

By: Estes

S.B. No. 1268

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 production 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

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

16 (a) The department by rule may require a fee for each:
17 (1) application for certification;
18 (2) application for registration or registration
19 renewal;
20 (3) annual report required by the department;
21 (4) certificate issued by the department; and
22 (5) document required by the federal government,
23 another state, or a foreign country that is issued by the department
24 under this subchapter [~~shall charge an annual fee, as provided by~~
25 ~~department rule, for each applicant certified as a producer,~~
26 ~~distributor, or retailer and a fee, as provided by department rule,~~
27 ~~for each applicant certified as a processor of organic food or fiber~~

1 ~~produced in this state~~].

2 (b) The department may establish a different fee amount for
3 each fee under Subsection (a) ~~[shall charge an annual fee, as~~
4 ~~provided by department rule, for each applicant certified as a~~
5 ~~distributor or retailer and a fee, as provided by department rule,~~
6 ~~for each applicant certified as a processor of organic food or fiber~~
7 ~~produced outside of this state]~~.

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

15 SECTION 5. Section 18.007, Agriculture Code, is amended to
16 read as follows:

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

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

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

SECTION 6. 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 production 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 production 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. The department shall allow the person not less than 10 days after the date the person receives the notice to provide the department with a written response to the notice. The response must contain any request for a hearing and a general or specific denial that the department's action is warranted by the facts or law.

(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 to the notice.

(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

1 of the date the order is issued under Subsection (d).

2 (f) On appeal, the court may only consider the issue of
3 whether the appellant received proper notice and whether the
4 appellant sent a proper response under Subsection (b). The
5 appellant has the burden of proof to establish, by a preponderance
6 of the evidence, that proper notice was not received or that a
7 proper response under Subsection (b) was provided. If the
8 appellant prevails, the default judgment shall be vacated and the
9 case shall be remanded to the department for an administrative
10 hearing on the substantive issues raised by the department's
11 notice.

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

15 SECTION 7. Section 18.009(a), Agriculture Code, is amended
16 to read as follows:

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

22 SECTION 8. Sections 18.010(a) and (b), Agriculture Code,
23 are amended to read as follows:

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

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

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

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

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

16 SECTION 9. Subchapter A, Chapter 18, Agriculture Code, is
17 amended by adding Section 18.011 to read as follows:

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

24 SECTION 10. Sections 18.004 and 18.005, Agriculture Code,
25 are repealed.

26 SECTION 11. 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.