

An Act Concerning the Surety of Perishable Agricultural Commodities

This Act authorizes the state department of agriculture to establish a “Perishable Agricultural Commodity Surety Fund,” for the benefit of growers of perishable agricultural commodities. This dedicated fund would be capitalized by collection of an additional annual assessment, in an amount to be determined by the department, from licensed purchasers of perishable agricultural commodities. The bill modifies the amount of the bond or other authorized surety required to be filed by licensed purchasers of perishable agricultural commodities.

The legislation provides that, in the event of a default by a licensed purchaser with respect to the purchase of perishable agricultural commodities from a grower, the state secretary of agriculture will disburse monies from the fund to the grower-creditor in such manner and amounts as may be established by the department. Monies in the fund could also be used by the department to pay for administrative expenses associated with the surety program.

The bill authorizes the secretary, with the approval of the state board of agriculture, to appoint an advisory board or council to advise the secretary with respect to the creation, operation, and administration of the surety program, and to take certain other actions to help ensure the success of the program.

Finally, the bill provides that the bond or other authorized surety to be filed by a licensed purchaser of perishable agricultural commodities must be for a sum of at least \$5,000 annually in accordance with a formula to be established by the department. However, the annual maximum of any such bond or other authorized surety to be filed would not exceed \$150,000, unless a complaint had been lodged against the licensee, in which case the total amount of all sureties required to be filed by the licensee would not exceed \$300,000.

Submitted as:

New Jersey

Chapter 61

Status: Enacted into law in 2005.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act Concerning the Surety of
2 Perishable Agricultural Commodities.”

3
4 Section 2. [*License.*]

5 a. A license shall not be issued unless and until the applicant has filed a good and
6 sufficient surety bond executed in favor of the [secretary of agriculture] in the [secretary’s]
7 official capacity, for the benefit of all growers with whom the applicant shall transact business,
8 by a surety company duly authorized to transact business in this state in [a sum at least equal to
9 the estimated maximum monthly value of all agricultural commodities to be purchased or
10 received or which may have been purchased or received by the applicant from a producer or
11 producers during the preceding 12 months], the sum of at least [\$5,000] annually in accordance
12 with a formula established by rule or regulation adopted by the [department of agriculture]. The
13 bond shall be executed upon a form prescribed by the [secretary] and shall be subject to the
14 [secretary’s] approval as to form and sufficiency. The applicant may in lieu of the bond deposit

15 with the [secretary] securities approved by the [department] in an amount equal to the sum
16 secured by the bond required to be filed as herein provided; or may, in the alternative, obtain and
17 deposit with the [secretary] an irrevocable letter of credit to equal the amount of the bond. The
18 securities or letters of credit so deposited with the [secretary] shall constitute a separate fund and
19 shall be held in trust for and applied exclusively to the payment of claims arising under the
20 provisions of this article against the licensee making such deposit for the period for which the
21 license is issued. All proceeds from surety bonds, money, or securities shall be distributed to the
22 grower-creditors by the [secretary] or returned to the licensee if no claims are made. The
23 [department of agriculture] shall establish an annual maximum for all such bonds, securities, or
24 irrevocable letters of credit which shall not exceed [\$150,000].

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

28 c. (1) Each licensee shall pay, in addition to the fee required pursuant to [insert
29 citation], an annual assessment in such amount as may be established by rule or regulation
30 adopted by the [department of agriculture]. All monies collected from this additional assessment
31 shall be deposited into a ["Perishable Agricultural Commodity Surety Fund"] established
32 pursuant to paragraph (2) of this subsection. No additional assessment paid pursuant to this
33 paragraph shall be returned or otherwise refunded to a licensee for any reason.

34 (2) The [secretary] may establish a dedicated nonlapsing, revolving fund, to be
35 known as the ["Perishable Agricultural Commodity Surety Fund,"] for the benefit of growers
36 selling perishable agricultural commodities to licensees. Any interest or other investment income
37 earned from monies deposited in the fund shall accrue and be credited to the fund. The fund shall
38 be held by the [state treasurer] and monies therefrom shall be used by the [department of
39 agriculture] for the purposes of paragraph (3) of this section. Monies in the fund may also be
40 used by the [department of agriculture] to pay for expenses associated with the administration of
41 the surety program established pursuant to this subsection.

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

46 d. To implement the provisions of this section, the [secretary], with the approval of the
47 [board of agriculture], may:

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

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

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

54 (4) adopt, pursuant to [insert citation] any rules and regulations necessary to
55 implement this section and the surety program, which rules and regulations may include, but
56 need not be limited to, provisions concerning the investigation of claims, compliance assurance,
57 disbursement of monies, record-keeping, and assessment of fees and penalties in addition to
58 those established in this Act.
59

60 Section 3. [*Severability.*] [Insert severability clause.]

61
62 Section 4. [*Repealer.*] [Insert repealer clause.]

63
64 Section 5. [*Effective Date.*] [Insert effective date.]