

CHAPTER 650

H.B. No. 2446

AN ACT

relating to the establishment of an organic standards and certification program; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 2, Agriculture Code, is amended by adding Chapter 18 to read as follows:

CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

Sec. 18.001. *DEFINITIONS. In this chapter:*

(1) “Distributor” means a person engaged in the business of selling food or fiber for resale, including a wholesaler, broker, packer, repacker, shipper, or shipping agent.

(2) “Logo” means the department’s copyrighted “Texas Department of Agriculture Certified Organic” or “Texas Department of Agriculture Organic Certification Pending—Transitional” logotype.

(3) “Organic certifying agent” means a private organic certification organization accredited under this chapter.

(4) “Organic farming” means a system of ecological soil management that relies on building humus levels through crop rotations, recycling organic wastes, and applying balanced mineral amendments and that uses, when necessary, mechanical, botanical, or biological controls with minimum adverse effects on health and environment.

(5) “Organic food” includes only food that is produced under a system of organic farming and processed, packaged, transported, and stored to retain maximum nutritional value without the use of artificial preservatives, coloring or other additives, ionizing radiation, or synthetic pesticides.

(6) “Organic fiber” includes only fiber that is produced under a system of organic farming and processed, packaged, transported, and stored to maintain segregation and prevention of contamination from other fiber or synthetic pesticides, prohibited defoliant, or desiccants.

(7) “Processor” means a person who is engaged in the business of manufacturing raw agricultural commodities into food, feed, or fiber products.

(8) “Producer” means a person who is engaged in the business of growing or producing food, feed, or fiber.

(9) “Retailer” means a person, other than a restaurant operator, who is engaged in the business of selling food at retail, other than at a restaurant, to its ultimate consumer.

Sec. 18.002. *RULES. The department may adopt rules necessary for the enforcement and administration of this chapter.*

Sec. 18.003. *ORGANIC CERTIFICATION. (a) The department shall certify producers, processors, distributors, and retailers of organic food and fiber in this state. The department by rule shall adopt minimum standards for certification under this chapter.*

(b) A person may apply for an organic certification, or a renewal of an organic certification, by submitting an application and a nonrefundable annual fee prescribed by the department.

(c) An organic certification expires on August 31 of each year. A person who fails to submit a renewal fee on or before the expiration date of the certification must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

(d) A person who is certified under this chapter may use department logos as provided by department rule.

Sec. 18.004. **ORGANIC CERTIFYING AGENT ACCREDITATION PROGRAM.** (a) The department by rule may accredit a person as an organic certifying agent. On receipt of a certificate of accreditation under this section, an organic certifying agent may certify for the department a producer, processor, distributor, or retailer of organic food or fiber under this chapter.

(b) A person may apply for a certificate of accreditation, or a renewal of a certificate of accreditation, by submitting an application and a nonrefundable annual fee prescribed by the department.

(c) The department may issue a certificate of accreditation under this section only if it determines that the applicant's certification standards are equivalent to department certification standards.

(d) A certificate of accreditation expires on the first anniversary of the date of issuance. A person who fails to submit a renewal fee on or before the expiration date of the certificate of accreditation must pay, in addition to the renewal fee, the late fee provided by Section 12.024 of this code.

(e) An organic certifying agent may not:

(1) provide an organic certification for a person with whom the organic certifying agent, or an employee of the organic certifying agent, has, or has had, a commercial relationship, including providing consulting services;

(2) accept payment, gifts, or other favors of any kind from a person seeking certification, other than fees permitted by this chapter; or

(3) charge a fee other than a fee prescribed by this chapter for providing advice about organic practices or techniques.

Sec. 18.005. **USE OF TERM "ORGANIC."** A person may not label, market, advertise, or represent as "organic" any food or fiber that is sold, kept, offered, or exposed for sale, unless that person is:

(1) certified directly by the department under Section 18.003 of this code; or

(2) certified by an organic certifying agent under Section 18.004 of this code.

Sec. 18.006. **FEES.** (a) The department may charge an annual fee not to exceed \$2,500 for each applicant certified as a producer, distributor, or retailer and a fee not to exceed \$5,000 for each applicant certified as a processor of organic food or fiber produced in this state.

(b) The department may charge an annual fee not to exceed \$2,500 for each applicant certified as a distributor or retailer and a fee not to exceed \$5,000 for each applicant certified as a processor of organic food or fiber produced outside of this state.

(c) The department may charge an annual fee not to exceed \$2,500 for a person who obtains a certificate of accreditation as an organic certifying agent.

(d) The department shall set fees under this chapter in amounts that enable it to recover the costs of administering this chapter.

Sec. 18.007. **DENIAL, SUSPENSION, OR REVOCATION OF ORGANIC CERTIFICATION OR ORGANIC CERTIFYING AGENT ACCREDITATION.** The department may deny, suspend, or revoke a certification of a producer, processor, distributor, or retailer or a certificate of accreditation issued to an organic certifying agent under this chapter if the person to whom the certification or accreditation was issued:

(1) makes a false representation material to a matter governed by this chapter; or

(2) violates or refuses to comply with this chapter or a rule or instruction of the department under this chapter.

Sec. 18.008. *PENALTY.* (a) A person commits an offense if the person knowingly:

(1) violates this chapter; or

(2) fails to comply with a notice, order, or rule of the department under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Sec. 18.009. *CIVIL PENALTY; INJUNCTION.* (a) A person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues is a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the general revenue fund. All civil penalties recovered in suits instituted by a county or district attorney under this section shall be divided between the state and the county in which the county or district attorney brought suit, with 50 percent of the recovery to be paid to the general revenue fund and 50 percent to the county.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

(e) This section is applicable only if the department chooses to use civil remedy as opposed to criminal penalty under Section 18.008.

Sec. 18.010. *STOP-SALE ORDER.* (a) If food or fiber is being sold in violation of this chapter or a rule adopted under this chapter, the department may issue a written order to stop the sale of that item of food or fiber by a person in control of the item. The person named in the order may not sell the item until:

(1) permitted by a court under Subsection (b) of this section; or

(2) the department determines that the sale of the item is in compliance with this chapter and rules adopted under this chapter.

(b) The person named in the order may bring suit in a court in the county where the item is located. After a hearing, the court may permit the item to be sold if the court finds the item is not being sold in violation of this chapter or a department rule issued under this chapter.

(c) This section does not limit the department's right to act under another section of this chapter.

SECTION 2. Section 12.0175, Agriculture Code, is amended to read as follows:

Sec. 12.0175. ~~GROWN IN TEXAS PROGRAM~~; ~~NATURAL, LEAN, OR ORGANIC CERTIFICATION~~. [(a)] If the department establishes a program to promote products grown in the state or products made from ingredients grown in the state, the department may charge a membership fee not to exceed \$50, as provided by department rule, for each producer that participates in the program. The fee shall be designed to recover the costs of promotion.

~~[(b) If the department establishes an organic certification program, the department may charge, as provided by department rule, an annual fee not to exceed \$500 for each participant certified by the department as a processor and a fee not to exceed \$150 for each participant certified by the department as a producer, distributor, or retailer. The fee shall be designed to recover the costs of inspection for purposes of certification.]~~

SECTION 3. Section 12.024(a), Agriculture Code, is amended to read as follows:

(a) This section is applicable only to a renewal fee under Section 14.005, 18.003, 18.004, 71.043, 71.057, 75.004, 76.044, 76.073, 76.113, or 132.025 of this code.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 8, 1993, by a non-record vote; passed by the Senate on May 20, 1993: Yeas 30, Nays 0.

Approved June 12, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.