

By: Holland

To: Agriculture

HOUSE BILL NO. 597

1 AN ACT TO CREATE AN ORGANIC CERTIFICATION PROGRAM TO BE
2 DEVELOPED AND IMPLEMENTED BY THE DEPARTMENT OF AGRICULTURE AND
3 COMMERCE FOR THE PURPOSE OF DISTINGUISHING, AND REGULATING THE
4 SALE OF, ORGANIC FOOD; TO PROVIDE DEFINITIONS; TO REQUIRE PERSONS
5 TO BECOME CERTIFIED BY THE DEPARTMENT BEFORE SELLING ORGANIC FOOD;
6 TO PROVIDE CERTIFICATION REQUIREMENTS; TO REQUIRE CERTAIN
7 INSPECTION AND RENEWAL FEES; TO PROVIDE PENALTIES FOR VIOLATIONS
8 OF THIS ACT; TO PROVIDE HEARING PROCEDURES FOR PERSONS ACCUSED OF
9 VIOLATING THIS ACT; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 SECTION 1. For the purpose of this act, the following terms
12 shall have the following meanings:

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

17 (b) "Certified organic farm" means a farm or portion of
18 a farm or a site where agricultural products or livestock are
19 produced, that is certified by the department as utilizing a
20 system of organic farming.

21 (c) "Commissioner" means the Commissioner of the
22 Mississippi Department of Agriculture and Commerce.

23 (d) "Department" means the Mississippi Department of
24 Agriculture and Commerce.

25 (e) "EPA" means the United States Environmental
26 Protection Agency.

27 (f) "Farm plan" means a plan of management of an
28 organic farm that has been agreed to by the producer or handler
29 and the department and that includes written plans concerning all
30 aspects of agricultural production or handling including all
31 practices required under this act.

32 (g) "FDA" means the United States Food and Drug
33 Administration.

34 (h) "Greenhouse unit" or "unit" means a structure
35 intended or used for the production of agricultural products.

36 (i) "Handler" means any person engaged in the business
37 of handling agricultural products, except such term shall not
38 include final retailers of agricultural products that do not
39 process agricultural products.

40 (j) "Livestock" means any cattle, sheep, goats, swine,
41 poultry, equine animals used for food or in the production of
42 food, fish or other seafood used for food, wild or domesticated
43 game, or other nonplant life.

44 (k) "Mississippi organic materials and practices
45 (MOMP)" means a list of approved and prohibited substances and
46 practices as adopted

47 (l) "Organic farming" means a food production system
48 based on farm management methods or practices that rely on
49 building soil fertility by utilizing crop rotation, recycling of
50 organic wastes, application of unsynthesized minerals and, when
51 necessary, mechanical, botanical or biological pest control.

52 (m) "Organic food" means a food which is labeled as
53 organic or organically grown and which has been produced,
54 transported, distributed, processed and packaged without the use
55 of synthetic pesticides, synthetically compounded fertilizers,

56 synthetic growth hormones, genetically modified organisms or
57 artificial radiation and which has been verified by the department
58 as complying with all provisions of this act.

59 (n) "Organically managed or produced" means an
60 agricultural product that is produced and handled in accordance
61 with all the provisions of this act and any regulations adopted
62 thereunder.

63 (o) "Person" means an individual, group of individuals,
64 corporation, association, organization, cooperative or other
65 entity.

66 (p) "Pesticide" means any substance or mixture of
67 substances intended for preventing, destroying, repelling or
68 mitigating any pest and any substance or combination of substances
69 intended for use as a plant regulator, defoliant, desiccant or any
70 substance the commissioner determines to be a pesticide.

71 (q) "Processing" means cooking, baking heating, drying,
72 mixing, grinding, churning, separating, extracting, cutting,
73 fermenting, eviscerating, preserving, dehydrating, freezing or
74 otherwise manufacturing and includes the packaging, canning,
75 jarring or otherwise enclosing food in a container.

76 (r) "Producer" means a person who engages in the
77 business of growing or producing food, feed, ornamental plants and
78 livestock.

79 (s) "Prohibited substances, fertilizers, materials,
80 pesticides" means those substances, fertilizers, materials,
81 pesticides or practices prohibited by the act or regulations
82 adopted thereunder from use in a certified organic farming
83 operation.

84 (t) "Restricted" means substances and practices whose
85 use is limited or qualified as such by the commissioner.

86 (u) "Tolerance" means the amount of a pesticide
87 permitted on raw or processed agricultural commodities.

88 SECTION 2. The department may adopt any rules and
89 regulations necessary for the enforcement and administration of
90 this act, including, but not limited to:

91 (a) Crop, livestock and dairy production standards;

92 (b) Manufacturing, processing, packaging and labeling
93 standards;

94 (c) A materials list of permitted and prohibited
95 substances;

96 (d) Procedures governing the certification process; and

97 (e) Standards and procedures for approving out-of-state
98 organic products and ingredients.

99 SECTION 3. (1) Any producer who sells or intends to sell
100 organic food shall make application to the department for
101 certification in accordance with the requirements of this act.

102 (2) An applicant for certification must document that the
103 land, individual field or greenhouse units to be certified shall
104 be managed organically. Documentation for certification shall be
105 in the form of a detailed, three-year farm plan for land, fields
106 or units and in a format acceptable to the department. The
107 application shall be reviewed by the organic certification program
108 director.

109 (3) The farm plan shall include:

110 (a) Three-year rotation and nutrient-stabilization
111 plans for each field or unit under organic management;

112 (b) One-year, agronomic field-by-field crop practice
113 and spray plans for each field or unit of the farm which is
114 organically managed;

115 (c) A map of the field to be organically managed which
116 also indicates all buffer zones and their width, with at least a
117 thirty-foot buffer zone separating land managed organically from
118 other cultivated agricultural land and at least a fifteen-foot
119 buffer zone separating greenhouse units managed organically from
120 other units;

121 (d) A description of facility and methods that shall be
122 used to keep organically managed crops and livestock from
123 post-harvest segregated from nonorganically managed crops and
124 livestock;

125 (e) A description of facilities and methods that will
126 be used to keep farm equipment from contaminating organically
127 managed fields; and

128 (f) A description of facilities and methods that shall
129 be used to store and handle prohibited materials separately from
130 permitted material.

131 (4) A crop grown in an organically managed field, any part
132 of which is located within thirty (30) feet of a field to which a
133 prohibited pesticide has been applied, shall be tissue-tested for
134 residues of that pesticide before the harvest of the organic crop.

135 (5) The department shall not certify a field as organically
136 managed that is part of a farm unless there exist distinct,
137 defined boundaries between fields under organic management and
138 other fields.

139 (6) The department shall not certify land that has no

140 previous history as cultivated cropland, orchard or improved
141 pasture, and that is being converted to organic for the sole
142 purpose of replacing land abandoned because of chemical
143 contamination or depleted fertility resulting from previous
144 farm-management practices.

145 (7) In order to be certified, greenhouse units must be used
146 solely for organically produced agricultural products in
147 compliance with the provisions of this act and the regulations
148 adopted hereunder.

149 (8) An applicant for certification shall present soil
150 fertility test results for each field or greenhouse unit to be
151 certified initially and every third year thereafter.

152 (9) An applicant shall also present the results of water
153 residue and plant-tissue tests as required by the department.

154 (10) The department shall reserve the right to use a
155 certification rating system in evaluating the application.

156 SECTION 4. (1) Every precaution shall be taken to avoid
157 pesticide or other contaminating residues on agricultural products
158 sold or labeled as organic. In cases of unavoidable environmental
159 contamination, residues shall not exceed the limits set by the
160 department. For any substance not currently regulated by federal
161 law, the department may set appropriate action levels.

162 (2) The department shall sample a percentage of organic raw
163 agricultural commodities and organic processed food products as
164 part of the state pesticide residue monitoring program. Results
165 obtained from organic produce and organically processed product
166 samples shall be compiled in a separate annual report and
167 submitted to the United States Department of Agriculture.

168 (3) If a pesticide residue or residue of another prohibited
169 substance is found on an organic raw agricultural commodity or an
170 organically processed product by a state pesticide residue
171 monitoring program, the department may conduct an investigation of
172 the appropriate handler, producer or processor.

173 (4) The department may conduct periodic residue testing of
174 agricultural products sold as organic in the following situations:

175 (a) In cases of pesticide drift;

176 (b) When farm or handling facility inspection leads to
177 suspicion of residue problems;

178 (c) Suspicion that the soil harbors contaminants;

179 (d) Suspicion that irrigation water or rainfall
180 contains residues;

181 (e) During the thirty-six-month period immediately
182 following treatment of a certified organic farm by a state or
183 federal emergency spray program; or

184 (f) In response to complaints, or to follow up on
185 positive residue testing results from federal, state, or local
186 government testing.

187 SECTION 5. (1) The department may certify a crop as organic
188 only if harvest occurs at least three (3) years after the most
189 recent use of a prohibited pesticide and at least three (3) years
190 after the most recent use of a prohibited fertilizer.

191 (2) Farmers, growers or producers may be certified as
192 "transition to organic" within the three-year period required for
193 being certified as organic pursuant to subsection (1) of the
194 section. A "transition to organic" certification shall not exceed
195 three (3) consecutive years for the same farm unit.

196 SECTION 6. If a certified farm, field or greenhouse unit is
197 removed from organic management, it may be recertified after
198 passage of three (3) years without the application of a prohibited
199 pesticide and two (2) years without the application of a
200 prohibited fertilizer or other prohibited material.

201 SECTION 7. (1) The following records shall be kept for each
202 farm, field or other agricultural production unit for which
203 application for certification is made:

204 (a) Copies of farm questionnaires devised by the
205 department and completed by applicants for certification;

206 (b) Field-by-field or unit-by-unit fertilization,
207 cropping and pest management histories;

208 (c) Records of all laboratory analyses performed for a
209 farm, including soil tests, plant-tissue tests, forage tests,
210 bacteria counts and residue tests for toxic contaminants in soil,
211 water or crops for at least three (3) years and made available for
212 review by the department;

213 (d) Records of all crops produced shall show by lot,
214 bin or shipment numbers and dates which field a particular lot
215 came from;

216 (e) A producer of both organic produce and nonorganic
217 produce on the same farm shall keep separate records for each of
218 these two (2) categories. The sales records shall include
219 verification documents such as questionnaires, farm plans,
220 affidavits, inspection reports, laboratory analyses and documents
221 showing the path taken by an organic food product through
222 post-harvest handling and distribution;

223 (f) Other documentation required to complete the

224 application for certification or recertification as required under
225 Section 3 of this act.

226 (2) The following records shall be kept for processors:

227 (a) The department-devised questionnaire covering all
228 nonfarm aspects of food processing and manufacturing, if
229 applicable, to be prepared for each stage of the processing where
230 a food is substantially changed from its previous state and
231 covering every aspect of the product relevant to the department's
232 certification standards; and

233 (b) Notarized affidavits and agreements declaring that
234 the information they provide is accurate.

235 (3) (a) The department shall conduct a minimum of one (1)
236 on-site inspection per year of every farm or processing facility
237 for which a questionnaire is required; and

238 (b) These inspections shall be reported on a form
239 signed by a department inspector that includes the following
240 information:

241 (i) Observations about the condition of the farm
242 or processing facility;

243 (ii) Comments about the use of restricted or
244 prohibited practices and materials; and

245 (iii) An optional certification rating of the
246 operation.

247 (4) The department may conduct unannounced inspections of
248 certified producers and certified processors.

249 SECTION 8. (1) The department may conduct or provide for
250 audits of all documents used to verify that certified products
251 meet organic standards.

252 (2) These audits shall include, where appropriate:

253 (a) An inventory audit, a listing of the formulations
254 of the product, percent accuracy in labeling, the amount bought
255 and sold per product and producer or destination and the number of
256 vendors and amount of product per vendor; or

257 (b) A farm audit, listing the amounts sold per product,
258 date and destination and the area and location planted of each
259 product with dates of harvest.

260 (3) Information contained in audit records that is exempt
261 under the Public Records Act of Mississippi shall remain
262 confidential. Such exempt confidential information shall include
263 but not be limited to:

264 (a) Information that, if released, would give advantage
265 to competitors or bidders; and

266 (b) Trade secrets and commercial or financial
267 information obtained from a person and privileged or confidential
268 by statute or judicial decision.

269 SECTION 9. (1) Applications submitted under this act shall
270 be in writing on a form prescribed by the department.

271 (2) A separate application shall be submitted for each farm,
272 farm unit, processing plant, distribution facility or retail
273 operation.

274 (3) Applications and verification documents shall be
275 submitted to the Mississippi Department of Agriculture and
276 Commerce.

277 (4) The department shall authorize retailers and
278 distributors to use the Mississippi certified organic mark upon
279 satisfactory completion and approval of a department application

280 form.

281 (5) All applicants entitled to use the mark shall be subject
282 to inspection by the department.

283 SECTION 10. (1) The following conditions apply generally to
284 the retail sale of organic products.

285 (a) Any person selling organic products shall be
286 certified by the department, shall renew certification annually
287 and shall abide by the provisions of this act.

288 (b) A certified retailer may use the department
289 approved mark to identify only certified organic or transition to
290 organic food produced in Mississippi by a department certified
291 producer.

292 (c) Products bearing a Mississippi organic or
293 transitional organic mark shall be easily identifiable to
294 consumers and shall be clearly distinguishable from similar
295 products that are not Mississippi certified or transitional
296 organic.

297 (d) A certified retailer may sell or hold out for sale
298 as organic those agricultural products that have been certified as
299 organically produced by the official certifying agent for the
300 state of origin.

301 (2) A retailer or distributor shall have in place physical
302 facilities and management procedures adequate to prevent
303 commingling of organic food or organic products with other
304 nonorganic or contaminated food or products during distribution or
305 stocking.

306 SECTION 11. (1) The department shall not certify drugs or
307 drug ingredients under this act.

308 (2) No person may use a Mississippi certified organic mark
309 in connection with, nor represent as Mississippi certified
310 organic, any product or any ingredient of a product that is
311 regulated as a drug or that has been determined by a state or
312 federal agency of competent jurisdiction to be subject to
313 regulation as a drug.

314 (3) No person may use a Mississippi certified organic mark
315 or represent any product or ingredient as Mississippi certified
316 organic in an advertisement including, but not limited to, a
317 printed or broadcast advertisement, "advertorial," flier,
318 point-of-purchase material, signage or other printed material,
319 that makes medicinal claims.

320 SECTION 12. The department shall perform inspections of
321 certified producers, processors, retailers, distributors and
322 applicants for certification at a time when normal production,
323 post-harvest or sales activity can be observed.

324 (2) The department may issue a stop sale on products that
325 falsely or erroneously claim to be organic. The stop sale may be
326 lifted at such time as the seller can show:

327 (a) That the products were organically managed in
328 compliance with the act and the regulations adopted thereunder or
329 that of the state of origin; or

330 (b) That he agrees to drop any claim that the products
331 were organically produced.

332 (3) The department may conduct unannounced inspections in
333 cases of suspected violations of standards.

334 (4) Any person with cause to believe that any provision of
335 this act has been violated may file a written or oral complaint

336 with the department setting forth the facts of the alleged
337 violation.

338 (5) The department shall maintain for three (3) years
339 records of all complaints, investigations, and remedial actions.
340 These records shall become part of the reviewing record of any
341 proceeding involving a certified person or applicant for
342 certification.

343 SECTION 13. (1) Producers and processors participating in
344 the department's organic certification program will be charged an
345 inspection fee and an annual renewal fee. Retailers and
346 distributors shall be charged an application fee for the initial
347 inspection conducted by the department in accordance with this act
348 and the regulations adopted hereunder and an annual renewal fee.

349 (2) The inspection fee shall be paid by the new applicant
350 and those applicants renewing certification, and shall be paid in
351 accordance with the following schedule:

| 352 Producer | Initial application | Renewal |
|--------------------------------|----------------------------|----------------|
| 353 less than 5 acres | \$50.00 | \$25.00 |
| 354 5 to 25 acres | \$75.00 | \$50.00 |
| 355 over 25 acres | \$150.00 | \$50.00 plus |
| 356 | | 2.50 per acre |
| 357 | | of production |
| 358 Greenhouse Producer | Initial application | Renewal |
| 359 less than 250 sq. ft. | \$50.00 | \$25.00 |
| 360 250 to 1,000 sq. ft. | \$75.00 | \$50.00 |
| 361 over 1,000 sq. ft. | \$150.00 | \$150.00 |
| 362 Distributor | Initial application | Renewal |
| 363 | \$150.00 | \$150.00/year |

| | | | |
|-----|------------------------------|----------------------------|----------------|
| 364 | Processor (other than | Initial application | Renewal |
| 365 | producer/processor) | \$500.00 | \$500.00/year |
| 366 | Retailer | Initial application | Renewal |
| 367 | | \$100.00 | \$100.00 |

368 SECTION 14. (1) The labeling, advertising or otherwise
369 representing of food to be organic by any producer, handler,
370 distributor or retailer is prohibited, unless the food complies
371 with all of the provisions of this act and the regulations adopted
372 hereunder.

373 (2) The selling or offering for sale of food as organic
374 which does not comply with all of the provisions of this act or
375 the regulations adopted hereunder is prohibited.

376 (3) The buying, selling or offering for sale of any organic
377 food by any handler, distributor or retailer in violation of this
378 act or the regulations adopted hereunder is prohibited.

379 (4) The use, employment, adoption or utilization of the
380 Mississippi certified organic mark in the selling, advertising,
381 marketing, packaging or other commercial handling of food and
382 fiber product without prior application to and approval by the
383 department is prohibited.

384 SECTION 15. Any person who violates any provision of this
385 act or any regulation adopted hereunder shall be guilty of a
386 misdemeanor, and shall be punished by the imposition of a fine not
387 to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the
388 county jail for a term not to exceed six (6) months, or both.

389 SECTION 16. (1) If any person violates any of the
390 provisions of this act, or the rules and regulations adopted
391 hereunder, administrative proceedings may be brought against him

392 pursuant to a written complaint filed with the department. The
393 matter shall be heard by the organic certification program
394 director or his designated representative in an informal meeting
395 between the accused and the program director or his designee. If
396 the program director or his designee finds that the accused did
397 commit a violation, the program director may levy a civil penalty
398 against the accused in an amount as authorized by the regulations
399 of the department, revoke or suspend the department's
400 registration, license or certification of the accused and require
401 the accused to remove the mark from the goods or products that are
402 in violation of this act before sale. The program director or his
403 designee shall render a written opinion. If either party is
404 aggrieved by the findings of the program director or his designee,
405 he may appeal to the commissioner for a full evidentiary hearing.
406 At the hearing before the commissioner or his designated
407 representative, the matter shall be heard de novo, the
408 commissioner shall have subpoena power, the witnesses shall be
409 placed under oath and the testimony shall be recorded. The
410 commissioner or his designee shall render a written opinion. If
411 either party is aggrieved by the findings of the commissioner, he
412 may appeal to the circuit court of the county of residence of the
413 accused, or, if the accused is a nonresident of the State of
414 Mississippi, to the Circuit Court of the First Judicial District
415 of Hinds County, Mississippi. If either party is aggrieved by the
416 findings of the circuit court, he may appeal to the Mississippi
417 Supreme Court. All fees, costs and penalties collected hereunder
418 from the accused may be retained by the department for its
419 operating expenses. The commissioner may expand and amplify the

420 procedures and other matters mentioned in this section in such
421 rules and regulations that the commissioner deems necessary or
422 desirable to carry out the provisions of this section.

423 (2) Where any violation of this chapter or the rules and
424 regulations adopted hereunder occurs or is about to occur that
425 presents a clear and present danger to the public health, safety
426 or welfare requiring immediate action, the commissioner or any of
427 designated representative may issue an order to be effective
428 immediately, before notice and a hearing that imposes upon the
429 accused a stop sale order, requires the relabeling of a product,
430 requires the seizure and sale of a product and such other measures
431 as the commissioner deems necessary under the circumstances. The
432 emergency order shall contain findings to this effect and the
433 reasons for its entry. The order shall contain or be accompanied
434 by a notice of opportunity for hearing which shall provide that a
435 hearing shall be held if and only if the person subject to the
436 order requests a hearing within ten (10) days of receipt of the
437 order and notice. A copy of the order and notice shall be served
438 upon the affected person by certified mail or by any of the
439 methods set forth in Rule 4 of the Mississippi Rules of Civil
440 Procedure. Upon such request for a hearing, a complaint setting
441 forth the charges shall be served upon the accused, and the
442 procedure outlined in subsection (1) of this section shall be
443 followed. If it is determined by the reviewing officer or the
444 commissioner, or his designee, that the emergency order was
445 erroneously entered, a remedy shall be fashioned which will make
446 the affected person whole.

447 SECTION 17. This act shall take effect and be in force from

448 and after July 1, 2000.