

By: Stogner, Horhn

To: Agriculture

SENATE BILL NO. 2559
(As Sent to Governor)

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 and three (3) advisory members
88 appointed by the Mississippi Organic Growers Association and one
89 (1) Mississippi State University extension service specialist and
90 one (1) Alcorn State University extension service specialist may
91 adopt any rules and regulations necessary for the enforcement and
92 administration of this act, including, but not limited to:

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

94 (b) Manufacturing, processing, packaging and labeling
95 standards;

96 (c) A materials list of permitted and prohibited
97 substances;

98 (d) Procedures governing the certification process; and

99 (e) Standards and procedures for approving out-of-state

100 organic products and ingredients.

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

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

111 (3) The farm plan shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

163 (2) The department shall sample a percentage of organic raw
164 agricultural commodities and organic processed food products as
165 part of the state pesticide residue monitoring program. Results

166 obtained from organic produce and organically processed product
167 samples shall be compiled in a separate annual report and
168 submitted to the United States Department of Agriculture.

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

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

176 (a) In cases of pesticide drift;

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

179 (c) Suspicion that the soil harbors contaminants;

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

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

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

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

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

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

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

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

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

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

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

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

224 (f) Other documentation required to complete the
225 application for certification or recertification as required under
226 Section 3 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

263 confidential. Such exempt confidential information shall include,
264 but not be limited to:

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

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

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

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

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

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

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

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

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

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

293 (c) Products bearing a Mississippi organic or
294 transitional organic mark shall be easily identifiable to
295 consumers and shall be clearly distinguishable from similar

296 products that are not Mississippi certified or transitional
297 organic.

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

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

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

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

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

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

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

328 (a) That the products were organically managed in

329 compliance with this act and regulations or that of the state of
330 origin; or

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

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

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

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

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

350 (2) The inspection fee shall be paid by the new applicant
351 and those applicants renewing certification, and shall be paid in
352 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

362		\$50.00	\$50.00/year
363	Processor (other than	Initial application	Renewal
364	producer/processor)	\$50.00	\$50.00/year
365	Retailer	Initial application	Renewal
366		\$10.00	\$10.00

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

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

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

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

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

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

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

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

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

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