

4:11-16 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 4:11-16 et al. (Procedures for licensing and bonding of perishable agricultural commodities)

Laws of 1977 Chapter 427

Bill No. A3232

Sponsor(s) Kozloski and others

Date Introduced Apr. 21, 1977

Committee: Assembly Agriculture & Environment

Senate Agriculture

Amended during passage Yes ~~no~~ Amendments during passage denoted by asterisks

Date of passage: Assembly July 11, 1977

Senate Dec. 15, 1977

Date of approval Feb. 27, 1978

Following statements are attached if available:

Sponsor statement	Yes	No (Below)
Committee Statement:	Assembly Yes	No
	Senate Yes	No
Fiscal Note	Yes	No
Veto message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	No

Sponsor's statement:

The licensing and bonding statutes are intended to guarantee payment to sellers of perishable agricultural commodities. This bill will improve and simplify procedures. Protection provided will be in accord with comparable dealings in interstate commerce under the Federal Agricultural Products Act of 1930. Enforcement delays will be avoided.

EJ. 10/4/76 JUL 1978 KB

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CHAPTER 427 LAWS OF N. J. 1977
APPROVED 2-22-78

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ASSEMBLY, No. 3232

STATE OF NEW JERSEY

INTRODUCED APRIL 21, 1977

By Assemblymen KOZLOSKI, CHINNICI and LITTELL

Referred to Committee on Agriculture and Environment

AN Act concerning perishable agricultural commodities amending sections 4:11-16, 4:11-17, 4:11-19, 4:11-20, 4:11-29, and 4:11-34 of the Revised Statutes and supplementing Article 2 of chapter 11 of Title 4 of the Revised Statutes.

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

1 1. R. S. 4:11-16 is amended to read as follows:

2 4:11-16. This article shall not apply to any transaction in which
3 the grower receives **[in United States currency]** at the time of the
4 transaction full payment of the amount due him, or to any duly
5 incorporated agricultural cooperative association in its dealings
6 with its members **[or to any agent, broker, commission merchant**
7 **or dealer who purchases only poultry products exclusively from**
8 **duly incorporated agricultural cooperative associations.]**

1 2. R. S. 4:11-17 is amended to read as follows:

2 4:11-17. Nothing contained in this article shall be construed to
3 apply to any agricultural cooperative association which deals only
4 with its members and organized pursuant to the provisions of
5 chapter 13 of this Title (§ 4:13-1 et seq.), or the provisions of an
6 act entitled "An act to provide for the incorporation and regula-
7 tion of cooperative agricultural associations, either with or with-
8-9 out capital stock," approved February 28, 1924.

10 *Cooperative agricultural associations exempted by this section*
11 *shall register with the Department of Agriculture and be issued*
12 *exempt agent identification cards.*

1 3. R. S. 4:11-19 is amended to read as follows:

2 4:11-19. A person before engaging in such business shall on or
3 before **[April]** November 1 of each year, file an application for a
4 license with the secretary, on a form prescribed by him, and pay an

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

5 application fee of \$30.00 which shall not be returned if the license
6 is not granted, for a license to transact such business.

7 The application shall state the nature of the business, the kinds
8 of agricultural commodities which the applicant proposes to handle
9 and if they be perishable agricultural commodities then the kinds
10 of perishable agricultural commodities which the applicant pro-
11 poses to handle, the full name of the person applying for the license,
12 and if the applicant be a firm, association, partnership, or corpora-
13 tion, the full name of each member of the firm, partnership or
14 association, or officers of the corporation, and the name of the local
15 agent of the person, firm, association, partnership or corporation,
16 the municipality and street address, if any, or post-office address,
17 where the business is to be conducted, and such other facts as the
18 secretary shall prescribe.

19 The applicant shall satisfy the secretary of his character, financial
20 responsibility and good faith in seeking to engage in the business.

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

2 4:11-20. A license shall not be issued unless and until the appli-
3 cant has filed a good and sufficient surety bond executed in favor
4 of the secretary in his official capacity, for the benefit of all growers
5 with whom the applicant shall transact business, by a surety com-
6 pany duly authorized to transact business in this State in the sum
7 of at least \$3,000.00, [except that any bond for a license to engage
8 in or carry on the business of agent, broker, commission merchant,
9 or dealer for the purchase of eggs only shall be in the sum of at
10 least \$1,000.00, conditioned for the payment of all moneys due and
11 owing by the licensee to such grower or growers during the period
12 that the license is in force] *conditioned on a yearly formula adopted*
13 *by regulations by the department.* The bond shall be executed upon
14 a form prescribed by the secretary and shall be subject to his
15 approval as to form and sufficiency. The applicant may in lieu of
16 the bond deposit with the secretary [United States Government]
17 securities *approved by the department* in an amount equal to the
18 sum secured by the bond required to be filed as herein provided;
19 *or may in the alternative, obtain and deposit with the secretary an*
20 *irrevocable letter of credit to equal the amount of the bond.* Such
21 securities *or letters of credit* so deposited with the secretary shall
22 constitute a separate fund and shall be held in trust for and applied
23 exclusively to the payment of claims arising under the provisions
24 of this article against the licensee making such deposit for the
25 period for which such license is issued. All proceeds from surety
26 bonds, money or securities shall be distributed to the grower-
27 creditors by the secretary *or returned to the licensee if no claims*

28 *are made. The department shall establish a yearly maximum for*
 29 *all *such* bonds, securities, or irrevocable letters of credit which*
 30 *shall not exceed \$50,000.00.*

31 The secretary may require a licensee to file an additional bond,
 32 **[to be executed as provided in this section, in the sum to be de-**
 33 **termined by the secretary]** *after a hearing on any complaint*
 34 *against the licensee, but the ***[maximum]*** *total* amount of*
 35 ****[the]*** *all* **[bond]** bonds shall not exceed **[\$25,000.00]***
 36 *\$100,000.00.*

1 5. R. S. 4:11-29 is amended to read as follows:

2 4:11-29. The secretary shall audit claims properly filed and de-
 3 termine the amounts due all such creditors.

4 **[After the expiration of 90 days from the termination of the**
 5 **license period or at any earlier date when all claims shall have been**
 6 **filed, the secretary shall sell the securities so deposited or make**
 7 **demand upon the surety for payment of an amount necessary to**
 8 **satisfy the claims determined to be due or such part thereof as**
 9 **shall equal the amount of the bond so filed.]** *Whenever an audit*
 10 *and hearing determine a claim to be valid and there is a refusal*
 11 *to pay, demand shall be made upon the surety after 90 days. During*
 12 *the 90 days the secretary shall publish the nonpayment of the claim*
 13 *each week in a newspaper in the county where the licensee resides*
 14 *as well as in all counties where transactions may have taken place*
 15 *in New Jersey with a request for all claims. All claimants will be*
 16 *required to file claims before expiration of said 90 days and demand*
 17 *is made on surety. During the 90 days the license of the dealer is*
 18 *revoked and can only be renewed after a new application and*
 19 *hearing. If the surety shall not make payment of the amount so*
 20 *demand, upon the expiration of 90 days from the termination of*
 21 *the license period, the secretary shall bring an action at law to*
 22 *recover from the surety on said bond the amount necessary to*
 23 *satisfy such claims or such part thereof as shall equal the amount*
 24 *of the bond, which action may be instituted by the secretary in his*
 25 *official capacity as such on behalf of said claimants, but without*
 26 *naming them as plaintiffs or defendants therein. The moneys*
 27 *obtained from the sale of said securities or by action against the*
 28 *surety shall be used for the satisfaction of such claims, and the*
 29 *secretary shall make distribution thereof to the claimants in accord-*
 30 *ance with the amounts determined to be due thereon, and if less*
 31 *than the total amount of said claims shall be so obtained, distribu-*
 32 *tion shall be made ratably to the creditors according to said*
 33 *amounts.*

34 If a creditor has reduced his claim to judgment, the judgment
35 shall be presumptive proof of the amount due him.

36 Claims not filed during the license period or within 90 days from
37 the termination of the license period, shall not be received, acted
38 upon or paid and shall not participate in the proceeds of any bond,
39 moneys or securities deposited with the secretary.

40 The secretary may bring an action in any court of competent
41 jurisdiction against the licensee or surety or sureties on the bond
42 or bonds for the recovery of any money due and owing to a grower
43 or growers as hereinbefore provided.

1 6. R. S. 4:11-34 is amended to read as follows:

2 4:11-34. A person, who shall engage in the business of com-
3 mission merchant, dealer or broker, as defined in section 4:11-15
4 of this Title, without first having obtained a license as provided in
5 this article *shall be subject to a penalty of not more than \$3,000.00*
6 *a day for each day of operation.*

7 **[Any person employing the services of any person as a commis-*
8 *sion merchant, dealer or broker knowing such person to be un-*
9 *licensed]** **Any grower or producer of perishable agricultural*
10 *commodities, poultry products or poultry who knowingly sells to,*
11 *or utilizes the services of, any unlicensed commission merchant,*
12 *dealer or broker* shall be subject to a penalty of not more than*
13 *\$3,000.00, or who shall violate any other provision of this article*
14 *shall be subject to a penalty of \$100.00 for the first offense and*
15 *\$500.00 for the second and each subsequent offense, to be sued for*
16 *and recovered with costs in the name of the department in the*
16A *manner provided in article 1 of chapter 23 of Title (§ 4:23-1 et seq.)*
16B *and in such proceeding the defendant may be arrested upon the*
16C *commencement of the action.*

17 If judgment is rendered for the plaintiff the court shall cause a
18 defendant who shall fail to pay forthwith the amount of the judg-
19 ment rendered against him, and all costs and charges incident
20 thereto, to be committed to the county jail for a period of not less
21 than 5 nor more than 90 days for a first offense and not less than
22 10 nor more than 200 days for the second and each subsequent
23 offense.

1 7. (New section) Each grower shall have 90 days from the date
2 payment was due to file a claim with the Secretary of Agriculture
3 on forms prescribed by him giving all terms of agreement and
4 amount due. Failure to file within 90 days shall nullify the claim.
5 All licensees may make agreements for deferred payments, but no

6 claims shall be allowed on any such agreement payable beyond
7 December 31 of license year.

1 8. (New section) The department shall have the power to stop
2 the operation of any person operating in the State of New Jersey
3 without a license as provided by this act. The secretary may order
4 such operations terminated immediately but any person whose
5 operations are stopped shall have 10 days to appeal to the Secretary
6 of Agriculture for a hearing at which the secretary or any person
7 duly appointed by him shall review all the circumstances of the case.
8 The department may enforce this section by summary proceedings
9 through courts of competent jurisdiction. The State Police, the
10 county sheriff or any municipal police are authorized to assist the
11 department in the enforcement of this section.

1 9. This act shall take effect the November 1 next following enact-
2 ment.

ASSEMBLY AGRICULTURE AND ENVIRONMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3232

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 27, 1977

This bill would amend the statutes concerning the licensing and bonding of brokers of perishable agricultural commodities. The effects of such amendment would be to (1) provide a maximum of \$50,000.00, based upon a formula determined by the department, for the amount of bond to be required of such brokers; (2) authorize the requirement of an additional bond, in certain cases, with the total amount of all bonds not to exceed \$100,000.00; (3) establish a 90 day period for the filing of claims against such bonds; and, (4) impose penalties of up to \$3,000.00 upon any grower or producer of perishable agricultural commodities, poultry products or poultry who knowingly sells to, or utilizes the services of, any unlicensed broker.