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SFA



BILL ANALYSIS

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Senate Bill 1273 (as enrolled)
Sponsor: Senator Leon Stille
Senate Committee: Farming, Agribusiness and Food Systems
House Committee: Agriculture and Resource Management

PUBLIC ACT 316 of 2000

Date Completed: 2-21-01

RATIONALE

In September 1998, Michigan Department of Agriculture Director Dan Wyant created the Michigan Organic Advisory Committee to develop a strategic plan that would serve as a framework to advance a system of production, processing, and marketing products of organic agriculture in the State. In June 1999, the Committee issued a report, entitled "Advancing Organic Agriculture in Michigan", in which it recommended that a registration program be established in the Department to protect the integrity of organic products. Recommendations for the program included certification of all Michigan producers, processors, and handlers of organic products; registration of certifying agents; and the establishment of an advisory committee to help in the development of organic standards, recommend rules on organic production and handling, and recommend activities to promote organic products. In consideration of the Committee's recommendations, some people suggested that a regulatory program be established in the State to ensure the integrity of organic products produced and sold in and exported from Michigan.

CONTENT

The bill creates the "Michigan Organic Products Act" to do the following:

- Prohibit a person from selling or representing an agricultural product as an organic product unless it has been certified.
- Require certification, by a certifying agent, of producers who sell organic products to the public; handlers; and certain handling operations.
- Require a person who wants to be a certifying agent to register with the Michigan Department of Agriculture (MDA), pay an annual registration fee, and meet certain certification requirements.
- Provide for the registration of handlers and establish a schedule of registration fees based on gross organic sales.

- Require the MDA Director to adopt standards that meet or exceed certain Federal standards or equivalent standards established by a national organic program.
- Create the Organic Advisory Committee within the MDA to assist in the development of organic standards; review and recommend rules governing organic production and handling; review organic product and certifying agent registration programs; and recommend actions to promote organic products.
- Create the "Organic Products Fund" and allow it to be used to administer and enforce the Act, and to develop and improve organic training and education programs.
- Require the labeling and advertisement of organic products to comply with standards in the Act and rules.
- Permit the Director to deny, suspend, or revoke a registration for a certifying agent or a handler, and to seize an organic or agricultural product that does not comply with the Act.
- Permit the Director to issue and enforce a stop sale order to prohibit the sale, processing, or movement of an organic or agricultural product determined to violate the Act.
- Establish criminal penalties for violations of the Act, and permit the Director to impose an administrative fine for a violation.

The bill will take effect October 1, 2001.

Departmental Authority

The Department of Agriculture may engage in or conduct activities to regulate, promote, and assist the organic industry in the manner provided by law. The MDA has the authority to enter into reciprocity agreements with other states' departments of agriculture and the U.S. Department of Agriculture and require that certain conditions be met and

records be maintained by certifying agents. The MDA may work with the Organic Advisory Committee and national and State-recognized certification groups and programs in formulating its policies, rules, and requirements.

Certification and Registration

An individual may not sell, offer for sale, or represent an agricultural product to be an organic product unless it has been certified by a certifying agent. ("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. "Organic product" means agricultural products, including crops, livestock products, or other agricultural products that are produced organically for human or livestock use or consumption. The term does not include personal care products.)

A person may not certify an agricultural product as an organic product unless the person is registered with the MDA as a certifying agent. A handler that sells, offers for sale, or represents an agricultural product to be an organic product also must register with the Department. ("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.)

The following persons must be certified by a certifying agent registered by the MDA in order to engage in the production, sale, or handling of organic products: a producer who sells, intends to sell, or represents that he or she is engaged in the business of selling to the public; a handler; and, a handling operation except as otherwise provided in the Act. ("Handling operation" means an operation or portion of an operation that sells, transports, receives, or otherwise acquires agricultural products as organic products and processes, packages, or stores them.)

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 it as organic are not required to be certified or registered. ("Processing" means processes that include cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or other manufacturing process, including the packaging, canning, jarring, or otherwise enclosing of food in a container.)

A handling operation not required to be certified must

demonstrate to the Director's satisfaction that it strictly complies with all of the following:

- Implements measures necessary to prevent the commingling of organic and nonorganic agricultural products, and to protect organic products from coming into contact with prohibited substances.
- Maintains records sufficient to prove that organic products are certified as required by the Act and/or rules adopted under it.
- Verifies quantities of organic products in a manner acceptable to the Director.
- Maintains records sufficient to verify compliance with the Act and allows the Director access to them for inspection and copying during normal business hours to determine compliance with the Act.
- Clearly labels, posts, or maintains original organic certification information or identification of the organic product it handles.

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 must be certified or registered. 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 the Act: their final product, an ingredient, their operation, or a particular part of their operation. Retail food establishments not required to be certified or registered may offer for sale agricultural products that contain organic and nonorganic components and may use a phrase such as "made with certified organic (specified ingredients)" if those organic components are certified in accordance with the Act and the Act's certification requirements are met.

Certifying Agent

An person who wants to act as a certifying agent must register with the MDA on a form provided by the Department and pay an annual nonrefundable registration fee established by the MDA. Upon payment of the appropriate annual registration fee and the applicant's demonstration of compliance with the Act's registration requirements, the MDA must issue a registration to the applicant for a one-year term. A registration expires December 1 of each year and may be renewed upon submission of a renewal application and payment of the appropriate annual registration fee. The fee must be an amount as determined by the Agriculture Commission. To obtain a registration as a certifying agent, an applicant must demonstrate all of the following to the Director's satisfaction:

- Certification standards that meet or exceed the Michigan organic standards.

- A requirement that producers or handlers that will be certified establish an organic plan.
- The establishment of and compliance with a procedure that allows producers and handlers to appeal an adverse certification determination.
- A requirement that each person it certifies demonstrate to the satisfaction of the certifying agent on an annual basis that he or she has produced, handled, sold, offered for sale, advertised, or labeled as organic an agricultural product in compliance with the standards imposed under the Act.
- Provision for at least an annual on-site inspection of each person it certified.
- 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 these products contain any prohibited substances if determined necessary by the Director.
- Compliance with adequate procedures necessary to carry out the Act's certifying duties.
- Protection against conflict of interest.
- Establishment 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.
- Provision to the Director of the names, addresses, and agricultural products certified for all persons certified by the registrant at least annually or upon the Director's request. A certifying agent has a continuing duty to update names or products as deletions and additions occur.
- Allowing the Director access during normal business hours to relevant records including business records relating to issuance of the certification, certification documents relating to clients, and laboratory analyses.
- Compliance with any other reasonable and necessary requirements imposed by the Director to ensure compliance with the Act.

Handler Registration and Fees

A handler required to be registered under the Act must provide the following information on its registration application: the registrant's name and address; the nature of the registrant's business; a list of the brands and/or agricultural products that are sold, offered for sale, or represented as organic; the names and addresses of all certifying agents providing certification; and, sufficient information to enable the Director to verify the registration fee to be paid.

The registration fee must be based on gross organic sales from the calendar year that precedes the

registration date or, if no sales were made in the preceding year, based on the expected sales during the calendar months following the registration date. The 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

To the extent feasible, the Director must coordinate the registration and fee collection procedures of these provisions with the registration process for certifying agents.

Organic Products Fund

The Act establishes an Organic Products Fund in the State Treasury. The Fund may be spent only to enforce the Act and to develop and improve organic training and education programs. The Fund is to receive as revenue money appropriated by the Legislature, all registration fees collected under the Act, and money from any other source to be forwarded by the Director to the State Treasurer for deposit in the Fund. Any administrative fines and penalties collected by the MDA under the Act must be deposited into the General Fund. The Act also specifies that it is the intent of the Legislature that an amount equal to the annual amount of administrative fines and penalties collected by the MDA be appropriated to the Department for the Act's purposes. Money in the Organic Products Fund that is not spent at the end of the fiscal year must be carried over to the succeeding fiscal year and may not revert to the General Fund.

Organic Products Standards

By promulgation of rules pursuant to the Administrative Procedures Act (APA), the Director must adopt standards that meet or exceed the standards for organic products of the U.S. Department of Agriculture (USDA) Agricultural Marketing Service, or equivalent national organic program. The standards must include a list of prohibited substances. The Act specifies that in no case may it and/or the standards permit the use of synthetic chemicals, genetically modified organisms, sewage sludge, ionizing radiation, or any combination of these substances. The Director must 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 protecting the waters of the State, the State natural resources, or the integrity of organic agriculture.

The Act specifies that until the effective date of the rules, 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 that he or she determines substantially equivalent upon 10 days' notification of that determination on the MDA Internet web site, or other form of notice considered appropriate by the Director and designed to inform the industry and general public.

The Director may enter into a reciprocity agreement with a state or country that has an organic program that he or she determines to be substantially equivalent. This includes certification standards for organic producers or handlers or products, licensure, or other state regulation of certifying agents. In a state or country that the Director determines has no organic program, including 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 the Act and/or rules adopted under it.

Product Labeling

All labeling and advertisement of organic products must comply with the requirements of the Act and rules adopted under it. The Director is required to consider as mislabeled an organic product meeting any of the following circumstances:

- 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.
- In the case of a product that originated or was produced in Michigan, does not meet the Michigan organic standards and/or is not certified by a Michigan registered certifying agent.
- In the case of a product that is brought into the State, has not been certified organic.

Organic Advisory Committee

The Act creates the Organic Advisory Committee within the MDA. The Committee is required to advise the Director on the Act's implementation and the promulgation of rules, and may do all of the following: assist the Director in developing the Michigan organic standards and recommend appropriate equivalent interim standards; annually

review and recommend changes in the Michigan organic standards, if necessary; 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; 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; and, formulate and recommend to the Director actions and policies to promote organic products.

The Committee is to consist of 11 voting members appointed by the Director for four-year terms. The voting members must include four producers of organic food; four individuals who are either retail food establishments, processors, or input suppliers of organic food or organic fiber; and three 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 fiber. Of the initial membership, four members must be appointed for a term of four years, three for three years, two for two years, and two for one year. The MDA may allow a representative of the USDA 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.

Members must be reimbursed for travel in the amount provided for in the Department of Management and Budget regulations. The committee may meet at the call of the chair (elected by the members), at the request of a majority of its members, at the request of the MDA, or at times prescribed by its procedural rules. Committee proceedings are subject to the Open Meetings Act. 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.

Compliance/Violations

In administering and enforcing the Organic Products Act, the Director is required to investigate complaints and initiate and conduct investigations of alleged violations of the 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 use other penalties or remedies available under the Act. The Director may promulgate rules under the APA to enforce and implement the Act.

The Director may deny an application for or suspend or revoke a registration issued for a certifying agent or a handler under the Act for any of the following:

submitting an application or verification documents that contain insufficient information upon which the MDA may make an appropriate determination; submitting or providing verification documents that demonstrate noncompliance with any provision of the Act; engaging in fraudulent or deceptive practices or evasion or attempt at evasion of the Act or standards and procedures established pursuant to the Act; making a false representation; violating or refusing to comply with the Act or a Director's order; or, having had registration revoked, suspended, or denied under the Act within the preceding five years.

The Director may seize and take possession of an agricultural or organic product that is not in compliance with the Act. A noncomplying product is subject to seizure upon a complaint filed in a court in the county where the product is located. If the court determines the product to be in violation and orders its condemnation, the product must be denatured, destroyed, relabeled, or otherwise disposed of in compliance with the law. The court may not order the product's disposition without giving the claimant an opportunity to apply to the court for the release of the product or permission to relabel it in compliance with the bill.

The Act specifies that it 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 the Act when the Director determines that the public interest is best served by suitable notice of warning in writing. The Director may apply for temporary or permanent injunctive relief, without bond, to restrain an individual from violating or continuing to violate the Act or a rule adopted under it notwithstanding the existence of other remedies at law.

The Director must 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 the Act has been violated. The Director may secure samples or specimens of any agricultural or organic product, after paying or offering to pay them, to determine if the Act is being violated. The Director may examine any records of the establishment, operation, or certifying agent to obtain necessary and pertinent information.

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 the Act or a rule adopted under it. The order must prohibit the further sale, processing, or movement of the product except upon the approval of the Director and until he or she 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 APA.

Upon finding that an individual violated the Act or a rule promulgated under it, the Department may impose an administrative fine of up to \$500 for the first offense and up to \$1,000 for a second or subsequent offense and the actual costs of the investigation of the violation. Except as otherwise provided under the Act, an individual who violates the Act or rules is guilty of a misdemeanor punishable by a fine of at least \$250 but not more than \$2,500 and/or by imprisonment for up to 90 days. Notwithstanding the other provisions of the Act, an individual who knowingly mislabels an organic product and engages in fraudulent or deceptive practices or evasion or attempted evasion of the Act or standards and procedures established under it is guilty of felony punishable by imprisonment for not more than four years and/or a fine of up to \$10,000 plus twice the amount of any economic benefit associated with the violation.

In defense of an action filed under the 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 had been in compliance with the Act and rules promulgated under it.

MCL 286.901-286.931

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Recognized as an alternative to conventional farming, organic farming prohibits the use of synthetic chemicals, genetically modified organisms, and ionizing radiation. A growing number of farmers are opting to farm more organically for a number of reasons, including protection of their own health and the environment. Many consumers are buying organic foods for similar reasons, including less exposure to pesticides and a healthier, and possibly more nutritious, food product. Nationally, hundreds of farms and processors, who supply the organic food market, operate under standards developed by certification organizations. In addition, 14 states operate a state organic certification program and up to 20 states have standards for organic certification. In Michigan, producers and handlers of organic products are not certified by the State but by third party certifying agents. Despite this system, some people who have not sought certification claim that their products and handling processes are organic.

The bill incorporates the current certification process and prohibits a person from selling or representing an agricultural product as an organic product unless it has been certified as organic by a certifying agent who is registered with the Department. Thus, certification will be required for all Michigan producers, processors, and handlers of organic products, and only those who are certified may use the term "organic" in their labeling or advertising. Furthermore, certifying agents in the State must meet a minimum set of standards to be registered with the Department.

Supporting Argument

The USDA recently released national standards for growing and processing organic products. According to officials at the MDA, the Federal regulations establish a system of third-party certification, which is required in Michigan under the bill. The certification program established in the bill and the Federal program complement each other, according to the MDA, and the State is seeking Federal approval of the new program.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill will result in increased administrative costs for the Michigan Department of Agriculture

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associated with the regulation, promotion, and assistance of the organic products industry. The new Organic Products Fund will receive all registration fees. Administrative fines and penalties collected under the bill will be deposited in the General Fund. The money in the Organic Products Fund and (subject to appropriation) any administrative fines and penalties deposited in the General Fund are earmarked for the administration and enforcement of the Act. The amount of revenue collected from registration fees will be based on the fee schedule and number of persons applying for registration and paying the required fees. It is estimated that the revenue generated will be sufficient to cover the cost of administering the registrations under the Act; however, there are no estimates of the exact fiscal impact at this time.

There also will be administrative costs associated with the Organic Advisory Committee created within the Department of Agriculture.

The criminal penalties will have an indeterminate fiscal impact on State and local government. There are no data available to indicate how many offenders might be convicted of violating the Act or the rules promulgated under it. To the extent that an offense is a misdemeanor, local units of government will receive the fine revenue or incur the costs of incarceration.

Additionally, there are no data available to indicate how many offenders might be convicted of fraudulent practices or knowingly mislabeling products. The felony offenses will carry a maximum penalty of four years' incarceration and/or a \$10,000 fine. Assuming that each year one offender is convicted and sentenced to a minimum term of 2.7 years, and serves the minimum sentence, given that average annual cost of incarceration is \$22,000, the cost to the State for incarceration will be \$59,400.

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