

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1273

A bill to define organic agriculture and products; to provide for the establishment of standards relative to organic products, producers and handlers of organic products, and other persons; to provide for designation of certain entities as certifying agents; to provide for registration of certain persons; to create certain funds and provide for their disposition; to create certain advisory committees; to provide for certain powers and duties of certain state agencies; and to provide for penalties and remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan organic products act".

3 Sec. 3. As used in this act:

4 (a) "Agricultural product" means any agricultural commodity
5 or product, whether raw or processed, including any commodity or

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1 product derived from livestock that is marketed for human or
2 livestock use or consumption.

3 (b) "Certification" or "certified" means a determination
4 made by a registered certifying agent that an agricultural pro-
5 duct has been produced and handled in compliance with the
6 Michigan organic standards.

7 (c) "Certifying agent" means an entity registered by the
8 department that certifies production or handling operations or
9 portions of production or handling operations as meeting the
10 Michigan organic standards.

11 (d) "Commingling" means the mixing together of or physical
12 contact between unpackaged organic products and nonorganic agri-
13 cultural products during production or handling.

14 (e) "Crop" means a plant or part of a plant marketed or
15 intended to be marketed as an agricultural product or fed or
16 intended to be fed to livestock.

17 (f) "Department" means the Michigan department of
18 agriculture.

19 (g) "Director" means the director of the department or his
20 or her designee.

21 Sec. 5. As used in this act:

22 (a) "Genetically modified organism" means substances or
23 their derivatives created by genetic engineering techniques that
24 alter the molecular or cell biology of an organism by means that
25 are not possible under natural conditions or processes. Genetic
26 engineering includes, but is not limited to, recombinant DNA
27 techniques, cell fusion, micro- and macro-encapsulation, gene

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1 deletion and doubling, introducing foreign gene, and changing the
2 positions of genes. Genetic engineering does not include breed-
3 ing, conjugation, fermentation, hybridization, in-vitro fertil-
4 ization, or tissue culture.

5 (b) "Handle" means to sell, process, or package agricultural
6 products.

7 (c) "Handler" means any person engaged in the business of
8 handling agricultural products as organic products including pro-
9 ducers who handle crops or livestock of their own production.

10 (d) "Handling operation" means any operation or portion of
11 an operation that sells, transports, receives, or otherwise
12 acquires agricultural products as organic products and processes,
13 packages, or stores such organic products.

14 (e) "Ionizing radiation" means gamma-ray emissions from
15 radioactive isotopes such as cobalt-60 or cesium-137; x-rays;
16 electron beams; or any other radiation capable of altering a
17 food's molecular structure, used for purposes that include, but
18 are not limited to, controlling microbes, pathogens, parasites,
19 and pests in food, preserving a food, or inhibiting physiological
20 processes such as sprouting or ripening.

21 (f) "Labeling" means all labels and other written, printed,
22 or graphic matter upon an article or any of its containers or
23 wrappers or accompanying the article.

24 (g) "Livestock" means any cattle, sheep, goat, swine, poul-
25 try, captive cervidae, ratites, or equine animals used for food,
26 fiber, feed, or other agricultural based consumer products, wild

1 or domesticated game, or other nonplant life including fish or
2 bees.

3 Sec. 7. As used in this act:

4 (a) "Michigan organic standards" means those organic produc-
5 tion and handling standards defined by this act, rules adopted
6 under this act, or both, that are designed to combine organic
7 production or handling practices and an audit trail that will
8 ensure the integrity of organic products from the producer to the
9 consumer.

10 (b) "Organic" means a labeling term referring to an agricul-
11 tural product produced in accordance with the standards described
12 in this act, rules adopted under this act, or both.

13 (c) "Organic advisory committee" means the committee created
14 under section 25.

15 (d) "Organic agriculture" means an agricultural management
16 system that enhances biodiversity, biological cycles, and soil
17 biological activity to produce healthy plants and animals and
18 fosters human and environmental health. Organic agriculture does
19 not include the use of synthetic chemicals, genetically modified
20 organisms, sewage sludge, and ionizing radiation, or any combina-
21 tion of those substances.

22 (e) "Organic plan" means a plan of management of an organic
23 production or handling operation that has been agreed to by the
24 producer or handler and the certifying agent and that includes
25 written plans concerning all aspects of agricultural production
26 and handling as described in this act, rules adopted under this
27 act, or both.

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1 (f) "Organic product" means agricultural products including,
2 but not limited to, crops, livestock, livestock products, or
3 other agricultural products that are produced organically for
4 human or livestock use or consumption. Organic products does not
5 include personal care products.

6 (g) "Person" means an individual, group of individuals, con-
7 tractor, corporation, limited liability company, partnership,
8 joint venture, cooperative, community supported agricultural
9 entity, or any other legal entity.

10 (h) "Processing" means processes that include, but are not
11 limited to, cooking, baking, heating, drying, mixing, grinding,
12 churning, separating, extracting, cutting, fermenting, eviscerat-
13 ing, preserving, dehydrating, freezing, or other manufacturing
14 process and includes the packaging, canning, jarring, or other-
15 wise enclosing of food in a container.

16 (i) "Producer" means a person who engages in the business of
17 growing or producing agricultural products.

18 (j) "Prohibited substance" means a substance whose use in
19 any aspect of organic production or handling is prohibited or not
20 provided for under this act, rules adopted under this act, or
21 both.

22 Sec. 9. As used in this act:

23 (a) "Retail food establishment" means a restaurant, delica-
24 tessen, bakery, grocery store, or any retail outlet with an
25 in-store restaurant, delicatessen, bakery, salad bar, or other
26 eat-in or carry-out service or a processed or prepared raw or

1 ready-to-eat food that is considered to be or is within the
2 definition of handling operation.

3 (b) "Sewage sludge" means solid, semisolid, liquid, or ash
4 residue generated during treatment of domestic or industrial
5 sewage in a treatment works.

6 (c) "Synthetic" means a substance that is formulated or man-
7 ufactured by a chemical process or by a process that chemically
8 changes a substance extracted from naturally occurring plant,
9 animal, or mineral sources except those substances created by
10 naturally occurring biological processes.

11 (d) "Waters of the state" means ground waters, lakes,
12 rivers, and streams and all other watercourses and waters within
13 the jurisdiction of the state and also the Great Lakes bordering
14 the state.

15 Sec. 11. (1) The department may engage in or conduct activ-
16 ities to regulate, promote, and assist the organic industry in
17 the manner provided by law. The department has the authority to
18 enter into reciprocity agreements with other states' departments
19 of agriculture and the United States department of agriculture
20 and may require certain conditions and records be met and main-
21 tained by certifying agents. The department may work with the
22 organic advisory committee and national and state recognized cer-
23 tification groups and programs in formulating its policies,
24 rules, and requirements.

25 (2) A person shall not sell, offer for sale, or represent an
26 agricultural product to be an organic product unless the

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1 agricultural product has been certified. The organic product
2 must be certified by a registered certifying agent.

3 (3) A person shall not certify an agricultural product as an
4 organic product unless that person is registered with the depart-
5 ment as a certifying agent.

6 (4) A handler that sells, offers for sale, or represents an
7 agricultural product to be an organic product must register with
8 the department.

9 Sec. 13. (1) The following persons must be certified by a
10 certifying agent registered by the department in order to engage
11 in the production, sale, or handling of organic products:

12 (a) A producer who sells, intends to sell, or represents
13 that he or she is engaged in the business of selling to the
14 public.

15 (b) A handler.

16 (c) A handling operation except as otherwise provided in
17 this section.

18 (2) Handling operations, including wholesalers and retail-
19 ers, that do not process, produce, package, or relabel organic
20 products under their own name or for private label, or make
21 organic claims about their operations or label their operation or
22 a particular part of their operation as organic, are not required
23 to be certified or registered.

24 (3) A handling operation not required to be certified must
25 demonstrate to the satisfaction of the director that is strictly
26 complies with all of the following:

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1 (a) Implements measures necessary for the prevention of
2 commingling organic and nonorganic products.

3 (b) Implements measures necessary to protect organic pro-
4 ducts from coming into contact with prohibited substances.

5 (c) Maintains records sufficient to prove that organic pro-
6 ducts are certified and registered as required by this act, rules
7 adopted under this act, or both.

8 (d) Verifies quantities of organic products in a manner
9 acceptable to the director.

10 (e) Maintains records sufficient to verify compliance with
11 this act and permits access to those records by the director for
12 inspection and copying during normal business hours in order to
13 determine compliance with this act.

14 (f) Clearly labels, posts, or maintains original organic
15 certification information or identification of the organic pro-
16 duct it handles.

17 (4) Retail food establishments advertising as organic,
18 labeling as organic, or making organic claims about a final pro-
19 duct, their operation, or a particular part of their operation
20 are required to be certified or registered.

21 (5) Retail food establishments not advertising as organic,
22 not labeling as organic, or not making organic claims about any
23 of the following are not subject to this act:

24 (a) Their final product.

25 (b) An ingredient.

26 (c) Their operation.

1 (d) A particular part of their operation.

2 (6) Retail food establishments not required to be certified
3 or registered may offer agricultural products for sale that con-
4 tain organic and nonorganic components and may use a phrase such
5 as "made with certified organic (specified ingredients)" if those
6 organic components were certified in accordance with this act and
7 the requirements in subsection (3)(b) through (f) are met.

8 Sec. 15. (1) A person who desires to act as a certifying
9 agent shall register with the department on a form provided by
10 the department and pay a nonrefundable registration fee annually
11 established by the department.

12 (2) Upon payment of the appropriate annual registration fee
13 and demonstration of the applicant of compliance with section 17,
14 the department shall issue a registration to the applicant for a
15 term of 1 year.

16 (3) Registration expires December 1 of each year and may be
17 renewed by submission of a renewal application and payment of the
18 appropriate annual registration fee. The registration fee shall
19 be an amount as determined by the commission of agriculture.

20 Sec. 17. To obtain a registration as a certifying agent, an
21 applicant shall demonstrate to the satisfaction of the director
22 all of the following:

23 (a) Certification standards meeting or exceeding the
24 Michigan organic standards.

25 (b) A requirement that producers or handlers that will be
26 certified establish an organic plan.

1 (c) The establishing and following of a procedure that
2 allows producers and handlers to appeal an adverse certification
3 determination.

4 (d) A requirement that each person it certifies demonstrate
5 to the satisfaction of the certifying agent on an annual basis
6 that the person has produced, handled, sold, offered for sale,
7 advertised, or labeled as organic an agricultural product in com-
8 pliance with the standards imposed under this act.

9 (e) Providing for at least an annual on-site inspection of
10 each person it certified.

11 (f) A requirement for the conduct of residue testing of
12 organic products that have been produced on certified organic
13 farms and handled through certified handling operations to deter-
14 mine whether such products contain any prohibited substances if
15 determined necessary by the director.

16 (g) The following of adequate procedures necessary to carry
17 out the certifying duties of this act.

18 (h) Protecting against conflict of interest.

19 (i) The establishing of a process that ensures impartiality
20 of the registrant's inspectors to include, at a minimum, training
21 in organic certification procedures and other related issues
22 determined necessary and approved by the director.

23 (j) Providing to the director the names, addresses, and
24 agricultural products certified for all persons certified by the
25 registrant not less than annually or upon request of the
26 director. A certifying agent has a continuing duty to update
27 names or products as deletions and additions occur.

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1 (k) Allowing the director access during normal business
2 hours to relevant records including, but not limited to, business
3 records relating to issuance of the certification, certification
4 documents relating to clients, and laboratory analyses.

5 (l) Complying with any other reasonable and necessary
6 requirements imposed by the director to ensure compliance with
7 this act.

8 Sec. 19. (1) A handler required to be registered under this
9 act shall provide the following on its application for
10 registration:

11 (a) The name and address of the registrant.

12 (b) The nature of the registrant's business.

13 (c) A listing of the brands or agricultural products, or
14 both, that are sold, offered for sale, or represented as
15 organic.

16 (d) The names and addresses of all certifying agents provid-
17 ing certification.

18 (e) Sufficient information to enable the director to verify
19 the registration fee to be paid.

20 (2) The registration fee is based upon gross organic sales
21 from the calendar year that precedes the date of registration or,
22 if no sales were made in the preceding year, based upon the
23 expected sales during the calendar months following the date of
24 registration.

25 (3) Fee schedule is as follows:

26	<u>Gross Organic Sales</u>	<u>Registration Fee</u>
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1	\$0 - 5,000	\$10
2	\$5,001 - 25,000	\$25
3	\$25,001 - 100,000	\$50
4	\$100,001 - 500,000	\$100
5	\$500,001 - 1,000,000	\$200
6	\$1,000,001 - above	\$400

7 (4) To the extent feasible, the director shall coordinate
8 the registration and fee collection procedures of this section
9 with the process for registration of the certifying agents.

10 Sec. 20. (1) An organic products fund is established in the
11 state treasury. The organic products fund shall be expended only
12 as provided in subsection (3).

13 (2) The organic products fund shall receive as revenue money
14 as appropriated by the legislature, all registration fees col-
15 lected under this act, and money from any other source to be for-
16 warded by the director to the state treasurer for deposit into
17 the organic products fund. Any administrative fines and penal-
18 ties collected by the department under this act shall be depos-
19 ited into the general fund, and it is the intent of the legisla-
20 ture that an amount equal to the annual amount of administrative
21 fines and penalties collected by the department be appropriated
22 to the department for purposes of this act.

23 (3) The money in the organic products fund shall be expended
24 to administer and enforce this act and to develop and improve
25 organic training and education programs.

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1 (4) Money in the organic products fund that is unexpended at
2 the end of the fiscal year shall be carried over to the
3 succeeding fiscal year and shall not revert to the general fund.

4 Sec. 21. (1) By promulgation of rules pursuant to the
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
6 24.328, the director shall adopt standards that meet or exceed
7 the standards for organic products of the United States depart-
8 ment of agriculture agricultural marketing service, or equivalent
9 national organic program. The standards shall include a list of
10 prohibited substances. In no case shall this act, the standards,
11 or both, permit the use of synthetic chemicals, genetically modi-
12 fied organisms, sewage sludge, ionizing radiation, or any combi-
13 nation of those substances. The director shall consult with the
14 organic advisory committee regarding the development of and
15 changes to the Michigan organic standards. The director may
16 adopt additional standards that he or she determines necessary,
17 including, but not limited to, protecting the waters of this
18 state, the state natural resources, or the integrity of organic
19 agriculture.

20 (2) Until the effective date of rules adopted under subsec-
21 tion (1), the international standards of the organic crop
22 improvement association international, as revised February 1999,
23 and the certification standards of the organic growers of
24 Michigan, as revised March 7, 2000 and adopted May 28, 2000, are
25 adopted by reference as interim standards. The director may
26 adopt any other standards he or she determines substantially
27 equivalent upon 10 days' notification of such determination on

1 the department internet website, or other form of notice
2 considered appropriate by the director and designed to inform the
3 industry and general public.

4 Sec. 22. (1) The department may enter into a reciprocity
5 agreement with a state or country that has an organic program
6 that has been determined by the director to be substantially
7 equivalent. This includes, but is not limited to, certification
8 standards for organic producers or handlers or products, licen-
9 sure, or other state regulation of certifying agents.

10 (2) In a state or country that the director has determined
11 to have no organic program including, but not limited to, certi-
12 fication standards for organic producers or handlers or products,
13 licensure, or other regulation of certifying agents, the director
14 may enter into a reciprocity agreement with private certifying
15 organizations upon demonstration to the director's satisfaction
16 that their program, including certification standards, meets or
17 exceeds those established under this act, rules adopted under
18 this act, or both.

19 Sec. 23. (1) All labeling and advertisement of organic pro-
20 ducts shall comply with the requirements contained in this act
21 and rules adopted under this act.

22 (2) The director shall consider as mislabeled an organic
23 product meeting any of the following circumstances:

24 (a) Is false or misleading in any particular, taking into
25 account representations made or suggested by statement, work,
26 design, device, sound, or any combination of statement, work,

1 design, or sound, or any other means as determined by the
2 director.

3 (b) In the case of a product that originated or was produced
4 in Michigan, does not meet the Michigan organic standards or is
5 not certified by a Michigan registered certifying agent, or
6 both.

7 (c) In the case of a product that is brought into this
8 state, has not been certified organic.

9 Sec. 25. (1) There is created an organic advisory committee
10 within the department. The committee shall advise the director
11 on the implementation of this act and the promulgation of rules
12 and may do all of the following:

13 (a) Assist the director in developing the Michigan organic
14 standards and recommend appropriate equivalent interim
15 standards.

16 (b) Annually review and recommend changes in the Michigan
17 organic standards, if necessary.

18 (c) Review and recommend to the director rules and policies
19 governing the business of organic production and handling by
20 study and evaluation of organic production issues.

21 (d) Annually conduct or cause to be conducted a comprehen-
22 sive review of the organic product registration and certifying
23 agent registration programs and advise and recommend to the
24 director any necessary changes to the programs.

25 (e) Formulate and recommend to the director actions and pol-
26 icies to promote organic products.

1 (2) The organic advisory committee shall consist of 11
2 voting members appointed by the director for 4-year terms. The
3 voting membership shall include 4 producers of organic food, 4
4 individuals who are either retail food establishments, proces-
5 sors, or input suppliers of organic food or organic fiber, and 3
6 members of the general public who are consumers of organic pro-
7 ducts and are not associated with the commercial production or
8 handling of organic food or organic fiber. Of the initial mem-
9 bership, 4 members shall be appointed for a term of 4 years, 3
10 for a term of 3 years, 2 for a term of 2 years, and 2 for a term
11 of 1 year. The department may allow a representative of the
12 United States department of agriculture natural resources conser-
13 vation service, the Michigan state university cooperative exten-
14 sion service or the agricultural experiment station, the direc-
15 tor, and a member of a recognized environmental organization to
16 serve as ex officio nonvoting members.

17 (3) Members shall receive reimbursement for travel in the
18 amount provided for in the department of management and budget
19 regulations.

20 (4) The members, at the first meeting and annually thereaf-
21 ter, shall elect officers and adopt rules of procedure. Terms of
22 officers are 1 year. A majority of the members are a quorum and
23 an act performed by a majority of the quorum is considered an
24 official act of the committee.

25 (5) The committee shall meet at the call of the chair, at
26 the request of a majority of its members, at the request of the
27 department, or at such times as may be prescribed by its

1 procedural rules. The proceedings of the committee are subject
2 to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Any
3 records, except those that may be used to identify an
4 individual's financial status or proprietary information, are
5 subject to the freedom of information act, 1976 PA 442, MCL
6 15.231 to 15.246.

7 Sec. 27. (1) The director, in administering and enforcing
8 this act, shall investigate complaints and initiate and conduct
9 investigations of alleged violations of this act. The director
10 may deny an application for or suspend or revoke registration of
11 a certifying agent or a handler or take other action or utilize
12 other penalties or remedies as are available under this section.
13 (2) The director may promulgate rules under the administra-
14 tive procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
15 to enforce and implement this act.

16 (3) The director may deny an application for or suspend or
17 revoke a registration issued for a certifying agent or a handler
18 under this act for any of the following:

19 (a) Submission of an application or verification documents
20 that contain insufficient information upon which the department
21 can make an appropriate determination.

22 (b) Submission of or providing verification documents that
23 demonstrate noncompliance with any provision of this act.

24 (c) Engaging in fraudulent or deceptive practices or as eva-
25 sion or attempt at evasion of this act or standards and proce-
26 dures established pursuant to this act.

1 (d) Making a false representation.

2 (e) Violating or refusing to comply with this act or an
3 order of the director.

4 (f) Having had registration revoked, suspended, or denied
5 under this act within the preceding 5 years.

6 (4) The director may seize and take possession of an organic
7 or agricultural product not in compliance with this act. An
8 organic or agricultural product not in compliance with this act
9 is subject to seizure upon a complaint filed in a court of compe-
10 tent jurisdiction in the county where the product is located. If
11 the court determines the product to be in violation and orders
12 the condemnation of the product, it shall be denatured,
13 destroyed, relabeled, or otherwise disposed of in compliance with
14 the law. The court shall not order the disposition of the pro-
15 duct without giving the claimant an opportunity to apply to the
16 court for the release of the product or permission to relabel the
17 product in compliance with this act.

18 (5) This act does not require the director to revoke or sus-
19 pend a registration, report for prosecution, institute seizure or
20 proceedings, issue an order for withdrawal from distribution, or
21 take other administrative action as a result of a minor violation
22 of this act when the director determines that the public interest
23 is best served by suitable notice of warning in writing.

24 (6) The director may apply for temporary or permanent
25 injunctive relief, without bond, to restrain a person from vio-
26 lating or continuing to violate this act or a rule adopted under
27 this act notwithstanding the existence of other remedies at law.

1 (7) The director shall have free access at all reasonable
2 hours to any establishment or operation, including a vehicle used
3 to transport or hold agricultural or organic products, for the
4 purpose of inspecting the establishment, operation, or vehicle to
5 determine if this act has been violated. The director may secure
6 samples or specimens of any agricultural or organic product,
7 after paying or offering to pay for such samples or specimens, to
8 determine if this act is being violated. The director may
9 examine any records of the establishment, operation, or certify-
10 ing agent to obtain necessary and pertinent information.

11 (8) The director may issue and enforce a written printed
12 stop sale order to the owner or custodian or any organic or agri-
13 cultural product the director determines is in violation of this
14 act or rule adopted under this act. The order shall prohibit the
15 further sale, processing, or movement of the product except upon
16 the approval of the director and until the director has evidence
17 of compliance with the law and has issued a release from the stop
18 sale order. The owner or custodian of the agricultural product
19 may request a hearing under the administrative procedures act of
20 1969, 1969 PA 306, MCL 24.201 to 24.328.

21 Sec. 29. (1) Upon finding that a person subject to this act
22 violated a provision of this act or rule promulgated under this
23 act, the department may impose an administrative fine of not more
24 than \$500.00 for the first offense and not more than \$1,000.00
25 for a second or subsequent offense and the actual costs of the
26 investigation of the violation.

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1 (2) Except as otherwise provided for under this act, a
2 person subject to this act who violates any provision of this act
3 or rules promulgated under this act is guilty of a misdemeanor
4 punishable by a fine of not less than \$250.00 or more than
5 \$2,500.00 or by imprisonment for not more than 90 days, or both.

6 (3) In defense of an action filed under this act and in
7 addition to any other unlawful defense, a person may present evi-
8 dence as an affirmative defense that, at the time of the alleged
9 violation, he or she was in compliance with this act and rules
10 promulgated under this act.

11 (4) Notwithstanding the other provisions of this act, a
12 person who knowingly violates section 23(2) and section 27(3)(c)
13 is guilty of a felony punishable by imprisonment for not more
14 than 4 years or by a fine of not more than \$10,000.00 plus twice
15 the amount of any economic benefit associated with the violation,
16 or both.

17 Sec. 31. This act takes effect October 1, 2001.