
20 relationship with the employer.

21 b. An individual employed as a drayage truck operator or a
22 parcel delivery truck operator who has not been properly classified
23 as an employee may bring a civil action for damages against the
24 employer or any other employer who was in contract with the
25 employee, for failing to properly classify the employee if the
26 employer had knowledge of the misclassification. An individual
27 representative, including a labor organization, may bring the action
28 on behalf of the individual or as a class action. The court may
29 award attorney's fees and other costs of the action in addition to
30 damages to an individual or class of individuals who have not been
31 properly classified as employees in accordance with section 4 of
32 P.L. , c. (C.) (pending before the Legislature as this bill).

33
34 8. (New section) It shall be unlawful for an employer or any
35 other party to discriminate in any manner or take adverse action
36 against any person in retaliation for exercising rights protected
37 under P.L. , c. (C.) (pending before the Legislature as this
38 bill). Rights protected under this act include, but are not limited to,
39 the right to file a complaint or inform any person about an
40 employer's noncompliance with P.L. , c. (C.) (pending
41 before the Legislature as this bill) and the right to inform any
42 person of the person's potential rights and to assist the person in
43 asserting those rights. Any person who in good faith alleges
44 noncompliance with this act shall be afforded the rights provided by
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 notwithstanding the persons failure on the merits. Taking adverse
47 action against a person within 90 days of the person's exercise of
48 rights protected under P.L. , c. (C.) (pending before the

1 Legislature as this bill) shall raise a rebuttable presumption of
2 having done so in retaliation for the exercise of those rights.

3

4 9. R.S.43:21-19 is amended to read as follows:

5 43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et
6 seq.), unless the context clearly requires otherwise:

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

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

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

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

40 With respect to a benefit year commencing on or after July 1,
41 1995, if an individual does not have sufficient qualifying weeks or
42 wages in his base year to qualify for benefits, the individual shall
43 have the option of designating that his base year shall be the
44 "alternative base year," which means the last four completed
45 calendar quarters immediately preceding the individual's benefit
46 year; except that, with respect to a benefit year commencing on or
47 after October 1, 1995, if the individual also does not have sufficient
48 qualifying weeks or wages in the last four completed calendar

1 quarters immediately preceding his benefit year to qualify for
2 benefits, "alternative base year" means the last three completed
3 calendar quarters immediately preceding his benefit year and, of the
4 calendar quarter in which the benefit year commences, the portion
5 of the quarter which occurs before the commencing of the benefit
6 year.

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

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

37 (3) With respect to a benefit year commencing on or after June
38 1, 1990 for an individual who immediately preceding the benefit
39 year was subject to a disability compensable under the provisions of
40 the workers' compensation law (chapter 15 of Title 34 of the
41 Revised Statutes), "base year" shall mean the first four of the last
42 five completed calendar quarters immediately preceding the
43 individual's period of disability, if the period of disability was not
44 longer than two years, if the employment held by the individual
45 immediately preceding the period of disability is no longer
46 available at the conclusion of that period and if the individual files a
47 valid claim for unemployment benefits after the conclusion of that
48 period. For the purposes of this paragraph, "period of disability"

1 means the period from the time at which the individual becomes
2 unable to work because of the compensable disability until the time
3 that the individual becomes able to resume work and continue work
4 on a permanent basis. An individual who files a claim under the
5 provisions of this paragraph (3) shall not be regarded as having left
6 work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

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

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

24 (2) "Controller" means the Office of the Assistant
25 Commissioner for Finance and Controller of the Department of
26 Labor and Workforce Development, established by the 1982
27 Reorganization Plan of the Department of Labor.

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

35 (g) "Employing unit" means the State or any of its
36 instrumentalities or any political subdivision thereof or any of its
37 instrumentalities or any instrumentality of more than one of the
38 foregoing or any instrumentality of any of the foregoing and one or
39 more other states or political subdivisions or any individual or type
40 of organization, any partnership, association, trust, estate, joint-
41 stock company, insurance company or corporation, whether
42 domestic or foreign, or the receiver, trustee in bankruptcy, trustee or
43 successor thereof, or the legal representative of a deceased person,
44 which has or subsequent to January 1, 1936, had in its employ one
45 or more individuals performing services for it within this State. All
46 individuals performing services within this State for any employing
47 unit which maintains two or more separate establishments within
48 this State shall be deemed to be employed by a single employing

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1 unit for all the purposes of this chapter (R.S.43:21-1 et seq.). Each
2 individual employed to perform or to assist in performing the work
3 of any agent or employee of an employing unit shall be deemed to
4 be employed by such employing unit for all the purposes of this
5 chapter (R.S.43:21-1 et seq.), whether such individual was hired or
6 paid directly by such employing unit or by such agent or employee;
7 provided the employing unit had actual or constructive knowledge
8 of the work.

9 (h) "Employer" means:

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

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

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

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

30 (5) Any employing unit for which service in employment as
31 defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December
32 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is
33 performed after December 31, 1977;

34 (6) Any employing unit for which service in employment as
35 defined in R.S.43:21-19 (i) (1) (c) is performed after December 31,
36 1971 and which in either the current or the preceding calendar year
37 paid remuneration for employment in the amount of \$1,000.00 or
38 more;

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

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

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

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

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

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

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

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

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

21 (A) Any service performed prior to January 1, 1972, which was
22 employment as defined in the "unemployment compensation law"
23 (R.S.43:21-1 et seq.) prior to such date, and, subject to the other
24 provisions of this subsection, service performed on or after January
25 1, 1972, including service in interstate commerce, performed for
26 remuneration or under any contract of hire, written or oral, express
27 or implied.

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

34 (ii) Service performed after December 31, 1977, in the employ
35 of this State or any of its instrumentalities or any political
36 subdivision thereof or any of its instrumentalities or any
37 instrumentality of more than one of the foregoing or any
38 instrumentality of the foregoing and one or more other states or
39 political subdivisions, if such service is not excluded from
40 "employment" under paragraph (D) below.

41 (C) Service performed after December 31, 1971 by an individual
42 in the employ of a religious, charitable, educational, or other
43 organization, which is excluded from "employment" as defined in
44 the Federal Unemployment Tax Act, solely by reason of section
45 3306 (c)(8) of that act, if such service is not excluded from
46 "employment" under paragraph (D) below.

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

- 1 (i) In the employ of (I) a church or convention or association of
2 churches, or (II) an organization, or school which is operated
3 primarily for religious purposes and which is operated, supervised,
4 controlled or principally supported by a church or convention or
5 association of churches;
- 6 (ii) By a duly ordained, commissioned, or licensed minister of a
7 church in the exercise of his ministry or by a member of a religious
8 order in the exercise of duties required by such order;
- 9 (iii) Prior to January 1, 1978, in the employ of a school which is
10 not an institution of higher education, and after December 31, 1977,
11 in the employ of a governmental entity referred to in R.S.43:21-19
12 (i) (1) (B), if such service is performed by an individual in the
13 exercise of duties
- 14 (aa) as an elected official;
- 15 (bb) as a member of a legislative body, or a member of the
16 judiciary, of a state or political subdivision;
- 17 (cc) as a member of the State National Guard or Air National
18 Guard;
- 19 (dd) as an employee serving on a temporary basis in case of fire,
20 storm, snow, earthquake, flood or similar emergency;
- 21 (ee) in a position which, under or pursuant to the laws of this
22 State, is designated as a major nontenured policy making or
23 advisory position, or a policy making or advisory position, the
24 performance of the duties of which ordinarily does not require more
25 than eight hours per week; or
- 26 (iv) By an individual receiving rehabilitation or remunerative
27 work in a facility conducted for the purpose of carrying out a
28 program of rehabilitation of individuals whose earning capacity is
29 impaired by age or physical or mental deficiency or injury or
30 providing remunerative work for individuals who because of their
31 impaired physical or mental capacity cannot be readily absorbed in
32 the competitive labor market;
- 33 (v) By an individual receiving work-relief or work-training as
34 part of an unemployment work-relief or work-training program
35 assisted in whole or in part by any federal agency or an agency of a
36 state or political subdivision thereof; or
- 37 (vi) Prior to January 1, 1978, for a hospital in a State prison or
38 other State correctional institution by an inmate of the prison or
39 correctional institution and after December 31, 1977, by an inmate
40 of a custodial or penal institution.
- 41 (E) The term "employment" shall include the services of an
42 individual who is a citizen of the United States, performed outside
43 the United States after December 31, 1971 (except in Canada and in
44 the case of the Virgin Islands, after December 31, 1971) and prior
45 to January 1 of the year following the year in which the U.S.
46 Secretary of Labor approves the unemployment compensation law
47 of the Virgin Islands, under section 3304 (a) of the Internal
48 Revenue Code of 1986 (26 U.S.C. s.3304 (a)) in the employ of an

1 American employer (other than the service which is deemed
2 employment under the provisions of R.S.43:21-19 (i) (2) or (5) or
3 the parallel provisions of another state's unemployment
4 compensation law), if

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

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

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

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

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

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

42 (H) The term "United States" when used in a geographical sense
43 in subsection R.S.43:21-19 (i) includes the states, the District of
44 Columbia, the Commonwealth of Puerto Rico and, effective on the
45 day after the day on which the U.S. Secretary of Labor approves for
46 the first time under section 3304 (a) of the Internal Revenue Code
47 of 1986 (26 U.S.C. s.3304 (a)) an unemployment compensation law

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1 submitted to the Secretary by the Virgin Islands for such approval,
2 the Virgin Islands.

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

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

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

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

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

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

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

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

35 (bb) such other entity shall be treated as having paid cash
36 remuneration to such individual in an amount equal to the amount
37 of cash remuneration paid to such individual by the crew leader
38 (either on his own behalf or on behalf of such other entity) for the
39 service in agricultural labor performed for such other entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (B) Such service is either outside the usual course of the
2 business for which such service is performed, or that such service is
3 performed outside of all the places of business of the enterprise for
4 which such service is performed; and

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

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

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

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

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

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

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

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

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

47 (F) Service performed in the employ of the United States
48 Government or of any instrumentality of the United States exempt

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

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

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

30 (I) Service with respect to which unemployment insurance is
31 payable under an unemployment insurance program established by
32 an Act of Congress;

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

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

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

45 (M) Service performed for or in behalf of the owner or operator
46 of any theater, ballroom, amusement hall or other place of
47 entertainment, not in excess of 10 weeks in any calendar year for
48 the same owner or operator, by any leader or musician of a band or

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1 orchestra, commonly called a "name band," entertainer, vaudeville
2 artist, actor, actress, singer or other entertainer;

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

9 (O) Services performed in the sale or distribution of merchandise
10 by home-to-home salespersons or in-the-home demonstrators whose
11 remuneration consists wholly of commissions or commissions and
12 bonuses;

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

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

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

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

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

46 (U) Service performed by an individual who is enrolled at a
47 nonprofit or public educational institution which normally
48 maintains a regular faculty and curriculum and normally has a

1 regularly organized body of students in attendance at the place
2 where its educational activities are carried on, as a student in a full-
3 time program, taken for credit at such institution, which combines
4 academic instruction with work experience, if such service is an
5 integral part of such program, and such institution has so certified
6 to the employer, except that this subparagraph shall not apply to
7 service performed in a program established for or on behalf of an
8 employer or group of employers;

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

17 (W) Services performed after the effective date of this
18 amendatory act by agents of mutual benefit associations if the
19 compensation to such agents for such services is wholly on a
20 commission basis;

21 (X) Services performed by operators of motor vehicles weighing
22 18,000 pounds or more, licensed for commercial use and used for
23 the highway movement of motor freight, who own their equipment
24 or who lease or finance the purchase of their equipment through an
25 entity which is not owned or controlled directly or indirectly by the
26 entity for which the services were performed and who were
27 compensated by receiving a percentage of the gross revenue
28 generated by the transportation move or by a schedule of payment
29 based on the distance and weight of the transportation move, except
30 that the term "employment" shall include services performed by
31 drayage truck operators and parcel delivery truck operators as
32 defined in section 3 of P.L. , c. (C.) (pending before the
33 Legislature as this bill);

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

35 (Z) Services performed, using facilities provided by a travel
36 agent, by a person, commonly known as an outside travel agent,
37 who acts as an independent contractor, is paid on a commission
38 basis, sets his own work schedule and receives no benefits, sick
39 leave, vacation or other leave from the travel agent owning the
40 facilities.

41 (8) If one-half or more of the services in any pay period
42 performed by an individual for an employing unit constitutes
43 employment, all the services of such individual shall be deemed to
44 be employment; but if more than one-half of the service in any pay
45 period performed by an individual for an employing unit does not
46 constitute employment, then none of the service of such individual
47 shall be deemed to be employment. As used in this paragraph, the
48 term "pay period" means a period of not more than 31 consecutive

1 days for which a payment for service is ordinarily made by an
2 employing unit to individuals in its employ.

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

7 (A) The limousine franchisee is incorporated;

8 (B) The franchisee is subject to regulation by the Interstate
9 Commerce Commission;

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

13 (D) The franchisee registers with the Department of Labor and
14 Workforce Development and receives an employer registration
15 number.

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

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

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

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

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

42 (m) "Unemployment."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (2) "Institution of higher education" means an educational
39 institution which:

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

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

45 (C) Provides an educational program for which it awards a
46 bachelor's or higher degree, or provides a program which is
47 acceptable for full credit toward such a degree, a program of post-
48 graduate or post-doctoral studies, or a program of training to

1 prepare students for gainful employment in a recognized
2 occupation; and

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

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

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

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

10

11 10. The commissioner shall, pursuant to the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), make and
13 promulgate rules and regulations necessary to implement the
14 purposes of P.L. , c. (C.) (pending before the Legislature as
15 this bill).

16

17 11. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 This bill creates a presumption that a work arrangement in the
23 drayage trucking or parcel delivery trucking industry is an
24 employer-employee relationship unless the party receiving the
25 services can overcome the legal presumption of employment.
26 Under the bill, trucking services performed in the drayage trucking
27 industry or parcel delivery industry by an individual for
28 remuneration are deemed to be employment unless and until it is
29 shown to the satisfaction of the Department of Labor and
30 Workforce Development that:

31 1. The individual has been and will continue to be free from
32 control or direction over the performance of that service, both under
33 the individual's contract of service and in fact;

34 2. The service is either outside the usual course of the business
35 for which the service is performed, or the service is performed
36 outside of all the places of business of the employer for which the
37 service is performed; and

38 3. The individual is customarily engaged in an independently
39 established trade, occupation, profession, or business.

40 Any employer who misclassifies individuals in the drayage
41 trucking or parcel delivery trucking industries as independent
42 contractors and fails to pay wages, benefits or taxes required for
43 employees by the unemployment insurance (UI) law, the Temporary
44 Disability Benefits Law, the New Jersey Gross Income Tax Act, the
45 workers' compensation law, or the New Jersey State Wage and
46 Hour Law, is:

47 1. Guilty of a disorderly persons offense and subject to a fine
48 of from \$100 to \$1,000, imprisonment of 10 to 90 days, or both.

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

3 2. If the failure is knowing, guilty of a crime of the second
4 degree if the contract amount is for \$75,000 or more; guilty of a
5 crime of the third degree if the contract amount exceeds \$2,500, but
6 is less than \$75,000; and guilty of a crime of the fourth degree if the
7 contract amount is for \$2,500 or less. The violator is also deemed
8 to have caused loss to the employees in any amount by which the
9 employees were underpaid in connection with the misclassification
10 and is subject to various provisions of the criminal code regarding
11 fines and restitution to victims. Administrative penalties may also
12 be assessed of up to \$2,500 for a first violation and up to \$5,000 for
13 each subsequent violation.

14 The State's current UI law already uses the three-point test
15 indicated above to determine whether an individual truck driver is
16 an employee or independent contractor, but that law exempts
17 various groups of workers, including certain drivers of trucks
18 weighing 18,000 pounds or more who own, lease, or finance the
19 truck and paid based on gross revenue or distance and weight. The
20 bill amends the UI law to eliminate that exemption in cases of
21 drayage truck operators and parcel delivery truck operators, thus
22 making them subject to the three-point test. A drayage truck
23 operator is defined as the driver of a truck weighing more than
24 33,000 pounds which operates on or transgresses through port or
25 intermodal rail yard property for the purpose of loading, unloading,
26 or transporting cargo. A parcel delivery truck operator is defined as
27 a driver of a vehicle used in the business of small package delivery,
28 not including newspaper delivery.

29 Finally, the bill makes it unlawful to retaliate against anyone for
30 exercising rights protected under the bill, including the rights: to
31 file a complaint or inform any person about an employer's
32 noncompliance; to inform any person of those rights under the act;
33 and to assist in the assertion of those rights.