

SENATE BILL No. 1273

May 16, 2000, Introduced by Senator STILLE and referred to the Committee on Farming,
Agribusiness and Food Systems.

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 organic products; 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
6 product derived from livestock that is marketed for human or
7 livestock use or consumption.

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

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

9 (d) "Crop" means a plant or part of a plant marketed or
10 intended to be marketed as an agricultural product or fed or
11 intended to be fed to livestock.

12 (e) "Department" means the Michigan department of
13 agriculture.

14 (f) "Director" means the director of the department.

15 Sec. 5. As used in this act:

16 (a) "Genetically modified organism" means substances or
17 their derivatives created by genetic engineering techniques that
18 alter the molecular or cell biology of an organism by means that
19 are not possible under natural conditions or processes. Genetic
20 engineering includes, but is not limited to, recombinant DNA
21 techniques, cell fusion, micro- and macro-encapsulation, gene
22 deletion and doubling, introducing foreign gene, and changing the
23 positions of genes. Genetic engineering does not include breed-
24 ing, conjugation, fermentation, hybridization, in-vitro fertil-
25 ization, or tissue culture.

26 (b) "Handle" means to sell, process, or package agricultural
27 products, except that handle does not include the sale,

1 transportation, or delivery of crops or livestock by its producer
2 to a handler or consumer.

3 (c) "Handler" means any person engaged in the business of
4 handling agricultural products as organic products including pro-
5 ducers who handle crops or livestock of their own production and
6 retail food establishments. Handler includes a retail food
7 establishment that repackages or processes an organic product but
8 does not include a retail food establishment that merely sells an
9 organic product that is already packaged in its final consumer
10 packaging.

11 (d) "Handling operation" means any operation or portion of
12 an operation that sells, transports, receives, or otherwise
13 acquires organic products that are not in the final consumer
14 packaging. Handling operation includes processing, cooking,
15 baking, heating, drying, mixing, grinding, churning, separating,
16 extracting, cutting, fermenting, eviscerating, preserving, dehy-
17 drating, freezing, or otherwise manufacturing products and
18 includes the packaging, repackaging, canning, jarring, or other-
19 wise enclosing of food in a container.

20 (e) "Ionizing radiation" means high-energy emissions from
21 radio-nuclides including, but not limited to, cobalt-60 or
22 cesium-137, capable of altering a food's molecular structure,
23 used for the purposes of controlling microbial contaminants,
24 pathogens, parasites, and pests in food, preserving a food, or
25 inhibiting physiological processes such as sprouting or
26 ripening.

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

4 (g) "Livestock" means any cattle, sheep, goat, swine, poul-
5 try, captive cervidae, ratites, or equine animals used for food,
6 fiber, feed, or other agricultural based consumer products, wild
7 or domesticated game, or other nonplant life including fish or
8 bees.

9 Sec. 7. As used in this act:

10 (a) "Michigan organic standards" means those organic produc-
11 tion and handling standards defined by this act, rules adopted
12 under this act, or both, that are designed to combine good
13 organic production or handling practices and an audit trail that
14 will ensure the integrity of organic products from the producer
15 to the consumer.

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

19 (c) "Organic advisory committee" means the committee created
20 under section 25.

21 (d) "Organic agriculture" means an agricultural management
22 system that enhances biodiversity, biological cycles, and soil
23 biological activity to produce healthy plants and animals and
24 fosters human and environmental health. Organic agriculture does
25 not include the use of synthetic chemicals, genetically modified
26 organisms, sewage sludge, and ionizing radiation, or any
27 combination of those substances.

1 (e) "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 (f) "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 (g) "Producer" means a person who engages in the business of
11 growing or producing agricultural products.

12 Sec. 9. As used in this act:

13 (a) "Sewage sludge" means solid, semisolid, liquid, or ash
14 residue generated during treatment of domestic or industrial
15 sewage in a treatment works.

16 (b) "Synthetic" means a substance that is formulated or man-
17 ufactured by a chemical process or by a process that chemically
18 changes a substance extracted from naturally occurring plant,
19 animal, or mineral sources except those substances created by
20 naturally occurring biological processes.

21 (c) "Waters of the state" means ground waters, lakes,
22 rivers, and streams and all other watercourses and waters within
23 the jurisdiction of the state and also the Great Lakes bordering
24 the state.

25 Sec. 11. (1) The department may engage in or conduct activ-
26 ities to regulate, promote, and assist the organic industry in
27 the manner provided by law. The department has the authority to

1 enter into reciprocity agreements with other states' departments
2 of agriculture and the United States department of agriculture
3 and may require certain conditions and records be met and main-
4 tained by certifying agents. The department shall work with the
5 organic advisory committee and national and state recognized cer-
6 tification groups and programs in formulating its policies,
7 rules, and requirements. The department may implement a program
8 to promote organic agriculture and encourage its use as a tool in
9 protecting natural resources and the waters of the state.

10 (2) A person shall not sell, offer for sale, or represent an
11 agricultural product to be an organic product unless the agricul-
12 tural product has been certified. The agricultural product must
13 come from a producer, handler, or retail food establishment that
14 has been certified by a registered certifying agent.

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

18 (4) A person shall not sell or offer for sale in this state
19 an organic product produced outside this state unless the product
20 has been registered with the department.

21 Sec. 13. The following persons or their products must be
22 certified by a certifying agent registered by the department in
23 order to engage in the production, sale, or handling of organic
24 products:

25 (a) A producer who sells, intends to sell, or represents
26 that he or she is engaged in the business of selling to the
27 public or to a handling operation organic products.

(b) A handler or handling operation.

(c) A retail food establishment that sells, intends to sell, or represents to be engaged in the business of selling organic products that it repackages or processes but not a retail food establishment that sells packaged organic products in its final consumer packaging.

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

(2) Upon payment of the appropriate annual registration fee, demonstration of the applicant of compliance with section 17, and the review and recommendation of the director and the organic advisory committee, the department shall issue a registration to the applicant for a term of 1 year.

(3) Registration expires December 1 of each year and may be renewed by submission of a renewal application and payment of the appropriate annual registration fee. Until 1 year after the first registration cycle under this act, the registration fee shall be sufficient to cover the cost of administering the registrations under this act.

Sec. 17. The department shall issue a registration as a certifying agent to an applicant who demonstrates to the satisfaction of the director of doing all of the following:

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

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

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

6 (d) A requirement that each person it certified demonstrate
7 to the satisfaction of the certifying agent on an annual basis
8 that the person has not produced, handled, sold, offered for
9 sale, advertised, or labeled as organic an agricultural product
10 except in compliance with the standards imposed under this act.

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

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

18 (g) The following of adequate enforcement procedures neces-
19 sary to carry out the certifying duties of this act.

20 (h) Protecting against conflict of interest.

21 (i) The establishing of a process that ensures impartiality
22 of the registrant's inspectors to include, at a minimum, training
23 in organic certification procedures and other related issues
24 determined necessary and approved by the director and conducted
25 by a person recommended by the organic advisory committee and
26 acceptable to the director.

1 (j) Providing to the director the names and addresses of all
2 persons certified by the registrant not less than annually. A
3 certifying agent has a continuing duty to update names or pro-
4 ducts as deletions and additions occur.

5 (k) Allowing the director access during normal business
6 hours to relevant records including, but not limited to, business
7 records relating to issuance of the certification, certification
8 documents relating to clients, and laboratory analyses.

9 (l) Complying with any other reasonable and necessary
10 requirements imposed by the director to ensure compliance with
11 this act.

12 Sec. 19. (1) A person doing business in this state who
13 brings agricultural products into this state that purport to be
14 handled, sold, offered for sale, or represented as organic pro-
15 ducts must do so in compliance with this act. Such a person must
16 obtain a registration of their agricultural products in order to
17 conduct such business regarding organic products within this
18 state.

19 (2) A person handling, selling, offering to sell, or repre-
20 senting to bring into this state organic products shall register
21 their products with the department by submitting with his or her
22 application the proposed labels or placards for the organic pro-
23 ducts, proof of certification from a certifying agent registered
24 under this act, and submission of the appropriate registration
25 fee as further described in subsection (3).

26 (3) The director shall establish an organic product
27 registration fee in the amount sufficient to cover the costs of

1 administering this section and condition the registration upon
2 payment of the fee. The fee may be charged for a partial year.
3 The fee is due upon the beginning of the registration cycle
4 beginning March 1 each year and may be renewed within 30 days of
5 expiration of a current registration. The director may charge a
6 late fee of \$25.00 for registration of an organic product sold in
7 this state after expiration of the preceding registration but
8 before the issuance of a renewal registration.

9 Sec. 21. (1) By promulgation of rules pursuant to the
10 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
11 24.328, the director shall adopt standards that meet or exceed
12 the standards for organic products of the United States depart-
13 ment of agriculture agricultural marketing service, or equivalent
14 national organic program. The director may adopt additional
15 standards that he or she determines necessary to protect the
16 waters of this state, the state natural resources, or the integ-
17 rity of organic agriculture.

18 (2) Until the effective date of rules adopted under subsec-
19 tion (1), the standards contained in the organic crop improvement
20 association international, published 2000, are adopted by refer-
21 ence as interim standards. The director may adopt any other
22 standards he or she determines equivalent upon 10 days' notifica-
23 tion of such equivalency determination on the department internet
24 website, or other form of notice considered appropriate by the
25 director and designed to inform the industry and general public.

1 Sec. 23. (1) All labeling and advertisement of organic
2 products shall comply with the standards contained in this act
3 and rules adopted under this act.

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

6 (a) Has not been certified.

7 (b) Does not meet the Michigan organic standards.

8 (c) Is not certified by a Michigan registered certifying
9 agent.

10 (d) Is false or misleading in any particular, taking into
11 account representations made or suggested by statement, word,
12 design, device, sound, or any combination of statement, word,
13 design, device, or sound, or any other means as determined by the
14 director.

15 Sec. 25. (1) There is created an organic advisory committee
16 within the department. The committee shall advise the director
17 on the implementation of this act and the promulgation of rules
18 and shall do all of the following:

19 (a) Assist the director in developing the Michigan organic
20 standards.

21 (b) Annually review and recommend changes in the Michigan
22 organic standards.

23 (c) Review and recommend to the director rules and policies
24 governing the business of organic production and handling by
25 study and evaluation of organic production issues.

26 (d) Review, advise, and make recommendations to the director
27 on each application for registration of certifying agent.

1 (e) Review, advise, and make recommendations to the director
2 on each application for registration of a product.

3 (f) Formulate and recommend to the director actions and pol-
4 icies to promote organic products.

5 (2) The organic advisory committee shall consist of 11
6 voting members appointed by the director for 4-year terms. The
7 voting membership shall include 4 producers of organic food, 4
8 individuals who are either retailers, processors, or input sup-
9 pliers of organic food or organic fiber, and 3 members of the
10 general public who are consumers of organic products and are not
11 associated with the commercial production or handling of organic
12 food or organic fiber. Of the initial membership, 4 members
13 shall be appointed for a term of 4 years, 3 for a term of 3
14 years, 2 for a term of 2 years, and 1 for a term of 1 year. The
15 department may allow a representative of the United States
16 department of agriculture natural resources conservation service,
17 the Michigan state university cooperative extension service or
18 the agricultural experiment station, and a member of a recognized
19 environmental organization to serve as ex officio nonvoting
20 members.

21 (3) Members shall receive reimbursement for travel in the
22 amount provided for in the department of management and budget
23 regulations. If funds are available, the members are entitled to
24 receive per diem compensation in the amount up to, but not to
25 exceed, that recommended in the department of management and
26 budget regulations.

1 (4) The members, at the first meeting and annually
2 thereafter, shall elect officers and adopt rules of procedure.
3 Terms of officers are 1 year. A majority of the members are a
4 quorum and an act performed by a majority of the quorum is con-
5 sidered an official act of the committee.

6 (5) The committee shall meet at the call of the chair, at
7 the request of a majority of its members, at the request of the
8 department, or at such times as may be prescribed by its proce-
9 dural rules but shall meet at least twice a year. The proceed-
10 ings of the committee are subject to the open meetings act, 1976
11 PA 267, MCL 15.261 to 15.275. Any records, except those that may
12 be used to identify an individual person, are subject to the
13 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

14 Sec. 27. (1) The director, in administering and enforcing
15 this act, shall investigate complaints and initiate and conduct
16 investigations of alleged violations of this act. The director
17 may deny an application for or suspend or revoke registration of
18 a certifying agent or a product or take other action or utilize
19 other penalties or remedies as are available under this section.
20 The director, where feasible, shall seek the advice of the
21 organic advisory committee during enforcement proceedings.

22 (2) The director may promulgate rules under the administra-
23 tive procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
24 to enforce and implement this act.

25 (3) The director shall deny an application for or suspend or
26 revoke a registration issued for a certifying agent or a product
27 under this act for any of the following:

1 (a) Submission of an application or verification documents
2 that contain insufficient information upon which the department
3 can make an appropriate determination.

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

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

9 (d) Making a false representation.

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

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

14 (4) A proceeding to impose a sanction against a registered
15 certifying agent or registered product shall be conditioned upon
16 notice and an opportunity for a hearing and be conducted pursuant
17 to the administrative procedures act of 1969, 1969 PA 306, MCL
18 24.201 to 24.328.

19 (5) After notice and opportunity for a hearing, the direc-
20 tor, upon determining that a person or his or her agent has vio-
21 lated this act or a rule adopted under this act, may impose an
22 administrative fine of not more than \$1,000.00 for each
23 violation.

24 (6) The director may seize and take possession of such a
25 product. An organic or agricultural product not in compliance
26 with this act is subject to seizure upon a complaint filed in a
27 court of competent jurisdiction in the county where the product

1 is located. If the court determines the product to be in
2 violation and orders the condemnation of the product, it shall be
3 denatured, destroyed, relabeled, or otherwise disposed of in com-
4 pliance with the law. The court shall not order the disposition
5 of the product without giving the claimant an opportunity to
6 apply to the court for the release of the product or permission
7 to relabel the product in compliance with this act.

8 (7) This act does not require the director to revoke or sus-
9 pend a registration, report for prosecution, institute seizure or
10 proceedings, issue an order for withdrawal from distribution, or
11 take other administrative action as a result of a minor violation
12 of this act when the director determines that the public interest
13 is best served by suitable notice of warning in writing.

14 (8) The director may apply for temporary or permanent
15 injunctive relief, without bond, to restrain a person from vio-
16 lating or continuing to violate this act or a rule adopted under
17 this act notwithstanding the existence of other remedies at law.

18 (9) The director shall have free access at all reasonable
19 hours to any establishment or operation, including a vehicle used
20 to transport or hold agricultural or organic products, for the
21 purpose of inspecting the establishment, operation, or vehicle to
22 determine if this act has been violated. The director has secure
23 samples or specimens of any agricultural or organic product,
24 after paying or offering to pay for such samples or specimens, to
25 determine if this act is being violated. The director may
26 examine any records of the establishment, operation, or
27 certifying agent to obtain necessary and pertinent information.

1 (10) The director may issue and enforce a written printed
2 stop sale order to the owner or custodian or any organic or agri-
3 cultural product the director determines is in violation of this
4 act or rule adopted under this act. The order shall prohibit the
5 further sale, processing, or movement of the product except upon
6 the approval of the director and until the director has evidence
7 of compliance with the law and has issued a release from the stop
8 sale order. The owner or custodian of the agricultural product
9 may request a hearing under the administrative procedures act of
10 1969, 1969 PA 306, MCL 24.201 to 24.328.

11 Sec. 29. (1) A person who sells or offers or exposes for
12 sale an agricultural product in this state represented to be or
13 labeled as an organic product that has not been registered by a
14 certifying agent under this act is guilty of a misdemeanor pun-
15 ishable by a fine of not less than \$300.00 and not more than
16 \$5,000.00 for each offense, by imprisonment for not more than 90
17 days, or both.

18 (2) A person who violates this act or any rules adopted
19 under this act or otherwise impedes, hinders, or otherwise pre-
20 vents or attempts to prevent the director or his or her autho-
21 rized agent is guilty of a misdemeanor punishable by a fine of
22 not less than \$300.00 and not more than \$5,000.00 for each
23 offense, by imprisonment for not more than 90 days, or both.

24 (3) A person who knowingly violates this act or a rule
25 adopted under this act is guilty of a misdemeanor punishable by a
26 fine of not less than \$500.00 and not more than \$25,000.00 for

1 each offense, by imprisonment for not more than 90 days, or
2 both.

3 (4) It is the duty of a prosecuting attorney to whom any
4 violation is reported to cause appropriate proceedings to be ini-
5 tiated and prosecuted in a court of competent jurisdiction.

6 Sec. 31. This act takes effect 180 days after the date of
7 its enactment.