

Act No. 316
Public Acts of 2000
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senator Stille

ENROLLED SENATE BILL No. 1273

AN ACT 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:

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

Sec. 3. As used in this act:

(a) "Agricultural product" means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed for human or livestock use or consumption.

(b) "Certification" or "certified" means a determination made by a registered certifying agent that an agricultural product has been produced and handled in compliance with the Michigan organic standards.

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

(d) "Commingling" means the mixing together of or physical contact between unpackaged organic products and nonorganic agricultural products during production or handling.

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

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

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

Sec. 5. As used in this act:

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

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

(c) “Handler” means any person engaged in the business of handling agricultural products as organic products including producers who handle crops or livestock of their own production.

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

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

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

(g) “Livestock” means any cattle, sheep, goat, swine, poultry, captive cervidae, ratites, or equine animals used for food, fiber, feed, or other agricultural based consumer products, wild or domesticated game, or other nonplant life including fish or bees.

Sec. 7. As used in this act:

(a) “Michigan organic standards” means those organic production and handling standards defined by this act, rules adopted under this act, or both, that are designed to combine organic production or handling practices and an audit trail that will ensure the integrity of organic products from the producer to the consumer.

(b) “Organic” means a labeling term referring to an agricultural product produced in accordance with the standards described in this act, rules adopted under this act, or both.

(c) “Organic advisory committee” means the committee created under section 25.

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

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

(f) “Organic product” means agricultural products including, but not limited to, crops, livestock, livestock products, or other agricultural products that are produced organically for human or livestock use or consumption. Organic products does not include personal care products.

(g) “Person” means an individual, group of individuals, contractor, corporation, limited liability company, partnership, joint venture, cooperative, community supported agricultural entity, or any other legal entity.

(h) “Processing” means processes that include, but are not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or other manufacturing process and includes the packaging, canning, jarring, or otherwise enclosing of food in a container.

(i) “Producer” means a person who engages in the business of growing or producing agricultural products.

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

Sec. 9. As used in this act:

(a) “Retail food establishment” means a restaurant, delicatessen, bakery, grocery store, or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service or a processed or prepared raw or ready-to-eat food that is considered to be or is within the definition of handling operation.

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

(c) “Synthetic” means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources except those substances created by naturally occurring biological processes.

(d) “Waters of the state” means ground waters, lakes, rivers, and streams and all other watercourses and waters within the jurisdiction of the state and also the Great Lakes bordering the state.

Sec. 11. (1) The department may engage in or conduct activities to regulate, promote, and assist the organic industry in the manner provided by law. The department has the authority to enter into reciprocity agreements with other states’ departments of agriculture and the United States department of agriculture and may require certain conditions and records be met and maintained by certifying agents. The department may work with the organic advisory

committee and national and state recognized certification groups and programs in formulating its policies, rules, and requirements.

(2) A person shall not sell, offer for sale, or represent an agricultural product to be an organic product unless the agricultural product has been certified. The organic product must be certified by a registered certifying agent.

(3) A person shall not certify an agricultural product as an organic product unless that person is registered with the department as a certifying agent.

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

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

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

(b) A handler.

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

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

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

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

(b) Implements measures necessary to protect organic products from coming into contact with prohibited substances.

(c) Maintains records sufficient to prove that organic products are certified and registered as required by this act, rules adopted under this act, or both.

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

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

(f) Clearly labels, posts, or maintains original organic certification information or identification of the organic product it handles.

(4) Retail food establishments advertising as organic, labeling as organic, or making organic claims about a final product, their operation, or a particular part of their operation are required to be certified or registered.

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

(a) Their final product.

(b) An ingredient.

(c) Their operation.

(d) A particular part of their operation.

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

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 and demonstration of the applicant of compliance with section 17, 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. The registration fee shall be an amount as determined by the commission of agriculture.

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

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

- (b) A requirement that producers or handlers that will be certified establish an organic plan.
- (c) The establishing and following of a procedure that allows producers and handlers to appeal an adverse certification determination.
- (d) A requirement that each person it certifies demonstrate to the satisfaction of the certifying agent on an annual basis that the person has produced, handled, sold, offered for sale, advertised, or labeled as organic an agricultural product in compliance with the standards imposed under this act.
- (e) Providing for at least an annual on-site inspection of each person it certified.
- (f) A requirement for the conduct of residue testing of organic products that have been produced on certified organic farms and handled through certified handling operations to determine whether such products contain any prohibited substances if determined necessary by the director.
- (g) The following of adequate procedures necessary to carry out the certifying duties of this act.
- (h) Protecting against conflict of interest.
- (i) The establishing of a process that ensures impartiality of the registrant's inspectors to include, at a minimum, training in organic certification procedures and other related issues determined necessary and approved by the director.
- (j) Providing to the director the names, addresses, and agricultural products certified for all persons certified by the registrant not less than annually or upon request of the director. A certifying agent has a continuing duty to update names or products as deletions and additions occur.
- (k) Allowing the director access during normal business hours to relevant records including, but not limited to, business records relating to issuance of the certification, certification documents relating to clients, and laboratory analyses.
- (l) Complying with any other reasonable and necessary requirements imposed by the director to ensure compliance with this act.

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

- (a) The name and address of the registrant.
 - (b) The nature of the registrant's business.
 - (c) A listing of the brands or agricultural products, or both, that are sold, offered for sale, or represented as organic.
 - (d) The names and addresses of all certifying agents providing certification.
 - (e) Sufficient information to enable the director to verify the registration fee to be paid.
- (2) The registration fee is based upon gross organic sales from the calendar year that precedes the date of registration or, if no sales were made in the preceding year, based upon the expected sales during the calendar months following the date of registration.
- (3) Fee schedule is as follows:

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

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

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

(2) The organic products fund shall receive as revenue money as appropriated by the legislature, all registration fees collected under this act, and money from any other source to be forwarded by the director to the state treasurer for deposit into the organic products fund. Any administrative fines and penalties collected by the department under this act shall be deposited into the general fund, and it is the intent of the legislature that an amount equal to the annual amount of administrative fines and penalties collected by the department be appropriated to the department for purposes of this act.

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

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

Sec. 21. (1) By promulgation of rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director shall adopt standards that meet or exceed the standards for organic products of the United States department of agriculture agricultural marketing service, or equivalent national organic program. The standards shall include a list of prohibited substances. In no case shall this act, the standards, or both, permit the use of synthetic chemicals, genetically modified organisms, sewage sludge, ionizing radiation, or any combination of those substances. The director shall consult with the organic advisory committee regarding the development of and changes to the Michigan organic standards. The director may adopt additional standards that he or she determines necessary, including, but not limited to, protecting the waters of this state, the state natural resources, or the integrity of organic agriculture.

(2) Until the effective date of rules adopted under subsection (1), the international standards of the organic crop improvement association international, as revised February 1999, and the certification standards of the organic growers of Michigan, as revised March 7, 2000 and adopted May 28, 2000, are adopted by reference as interim standards. The director may adopt any other standards he or she determines substantially equivalent upon 10 days' notification of such determination on the department internet website, or other form of notice considered appropriate by the director and designed to inform the industry and general public.

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

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

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

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

(a) Is false or misleading in any particular, taking into account representations made or suggested by statement, work, design, device, sound, or any combination of statement, work, design, or sound, or any other means as determined by the director.

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

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

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

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

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

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

(d) Annually conduct or cause to be conducted a comprehensive review of the organic product registration and certifying agent registration programs and advise and recommend to the director any necessary changes to the programs.

(e) Formulate and recommend to the director actions and policies to promote organic products.

(2) The organic advisory committee shall consist of 11 voting members appointed by the director for 4-year terms. The voting membership shall include 4 producers of organic food, 4 individuals who are either retail food establishments, processors, or input suppliers of organic food or organic fiber, and 3 members of the general public who are consumers of organic products and are not associated with the commercial production or handling of organic food or organic fiber. Of the initial membership, 4 members shall be appointed for a term of 4 years, 3 for a term of 3 years, 2 for a term of 2 years, and 2 for a term of 1 year. The department may allow a representative of the United States department of agriculture natural resources conservation service, the Michigan state university cooperative extension service or the

agricultural experiment station, the director, and a member of a recognized environmental organization to serve as ex officio nonvoting members.

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

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

(5) The committee shall meet at the call of the chair, at the request of a majority of its members, at the request of the department, or at such times as may be prescribed by its procedural rules. The proceedings of the committee are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Any records, except those that may be used to identify an individual's financial status or proprietary information, are subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 27. (1) The director, in administering and enforcing this act, shall investigate complaints and initiate and conduct investigations of alleged violations of this act. The director may deny an application for or suspend or revoke registration of a certifying agent or a handler or take other action or utilize other penalties or remedies as are available under this section.

(2) The director may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to enforce and implement this act.

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

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

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

(c) Engaging in fraudulent or deceptive practices or as evasion or attempt at evasion of this act or standards and procedures established pursuant to this act.

(d) Making a false representation.

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

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

(4) The director may seize and take possession of an organic or agricultural product not in compliance with this act. An organic or agricultural product not in compliance with this act is subject to seizure upon a complaint filed in a court of competent jurisdiction in the county where the product is located. If the court determines the product to be in violation and orders the condemnation of the product, it shall be denatured, destroyed, relabeled, or otherwise disposed of in compliance with the law. The court shall not order the disposition of the product without giving the claimant an opportunity to apply to the court for the release of the product or permission to relabel the product in compliance with this act.

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

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

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

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

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

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

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

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

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Gay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.