

## CHAPTER 61

AN ACT concerning surety requirements for perishable agricultural commodities, and amending R.S.4:11-20.

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

1. R.S.4:11-20 is amended to read as follows:

Bond accompanying application; securities or letter of credit in lieu of bonds; Perishable Agricultural Commodity Surety Fund.

4:11-20. a. A license shall not be issued unless and until the applicant has filed a good and sufficient surety bond executed in favor of the secretary in the secretary's official capacity, for the benefit of all growers with whom the applicant shall transact business, by a surety company duly authorized to transact business in this State in the sum of at least \$5,000 annually in accordance with a formula established by rule or regulation adopted by the Department of Agriculture. The bond shall be executed upon a form prescribed by the secretary and shall be subject to the secretary's approval as to form and sufficiency. The applicant may in lieu of the bond deposit with the secretary securities approved by the department in an amount equal to the sum secured by the bond required to be filed as herein provided; or may, in the alternative, obtain and deposit with the secretary an irrevocable letter of credit to equal the amount of the bond. The securities or letters of credit so deposited with the secretary shall constitute a separate fund and shall be held in trust for and applied exclusively to the payment of claims arising under the provisions of this article against the licensee making such deposit for the period for which the license is issued. All proceeds from surety bonds, money, or securities shall be distributed to the grower-creditors by the secretary or returned to the licensee if no claims are made. The Department of Agriculture shall establish an annual maximum for all such bonds, securities, or irrevocable letters of credit which shall not exceed \$150,000.

b. The secretary may require a licensee to file an additional surety after a hearing on any complaint lodged against the licensee, but the total amount of all sureties filed by the licensee shall not exceed \$300,000.

c. (1) Each licensee shall pay, in addition to the fee required pursuant to R.S.4:11-19, an annual assessment in such amount as may be established by rule or regulation adopted by the Department of Agriculture. All monies collected from this additional assessment shall be deposited into the "Perishable Agricultural Commodity Surety Fund" established pursuant to paragraph (2) of this subsection. No additional assessment paid pursuant to this paragraph shall be returned or otherwise refunded to a licensee for any reason.

(2) The secretary may establish a dedicated nonlapsing, revolving fund, to be known as the "Perishable Agricultural Commodity Surety Fund," for the benefit of growers selling perishable agricultural commodities to licensees. Any interest or other investment income earned from monies deposited in the fund shall accrue and be credited to the fund. The fund shall be held by the State Treasurer and monies therefrom shall be used by the Department of Agriculture for the purposes of paragraph (3) of this section. Monies in the fund may also be used by the Department of Agriculture to pay for expenses associated with the administration of the surety program established pursuant to this section.

(3) In the event of a default by a licensee with respect to the purchase of perishable agricultural commodities from a grower, the secretary shall disburse monies from the fund to the grower-creditor in such manner and amounts as may be established by rule or regulation adopted by the Department of Agriculture.

d. To implement the provisions of this section, the secretary, with the approval of the Board of Agriculture, may:

(1) appoint an advisory board or council to advise the secretary with respect to the creation, operation, and administration of the surety program;

(2) establish procedures for the creation, operation, administration, and enforcement of the surety program;

(3) charge fees or other assessments to cover the reasonable costs and claims associated with the surety program; and

(4) adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) any rules and regulations necessary to implement this section and the surety program,

which rules and regulations may include, but need not be limited to, provisions concerning the investigation of claims, compliance assurance, disbursement of monies, record-keeping, and assessment of fees and penalties in addition to those established in this article.

2. This act shall take effect immediately.

Approved March 28, 2005.