

By: Hardcastle

H.B. No. 2012

A BILL TO BE ENTITLED

AN ACT

relating to the creation of an organic standards registration and certification program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 18.001, Agriculture Code, is amended to read as follows:

Sec. 18.001. DEFINITIONS. In this subchapter:

(1) "Agricultural product" [~~"Distributor"~~] means any raw or processed agricultural commodity or product, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption [~~a person engaged in the business of selling food or fiber for resale, including a wholesaler, broker, packer, repacker, shipper, or shipping agent~~].

(2) "National organic program" [~~"Logo"~~] means the program established under the Organic Foods Production Act of 1990 (7 U.S.C. Section 6501 et seq.), as amended, or any similar federal program [~~the department's appropriately registered "Texas Department of Agriculture Certified Organic" or "Texas Department of Agriculture Organic Certification Pending--Transitional" logo~~].

(3) "Organic" [~~"Organic certifying agent"~~] means labeled, advertised, marketed, or otherwise represented as an agricultural product produced in accordance with the Organic Foods

1 Production Act of 1990 (7 U.S.C. Section 6501 et seq.), as amended,  
2 and ~~[an organic certification organization registered under]~~ this  
3 subchapter.

4 ~~[(4) "Organic farming" means a system of ecological~~  
5 ~~soil management that relies on building humus levels through crop~~  
6 ~~rotations, recycling organic wastes, and applying balanced mineral~~  
7 ~~amendments and that uses, when necessary, mechanical, botanical, or~~  
8 ~~biological controls with minimum adverse effects on health and~~  
9 ~~environment.~~

10 ~~[(5) "Organic food" includes only food that is~~  
11 ~~produced under a system of organic farming and processed, packaged,~~  
12 ~~transported, and stored to retain maximum nutritional value without~~  
13 ~~the use of artificial preservatives, coloring or other additives,~~  
14 ~~ionizing radiation, or synthetic pesticides.~~

15 ~~[(6) "Organic fiber" includes only fiber that is~~  
16 ~~produced under a system of organic farming and processed, packaged,~~  
17 ~~transported, and stored to maintain segregation and prevention of~~  
18 ~~contamination from other fiber or synthetic pesticides, prohibited~~  
19 ~~defoliants, or desiccants.~~

20 ~~[(7) "Processor" means a person who is engaged in the~~  
21 ~~business of manufacturing raw agricultural commodities into food,~~  
22 ~~feed, or fiber products.~~

23 ~~[(8) "Producer" means a person who is engaged in the~~  
24 ~~business of growing or producing food, feed, or fiber.~~

25 ~~[(9) "Retailer" means a person, other than a~~  
26 ~~restaurant operator, who is engaged in the business of selling food~~  
27 ~~at retail, other than at a restaurant, to its ultimate consumer.]~~

SECTION 2. Section 18.002, Agriculture Code, is amended to read as follows:

Sec. 18.002. ORGANIC STANDARDS PROGRAM ~~[RULES]~~. (a) The department by rule may create and administer a program for the administration and enforcement of standards related to organic agricultural products, including certification of persons who produce, process, distribute, or handle organic agricultural products, and may regulate the use of "organic" and related terms ~~[adopt rules necessary for the enforcement and administration of this subchapter]~~.

(b) Any program created by the department under Subsection (a) must be consistent with the provisions of the national organic program.

(c) To the extent consistent with federal law, the department by rule may adopt standards related to organic agricultural products other than the standards established by the national organic program.

(d) The department may enter into an agreement with the United States Department of Agriculture to act as an organic certifying agent or to provide primary enforcement of state and national standards relating to organic agricultural products.

(e) In regulating organic agricultural products under this subchapter, the department may require certification, registration, or other documentation the department considers necessary:

(1) to ensure the integrity of the state and national organic programs;

1           (2) to ensure the marketability of organic  
2 agricultural products produced in this state; and

3           (3) to meet the authentication or verification  
4 requirements of the federal government, another state, or a foreign  
5 country relating to organic agricultural products.

6           SECTION 3. Section 18.003, Agriculture Code, is amended to  
7 read as follows:

8           Sec. 18.003. ORGANIC CERTIFICATION. (a) The department  
9 may ~~[shall]~~ certify each person who produces, processes,  
10 distributes, or handles an organic agricultural product  
11 ~~[producers, processors, distributors, and retailers of organic~~  
12 ~~food and fiber]~~ in this state. ~~[The department by rule shall adopt~~  
13 ~~minimum standards for certification under this subchapter.]~~

14           (b) A person may apply for any required ~~[an organic]~~  
15 certification under this subchapter ~~[, or a renewal of an organic~~  
16 ~~certification,]~~ by submitting the following, as prescribed by  
17 department rule:

18               (1) an application for certification;

19               (2) a plan for production, processing, distribution,  
20 or handling of organic agricultural products; and

21               (3) a ~~[an annual]~~ fee ~~[prescribed by the department].~~

22           (c) The department by rule may require a person certified  
23 under this subchapter to submit an annual report of that person's  
24 production, processing, distribution, or handling of organic  
25 agricultural products, along with an annual reporting fee. ~~[An~~  
26 ~~organic certification shall be for a period prescribed by the~~  
27 ~~department. A person who fails to submit a renewal fee on or before~~

1 ~~the expiration date of the certification must pay, in addition to~~  
2 ~~the renewal fee, the late fee provided by Section 12.024 of this~~  
3 ~~code.]~~

4 (d) The department may by written notice require that a  
5 person certified under this subchapter submit any additional  
6 report, including copies of records, the department considers  
7 necessary to investigate or monitor production, processing,  
8 distribution, or handling of organic agricultural products [A  
9 ~~person who is certified under this subchapter may use department~~  
10 ~~logos as provided by department rule].~~

11 (e) A certificate issued under this subchapter remains in  
12 effect until surrendered, suspended, or revoked in accordance with  
13 procedures established by department rule and Section 18.0075.

14 SECTION 4. The heading to Section 18.004, Agriculture Code,  
15 is amended to read as follows:

16 Sec. 18.004. [~~ORGANIC CERTIFYING AGENT~~] REGISTRATION  
17 PROGRAM.

18 SECTION 5. Section 18.004(a), Agriculture Code, is amended  
19 to read as follows:

20 [(a)] The department by rule may establish a voluntary or  
21 mandatory registration program for persons who produce, process,  
22 distribute, handle, or advertise organic products in this state and  
23 for persons who certify any producers, processors, distributors, or  
24 handlers located in this state [~~register a person as an organic~~  
25 ~~certifying agent. On receipt of a certificate of registration~~  
26 ~~under this section, an organic certifying agent may certify for the~~  
27 ~~department a producer, processor, distributor, or retailer of~~

1 ~~organic food or fiber under this subchapter].~~

2 SECTION 6. Sections 18.006(a), (b), and (c), Agriculture  
3 Code, are amended to read as follows:

4 (a) The department by rule may require a fee for each:

5 (1) application for certification;

6 (2) application for registration or registration  
7 renewal;

8 (3) annual report required by the department;

9 (4) certificate issued by the department; and

10 (5) document required by the federal government,  
11 another state, or a foreign country that is issued by the department  
12 under this subchapter ~~[shall charge an annual fee, as provided by~~  
13 ~~department rule, for each applicant certified as a producer,~~  
14 ~~distributor, or retailer and a fee, as provided by department rule,~~  
15 ~~for each applicant certified as a processor of organic food or fiber~~  
16 ~~produced in this state].~~

17 (b) The department may establish:

18 (1) a different fee amount for each fee under  
19 Subsection (a); and

20 (2) a fee schedule for each fee under Subsection (a)  
21 ~~[shall charge an annual fee, as provided by department rule, for~~  
22 ~~each applicant certified as a distributor or retailer and a fee, as~~  
23 ~~provided by department rule, for each applicant certified as a~~  
24 ~~processor of organic food or fiber produced outside of this state].~~

25 (c) The department may establish a late fee in an amount  
26 that is not more than twice the amount of the fee authorized under  
27 Subsection (a) and required to be paid by a date established by rule

1 or by written notice provided to the person who owes the fee ~~[shall~~  
2 ~~charge an annual fee, as provided by department rule, for a person~~  
3 ~~who obtains a certificate of registration as an organic certifying~~  
4 ~~agent]~~.

5 SECTION 7. Section 18.007, Agriculture Code, is amended to  
6 read as follows:

7 Sec. 18.007. DENIAL, SUSPENSION, OR REVOCATION OF ORGANIC  
8 CERTIFICATION OR ~~[ORGANIC CERTIFYING AGENT]~~ REGISTRATION. The  
9 department may deny, suspend, or revoke a certification or ~~[of a~~  
10 ~~producer, processor, distributor, or retailer or a certificate of]~~  
11 registration issued ~~[to an organic certifying agent]~~ under this  
12 subchapter if the person to whom the certification or registration  
13 was issued:

14 (1) makes a false representation material to a matter  
15 governed by this subchapter; or

16 (2) violates or refuses to comply with this subchapter  
17 or a rule or instruction of the department under this subchapter.

18 SECTION 8. Subchapter A, Chapter 18, Agriculture Code, is  
19 amended by adding Section 18.0075 to read as follows:

20 Sec. 18.0075. ADMINISTRATIVE PROCEDURES. (a) To the  
21 extent consistent with the requirements of the national organic  
22 program, the department by rule shall adopt administrative  
23 procedures relating to assessment of administrative penalties and  
24 other sanctions for violations of this subchapter. Chapter 2001,  
25 Government Code, does not apply to department rules adopted under  
26 this subchapter to the extent that Chapter 2001, Government Code,  
27 conflicts with the requirements of the national organic program.

1        (b) The department shall provide a person with written  
2 notice of the department's intent to assess the person with an  
3 administrative penalty or other sanction. If the department  
4 requires a written response to the notice, the department shall  
5 allow the person not less than 10 days after the date the person  
6 receives the notice to provide the department with the written  
7 response. A written response may contain an admission of a  
8 violation of this subchapter or rule adopted under this subchapter,  
9 as applicable, and an agreement to assessment of the applicable  
10 administrative penalty or sanction.

11        (c) The department's administrative procedures may provide  
12 for a default judgment without a hearing for failure to submit to  
13 the department a written response under Subsection (b) that  
14 contains a request for a hearing and a general or specific denial  
15 that the department's action is warranted by the facts or law.

16        (d) A default judgment may be entered under this section by  
17 order of the commissioner. The order entering a default judgment is  
18 final on the day the commissioner issues the order.

19        (e) A default judgment may be appealed for review de novo to  
20 a Travis County district court not later than the first anniversary  
21 of the date the order is issued under Subsection (d).

22        (f) On appeal, the court may only consider the issues of  
23 whether the appellant received proper notice as required by  
24 Subsection (b) and whether the department received a proper  
25 response under Subsection (b). The appellant has the burden of  
26 proof to establish, by a preponderance of the evidence, that proper  
27 notice was not received by the appellant or that a proper response

1 under Subsection (b) was received by the department. If the  
2 appellant prevails, the default judgment shall be vacated and the  
3 case shall be remanded to the department for an administrative  
4 hearing on the substantive issues raised by the department's  
5 notice.

6 (g) The State Office of Administrative Hearings shall  
7 conduct any hearing required by a rule of the department adopted  
8 under this subchapter.

9 (h) In the absence of administrative procedures adopted by  
10 the department under this section, the procedures under Chapter 12  
11 and under Chapter 2001, Government Code, apply to the assessment of  
12 administrative penalties or license sanctions, except that the  
13 procedures may, on motion of a party or on the administrative law  
14 judge's own motion, be modified by the judge as necessary to comply  
15 with standards and procedures under the national organic program.

16 SECTION 9. Section 18.009(a), Agriculture Code, is amended  
17 to read as follows:

18 (a) A person who violates this subchapter or a rule adopted  
19 under this subchapter is liable to the state for a civil penalty not  
20 to exceed \$10,000 [~~\$500~~] for each violation. Each day a violation  
21 continues is a separate violation for purposes of a civil penalty  
22 assessment.

23 SECTION 10. Sections 18.010(a) and (b), Agriculture Code,  
24 are amended to read as follows:

25 (a) If an organic agricultural product [~~food or fiber~~] is  
26 being sold or distributed in violation of this subchapter or a rule  
27 adopted under this subchapter, the department may issue a written

1 order to stop the sale or distribution of the product [~~that item of~~  
2 ~~food or fiber~~] by a person in control of the product [~~item~~]. The  
3 product [~~person~~] named in the order may not be sold or distributed  
4 while [~~sell the item~~] labeled, marketed, advertised, or otherwise  
5 represented as "organic" until:

6 (1) permitted by a court under Subsection (b) [~~of this~~  
7 ~~section~~]; or

8 (2) the department determines that the sale or  
9 distribution of the product [~~item~~] is in compliance with this  
10 subchapter and rules adopted under this subchapter.

11 (b) A [~~The~~] person in control of the product named in the  
12 order may bring suit in a court in the county where the product  
13 [~~item~~] is located. After a hearing, the court may permit the  
14 product [~~item~~] to be sold if the court finds the product [~~item~~] is  
15 not being sold in violation of this subchapter or a department rule  
16 issued under this subchapter.

17 SECTION 11. Subchapter A, Chapter 18, Agriculture Code, is  
18 amended by adding Section 18.011 to read as follows:

19 Sec. 18.011. PUBLIC INFORMATION. Information created,  
20 collected, assembled, or maintained by the department under this  
21 subchapter is public information, except that the department by  
22 rule may exempt specified information from disclosure but only to  
23 the extent necessary to comply with the national organic program.

24 SECTION 12. Sections 18.004(b), (c), (d), and (e) and  
25 Section 18.005, Agriculture Code, are repealed.

26 SECTION 13. This Act takes effect immediately if it  
27 receives a vote of two-thirds of all the members elected to each

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1 house, as provided by Section 39, Article III, Texas Constitution.  
2 If this Act does not receive the vote necessary for immediate  
3 effect, this Act takes effect September 1, 2003.