

HOUSE BILL No. 5347

October 20, 2005, Introduced by Reps. Stahl, Emmons, Sheltroun, Mayes, Hoogendyk, Nitz, Baxter, Hummel and Drolet and referred to the Committee on Agriculture.

A bill to amend 2000 PA 316, entitled "Michigan organic products act," by amending sections 7, 11, 13, 21, 22, 23, 25, 27, and 29 (MCL 286.907, 286.911, 286.913, 286.921, 286.922, 286.923, 286.925, 286.927, and 286.929).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. As used in this act:

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

8 (b) "Organic" means a labeling term referring to an

1 agricultural product produced in accordance with the standards
2 described in this act. ~~—, rules adopted under this act, or both.~~

3 (c) "Organic advisory committee" means the committee created
4 under section 25.

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

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

18 (f) "Organic product" means agricultural products including,
19 but not limited to, crops, livestock, livestock products, or other
20 agricultural products that are produced organically for human or
21 livestock use or consumption. Organic products does not include
22 personal care products.

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

27 (h) "Processing" means processes that include, but are not

1 limited to, cooking, baking, heating, drying, mixing, grinding,
2 churning, separating, extracting, cutting, fermenting,
3 eviscerating, preserving, dehydrating, freezing, or other
4 manufacturing process and includes the packaging, canning, jarring,
5 or otherwise enclosing of food in a container.

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

8 (j) "Prohibited substance" means a substance whose use in any
9 aspect of organic production or handling is prohibited or not
10 provided for under this act. ~~—, rules adopted under this act, or~~
11 ~~both.~~

12 Sec. 11. (1) The department may engage in or conduct
13 activities to regulate, promote, and assist the organic industry in
14 the manner provided by law. The department has the authority to
15 enter into reciprocity agreements with other states' departments of
16 agriculture and the United States department of agriculture and may
17 require certain conditions and records be met and maintained by
18 certifying agents. The department may work with the organic
19 advisory committee and national and state recognized certification
20 groups and programs in formulating its policies ~~—, rules,~~ and
21 requirements.

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

26 (3) A person shall not certify an agricultural product as an
27 organic product unless that person is registered with the

1 department as a certifying agent.

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

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

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

10 (b) A handler.

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

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

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

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

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

26 (c) Maintains records sufficient to prove that organic
27 products are certified and registered as required by this act. —

1 ~~rules adopted under this act, or both.~~

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

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

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

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

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

18 (a) Their final product.

19 (b) An ingredient.

20 (c) Their operation.

21 (d) A particular part of their operation.

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

1 Sec. 21. ~~(1) By promulgation of rules pursuant to the~~
2 ~~administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to~~
3 ~~24.328, the director shall adopt standards that meet or exceed the~~
4 ~~standards for organic products of the United States department of~~
5 ~~agriculture agricultural marketing service, or equivalent national~~
6 ~~organic program. The standards shall include a list of prohibited~~
7 ~~substances. In no case shall this act, the standards, or both,~~
8 ~~permit the use of synthetic chemicals, genetically modified~~
9 ~~organisms, sewage sludge, ionizing radiation, or any combination of~~
10 ~~those substances. The director shall consult with the organic~~
11 ~~advisory committee regarding the development of and changes to the~~
12 ~~Michigan organic standards. The director may adopt additional~~
13 ~~standards that he or she determines necessary, including, but not~~
14 ~~limited to, protecting the waters of this state, the state natural~~
15 ~~resources, or the integrity of organic agriculture.~~

16 ~~— (2) Until the effective date of rules adopted under subsection~~
17 ~~(1), the~~ **THE** international standards of the organic crop
18 improvement association international, as revised February 1999,
19 and the certification standards of the organic growers of Michigan,
20 as revised March 7, 2000 and adopted May 28, 2000, are adopted by
21 reference as ~~interim~~ standards. ~~The director may adopt any other~~
22 ~~standards he or she determines substantially equivalent upon 10~~
23 ~~days' notification of such 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.~~

26 Sec. 22. (1) The department may enter into a reciprocity
27 agreement with a state or country that has an organic program that

1 has been determined by the director to be substantially equivalent.
2 This includes, but is not limited to, certification standards for
3 organic producers or handlers or products, licensure, or other
4 state regulation of certifying agents.

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) The organic advisory committee shall consist of 11 voting
19 members appointed by the director for 4-year terms. The voting
20 membership shall include 4 producers of organic food, 4 individuals
21 who are either retail food establishments, processors, or input
22 suppliers of organic food or organic fiber, and 3 members of the
23 general public who are consumers of organic products and are not
24 associated with the commercial production or handling of organic
25 food or organic fiber. Of the initial membership, 4 members shall
26 be appointed for a term of 4 years, 3 for a term of 3 years, 2 for
27 a term of 2 years, and 2 for a term of 1 year. The department may

1 allow a representative of the United States department of
2 agriculture natural resources conservation service, the Michigan
3 state university cooperative extension service or the agricultural
4 experiment station, the director, and a member of a recognized
5 environmental organization to serve as ex officio nonvoting
6 members.

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

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

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

23 Sec. 27. (1) The director, in administering and enforcing this
24 act, shall investigate complaints and initiate and conduct
25 investigations of alleged violations of this act. The director may
26 deny an application for or suspend or revoke registration of a
27 certifying agent or a handler or take other action or utilize other

1 penalties or remedies as are available under this section.

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

5 (2) ~~—(3)—~~ The director may deny an application for or suspend
6 or revoke a registration issued for a certifying agent or a handler
7 under this act for any of the following:

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

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

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

16 (d) Making a false representation.

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

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

21 (3) ~~—(4)—~~ The director may seize and take possession of an
22 organic or agricultural product not in compliance with this act. An
23 organic or agricultural product not in compliance with this act is
24 subject to seizure upon a complaint filed in a court of competent
25 jurisdiction in the county where the product is located. If the
26 court determines the product to be in violation and orders the
27 condemnation of the product, it shall be denatured, destroyed,

1 relabeled, or otherwise disposed of in compliance with the law. The
2 court shall not order the disposition of the product without giving
3 the claimant an opportunity to apply to the court for the release
4 of the product or permission to relabel the product in compliance
5 with this act.

6 (4) ~~-(5)-~~ This act does not require the director to revoke or
7 suspend a registration, report for prosecution, institute seizure
8 or proceedings, issue an order for withdrawal from distribution, or
9 take other administrative action as a result of a minor violation
10 of this act when the director determines that the public interest
11 is best served by suitable notice of warning in writing.

12 (5) ~~-(6)-~~ The director may apply for temporary or permanent
13 injunctive relief, without bond, to restrain a person from
14 violating or continuing to violate this act ~~or a rule adopted~~
15 ~~under this act~~ notwithstanding the existence of other remedies at
16 law.

17 (6) ~~-(7)-~~ The director shall have free access at all
18 reasonable hours to any establishment or operation, including a
19 vehicle used to transport or hold agricultural or organic products,
20 for the purpose of inspecting the establishment, operation, or
21 vehicle to determine if this act has been violated. The director
22 may secure samples or specimens of any agricultural or organic
23 product, after paying or offering to pay for such samples or
24 specimens, to determine if this act is being violated. The director
25 may examine any records of the establishment, operation, or
26 certifying agent to obtain necessary and pertinent information.

27 (7) ~~-(8)-~~ The director may issue and enforce a written printed

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

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

16 (2) Except as otherwise provided for under this act, a person
17 subject to this act who violates any provision of this act ~~or~~
18 ~~rules promulgated under this act~~ is guilty of a misdemeanor
19 punishable by a fine of not less than \$250.00 or more than
20 \$2,500.00 or by imprisonment for not more than 90 days, or both.

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

26 (4) Notwithstanding the other provisions of this act, a person
27 who knowingly violates section 23(2) and section ~~27(3)(e)~~

1 27(2)(C) is guilty of a felony punishable by imprisonment for not
2 more than 4 years or by a fine of not more than \$10,000.00 plus
3 twice the amount of any economic benefit associated with the
4 violation, or both.