

By: Hardcastle (Senate Sponsor - Estes) H.B. No. 2012
(In the Senate - Received from the House April 14, 2003;
April 15, 2003, read first time and referred to Committee on
Natural Resources; May 5, 2003, reported favorably by the
following vote: Yeas 9, Nays 0; May 5, 2003, sent to printer.)

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"~~
~~logotype].~~

(3) "Organic" ["Organic certifying agent"] means
labeled, advertised, marketed, or otherwise represented as an
agricultural product produced in accordance with the Organic Foods
Production Act of 1990 (7 U.S.C. Section 6501 et seq.), as amended,
and ~~[an organic certification organization registered under]~~ this
subchapter.

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

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

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

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

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

~~[(9) "Retailer" means a person, other than a~~
~~restaurant operator, who is engaged in the business of selling food~~
~~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;

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

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

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

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

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

(1) an application for certification;

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

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

(c) The department by rule may require a person certified under this subchapter to submit an annual report of that person's production, processing, distribution, or handling of organic agricultural products, along with an annual reporting fee. ~~[An organic certification shall be for a period prescribed by the department. A person who fails to submit a renewal fee on or before the expiration date of the certification must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.]~~

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

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

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

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

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

~~[(a)]~~ The department by rule may establish a voluntary or mandatory registration program for persons who produce, process, distribute, handle, or advertise organic products in this state and

for persons who certify any producers, processors, distributors, or handlers located in this state ~~[register a person as an organic certifying agent. On receipt of a certificate of registration under this section, an organic certifying agent may certify for the department a producer, processor, distributor, or retailer of organic food or fiber under this subchapter]~~.

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

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

(1) application for certification;
(2) application for registration or registration renewal;
(3) annual report required by the department;
(4) certificate issued by the department; and
(5) document required by the federal government, another state, or a foreign country that is issued by the department under this subchapter ~~[shall charge an annual fee, as provided by department rule, for each applicant certified as a producer, distributor, or retailer and a fee, as provided by department rule, for each applicant certified as a processor of organic food or fiber produced in this state]~~.

(b) The department may establish:

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

(c) The department may establish a late fee in an amount that is not more than twice the amount of the fee authorized under Subsection (a) and required to be paid by a date established by rule or by written notice provided to the person who owes the fee ~~[shall charge an annual fee, as provided by department rule, for a person who obtains a certificate of registration as an organic certifying agent]~~.

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

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

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

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

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

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

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

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

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

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

(f) On appeal, the court may only consider the issues of whether the appellant received proper notice as required by Subsection (b) and whether the department received a proper response under Subsection (b). The appellant has the burden of proof to establish, by a preponderance of the evidence, that proper notice was not received by the appellant or that a proper response under Subsection (b) was received by the department. If the appellant prevails, the default judgment shall be vacated and the case shall be remanded to the department for an administrative hearing on the substantive issues raised by the department's notice.

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

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

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

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

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

(a) If an organic agricultural product [~~food or fiber~~] is being sold or distributed in violation of this subchapter or a rule adopted under this subchapter, the department may issue a written order to stop the sale or distribution of the product [~~that item of food or fiber~~] by a person in control of the product [~~item~~]. The product [~~person~~] named in the order may not be sold or distributed while [~~sell the item~~] labeled, marketed, advertised, or otherwise represented as "organic" until:

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

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

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

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

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

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

5-1 SECTION 13. This Act takes effect immediately if it
5-2 receives a vote of two-thirds of all the members elected to each
5-3 house, as provided by Section 39, Article III, Texas Constitution.
5-4 If this Act does not receive the vote necessary for immediate
5-5 effect, this Act takes effect September 1, 2003.

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