

By: Stogner, Horhn

To: Agriculture

SENATE BILL NO. 2559
(As Passed the Senate)

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 SALE
4 OF ORGANIC FOOD; TO PROVIDE DEFINITIONS; TO REQUIRE PERSONS TO
5 BECOME CERTIFIED BY THE DEPARTMENT BEFORE SELLING ORGANIC FOOD; TO
6 PROVIDE CERTIFICATION REQUIREMENTS; TO REQUIRE CERTAIN INSPECTION
7 AND RENEWAL FEES; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT;
8 TO PROVIDE HEARING PROCEDURES FOR PERSONS ACCUSED OF VIOLATING
9 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,
72 drying, mixing, grinding, churning, separating, extracting,
73 cutting, fermenting, eviscerating, preserving, dehydrating,
74 freezing or otherwise manufacturing and includes the packaging,
75 canning, 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" mean those substances, fertilizers, materials,
81 pesticides or practices prohibited by this act or regulations from
82 use in a certified organic farming operation.

83 (t) "Restricted" means substances and practices which
84 use is limited or qualified by the commissioner.

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

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

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

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

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

95 (d) Procedures governing the certification process; and

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

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

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

108 (3) The farm plan shall include:

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

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

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

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

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

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

130 (4) A crop grown in an organically-managed field, any part

131 of which is located within thirty (30) feet of a field to which a
132 prohibited pesticide has been applied, shall be tissue-tested for
133 residues of that pesticide before the harvest of the organic crop.

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

138 (6) The department shall not certify land that has no
139 previous history as cultivated cropland, orchard or improved
140 pasture, and that is being converted to organic for the sole
141 purpose of replacing land abandoned because of chemical
142 contamination or depleted fertility resulting from previous
143 farm-management practices.

144 (7) In order to be certified, greenhouse units must be used
145 solely for organically-produced agricultural products in
146 compliance with this act and applicable regulations.

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

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

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

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

160 (2) The department shall sample a percentage of organic raw
161 agricultural commodities and organic processed food products as
162 part of the state pesticide residue monitoring program. Results
163 obtained from organic produce and organically processed product

164 samples shall be compiled in a separate annual report and
165 submitted to the United States Department of Agriculture.

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

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

173 (a) In cases of pesticide drift;

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

176 (c) Suspicion that the soil harbors contaminants;

177 (d) Suspicion that irrigation water or rainfall
178 contains residues;

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

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

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

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

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

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

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

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

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

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

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

221 (f) Other documentation required to complete the
222 application for certification or recertification as required under
223 Section 3 of this act.

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

225 (a) The department-devised questionnaire covering all
226 nonfarm aspects of food processing and manufacturing, if

227 applicable, to be prepared for each stage of the processing where
228 a food is substantially changed from its previous state and
229 covering every aspect of the product relevant to the department's
230 certification standards; and

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

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

236 (b) These inspections shall be reported on a form
237 signed by a department inspector that include the following
238 information:

239 (i) Observations about the condition of the farm
240 or processing facility;

241 (ii) Comments about the use of restricted or
242 prohibited practices and materials; and

243 (iii) An optional certification rating of the
244 operation.

245 (4) The department may conduct unannounced inspections of
246 certified producers and certified processors.

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

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

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

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

258 (3) Information contained in audit records that is exempt
259 under the Public Records Act of Mississippi shall remain

260 confidential. Such exempt confidential information shall include,
261 but not be limited to:

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

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

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

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

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

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

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

281 SECTION 10. (1) The following conditions apply generally to
282 the retail sale of organic products:

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

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

290 (c) Products bearing a Mississippi organic or
291 transitional organic mark shall be easily identifiable to
292 consumers and shall be clearly distinguishable from similar

293 products that are not Mississippi certified or transitional
294 organic.

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

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

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

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

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

318 SECTION 12. (1) The department shall perform inspections of
319 certified producers, processors, retailers, distributors and
320 applicants for certification at a time when normal production,
321 post-harvest or sales activity can be observed.

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

325 (a) That the products were organically managed in

326 compliance with this act and regulations or that of the state of
327 origin; or

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

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

332 (4) Any person with cause to believe that any provision of
333 this act has been violated may file a written or oral complaint
334 with the department setting forth the facts of the alleged
335 violation.

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

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

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

Producer	Initial application	Renewal
<u>less than 5 acres</u>	<u>\$25.00</u>	<u>\$25.00</u>
<u>5 to 25 acres</u>	<u>\$50.00</u>	<u>\$25.00</u>
<u>over 25 acres</u>	<u>\$75.00</u>	<u>\$25.00</u>
Greenhouse Producer	Initial application	Renewal
<u>less than 250 sq. ft.</u>	<u>\$25.00</u>	<u>\$25.00</u>
<u>250 to 1,000 sq. ft.</u>	<u>\$50.00</u>	<u>\$25.00</u>
<u>over 1,000 sq. ft.</u>	<u>\$75.00</u>	<u>\$25.00</u>
Distributor	Initial application	Renewal

359		\$50.00	\$50.00/year
360	Processor (other than	Initial application	Renewal
361	producer/processor)	\$50.00	\$50.00/year
362	Retailer	Initial application	Renewal
363		\$10.00	\$10.00

364 SECTION 14. (1) The labeling, advertising or otherwise
365 representing of food to be organic by any producer, handler,
366 distributor or retailer is prohibited, unless the food complies
367 with this act and regulations.

368 (2) The selling or offering for sale of food as organic
369 which does not comply with this act or regulations is prohibited.

370 (3) The buying, selling or offering for sale of any organic
371 food by any handler, distributor or retailer in violation of this
372 act or regulations is prohibited.

373 (4) The use, employment, adoption or utilization of the
374 Mississippi certified organic mark in the selling, advertising,
375 marketing, packaging or other commercial handling of food and
376 fiber product without prior application to and approval by the
377 department is prohibited.

378 SECTION 15. Any person who violates this act or any
379 regulation is guilty of a misdemeanor, and shall be punished by
380 the imposition of a fine not to exceed Five Hundred Dollars
381 (\$500.00) or by imprisonment in the county jail for a term not to
382 exceed six (6) months, or both.

383 SECTION 16. (1) If a person violates this act, or rules and
384 regulations, administrative proceedings may be brought against the
385 person by a written complaint filed with the department. The
386 matter shall be heard by the organic certification program
387 director or his designated representative in an informal meeting
388 between the accused and the program director or his designee. If
389 the program director or his designee finds that the accused did
390 commit a violation, the program director may levy a civil penalty
391 against the accused in an amount as authorized by the regulations

392 of the department, revoke or suspend the registration, license or
393 certification of the accused and require the accused to remove the
394 mark from the goods or products that are in violation of this act
395 before sale. The program director or his designee shall render a
396 written opinion. If either party is aggrieved by the findings of
397 the program director or his designee, he may appeal to the
398 commissioner for a full evidentiary hearing. At the hearing
399 before the commissioner or his designated representative, the
400 matter shall be heard de novo, the commissioner shall have
401 subpoena power, the witnesses shall be placed under oath and the
402 testimony shall be recorded. The commissioner or his designee
403 shall render a written opinion. If either party is aggrieved by
404 the findings of the commissioner, he may appeal to the circuit
405 court of the county of residence of the accused, or, if the
406 accused is a nonresident of the State of Mississippi, to the
407 Circuit Court of the First Judicial District of Hinds County,
408 Mississippi. If either party is aggrieved by the findings of the
409 circuit court, he may appeal to the Mississippi Supreme Court.
410 All fees, costs and penalties collected from the accused may be
411 retained by the department for its operating expenses. The
412 commissioner may expand and amplify the procedures and other
413 matters mentioned in this section in such rules and regulations
414 that the commissioner deems necessary or desirable to carry out
415 this section.

416 (2) When any violation of this act or rules and regulations
417 occurs or is about to occur that presents a clear and present
418 danger to the public health, safety or welfare requiring immediate
419 action, the commissioner or any designated representative may
420 issue an order to be effective immediately, before notice and a
421 hearing that imposes upon the accused a stop sale order, requires
422 the relabeling of a product, requires the seizure and sale of a
423 product and such other measures as the commissioner deems
424 necessary under the circumstances. The emergency order shall

425 contain findings to this effect and the reasons for its entry.
426 The order shall contain or be accompanied by a notice of
427 opportunity for hearing which shall provide that a hearing shall
428 be held if and only if the person subject to the order requests a
429 hearing within ten (10) days of receipt of the order and notice.
430 A copy of the order and notice shall be served upon the affected
431 person by certified mail or by any of the methods set forth in
432 Rule 4 of the Mississippi Rules of Civil Procedure. Upon a
433 request for a hearing, a complaint setting forth the charges shall
434 be served upon the accused, and the procedure outlined in
435 subsection (1) of this section shall be followed. If it is
436 determined by the reviewing officer or the commissioner, or his
437 designee, that the emergency order was erroneously entered, a
438 remedy shall be fashioned which will make the affected person
439 whole.

440 SECTION 17. This act shall take effect and be in force from
441 and after July 1, 2000.