House Legislative Analysis Section

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CERTIFY ORGANIC FOODS

House Bills 5873 and 5874
Sponsor: Rep. Carl F. Gnodtke
Committee: Agriculture

Complete to 10-26-90

A SUMMARY OF HOUSE BILLS 5873 AND 5874 AS INTRODUCED 6-13-90

The bills would establish a certification program for organically grown produce and livestock (House Bill 5873) and make the misrepresentation of food as organically produced a form of misbranding under the Michigan Food Law (House Bill 5874).

House Bill 5874 (MCL 289.717) would amend the Michigan Food Law of 1968 to make the misrepresentation of food as organically produced a form of "misbranding" of food under the act. The bill is tie-barred to House Bill 5873.

House Bill 5873. The bill would create a new act, the Michigan Organic Food Act, to:

- enact legislative findings concerning the nature of organic farming and the practices of organic farmers;
- include detailed requirements for producers and processors of organic produce and meat;
- require the director of the Michigan Department of Agriculture (MDA) to establish lists of preferred, regulated, and prohibited agricultural materials and practices for organic farmers and processors;
- set up a certification process for organic farmers and processors that would require that people be certified before they engaged in commercial organic food production or processing;
- prohibit people from falsely advertising agricultural products as being organic; and
- impose civil and criminal penalties for violating the bill's provisions.

Legislative findings. The bill would set forth certain findings of the legislature, including that organic farming is based upon a set of principles that encourages stewardship of the earth and that it is "designed to work in harmony with natural systems and cycles, with consideration of wider social and ecological impact."

The bill would say that the legislature finds that organic farmers:

(1) seek to provide agricultural products of the highest quality, using practices and materials that do not place human health at risk;

(2) use renewable resources to the greatest extent possible, within locally organized agricultural systems;

(3) maintain diversity within the farming system and its surroundings, including protecting plant and wildlife habitat;

(4) replenish and maintain long-term soil fertility by providing optimum conditions for soil biological activity and health;

(5) provide livestock, fish, and fowl with conditions that meet both the health and behavioral requirements of the animals (including, in particular, concern for the ethological needs of the livestock and poultry); and

(6) seek to enhance the protection and integrity of the ecosystem.

Organic standards. The bill would specify that organically produced agricultural products (whether plant or animal) would have to be produced, processed, transported, and marketed in such a way that the organic quality of the product would not be compromised (primarily by prohibiting exposure to synthetic or bioengineered substances) and in a way that would be in accordance with certain kinds of sustainable farming practices and humane livestock raising techniques.

More specifically, in addition to meeting all applicable governmental regulations governing the safety and quality of agricultural products, organically produced agricultural products would have to be:

(1) produced by systems based on farm management practices that replenished and maintained soil fertility and provided optimum conditions for soil biological activity;

(2) produced or composed of ingredients that were grown or raised without the use of synthetic substances (including synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, or arsenicals);

(3) for at least three years before harvest, grown, harvested, preserved, processed, stored, transported, and marketed only in accordance with a materials and practices list that would be established by the director of the MDA through the administrative rules process;

(4) packaged and transported free of any synthetic substances (including not only synthetic fungicides, preservatives, fumigants, and pesticides, but also substances, materials, and containers that might be absorbed by, or adhere to, the product);

(5) produced on land that had not had synthetic substances applied to it for at least three years prior to the harvest of the agricultural product; and

(6) not produced on soil (or any growing medium) that contained levels of chemical residue that would be likely to result in unsafe residue levels in an agricultural product produced on the soil.

In addition, organically produced agricultural products would have to be:

- produced, processed, and marketed without any synthetics (including synthetic preservatives, colorings, flavorings, texturizers, and emulsifiers);
- produced from ingredients that were organic under the bill (including those allowed by an applicable materials and practices list under the bill);

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- packaged with materials that did not contain any chemical additives (including fungicides and preservatives) and that had not been in contact with any substance that could compromise the organic quality of the product (for example, organic products could not be packaged or put in containers that had previously been in contact with a substance that could compromise the organic quality of the product).

The bill would specify both what organic livestock would have to be given and what could not be used in the course of raising them. Organically produced livestock, fish, and fowl would have to be provided with:

(1) a habitat that fulfilled their physiological and ethological (e.g. social animals could not be raised in isolation) needs;

(2) enclosures or waters that contained feeds and pastures that were organic under the bill; and

(3) organically produced feed and pasture at a minimum ration percentage to be established by rules under the bill.

Organically produced livestock, fish, and fowl would have to be produced without using any:

(1) drugs, medications, hormones or growth regulators (whether synthetic or not), or other synthetic substances (including those administered to stimulate or regulate growth or tenderness, and any subtherapeutic doses of antibiotics);

(2) feeds, supplements, or practices that did not comply with the applicable materials and practices list under the bill; and

(3) xenobiotic substances (materials produced through synthesis or gene splicing that do not occur naturally) applied after slaughter to the meat or to its packaging (including preservatives), except as otherwise allowed by an applicable materials and practices list established by rule under the bill.

Although drugs (such as antibiotics) could not be routinely used prophylactically (that is, used in the absence of actual disease in order to prevent possible disease), the bill would allow legally required vaccines (or for the prevention of an endemic disease) and the use of drugs for treating specific illnesses diagnosed by a licensed veterinarian. Vitamin and mineral supplements also would be allowed. In cases where medicine was administered for a specific occurrence of a disease, the treated animal could not be slaughtered until a certain "withdrawal" time (which would be specified by rule) had passed.

Handlers and processors of organically produced agricultural products also would have to have appropriate physical facilities, machinery, and management practices to prevent the possibility of mixing organic and nonorganic products.

Materials and practices lists. The director of the MDA would promulgate rules establishing lists of materials and practices that were "preferred," "regulated," or "prohibited" in the production of organic agricultural products.

- The "preferred" category of materials would include only naturally-derived materials. "Naturally derived" would be defined in the bill to mean minerals and organic products obtained from natural deposits, plants, or animals that — after their extraction, harvest, or slaughter — had been subjected only to mechanical and physical treatments (such as grinding, milling, drying, cold, heat, extraction, distillation, or crystallization) in order to isolate, purify, or concentrate a particular ingredient.

- The "regulated" category would include allowable naturally-derived materials, synthetic materials that were chemically identical to naturally-derived products, and xenobiotics, even though the use of the substance were prohibited elsewhere in the bill. The bill would define "synthetic" as a substance that was manufactured by chemical reaction or chemical synthesis to create a substance that did not occur in nature. The definition of "synthetic" would not include substances produced solely by biological degradation, microbiological processes, biological propagation, or physical manipulation of natural materials through physical or mechanical action (such as crushing, drying, cooking, or extraction). The bill would define "xenobiotic" to mean a material that was produced through synthesis or gene splicing that does not occur naturally.

- The "prohibited" category would include xenobiotic materials and organisms and synthetic or naturally-derived materials as deemed necessary by the director.

In establishing materials and practices lists, the director would be required to consider a number of factors, including:

- The potential for detrimental chemical interactions with other agricultural chemicals used in organic farming;
- The toxicity and mode of action of the material and of its breakdown products or any contaminants, and their persistence in areas of concentration in the environment;
- the probability of environmental contamination during the manufacture and the normal and recommended use of the material or as a result of its misuse;
- the effects of the material or practice on human health;
- the physiological impact of the material or practice on crops or livestock;
- the effects of the material on biological and chemical interactions in the agro-ecosystem, including the physiological effects of the material on soil organisms and consideration of salt index and solubility;
- the resources used in the manufacture and distribution of a material;
- the alternatives to using the material or practice;
- the essential need for the material or practice;
- the economic impact of the proposed use of the material or practice on people producing organic products;
- any United States Environmental Protection Agency (EPA) and state registration data and tolerances;
- toxicological, materials safety, and risk analysis data;
- environmental impact studies; and
- consistency with organic farming procedures and the purposes of the bill.

Under the bill, xenobiotic materials could not be authorized for soil and crop management. Although xenobiotic anti-parasiticides and other medications could be allowed as "regulated" materials for diagnosed medical conditions, they would not be allowed as routine material and a "reasonable" amount of time would have to pass between the time of their application and the slaughter of the treated animal.

Certifying agency. The director of the department would certify farms and processing establishments, or could accredit another agent to do the certification.

A certifying agent accredited by the director would have to be qualified (i.e., have the requisite expertise in organic farming or processing, or both), and would have to comply with, and be able to fully implement, the bill's requirements and any rules promulgated under the bill. A certifying agent also would have to keep, for at least ten years, records of his or her official activities, and would have to keep client records strictly confidential. Only the director of the MDA would have access to

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these records, and if a certifying agent lost accreditation or went out of business, his or her records would revert to the director. Each year, an agent would have to give the director lists both of all the people he or she had certified and of all the inspectors he or she had employed. (The bill also would require that inspectors have enough knowledge of organic farming or handling and processing practices to carry out inspections.) Agents also would be required to hold the department harmless for any failure of the agent to carry out his or her duties under the bill.

Certifying agents would be prohibited from:

- inspecting any operation in which he or she (or any of his or her inspectors or other employees) had a commercial interest in (including consultation services by the agent);
- accepting payments, gifts, or favors of any kind, from someone who was being inspected, above that prescribed for certification fees;
- selling advice on organic practices and techniques for a fee other than for fees established under the bill; and
- allowing anyone he or she had certified to deliver or sell any agricultural commodities labeled as organically produced if the commodities did not meet the bill's requirements.

Certification. The bill would require that people be certified before producing or processing organic agricultural products for sale. Applications for certification would have to be submitted annually to the Department of Agriculture or to a certifying agent designated by the department. Each application would have to be accompanied by a sworn statement that the applicant had complied, and would continue to comply, with the bill and any rules promulgated under it.

In addition, each producer who applied for certification would have to submit a "farm plan," a written plan of organic management of a farm, which the producer would have to comply with in order to maintain certification. (The director would establish a schedule for on-site inspections of certified farms or processors.) Certified producers would be assigned a producer identification number which would have to be included on the invoices of all sales other than to the ultimate consumer. Any product labeled as "organic," "organically produced," or "transitionally organic" would have to have a label with the name, address, and certification number of the producer and the name of the certified agent.

Someone who met the bill's requirements would be certified as either a "certified organic farm" or a "certified organic processor." Certification could be for an entire farm or processing operation, or for just a designated part of a farm or processing operation.

People could petition the MDA for a confidential evaluation of products and materials proposed for use in organic production. Petitions would have to include both a clear agronomic justification for the use of the proposed products and materials as well as all of their ingredients (including inert ingredients and contaminants).

Record-keeping. Producers of organic agricultural products would have to keep accurate records concerning production and handling systems. Producers, processors, or sellers of organic agricultural products would have to make these records available for inspection and audit by the MDA. Producers of organic livestock, fish, or fowl would have to keep records of all applicable management practices, inputs or feed, supplements, medicine and dates administered, and certain kinds of diseases, and would have to track each animal from birth to slaughter. Except for fowl and animals not individually identified by tags, each animal that was treated with a regulated substance would have to be clearly identified with a tag specifying the material and date of treatment.

Revocation of certification. The certifying agent (either the department or its designated agent) could revoke someone's certification if the certified person:

(a) violated the bill's certification standards;
(b) filed a false or misleading application;
(c) failed to allow access to records or required inspections, or
(d) otherwise violated the bill or rules promulgated under it.

Denial of certification. Someone denied certification (or someone notified that his or her certification might be revoked) would be offered the opportunity for a public hearing under the Administrative Procedures Act and would have 20 days after notification to submit a written request for such a hearing.

Exemption from certification. People producing less than $1,000 worth of organic agricultural products for sale on their property would not have to be certified. They still would have to meet all of the bill's other requirements, but they could not label or represent their agricultural product as certified.

Duties of the director of the MDA. In addition to certifying (or accrediting someone to certify) organic farmers and processors, promulgating rules establishing materials and practices lists, and establishing schedules of inspection of certified organic farmers or processors, the director of the department also would have a number of other powers and duties.

The director would be required to:

- detain or embargo agricultural products sold, labeled, or advertised in violation of the bill;
- investigate complaints brought under the bill;
- investigate cases where there was reason to believe that the bill or the rules promulgated under the bill were being violated;
- promulgate rules that set standards for organic agricultural products and fees for certification, developed a seal or logo for organic agricultural products and prescribed conditions for its use and suspension or revocation, and implemented and enforced the bill; and
- impose administrative fines for violations of the bill.

In addition, the director could:

- establish a statewide advisory board on organically produced agricultural products;
- establish protected and registered seals or logos to identify organic food produced under the bill's certification program and authorize their use (and the revocation of their use);
- contract with other people or agencies for investigation, inspecting, testing, or sampling; and
- take samples (after paying a fair market price) to verify compliance with the bill (and any rules promulgated under the bill).

Allowable terms. The only terms under which agricultural products could be marketed as organically produced would be "organic," "organically produced," and "transitional organic." The term "transitional organic" would be used to label products that met the bill's standards and that had been produced according to the bill's requirements except for the requirement that the product be produced on land that had had no synthetic substances applied for three years before being harvested.

Mislabeling and other prohibited actions. In addition to prohibiting people from engaging in commercial organic

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production or processing without first being certified, the bill would specifically prohibit a number of related actions.

The bill would prohibit people from mislabeling food as organic when it was not, interfering with the director of the MDA carrying out his or her official duties, illegally taking or getting rid of products that had been embargoed, or issuing false certifications of inspection.

An organically produced agricultural product would be mislabeled if it:

(a) failed to meet the requirements (including standards of quality) established by the bill (or by rules promulgated under the bill);
(b) was labeled "certified" or "verified" as organic or organically produced but was not produced by a properly certified producer (either someone certified under the bill or someone certified in another state or country whose requirements for certification met or exceeded the standards proposed in the bill); and
(c) was in any way false or misleading.

People specifically would be prohibited from:

- labeling or otherwise advertising or representing an agricultural product in any way that implied that the product had been organically produced, grown, processed, marketed, or certified under the bill when the product in fact did not comply with the bill's provisions;
- publicly and falsely advertising (in newspapers, window banners, handbills, bulletins, radio, television or by means of labeling, seals, placards, or bulletin boards) with regard to the composition of agricultural products that would be regulated under the bill; and
- giving false information regarding pesticide residues in food or regarding any matter pertaining to the bill.

Penalties. The bill would subject violators to both criminal penalties and administrative fines.

In addition to any other liability or penalties provided by other laws, someone convicted of violating the bill could be fined up to $500 for each violation plus the actual costs of the investigation (including those of laboratory analyses) into the violation. Administrative fines and any investigation costs assessed would be deposited in the state general fund and the legislature could appropriate this revenue to the MDA for enforcement of the bill.

In deciding about imposing administrative fines, the director of the MDA would have to take the following factors into consideration:

- the past history of the person "in taking all feasible steps or procedures necessary or appropriate to correct a violation;"
- other violations by the person in question of statutes, rules, or orders regarding organic products;
- the immediacy and extent of the threat of the violation to public health or safety;
- the impact on consumers and handlers of the organically produced agricultural product; and
- the size of the producer and his or her volume of production.

If someone did not pay an administrative fine, the director of the department could go to the attorney general, who would then sue to recover the fine. Any default in the payment of a civil fine or costs assessed could be handled under the Revised Judicature Act.

Knowing violations of the bill or its rules would be misdemeanors punishable by up to 90 days imprisonment and a fine of at least $500 (and up to $5,000) plus court costs. Someone convicted under the bill would be ineligible for certification for 5 years, though the director of the MDA could reduce this if he or she believed that such a reduction would be in the best interest of the certification program.

Effective date. The bill would take effect 90 days after it had been enacted.